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-2021-0312

PUBLIC COUNSEL'S POSITIONS ON THE AMENDED LIST OF ISSUES

1. Policy

OPC Position: In this case this Commission is charged by statute to design just and reasonable rates that Missourians in Joplin, Aurora, Republic, Bolivar, and Branson, and in other communities and rural areas of southwest Missouri will pay for electricity from Empire. Safe and reliable service is tempered by just and reasonable cost. In the late 18th and beginning of the 19th Century reliable service often was dusk to dawn lighting. It has never meant electricity at any cost.

At every turn in this case Empire is pushing to or beyond the ratemaking envelope to increase its cost-of-service. Not only is Empire seeking return of its investment in its Asbury generating unit that it chose to strand by prematurely retiring that unit, but it is also seeking return on that no longer used and useful investment. Further, for its fuel and purchased power, and related, non-capital expenses that it incurred for Storm Uri, Empire is not only is seeking to recover those costs, but also to receive a return on them. Further, Empire is seeking to exclude from offsetting its rate base the revenues and the values of production tax credits that its wind projects generate before those wind projects are included in the cost-of-service upon which this Commission sets Empire's new rates in this case. Moreover, although the Commission decided Empire's return-on-equity and capital structure just a year and one-half ago, Empire is seeking to increase its return-on-equity from 9.25% to 10.00% and its capital structure from 46% common equity and 54% long-term to 52.79% common equity and 47.21% long-term debt.

Not only do these requests push the ratemaking envelope, but they are being made by a utility that has for years consistently performed poorly in JD Power & Associates customers' satisfaction surveys for years.

In 2020 Empire performed worse in customer satisfaction than the following utilities who garnered national notoriety:

- PG&E – Who was charged with manslaughter for up to four deaths for starting the Zogg Fire in Northern California that burned 50,000+ acres of land and 204 buildings;
- FirstEnergy– Who confessed to federal corruption and racketeering charges tied to passage of Ohio House Bill 6 to prop up a nuclear power plant;

- Commonwealth Edison – Who was ordered to pay $200 million in fines to resolve a criminal investigation into a years-long utility bribery scheme with lawmakers of the Illinois General Assembly;
- Arizona Public Service Company – Arizona's largest electric company who ended up paying $24 million in fines for not explaining its rates properly, erroneously directing thousands of customers away from its cheapest plans, and disclosing some customers' bills publically without their consent on its website; and
- Dominion - Who raised rates in the middle of the COVID-19 pandemic following the failed $9 billion V.C. Summer nuclear fallout that South Carolina residents will be paying for generations.

The sole utility with a lower customer satisfaction score in the entire United States (including all investor-owned utilities and select large cooperatives), Central Maine Power, required a last minute veto from the Governor of Maine to override an approved bill from the Main General Assembly to prevent that investor-owned utility from being taken over as a consumer-owned utility due to its high cost and poor quality service. Empire only scored better than the utility where lawmakers in the state in which it operates voted to force it to be sold to its customers.

Keep in mind these scores reflect 2020 and do not include all that occurred in 2021, including the loss of power and $218 million in fuel related costs Empire wants to pass on completely (with carrying costs) to customers as a result of Storm Uri. It also does not include any of its AMI or the $2 billion in planned PISA capital investments (over the next four years), the more than $600 million in ratepayer-backed merchant generation, and the hundreds of millions of dollars in undepreciated balance and return on for its self-imposed stranded Asbury power plant. Empire achieved the second worst score in the country before it requested to put any of these aforementioned financial burdens on its approximately 160,000 captive Missouri ratepayers, and now it asks that it be entitled to a 10.05 return on equity for its service. See Marke direct p. 1-31.

This is the first case where Empire's wind projects affect its cost-of-service used for designing rates. While Empire touts paygo revenues as a customer benefit from its wind projects, a benefit is estimates to be as high as $11 million annually, Empire excluded paygo revenues from its cost-of-service, thereby making it some $11 million higher than had it included paygo revenues. Likewise, while recent history shows that Empire vastly underestimated the renewable energy credits sales revenues that it could achieve from the wind projects, it also excluded those revenues from its cost of service, similarly making its cost-of-service higher than had it included those renewable energy credits sales revenues.

OPC Witness: Geoff Marke

2. Voltage Optimization Study

(a) Should the Commission order Empire to issue a request for proposals for an independent, third-party consultant to conduct a study in calendar year 2022 of its distribution system designed to gauge the costs and benefits of a voltage optimization program in Empire's service territory?

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OPC Position: Yes. Voltage Optimization ensures that homes and businesses are being supplied the appropriate amount of voltage that is needed. A voltage optimization plan represents "low hanging fruit" for utilities investing in grid modernization.

(b) Should Empire be ordered to select a consultant based on ranked majority voting from Empire, Staff and OPC to have the cost/benefit study performed?

OPC Position: Yes. Such a selection process has been utilized in the past and provides for appropriate neutral and objective results.

(c) Should Empire be ordered to file the cost/benefit study in Empire's PISA docket with a target date on or before December 31, 2022?

