BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Symmetry Energy Solutions, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. GC-2022-0062
	)	
The Empire District Gas Company d/b/a Liberty Utilities or Liberty,	)	
	)	
Respondent.	)	

SYMMETRY'S RESPONSE IN OPPOSITION TO EMPIRE'S MOTION FOR SUMMARY DETERMINATION AND SYMMETRY'S STATEMENT OF ADDITIONAL MATERIAL FACTS THAT REMAIN IN DISPUTE AND MEMORANDUM IN SUPPORT

Symmetry Energy Solutions, LLC ("Symmetry") commenced this case because The Empire District Gas Company d/b/a Liberty Utilities or Liberty ("Empire") is violating its Tariff by demanding that Symmetry and its Missouri customers pay over $11 million in unlawful OFO penalties. Undeterred by Southern Star's waiver of its OFO penalties, compelling factual findings by FERC, and in its pursuit of such an illegal windfall, Empire on September 17, 2021 filed its Motion for Summary Determination. Pursuant to 20 CSR 4240-2.117(C) and (E), Symmetry hereby opposes that motion because there are genuine issues as to material facts, Empire is not entitled to any relief as a matter of law as to any part of this case, and a summary determination of this case at this time is not in the public interest, as is set forth in detail below.

Symmetry's Response to
Empire's "Statement of Material Facts as to Which There is No Genuine Issue":

1. Empire is a local gas distribution company that operates in Missouri pursuant to its Tariff that is on file with the Missouri Public Service Commission (the "Commission").

RESPONSE:

OBJECTION: This "fact" is compound. Additionally, the "pleadings, testimony, discovery, or affidavits" required by 20 CSR 4240-2.117(B) and cited by Empire as "Complaint ¶¶ 8, 15" do not fully support the allegations herein.

DENY IN PART: Empire is self-described as a legal entity that owns gas distribution facilities/assets rather than as "a local gas distribution company." (EM-2016-0213, March 16, 2016 Joint Application of the Empire District Electric Company, Liberty Utilities (Central) Co. and Liberty Sub Corp. and Contingent Request for Waiver, Appendix G Notes, Charts A, B, B2; Opposition to Motion for Summary Determination Exhibit – 1 (hereinafter "Oppose MSD Ex – 1")).

ADMIT IN PART: Empire operates in Missouri pursuant to Empire's current Tariff on file with the Missouri Public Service Commission which was issued on August 17, 2020 and became effective on October 16, 2020 and Empire is a wholly-owned subsidiary of The Empire District Electric Company. (Complaint and Answer ¶¶ 8 and 15; Oppose MSD Ex – 2 and 3).

2. Under the terms of its Tariff, non-residential customers can contract directly with natural gas Marketers or Aggregators to arrange the delivery of natural gas to Empire's city gate.

RESPONSE: ADMIT. (Complaint and Answer ¶¶ 16 and Exhibit B to Complaint, Oppose MSD Ex – 2 and 3; GR-2009-0434, YG-2020-0568 Tariff Sheet No. 23, Oppose MSD Ex – 4).

3. Empire, pursuant to its transportation service offered under the Tariff, delivers the gas from the city gate to the Customer over its local distribution system.

RESPONSE: ADMIT. (Complaint and Answer ¶¶ 16, Exhibit B to Complaint, Oppose MSD Ex – 2 and 3).

4. Symmetry is natural gas Marketer or Aggregator that delivers gas to customers on Empire's distribution system pursuant to the terms of the Tariff and a Marketer/Aggregator Agreement with Empire.

RESPONSE: ADMIT. (Complaint and Answer ¶¶ 10, Exhibit B to Complaint, Oppose MSD Ex – 2 and 3; GR-2009-0434, YG-2020-0568 Tariff Sheet No. 23, Oppose MSD Ex – 4).

5. Under the terms of the Tariff, Symmetry has the obligation to nominate a quantity of gas at the city gate that matches the quantity of gas delivered to its Customer in order to avoid the creation of Imbalances on Empire's distribution system.

RESPONSE:

OBJECTION: The "pleadings, testimony, discovery, or affidavits" required by 20 CSR 4240-2.117(B) are incompletely cited by Empire as "Tariff Sheet No. 26" and thus do not fairly support the allegations herein.

DENY IN PART: Tariff Sheet No. 26 does not limit the requirement regarding nominations to Symmetry. (GR-2009-0434, YG-2020-0568 Tariff Sheet No. 26, Oppose MSD Ex – 5).

ADMIT IN PART: Paragraph 28 of Tariff Sheet No. 26, only partially cited by Empire, actually states, "The Customer, Marketer or Aggregator has the obligation to nominate a quantity of gas at the Receipt Point that matches the quantity of gas deliveries to the Customer(s), including L&U to avoid the creation of Imbalances on the Company's distribution system. The quantity of natural gas nominated must be equalized as far as practicable over a Gas Day and for the services provided hereunder natural gas is assumed to have been received by the Company uniformly during each hour of the Gas Day." (GR-2009-0434, YG-2020-0568 Tariff Sheet No. 26, Oppose MSD Ex – 5).

6. The Tariff allows Empire to issue an Operational Flow Order that requires actions to alleviate conditions that, in the sole judgment of Empire, could jeopardize the operational integrity of Empire's system required to maintain system reliability.

RESPONSE:

OBJECTION: The "pleadings, testimony, discovery, or affidavits" required by 20 CSR 4240-2.117(B) cited by Empire as "Tariff Sheet No. 43 and Complaint ¶17" do not support the allegations herein.

DENY IN PART: Empire has added the word "could" before the word "jeopardize" in the language of Tariff Sheet No. 43, thus attempting to expand the authority granted by Tariff Sheet No. 43. (GR-2009-0434, YG-2020-0568 Tariff Sheet No. 43, Oppose MSD Ex – 6).

ADMIT IN PART: Tariff Sheet No. 43 reads, "Company will have the right to issue an Operational Flow Order that will require actions by the Customer to alleviate conditions that, in the sole judgment of the Company, jeopardize the operational integrity of Company's system required to maintain system reliability. Customer shall be responsible for complying with the directives set forth in the OFO. Any OFO, along with associated conditions and penalties, shall be limited, as practicable to address only the problem(s) giving rise to the need for the OFO." (GR-2009-0434, YG-2020-0568 Tariff Sheet No. 43, Oppose MSD Ex – 6).

7. When an OFO is called, the Customer, Marketer, or Aggregator shall be responsible for complying with the directives set forth in the OFO.

RESPONSE:

OBJECTION: The "pleadings, testimony, discovery, or affidavits" required by 20 CSR 4240-2.117(B) cited by Empire as "Tariff Sheet No. 43" do not support the allegations herein.

DENY IN PART: Empire has added the words "Marketer" and "Aggregator" after the word "Customer" in the language of Tariff Sheet No. 43, thus attempting to expand the authority granted by Tariff Sheet No. 43. (GR-2009-0434, YG-2020-0568 Tariff Sheet No. 43, Oppose MSD Ex – 6).

ADMIT IN PART: Tariff Sheet No. 43 reads, "Customer shall be responsible for complying with the directives set forth in the OFO. Any OFO, along with associated conditions and penalties, shall be limited, as practicable to address only the problem(s) giving rise to the need for the OFO." (GR-2009-0434, YG-2020-0568 Tariff Sheet No. 43, Oppose MSD Ex – 6).

8. If a Customer, Marketer, or Aggregator does not comply with the directives set forth in the OFO, it will be charged OFO penalties pursuant to the Tariff.

RESPONSE:

DENY IN PART: In paraphrasing the Tariff language, Empire omitted the Tariff's implicit threshold requirement of a lawfully-issued OFO prior to the imposition of any OFO penalties. Specifically, Tariff Sheet No. 43, Section 2 reads as follows, "Customer Compliance: Upon issuance of an OFO, the Company will direct customer to comply with one of the following conditions …." (GR-2009-0434, YG-2020-0568 Tariff Sheet No. 43, Oppose MSD Ex – 6).

ADMIT IN PART: Per Tariff Sheet No. 43, Section 2(A), if a Customer, Aggregator or Marketer receives "unauthorized deliveries" as defined by the Tariff "during the duration of the OFO" that was lawfully declared, "with the exception of a 5% daily tolerance," the "Customer, Aggregator or Marketer shall be charged a penalty of $25.00 per Mcf, plus the Gas Daily Index price for the applicable Interstate Pipeline" for "Unauthorized Overruns" as defined by the Tariff. (GR-2009-0434, YG-2020-0568 Tariff Sheet No. 43, Oppose MSD Ex – 6).

