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**Before the Public Service Commission
of the State of Missouri**

Direct Testimony

of

Katrina T. Niehaus

on behalf of

The Empire District Electric Company d/b/a Liberty Utilities

March 2022



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THE EMPIRE DISTRICT ELECTRIC COMPANY
BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
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DIRECT TESTIMONY OF KATRINA T. NIEHAUS
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1 **I. INTRODUCTION**

2 **Q. Please state your name and company affiliation.**

3 A. My name is Katrina T. Niehaus, and I am employed by Goldman, Sachs & Co.
4 (“Goldman”) located at 200 West Street, New York, New York.

5 **Q. In what capacity are you employed and what are your responsibilities?**

6 A. I am currently a Managing Director, Head of the Corporate Asset Backed Securities
7 (“ABS”) Finance Group at Goldman.

8 **Q. Briefly describe the role of Goldman in the proposed transaction.**

9 A. Goldman was retained by The Empire District Electric Company d/b/a Liberty
10 (“Liberty”) to be its structuring advisor for the proposed transaction relating to
11 retirement of Liberty’s Asbury generating plant. Goldman, as structuring advisor, has
12 agreed to assist Liberty in, among other things, procuring a financing order (“Financing
13 Order”) to permit securitization and development of the bond structure.

14 **Q. Please give your educational background, professional qualifications, and
15 experience.**

16 A. I received a Bachelor of Science in Economics degree from the Wharton School at the
17 University of Pennsylvania. Prior to joining Goldman in 2005, I was employed by
18 Lehman Brothers. I was at Lehman Brothers from 2004-2005 as an analyst.
19 During my time at Goldman, I have assisted a number of utilities / States through the
20 securitization process as an advisor or underwriter including: Pacific Gas & Electric,
21 Entergy Texas, Entergy Louisiana, Jersey Central Power & Light, AEP Texas Central,

1 CenterPoint Energy, FirstEnergy, Consumers Energy, The Long Island Department of
2 Power, and The State of Hawaii. Currently, I oversee a group that has the responsibility
3 for the origination and structuring of securitizations backed by a broad range of assets
4 including solar loans and leases, triple net leases, intellectual property, and small
5 business loans.

6 **Q. Have you previously testified before the Missouri Public Service Commission (the**
7 **“Commission”) or other Missouri regulatory bodies?**

8 A. Yes on Liberty’s behalf.

9 **Q. What is the purpose of your Direct Testimony on behalf of Liberty?**

10 A. My testimony will: (i) provide an overview of the proposed securitization transaction
11 and market; (ii) discuss the key structural elements of Liberty’s proposed rate reduction
12 bond offering; and (iii) discuss the primary rating agency criteria for rate reduction
13 bonds to obtain triple-A ratings.

14 **II. OVERVIEW OF PROPOSED SECURITIZATION TRANSACTION AND**
15 **MARKET**

16 **Q. What is Securitization?**

17 A. Securitization is a financing technique in which certain assets—typically financial
18 assets such as loans, leases, or receivables—are legally isolated within a special
19 purpose entity (“SPE”) and investors purchase securities that represent either debt or
20 equity interests in the SPE. These securities are generally referred to as Asset Backed
21 Securities (“ABS”). Securitization has become widely accepted as an efficient way for
22 companies to finance a broad range of assets. The proposed transaction is similar to
23 prior securitizations that have been completed on behalf of other utilities, in that the
24 SPE will issue securities backed primarily by a statutory and regulatory right to receive

1 a charge (referred to herein generically as a “Securitized Utility Tariff Charge”) paid
2 by customers in a utility’s service territory. Securitizations are generally non-recourse
3 to and bankruptcy-remote from any operating company (here, Liberty). The bonds are
4 typically self-amortizing through payments of principal over time, and there is
5 customarily a broad and diverse pool of underlying obligors (here, retail electric
6 customers) that will make payments to service the bonds. In the case of rate reduction
7 bonds, collections of the securitized charge provide the cash from which interest and
8 principal on the bonds are paid over time.

9 **Q. Have other utilities issued rate reduction bonds?**

10 A. RSMo. §393.1700 (the “Securitization Statute”) is the first rate reduction bond
11 (“RRB”) statute in Missouri, and Liberty’s Petition in January 2022 relating to Winter
12 Storm Uri was the first of its kind in Missouri. Since 1995, however, over \$60 billion
13 of rate reduction bonds have been issued successfully by or on behalf of electric utilities
14 in various other states, as shown in **Direct Schedule KN-1**.