OPC Position: Yes. Eleven months should be adequate time to complete the study.

OPC Witness: Geoff Marke (rebuttal pp. 34-35)

3. **Reliability Reporting:** Should the Commission order Empire to report additional details of its reliability investment programs?

OPC Position: Yes.

OPC Witness: Geoff Marke (rebuttal pp. 34-35)

4. **PISA**

(a) Should the Commission order Empire to file cost-benefit analyses for investments greater than $1 million and outcome-based objective metrics (benchmarks) that include both baseline and target metrics in Case No. EO-2019-0046 by the end of the calendar year 2022?

OPC Position: Yes. Presently Empire has presented only a 20-page report void of any meaningful details in its PISA docket where it stated that it plans to spend over $2 billion in the next four years.

(b) If so, should Empire be ordered to meet with interested parties to discuss the parameters and assumptions surrounding the filing at least twice leading up to the filing?

OPC Position: Yes. At least twice to give interested stakeholders a reasonable opportunity to provide feedback

(c) Should Empire be ordered to update the studies and metrics on an annual basis as long as PISA is in place for Empire?

OPC Position: Yes. PISA will necessarily be a moving target and performance metrics are designed to show performance. An annual basis is consistent with Empire's annual PISA filing.

OPC Witness: Geoff Marke (Rebuttal pp. 30-32, Surrebuttal p. 330-2)

5. **Project Guardian**

(a) Should the Commission order Empire to meet with Staff and OPC on Project Guardian?

OPC Position: Yes. It should order at least two meetings to provide interested stakeholders a reasonable opportunity to provide input.

(b) Should the Commission order Empire to meet with Staff and OPC on all other "pilots" the Company is currently running or plans to run.

OPC Position: Yes. Empire should maintain healthy dialogue with its regulators and stakeholders about its operations.

OPC Witness: Geoff Marke (Rebuttal pp. 27-30)

6. **Empire's Emergency Conservation Plan:** Should Empire's Emergency Conservation Plan be modified to trigger phase I of the plan when SPP wholesale market energy prices reach $500/MWh ($0.50/kWh) and phase II when SPP wholesale market energy prices reach $1000/MWh ($1.00/kWh)?

OPC Position: Yes, as a threshold until a value of lost load study is completed to assay at what cost customers temporarily would stop using electricity for events similar to Storm Uri.

OPC Witness: Geoff Marke (Surrebuttal pp. 7-10)

7. **Value of Lost Load Study:** Should Empire be required to engage with interested stakeholders at least twice for input regarding the scope, methodology, questions and goals of a value of lost load study to be conducted in calendar year 2022 before the cold weather season by an independent third party retained by Empire for purposes of recommending changes to Empire's Emergency Conservation Plan embodied in its tariff?

OPC Position: Yes, to learn at what cost customers are willing to temporarily stop using electricity (shed load) for both emergencies *and* as a general demand response measure. To operate a system where a supply-outage to customers is used as an acceptable, albeit expensive operative decision, it is essential to know the cost of this shedding or the customer's willingness to pay for energy. The value of lost load study helps determine the average amount consumers are willing to pay to avoid an additional period without power. The study also complements OPC recommendations related to PISA.

OPC Witness: Geoff Marke (Surrebuttal pp. 10-13)

8. **Low-Income Programs**

(a) Should the LIPP continue?

OPC Position: No. The LIPP has not performed at a satisfactory level and better program designs exist to adopt and implement.

(b) If so, what, if any, modifications should be made?

OPC Position: The LIPP should be replaced with a more effective Keeping Current and Keeping Kool-like bill assistance program that is directed towards customers with outstanding arrearages as opposed to straight discount as it currently does through its LIPP.

(c) Should the Commission order Empire to implement a Keeping Current and Keeping Kool-like bill assistance program?

OPC Position: Yes, in lieu of continuing the less effective LIPP.

(d) If so, should the Commission order Empire to provide shareholder funding of $500,000 annually?

OPC Position: Yes, the shareholder funding should be $500,000 annually out of a total annual funding of $750,000 consistent with every other utility in Missouri and for Empire's failure to fund low income assistance programs in the past.

(e) Should the Commission order Empire to create a Critical Needs Program consistent with the Critical Needs Program the Commission approved in Case Nos: GR-2021-0108 and ER-2021-0240?

OPC Position: Yes, such a program will assist vulnerable customers who are unable to research and apply for assistance, negotiate reasonable payment plans, or navigate the application process for assistance, but who are particularly vulnerable to harm if their electric service is disconnected.

(f) If so, should the Commission order annual funding of $200,000, with funding split 50/50 between customers and shareholders, and with unspent funding allocated to Empire's bill assistance program?

OPC Position: Yes.

(g) Should the Commission order Empire to fund a one-time independent 3rd party needs assessment study that should not exceed $100,000 in funding from Empire's bill assistance program.

OPC Position: Yes. Such an analysis is necessary and long overdue given Empire's historically poor results with income eligible programs and high customer bills.