9. In particular, Customers, Marketers, or Aggregators that take delivery of more natural gas than is being nominated by or for it at the city gate will be charged a penalty of $25.00 per Mcf, plus the Gas Daily Index price for the applicable Interstate Pipeline for such amounts.

RESPONSE:

DENY IN PART: In paraphrasing the Tariff language, Empire omitted the Tariff's implicit threshold requirement of a lawfully-issued OFO prior to the imposition of any OFO penalties. Specifically, Tariff Sheet No. 43, Section 2 reads as follows, "Customer Compliance: Upon issuance of an OFO, the Company will direct customer to comply with one of the following conditions …." (GR-2009-0434, YG-2020-0568 Tariff Sheet No. 43, Oppose MSD Ex – 6).

ADMIT IN PART: Per Tariff Sheet No. 43, Section 2(A), if a Customer, Aggregator or Marketer receives "unauthorized deliveries" as defined by the Tariff "during the duration of the OFO" that was lawfully declared, "with the exception of a 5% daily tolerance," the "Customer, Aggregator or Marketer shall be charged a penalty of $25.00 per Mcf, plus the Gas Daily Index price for the applicable Interstate Pipeline" for "Unauthorized Overruns" as defined by the Tariff. (GR-2009-0434, YG-2020-0568 Tariff Sheet No. 43, Oppose MSD Ex – 6).

10. Empire called an OFO on February 9, 2021 and February 11, 2021 that lasted until the Gas Day of February 19, 2021 and instructed Symmetry to "Please adjust your nominations to ensure you are NOT SHORT. OFO Penalties will apply to unauthorized deliveries."

RESPONSE:

OBJECTION: This "fact" is compound.

DENY IN PART: The email relied upon by Empire in support of its allegation that it called an OFO on February 11, 2021 is addressed only to persons with "libertyutilities.com" email addresses, and thus offers no proof that Empire notified Symmetry that either Empire or Southern Star called an OFO on February 11, 2021. Further, Empire cannot remedy its failure through the inconsistent testimony of Tatiana Earhart at Paragraph 10 of her Affidavit marked Exhibit A-1. See, *ITT Commercial Fin. Corp. v. Mid-America Marine Supply Corp*., 854 S.W.2d 371, 388 (Mo. 1993). (Exhibits A-2 and A-1 Affidavit of Tatiana Earhart in Support of Motion for Summary Determination).

ADMIT IN PART: Empire emailed Symmetry on February 9, 2021 to notify Symmetry that Southern Star had issued an OFO "effective the start of gas day Tuesday, February 9, 2021 until Wednesday, February 17, 2021," and wrote that "Empire will do the same." Symmetry employee Michael Keen responded that Southern Star's OFO did not begin until February 11, to which Empire representative Tatiana Earhart responded, "You're correct. I have received several notices today and mistyped. Thanks for catching this." (Oppose MSD Ex – 7)

On February 11, 2021 Ms. Earhart sent an email to other "libertyutilities.com" email addresses, stating, "Please be advised Southern Star has issued a new System Wide OFO effective the start of gas day Saturday, February 13, 2021 until no end date. Empire will do the same." It appears a Symmetry employee may have received that email. (Oppose MSD Ex – 8)

The February 9, 2021 OFO issued by Southern Star was not addressed to marketers such as Symmetry but instead to "all storage customers…to protect the integrity of the Southern Star's storage facilities" and that notification speaks for itself. (Complaint Exhibit D, Complaint and Answer ¶¶ 23, Oppose MSD Ex – 2 and 3; Exhibit A-1 Affidavit of Tatiana Earhart in Support of Motion for Summary Determination Paragraph 9).

The February 11, 2021 OFO issued by Southern Star was directed not to marketers such as Symmetry but instead to "Receiving Parties," which is defined under Southern Star's tariff as "the owner or operator of the facilities into which Southern Star physically delivers gas for Shipper" (i.e., utilities like Empire) (Southern Star Tariff Sheet No. 203, Oppose MSD Ex – 9).

11. Symmetry nominated less gas than its Customers used for every day while the OFOs were in effect and thus did not comply with the OFOs' directives.

RESPONSE:

OBJECTION: This "fact" is compound and calls for a legal conclusion.

DENY IN PART: The email relied upon by Empire in support of its allegation that it called an OFO on February 11, 2021 is addressed only to persons with "libertyutilities.com" email addresses, and thus offers no proof that Empire notified Symmetry that either Empire or Southern Star called an OFO on February 11, 2021, and therefore Symmetry denies that it failed to comply with any directives of said OFO. (Exhibits A-2 and A-1 Affidavit of Tatiana Earhart in Support of Motion for Summary Determination).

ADMIT IN PART: The February 9, 2021 OFO issued by Southern Star and Empire, was addressed not to marketers such as Symmetry but instead to "all storage customers…to protect the integrity of the Southern Star's storage facilities." Overall, however, FERC found that, although "many shippers and delivery point operators were unable to adhere completely to the OFO," FERC ruled that "Southern Star acted in good faith by collaborating with shippers and delivery point operators to ensure system reliability during the extreme weather event…[which] presented circumstances outside the control of the delivery point operators." Throughout the period of these OFOs, Symmetry endeavored to procure gas for delivery to Empire's city gate sufficient to cover the needs of Symmetry's customers, including by attempting to make daily incremental gas purchases when it became apparent that gas supplies Symmetry had purchased in advance were being cut by Symmetry's suppliers. However, and despite its attempts to do so, Symmetry was unable to purchase sufficient quantities of gas on the daily spot market to make up for supply cuts by Symmetry's upstream suppliers. In many instances, the gas that Symmetry was able to purchase on the spot market simply never arrived due to upstream supply cuts and transportation issues. To the extent Symmetry nominated less gas than it expected its customers to burn on any particular day during the OFOs, or to the extent Symmetry delivered less gas to Empire's city gate than it nominated, those under-nominations or under-deliveries were caused by cuts to Symmetry's upstream supply and available transport. Further, to the extent Symmetry was short on any given day during Winter Storm Uri, Symmetry was balanced in its deliveries and had made Empire whole by the end of February 2021. (Purcell Affidavit, Oppose MSD Ex – 10; Complaint and Answer ¶¶ 29, 32 and 38, Exhibit D to Complaint, Oppose MSD Ex – 2 and 3).

12. Empire calculated Symmetry's OFO penalty pursuant to the Tariff and billed Symmetry that amount.

RESPONSE:

OBJECTION: This "fact" is compound.

DENY IN PART: Empire did not properly calculate or bill the OFO penalty it seeks to impose upon Symmetry pursuant to the Tariff because Empire's OFOs were not limited to address only the stated problem giving rise to the OFO (Southern Star's declaration of an OFO which was subsequently waived, and was waived prior to Empire's calculations at issue herein), its system integrity was not jeopardized during the relevant time period, and system participants collaborated to ensure system reliability. Therefore, Empire seeks OFO penalties from Symmetry and its customers that are not permitted under the Tariff. (Exhibits A-2 and A-1

Affidavit of Tatiana Earhart in Support of Motion for Summary Determination; Complaint and Answer ¶¶ 27, 29, 32, 33, 35-37, Exhibit D to Complaint, Oppose MSD Ex – 2 and 3).

Further, throughout the period of these OFOs, Symmetry endeavored to procure gas for delivery to Empire's city gate sufficient to cover the needs of Symmetry's customers, including by attempting to make daily incremental gas purchases when it became apparent that gas supplies Symmetry had purchased in advance were being cut by Symmetry's suppliers. However, and despite its attempts to do so, Symmetry was unable to purchase sufficient quantities of gas on the daily spot market to make up for supply cuts by Symmetry's upstream suppliers. In many instances, the gas that Symmetry was able to purchase on the spot market simply never arrived due to upstream supply cuts and transportation issues. To the extent Symmetry nominated less gas than it expected its customers to burn on any particular day during the OFOs, or to the extent Symmetry delivered less gas to Empire's city gate than it nominated, those under-nominations or under-deliveries were caused by cuts to Symmetry's upstream supply and available transport. Further, to the extent Symmetry was short on any given day during Winter Storm Uri, Symmetry was balanced in its deliveries and had made Empire whole by the end of February 2021. (Purcell Affidavit, Oppose MSD Ex – 10; Complaint and Answer ¶¶ 29, 32 and 38, Exhibit D to Complaint, Oppose MSD Ex – 2 and 3).

ADMIT IN PART: Empire has demanded over $11 million in OFO penalties from Symmetry and its Missouri customers. (Complaint and Answer ¶¶ 1and 25, Exhibit F to Complaint, Oppose MSD Ex – 2 and 3).

13. Under the terms of the Tariff and the Marketer/Aggregator Agreement, upon providing notice, Empire has the right to terminate Symmetry's participation in its transportation program.

