

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

In the Matter of The Empire District                    )  
Electric Company’s Request for Authority            )  
to File Tariffs Increasing Rates for Electric        )  
Service Provided to Customers in its                )  
Missouri Service Area                                    )

Case No. ER-2019-0374

**PUBLIC COUNSEL’S RESPONSES  
TO THE COMMISSION’S QUESTIONS**

COMES NOW the Office of Public Counsel (Public Counsel) and for its responses to certain of the Commission’s questions posed April 28, 2020, states:

1. The Commission directed a number of questions to the parties regarding issues in this case. Some questions are directed to the parties generally, others are directed to specific parties. Public Counsel is responding to questions the Commission directed to the parties generally, questions the Commission directed specifically to Public Counsel, and questions directed to other parties; however, Public Counsel is not responding to every question the Commission posed.

2. Rather than reproducing all of the questions the Commission posed, Public Counsel will identify and reproduce only those questions to which it is providing a response, in the order by which the Commission posed its questions.

3. With regard to Issue **1. Rate of Return—Return on Equity, Capital Structure, and Cost of Debt**, the Commission asked the following two questions to which Public Counsel is providing responses:

1. Staff – LUCo provides shared corporate support functions and services to all of its various affiliates, both regulated and unregulated, on a centralized basis. In evaluating whether the use of Empire’s Capital Structure is more “economical” than LUCo’s, why is it appropriate to remove the debt associated with LUCo’s unregulated affiliates from its capital structure, but not make a companion adjustment to reduce a portion of equity that is used to serve unregulated affiliates?

2. Staff - What percentage of LUCo's total debt is attributable to unregulated affiliate debt? What percentage of LUCo's equity is attributable to equity in unregulated affiliates? What would be LUCo's capital structure if an equivalent percentage of LUCo's debt to and equity in unregulated utilities were removed?

**Public Counsel's response:** Public Counsel witness David Murray emphasizes that LUCo's off-balance-sheet debt was used for LUCo's regulated utility subsidiaries in his contemporaneously filed question and answer formatted testimony labeled, "Testimony responding to Commission questions of David Murray." (Ex. 299-9).

4. With regard to Issue **2. Rate Design, Other Tariff and Data Issues**, the Commission asked the following two questions to which Public Counsel is responding:

1. OPC - Public Counsel did not list a position on Rate Design sub-issue f, what is the appropriate customer charge. Although the Global Stipulation, now joint position statement, called for the customer charge to remain at \$13.00 per month, Empire took the position that the customer charge should be increased to \$19.00 per month. What is OPC's current position, if any, as to the appropriate customer charge and why?
2. OPC – What would be the impact to residential ratepayers to increase the customer charge?

**Public Counsel's response:** Public Counsel witness Geoff Marke responds in testimony to these questions in his contemporaneously filed verified memorandum formatted testimony (Ex. 299-8) where he explains what is summarized following. The residential class customer charge should not be increased from the current \$13.00 per month because increasing customer charges impedes the ability of customers to control their bills, and that ability to reduce bills by controlling usage leads to positive actions such as increased customer energy efficiency and conservation. Maximizing control of finances is very important to customers during this national emergency COVID-19 pandemic. Further, Empire has the highest residential customer charge of all the Missouri investor-owned electric utilities and the cost-of-service studies in this case are flawed because of the high number of estimated billings in the data input into them. Generally, increasing

the customer charge would cause low-usage customers to pay more, and high-usage customers to pay less.

5. With regard to Issue 5. FAC, the Commission asked the following two questions to which Public Counsel is providing responses:

- 2. Empire- What is the source for the capacity to fulfill the obligations for the MJMEUC contract?
- 3. All parties - What is the appropriate base factor for the FAC and what evidence supports it?

**Public Counsel's response:** Empire's sources of capacity for its contract with MJMEUC follow:

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Empire's contract with MJMEUC is provided in its entirety as Schedule LMM-D-3HC attached to the direct testimony of Lena Mantle (Ex. 203HC). The source of the capacity is provided on page 26 of 28 of this schedule. The current total capacity of these resources is from Empire's 2020 IRP update filing in Case No. EO-2020-0284.