OPC Witness: Geoff Marke (Direct pp. 57-63, Surrebuttal pp. 27-28)

9. **Late Fee**: Should Empire's late fee be reduced from 0.5% to 0.25%?

OPC Position: Yes, to better reflect Empire's actual cost for customers paying bills late.

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OPC Witness: Geoff Marke (Direct p. 64, Surrebuttal pp. 28-29)

10. Low-Income Weatherization Program ("LIWAP")

(a) Should the budget for the LIWAP program be increased by $500,000?

OPC Position: Yes, because it is underfunded now at $250,000.

(b) If so, should Empire be ordered to provide shareholder funding for this amount?

OPC Position: Yes, to recognize Empire not funding this program in the past and to fund LIWAP at a level commensurate with other utilities in Missouri. Alternatively, the Commission should consider Empire's historically not having funded this program when determining Empire's allowed return on equity.

(c) Should the Commission order Empire to give the three agencies—Economic Security Corporation, Ozark Area Community Action Corporation, and West Central Missouri Community Action Agency—more discretion in how they may utilize funds from Empire?

OPC Position: Due to uncertainty surrounding COVID-19, federal funding, and securing appropriate labor for completing LIWAP projects these agencies should be given more discretion in disbursing these funds.

(d) Should the Commission order Empire's Annual Low-Income meetings to continue to occur?

OPC Position: Yes, to give Empire periodic feedback from Empire's non-profit community action agencies on their needs and how they used the LIWAP funds.

OPC Witness: Geoff Marke (Direct, pp. 59-60, Surrebuttal, pp. 25-27)

11. J.D. Power Customer Satisfaction Reports: Should Empire be required to file its future annual company-specific J.D. Power Reports (not just the scores) in this docket together with memoranda that detail how Empire is improving its relationships with its customers in light of the J.D. Power Report scores of Empire relative to its peers, as well as its relative rank across the United States, and specifically as it pertains to its cost of service.

OPC Position: Yes. Empire consistently has one of the worst scoring JD Power Residential Customer Satisfaction Survey results in the entire nation. Not just in Missouri, but in the entire United States. Moving forward, Empire's customers face the potential for further cost-prohibitive rates, in part, from Empire's insistence to make a profit off of Storm Uri and its self-imposed stranded assets (both Asbury and its undepreciated meters). Empire should be held to a standard. Customer satisfaction provides one reasonable standard to hold the Company accountable to, and Empire clearly is not meeting that standard. The Commission should also take the poor customer satisfaction results into consideration in setting the Company's return on equity.

OPC Witness: Geoff Marke (Direct pp. 15-23, Surrebuttal pp. 13-16)

12. Billing

(a) Should the Commission order Empire to meet with Staff and OPC at least twice before its next rate case regarding input on the feasibility of future bill revisions with the intent to update the bill's contents in a cost-effective and customer informative manner moving forward?

OPC Position: Yes. Far from a "modern customer experience" the current bill represents a bare bones billing explanation littered with incomplete customer messages.

(b) Should Empire be ordered to update its bill and its website with the following information within one month (or sooner) of rates going into effect in this case?

- Provide a link to the SAFHR website https://www.mohousingresources.com/safhr and not the Company's website;
- Include some supporting messaging containing relevant information (i.e., what it is, how one can participate, etc.) regarding Project Help;
- Include language containing contact information regarding Low-Income Weatherization Assistance Program ("LIWAP") enrollment; and
- Add language that directs further billing questions to a hyperlink to the Company's website which provides an FAQ of greater billing detail (e.g., this is what a MEEIA surcharge is, this is what the FAC is, what do TOU rates mean, etc.).

OPC Position: Yes, Empire's customers should have ready access to information on the existence of and access to these options.

OPC Witness: Geoff Marke (Surrebuttal p. 16-19)

13. Charitable Contributions

(a) Should the Commission disallow ** [redacted] ** from Empire's revenue requirement for an alleged failure for the past five years to comply with the minimum charitable donations Empire agreed to and the Commission ordered it to do?

OPC Position: Based on its supplemental data request made January 28, 2022, Empire may be in compliance with the amount of charitable donations to which it agreed in Case No. EM-2016-0213, an agreement to which the Commission ordered Empire to comply. If not, then the Commission should disallow this amount from Empire's revenue requirement.

(b) Should the Commission order Empire to remove the statement on its website about the $500,000 level of funding customers received from Liberty for COVID-19 relief?

OPC Position: Yes. Content on Empire's webpage is incorrect and misleading. The Commission should order Empire to remove its assertions about the level of funding Empire customers received from Liberty for COVID-19 relief from $500,000 to $76,745.

OPC Witness: Geoff Marke (Surrebuttal p. 21-25).

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14. **Rate Base Issue:** What are the appropriate Cash Working Capital expense lag days for Asbury?

OPC Position: The expense lag days for costs that are directly associated to the Asbury AAO that are not expended during the year should be 365 days. These expenses would be the coal inventory that was included yet did not exist and therefore was not paid during the test year. The income tax calculated on the return on Asbury and the return on the coal inventory. Expense lag days for property tax and interest should be the same as established in Staff's CWC Schedule 08

OPC Witness: John Riley

15. **Income Statement Issue:** Should credit rating agency fees in the amount of $431,779 be included in the cost of service?