15 **Q. Who is a typical investor in securitizations?**

16 A. The most frequent investors in securitizations are banks, pension funds, insurance
17 companies, and money managers (i.e. institutional investors). Securitizations tend to
18 be large, normally in the range of \$100 million to \$2 billion. The large transaction size
19 economizes on the fixed costs of setting up a securitization and provides greater
20 liquidity for investors seeking to trade in the secondary market, which can lead to better
21 pricing in the primary (i.e. new issue) market.

22 **Q. How are rate reduction bonds priced?**

23 A. The exact interest rate (or coupon) of rate reduction bonds is a function of the market
24 conditions at the time the bonds are sold and is influenced not only by general market

1 conditions but by such factors as the number and quality of competitive bond offerings
2 coming to market at the same time. The interest rates (or coupons) on the rate reduction
3 bonds are set at a level agreed to by the sponsor and the underwriters shortly before the
4 bonds are issued. The objective in setting the interest rates on the rate reduction bonds
5 is to set them at a level sufficient to generate enough demand to allow all bonds to be
6 sold, without setting the interest rate at a level higher than necessary to generate
7 sufficient demand. The ratings of the rate reduction bonds also generally impact the
8 rate at which investors are willing to purchase the securities.

9 **Q. How will the bonds be structured in this transaction?**

10 A. Rate reduction bonds may be issued in a single tranche or multiple tranches. Tranches
11 should be of sufficient size to be liquid. If tranches are seen by the market as too small,
12 they will be seen as illiquid and will not generate as much investor demand, which can
13 result in higher coupons. While the final structure will depend upon market conditions
14 at the time of offering, we currently estimate that the proposed offering will have one
15 tranche with a weighted average life of approximately 7.17 years. The legal final
16 maturity of the bonds is not expected to exceed 15 years. The likely scheduled final
17 payment date of the bonds will be approximately 13 years from the date of issuance.
18 We have structured the deal here for the Asbury retirement costs so it will match the
19 final legal maturity of the deal referenced in the previous testimony filed in January
20 2022 relating to Winter Storm Uri. **Direct Schedule KN-2** shows an example of the
21 bond structure that Goldman would recommend under current market conditions by
22 first scheduled principal payment date, scheduled final payment date, legal final
23 maturity, initial principal amount, average life, and estimated coupon. I should note

1 that **Direct Schedule KN-2** is only an example and that the actual structure could differ
2 depending on market conditions at the time of issuance.

3 **Q. How was the tranching determined?**

4 A. Given the total recovery amount, we have created a one tranche structure. We believe
5 that the tranche size is large enough to generate investor demand at pricing and will
6 also be seen as large enough to be able to trade easily in the secondary market.

7 **Q. Do you recommend the bonds be offered in a public transaction registered with
8 the SEC or a private placement?**

9 A. I recommend in this case pursuing an offering registered with the U.S. Securities and
10 Exchange Commission (“SEC”), generally referred to as a “public” offering. The
11 Securities Act requires that every security offered or sold in the United States either be
12 registered with the SEC or qualify for an exemption from registration (with such
13 exempt securities generally referred to as a “private” offering). If a transaction is
14 registered with the SEC, there are no restrictions on the type of investor who may
15 purchase the securities. While private offerings are restricted to certain types of
16 sophisticated institutional investors, public offerings can be sold to anyone, including
17 retail investors. Because there are no restrictions on the sophistication of the investors
18 able to purchase the bonds, the SEC requires public offerings to prepare a prospectus
19 that conforms to detailed disclosure requirements and is also reviewed by the SEC prior
20 to marketing. Offering documents for private transactions do not have to be reviewed
21 by the SEC prior to marketing. The public offering process can therefore be more time
22 consuming, and may also have higher transaction costs. Legal fees may be higher due
23 to the SEC review process, and unlike private offerings, the SEC requires issuers to
24 pay a filing fee based on the dollar amount of bonds being registered. However, in

1 general, public offerings are considered to be more liquid given the broader potential
2 investor universe and therefore may be more attractive to investors, resulting in lower
3 pricing. Therefore, similar to the vast majority of precedent RRB transactions, we
4 believe a public offering will likely lead to lower overall costs for customers.

5 **Q. Will the rate reduction bonds pay fixed or floating rates?**

6 A. Nearly all rate reduction bonds have been fixed-rate bonds. Fixed rates facilitate
7 evaluation of the likely costs and benefits in advance and the maintenance of roughly
8 equal securitized charges over time (subject to variances in items such as actual load or
9 collections history from forecast). Although it is possible to issue floating-rate bonds
10 if the floating interest rate is then converted to a fixed rate through use of an interest
11 rate swap or hedge between an SPE and a highly-rated swap counterparty, in today's
12 market, floating rate bonds, swaps, and hedges are expected to create additional
13 documentation costs and introduce additional risks. Our analysis assumes that only
14 fixed-rate bonds will be issued.

