

Docket 11-0559
Joint Applicants Ex. 6.4
Filed December 15, 2011

LIBERTY ENERGY (MIDSTATES) CORP.

**ILLINOIS COMMERCE COMMISSION
DOCKET NO. 11-0559
DATA REQUEST NO. JF-5.01**

JF-5.01 Please describe any steps that Liberty Utilities and Liberty Energy Midstates have taken or will take to ring fence themselves from their affiliates.

Response:

1. Separate Entity

The regulated utility assets to be acquired from Atmos Energy will be held by Liberty Midstates, an entity that is legally separate from all other businesses of APUC and its other direct and indirect subsidiaries. While the foregoing structure has been put in place by Liberty Utilities Co. of its own accord, state commission approval would be required to either merge Liberty Energy (Midstates) with or into any other entity,¹ or to transfer the utility assets from Liberty Energy (Midstates) to any other entity.² As a result, state commission approval would be required to effectuate movement away from the holding company structure. In addition, non-regulated business activities of APUC and its affiliates are conducted “above” the regulated utility entities and their intermediate holding companies, through additional legally distinct subsidiaries of APUC, as recommended by ratings agencies and others.

2. Operational Separateness

Local control and day-to-day management are central tenets of the business model adopted with respect to the regulated utilities indirectly owned by APUC. As discussed in Mr. David Pasioka testimony, “Liberty Utilities adopts a de-centralized approach to operating its regulated utilities business, emphasizing the importance of local management and local control of business operations in structuring its operations.” In his commission testimony, Mr. Pasioka further noted that Liberty Energy (Midstates) will employ a President based in the service territory who will have full time responsibility for the day-to-day operations of the utility. Additionally, all operational personnel for the utility being acquired will be employed by Liberty Energy (Midstates).

¹ 220 ILCS 5/7-204 (*see also* 220 ILCS 5/7-102(A)(c)-(d)) (Illinois); Mo Rev. Stat. 393.190(1) (*see also* Mo. Rev. Stat. 393.250) (Missouri).

² 220 ILCS 5/7-102(A)(c) and 5/7-204 (*see also* 5/7-203 and 5/8-406) (Illinois); Mo Rev. Stat. 393.190(1) (Missouri).

All shared services will be allocated pursuant to a written cost allocation manual based largely on guidelines established by the National Association of Regulatory Utility Commissioners (NARUC). Further, state commission rules require that Liberty Energy (Midstates) maintain, and ensure that its affiliates maintain, documentation of affiliate transaction costs and methods of allocation.³

3. Books and Records

Liberty Energy (Midstates) will maintain books and records separate from those of any of its affiliates. State laws and rules of the state commissions to which Liberty Energy (Midstates) will be subject require that separate books and records be kept,⁴ and also prescribe specific forms of and methods of keeping accounts, books and records, and the submission to the commission of various reports. Further, state commissions to which Liberty Energy (Midstates) will be subject, as well as the Federal Energy Regulatory Commission, will have rights of access to the books and records of Liberty Energy (Midstates) and its affiliates pursuant to state law and commission rules,⁵ and pursuant to the Public Utility Holding Company Act of 2005.⁶

4. Capitalization

As specified in the testimony of Mr. Eichler, Liberty Energy (Midstates) plans to establish a 45/55 debt-to-equity ratio upon the acquisition of regulated utility assets from Atmos Energy. The proposed capitalization of the utility would not support a finding that the utility was “grossly undercapitalized” for purposes of disregarding the corporate separateness of Liberty Energy (Midstates).

Prepared By:

Name: Shannon Coleman
Title: Senior Regulatory Counsel Liberty Utilities (Canada) Corp.
Contact: (905) 465-4462

³ 220 ILCS 5/7-101(2) (Illinois); 4 CSR 240-40.015(5)(A) (Missouri).

⁴ 220 ILCS 5/7-206 (Illinois); 4 CSR 240-40.015(4)(A) (Missouri).

⁵ 220 ILCS 5/5-105, 5/7-101(2), 5/7-205 and 5/7-206 (Illinois); 4 CSR 240-40.015(6) (Missouri).

⁶ 42 U.S.C. 16452 and 16453.