RESPONSE:

OBJECTION: This "fact" is compound and calls for a legal conclusion.

DENY: Symmetry has not "fail[ed] to comply with or perform any of [its] obligations" or "fail[ed] to meet any condition of the Transportation rate schedule" under the Tariff because Empire's OFOs were not limited to address only the stated problem giving rise to the OFO (Southern Star's declaration of an OFO which was subsequently waived), its system integrity was not jeopardized during the relevant time period, and system participants collaborated to ensure system reliability. Further, to the extent Symmetry was short on any given day during Winter Storm Uri, Symmetry was balanced in its deliveries and had made Empire whole by the end of February 2021, and thus Symmetry has not "repeatedly fail[ed] to deliver to Company specified operational flow order quantities of gas." Therefore, Empire does not have the right under Tariff Sheet Nos. 31 and 44 to terminate Symmetry's participation in Empire's transportation program. Moreover, for the same reasons and also because Symmetry timely "disputed" the charges at issue herein, Empire does not have the right under Paragraphs 8 or 10 of the Marketer/Aggregator Agreement to terminate Symmetry's participation in Empire's transportation program. (Exhibits A-2 and A-1 Affidavit of Tatiana Earhart in Support of Motion for Summary Determination; Complaint and Answer ¶¶ 27, 29, 32, 33, 35-38, Oppose MSD Ex – 2 and 3; GR-2009-0434, YG-2020-0568 Tariff Sheet Nos. 31 and 44, Oppose MSD Ex – 11 and 12; Marketer/Aggregator Agreement ¶¶ 8 and 10, Exhibit B to Complaint, Oppose MSD Ex - 2).

Symmetry's Statement of Additional Material Facts that Remain in Dispute:

14. The operational integrity and reliability of Southern Star's pipeline, from which Empire receives a portion of its gas, was not jeopardized during Winter Storm Uri. (Complaint and Answer ¶¶ 22, 29, 30, 32 and 33, Oppose MSD Ex – 2 and 3).

15. Empire's parent, The Empire District Electric Company, did not claim in its filings in FERC Docket RP21-618-000 that the operational integrity and reliability of Empire's system was jeopardized during Winter Storm Uri. (Complaint and Answer ¶¶ 31, Oppose MSD Ex – 2 and 3).

16. Empire did not experience any integrity or reliability issues with its system during Winter Storm Uri. (Complaint and Answer ¶¶ 38, Exhibit F to Complaint, Oppose MSD Ex – 2 and 3; Exhibit A-1 Affidavit of Tatiana Earhart in Support of Motion for Summary Determination ¶¶ 14, 16, 17, 18 and 21).

17. Empire does not have the right to a windfall as the result of administration of penalties on other entities. (175 FERC 61,015 at ¶¶ 4-5, Exhibit A to Complaint, Complaint and Answer ¶¶ 2 and 33, Oppose MSD Ex – 2 and 3).

18. Empire has never provided Symmetry with any written basis for its OFO beyond the fact of the Southern Star OFO issued on February 9, 2021. (Complaint and Answer ¶¶ 23, Exhibit D to Complaint, Oppose MSD Ex – 2 and 3).

19. The OFO issued by Empire on February 9, 2021 was "equivalent" to the OFO issued by Southern Star on February 9, 2021. (Exhibits D and F to Complaint, Oppose MSD Ex - 2).

20. If Empire did issue an OFO on February 11, 2021, it was "equivalent" to the OFO issued by Southern Star on February 11, 2021. (Exhibit F to Complaint, Oppose MSD Ex - 2; Exhibit A-2 to Affidavit of Tatiana Earhart in Support of Motion for Summary Determination).

21. The OFO issued by Southern Star on February 9, 2021 was not issued to gas marketers such as Symmetry but was "issued to all storage customers…to protect the integrity of the Southern Star's storage facilities due to high withdrawal levels from Southern Star's storage fields." (Exhibit D to Complaint, Oppose MSD Ex - 2).

22. Throughout Winter Storm Uri, Empire maintained service and reliability for all customers. (Exhibit F to Complaint, Oppose MSD Ex - 2).

23. The gas Empire provided to Symmetry's customers during Winter Storm Uri (that was not provided to Empire by Symmetry) was obtained or procured by Empire from its storage reserves. (Exhibit F to Complaint, Oppose MSD Ex - 2; Affidavit of Tatiana Earhart in Support of Motion for Summary Determination ¶¶ 14, 16).

24. The gas Empire provided to Symmetry's customers during Winter Storm Uri (that was not provided to Empire by Symmetry) was obtained or procured from Empire's affiliates' storage reserves. (Exhibit F to Complaint, Oppose MSD Ex - 2; Affidavit of Tatiana Earhart in Support of Motion for Summary Determination ¶¶ 14, 16-18).

25. The gas Empire provided to Symmetry's customers during Winter Storm Uri (that was not provided to Empire by Symmetry) was not purchased by Empire on the spot market during Winter Storm Uri. (Exhibit F to Complaint, Oppose MSD Ex - 2; Affidavit of Tatiana Earhart in Support of Motion for Summary Determination ¶¶ 14, 16-18).

26. Symmetry suffered significant supply cuts and force majeure cuts from upstream suppliers during Winter Storm Uri. Throughout the period of Empire's OFOs, Symmetry endeavored to procure gas for delivery to Empire's city gate sufficient to cover the needs of Symmetry's customers, including by attempting to make daily incremental gas purchases when it became apparent that gas supplies Symmetry had purchased in advance were being cut by Symmetry's suppliers. However, and despite its attempts to do so, Symmetry was unable to purchase sufficient quantities of gas on the daily spot market to make up for supply cuts by Symmetry's upstream suppliers. To the extent Symmetry was short on any given day during Winter Storm Uri, Symmetry was balanced in its deliveries and had made Empire whole by the end of February 2021. (Purcell Affidavit, Oppose MSD Ex – 10).

Symmetry's Memorandum of Law in Support:

This Commission is authorized by 20 CSR 4240-2.117(E) to issue the order of summary determination sought herein by Empire *only if* "the pleadings, testimony, discovery, affidavits, and memoranda on file" show that (1) "there is no genuine issue as to any material fact" necessary to this case; (2) Empire "is entitled to relief as a matter of law;" and (3) this Commission determines that granting Empire's motion for summary determination "is in the public interest."[1] The presence of the third prong of this test for summary determination – the Commission's determination that it "is in the public interest" – "reserves unto the Commission the discretion to deny summary relief [even] if it believes that the first two elements have been

[1] 20 CSR 4240-2.117(E).

met but that summary determination is not in the public interest."[2] One of the factors evidencing "the public interest" in granting summary determination is that such order would provide "substantial justice between patrons and public utilities."[3] Summary determination is a greater burden than an evidentiary hearing because even a movant with no burden of proof on the complaint has a burden when filing a motion for summary determination.[4] "Any merely genuine dispute bars a decision, and the Commission does not resolve disputes of fact, on summary determination."[5]

Here, Empire bears the burden to "show a right to judgment flowing from facts about which there is no genuine dispute."[6] But, Empire fails to carry its burden of proof because Symmetry herein shows this Commission "that one or more of the material facts shown by [Empire] to be above any genuine dispute is, in fact, genuinely disputed" and Symmetry defeats Empire's motion.[7] As evidenced herein, Symmetry has specifically referenced the pleadings, testimony, discovery or affidavits that ground its denial of all or part of ten (10) of Empire's thirteen (13) material facts, and Symmetry has served Empire with thirteen (13) additional disputed material facts to which Empire must respond. Thus, there are now and will continue to be (at least until the conclusion of discovery) genuine disputes as to material facts in this case. Consequently, Empire is not entitled to relief as a matter of law and Empire's motion must now be denied.

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[2] *PSC v. Mo. Gas Energy*, 388 S.W.3d 221, 228 (Mo. App. W.D. 2012).
[3] *Id.*
[4] *Emma J. McFarlin and Rebecca Shepherd v. KCP&L Greater Missouri Ops. Co*., 2013 WL 1287761 (Mo. P.S.C. EC-20130024) (March 21, 2013).
[5] *Id*.
[6] *ITT Commercial Fin. Corp. v. Mid-America Marine Supply Corp*., 854 S.W.2d 371, 378 (Mo. 1993)(Separate issue superseded by statute in *Fid. Real Estate Co. v. Norman*, 586 S.W.3d 873 (Mo. App. W.D. 2019)).
[7] *ITT Commercial Fin. Corp*., 854 S.W.2d at 381.