OPC Position: No. Empire no longer accesses capital markets directly. For this reason, Empire no longer needs issuer or issue credit ratings. The $431,779 relates to ratings service purchased specifically for Empire (not allocated rating agency fees incurred for rating LUCo's and GP1's debt). Company witness Emery agrees Empire no longer requires ratings, but maintains the costs should be included in rates because they were incurred. If the prudence standard for determining if costs should be recovered is that they were incurred, then the Commission would just check accounting records for accuracy. This is not the standard.

OPC Witness: David Murray

16. **Wind Projects**

(a) Should rate base be reduced based on test generation wind revenue?

OPC Position: Yes. The wind projects rate base should be reduced by any revenues generated by the projects prior to its inclusion into rates

OPC Witness: John Riley

(b) Should the amount of the rate base addition of the wind projects include reductions by the net revenues, RECs, and PTCs generated by the wind projects (including for test power) until the date new rates from this case become effective?

OPC Position: Yes. The amount added to Empire's rate base for the wind projects should include reductions for the net amount of revenues the wind projects generate before they are included in the rate base used to determine new rates. The reductions will include reductions for generating sales, REC net revenues and PTC amounts generated before the new rates become effective.

OPC Witness: John Riley (Surrebuttal, p. 13)

(c) Should the amount of the rate base addition of the wind projects include reductions for the payments to Tenaska pursuant to the Purchase and Sale Agreement when it elected to terminate its role as contractor for two of the wind projects?

OPC Position: Yes. To the extent there are development fees that LUCo wants to shift to Liberty it is inappropriate to saddle ratepayers with them as this is a risk that Liberty customers would not be charged if not for LUCo stepping in for Tenaska.

OPC Witness: John A. Robinett (Rebuttal pp.14-17)

(d) Should the Commission order Empire District Electric Company to provide additional information regarding the ** [redacted] ** of the Neosho Ridge wind farm?

OPC Position: OPC does not have a position on this issue at this time.

17. PAYGO

(a) Should Paygo be included as an FAC revenue?

OPC Position: No. Rather than being an amount tied to fuel, purchased power, or transportation, paygo is a payment the tax equity partners make when the wind projects generate more than an amount of MWhs set in the tax equity partnership contract. If the wind project generates below this amount, there is no paygo payment. It is not a revenue provided for every MWh generation but only for the generation above a certain amount. Therefore it is not a revenue associated with fuel, purchased power, or transportation.

(b) Should Paygo be included in the general revenue requirement?

OPC Position: Yes, paygo should be included in Empire's revenue requirement used for designing rates. Empire has estimated that it will receive $11 million a year in paygo, yet it did not include any normalized revenue from pagyo in its revenue requirement calculation. Including a normalized level of paygo, in Empire's revenue requirement would decrease the rate case impact on Empire's customers. OPC recommends that the Commission include $4 million of paygo revenues in Empire's revenue requirement to insure that its customers, through rates, are not overpaying for paygo.

(c) Should an estimated amount of Paygo be included in revenue requirement and the balance tracked and adjusted in the next general rate case?

OPC Position: Yes. Paygo should be included in the Wind Projects Market Price Protection Mechanism. It is considered a benefit to the customers. The inclusion of paygo in revenue requirement is the best way to ensure timely pass through of these benefits to customers. Therefore the actual amounts of paygo that Empire receives should be tracked against the amount included in its revenue requirement, with the difference between the amount included in its revenue requirement and actual amount it receives addressed in its next general rate case.

If the Commission allows paygo to flow through Empire's FAC, $4 million of revenue should be included in the calculation of the FAC base factor. While 95% of the difference between the actual and this $4 million a year will flow through Empire's FAC, the total amount of paygo revenues that Empire receives needs to be tracked, as does the 5% of the difference that did not flow through its FAC, with customer benefit of that 5% then addressed in Empire's next general rate case.

OPC Witnesses: John Riley (Direct p. 5 & 6); Lena Mantle (Direct, p. 14, Rebuttal pp, 58 & 59, Surrebuttal p. 34)

18. Market Price Protection Mechanism ("MPPM")

(a) Is it necessary and appropriate for the Commission to make changes to the MPPM in this case?

OPC Position: Yes. The Commission's *Report and Order* Case No. EA-2019-0010 where it approved the MPPM is not clear regarding all aspects of the MPPM nor are the signatories to the *Non-Unanimous Stipulation and Agreement* the Commission approved with that *Report and Order.* Because of the lack of clarity, it is necessary and appropriate for the Commission to make changes to the MPPM in this case.

(b) If so,

i. Should the rate base revenue requirement component remain formulaic or only change with the effective dates of new rates?

OPC Position: For the MPPM to accurately reflect the costs and benefits of the wind projects, the rate base revenue requirement component should only change with the effective dates of new rates. Formulaic changes would not accurately reflect the costs of the wind projects to Empire's customers.

ii. What costs should be included?

