

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

**Atmos Energy Corporation and  
Liberty Energy (Midstates) Corp.**

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Docket No. 11-0559

Application for Approval of Proposed  
Reorganization and Other Relief

**JOINT APPLICANTS' REPLY BRIEF**

## TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY .....	1
II.	ARGUMENT.....	6
A.	The Commission Should Disregard Arguments in Staff’s Initial Brief .....	6
B.	Section 7-204(b)(2) .....	7
1.	An ASA between LUC and APCo is outside the Commission’s jurisdiction and is unnecessary to protect Illinois ratepayers.....	7
2.	Section V of the CAM does not apply to Liberty Energy Midstates .....	11
3.	Staff recommendation that Liberty Energy Midstates modify the ASAs to include a list of receiving companies is unnecessary .....	13
4.	Liberty Energy Midstates’ ASAs and CAM include all necessary principles of cost allocation .....	15
5.	Liberty Energy Midstates has voluntarily adopted safeguards, which will ensure there is no cross-subsidization or improper allocation of costs.....	19
6.	There is no record or legal basis for requiring an additional 7-101 petition nor is it necessary .....	25
C.	Section 7-204(b)(3) .....	27
D.	Section 7-204(b)(5) .....	29
E.	Section 7-101 .....	30
III.	CONCLUSION .....	32

## I. INTRODUCTION AND SUMMARY

The Joint Applicants' evidentiary presentation and Initial Brief have demonstrated that the proposed reorganization is beneficial to Illinois and meets the relevant requirements of the Illinois Public Utilities Act (the "Act").<sup>1</sup> Although the evidence in the record shows that the proposed reorganization meets the requirements of the Act, the Joint Applicants have worked diligently to resolve issues raised by Staff. As a result of these efforts and the corresponding efforts of Staff, there are no contested issues under Sections 7-204(b)(1), (4), (6), (7), 7-204(b) (5) (as it relates to Staff witness Burk), or any of the related relief requested by the Joint Applicants.<sup>2</sup>

The only remaining issues in this docket are related to Affiliate Services Agreements ("ASAs") and a Cost Allocation Manual ("CAM") for which Liberty Energy Midstates has requested approval in connection with the proposed reorganization.<sup>3</sup> Liberty Energy Midstates has made every effort to revise and modify its ASAs and CAM to reflect concerns expressed by Staff.<sup>4</sup> The Joint Applicants have adopted an annual internal audit, billing report, cost allocation percentage template, triennial cost study, and a prohibition on purchasing gas from affiliates ("*Safeguard Conditions*").<sup>5</sup> While

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<sup>1</sup> 220 ILCS 5/1-101 et seq.

<sup>2</sup> The uncontested related relief requested by the Joint Applicants includes relief under Sections, 5-106, 6-102, 6-103, 6-108, 7-102, 7-203, 7-204(c), 8-406, 8-508 and 9-201. See Joint Applicant Initial brief at § II (discussion of resolved issues).

<sup>3</sup> See Joint Applicant Initial Brief at § III (discussion of contested issues); Staff Initial Brief at § III (discussion of contested issues).

<sup>4</sup> Joint Applicant Ex. 9.0 at 13:316-14:329; *Compare* Joint Applicant Ex. 9.6-9.10 with Staff Ex. 10.0 Att. A-E.

<sup>5</sup> See Joint Applicant Initial Brief at § III.A.3-7; *infra* Part II.B.5.

Liberty Energy Midstates was unable to reflect a narrow set of the recommendations made by Staff witness Bonita A. Pearce, an Accountant in the Accounting Department of the Commission's Financial Analysis Division, Liberty Energy Midstates has addressed all of the concerns expressed by Ms. Pearce.<sup>6</sup> Specifically, Liberty Energy Midstates has been unable to adopt Ms. Pearce's specific recommendations that:

- Liberty Energy Midstates require its affiliates, Liberty Utilities (Canada) Corp. ("LUC") and Algonquin Power Co. ("APCo"), two non-utility affiliated interests, to enter into an ASA between each other that is subject to Commission approval;<sup>7</sup>
- That Liberty Energy Midstates be required to delete Section V of the CAM or clearly identify the Service Companies that will be providing services under this section, even though Liberty Energy Midstates is not seeking to make this section of the CAM effective in Illinois;<sup>8</sup>
- Liberty Energy Midstates modify the ASAs to require Liberty Energy Midstates to include as parties a list of additional receiving companies to the ASAs, even though Liberty Energy Midstates is not seeking approval of transactions with these companies;<sup>9</sup>
- That Liberty Energy Midstates be required to submit a petition under Section 7-101 to evaluate the effectiveness of the ASAs.<sup>10</sup>

These items are what the Joint Applicants believe to be the open issues in this docket. As described in further detail below, Liberty Energy Midstates cannot adopt the remaining recommendations of Ms. Pearce. Those remaining recommendations are

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<sup>6</sup> Joint Applicant Ex. 9.0 at 12:295-301; see *generally* Joint Applicant Initial Brief at § III.

<sup>7</sup> See *infra* Parts II.B.1 (Discussing disagreement that the Commission regulates affiliate agreements that do not involve an Illinois public utility).

<sup>8</sup> See *infra* Parts II.B.2 (discussing why removal of Section V is not required).

<sup>9</sup> See *infra* Parts II.B.3 (discussing why the requirement to list additional receiving companies is unnecessary).

<sup>10</sup> See *infra* Part II.B.6 (discussion that an additional 7-101 petition is unnecessary).

inconsistent with the Act, have no record support, and are not necessary to allow the Commission to approve the proposed reorganization or the ASAs and CAM that have been proposed by Liberty Energy Midstates.

1. No LUC-APCo ASA. The Commission should not order two non-utilities, LUC and APCo, to enter into an ASA. First and foremost, there is no need for an ASA between LUC and APCo, because the ASAs between Liberty Energy Midstates and the entities that will be providing Liberty Energy Midstates with services adequately protect Illinois ratepayers from cross-subsidization. Second, the Commission has previously decided that its jurisdiction over affiliated interests only extends to their dealings with an Illinois public utility. Third, there is no evidence in the record that explains why such an ASA is required or even proposed.
2. Not require specific identification of CAM Service Companies. The Commission should not require Liberty Energy Midstates to specifically identify the CAM Service Companies nor should the Commission strike Section V of the CAM. Liberty Energy Midstates will not receive any services in Illinois under this section of the CAM, and has already proposed a condition that would make this section inapplicable in Illinois. Since Liberty Energy Midstates will not receive services from the CAM Service Companies, there is no need to specifically identify these entities within the CAM.
3. No Additional Receiving Parties. This condition is one example of how one of Staff's conditions was not adopted but the underlying concern was nevertheless addressed. As articulated in their brief, Staff's concern is that in order to know whether the costs being allocated to Midstates are appropriate it is necessary to know what

other entities may be receiving that service.<sup>11</sup> While Liberty Energy Midstates did not agree to add non-Illinois entities to the ASAs as parties, Liberty Energy Midstates did agree to provide a yearly allocation percentage report that shows the calculation used to allocate costs under each ASA to Liberty Energy Midstates. As demonstrated on the example APUC yearly allocation percentage report, submitted as Joint Applicants Exhibit 9.11, this report shows all of the entities that received services and contains all of the information necessary to ensure costs were allocated pursuant to the CAM. Accordingly, there is no need for the Commission to require additional, non-Illinois entities, to become parties to each ASA as receiving companies. Nor has Liberty Energy Midstates requested approval of these transactions, because approval is not required for transactions between entities, neither of which is an Illinois public utility.