Although this law and these disputed material facts are alone sufficient to defeat Empire's motion, Symmetry herein further addresses Empire's attempt in its motion to mischaracterize the issues before this Commission to be the plain language of its Tariff and the accuracy or inaccuracy of Empire's arithmetic. Empire's motion thus impermissibly shifts focus away from the actual issues presented by Symmetry's Complaint, namely:

- Whether Empire timely notified Symmetry of lawful and proper OFOs applicable to Symmetry and limited those OFOs, along with associated conditions and penalties, to address only the problems giving rise to the need for the OFOs as required by the Tariff?
- Whether given that Empire declared its OFOs to be the "same" or "equivalent" of OFOs issued by Southern Star, the April 9, 2021 FERC Order waiving all penalties associated with the Southern Star OFOs negates the purported justifications for Empire's OFOs, and bars Empire from seeking the OFO penalties it claims herein from Symmetry and Symmetry's customers?
- Whether Empire's system integrity or reliability was jeopardized during Winter Storm Uri, and whether given that it procured gas from its storage reserves, it ever actually incurred any extraordinary gas costs, or is Empire instead unlawfully seeking a windfall via its demand for OFO penalties from Symmetry and Symmetry's customers?

Empire's OFOs were wholly derivative of Southern Star's OFOs—which were not directed at gas marketers like Symmetry—and Empire never proffered any independent justification or need for its OFOs:

At Exhibit D to its Complaint, Symmetry provided this Commission with the February 9, 2021 email it received from Empire, to which Empire had attached the February 9, 2021 OFO

issued by Southern Star, which was not addressed to marketers such as Symmetry but was instead addressed to "storage customers." At Exhibit A-2 to its motion, Empire provided this Commission with the February 11, 2021 email it sent to persons with "libertyutilities.com" addresses – not to Symmetry. Exhibit A-2 also includes a February 11, 2021 OFO issued by Southern Star. At no point in either the February 9, 2021 email or the February 11, 2021 email did Empire indicate to any addressee that Empire was issuing an OFO that was "different," "independent" or "distinct" from Southern Star's OFO, as Empire now argues at pages 10 and 11 of its motion. Instead, both emails ambiguously and generically state that "Empire will do the same." Similarly, in its April 15, 2021 letter to Symmetry, which Symmetry attached as Exhibit F to its Complaint, Empire gave no explanation for its issuance of either OFO other that its declaration that its OFOs were "equivalent" to the OFOs "in place for the interstate pipeline or pipelines." (Material Fact Nos. 10, 18, 19, 20 and 21).

Additionally, at page 10 of its motion, Empire admits that Tariff Sheet No. 26 caused Southern Star's OFOs to "automatically trigger" the OFO under Empire's Tariff "without Empire needing to make another call related to Southern Star's OFO." Thus, under Tariff Sheet No. 26, it was the Southern Star OFOs that "automatically triggered" the "same" or "equivalent" Empire OFOs. And, at page 11 of its motion, Empire admits that "the unprecedented severe and extreme cold and winter weather conditions experienced on Southern Star's system during that period" were indeed "the same conditions that Empire was attempting to manage with its OFO."

Nothing in Empire's Tariff permits it to charge OFO penalties to Symmetry or to Symmetry's customers under the applicable law and these facts, so Empire is not entitled to any relief as a matter of law. Empire's motion must be denied.

Because the Empire OFOs are the "same" and "equivalent" to those issued by Southern Star, FERC's April 9, 2021 Order waiving all penalties arising from Southern Star's OFOs negates the purported justification for Empire's OFOs and bars Empire from seeking OFO penalties from Symmetry and Symmetry's customers:

In its April 9, 2021 Order, FERC waived all penalties associated with Southern Star's OFOs during Winter Storm Uri.[8] In so doing, FERC found that Winter Storm Uri's "extreme weather event present circumstances outside the control of the delivery point operators," "the cooperation of the pipeline's customers (including delivery point operators), helped maintain system integrity," there was "no evidence of gamesmanship by any entity," and therefore "these extreme penalties do not accomplish the purpose of penalties, which is to deter behavior that could impair system reliability."[9] FERC further ruled, specifically regarding Empire's parent, Empire District Electric Company, that FERC "disagreed" with Empire's protest that its order "would reward delivery point operators who jeopardized pipeline security and reliability by violating Southern Star's OFO…[because there was] "no evidence of gamesmanship…[and] the cooperation of delivery point operators helped maintain system integrity."[10] Specifically, FERC explained that "no shipper (including Empire) has a right to a windfall as the result of administration of penalties on other entities."[11]

Because Southern Star's OFO penalties have been waived, the condition that gave rise to Empire's OFOs no longer exists, and Empire cannot collect OFO penalties from Symmetry and its customers now.

Empire cannot relitigate FERC's rulings in the present proceeding. Missouri's Supreme Court ruled in *Sexton v. Jenkins & Assocs*. that "the court-made doctrine of collateral estoppel –

[8] 175 FERC 61,015 (Exhibit A to Symmetry's Complaint, Oppose MSD Ex - 2)
[9] Complaint and Answer ¶¶ 32, Oppose MSD Ex – 2 and 3.
[10] Complaint and Answer ¶¶ 33, Oppose MSD Ex – 2 and 3.
[11] *Id.*

known by its modern term, issue preclusion – precludes relitigation of an issue previously decided and incorporated into an earlier judgment."[12] To give preclusive effect to a prior judgment, the tribunal will consider these four factors: "(1) whether the issue decided in the prior adjudication was identical to the issue presented in the present action; (2) whether the prior adjudication resulted in a judgment on the merits; (3) whether the party against whom estoppel is asserted was a party or was in privity with a party to the prior adjudication; and (4) whether the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior suit."[13]

The first prong of the test for collateral estoppel/issue preclusion is met because the FERC Order quoted herein obviously addressed and ruled upon the same issues Symmetry has raised in this Complaint case – there was no system integrity or reliability issue to warrant an OFO, Winter Storm Uri presented circumstances outside the control of delivery point operators (including Symmetry) whose cooperation helped ensure system integrity, no delivery point operator engaged in gamesmanship, and Empire does not have the right to a windfall via OFO penalties.

The second prong of the test for collateral estoppel/issue preclusion is met because the FERC Order attached as Exhibit A to the Complaint is a judgment on the merits.

The third prong of the test for collateral estoppel/issue preclusion is met because Empire is in privity with a party to the FERC proceeding – Empire's parent, Empire District Electric Company. (Material Fact No. 15 and Complaint and Answer ¶¶ 8, Oppose MSD Ex – 2 and 3). "Privity exists where the party sought to be precluded has interests that are so closely aligned to

[12] *Sexton v. Jenkins & Assocs*., 152 S.W.3d 270, 273 (Mo. 2004).
[13] *James v. Paul*, 49 S.W.3d 678, 682 (Mo. 2001). See also, *State ex rel. Laclede Gas Co. v. PSC*, 392 S.W.3d 24, 37 (Mo. App. W.D. 2012)("The true test of the conclusiveness of a former judgment in respect to particular matters is identity of issues.")

the party in the earlier litigation that the non-party can be fairly said to have had its day in court."[14]

The fourth and final prong of the test for collateral estoppel/issue preclusion is met because Empire has had a full and fair opportunity to litigate these issues before FERC. This prong is "not a second layer of privity analysis under which only those in privity who had actual notice and an opportunity to intervene may be bound by a prior adjudication. Rather it is a shorthand description of the analysis required to determine if non-mutual collateral estoppel should be applied…Defensive collateral estoppel generally involves a defendant invoking the doctrine to prevent a plaintiff from relitigating a fact decided against the plaintiff in earlier litigation that is necessary for the plaintiff to establish and carry his burden of proof."[15] Here, Empire is in privity with its parent who litigated these same issues before FERC – and lost. It is thus manifestly unjust for Empire to take another bite at the same apple by seeking this Commission's approval of OFO penalties against Symmetry and Symmetry's customers for the same circumstances on the same pipeline during the same timeframe addressed and ruled by FERC.

Moreover, at pages 6-14 of its motion, Empire builds up and then tears down four "straw man" arguments that are irrelevant here where Symmetry makes a straightforward assertion regarding the preclusive effect of FERC's Order on Empire. First, since there are no grounds for Empire to impose an OFO and then seek penalties, this Commission need not be concerned with whether or not OFO penalties can be "waived" under Empire's Tariff. Second, because there were no OFO penalties assessed by Southern Star, there is not even an allegation that Empire is attempting to pass interstate pipeline OFO penalties down to Symmetry and Symmetry's

[14] *James v. Paul*, 49 S.W. 3d at 683.
[15] *James v. Paul*, 49 S.W.3d at 684-685.

customers. Third, relying on settled Missouri law, Symmetry asserts collateral estoppel/issue preclusion against Empire, which does not in any way "conflate" this Commission's jurisdiction over Empire with any jurisdiction possessed by FERC. Fourth, FERC's conclusive ruling that no delivery point operator engaged in gamesmanship and there was no bad behavior to be deterred via penalties renders irrelevant Empire's dire prediction that bad behavior will be incentivized.