OPC Position: The MPPM should include all the costs of the wind projects that are passed on to Empire's customers. They include operation and maintenance costs, labor costs, tax equity payments/credits, property taxes, return-of-investment, return-on-investment, income taxes, and the cost to its customers of Empire's election of plant-in-service accounting ("PISA") for the wind projects. Payments Empire makes to the wind project as part of the tax equity partner agreement to guarantee a revenue for each MWh generated—"hedge" payments—should not be included in as a cost because this payment will flow back to Empire from the Wind Holding Company.

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iii. What revenues should be included?

OPC Position: The MPPM should accurately include all revenues the Wind Projects generate that are passed to Empire's customers. This includes Southwest Power Pool Integrated Market revenues, paygo payments, revenue from the sale of renewable energy credits, and the value of the production tax credits.

iv. How should the PPA replacement value be calculated?

OPC Position: There should be no PPA replacement value included in the MPPM. If the Commission orders that a PPA replacement value be included in the MPPM, the benefit that should be included in the MPPM is the lesser of the least-cost manner of meeting the RES at the time renewables are needed or the portion of the wind projects revenue requirement consistent with the RES requirement. The RES requirement of the wind projects should be the RES MWh needed after taking into account the energy generated at Empire's Ozark Beach Dam. The wind projects benefit calculation would also take into account the 1.25 multiplier for energy generated in Missouri.

v. When should a jurisdictional allocation factor be applied?

OPC Position: Energy jurisdictional allocation factor should be applied each year based on the energy usage of all jurisdictions for that year.

vi. Should the MPPM include interest on the cumulative costs/gains?

OPC Position: The cumulative Annual Wind Values should include interest at the same rate that applies to customer deposits.

vii. If the cumulative value at the end of ten years is a net cost, how should the net cost be shared between customers and Empire?

OPC Position: Empire's customers should bear no more than $26.5 million of 50% of any cumulative loss over the first ten (10) years.

(c) How should the components in Empire's MPPM be tracked?

OPC Position: Base amounts for each component should be included in deriving Empire's revenue requirement in this case, and the future impacts of each of those components should be tracked against those base amounts between rate cases—cases where the base amounts should be reset.

OPC Witness: Lena Mantle (Direct, pp. 12-13, 17, 20-23, Rebuttal, pp. 38-55, Surrebuttal, pp. 22 & 23 & 24)

19. Fuel Adjustment Clause ("FAC")

(a) Should the revised FAC subaccount testimony schedule submitted by Empire be adopted?

OPC Position: No.

(b) Which FERC subaccounts, if any, should be added to Empire's FAC?

OPC Position: Empire did not provide enough information to determine which subaccounts it proposed be included in its FAC. Empire's FAC should include only subaccounts where Empire records costs and revenues that the Commission has approved to flow through its FAC. Because Empire's FAC uses formula rates, the costs and revenues that are included in Empire's FAC should not be defined by the subaccount in which they are recorded. By defining by subaccount and not by the nature of cost or revenue, then any cost or revenue included in that subaccount would flow through Empire's FAC—effectively modifying the FAC. Instead of approving subaccounts, the Commission should define the costs and revenues that are to flow through Empire's FAC, and Empire should provide the subaccounts where it will record only those costs and revenues.

(c) Which FERC subaccounts, if any, should be removed from Empire's FAC?

OPC Position: The Commission should not approve a subaccount to record unexpected revenues for the wind project companies (account 456250) because these revenue types are unknown at this time. The Commission should not approve a subaccount for purchased power net metering costs (account 555999) because there is no testimony that identifies these costs or justifies why they should flow through Empire's FAC. The Commission should not approve the inclusion of account 575500 where Empire proposes to record SPP administrative costs because these administrative costs are not fluctuating fuel and purchased power costs. The Commission should not include account 456210 because Empire will not record any revenues in this subaccount after the effective date of new rates in this case.

(d) What should be included in the FAC base factor for this case?

OPC Position: Empire's FAC base factor should be based on including each of the revenues and costs the Commission approves to be in Empire's FAC at the same level as they are included in Empire's revenue requirement.

(e) What is the percentage of SPP and MISO transmission expense that should be recovered through the FAC?

OPC Position: The percentage should be based the Commission's finding in Case No. ER-2014-0351 that the transmission costs that should be included in Empire's FAC were:

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1) The costs to transmit electric power it did not generate to its own load (true purchased power); and

2) The costs to transmit excess electric power it is selling to third parties to locations outside the SPP (off-system sales).

The calculation of the percentage should be based on Staff's fuel and purchased power modeling.

(f) What percentage of the SPP transmission revenues should be included in the FAC? What is the amount of transmission revenues that should be included in the FAC base factor calculation?

OPC Position: The Commission should order the inclusion of SPP transmission revenues received under the same SPP schedules that have costs that flow through Empire's FAC at the same percentage as the costs that are included in Empire's FAC.

(g) What amount of REC revenues from the Wind Projects shall be included in the FAC base factor calculation?

OPC Position: RECs should be valued at **____________** resulting in REC revenues of $6,000,149. This is also the amount of revenue that should be included in revenue requirement.