Public Counsel does not have the technical capabilities to calculate the base factor for Empire's FAC; however, Public Counsel generally supports Staff's calculations of that base factor, with two changes to account for Empire finally shutting down its Asbury plant on December 12, 2019. The appropriate base factor should:

- 1) Exclude fuel, variable operation and maintenance costs, and SPP revenues for Asbury generation; and

- 2) Include additional transmission costs since the absence of Asbury generation lowers the total generation Empire sells into the market but does not change the energy Empire purchases from the SPP market.

For a base factor consistent with Empire's generation, the Commission should order Staff to re-run its fuel model without Asbury generation to account for these two factors. While this re-calculation will increase Staff's true-up FAC base factor, Staff's true-up base factor of \$0.02333/kWh in the surrebuttal/true-up testimony of Staff witness Brook Mastrogiannis (Ex. 137), is considerably lower than the current \$0.02416/kWh to which the other parties, including Staff, have agreed. The need for this re-calculation is supported by the Public Counsel witness Lena M. Mantle in her direct testimony (Ex. 203HC) at pages 15-16. The shutdown of the Asbury plant is supported by Public Counsel witness John A. Robinett in his surrebuttal/true-up direct testimony (Ex. 219C) at pages 1-3.

6. With regard to Issue **7. Rate case Expense**, the Commission asked the following question to which Public Counsel is providing a response:

**2. Empire - When does Empire anticipate filing its next rate case?**

**Public Counsel's response:** Public Counsel witness Amanda Conner responds to this question in contemporaneously filed question and answer formatted testimony labeled, "Testimony responding to Commission questions of Amanda Conner" (Ex. 299-7) where she explains that she is concerned with matching the rate case expense recovery period with the period between when rates take effect in this case and when they take effect in Empire's next general electric rate case.

7. With regard to Issue **8. Management expense**, the Commission asked the following question to which Public Counsel is responding:

1. **OPC - Provide the Empire responses to DR 1204 and 1214 relied on by OPC to make its expense disallowances.**

2. OPC - Would OPC agree that the costs associated with employee meals on work premises provided during meetings or training sessions should be included in rates? If not, please explain.
3. OPC - Were the disallowance adjustments of OPC related to trips to Bermuda, London, England and Peru part of the officer disallowances or management disallowances? Were these charges in the twelve months ending 1-31-20 (true-up period)? Please quantify the disallowance for each of these trips.
4. OPC - Please provide details for the officer meal disallowances related to alcohol or excessive meal charges for the twelve months ending 1-31-20.
5. OPC - Is the \$18,550 true-up officer disallowance for the twelve months ending 1-31-20? If not, please provide that adjustment amount.
6. OPC - Did OPC perform an analysis of any manager expense reports?

**Public Counsel's response:** For its response to the first question, Public Counsel states that it provided Empire's responses to OPC data request nos. 1204 and 1214 to the Commission as Exhibit Nos. 299-5 and 299-6C, respectively, by filing them in the Commission's electronic filing and information system on April 29, 2020. Public Counsel witness Amanda Conner responds in testimony to questions 2-6 in contemporaneously filed question and answer formatted testimony labeled, "Testimony responding to Commission questions of Amanda Conner." (Exhibit 299-7).

8. With regard to Issue **10. Cash Working Capital** the Commission asked the following question to which Public Counsel is providing a response:

1. Empire - Has Empire's parent or its tax paying affiliate made a quarterly payment to the IRS during the test year or true-up period in this case? If yes, how much was paid?

**Public Counsel's response:** Public Counsel witness John Riley provides testimony responsive to this question in contemporaneously filed question and answer formatted testimony (Ex. 299-10) labeled, "Testimony responding to Commission questions of John Riley" where he explains that Empire's parent did not pay federal income taxes for the 2017 and 2018 tax years and, therefore, had no obligation to make federal income tax prepayments.

9. With regard to Issue **13. Asbury** the Commission asked the following questions to which Public Counsel is providing responses:

3. Staff - On Page 6 lines 15-22 of Aaron Doll's rebuttal testimony, he outlines that Empire is considering a combination of several options for what to do with Asbury. This includes (i) decommissioning pieces that will be scrapped for salvage; (ii) decommissioning equipment that will be sold; (iii) repurposing; and (iv) reused. Please explain how the AAO reporting requirements contemplate all of these options occurring and the relative timing of each of them to each other and the Asbury shut down date.