Therefore, based on the record now before this Commission, Empire is precluded by the FERC Order from herein asserting any lawful grounds for OFO penalties against Symmetry and Symmetry's customers. Nothing in Empire's Tariff permits it to charge OFO penalties to Symmetry or to Symmetry's customers under the applicable law and these facts, so Empire is not entitled to any relief as a matter of law. Empire's motion must be denied.

Empire's system integrity and reliability were not jeopardized during Winter Storm Uri, and Empire relied on—or should have relied on—storage reserves to make up any marketer shortfalls; therefore, OFO penalties against Symmetry and Symmetry's customers would be an unlawful windfall to Empire:

Empire's Tariff provides that the "Company will have the right to issue an [OFO] that will require actions by the Customer to alleviate conditions that, in the sole judgment of the Company, *jeopardize the operational integrity* of Company's system required to maintain system reliability."[16] It also requires that "[a]ny OFO, along with associated conditions and penalties, shall be limited, as practicable to address only the problem(s) giving rise to the need for the OFO."[17] The only "problem" giving rise to the purported "need" for Empire's OFOs was the fact that Southern Star issued OFOs, and if Empire and other parties failed to comply with Southern Star's OFOs, they faced possible penalties. However, now that Southern Star's OFO

[16] Oppose MSD Ex – 6, Tariff Sheet No. 43 at ¶ 1 (emphasis added).
[17] *Id.*

penalties have been waived, there is no "problem" for Empire's OFOs to address because Empire never faced any actual threat to system integrity.

Empire argues at page 4 of its motion that "the operational integrity of Empire's system [was] jeopardized – as it was with Winter Storm Uri." But, Empire negates its own argument at page 7 of its motion by admitting that it was able "to maintain their operations and to keep Empire's system stable." It is understandable that Empire backed off this argument, given the facts in this record. Southern Star's pipeline, from which Empire receives a portion of its gas, was not jeopardized during Winter Storm Uri; Empire's parent did not claim before the FERC that the operational integrity and reliability of Empire's system was jeopardized during Winter Storm Uri; and Empire did not experience any integrity or reliability issues and indeed maintained service and reliability for all customers during Winter Storm Uri. (Material Fact Nos. 14, 15, 16 and 22).

Further, Empire argues at page 2 of its motion that it needs OFO penalties against Symmetry and Symmetry's customers to "cover the increased gas costs associated with the purchases made by Empire to meet the needs of Symmetry's customers," and Empire claims at page 9, footnote 44 that these "gas costs" totaled "over $11 million." But, the facts in this record belie Empire's argument. The gas Empire provided to Symmetry's customers during Winter Storm Uri (that was not provided to Empire by Symmetry) was obtained or procured by Empire from its or its affiliates' storage reserves and was not purchased by Empire from the market during Winter Storm Uri. (Material Fact Nos. 23, 24 and 25). Consequently, Empire does not have the right to a windfall as the result of administration of penalties on other entities such as Symmetry and Symmetry's customers. (Material Fact No. 17).

Therefore, based on the record now before this Commission, Empire's system integrity and reliability were not jeopardized during Winter Storm Uri, and Empire relied on storage

reserves and thus did not incur any extraordinary gas costs during Winter Storm Uri. Nothing in Empire's Tariff permits it to charge OFO penalties to Symmetry or to Symmetry's customers under the applicable law and these facts, and to do so would also grant Empire an unlawful windfall. Empire is not entitled to any relief as a matter of law and its motion must be denied.

Summary determination of this important issue is not in the public interest:

Pursuant to Rule 20 CSR 4240-2.117(E), the Commission cannot grant summary determination unless doing so is in the public interest. This requirement reserves for the Commission "the discretion to deny summary relief if it believes that the first two elements have been met but that summary determination is not in the public interest."[18] The public interest "includes factors related to efficient facilities and substantial justice between patrons and public utilities."[19] It would be contrary to the public interest for the Commission to decide, as a matter of law—and without permitting discovery or further inquiry—that Empire is entitled to impose OFO penalties in excess of $11 million on Symmetry and its customers, where Empire's OFOs were predicated only on Southern Star's OFOs, FERC waived all penalties associated with Southern Star's OFOs, Empire suffered no actual system integrity issues, Symmetry attempted to procure gas for delivery to Empire's city gate but was unable to do so because of upstream supply cuts and the extraordinary circumstances of Winter Storm Uri (Material Fact No. 26), Symmetry was balanced in its deliveries and had made Empire whole by the end of February 2021 (*id.*), Empire has not been damaged, and Symmetry engaged in no misconduct. As FERC observed, OFO penalties are not intended to provide an undeserved windfall to anyone, including Empire.

[18] *PSC v. Mo. Gas Energy*, 388 S.W.3d 221, 228 (Mo. App. W.D. 2012).
[19] *Id*. (quotation marks omitted).

WHEREFORE, there are genuine issues of material fact in the record before this Commission, Empire is not entitled to any relief as a matter of law, and summary determination on this record is not in the public interest because it would violate Empire's Tariff and the law cited herein, would provide Empire with a windfall, and would work substantial injustice between Symmetry, Symmetry's customers and Empire.

Respectfully submitted,

HEALY LAW OFFICES, LLC

By: */s/ Peggy A. Whipple*

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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of October 2021, a copy of the foregoing **Symmetry's Response in Opposition to Empire's Motion for Summary Determination and Symmetry's Statement of Additional Material Facts that Remain in Dispute and Memorandum in Support** has been served on all parties on the official service list for this matter via filing in the Commission's EFIS system and/or email.

/s/ *Peggy A. Whipple*
Peggy A. Whipple

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE JOINT APPLICATION OF THE EMPIRE DISTRICT ELECTRIC COMPANY, LIBERTY UTILITIES (CENTRAL) CO., AND LIBERTY SUB CORP. FOR APPROVAL OF AN AGREEMENT AND PLAN OF MERGER AND FOR OTHER RELATED RELIEF	)	File No. EM-2016-0213

JOINT APPLICATION OF THE EMPIRE DISTRICT ELECTRIC COMPANY, LIBERTY UTILITIES (CENTRAL) CO., AND LIBERTY SUB CORP. AND CONTINGENT REQUEST FOR WAIVER

The Empire District Electric Company ("Empire"), Liberty Utilities (Central) Co. ("LU Central"), and Liberty Sub Corp. (collectively, "Joint Applicants"), pursuant to §393.190, RSMo. 2000, as amended, and Commission rules 4 CSR 240-2.060, 4 CSR 240-3.115, 4 CSR 240-3.125, 4 CSR 240-3.610 and 4 CSR 240-3.620 seek an order authorizing LU Central and Liberty Sub Corp. to acquire all of the common stock of Empire. In support of their application, the Joint Applicants respectfully state the following to the Missouri Public Service Commission (the "Commission"):

The Applicants

1. Empire is a Kansas Corporation with its principal office and place of business at 602 South Joplin Avenue, Joplin, Missouri 64801. Empire is qualified to conduct business and is conducting business in Missouri as well as in the states of Kansas, Arkansas and Oklahoma. Empire is engaged generally in the business of generating, purchasing, transmitting, distributing and selling electric energy in portions of said states. Empire also provides water service in Missouri. Through a wholly-owned subsidiary, The Empire District Gas Company ("EDG"), Empire provides natural gas utility service throughout a number of Missouri counties subject to

authority granted by the Commission in Case No. GO-2006-0205. Through a wholly-owned subsidiary, Empire District Industries, Inc. ("EDI"), Empire provides interexchange and private line telecommunications services in Missouri subject to authority granted by the Commission in Case No. LA-2003-0026. All of Empire's Missouri utility operations are subject to the jurisdiction of the Commission as provided by law.

2. A certified copy of Empire's restated Articles of Incorporation, as amended, was filed in Commission Case No. EF-94-39 and is incorporated herein by reference in accordance with Commission rule 4 CSR 240-2.130(2). A certificate from the Missouri Secretary of State that Empire, a foreign corporation, is authorized to do business in Missouri was filed with the Commission in Case No. EM-2000-369 and is incorporated herein by reference in accordance with Commission rule 4 CSR 240-2.130(2). This information is current and correct. Other than complaint cases that may currently be on file with the Commission, Empire has no pending or final unsatisfied judgments or decisions against it from any state or federal agency or court that involve customer service or rates and that have occurred within the three (3) years immediately preceding the filing of this Application. Empire's Annual Report and assessment fees are not overdue.

