

**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 Variancee.) Case No. _____

APPLICATION FOR VARIANCE

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 a variance from certain portions of Rules 4 CSR 240-20.015(2)(A) and 4 CSR 240-40.015(2)(A) and 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 S. Joplin Avenue, Joplin, Missouri, 64801. Empire Electric is engaged in the business of providing electric 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 S. Joplin Avenue, 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 602 S. Joplin Avenue, Joplin, Missouri 64801. 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 602 S. Joplin Avenue, Joplin, Missouri 64801. 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. The Applicants are affiliates of each other and are also affiliates and subsidiaries of Liberty Utilities Co. (“LUCo”). LUCo is a subsidiary of Algonquin Power & Utilities Corp. (“APUC”).

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

Request for Variance – Affiliate Transactions Rules

8. 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.

9. 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 herein are seeking Commission approval of their CAM in File No. AO-2017-0360. For ease of operation, Liberty Utilities is a party to this Application and File No. AO-2017-0360, even though the Commission’s rules do not require water corporations to operate pursuant to Commission-approved CAMs.

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).

11. 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.

12. 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.

13. 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.

14. 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.

15. The Applicants desire to participate in a “Money Pool Agreement” which will result in affiliate transactions involving the Applicants and other affiliates, with the pricing for each transaction to be established pursuant to the Agreement and without competitive bidding and cost documentation for each transaction. The Money Pool Agreement, a copy of which is attached hereto as Exhibit A, is between LUCo and its subsidiaries, including both regulated and unregulated entities. The Agreement will provide benefits to the utilities’ customers and will not allow for any cross subsidization to occur among the participating entities, since the lending and borrowing interest rate for participating parties is the same.

16. The “Money Pool” is a cash management arrangement among the 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 made by eligible borrowers. Participants contributing excess funds to the Money Pool will receive a pro-rata share of all loan and/or investment interest.

17. LUCo has entered into a Credit Agreement with JP Morgan Chase, N.A., and the other lender parties thereto dated as of September 30, 2013, which provides for a \$200 million multi-bank revolving credit facility. LUCo carries an investment grade rating of BBB/Stable from Standard & Poor's and maintains a high-grade committed credit facility. The interest rate applicable to all borrowings from the Money Pool will be equal to the lowest rate available under the LUCo Credit Agreement, which will usually be the 30-day LIBOR rate plus 125 basis points.

18. The Money Pool minimizes the need for the Applicants to seek short-term loans to cover temporary cash shortfalls from external sources. The Money Pool benefits the utilities, and in turn their customers, by providing the utilities with lower cost short-term liquidity and higher paying short-term investment opportunities than they would otherwise have. The Money Pool also provides better cash management for the utilities' funds, lessening the potential for excess funds to be left idle in checking or other bank accounts paying low rates of interest or not invested due to an insufficient investment amount.

19. More specifically, the benefit to utility customers is two-fold: (1) when a utility lends money to the Money Pool, it will have the opportunity to share in the loan interest income paid by borrowers, which will be at a higher rate of interest than overnight investments; and (2) the interest rate charged to the utility on funds it borrows from the Money Pool leverages LUCo's investment-grade credit rating – providing the lowest available borrowing rate under the LUCo Credit Agreement. It is highly unlikely under current circumstances that the utility would be able to borrow funds at a lower rate on its own.

20. Regarding paragraphs 15-19 above, and with respect only to Empire Electric and Empire Gas, please note that Empire Electric has its own commercial paper program which is backed by Empire Electric's own \$200 million credit facility led by Wells Fargo Bank. This credit facility is used to support the working capital needs of Empire Electric and Empire Gas and its funding rates are lower than those available under the Money Pool. Therefore, Empire Electric and Empire Gas will only participate in the Money Pool as lenders of excess cash and will only borrow from the Money Pool if and when it offers a lower cost of funds.

21. To the extent the Commission believes a variance is required, the Applicants request a variance from the asymmetrical pricing and competitive bidding requirements of Rules 4 CSR 240-20.015(2)(A) and 4 CSR 240-40.015(2)(A), to allow the Applicants to participate in the Money Pool Agreement attached hereto.

Motion for Waiver – 60-Day Notice

22. Commission Rule 4 CSR 240-4.017(1) provides that "(a)ny person that intends to file a case shall file a notice with the secretary of the commission a minimum of sixty (60) days prior to filing such case." No such notice was filed herein. As such, the Applicants seek a waiver of the 60-day notice requirement.