15 **Q. Please describe and provide an estimate of the up-front financing costs of original**
16 **issue discount.**

17 A. Original issue discount ("OID") is not really a "cost" similar to the other up-front
18 financing costs discussed in Liberty's testimony. Instead, it is the difference between
19 the total par amount of the bonds issued and the actual price paid by investors. There
20 is a mathematical relationship, as captured by the yield of a bond, between the amount
21 of OID in a particular transaction and the interest rate (or coupon) paid on the bonds
22 sold. The lower the interest rate, the higher the OID will be for a given yield (all else
23 equal). For planning purposes, it is assumed that the rate reduction bonds will be issued
24 without OID. However, as a practical matter, it is likely that some level of OID will

1 be needed to provide yields that match the exact market conditions at issuance. In fact,
2 a certain amount of OID is typical of rate reduction bonds and some other asset backed
3 securities generally. The amount of OID is generally less than 0.5%. These types of
4 discounts arise because (a) the swap curve is typically quoted to four decimal places
5 while bond coupons are typically stated to two decimal places and (b) many initial
6 offerings settle without accrued interest on a mid-month date, which results in an “odd
7 first period.” Under these circumstances, pricing at exactly 100% is not practicable.
8 Many investors tend to prefer a lower coupon with a discount over a higher coupon
9 with a premium, so the normal convention is to round the coupon down (to two decimal
10 places) at pricing to produce a slight discount.

11 For all practical purposes, OID is an element of interest cost. The OID will
12 depend on market conditions at the time and the “odd first period” described above.
13 Since the OID will be fully reflected in the issuance advice letter, and there is no reason
14 to predict, nor any basis for predicting, the exact amount of OID that may be associated
15 with this transaction. Any estimate would be arbitrary.

16 **Q. How might market conditions at the time of the offering impact the RRBs?**

17 A. Market conditions for fixed income securities overall can impact the execution of
18 specific securities, including rate reduction bonds, independent of investors’
19 fundamental views of those specific securities. For example, if there is generally
20 growing risk aversion among investors, it may be more expensive to an issuer to offer
21 securities of a longer duration, all else being equal.

22 **III. KEY ELEMENTS OF THE RRB STRUCTURE**

23 **Q. What key elements or characteristics of rate reduction bonds are considered**
24 **important in establishing the credit rating of rate reduction bonds?**

1 A. Rating agencies generally consider several key elements including: (1) bankruptcy
2 remoteness from the utility; (2) predictability and non-bypassability of the legislatively
3 mandated “Securitized Utility Tariff Charge”; (3) standards governing any future third
4 party biller (a “TPB”)¹; (4) credit enhancement; and (5) the state pledge and other
5 statutory safeguards.

6 **Q. Please describe the structure of the proposed securitization transaction.**

7 A. A diagram of the structure of the proposed securitization transaction is provided in
8 **Direct Schedule KN-3**. This structure is substantially similar to that employed in
9 typical rate reduction bond offerings. The proposed transaction will involve the
10 creation by Liberty of one or more wholly-owned SPEs, which would be incorporated
11 as Delaware limited-liability companies with Liberty as the sole member. The SPE
12 will serve as the issuer of the rate reduction bonds (the “Issuer”). Liberty, pursuant to
13 authorization granted it by the Commission in a Financing Order, will create and sell
14 certain “property” (namely, the right to impose, bill, and receive Securitized Utility
15 Tariff Charges, the “RRB Property”) to Issuer. The Issuer will finance the purchase of
16 such RRB Property by selling rate reduction bonds, thereby acquiring all of the right,
17 title, and interest of Liberty to collect Securitized Utility Tariff Charges.

18 **Q. What is the reason for using a newly formed SPE rather than issuing the rate**
19 **reduction bonds directly from Liberty?**

20 A. The credit ratings (or creditworthiness, if not formally rated) of existing companies are
21 affected by factors related to their historical and ongoing business. One of the aspects
22 of securitization is that it allows a particularly high quality stream of revenue to be

¹ The rating agencies are likely to focus on the impact of each third-party billing entities credit and their involvement on the flow of collections. Historically, the rating agencies have required the public utility commission to indicate they will consider the rating of the securitization to the extent a change in billing structure is made in the future.