5. No Subsequent Petition. The Commission should not require Liberty Energy Midstates to submit *another* petition under Section 7-101 to evaluate the effectiveness of the ASAs and CAM being approved in this docket. The many Safeguard Conditions in the ASAs provide the Commission with the necessary information to evaluate the effectiveness of the ASAs on an ongoing basis. Even Staff witness Pearce acknowledged that the Commission's oversight powers give it ample ability to modify or revoke an ineffective ASA should the need arise.<sup>12</sup> Section 7-101 does not contemplate multiple approvals of the same agreement on a prospective basis, nor does it contain standards for a post-agreement review of transactions that have already been

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<sup>11</sup> Staff Initial Brief at 26.

<sup>12</sup> Tr. 89:17-19.

approved. And, as with each other open issue, Staff witness Pearce presented no evidence describing why this condition should be imposed or what potential harm could occur if it were rejected.

In addition, Staff's Initial Brief objects to the way in which the Safeguard Conditions were adopted by Liberty Energy Midstates.<sup>13</sup> Staff's Initial Brief also states that the "principles of cost allocation" should be incorporated into the CAM and ASAs.<sup>14</sup> As described below, Liberty Energy Midstates adopted the Safeguard Conditions and the principles of cost allocation referred to by Ms. Pearce in her testimony into the ASA and CAM.<sup>15</sup> No substantive basis for Staff's objections has been put forward so it is difficult for the Joint Applicants to consider these issues as "open" in any real sense. The ASAs and CAM proposed by Liberty Energy Midstates contain the Safeguard Conditions and the principles of cost allocation.<sup>16</sup>

The Joint Applicants respectfully request that the Commission approve the proposed reorganization and order the other relief requested by the Joint Applicants without adopting the remaining contested recommendations of Ms. Pearce regarding the ASAs and CAM.

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<sup>13</sup> Staff Initial Brief at 29-33.

<sup>14</sup> *Id.* at 27-29.

<sup>15</sup> See *infra* Parts II.B.4 (discussing that the principles of cost allocation are already incorporated).

<sup>16</sup> Joint Applicant Ex. 9.6 at Sch. II § 7-9; Joint Applicant Ex. 9.7 at Sch. II § 7-9; Joint Applicant Ex. 9.8 at Sch. II § 7-9; Joint Applicant Ex. 9.9 at Sch. II § 7-9; Joint Applicant Ex. 9.0: 20:465-467; Joint Applicant Ex. 9.1 IV.a-b; Joint Applicant Ex. 9.10 at 2-3. The Joint Applicants understand that footnote 2 in Staff's Initial Brief was included in error and that it would be withdrawn in Staff's reply brief. As indicated in the Stipulation, a rating on the long term debt to finance the proposed reorganization of BBB-, BAA3 or BBB(low) would meet Staff's proposed condition. Stipulation (February 23, 2012) at III.a.

## II. ARGUMENT

### A. The Commission Should Disregard Arguments in Staff's Initial Brief

As an initial matter that goes beyond the parties' substantive disagreements in this case, the Joint Applicants have filed a motion to strike Staff's initial brief.<sup>17</sup> As discussed in more detail in the motion to strike, Staff's Initial Brief is noncompliant with the Commission's rules and should be disregarded as it relates to contested issues for two reasons.<sup>18</sup> First, Staff's Initial Brief contains false and misleading statements related to the claim by Staff that no blacklines of the ASAs and CAM were provided to Staff (the Joint Applicants did provide these blacklines to Staff).<sup>19</sup> Second, the brief contains statements that are not supported by citations to the record or to case law.<sup>20</sup>

Regardless of the outcome of the motion to strike, the Commission should, as a substantive matter, disregard the arguments of Staff that are based on the false claim that Staff was not able to identify the differences between the ASAs and CAM submitted for approval by the Joint Applicants and those proposed by Ms. Pearce.<sup>21</sup> Likewise, the Commission should give no weight to Staff's arguments that are not supported by

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<sup>17</sup> Joint Applicants' Motion to Strike, Docket 11-0559, (March 8, 2012).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 1-5; Attachment A (January 26, 2012 email from counsel for the Joint Applicants, Mr. Bresnahan, to Ms. Janis VonQualen and Ms. Megan McNeil, counsel for Staff witnesses providing blacklines of the ASA form and CAM).

<sup>20</sup> Joint Applicants' Motion to Strike, Docket 11-0559, (March 8, 2012) at 5-7.

<sup>21</sup> *See id.* at 1-5.

citations to the record or relevant case law, particularly where Staff's Initial Brief has already been clearly shown to contain false statements.<sup>22</sup>

**B. Section 7-204(b)(2)**

Ms. Pearce's testimony lacks any rationale for her recommendations. Staff points out that Ms. Pearce made a recommendation, but not why that recommendation was made, how the recommendation relates to a legal requirement, or any facts in the record about what might happen should the Commission adopt, or fail to adopt, her recommendations. Ms. Pearce's testimony does not contain a rationale for her recommendations. Staff's initial brief includes some new ideas on the subject but they necessarily lack evidentiary basis and Ms. Pearce and Staff have fundamentally failed to even attempt to address the changes that Liberty Energy Midstates has proposed to meet Staff's concerns.

The Joint Applicants have endeavored to incorporate Staff's recommendations, but the few remaining recommendations of Ms. Pearce are not acceptable and should be rejected by the Commission. The Joint Applicant's disagreements with these recommendations are set forth below.

**1. An ASA between LUC and APCo is outside the Commission's jurisdiction and is unnecessary to protect Illinois ratepayers.**

Staff has asserted that an ASA between APCo and LUC should be required.<sup>23</sup>

As discussed by the Joint Applicants' Initial Brief, Section 7-101 of the Act does not

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<sup>22</sup> See *id.* at 5-7.

<sup>23</sup> Staff Initial Brief at 22. Staff's Initial Brief has caused some confusion by using the term LUC to define two separate entities, Liberty Utilities (Canada) Corp. and Liberty Utilities Co.<sup>23</sup> To

apply, on its face, to agreements between two entities that are not public utilities.<sup>24</sup> Consistent with the statute, the Commission has previously declined to approve a proposed services agreement between two non-utility affiliates stating that its jurisdiction over affiliated interests is limited to their transactions with a public utility.<sup>25</sup> Staff's Initial Brief has not even attempted to address the fundamental question of whether the Commission has a basis to require approval of an agreement between LUC and APCo. Instead, Staff just asserts that it is necessary for the Commission to require such an agreement.<sup>26</sup>

Staff's initial brief states (without citation) that due to language in the CAM, "charges from the unregulated operations of [APCo] would be billed to the Illinois regulated operations of Midstates without safeguards to insure [sic] that Midstates did not subsidize the unregulated operations of [APCo]." <sup>27</sup> Subject to specified exemptions, pursuant to Section 7-101 a contract or arrangement between a public utility and an affiliated interest is void if not consented to by the Commission.<sup>28</sup> There is no contract

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clarify, Liberty Utilities (Canada) Corp. is the only entity that Staff has asserted needs an ASA with APCo in any testimony. See Staff Ex. 10 Att. F (setting forth Staff's proposed ASA between Liberty Utilities (Canada) Corp. and Liberty APCo).

<sup>24</sup> See Joint Applicant Initial Brief at 40-41; 220 ILCS 5/7-101 ("The Commission shall have jurisdiction over affiliated interests having transactions, other than ownership of stock and receipt of dividends thereon, with electric and gas public utilities under the jurisdiction of the Commission.").