3. LU Central is a Delaware Corporation and was formed for the purpose of acquiring the capital stock of Empire as described herein. A Certificate of Good Standing from the office of the Delaware Secretary of State is attached hereto as **Appendix A**. LU Central is a wholly-owned subsidiary of Liberty Utilities Co. and is an indirect subsidiary of Algonquin Power & Utilities Corp. ("Algonquin"). LU Central has no pending or final unsatisfied judgments or decisions against it from any state or federal agency or court that involve customer service or rates and that have occurred within the three (3) years immediately preceding the filing of this application. LU Central is not a "public utility" as defined in §386.020(43), RSMo.

2000, and will not become a public utility if this application is granted, although certain of its activities and transactions may be subject to 4 CSR 240-20.015, the Commission's rule governing affiliate transactions. LU Central does not transact business in the State of Missouri as contemplated by §351.574.1 RSMo. 2000. Consequently, it has not registered with the Secretary of State's office as a foreign corporation.

4. Liberty Sub Corp. is a Kansas Corporation that is a wholly-owned subsidiary of LU Central. Liberty Sub Corp. is a special purpose corporation formed for the sole purpose of merging with and into Empire, as hereinafter described. Liberty Sub Corp. is not a "public utility" as defined in §386.020(43), RSMo. 2000, and will not become a public utility if this application is granted. Liberty Sub Corp. does not transact business in the State of Missouri, as contemplated by §351.574.1 RSMo. 2000. Consequently, it has not registered with the Secretary of State's office to do business in the State of Missouri as a foreign corporation.

5. Pleadings, notices, orders, and other correspondence and communications concerning this Joint Application and proceeding should be addressed to the undersigned counsel as well as to:

Christopher D. Krygier
Director, Regulatory and Government Affairs
Liberty Utilities
2751 N. High Street
Jackson, MO 63755
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Kelly S. Walters
The Empire District Electric Company
Vice President and Chief Operating Officer – Electric
602 S. Joplin Ave., P.O. Box 127
Joplin, MO 64802
P: 417-625-5100
kwalters@empiredistrict.com

Associated Entities

6. Liberty Utilities Co. ("Liberty Utilities") is a Delaware corporation and is a holding company that owns corporations which own and operate regulated gas, water, sewer and electric utilities in eleven states—Arizona, Arkansas, California, Iowa, Illinois, Missouri, Georgia, Massachusetts, Montana, New Hampshire and Texas. Liberty Utilities has been providing regulated water, sewer and natural gas utility services in Missouri through its subsidiaries Liberty Utilities (Missouri Water), LLC and Liberty Utilities (Midstates Natural Gas) Corp. Liberty Utilities is not a "public utility" as defined in §386.020(43), RSMo. 2000, and will not become a public utility if this application is granted, although certain of its activities and transactions may be subject to 4 CSR 240-20.015, the Commission's rule governing affiliate transactions.

7. EDG is a corporation organized and existing under the laws of the state of Kansas, with its principal office and place of business located at 602 Joplin Street, Joplin, Missouri 64802. EDG provides natural gas service pursuant to authority granted by the Commission in Case No. GO-2006-0205.

8. EDI is a corporation organized and existing under the laws of Delaware, with its principal office and place of business located at 602 Joplin Street, Joplin, Missouri 64802. EDI provides interexchange and private line telecommunications services in Missouri subject to authority granted by the Commission in Case No. LA-2003-0026.

The Transaction

9. Empire, LU Central and Liberty Sub Corp. have entered into an Agreement and Plan of Merger dated February 9, 2016, ("Agreement"), a copy of which is attached hereto as **Appendix B** and incorporated herein by reference. Pursuant to the Agreement, Liberty Sub Corp. will be merged with and into Empire under the terms and provisions described in the Agreement, with Empire emerging as the surviving corporation. Immediately following the merger Liberty Sub Corp. will cease to exist. As a consequence of the merger, LU Central will acquire all of the capital stock of Empire.

10. The aggregate purchase price of the transaction is $2.4 billion dollars, including $.9 billion of existing Empire debt. Empire's shareholders will receive $34 per common share in cash.

11. Closing of the transaction is subject to customary conditions, including the approval of Empire's common shareholders and the receipt of certain state and federal regulatory and governmental approvals, including the approval of this Commission.

12. At the closing of the transaction, Empire will become a wholly-owned subsidiary of LU Central and will cease to be a publicly-held corporation.

13. A certified copy of the Resolutions of the Board of Directors of Empire authorizing the transaction and related matters contemplated by the Agreement is marked as **Appendix C**, attached hereto and made a part hereof for all purposes.

14. A certified copy of the Resolutions of the Board of Directors of LU Central authorizing the transaction and related matters contemplated by the Agreement is marked as **Appendix D**, attached hereto and made a part hereof for all purposes.

15. A certified copy of the Resolutions of the Board of Directors of Liberty Sub Corp. authorizing the transaction and related matters contemplated by the Agreement is marked as **Appendix E**, attached hereto and made a part hereof for all purposes.

Jurisdiction of the Commission

16. Joint Applicants seek approval under §393.190 RSMo. 2000, of the acquisition by LU Central of Empire's capital stock pursuant to the terms of the Agreement.

Public Interest Considerations

17. The proposed acquisition of the capital stock of Empire by LU Central is not detrimental to the public interest and, in fact, will promote the public interest in the following respects:

a. The electric and water utility assets of Empire will remain subject to the jurisdiction of the Commission and the transaction will not impair or impede the nature or scope of the Commission's supervision of Empire's operations. Similarly, the Commission's regulatory authority over the regulated assets and operations of Empire's subsidiaries, EDG and EDI, will be unchanged.

b. Empire will continue to comply with any ongoing regulatory commitments currently in place with respect to its electric, water and natural gas operations.

c. Empire's employees and experienced management team will remain in place evidencing Liberty Utilities' commitment that Empire will continue to provide customers with safe, reliable and cost-effective utility services.

d. Empire will maintain its headquarters in Joplin, Missouri after the transaction is closed.

e. Empire and EDG will continue to utilize the rates, rules, regulations and other tariff provisions on file with and approved by the Commission as of the date the transaction is closed, and will continue to provide service to their customers under those rates, rules and regulations, and other tariff provisions until such time as they may be modified according to applicable law. As a consequence, the transaction will have no discernable effect on existing Empire, EDG and EDI customers, all of whom will continue to experience quality day-to-day service at just and reasonable rates without incident or interruption.

f. The Joint Applicants anticipate that Liberty Utilities will maintain a strong investment grade credit rating, and that Empire therefore will be able to access the capital markets on reasonable terms for the benefit of its customers.

g. The transaction will have no impact on the property tax revenues of any political subdivision in which any of the structures, facilities, or equipment of Empire, EDG or EDI are located.

h. LU Central will not seek any recovery of the premium paid over book value, or any transaction costs associated with the transaction in future Empire rate cases.

Miscellaneous Filing Requirements and Other Documentation

18. As required by Commission rule 4 CSR 240-3.115(1)(E), the Joint Applicants state that the merger of Liberty Sub Corp. with and into Empire facilitating the acquisition by LU Central of all of the outstanding stock of Empire will have no impact on the Missouri jurisdictional operations of Empire post-merger for the reasons stated above.

19. Attached hereto and incorporated herein for all purposes are the following additional appendices to this application:

a. **Appendix F**: A balance sheet and income statement for the 12 months ending December 31, 2014, and for the nine months ending September 30, 2015, of Empire and LU Central and the merged entity.

b. **Appendix G**: An organizational chart that depicts the relationships of the involved corporate entities, both current and as expected post-transaction.

Contingent Request for Waiver

20. As recited in the Notice of Intended Filing, this matter is not a contested case within the meaning of Commission Rule 4 CSR 240-4.020(2) because a hearing is not required by law. §536.010(2) RSMo; See also, *In the Matter of the Application of Atmos Energy Corporation for Authority to Sell Part of its Works or System Located at the Hannibal, Missouri Propane Air Plant*, File No. GO-2011-0281 (April 19, 2011). If the Commission nevertheless concludes that the filing of this application institutes a contested case, Joint Applicants request a waiver of the sixty (60) day notice for good cause shown as permitted by Commission rule 4 CSR 240-4.020(2)(B) in that no party or potential party will be prejudiced by the filing of the application on this date.

WHEREFORE, Joint Applicants request that the Commission issue an order:

(a) authorizing Empire, LU Central, and Liberty Sub Corp. to consummate the transaction in accordance with the terms and conditions of the Agreement and Plan of Merger and all other transaction-related instruments, and to take any and all other actions as may be reasonably necessary and incidental to the performance of the transaction;

(b) authorizing LU Central and Liberty Sub Corp., pursuant to the terms of the Agreement and Plan of Merger, to acquire all of the stock of Empire, all as more particularly described in the Agreement;

(c) authorizing Empire to merge with Liberty Sub Corp., with Empire being the surviving corporation, all as more particularly described in the Agreement and Plan of Merger; and

(d) finding that the transaction and other relief sought in this application is not detrimental to the public interest.