1 isolated, and bonds secured by that stream to be sold in a manner that insulates the
2 investor from credit risks of the existing company. As a result, securities issued by
3 SPEs, such as the Issuer, often have higher credit ratings than the debt of the company
4 that sponsored the transaction. As Liberty is unrated, the securities issued by the Issuer
5 are expected to have higher credit ratings than Liberty's debt if it were explicitly rated.
6 To obtain and maintain these higher credit ratings, the SPE is generally made the
7 beneficiary of one or more forms of credit enhancement, which may include equity
8 contributed by the sponsor, subordinated interests retained by the sponsor, financial
9 guarantees or letters of credit, and in the context of the proposed rate reduction bond
10 transaction, a true-up of securitized charges and other statutory protections. In the case
11 of rate reduction bonds, the statutory provisions are designed to permit the bonds to be
12 issued with triple-A ratings using features generally consistent with precedent
13 legislation enabling securitization of this type.

14 **Q How does the sale of the RRB Property to an SPE contribute to the bankruptcy-**
15 **remoteness of such RRB Property?**

16 A. When the transfer of the RRB Property to an SPE constitutes a legal true sale and
17 absolute transfer for commercial law purposes, the RRB Property owned by the SPE is
18 no longer property of the utility and, therefore, would not be subject to the claims of
19 the utility's creditors if the utility were to become the subject of a bankruptcy
20 proceeding. Although Liberty, as seller of the RRB Property, will initially act as
21 servicer (the "Servicer") for an SPE by collecting Securitized Utility Tariff Charges,
22 the SPE will hold legal title to the collections received in connection with Securitized
23 Utility Tariff Charges and the funds will not be part of Liberty's revenues or assets for
24 legal purposes. Legal counsel to the issuer will give a reasoned legal opinion regarding

1 the true sale of the RRB Property and that the SPE will not be consolidated into the
2 bankruptcy estate of the parent utility. The rating agencies will review this opinion as
3 part of their diligence on the transaction.

4 **Q. How does the independence of the SPE from the utility influence the bankruptcy-**
5 **remoteness of the RRB Property?**

6 A. In order to preserve the bankruptcy-remote status of the SPE and the RRB Property
7 once it is sold to the SPE, the utility should maintain an arms' length relationship with
8 the SPE and not act in a manner inconsistent with the ownership of the RRB Property
9 by the SPE. The transaction documents will have covenants included that state the
10 utility cannot have an ownership claim on the Securitized Utility Tariff Charges. These
11 covenants will help support the reasoned legal opinion regarding bankruptcy matters
12 that will be provided at closing by the issuer's legal counsel.

13 **Q. What are the structural elements of the RRB Transaction that support the status**
14 **of the SPE as a separately organized legal entity?**

15 A. The structural elements that the opining law firm typically requires to support such
16 separate existence typically include, without limitation, requirements that the SPE be
17 adequately capitalized, that the utility, as Servicer, be adequately compensated on an
18 arms' length basis for the functions it performs for the SPE in billing, collecting and
19 remitting the Securitized Utility Tariff Charges on behalf of the SPE, that the utility not
20 be liable for the SPE's debts and that the SPE not be liable for the utility's debts, that
21 the utility and the SPE take certain steps to ensure that creditors are not misled as to
22 their separate existence, such as disclosure in the utility's financial statements of such
23 separate existence, that certain steps have been taken to avoid commingling of funds,
24 and that separate books and records are maintained for each of the SPE and the utility.

1 These structural protections are important to avoid the potential for “substantive
2 consolidation” in a bankruptcy proceeding, where the assets and liabilities of two or
3 more affiliated entities (such as the utility and its affiliated SPE) are pooled, resulting
4 in claims of third-party creditors against any of those entities being treated as claims
5 against the common pool of assets created by consolidation.

6 **Q. If the utility wholly owns the SPE, how will the SPE be operated independently**
7 **from the utility?**

8 A. Issuer’s counsel and the rating agencies typically require that the organizational
9 documents of the SPE impose restrictions upon its activities and the ability of the utility
10 to take actions as the holder of the equity interest therein. For example, in the proposed
11 transaction, the SPE will be formed for the limited purpose of acquiring the RRB
12 Property and issuing the bonds. The SPE will be managed by a board of managers,
13 including at least one independent manager. Without the consent of this independent
14 manager, such SPE will be unable (a) to amend provisions of fundamental
15 organizational documents which ensure the bankruptcy-remoteness of the SPE or (b)
16 to institute or to consent to the institution of bankruptcy or insolvency proceedings
17 against it, or (c) to dissolve, liquidate or wind up the SPE. Other provisions may also
18 be included to support the bankruptcy-remote character of an SPE as required by the
19 rating agencies.