(h) Should the wind project costs that Empire calls hedging costs/gains be included in the FAC?

i. If yes, what amount of costs/gains should be included in the calculation of the FAC base factor?

OPC Position: No. As a part of the tax equity agreement, customers will pay the Wind Holding Company a "hedge" for the possibility that the market price is too low. Empire has assured the Commission that this is a flow through in years one through five, and that the SPP market prices will be above the hedge price in years six through ten. Therefore, there is no reason for the hedge payments to flow through Empire's FAC.

(i) Should the paygo component of the wind project contracts be included in the FAC?

i. If yes, what amount of paygo should be included in the calculation of the FAC base factor?

OPC Position: No. Paygo is a payment the tax equity partners provide if the wind projects generate more energy than an amount that is set in their tax equity partnership contracts. If a wind project generates less than this amount, there is no paygo payment. It is not a revenue provided for every MWh of generation, but only for MWhs generated above a certain amount. Therefore, it is not a revenue associated with fuel, purchased power, or transportation.

(j) Should the value of the wind project production tax credits transferred to Empire be included in the FAC?

OPC Position: No. PTCs are tax credits, not revenue sources. Empire has stated that it will provide the value of the PTCs to its customers. PTCs are not a revenue source nor are they fuel, purchased power, or transportation cost, and they should not flow through Empire's FAC.)

(k) What additional FAC reporting requirements should the Commission require of Empire?

OPC Position: The Commission should order Empire to continue to provide the information provided in Staff's Cost of Service Report, page 121, with the modification that OPC and all other parties to this case are to receive the notices and be provided a copy of the additional information. In addition, the Commission should order the deadlines for Empire's quarterly FAC surveillance reports that are provided on page 62 of the rebuttal testimony of Lena M. Mantle.

(l) How should the FAC tariff sheets be revised?

OPC Position: Empire's FAC tariff sheets should be revised to reflect the changes shown in Schedule LMM-D-4 of the rate design direct testimony of Lena Mantle.

i. Should the FAC tariff sheets include language that allows the Commission to allow a variance from any provision of the FAC?

OPC Position: No. A FAC can only be changed in a general rate case. Including this provision in the FAC tariff sheet would on its face would allow the Commission, upon request by Empire, to change its FAC between general rate cases.

ii. Should the FAC tariff sheets include language that would allow for extended recovery periods?

OPC Position: Yes. Empire's FAC should be modified to provide clarity to it, its customers, and the Commission for how sudden, sharp change in fuel, purchased power, and transportation costs will be handled in a manner that is affordable to customers while, still allowing Empire to recover its extraordinary costs after an opportunity for the Commission to review the prudency of those extraordinary costs. The definition of "Recovery Period" in the tariff sheets should be modified to read as follows:

> RECOVERY PERIOD:
>
> The billing months during which a FAR is applied to retail customer usage on a per kilowatt-hour ("kWh") basis. When extraordinary net costs have been incurred in an accumulation period, for good cause the Commission may allow (after opportunity for any party to be heard) the recovery period to extend beyond six

months. The amount not recovered will be added to subsequent recovery periods with a true-up for the extraordinary cost at the end of the Commission approved recovery time period for the extraordinary cost.

iii. Should the FAC tariff sheets explicitly prohibit recovery of retirement and/or decommissioning costs related to the retirement of a generation plant? If so, what language should be adopted?

OPC Position: Yes. Retirement and decommissioning costs are not costs incurred to generate electricity therefore these costs should not flow through a FAC. Empire included costs in its FAC for a final "coal inventory adjustment" of basemat coal at Asbury's retirement, only to remove the costs when opposed. Modifying Empire's FAC to specifically state retirement and decommissioning costs are not FAC costs should prevent this from happening again. The definition of "FC = Fuel costs Incurred to support Sales" included in the FAC tariff sheets should be modified as follows:

FC = Fuel costs, excluding decommissioning and retirement costs, incurred to support sales and revenues associated with the Company's in-service generating plants consisting of the following:

iv. Should the FAC tariff sheets explicitly prohibit recovery of fuel and purchased power costs for research and development? If so, what language should be adopted?

OPC Position: Yes. Empire's cost of energy used for research and development projects should be explicitly excluded from Empire's FAC. This is preventative language. OPC is not aware of any Empire research and development project to which this provision would apply, but this circumstance has arisen with Ameren Missouri.

The first section in the definition of PP found on Empire's FAC tariff sheets should be changed to read:

1. Costs and revenues for purchased power reflected in FERC Account 555, excluding: 1) all charges under Southwest Power Pool ("SPP") Schedules 1a and 12, and 2) amounts associated with energy purchased from the SPP market to serve research and development projects of the Company. Such costs include:

In addition, the definition of S_{AP} found on Empire's FAC tariff sheets should be changed to read as follows:

S_{AP} = Actual net system input (NSI), excluding the energy used by Company research and development projects, at the generation level for the accumulation period.