<sup>25</sup> GTE Illinois, Docket No. 91-0137 (Ill. Comm. Comm'n, June 26, 1991)("The Commission notes that its jurisdiction over 'affiliated interests' pursuant to Section 7-101(2) is limited to their transactions with public utilities").

<sup>26</sup> Staff Initial Brief at 22. Even this statement is not supported by a cite to the record.

<sup>27</sup> Staff Initial Brief at 23.

<sup>28</sup> 220 ILCS 5/7-101(3).

or arrangement between Liberty Energy Midstates and APCo. Lest there be any confusion Algonquin Power & Utilities Corp. (“APUC”) is a separate and distinct entity from APCo. Accordingly, the APUC CAM is not a contract or arrangement between Liberty Energy Midstates and APCo. Thus, any provision of service by APCo to Midstates would be void because the Commission has not consented to such arrangement.<sup>29</sup>

Furthermore, the CAM has not been independently submitted for approval.<sup>30</sup> The CAM is an attachment to specific ASAs and as such describes how costs will be allocated under those specific ASAs.<sup>31</sup> It is not a stand-alone document that would authorize transactions not provided for under the ASA.<sup>32</sup> As has been stated many times, Liberty Energy Midstates understands that if it is going to recover amounts charged to it by APCo, Section 7-101 requires the transaction to have been approved by the Commission.<sup>33</sup> As stated by Mr. Eichler, Liberty Energy Midstates will seek that approval in the unlikely event it decides to engage in a transaction with APCo.<sup>34</sup>

Staff’s initial brief goes on to state that Staff witness Pearce is concerned about potential cross-subsidization that could occur due to charges from APCo being indirectly

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<sup>29</sup> See 220 ILCS 5/7-101 (“Every contract or arrangement not consented to or excepted by the Commission as provided for in this Section is void.”).

<sup>30</sup> Application at Para. 47 (no request for approval of CAM)

<sup>31</sup> See Joint Applicant Ex. 9.6 at Sch. I (CAM attached as schedule to ASA); Joint Applicant Ex. 9.7 at Sch. I (CAM attached as schedule to ASA); Joint Applicant Ex. 9.8 at Sch. I (CAM attached as schedule to ASA); Joint Applicant Ex. 9.9 at Sch. I (CAM attached as schedule to ASA).

<sup>32</sup> Application at Para. 47 (no request for approval of CAM).

<sup>33</sup> Joint Applicant Ex. 9.0 at 14:332-341; Joint Applicant Initial Brief at 39-40.

<sup>34</sup> Tr. at 45:15-20.

allocated to Liberty Energy Midstates through LUC.<sup>35</sup> However, when Ms. VonQualen asked Mr. Eichler whether there would ever be a situation where APCo provided services to another affiliate and allocated charges to that affiliate, and then some of those charges got allocated down to Liberty Energy Midstates,<sup>36</sup> Mr. Eichler said “I can’t think of a situation where that would occur, no.”<sup>37</sup> Mr. Eichler went on to explain that assuming, however unlikely, that APCo provided a service to APUC, which then allocated costs to Liberty Energy Midstates, the ASA between Liberty Energy Midstates and APUC would protect the Illinois ratepayer from any cross-subsidization.<sup>38</sup> That ASA would require Liberty Energy Midstates to support any costs back to the genesis of the charge.<sup>39</sup>

The recordkeeping requirements of Section 2.1 of the ASAs require documentation going all the way to back the original source of costs, including invoices.<sup>40</sup> Mr. Eichler testified to the backup records that Liberty maintains for all allocations and in particular that these records have been sufficient to satisfy any information request it has received from regulators.<sup>41</sup> Liberty Energy Midstates has the ability to challenge allocated costs originating from APCo under any ASA.<sup>42</sup> In addition,

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<sup>35</sup> Staff Initial Brief at 24-25.

<sup>36</sup> Tr. at 44:17-22.

<sup>37</sup> Tr. 45:1-2.

<sup>38</sup> Tr.46:21-47:10.

<sup>39</sup> *Id.*

<sup>40</sup> Tr. at 47:4-10; Tr. at 49:11-50:9; Joint Applicant Ex. 9.7 § 2.1.

<sup>41</sup> Tr. at 49:12-50:6.

<sup>42</sup> Tr. at 47:15-16.

the other Safeguard Conditions are in place, which ensures the Commission has adequate access to information to prevent cross-subsidization.<sup>43</sup> Moreover, any costs incurred under the ASAs must be shown to have been prudently incurred and will not be charged to any customer unless and until the Commission sees fit to approve the recovery of those costs in a rate case.<sup>44</sup> All of these protections prevent unjustified subsidization without requiring an ASA between LUC and APCo, and also provide the Commission with sufficient information to determine the costs appropriately included for ratemaking purposes. Staff witness Pearce has never explained why she believes these ASA protections are not sufficient to protect Illinois ratepayers.

## **2. Section V of the CAM does not apply to Liberty Energy Midstates**

Staff's assertion that Liberty Energy Midstates is asking the Commission to "approve transactions by an unidentified Service Company" under Section V of the CAM has no support in the record.<sup>45</sup> Remarkably, Staff's Initial Brief completely ignores that the Joint Applicants have proposed a condition that Section V of the CAM shall not apply to Liberty Energy Midstates in Illinois.<sup>46</sup> Because Liberty Energy Midstates' proposed condition does not permit it to receive services under Section V of the CAM, Staff's argument is moot.

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<sup>43</sup> See *infra* at Part § II.B.5.

<sup>44</sup> Joint Applicant Ex. 9.0 at 19:452-455.

<sup>45</sup> See Staff Initial Brief at 25.

<sup>46</sup> See *id.*; Joint Applicants Initial Brief at § III.A.2; Joint Applicant Ex. 9.0 at 22:521-524.

Additionally, Staff's argument is based on a flawed premise. The CAM has not been independently submitted for approval.<sup>47</sup> The CAM is an attachment to specific ASAs and as such describes how costs will be allocated under those specific ASAs.<sup>48</sup> It is not a stand-alone document that would authorize transaction not provided for under the ASA.<sup>49</sup> There can be no harm to the public interest or risk of cross-subsidization by not specifically identifying the CAM service companies, because Liberty Energy Midstates cannot be charged under Section V of the CAM.<sup>50</sup>

Notwithstanding the practical reasons for not requiring Liberty Energy Midstates to make changes to a section of the CAM that will have no effect in Illinois, there is simply no evidence in the record to support Staff's argument. Staff witness Pearce did not testify as to anything regarding Section V of the CAM (other than attaching a markup that deletes Section V).<sup>51</sup> Therefore Staff's position on the issue is entirely without record support.

Despite having ample time to address this issue in its testimony, Staff has chosen to wait until its Initial Brief to argue for the first time that Section V of Liberty

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<sup>47</sup> See Joint Applicant Ex. 9.6 at Sch. I (CAM attached as schedule to ASA); Joint Applicant Ex. 9.7 at Sch. I (CAM attached as schedule to ASA); Joint Applicant Ex. 9.8 at Sch. I (CAM attached as schedule to ASA); Joint Applicant Ex. 9.9 at Sch. I (CAM attached as schedule to ASA).

<sup>48</sup> See *id.*

<sup>49</sup> See *id.*

<sup>50</sup> This is also relevant to the finding under Section 7-204(b)(3) because no costs under Section V of the CAM are being included by the utility for ratemaking purposes.

<sup>51</sup> See Staff Initial Brief at 25; Staff Ex. 10 at 12:266-270 (recommending changes be made to the CAM without providing any rationale); Staff Ex. 10.0 Att. B (striking Section V of the CAM without providing rationale).