20 The SPE will not have any employees, so Liberty, in its role as Administrator,
21 will perform certain functions for the SPE. These functions will include, among others,
22 maintaining the general accounting records, preparation of periodic and annual reports,
23 arranging for annual audits of the SPE’s financial statements, as may be necessary,
24 preparing all required external filings, preparing any required income or other tax

1 returns, and related support. The administration fee is meant to cover expenses
2 associated with these functions.

3 **Q. Will the utility be permitted to voluntarily resign as Servicer?**

4 A. It is expected that the servicing agreement will prohibit Liberty, as the initial Servicer,
5 from resigning as Servicer except upon either (i) a determination that the performance
6 by it of such duties is no longer permissible under applicable law or (ii) the prior
7 approval of the Commission and confirmation (or deemed confirmation) by the
8 applicable rating agencies that such resignation will not result in a suspension,
9 reduction or withdrawal of the then current credit ratings for the bonds. Such
10 resignation will not be effective until a successor Servicer has assumed the initial
11 Servicer's obligations in order to continue servicing the RRB Property without
12 interruption. The Servicer may also be terminated from its responsibilities under certain
13 instances, such as the failure to remit collections within a specified period of time. Any
14 merger or consolidation of the Servicer with another entity would require the merged
15 entity to assume the Servicer's responsibility under the servicing agreement. The terms
16 of the servicing agreement are critical to the rating agency analysis of the proposed
17 transaction and the ability to achieve the highest credit ratings.

18 **Q. What are the eligibility criteria for a third-party successor servicer?**

19 A. Selection of a third-party successor servicer is customarily made by the indenture
20 trustee, either at its own discretion or as it may be directed by holders of a majority of
21 the outstanding principal balance of the related series, subject to rating agency
22 approval. Typically, indenture trustees and rating agencies are primarily concerned
23 with performance-related criteria, and secondarily with financial strength. A third-
24 party successor servicer must be able to perform the calculation, billing, collection,

1 filing, and other duties that the servicer is required to provide under the servicing
2 agreement, must enter into a servicing agreement substantially similar to the servicing
3 agreement with the servicer being replaced, and must agree not to resign. Appointment
4 of the successor servicer must also not cause the rating agencies to reduce or withdraw
5 the current ratings of any class of rate reduction bonds for which the replacement would
6 act as servicer.

7 **Q. Will an indenture trustee be engaged in this securitization?**

8 A. Yes. Securitizations typically involve an indenture trustee who will act on behalf of
9 investors pursuant to the indenture. The assets of the SPE are typically pledged to the
10 indenture trustee on behalf of the bondholders, who perfects a first-priority security
11 interest in them. In the event the sponsor or servicer defaults on its servicing
12 obligations, the indenture trustee is normally empowered to contract with another party
13 to perform those obligations. The entity acting as indenture trustee will charge an up-
14 front fee, as well as ongoing fees to perform the role of indenture trustee for the
15 transaction.

16 **Q. What is the role of the indenture trustee?**

17 A. The indenture trustee receives and processes Securitized Utility Tariff Charges from
18 the Servicer, calculates the amounts due to bondholders on each payment date, allocates
19 collections in accordance with the priority of payments for the transaction, invests
20 amounts on deposit in each subaccount in eligible investments, and provides periodic
21 reports that detail account activity and balances to various parties. The duties, rights,
22 and obligations of the indenture trustee will be more fully described in the indenture.

23 **Q. Please describe the different kinds of accounts that will be created for the**
24 **transaction.**

1 A. The indenture will provide for the creation of a collection account and a capital account.
2 This is similar to the structure of other recent rate reduction bonds.

3 **Q. Please describe the Collection Account.**

4 A. All collections of Securitized Utility Tariff Charges by the Servicer will be remitted
5 into the collection account for distribution to bondholders and other parties in
6 accordance with a priority of payments (or “waterfall”) as described below. To achieve
7 triple-A ratings, it is generally necessary for, among other things, the documents to
8 include a detailed priority of payments for the application of collections. The priority
9 of payments is found in the indenture and is expected to be similar to other recent rate
10 reduction bond precedent transactions.

11 **Q. Please describe the Capital Account.**

12 A. The Capital Account serves as a buffer against undercollection, which might otherwise
13 cause a delay in the payment of scheduled principal, interest, or operating expenses.
14 The Capital Subaccount will be funded by Liberty on or prior to the closing of the
15 transaction through a capital contribution in an amount to equal to at least 0.5% of the
16 initial principal balance of the rate reduction bonds issued. This level of capital
17 contribution is generally necessary to achieve triple-A ratings and is also required to
18 support the necessary tax treatment.