Finally, the definition of SRP found on Empire's current FAC tariff sheet should be modified to read as follows:

S_{RP} = Forecasted Missouri NSI kWh for the recovery period excluding energy projected to be used by Company research and development projects.

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= Forecasted total system NSI * Forecasted Missouri retail kWh sales

Forecasted total system kWh sales

Where Forecasted total system NSI includes kWh sales to municipalities that are associated with Empire and excludes off system sales and energy projected to be used by Company research and development projects.

OPC Witnesses: Lena Mantle (Cost-of-Service Direct, pp. 27-29, Sch. LMM-D-2, *Electric Utility Fuel Adjustment Clause in Missouri: History and Application Whitepaper*, Rate Design Direct, pp. 2-3, Rebuttal, p. 50, 57, 61, 62, Surrebuttal, p. 28, 30-32), John Riley (Direct p. 5) Staff witness: Brooke Mastrogiannis (Surrebuttal, p. 6)

20. Transmission Tracker: If Empire is not authorized to include transmission revenues and expenses in the FAC, should Empire be granted a transmission tracker to track transmission revenues and expenses between rate cases?

OPC Position: If Empire is not authorized to include any portion of its SPP transmission costs and revenues in its FAC, it should not be granted a tracker for these costs and revenues. They should be normalized and included in revenue requirement.

OPC Witness: Lena Mantle

21. Rate of Return; Return on Equity; Capital Structure; Cost of Debt

(a) What return on common equity should be used for determining the rate of return?

OPC Position: The Commission should use an allowed return on equity of 9.0% for determining Empire's rate of return, but at the very least no higher than the 9.25% the Commission just authorized Empire in its last rate case, Case No ER-2019-0374. Public Counsel's witness, David Murray, used cost of equity models and assumptions consistent with those investors use. His cost of equity estimate of 6.5% to 7.25% is corroborated by those investors use to value utility stocks, and is actually higher that the COE APUC uses to determine a fair value for its regulated utility assets. While Mr. Murray recognizes the COE has increased slightly since late 2019/early 2020, utilities' COE at that time was at an all-time low. Mr. Murray shows that the valuation levels of utility stocks, (higher share price per unit of earnings – P/E) are still much higher post Covid-19 than they were around the middle of the last decade when the Commission deemed approximately 9.5% authorized ROEs for Missouri's major electric utilities as reasonable. High P/E ratios for low-growth utility stocks translate into a higher investment cost for utility investors, but lower equity costs for utility stock issuers. Utility bond yields, as demonstrated by LUCo's 2.05% 10-year bond, reached historical lows post Covid-19. This is due to the Federal Reserve's and U.S. Congress' extraordinary support for U.S. capital markets post Covid-19. In addition to the favorable macroeconomic and capital market conditions, Empire has elected the investor-friendly rate making mechanism, plant-in-service accounting (PISA), since Empire's last authorized ROE of 9.25%. This mechanism reduced Empire's business risk via a reduced exposure to regulatory lag. Collectively, these circumstances support

lowering Empire's authorized ROE to 9.0%. As Mr. Murray identifies, setting Empire's ROE at 9.0% will allow it to earn a margin of 175 to 250 basis points (1.75% to 2.55) over its COE, which allows APUC to create shareholder value by investing capital in Empire's system.

(b) What capital structure should be used for determining the rate of return?

OPC Position: The Commission should set Empire's rate-of-return ("ROR") based on a capital structure of 48.25% common equity and 51.75% long-term debt, as Public Counsel witness David Murray recommends in his rebuttal testimony. Mr. Murray's capital structure recommendation is based on his comparison of Liberty Utility Company's ("LUCo") actual quarterly capital structures for the original test year through the update period (September 30, 2019 through June 30, 2021) to APUC's own internal and external communications related to its targeted common equity ratios for its Regulated Services Group. While Mr. Murray analyzed Empire's per books capital structures over the same period, Empire no longer accesses capital markets independently as it did before APUC indirectly acquired it on January 1, 2017. As Mr. Murray explains, the Financing Conditions ordered by the Commission required Empire to provide evidence in the event that Empire's cost of capital was higher than its financing affiliates or higher than it was before APUC acquired it. Considering that APUC considers a 45% to 50% common equity ratio to be appropriate for its Regulated Services Group and Empire requested a 49% common equity before it was acquired by APUC, Mr. Murray's recommended capital structure ensures Empire's ratepayers are not harmed due to Empire's capital structure now being a function of internal financing transactions. There is no reason for the Commission to deviate from its decision to look to LUCo's capital structure in Empire's last rate case because it is consistent and logical as it relates to the Commission's decisions for Empire's affiliates, Liberty Utilities (Midstates Natural Gas) Corp ("Liberty Midstates") and Liberty Utilities Utilities (Missouri Water) LLC ("Liberty Water"). In Case Nos. GR-2014-0083 and WR-2018-0170, respectively, the Commission used LUCo's capital structure. In Case No. GR-2014-0083 the Commission used an equity ratio of 45.89%. In Case No. WR-2018-0170 the Commission used an equity ratio of 42.83%.

(c) What cost of debt should be used for determining rate of return?