Energy Midstates' CAM is not in the public interest.<sup>52</sup> The Commission has previously rejected the argument of a party that has failed to present any evidence and it should do so here.<sup>53</sup> While Liberty Energy Midstates has, in fact, identified the entities that are Service Companies today,<sup>54</sup> there is no purpose to be served by limiting transactions under the CAM that do not affect Illinois. Because of the Joint Applicants' proposed condition, Section V has no effect in Illinois and the hypothetical effects mentioned, with no record support, in Staff's brief are not valid.

**3. Staff recommendation that Liberty Energy Midstates modify the ASAs to include a list of receiving companies is unnecessary**

Staff asserts that each ASA should identify all parties to the agreement.<sup>55</sup> The ASAs do identify all parties to them.<sup>56</sup> The only receiving party under the ASAs is Liberty Energy Midstates.<sup>57</sup> The only providing parties are APUC, LUC, Liberty Utilities Co. and Liberty Utilities (New Hampshire) Corp., each of which is the subject of a

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<sup>52</sup> See Staff Initial Brief at 25; Staff Ex. 10 at 12:266-270 (recommending changes be made to the CAM without providing any rationale); Staff Ex. 10.0 Att. B (striking Section V of the CAM without providing rationale).

<sup>53</sup> See *Ill. Am. Water. Co.* Docket No. 01-0832 at 20 (Ill. Comm. Comm'n, Nov. 20, 2002) (rejecting a party's recommendation that conditions be adopted where no evidence has been presented).

<sup>54</sup> See Joint Applicants Ex. 12.0.

<sup>55</sup> Staff Initial Brief at 26.

<sup>56</sup> See Joint Applicant Ex. 9.6 (Liberty Energy Midstates and APUC); Joint Applicant Ex. 9.7 (Liberty Energy Midstates and LUC); Joint Applicant Ex. 9.8 (Liberty Energy Midstates and Liberty Utilities Co.); Joint Applicant Ex. 9.6 (Liberty Energy Midstates and Liberty Energy Utilities (New Hampshire) Corp.).

<sup>57</sup> *Id.*

separate ASA with Liberty Energy Midstates.<sup>58</sup> These are the only transactions that the Commission is being asked to approve, not transactions between non-Illinois utilities and other non-Illinois affiliates.<sup>59</sup> So Staff's requirement—that all parties be identified—is met. Staff's statement in its initial brief that it is not clear which entities are receiving services under the ASA besides Liberty Energy Midstates<sup>60</sup> is incorrect (and again lacks citation to any record evidence). The ASAs are very clear and list the parties by name in the preamble.<sup>61</sup>

The Joint Applicants have addressed Staff's desire to know what other entities may be receiving a particular service.<sup>62</sup> Liberty Energy Midstates has agreed to provide the identity of other entities receiving services for which cost allocations are made as part of its yearly allocation percentage report that shows the calculation used to allocate costs under each ASA to Liberty Energy Midstates.<sup>63</sup> As demonstrated on the sample APUC yearly allocation percentage report, submitted as Joint Applicants Exhibit 9.11, this report will show all of the entities that received services and contain all of the information necessary to ensure costs were allocated pursuant to the CAM.<sup>64</sup> As stated in Mr. Eichler's surrebuttal testimony, Liberty Energy Midstates commits to providing a yearly allocation percentage report for each entity providing services to Liberty Energy

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<sup>58</sup> *Id.*

<sup>59</sup> Joint Applicant Ex. 9.0 at 14:339-341; Joint Applicant Ex. 9.6-9.9.

<sup>60</sup> Staff Initial Brief at 26.

<sup>61</sup> Joint Applicant Ex. 9.6-9.9.

<sup>62</sup> Staff Initial Brief at 26.

<sup>63</sup> Joint Applicant Ex. 9.0 at 18:430-436.

<sup>64</sup> See Joint Applicant Ex. 9.11.

Midstates, *i.e.*, APUC, LUC, Liberty Utilities Co., and Liberty Energy Utilities (New Hampshire) Corp.<sup>65</sup> Therefore, Staff's recommendation is unnecessary. Staff's initial brief simply ignores the fact that the requirement on Liberty Energy Midstates to provide the annual allocation percentage template fully satisfies any informational requirements Staff may have.

Moreover, the Joint Applicants have overwhelmingly demonstrated that rejecting Staff's recommendation will not result in cross subsidization or diminish the ability of the Commission to identify the costs properly included for ratemaking purposes. The affiliated interests that provide services to Liberty Energy Midstates pursuant to the ASAs are required to use the same methodology, as set forth in the CAM, to allocate costs to other affiliates,<sup>66</sup> thereby ensuring that costs are allocated among recipient companies in the same manner.<sup>67</sup> Additionally, Liberty Energy Midstates has adopted Safeguard Conditions to prevent any cross subsidization and ensure costs can be properly identified for ratemaking purposes.

**4. Liberty Energy Midstates' ASAs and CAM include all necessary principles of cost allocation**

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<sup>65</sup> See Joint Applicant Ex. 9.0 at 18:430-436 ("Liberty Energy Midstates acknowledges that the actual annual template will need to include allocation percentages for all provider companies.").

<sup>66</sup> Joint Applicant Ex. 9.0 at 17:402-405; Joint Applicants Ex. 9.6 at § 2.2; Joint Applicants Ex. 9.7 at § 2.2; Joint Applicants Ex. 9.8 at §2.2; Joint Applicants Ex. 9.9 at § 2.2 Joint Applicant Ex. 9.10.

<sup>67</sup> Joint Applicant Ex. 9.0 13:316-320.

Liberty Energy Midstates has already incorporated most of the cost allocation principles proposed by Staff, albeit in different locations than proposed by Staff.<sup>68</sup> For example, the following language from Schedule II of the ASAs proposed by Staff witness Pearce has been moved to the CAM (with minor modifications):<sup>69</sup>

- i. Costs charged and allocated pursuant to the ASA shall include direct labor, direct materials, direct purchased services associated with the related asset or services, and overhead amounts.<sup>70</sup>
- ii. Tariffed rates or other pricing mechanisms established by rate setting authorities shall be used to provide all regulated services.<sup>71</sup>
- iii. Services not covered by (ii) shall be charged by the providing party to the receiving party at fully distributed cost.<sup>72</sup>
- iv. For facilities and administrative services rendered to a rate-regulated subsidiary of the Service Company, parties shall charge for services on the following basis:<sup>73</sup>

Services provided to a rate-regulated subsidiary of Service Company by another party shall be charged by the providing

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<sup>68</sup> Joint Applicant Ex. 9.6 at § 2.1 and Sch. II; Joint Applicant Ex. 9.7 at § 2.1 and Sch. II; Joint Applicant Ex. 9.8 at § 2.1 and Sch. II; Joint Applicant Ex. 9.9 at § 2.1 and Sch. II; Joint Applicant Ex. 9.10 at 2-3.

<sup>69</sup> Joint Applicant Ex. 9.10 at 2-3. Nonsubstantive changes have been made such as changes to the numbering of these conditions or changing the word “ASA” to “CAM.”

<sup>70</sup> Staff Ex. 10.0 Att. A; Staff Initial Brief at 27-28; see Joint Applicant Ex. 9.10 at 2 (contains the same language as proposed by Ms. Pearce except “ASA” has been changed to “CAM”).

<sup>71</sup> Staff Ex. 10.0 Att. A; Staff Initial Brief at 27-28; see Joint Applicant Ex. 9.10 at 2 (no changes to language).