19 The Internal Revenue Service in 2005 issued a revenue procedure (2005-62) stating
20 the “qualifying securitizations” were required to capitalize the issuer SPE with an
21 equity contribution from the sponsoring utility of no less than 0.5% of the aggregate
22 principal amount of the financing. A “qualifying securitization” will receive the
23 following tax treatment:

- 1 • be treated as not recognizing gross income in connection with: (i) the receipt of the
2 Financing Order; (ii) the receipt of cash or other consideration in exchange for the
3 transfer of the intangible property right created under the Financing Order; or (iii)
4 the receipt of cash or other consideration in exchange for securitized instruments
5 issued by the SPE;
- 6 • the securitized instruments will be treated as obligations of Liberty; and
- 7 • the securitization charges are gross income to Liberty.

8 Revenue Procedure 2005-62 clarifies that a typical qualifying utility securitization will
9 avoid recognition by the utility of gross income upon receipt from the SPE of the net
10 proceeds of the securitization bonds as the sales price of the RRB Property and treats
11 the Securitized Utility Tariff Charges as gross income to the utility under its usual
12 method of accounting.

13 The Capital Account can be used to make interest and principal payments (or
14 to pay other operating costs) if Securitized Utility Tariff Charges are inadequate to do
15 so. Any withdrawals from the Capital Account to pay interest or principal due to
16 bondholders will be repaid with future remittances of Securitized Utility Tariff Charges
17 and incorporated into the true-up mechanism.

18 Because this subaccount is funded by Liberty (as the sole member of the Issuer),
19 upon the repayment of the bonds, all amounts in the Capital Subaccount should be
20 returned to the shareholders of Liberty.

21 **Q. How will the amounts in these accounts be invested?**

22 A. Amounts on deposit in each of the accounts will be invested by the indenture trustee in
23 “eligible investments.” The indenture is expected to define eligible investments in a
24 similar manner as other recent precedent transactions and will include U.S.

1 Government securities, certain bank deposits, banker's acceptances, and security
2 repurchase obligations from institutions with long-term ratings of at least Aa3/AA/AA
3 (from Moody's, Standard and Poor's, and Fitch, respectively), or short-term ratings of
4 at least P-1/A-1+/F-1+, respectively, the commercial paper of similarly-rated
5 commercial or financial entities, and investments in Aaa/AAA/AAA-rated money
6 market funds.

7 **IV. PRIMARY RATING AGENCY CRITERIA**

8 **Q. Are the terms of a Financing Order critical to achieving a successful RRB**
9 **transaction?**

10 A. Yes. A Financing Order, when taken together with the applicable provisions of the
11 Securitization Statute, establishes in strong and definitive terms the legal right of
12 investors to receive, in the form of Securitized Utility Tariff Charges, those amounts
13 necessary to pay the interest and principal on the bonds and other ongoing expenses in
14 full and on a timely basis. A proposed draft of the Financing Order is attached to
15 Liberty's Verified Petition for Financing Order as Appendix A and is also attached
16 hereto as **Direct Schedule KN-4**.

17 As more fully described below, the Financing Order specifies the mechanisms
18 and structures for payments of bond interest, principal, and ongoing expenses in a
19 manner that minimizes the amount of additional credit enhancements required by the
20 rating agencies to achieve the highest possible ratings. The highest possible ratings will
21 allow the financing to achieve the desired pricing and savings results. In addition, the
22 Financing Order, when taken together with the applicable provisions of the
23 Securitization Statute, will enable Liberty to structure the financing in a manner
24 reasonably consistent with investor preferences and rating agency considerations at the

1 time of pricing, which flexibility is also necessary for the transaction to achieve the
2 desired results.

3 The true-up mechanism in the Proposed Financing Order is consistent with
4 current market standards. I also recommend that in addition to the annual true-up
5 mandated by the Securitization Statute and the interim true-ups included in the
6 financing order, true-ups be required on a non-standard basis if the servicer determines
7 that a true-up adjustment is necessary to ensure the expected recovery, during the
8 succeeding period, of amounts sufficient to pay schedule principal and interest on the
9 securitization bonds, the Issuer's Ongoing Financing Costs and amounts necessary to
10 replenish the draws on the Capital Subaccount.

11 Additionally, in the Proposed Financing Order, I recommend that Liberty may
12 proceed with the issuance of the securitized utility tariff bonds unless, prior to noon on
13 the fourth business day after pricing of the bonds, the Commission issues a disapproval
14 letter directing that the securitized utility tariff bonds are proposed shall not be issued
15 together with the basis for such disapproval. This timeline provides the Commission
16 with one business day less than what is specified in section 393.1700.2(3)(h) of the
17 Securitization Statute but is recommended since there otherwise would not be enough
18 time to settle the bonds in accordance with market practice on the fifth business day
19 after pricing.