OPC Position: The Commission should use an embedded cost of debt of 4.05% based on all the third-party debt LUCo guarantees and the regulated subsidiary debt it consolidates on its balance sheet. Using this debt cost appropriately matches the debt costs to the capital structure where they reside.

OPC Witness: David Murray

22. **Allowance for Funds Used During Construction:** What metric should be used for Empire's carrying cost rate for funds it uses during construction that are capitalized?

OPC Position: The Commission should require Empire to use a short-term debt rate to determine 100% of the allowance for funds used during construction ("AFUDC") for its construction work in progress ("CWIP") subsequent to the effective date of its Order. Empire's capital structure and costs are determined through a series of affiliate financing transactions. As shown in Empire's wide swings in its common equity ratios and money-pool borrowings, its capital structure is not actively managed for efficiency or stability to access third-party debt markets. To ensure Empire's ratepayers are not charged excessive AFUDC because it is no longer financially managed as a standalone entity, the Commission should order Empire's AFUDC be determined based only on short-term debt costs as incurred by LUCo.

OPC Witness: David Murray

23. **Class Cost of Service and Rate Design:** How should Empire's revenue requirement be allocated amongst Empire's customer rate classes (class revenues responsibilities)?

OPC Position: The change in revenue requirement should be allocated as an equal percent increase/decrease across classes.

24. **Depreciation Issue:** Should the Commission allow Empire to book assets for general plant in accordance with the Federal Energy Regulatory Commission Accounting Release 15?

OPC Position: No. General Plant Amortization threatens the ability to perform any sort of prudence review of plant added into these accounts because it fails to track retirement units and original costs. surrebuttal testimony of John A Robinett p. 4.

If the Commission approves general plant amortization OPC recommends conditions outlined in the surrebuttal testimony of John A. Robinett Page7 Line11 through Page 9 Line 5.

OPC Witness: John Robinett

25. **Retiree Issue:** Is Empire meeting the merger stipulation employee benefit obligations to its retired employees?

OPC Position: OPC does not have a position on this issue at this time.

26. Asbury

(a) Should the $122.4 million of net book value of Empire's 2015 AQCS investment in Asbury that remained when Empire retired Asbury be included in Empire's cost-of-service through the Asbury AAO or otherwise?

OPC Position: No. The $122.4 million that represents the original cost amount for the AQCS investment should be considered a reduction to the Asbury rate base amount. This amount

should be considered net of appropriate depreciation and reduce the AAO regulatory asset to reflect Company's decision to prematurely retire Asbury yet.

OPC Witness: Geoff Marke

(b) What is the retirement date for Asbury?

OPC Position: The retirement date for Asbury should be considered December 12, 2019 due to its inability to generate power, however, for purposes of accounting for assets, liabilities and carry costs, the retirement date should be the Commission ordered January 1, 2020 that was established for measurement purposes of the AAO (Riley surrebuttal, pg. 10).

OPC Witness: John Riley

(c) What balances should be included in the Asbury AAO regulatory asset?

OPC Position: $139,100,298 as calculated in Riley surrebuttal JSR-S-01. This does not recognize any adjustment for AQCS balances.

OPC Witness: John Riley

(d) What balances should be included in the Asbury AAO regulatory liability?

OPC Position: The regulatory liabilities should be calculated out to the law date. Riley surrebuttal JSR-S-01, p. 1 calculates the liabilities as $80,471,933.

OPC Witnesses: John Riley and Geoff Marke

27. Resource Adequacy: Do Empire's current resources provide adequate electricity to meet its customers' load requirements?

OPC Position: No. Empire's resources were neither reliable nor efficient to provide its customers with energy services in February 2021. The lack of resources to meet customers' requirements demonstrates better than any modeling that the resource plans of Empire were inadequate. (Mantle rebuttal, pgs. 15 - 32; Mantle surrebuttal, pgs. 3 – 13)

OPC Witness: Lena Mantle

28. Storm Uri

(a) What is the amount of Empire's prudently incurred extraordinary Storm Uri costs?

OPC Position: Empire should not be allowed to recover the 5% of the FAC costs that could not flow through the FAC. Of the remaining costs, Empire should absorb half of the costs it attributes to Storm Uri. (Mantle rebuttal, pg. 2 – 34).

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(b) Over what time should Empire's prudently incurred extraordinary Storm Uri costs be amortized?

OPC Position: Storm Uri cost should be collected from customers on a usage basis, and based on an amortization period that results in a kWh cost of less than \$0.0075 but does not exceed ten years. (Mantle rebuttal, pg. 34)

(c) What carrying costs should apply?

OPC Position: There should be no carrying costs applied to the Storm Uri costs. (Mantle rebuttal, pg. 4)

(d) Should Empire collect a return on Empire's prudently incurred Storm Uri costs?

OPC Position: No. Storm Uri costs are expenses not capital costs. Empire's shareholders should not receive a return on expenses incurred during Storm Uri.

OPC Witness: Lena Mantle

Respectfully,

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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 31st day of January 2022.

/s/ Nathan Williams

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