<sup>72</sup> Staff Ex. 10.0 Att. A; Staff Initial Brief at 27-28; see Joint Applicant Ex. 9.10 at 3 (no changes to language. The numbering of the principles has been changed and the cross-reference to principle (ii.) should cross-reference to principle (i.)).

<sup>73</sup> Staff Ex. 10.0 Att. A; Staff Initial Brief at 27-28; see Joint Applicant Ex. 9.10 at 3 (changed introductory language).

party to the receiving party at:<sup>74</sup> (1) the prevailing price for which the service is provided for sale to the general public by the providing party (i.e., the price charged to nonaffiliates if such transactions with non-affiliates constitute a substantial portion of the providing party's total revenues from such transactions) or, if no such prevailing price exists, (2) an amount not to exceed the fully distributed cost (determined as provided in the CAM) incurred by the providing party in providing such service to the receiving party.<sup>75</sup>

Likewise, Staff proposed the following cost allocation principles be added to the CAM, but Liberty Energy Midstates has moved portions of them to the ASA:

Costs shall be charged to a party using either a direct charge or an allocation. Any cost allocation methodology for the assignment of corporate and affiliate costs will comply with the following principles:

- 1) For administrative services rendered to a rate-regulated subsidiary of LUC or each cost category subject to allocation to rate-regulated subsidiaries by LUC, LUC must be able to demonstrate that such service or cost category is reasonable for the rate-regulated subsidiary for the performance of its regulated operations, is not duplicative of administrative services already performed within the rate-regulated subsidiary, and is reasonable and prudent.
- 2) LUC will have in place positive time reporting systems adequate to support the allocation and assignment of costs of executives and other relevant personnel to receiving parties.
- 3) Parties must maintain records sufficient to specifically identify costs subject to allocation, particularly with respect to their origin. In addition, the records must be adequately supported in a manner sufficient to justify recovery of the costs in rates of rate-regulated receiving parties to this agreement to ensure that costs which would have been denied recovery in rates had such costs been directly incurred by the regulated operation are appropriately

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<sup>74</sup> Staff Ex. 10.0 Att. A; Staff Initial Brief at 27-28; see Joint Applicant Ex. 9.10 at 3 (clause removed due to change in introductory language).

<sup>75</sup> Staff Ex. 10.0 Att. A; Staff Initial Brief at 27-28; see Joint Applicant Ex. 9.10 at 3 (added "determined as provided in the CAM").

identified and segregated in the books of the regulated operation.<sup>76</sup>

Specifically, Liberty Energy Midstates has moved principle 1) to Schedule II of the ASAs and incorporated the concept of principle 3) into Section 2.1 of the ASAs.<sup>77</sup>

Staff has presented no evidence why any of these principles should be in the ASAs instead of the CAM (and vice versa). In fact it appears that Staff does not understand that they are incorporated—Staff states (with no citation) that “it is not apparent that these principles are reflected in Midstate’s proposed ASA and CAM, as they should be.” A simple look at the documents shows that they are.<sup>78</sup> For that matter, Staff has presented no evidence or legal support as to why any of the cost allocation principles should be included at all. Staff witness Pearce simply made a declarative statement that the proposed language should be adopted.<sup>79</sup> Consequently, there is no basis in the record for requiring Liberty Energy Midstates to place the principles in a particular location—any of them are binding in either the ASA or CAM—or to even to include them at all.

The ASAs and CAM for which Liberty Energy Midstates has requested approval clearly include all necessary cost allocation principles.<sup>80</sup> Staff has not identified a single

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<sup>76</sup> Staff Ex. 10.0 Att. B; Staff Initial Brief at 29.

<sup>77</sup> Joint Applicant Ex. 9.6 at Sch. II; Joint Applicant Ex. 9.7 at Sch. II; Joint Applicant Ex. 9.8 at Sch. II; Joint Applicant Ex. 9.9 at Sch. II Joint Applicants Ex. 9.6 at § 2.1; Joint Applicants Ex. 9.7 at § 2.1; Joint Applicants Ex. 9.8 at § 2.1; Joint Applicants Ex. 9.9 at § 2.1; Joint Applicant Ex. 9.10.

<sup>78</sup> *See id.*

<sup>79</sup> Staff Ex. 10.0 at 12:268-270.

<sup>80</sup> Joint Applicant Ex. 9.0 at 14:328-329; Joint Applicant Ex. 9.6 at Sch. II; Joint Applicant Ex. 9.7 at Sch. II; Joint Applicant Ex. 9.8 at Sch. II; Joint Applicant Ex. 9.9 at Sch. II Joint Applicants Ex.

issue with any of the allocation provisions in the ASA and CAM. The agreements fairly allocate costs and Staff has presented no evidence to the contrary.

**5. Liberty Energy Midstates has voluntarily adopted safeguards, which will ensure there is no cross-subsidization or improper allocation of costs**

Staff witness Pearce proposed Safeguard Conditions to the ASAs that Joint Applicants were under the impression they had adopted.<sup>81</sup> However, Staff's initial brief suggests the requirements for Safeguard Conditions have not been met.<sup>82</sup> This confusion is a consequence of Staff witness Pearce failing to develop a sufficient evidentiary record that clearly describes the requirements and rationale of each condition she proposed. A declarative statement that a condition is required does not provide any guidance to the Joint Applicants (or the Commission) on the requirements of a condition, particularly where there are no statutory provisions or rules mandating imposition of the condition. As a result, the Joint Applicants have in good faith adopted conditions proposed by Staff, only to find out that Staff does not view a condition to be met due to a previously undisclosed reason. Despite these difficulties, the Joint Applicants believe they have met all of Staff's requirements related to safeguards.

**a. Annual Internal Audit**

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9.6 at § 2.1; Joint Applicants Ex. 9.7 at § 2.1; Joint Applicants Ex. 9.8 at § 2.1; Joint Applicants Ex. 9.9 at § 2.1; Joint Applicant Ex. 9.10 at 2-3.

<sup>81</sup> See Joint Applicant Initial Brief at 46-50.

<sup>82</sup> Staff Initial Brief at 29-33.

As discussed in the Joint Applicants' Initial Brief, Liberty Energy Midstates has agreed to conduct an annual internal audit and included this requirement in each of the ASAs attached to Mr. Eichler's surrebuttal testimony.<sup>83</sup> Although Staff witness Pearce has noted a concern that the requirement is on the utility level,<sup>84</sup> Staff has not presented evidence that it will be unable to obtain sufficient records or reports from Liberty Energy Midstates. Section 7-101(2) provides in pertinent part that prior to requesting "reports from the affiliated interest, the Commission shall first seek to obtain the information that would be included in such accounts, records, or reports from the public utility."<sup>85</sup> Under the Commission's own biennial internal audit requirement, Rule 506 places the burden on the public utility.<sup>86</sup> Ms. Pearce made a clarification during cross examination that an annual internal audit of the charges under each ASA would satisfy her concerns about the requirement being placed on the utility level.<sup>87</sup> Section 7 of Schedule II to each of the draft ASAs proposed by Liberty Energy Midstates requires an internal audit of the charges covered by that *specific* ASA, thereby satisfying her clarified concerns.<sup>88</sup> The Joint Applicants believe they fulfilled Staff's recommendation for an annual internal audit based on the clarification of Ms. Pearce and statutory authority.

#### b. **Billing Report**

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<sup>83</sup> Joint Applicant Initial Brief at 47.

<sup>84</sup> Tr. at 70:6-71:4.

<sup>85</sup> 220 ILCS 7-101(2)(ii).

<sup>86</sup> 83 Ill. Adm. Code § 506.

<sup>87</sup> Tr. 72:12.