20 **Q. What are the principal criteria for achieving triple-A ratings for the rate**
21 **reduction bonds?**

22 A. The proposed transaction will be structured in a manner intended to achieve the highest
23 rating by each of the three major rating agencies: Aaa by Moody's, AAA by Standard
24 and Poor's, and AAA by Fitch. Note that while the transaction is structured with all

1 three major agencies' rating criteria in mind, Liberty may choose to follow the lead of
2 certain recent rate reduction bonds transactions, and only engage two of the three
3 agencies. Engaging only two of three agencies is not expected to have a material effect
4 on the pricing of the transaction, but can save on up-front financing costs. Rating
5 agencies will charge an up-front fee to rate the transaction, typically based on a
6 percentage of the original principal amount of the transaction, up to a cap. Rating
7 agencies will also charge a surveillance fee throughout the life of the transaction, to
8 review ongoing creditworthiness of the bonds and whether there needs to be a change
9 in rating. To achieve these ratings, the transaction should exhibit certain characteristics:

10 1. There must be a "true sale" transfer of the RRB Property from Liberty
11 to the Issuer with a first-priority perfected security interest in the transferred RRB
12 Property granted in favor of the indenture trustee.

13 2. The Issuer must be structured to ensure that it will be bankruptcy-remote
14 from Liberty.

15 3. The Financing Order authorizing the issuance must include statements
16 recognizing the irrevocability of the Securitized Utility Tariff Charges, describing and
17 authorizing imposition, collection, and non-bypassability thereof, and approving the
18 implementation of a satisfactory true-up mechanism to adjust Securitized Utility Tariff
19 Charges. The statute also includes a state pledge that neither the state, nor any of its
20 agencies, including the Commission, shall reduce, alter or impair the Securitized Utility
21 Tariff Charge, the RRB Property and all rights thereunder.

22 4. The true-up mechanism must be mandatory and provide for at least an
23 annual adjustment, with a preference for mandatory semi-annual and other interim

1 reviews. These adjustments are needed to ensure sufficient collections to adhere to the
2 scheduled amortization schedule.

3 5. The transaction should include credit enhancement in the form of the
4 Capital Account. It is expected that the Capital Account will be required in amounts
5 no less than 0.5% of the original principal amount of rate reduction bonds per the
6 discussion above.

7 6. The rate reduction bonds must have scheduled final payment dates that
8 are sufficiently shorter than the legal final maturity date of the bonds to ensure
9 sufficient funds will be collected under a “worst case” scenario to pay the interest and
10 principal regardless of the economic, weather, or other conditions that exist prior to the
11 legal final maturity date of the bonds. Typically, the legal final is one or two years
12 beyond the expected scheduled final payment date.

13 7. There should be cross-collateralization among customer rate classes
14 allowing collection shortfalls to be allocated among classes through the true-up
15 mechanism. There should also be no cap on the Securitized Utility Tariff Charges.

16 8. The rating agencies will need to be satisfied that the Servicer is qualified
17 to perform its billing, collection, and related responsibilities and that it is of sufficient
18 financial substance and stability that it can be expected to perform such services for the
19 life of the rate reduction bonds. The rating agencies will also require the documentation
20 to provide that a qualified successor servicer can and will be appointed following
21 certain servicer defaults.

22 9. The rating agencies will want assurance that the permitted servicing fee
23 will be adequate to obtain a replacement servicer in the unlikely event that transfer of
24 servicing is required.

1 10. The rating agencies must be convinced that the Financing Order’s terms
2 regarding the credit standards, remittance requirements, and deposit mechanisms
3 relating to the possibility of third party billing parties are adequate and will be enforced.
4 All of these requirements are properly provided for in the proposed structure of the
5 transaction and the draft Financing Order. We expect that the proposed Financing
6 Order will allow Liberty to meet the rating agency criteria to achieve triple-A ratings
7 for the rate reduction bonds.

8 **Q. What is the importance of the predictability and non-bypassability of Securitized**
9 **Utility Tariff Charges?**

10 A. In order to obtain the highest feasible credit rating, the revenue stream associated with
11 the Securitized Utility Tariff Charge should be secure and predictable. The Securitized
12 Utility Tariff Charges will be assessed and collected from all retail electric customers
13 obligated to pay the Securitized Utility Tariff Charge (as described in the proposed
14 Financing Order and related testimony) to the Servicer (or any successor Servicer). The
15 credit rating for the bonds will depend on the predictability and stability of that revenue
16 stream even under financial stress or changes in circumstances.