Respectfully submitted,

Brydon, Swearengen & England, P.C.

By: /s/ Paul A. Boudreau

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Attorneys for Joint Applicants

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent via U.S. Mail, postage prepaid, hand-delivery, electronic filing system, or electronically, this 16th day of March, 2016, to the following:

/s/ Paul A. Boudreau
Paul A. Boudreau

AFFIDAVIT OF BRAD P. BEECHER

STATE OF MISSOURI)
) ss
COUNTY OF JASPER)

On the 14th day of March, 2016, before me appeared Brad P. Beecher, to me personally known, who, being by me first duly sworn, states that he is the President and CEO of The Empire District Electric Company and acknowledged that he has read the above and foregoing document and believes that the statements therein are true and correct to the best of his information, knowledge and belief.

Brad P. Beecher

Brad P. Beecher

Subscribed and sworn to before me this 14th day of March, 2016

ANGELA M. CLOVEN
Notary Public - Notary Seal
State of Missouri
Commissioned for Jasper County
My Commission Expires: November 01, 2019
Commission Number: 15262659

Notary Public

My commission expires: 11/01/19.

VERIFICATION

STATE OF CALIFORNIA)
)ss
COUNTY OF LOS ANGELES)

I, Gregory Sorensen, state that I am the President of Liberty Sub Corp.; that I have read the above and foregoing document; that the statements contained therein are true and correct to the best of my information, knowledge and belief; and, that I am authorized to make this statement on behalf of Liberty Sub Corp.

Gregory Sorensen

STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES

Subscribed and sworn to before me on this 14 day of March, 2016, by Gregory Sorensen, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

(Seal) TAMMIE A. MYERS
Commission # 2099082
Notary Public - California
Los Angeles County
My Comm. Expires Feb 6, 2019

Signature

VERIFICATION

STATE OF CALIFORNIA)
)ss
COUNTY OF LOS ANGELES)

I, Gregory Sorensen, state that I am the President of Liberty Utilities (Central) Co.; that I have read the above and foregoing document; that the statements contained therein are true and correct to the best of my information, knowledge and belief; and, that I am authorized to make this statement on behalf of Liberty Utilities (Central) Co.

Gregory Sorensen

STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES

Subscribed and sworn to before me on this 14 day of March, 2016, by Gregory Sorensen, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

(Seal) Signature Tammie A. Myers

TAMMIE A. MYERS
Commission # 2099082
Notary Public - California
Los Angeles County
My Comm. Expires Feb 6, 2019

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "LIBERTY UTILITIES (CENTRAL) CO." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE THIRD DAY OF MARCH, A.D. 2016.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL REPORTS HAVE BEEN FILED TO DATE.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE BEEN PAID TO DATE.

5956697 8300

Authentication: 201927487

SR# 20161473240

Date: 03-03-16

You may verify this certificate online at corp.delaware.gov/authver.shtml

AGREEMENT AND PLAN OF MERGER

by and among

THE EMPIRE DISTRICT ELECTRIC COMPANY,

LIBERTY UTILITIES (CENTRAL) CO.

and

LIBERTY SUB CORP.

Dated as of February 9, 2016

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AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this "**Agreement**"), dated as of February 9, 2016, is by and among THE EMPIRE DISTRICT ELECTRIC COMPANY, a Kansas corporation (the "**Company**"), LIBERTY UTILITIES (CENTRAL) CO., a Delaware corporation ("**Parent**"), and LIBERTY SUB CORP., a Kansas corporation ("**Merger Sub**" and, together with the Company and Parent, the "**Parties**").

RECITALS

WHEREAS, the Parties intend that, upon the terms and subject to the conditions set forth herein, at the Effective Time, Merger Sub will merge with and into the Company, with the Company surviving such merger;

WHEREAS, the board of directors of the Company (the "**Company Board**") has (a) determined that it is in the best interests of the Company and its shareholders, and declared it advisable, for the Company to enter into this Agreement, (b) adopted this Agreement and approved the Company's execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement and (c) resolved to recommend that the Company's shareholders approve this Agreement;

WHEREAS, the board of directors of Parent has (a) determined that it is in the best interests of Parent and its shareholder, and declared it advisable, for Parent to enter into this Agreement and (b) adopted this Agreement and approved Parent's execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement;

WHEREAS, the board of directors of Merger Sub has (a) determined that it is in the best interests of Merger Sub and its shareholder, and declared it advisable, for Merger Sub to enter into this Agreement, (b) adopted this Agreement and approved Merger Sub's execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement and (c) resolved to recommend that Merger Sub's sole shareholder, approve this Agreement;

WHEREAS, Parent has approved this Agreement by written consent in its capacity as the sole shareholder of Merger Sub; and

WHEREAS, the Company, Parent and Merger Sub desire to make certain representations, warranties, covenants and agreements specified herein in connection with this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements set forth herein, and subject to the conditions set forth herein, and each intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I

THE MERGER

SECTION 1.01 The Merger. At the Effective Time, upon the terms and subject to the conditions set forth herein, Merger Sub shall be merged with and into the Company in accordance with the Kansas General Corporation Code (the "**GCC**") and this Agreement (the "**Merger**"), and the separate corporate existence of Merger Sub shall cease. The Company shall be the surviving corporation in the Merger (sometimes referred to herein as the "**Surviving Corporation**").

SECTION 1.02 The Effective Time. As soon as practicable on the Closing Date, the Company shall deliver to the Office of the Secretary of State of the State of Kansas a certificate of merger with respect to the Merger, in such form as is required by, and executed in accordance with, the relevant provisions of the GCC (the "**Certificate of Merger**"). The Merger shall become effective at the time the Certificate of Merger is duly filed with the Office of the Secretary of State of the State of Kansas in accordance with the GCC or at such later time as is permissible in accordance with the GCC and, as the Parties may mutually agree, as specified in the Certificate of Merger (the time the Merger becomes effective, the "**Effective Time**").

SECTION 1.03 The Closing. Unless this Agreement has been terminated in accordance with Section 8.01, the consummation of the Merger (the "**Closing**") shall take place at the offices of Cahill Gordon & Reindel LLP at 10:00 a.m. New York City time on a date to be mutually agreed to by the Parties, which date shall be no later than the fifteenth Business Day after the satisfaction or waiver of the conditions to the Closing set forth in Article VII (except for those conditions to the Closing that by their terms are to be satisfied at the Closing but subject to the satisfaction or waiver of such conditions) unless another time, date or place is mutually agreed to in writing by the Parties. The date on which the Closing occurs is referred to herein as the "**Closing Date**."

SECTION 1.04 Effects of the Merger. The Merger shall have the effects specified herein and in the applicable provisions of the GCC, including Article 67 thereof.

SECTION 1.05 Organizational Documents. As of the Effective Time, the articles of incorporation of the Surviving Corporation shall be amended and restated to be the same as the articles of incorporation of Merger Sub, as in effect immediately prior to the Effective Time, until thereafter amended as provided therein and in accordance with applicable Law, except that the name of the Surviving Corporation shall be "The Empire District Electric Company". As of the Effective Time, the bylaws of the Surviving Corporation shall be amended and restated to be the same as the bylaws of Merger Sub, as in effect immediately prior to the Effective Time, until thereafter amended as provided therein and in accordance with applicable Law, except that the name of the Surviving Corporation shall be The Empire District Electric Company".

SECTION 1.06 Surviving Corporation Directors and Officers. As of the Effective Time, (i) the directors of Merger Sub as of immediately prior to the Effective Time shall be the directors of the Surviving Corporation and (ii) the officers of the Company as of immediately prior to the Effective Time shall be the officers of the Surviving Corporation, in each case until their successors have been duly elected or appointed or until their earlier death, resignation or removal.

ARTICLE II

EFFECT ON CAPITAL STOCK; EXCHANGE OF CERTIFICATES AND BOOK-ENTRY SHARES

SECTION 2.01 Effect of Merger on Capital Stock.