<sup>88</sup> Joint Applicant Ex. 9.6 at Sch. II § 7; Joint Applicant Ex. 9.7 at Sch. II § 7; Joint Applicant Ex. 9.8 at Sch. II § 7; Joint Applicant Ex. 9.9 at Sch. II § 7.

In response to Ms. Pearce's recommendation regarding billing reports, the Joint Applicants have agreed to file an annual billing report summarizing the monthly charges to Liberty Energy Midstates from the provider companies and included this requirement in each of the ASAs attached to Mr. Eichler's surrebuttal testimony.<sup>89</sup> Ms. Pearce again discussed concerns that this requirement was on the utility level, but did not present evidence that the information could not be provided by Liberty Energy Midstates.<sup>90</sup> As discussed above,<sup>91</sup> placing the requirement on the utility level is consistent with Section 7-101(2). Ms. Pearce clarified during cross examination that if Liberty Energy Midstates agreed to provide a billing report with respect to the charges under each of the ASAs, that would satisfy her concerns about the requirement being placed on the utility level.<sup>92</sup> Section 9 of Schedule II to each of the draft ASAs proposed by Liberty Energy Midstates requires a billing report with respect to the charges under that ASA, thereby satisfying her clarified concern.<sup>93</sup> Based on statutory authority and the clarifications of Ms. Pearce, the Joint Applicants believe this condition has been met.

**c. Triennial Cost Study**

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<sup>89</sup> Joint Applicant Ex. 9.6 at Sch. II § 9; Joint Applicant Ex. 9.7 at Sch. II § 9; Joint Applicant Ex. 9.8 at Sch. II § 9; Joint Applicant Ex. 9.9 at Sch. II § 9.

<sup>90</sup> Tr. 79:17-22, 80:1-5.

<sup>91</sup> See *supra* at Part II.B.5.a.

<sup>92</sup> Tr. 80:10.

<sup>93</sup> Joint Applicant Ex. 9.6 at Sch. II § 9; Joint Applicant Ex. 9.7 at Sch. II § 9; Joint Applicant Ex. 9.8 at Sch. II § 9; Joint Applicant Ex. 9.9 at Sch. II § 9.

Liberty Energy Midstates agreed to conduct a triennial cost study and included this requirement in each of the ASAs attached to Mr. Eichler's surrebuttal testimony.<sup>94</sup> Ms. Pearce initially testified that she had concerns with Liberty Energy Midstates changing the burden to the utility instead of the provider, but has not presented evidence that Liberty Energy Midstates will be unable to provide the study.<sup>95</sup> As discussed above,<sup>96</sup> placing the burden on Liberty Energy Midstates is consistent with Section 7-101(2).<sup>97</sup> In cross-examination, Ms Pearce clarified that her concerns about the requirement being placed on the utility level would be met if Liberty Energy Midstates agreed to provide a cost study for the charges under each of the ASAs.<sup>98</sup> Section 8 of Schedule II to each of the draft ASAs proposed by Liberty Energy Midstates requires a cost study with respect to the charges under that ASA.<sup>99</sup> Accordingly, the Joint Applicants believe they have satisfied the requirement that the ASAs provide a cost study based on statutory authority and by meeting Staff's clarification.

#### **d. Allocation Percentage Template**

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<sup>94</sup> Joint Applicant Ex. 9.6 at Sch. II § 8; Joint Applicant Ex. 9.7 at Sch. II § 8; Joint Applicant Ex. 9.8 at Sch. II § 8; Joint Applicant Ex. 9.9 at Sch. II § 8.

<sup>95</sup> Tr. at 78:13-19.

<sup>96</sup> See *supra* at Part II.B.5.a.

<sup>97</sup> See 220 ILCS 7-101(2)(ii) ("the Commission shall first seek to obtain the information that would be included in such accounts, records, or reports from the public utility.")<sup>97</sup>

<sup>98</sup> Tr. at 78:22-79:8.

<sup>99</sup> Joint Applicant Ex. 9.6 at Sch. II § 8; Joint Applicant Ex. 9.7 at Sch. II § 8; Joint Applicant Ex. 9.8 at Sch. II § 8; Joint Applicant Ex. 9.9 at Sch. II § 8.

In response to Ms. Pearce's proposed condition regarding a cost allocation percentage template, Liberty Energy Midstates has agreed to provide an annual detailed cost allocation percentage template.<sup>100</sup> Liberty Energy Midstates provided a sample of what the template would look like in Joint Applicant Exhibit 9.11. Ms. Pearce testified that she was uncertain based on the sample provided in Joint Applicant Exhibit 9.11 that 100% of all of the costs under all of the ASAs would be included in the templates.<sup>101</sup> Ms. Pearce later agreed that Liberty Energy Midstates has acknowledged that the actual annual cost allocation percentage template will need to include allocation percentages for all provider companies.<sup>102</sup> Liberty Energy Midstates herein confirms that all costs allocated to Liberty Energy Midstates under each ASA will be included in the ASA reports, and the reports will show how these costs were spread amongst all the other affiliates as well. Accordingly, the Joint Applicants believe they have satisfied Staff's condition requiring an annual allocation percentage template.

**e. Gas Supply Purchases**

It is uncontested that Joint Applicants' proposed condition prohibits Liberty Energy Midstates from purchasing gas from an affiliate without Commission approval or exemption under applicable law.<sup>103</sup> Liberty Energy Midstates has not requested approval to purchase gas from any affiliates.<sup>104</sup> Therefore, the Joint Applicants'

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<sup>100</sup> Joint Applicant Ex. 9.0: 20:465-467; Joint Applicant Ex. 9.1 IV.a-b.

<sup>101</sup> Tr. at 75:1-10.

<sup>102</sup> Tr. at 75:19.

<sup>103</sup> Staff Initial Brief at 32-33.

<sup>104</sup> See Joint Applicant Ex. 9.7; Joint Applicant Ex. 9.9.

proposed condition prohibits purchase of gas from affiliates to the extent not allowed by Section 7-101.<sup>105</sup> It is not clear to the Joint Applicants what Staff's remaining concerns about cross-subsidization are. Staff witness Pearce's rebuttal testimony offers no guidance because it merely listed a proposed condition with no rationale provided.<sup>106</sup> Staff imputes a concern of cross-subsidization in its Initial Brief<sup>107</sup> but that concern was not actually expressed in the testimony with respect to this requirement.<sup>108</sup> Similarly, Ms. Pearce gave no indication of any concerns with the Joint Applicants' proposed condition during cross examination.<sup>109</sup> She agreed that this condition would satisfy her concerns on this point.<sup>110</sup>

Staff's Initial Brief directly contradicts Ms. Pearce's testimony.<sup>111</sup> The brief states that Liberty Energy Midstates had not adopted the condition exactly as described by Ms. Pearce in her rebuttal testimony.<sup>112</sup> This is true, but Ms. Pearce was aware of this when she testified on cross-examination that the proposed condition was acceptable.<sup>113</sup> The

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<sup>105</sup> The Commission's jurisdiction under 7-101 only extends to transactions involving a public utility. See *supra* at Part II.B.1.

<sup>106</sup> See Staff Ex. 10.0 at 12:266-14:297.

<sup>107</sup> See Staff Initial Brief at 32-33.

<sup>108</sup> Staff again neglected to provide a cite for their assertion that this condition did not satisfy Ms. Pearce's concerns regarding cross subsidization. Later Staff refers to Ms. Pearce's rebuttal testimony at 446-452, which contains no mention of cross-subsidization and is instead a list of recommendations under Section 7-102. See Staff Ex. 10.0 at 20:446-452; Staff Initial Brief at 32-33.