17 It is important that the Securitized Utility Tariff Charges be non-bypassable. In
18 other words, a retail electric customer of Liberty’s designated service territory must
19 pay the Securitized Utility Tariff Charge regardless of whether it purchases energy
20 from Liberty or a third party generation supplier, or whether such service territory is
21 operated by Liberty or a successor. The SPE, not the utility or any other collection
22 agent, including a TPB, must have the right to receive such Securitized Utility Tariff
23 Charges.

24 **Q. Please describe the irrevocable nature of the Financing Order.**

1 A. In accordance with the Securitization Statute, the Financing Order shall be irrevocable,
2 and neither the Commission nor any successor finance order or otherwise may, directly
3 or indirectly, revalue or revise for ratemaking purposes the RRB Property or the
4 Securitized Utility Tariff Charges, or the costs of providing, recovering, financing, or
5 refinancing the RRB Property, determine that such Securitized Utility Tariff Charge is
6 unjust or unreasonable, or in any way reduce or impair the value of the RRB Property
7 either directly or indirectly by taking such Securitized Utility Tariff Charge (other than
8 the portion of such Securitized Utility Tariff Charge constituting a servicing fee
9 payable to Liberty) into account when setting other rates for Liberty, nor shall the
10 amount of revenues arising with respect to the Securitized Utility Tariff Charge be
11 subject to reduction, impairment, postponement or termination.

12 **Q. Please describe the State of Missouri pledge and other statutory safeguards that**
13 **will support the credit rating of the bonds.**

14 A. The Securitization Statute includes a pledge that neither the state, nor any of its
15 agencies, including the Commission, shall reduce, alter or impair the Securitized Utility
16 Tariff Charge, the RRB Property and all rights thereunder or ownership thereof or
17 security interest therein until the bonds, including all principal, interest, premium, costs
18 and arrearages thereon, have been paid and performed in full.

19 **Q. What concerns do the rating agencies have with a third party biller?**

20 A. To the extent a TPB bills, collects and remits Securitized Utility Tariff Charges, the
21 process is one step removed from the Servicer, which may result in the Servicer
22 receiving the Securitized Utility Tariff Charges later than it otherwise would. The
23 greater the delay in receipt of payment, the larger the amount of payments subject to
24 the risk of non-payment due to default, bankruptcy or insolvency of the TPB holding

1 the funds. TPB billing places increased information requirements on the Servicer. It
2 requires the Servicer to perform double tracking of Securitized Utility Tariff Charge
3 payments because the Servicer has the responsibility of accounting for the Securitized
4 Utility Tariff Charge payments due to RRB holders regardless of which entity provides
5 a customer's electric power. As a result, the security of the cash flows that constitute
6 RRB Property may be reduced, thereby increasing risks to investors, potentially
7 reducing the credit rating and/or increasing the interest rate of the bonds that would be
8 required by investors. This concern is especially acute if the TPB is a start-up company
9 or minimally capitalized entity unrated by rating agencies.

10 It is important that the Commission ensure that any TPB, in the event there is
11 any change in utility regulation, must bill, collect and remit the Securitized Utility
12 Tariff Charges in a manner that will not cause any of the then-current credit ratings of
13 the bonds to be suspended, withdrawn, or downgraded. Language to this effect is
14 included in the proposed Financing Order.

15 **Q. Do you believe that the proposed structure of the RRB Transaction has been**
16 **designed to achieve the highest possible credit ratings?**

17 A. Yes.

18 **Q. Are the terms of the RRB Transaction, as described in this Direct Testimony, the**
19 **final terms of the proposed transaction?**

20 A. No. Certain details regarding the issuance of the rate reduction bonds, including
21 without limitation, interest rates, the expected amortization schedule and the weighted
22 average life of the bonds are entirely dependent upon market conditions at the time the
23 bonds are issued, and until that time such terms cannot be finalized. Additionally, the
24 rating agencies will need to perform their due diligence, including running various cash

1 flow stress scenarios, which may result in changes to the structure in order for the rate
2 reduction bonds to achieve triple-A ratings. Finally, the Financing Order sets forth an
3 issuance advice letter process whereby the Commission will provide input to Liberty
4 and collaborate with Liberty in all facets of the bond process.

5 **Q. Does this conclude your Direct Testimony?**

6 **A. Yes.**

VERIFICATION

I, Katrina T. Niehaus, under penalty of perjury, on this 21st day of March, 2022, declare that the foregoing is true and correct to the best of my knowledge and belief.

/s/ Katrina T. Niehaus