**Public Counsel's response:** Public Counsel witness John A. Robinett provides testimony responsive to this question in contemporaneously filed question and answer formatted testimony labeled, "Testimony responding to Commission questions of John A. Robinett" (Ex. 299-11) where he raises concerns about how Empire will book and account for Asbury scrap metal salvage value.

10. With regard to Issue **18. Affiliate Transactions** the Commission asked the following questions to which Public Counsel is providing responses:

6. OPC - Is it OPC's opinion that affiliate transactions in compliance with the Commission's Affiliate Transactions Rule pricing requirements may be included in rates even without a Commission approved Cost Allocation Manual (CAM)?
7. OPC - Referring to Schallenberg direct testimony page 19, lines 5-15, isn't the real problem with costs charged to Empire from Algonquin affiliates an allocation problem rather than a pricing problem?
8. OPC - Which Algonquin/Empire affiliates would you consider to be regulated, service companies and non-regulated? Where would the quantification of these transactions be documented through the test year and true-up period in this rate case?
9. OPC - In David Murray's direct testimony (Page 15 Line 1), he indicated Empire's embedded cost of debt at the updated period (September 30, 2019) was 4.98% for its long-term debt and it included the \$90 million loan from LUCo. What other long-term debt was used in this calculation and at what terms?

**Public Counsel's response:** Public Counsel's response to No. 6 is "Yes." However, regardless of whether they comply with a Commission-approved cost allocation manual, to be included in a utility's cost-of-service used for setting rates, utility transactions with its affiliates must be prudent

and reasonable, the Commission's presumption of prudence does not apply, and the utility has the burden of adducing evidence showing the transactions are prudent. If a utility complies with the Commission's applicable affiliate transactions rule it will have created much evidence on the issue of whether its transactions with its affiliates are prudent.

Public Counsel's response to No. 7 is "No." The real problem with the costs of Empire's transactions with its affiliates is that there is no evidence that they are prudent and, in many respects, Empire did not comply with Commission's affiliate transactions rule with regard to them. Empire's transactions with its affiliates implicate both allocation and pricing. The allocation problem is that the allocators and the costs to which they are applied need to have a rational relationship to the nature of the affiliated good or service provided and charge Empire no more than an appropriate price for the good or service. The pricing problem is that the cost of the good or service provided—including an allocated cost—must be a prudent one, *i.e.*, one that a reasonably prudent entity would incur for the good or service in an arms-length transaction.

Public Counsel's response to the first sentence of No. 8 is that it considers entities that provide services to another entity to be a service company. If Algonquin Power & Utilities Company (APUC) employees provide services to another entity, then Public Counsel considers APUC to be a service company. If Liberty Utilities Canada Company (LUC) employees provide services to another entity, then Public Counsel considers LUC to be a service company. Liberty Utilities Service Company (LUSC) employees provide services to Empire, so Public Counsel considers LUSC to be a service company. If Liberty Energy Utilities (New Hampshire) Corp. employees provide services to another entity, then Public Counsel considers Liberty Energy Utilities (New Hampshire) Corp. to be a service company.

Public Counsel's response to the second sentence is that the best documentation of the quantification of Empire's affiliate transactions of which Public Counsel is aware are in Schedule RES-D-6C (Empire's 2018 affiliate transactions report) to Mr. Schallenberg's direct testimony (Ex. 220C), Exhibit 229C (Empire's 2019 affiliate transactions report) and Exhibit 229-12 (Empire's FERC Form 1 for 2018). Regardless, unless the transactions are prudent, they cannot be included in Empire's cost of service used for setting rates in this case.

For Public Counsel's response to No. 9, Public Counsel witness David Murray clarifies the nature of the cost of debt to which the Commission refers as "Empire's embedded cost of debt" in question number nine in contemporaneously filed question and answer formatted testimony labeled, "Testimony responding to Commission questions of David Murray." (Ex. 299-9).

11. With regard to Issue **20. Software Maintenance Expense** the Commission asked the following question to which Public Counsel is providing a response:

**4. OPC - What is OPC's position on what cost of service items should or should not be included in true-up adjustments?**

**Public Counsel's response:** As it has often indicated in orders, a true-up must include those accounts necessarily affected by some significant known and measurable change. The list of "all major changes to revenue, expenses, rate base, and capital structure occurring through the true-up date." The listing Staff provided and the Commission ordered in Aquila's 2005-2006 general electric rate case (Case No. ER-2016-0436) is representative of the cost-of-service items to include in true-up adjustments. Exhibit No. 299-13 ER-2016-0436 true-up order & Staff pleading is a copy of that order and Staff listing. In this case Empire's shutdown of its Asbury generating plant is a significant and measurable change, and the impacts of that shutdown on Empire's cost-of-service are items that should be true-up adjustments.