23. Commission Rule 4 CSR 240-4.017(1)(D) provides that a waiver may be granted for good cause. In this regard, the Applicants declare (as verified below) that they have had no communication with the Office of the Commission (as defined in Commission Rule 4 CSR 240-4.015(10)) within the prior 150 days regarding any substantive issue likely to be in this case. Further, the Applicants note that the issue of the Empire Electric and Empire Gas CAM has been before the Commission in various forms since 2011 and that the CAM for all Applicants is currently before the Commission in File No. AO-2017-0360.

24. For the good cause shown, the Applicants move for a waiver of the 60-day notice requirement of Rule 4 CSR 240-4.017(1) and acceptance of this Application at this time.

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

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.

By: /s/ Diana C. Carter

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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing document was filed in EFIS on this 29th day of December, 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

VERIFICATION

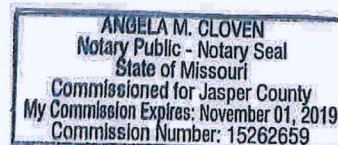
State of Missouri)
) ss
County of Jasper)

I, Jill Schwartz, having been duly sworn upon my oath, state that I am the Senior Manager, Rates and Regulatory Affairs of The Empire District Electric Company (Empire), that I am duly authorized to make this affidavit on behalf of Empire, and that to the best of my information, knowledge and belief the matters and things stated in the foregoing Application are true and correct, and that no one representing Empire has had any communication with the Office of the Commission (as defined in Rule 4 CSR 240-4.015(10)) within the one hundred fifty (150) days prior to the filing of the Application regarding any substantive issue likely to be addressed in this case.

Jill Schwartz

Subscribed and sworn before me this 28th day of December, 2017.

Angela M. Cloven
Notary Public



VERIFICATION

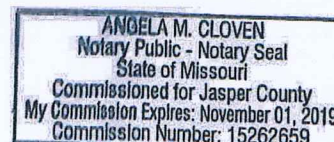
State of Missouri)
) ss
County of Jasper)

I, Jill Schwartz having been duly sworn upon my oath, state that I am the Senior Manager, Rates and Regulatory Affairs of The Empire District Gas Company (Empire Gas), that I am duly authorized to make this affidavit on behalf of Empire Gas, and that to the best of my information, knowledge and belief the matters and things stated in the foregoing Application are true and correct, and that no one representing Empire Gas has had any communication with the Office of the Commission (as defined in Rule 4 CSR 240-4.015(10)) within the one hundred fifty (150) days prior to the filing of the Application regarding any substantive issue likely to be addressed in this case.

Jill Schwartz

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Angela M. Cloven
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VERIFICATION

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) ss
County of Jasper)

I, Jill Schwartz, having been duly sworn upon my oath, state that I am the Senior Manager, Rates and Regulatory Affairs of Liberty Utilities (Midstates Natural Gas) Corp. (Liberty Midstates), that I am duly authorized to make this affidavit on behalf of Liberty Utilities (Midstates Natural Gas) Corp. (Liberty Midstates), and that to the best of my information, knowledge and belief the matters and things stated in the foregoing Application are true and correct, and that no one representing Liberty Utilities (Midstates Natural Gas) Corp. (Liberty Midstates) has had any communication with the Office of the Commission (as defined in Rule 4 CSR 240-4.015(10)) within the one hundred fifty (150) days prior to the filing of the Application regarding any substantive issue likely to be addressed in this case.

Jill Schwartz

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Angela M. Cloven
Notary Public

VERIFICATION

State of Missouri)
) ss
County of Jasper)

I, Jill Schwartz, having been duly sworn upon my oath, state that I am the Senior Manager, Rates and Regulatory Affairs of Liberty Utilities (Missouri Water) LLC, that I am duly authorized to make this affidavit on behalf of Liberty Utilities (Missouri Water) LLC, and that to the best of my information, knowledge and belief the matters and things stated in the foregoing Application are true and correct, and that no one representing Liberty Utilities (Missouri Water) LLC has had any communication with the Office of the Commission (as defined in Rule 4 CSR 240-4.015(10)) within the one hundred fifty (150) days prior to the filing of the Application regarding any substantive issue likely to be addressed in this case.

Jill Schwartz

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