<sup>109</sup> Tr. at 22.

<sup>110</sup> Tr. at 81:1-5.

<sup>111</sup> Compare Staff Initial Brief at 32-32 with Tr. at 80:15-81:5.

<sup>112</sup> Staff Initial Brief at 33.

<sup>113</sup> The Joint Applicants' entire proposed condition was read out during cross examination. See Tr. at 80:15-81:5.

reason for this disagreement is unclear. Perhaps it is that Staff believes that Commission jurisdiction should extend to non-Illinois utilities' purchases of gas. To the extent that this addresses Staff's issue, Liberty Energy Midstates is willing to extend the prohibition to state that neither Liberty Energy Midstates, LUC nor Liberty Energy (New Hampshire) will purchase gas from an affiliated interest of Liberty Energy Midstates *to serve Illinois customers* without Commission approval or unless such approval is not required under applicable law.<sup>114</sup>

Staff continues to believe that a declarative statement, unsupported by, and even contrary to the record (in this case contrary to its own witness's statement that her concerns were satisfied) is the basis for a Commission decision. It is not, particularly where the Joint Applicants' proposed condition is fully compliant with the Act and satisfies all stated concerns.

**6. There is no record or legal basis for requiring an additional 7-101 petition nor is it necessary**

There is no record basis for requiring an additional Section 7-101 petition to consider the effectiveness of the ASAs approved in this proceeding. Staff argues in its Initial Brief for the first time that its proposed additional Section 7-101 petition is necessary to prevent cross-subsidization under Section 7-204(b)(2).<sup>115</sup> However, there is no record evidence that ties the additional Section 7-101 petition to Section 7-

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<sup>114</sup> The condition proposed by Staff and condition proposed by Liberty Energy Midstates as modified, show no difference except the "unless such approval is not required under applicable law," and the "to service Illinois customers" phrases. See Staff Ex. 10.0 at 13:292-14:297; Joint Applicant Ex. 9.1 at IV-c.

<sup>115</sup> Staff Initial Brief at 33-34.

204(b)(2) of the Act. Although Staff witness Pearce has testified that an additional 7-101 proceeding should be required under 7-204(b)(3),<sup>116</sup> as with most of her recommendations, there is no explanation as to how such a proceeding would actually meet the requirements of Section 7-204(b)(3), just a declarative statement that the Commission should order it.<sup>117</sup> That alone is an insufficient basis for the Commission to adopt the recommendation under any provision of the Act; the Commission must base its Order on evidence in the record.<sup>118</sup>

Staff's arguments whether under Section 7-204(b)(2) or Section 7-204(b)(3), or Section 7-101, are also not supported by the law. Staff witness Pearce has not demonstrated any basis for the Commission to implement the requirement. Section 7-101 does not require an additional proceeding, and contemplates approving agreements on a prospective basis.<sup>119</sup> Staff has not presented any precedent of the Commission ever conditioning approval of an ASA with the requirement that a utility come in for an additional 7-101 hearing to evaluate the effectiveness of an agreement.<sup>120</sup> Staff's Initial Brief contains no legal support for the inclusion of this

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<sup>116</sup> Staff Ex. 10.0 at 15:328-341.

<sup>117</sup> Staff Ex. 10.0 at 14:303-15:341.

<sup>118</sup> See 220 ILCS 5/10-103 ("any finding, decision or order made by the Commission shall be based exclusively on the record for decision in the case, which shall include only the transcript of testimony and exhibits together with all papers and requests filed in the proceeding").

<sup>119</sup> See 220 ILCS 5/7-101 (no requirement for additional hearing).

<sup>120</sup> Tr. at 88:18-89:1.

requirement.<sup>121</sup> As discussed, the Commission has previously rejected arguments where a party has presented no evidence.<sup>122</sup>

Lastly, there is no need for an additional 7-101 petition. In its Initial Brief, Staff argues that an additional petition is necessary, because Liberty Energy Midstates has not accepted Staff's proposed revisions to the ASAs and CAM and Liberty Energy Midstates has not accepted Staff's Safeguard Conditions.<sup>123</sup> As discussed *supra*, while Liberty Energy Midstates has not accepted all of Staff's proposed revisions to the ASAs and CAM, the unacceptable revisions are inconsistent with the Act, have no record support, and are not necessary to allow the Commission to approve the transaction or the ASAs and CAM. Accordingly, these revisions are not a basis to require an additional 7-101 petition. Liberty Energy Midstates has adopted Staff's Safeguard Conditions. Thus, there is no need for an additional 7-101 petition to gauge the effectiveness of the ASAs and CAM as the Safeguard Conditions will allow Staff to do that on an on-going basis.

### **C. Section 7-204(b)(3)**

Staff's initial brief presents no evidence regarding the requirements of Section 7-204(b)(3) other than a statement that it cannot make the required finding.<sup>124</sup> While Staff refers to its discussion regarding Section 7-204(b)(2), its Initial Brief makes no mention

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<sup>121</sup> See Staff Initial Brief at 33-35.

<sup>122</sup> See *Ill. Am. Water. Co.* Docket No. 01-0832 at 20 (Ill. Comm. Comm'n, Nov. 20, 2002) (rejecting a parties recommendation that conditions be adopted where no evidence has been presented).

<sup>123</sup> Staff Initial Brief at 34.

<sup>124</sup> Staff Initial Brief at 35.

of how that discussion relates to the standards of Section 7-204(b)(3), if at all.<sup>125</sup> Where a legal standard is referred to in Staff's Initial Brief (a rare occurrence), it seems to be related to cross-subsidization but not to the standard set forth in Section 7-204(b)(3).

The Applicants, however, have presented a wealth of information demonstrating that "costs and facilities are fairly and reasonably allocated between the utility and non-utility activities in such a manner that the Commission may identify those costs and facilities which are properly included by the utility for ratemaking purposes."<sup>126</sup>

Liberty Energy Midstates' has a clear separation on the corporate level from non-utilities, which operate out of separate subsidiaries.<sup>127</sup> Liberty Energy Midstates' focus on local emphasis increases the extent to which rates are based on costs incurred primarily at the local level and therefore these costs are more readily identifiable with the services provided.<sup>128</sup> In addition to the Commission's existing requirements on utilities generally, Liberty Energy Midstates has also included Safeguard Conditions.<sup>129</sup> The ASAs and CAM contain detailed requirements for cost allocation, as well as record-keeping and reporting that allow for easy identification and separation of costs.<sup>130</sup> All of these provide the Commission with an abundance of information for a rate proceeding. Mr. Eichler testified to the level of detailed information found in Algonquin's records

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<sup>125</sup> *Id.*

<sup>126</sup> 220 ILCS 5/7-204(b)(3).

<sup>127</sup> See Joint Applicant Ex. 9.10 at 2 (organizational chart).

<sup>128</sup> Joint Applicant Ex. 1.0 a 13:270-272.

<sup>129</sup> *Id.* at 13:321-323.

<sup>130</sup> Joint Applicant Ex. 9.6 at § 2.1; Joint Applicant Ex. 9.7 at § 2.1; Joint Applicant Ex. 9.8 at § 2.1; Joint Applicant Ex. 9.9 at § 2.1.

related to cost allocations, including the date of a transaction, a description of the transaction, the amount, and invoices.<sup>131</sup> Nothing in Staff's initial brief addresses any alleged failures by the Joint Applicants to meet the Section 7-204(b)(3) requirements.