12. With regard to Issue **23. Estimated Bills** the Commission asked the following questions to which Public Counsel is providing responses:

1. Empire - What number and percentage of customers only receive estimated bills in a 12-month period?
12. Empire – Witness Brent Baker also states in his surrebuttal testimony that estimated meter readings have gone down in the first two months of 2020, but are not yet as low as 2017 levels. Has Empire set a goal for when it should be back at a 2017 level of estimated bills? What policies and procedures have been put in place to ensure that goal is met?

**Public Counsel’s response:** Public Counsel witness Geoff Marke provides testimony responsive to these questions in his contemporaneously filed verified memorandum formatted testimony (Ex 299-9) where he explains and expands on the following summary. In his revenue requirement rebuttal testimony (Ex. 207C) Mr. Marke provides a table that, by month, includes the numbers of Empire’s customers who received estimated electric bills from January 2017 through December 2019, and reproduces that part of that testimony in his memorandum testimony. With regard to Empire and AMI, Mr. Marke testifies that Evergy Metro, Evergy West and Ameren Missouri did not and are not experiencing increases in estimated billings due to AMI deployment, and that Empire is seeking cost recovery for bonuses for lineman retention, but, despite its protracted period of estimating bills, which it attributes to insufficient meter readers, Empire apparently did little or nothing to remedy that issue.

13. With regard to **Questions Regarding the Global Stipulation and Agreement** the Commission asked the following questions to which Public Counsel is providing responses:

5. All Parties - If the Commission does not approve the Global Stipulation and Agreement, do OPC and the Signatories still support approval of the terms of the agreement that OPC indicated in its Objection to Parts of the Global Stipulation and Agreement that it does not oppose? If not, please identify the terms of agreement that all parties do not oppose?

**Public Counsel’s response:** Public Counsel cannot speak for other parties, but Public Counsel stands by what it stated it does not oppose of the terms of the Global Stipulation and Agreement as it set forth in its *Objection to Parts of the Global Stipulation and Agreement* Filed April 15, 2020, and by the issues to which it does not state a position in its position statements set out in its *Positions on Jointly Listed Issues* that it filed on April 17, 2020—this issues lined through. Note that Public Counsel includes an issue in its position statements—**Issue 9.b.: Allowance for Funds Used During Construction, b. Should Empire’s rate base be reduced to reflect the source and cost of the financial transaction behind Empire’s \$90 million promissory note with LUCo?**—that Staff omitted from the *Joint List of Issues* which Staff filed on April 8, 2020. It is an issue that Public Counsel provided to Staff and the other parties on April 3, 2020, before Staff created the joint listing of issues, but which Staff failed to include in that listing it filed on April 8, 2020.

8. All parties - Paragraph 9 of the Stipulation and Agreement lays out a detailed list of metrics Empire will need to report to Staff and OPC regarding estimated meter reading and billing. If Empire fails to meet these metrics what corrective actions should be taken?

**Public Counsel’s response:** Public Counsel witness Geoff Marke provides testimony responsive to this question in his contemporaneously filed verified memorandum formatted testimony (Ex. 299-8) where he points out and further supports Public Counsel’s recommendation of an explicit 60 basis point reduction to what return on equity the Commission would otherwise adopt for purposes of setting rates in this case.

14. With regard to **Questions Regarding Hedging** the Commission asked the following question to which Public Counsel is providing a response:

3. OPC- What is OPC’s opinion of Empire’s changes to its hedging risk management plan? Please provide OPC’s opinion on limiting hedges to physical hedges alone?

**Public Counsel’s response:** Public Counsel witness John Riley provides testimony responsive to this question in contemporaneously filed question and answer formatted testimony (Ex. 299-10) labeled, “Testimony responding to Commission questions of John Riley” where he explains that Empire’s changes to its hedging program are an improvement, but insufficient, and offers a further improvement.

Respectfully,

/s/ Nathan Williams

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 6<sup>th</sup> day of May 2020.

/s/ Nathan Williams