**D. Section 7-204(b)(5)**

The Joint Applicants again point out that while Staff refers to its discussion regarding Section 7-204(b)(2), its Initial Brief makes no mention of how that discussion relates to the standards of Section 7-204(b)(5), if at all. Based on Staff's limited discussion of this issue, there is little the Joint Applicants can reply to in this brief other than to Staff's unsupported recommendation of denial. As discussed more fully in the Joint Applicants' Initial Brief, Staff witness Pearce's recommendations under Section 7-204(b)(5) are based on a fundamental misunderstanding of the statute and the Commission's prior authority and should not be given any weight.<sup>132</sup>

Section 7-204(b)(5) sets forth a straightforward standard that requires the Commission to find that "the utility will remain subject to all applicable laws, regulations, rules, decisions, and policies governing the regulation of Illinois public utilities."<sup>133</sup> No party has disputed that Liberty Energy Midstates will remain subject to these laws, and even Ms. Pearce indicated that she had not identified any such laws that would be inapplicable to Liberty Energy Midstates, and that she had no reason to believe that it

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<sup>131</sup> Tr. 49:11-22.

<sup>132</sup> Joint Applicant Initial Brief at 58.

<sup>133</sup> 220 ILCS 7-204(b)(5).

would not be subject to all of those laws.<sup>134</sup> Accordingly, the Joint Applicants have fully satisfied the requirements of Section 7-204(b)(5).

The plain language of Section 7-204(b)(5) only requires that the applicable laws governing the regulation of Illinois public utilities will still apply post-reorganization. In Docket 98-0555, the Commission rejected Staff's argument that a pattern of non-compliance would amount to a failure to meet the requirements of Section 7-204(b)(5).<sup>135</sup> Instead, the Commission has interpreted Section 7-204(b)(5) consistent with the plain meaning of the statute and in particular as requiring the Commission to "ensure that the proposed reorganization does not inappropriately shelter or otherwise remove a utility's activities from regulatory scrutiny by this Commission (e.g., by somehow shifting regulated functions to an unregulated affiliate)."<sup>136</sup> The Joint Applicants meet this standard. All parties to this case have agreed that Liberty Energy Midstates will remain subject to the jurisdiction of the Commission and to all laws, regulations, rules, decisions, and policies to the same extent after the reorganization as before the reorganization.<sup>137</sup>

#### **E. Section 7-101**

Staff has not presented evidence that the proposed ASAs and CAM are not in the public interest, as required by Section 7-101. The rebuttal testimony of Staff witness Pearce simply declares that her changes and conditions should be accepted without

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<sup>134</sup> Tr. at 93:10, 15.

<sup>135</sup> See *Ameritech Illinois*, Docket No. 98-0555 at 35-36 (Ill. Comm. Comm'n, Sept. 23, 1999).

<sup>136</sup> *Ameritech*, at 35.

<sup>137</sup> Tr. at 92:21; Joint Applicant Ex. at 8:171-9:177.

delving into any rationale.<sup>138</sup> This unsupported statement does not rebut the Joint Applicants' showing that Liberty Energy Midstates proposed ASAs and CAM are in the public interest.<sup>139</sup> Mr. Eichler testified that the services subject to the ASAs replace services currently provided by Atmos through an affiliated agreement and that the ASAs are necessary to the provision of reliable and cost efficient gas.<sup>140</sup> In addition to direct charging whenever possible, Liberty Energy Midstates also has included many checks and balances in the ASAs to both ensure that all charges under the ASAs are fair and reasonable and to ensure that the Commission will be able to exercise all necessary regulatory oversight. These checks and balances include an annual internal audit, a template of all cost allocation percentages used to charge Liberty Energy Midstates pursuant to the ASAs, a billing report summarizing the monthly charges to Liberty Energy Midstates, and a full study of the cost of services provided under the ASAs on a triennial basis.<sup>141</sup> All of these Safeguard Conditions provide the Commission with detailed reports and information to ensure that Liberty Energy Midstates is in compliance with the terms of its proposed ASAs.

In its Initial Brief, Staff does not even bother to indicate how most of the conditions proposed by Ms. Pearce relate to Section 7-101; the discussion merely references the other portions of Staff's Initial Brief. However, the portions of the brief

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<sup>138</sup> Staff Ex. 10.0 at 19:414-21:475.

<sup>139</sup> Joint Applicant Initial brief at 63-67.

<sup>140</sup> Joint Applicant Ex. 2.0 17:363-366.

<sup>141</sup> Joint Applicant Ex. 9.6 at Sch. II § 7-9; Joint Applicant Ex. 9.7 at Sch. II § 7-9; Joint Applicant Ex. 9.8 at Sch. II § 7-9; Joint Applicant Ex. 9.9 at Sch. II § 7-9; Joint Applicant Ex. 9.0: 20:465-467; Joint Applicant Ex. 9.1 IV.a-b.

cited relate to Section 7-204(b)(2), rather than the public interest standard applicable to Section 7-101.<sup>142</sup>

The only reference tying Staff's conditions to Section 7-101 that Joint Applicants were able to find in the record is a general statement made by Ms. Pearce that that the public interest is protected if there are adequate safeguards to satisfy the requirements of Section 7-204.<sup>143</sup> As discussed *supra* in Sections II.B.1 – II.B.2 and incorporated herein by reference, the Joint Applicants have satisfied the requirements of Section 7-204. Accordingly, the proposed ASAs and CAM are in the public interest and should be approved under Section 7-101.

### **III. CONCLUSION**

The record fully supports a finding that the proposed reorganization meets the requirements of the Act. The record demonstrates that Liberty Energy Midstates' proposed ASAs and CAM prevent cross-subsidization, provide the Commission with adequate information, incorporate Safeguard Conditions proposed by Staff, and include all necessary principles of cost allocation.

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<sup>142</sup> In two cases, Staff does reference the public interest standard under Section 7-101. Staff alleges that the Commission is unable to safeguard the public interest as required by Section 7-101 unless it has an ASA that sets forth the parameters of the transactions for which approval is requested. No citations to the record are provided. See Staff Initial Brief at 23. Also, Staff states that Section V of the CAM (which as proposed by the Joint Applicants is inapplicable in Illinois) prohibits the Commission from putting safeguards in place to protect the public interest as required by Section 7-101. See Staff Initial Brief at 25.

<sup>143</sup> See Staff Ex. 4.0 at 12:255-258 ("The public interest is protected if there exist adequate safeguards to satisfy the requirements of Sections 7-204(b)(2), 7-204(b)3) and 7-204(b)(5) of the Act, as previously described"); see also Staff Ex. 10.0 at 19:412-20:475 ("My recommendation regarding this section is subject to *all the conditions previously noted*, including.[sic]")(emphasis added).

As discussed, Staff has not rebutted the Joint Applicants' evidentiary presentation demonstrating the proposed reorganization supports the required findings of Section 7-204 and Section 7-101. Staff's contested recommendations are inconsistent with the Act, have no record support, and are not necessary to allow the Commission to approve the proposed reorganization or Liberty Energy Midstates' proposed ASAs and CAM. Staff has not presented evidence of any rationale why their contested recommendations should be adopted, nor are Staff's arguments supported by citations to the record or applicable authority. In light of the law and facts set forth above and in the Joint Applicants' Initial Brief, the Commission should reject the arguments of Staff. Accordingly, the Joint Applicants respectfully request that the Commission make the findings required by Section 7-204 of the Act and approve the Reorganization because the evidence fully supports each requisite finding. Additionally, the Commission should make the other findings reflected herein and grant all of the relief requested by the Joint Applicants.

Dated: March 8, 2012

Respectfully submitted,  
ATMOS ENERGY CORPORATION AND  
LIBERTY ENERGY (MIDSTATES) CORP.

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