(a) Cancellation of Treasury Stock and Parent-Owned Stock; Dissenting Stockholders; Conversion of Company Common Stock; Conversion of Merger Sub Common Stock. At the Effective Time, by virtue of the Merger and without any action on the part of the Company, Parent, Merger Sub or any holder of shares of Company Common Stock:

(i) each share of common stock, $1.00 par value, of the Company ("**Company Common Stock**") that is owned by (x) the Company as treasury stock, if any, each share of

Company Common Stock that is owned by a wholly owned Subsidiary of the Company, if any, and each share of Company Common Stock that is owned directly or indirectly by Guarantor or any of its Subsidiaries, if any, immediately prior to the Effective Time and (y) stockholder ("**Dissenting Stockholders**") who have perfected and not withdrawn a demand for appraisal rights pursuant to Section 17-6712 of the GCC (each share of Company Common Stock referred to in clause (x) or clause (y) being an "**Excluded Share**" and collectively, "**Excluded Shares**") shall no longer be outstanding and shall automatically be canceled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor, subject to any rights the holder thereof may have under Section 2.02(i);

(ii) subject to Section 2.01(b), each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (except for the Excluded Shares) shall be converted automatically into the right to receive an amount in cash (without interest) equal to the Merger Consideration, payable as provided in Section 2.02, and, when so converted, shall automatically be canceled and retired and shall cease to exist;

(iii) each share of common stock, par value $1.00 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into one share of common stock, $1.00 par value, of the Surviving Corporation and shall constitute the only outstanding shares of capital stock of the Surviving Corporation.

(b) Adjustments to Merger Consideration. If at any time during the period between the date of this Agreement and the Effective Time, any change in the outstanding shares of capital stock of the Company (or any other securities convertible therefor or exchangeable thereto) shall occur as a result of any reclassification, stock split (including a reverse stock split), combination, exchange or readjustment of shares, or any stock dividend or stock distribution with a record date during such period, or any similar event, the Merger Consideration and any other similarly dependent items shall be equitably adjusted to provide to Parent, Merger Sub, and the holders of Company Common Stock the same economic effect as contemplated by this Agreement prior to such action.

SECTION 2.02 Payment for Shares.

(a) Paying Agent. Prior to the Effective Time, Parent and the Company shall appoint Wells Fargo Bank, N.A. or such other Person as the Parties may mutual agree to act as paying agent (the "**Paying Agent**") for the purpose of exchanging shares of Company Common Stock for the Merger Consideration in accordance with Section 2.01(a)(ii). At or prior to the Effective Time, Parent shall irrevocably deposit or cause to be deposited with the Paying Agent, in trust for the benefit of the holders of Company Common Stock contemplated by Section 2.01(a)(ii), cash in an amount equal to the aggregate amount of the Merger Consideration pursuant to Section 2.01(a)(ii) (the "**Payment Fund**").

(b) Payment Procedures.

(i) Promptly after the Effective Time (but no later than two (2) Business Days after the Effective Time), the Paying Agent will mail to each holder of record of a certificate representing outstanding shares of Company Common Stock immediately prior to the Effective Time (a "**Certificate**") and to each holder of uncertificated shares of Company Common Stock represented by book entry immediately prior to the Effective Time ("**Book-Entry Shares**"), in each case, whose shares were converted into the right to receive the Merger Consideration pursuant to Section 2.01(a)(ii):

(1) a letter of transmittal, which shall specify that delivery shall be effected, and that risk of loss and title to Certificates or Book-Entry Shares held by such holder will pass, only upon delivery of such Certificates or Book-Entry Shares to the Paying Agent and which shall be in form and substance reasonably satisfactory to Parent and the Company, and

(2) instructions for use in effecting the surrender of such Certificates or Book-Entry Shares in exchange for the Merger Consideration with respect to such shares.

(ii) Upon surrender to, and acceptance in accordance with Section 2.02(b)(iii) by, the Paying Agent of a Certificate or Book-Entry Share, the holder thereof will be entitled to the Merger Consideration payable in respect of the number of shares of Company Common Stock formerly represented by such Certificate or Book-Entry Share surrendered under this Agreement.

(iii) The Paying Agent will accept Certificates or Book-Entry Shares upon compliance with such reasonable terms and conditions as the Paying Agent may impose to effect an orderly exchange of the Certificates and Book-Entry Shares in accordance with customary exchange practices.

(iv) From and after the Effective Time, no further transfers may be made on the records of the Company or its transfer agent of Certificates or Book-Entry Shares, and if any Certificate or Book-Entry Share is presented to the Company for transfer, such Certificate of Book-Entry Share shall be canceled against delivery of the Merger Consideration payable in respect of the shares of Company Common Stock represented by such Certificate or Book-Entry Share.

(v) If any Merger Consideration is to be remitted to a name other than that in which a Certificate or Book-Entry Share is registered, no Merger Consideration may be paid in exchange for such surrendered Certificate or Book-Entry Share unless:

(1) either (A) the Certificate so surrendered is properly endorsed, with signature guaranteed, or otherwise in proper form for transfer or (B) the Book-Entry Share is properly transferred; and

(2) the Person requesting such payment shall (A) pay any transfer or other Taxes required by reason of the payment to a Person other than the registered holder of the Certificate or Book-Entry Share or (B) establish to the satisfaction of the Paying Agent that such Tax has been paid or is not payable.

(vi) At any time after the Effective Time until surrendered as contemplated by this Section 2.02, each Certificate or Book-Entry Share shall be deemed to represent only the right to receive upon such surrender the Merger Consideration payable in respect of the shares of Company Common Stock represented by such Certificate or Book-Entry Share as contemplated by Section 2.01(a)(ii). No interest will be paid or accrued for the benefit of holders of Certificates or Book-Entry Shares on the Merger Consideration payable in respect of the shares of Company Common Stock represented by Certificates or Book-Entry Shares.

(c) No Further Ownership Rights in Company Common Stock.

(i) At the Effective Time, each holder of a Certificate, and each holder of Book-Entry Shares, will cease to have any rights with respect to such shares of Company Common Stock, except, to the extent provided by Section 2.01, for the right to receive the Merger Consid-

eration payable in respect of the shares of Company Common Stock formerly represented by such Certificate or Book-Entry Shares upon surrender of such Certificate or Book-Entry Share in accordance with Section 2.02(b);

(ii) The Merger Consideration paid upon the surrender or exchange of Certificates or Book-Entry Shares in accordance with this Section 2.02 will be deemed to have been paid in full satisfaction of all rights pertaining to the shares of Company Common Stock formerly represented by such Certificates or Book-Entry Shares.

(d) Termination of Payment Fund. The Paying Agent will deliver to the Surviving Corporation, upon the Surviving Corporation's demand, any portion of the Payment Fund (including any interest and other income received by the Paying Agent in respect of all such funds) which remains undistributed to the former holders of Certificates or Book-Entry Shares upon expiration of the period ending one (1) year after the Effective Time. Thereafter, any former holder of Certificates or Book-Entry Shares prior to the Merger who has not complied with this Section 2.02 prior to such time, may look only to the Surviving Corporation for payment of his, her or its claim for Merger Consideration to which such holder may be entitled.

(e) Investment of Payment Fund. The Paying Agent shall invest any cash in the Payment Fund if and as directed by Parent; provided that such investment shall be in obligations of, or guaranteed by, the United States of America, in commercial paper obligations of issuers organized under the Law of a state of the United States of America, rated A-1 or P-1 or better by Moody's Investors Service, Inc. or Standard & Poor's Ratings Service, respectively, or in certificates of deposit, bank repurchase agreements or bankers' acceptances of commercial banks with capital exceeding $10,000,000,000, or in mutual funds investing in such assets. Any interest and other income resulting from such investments shall be paid to, and be the property of, Parent. No investment losses resulting from investment of the Payment Fund shall diminish the rights of any of the Company's shareholders to receive the Merger Consideration or any other payment as provided herein. To the extent there are losses with respect to such investments or the Payment Fund diminishes for any other reason below the level required to make prompt cash payment of the aggregate funds required to be paid pursuant to the terms hereof, Parent shall reasonably promptly replace or restore the cash in the Payment Fund so as to ensure that the Payment Fund is at all times maintained at a level sufficient to make such cash payments.

(f) No Liability. None of the Company, Parent, Merger Sub, the Surviving Corporation or the Paying Agent shall be liable to any Person in respect of any portion of the Payment Fund delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law.

(g) Withholding Taxes. Each of Parent, the Surviving Corporation and the Paying Agent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any holder of Certificates, Book-Entry Shares, Time-Vested Restricted Stock Awards or Performance-Based Restricted Stock Awards such amounts as may be required to be deducted and withheld with respect to the making of such payment under applicable Tax Law. Amounts so withheld and paid over to the appropriate taxing authority shall be treated for all purposes under this Agreement as having been paid to the holder of Certificates, Book-Entry Shares, Time-Vested Restricted Stock Awards or Performance-Based Restricted Stock Awards, as applicable, in respect of which such deduction or withholding was made.

(h) Lost, Stolen or Destroyed Certificates. If any Certificate formerly representing shares of Company Common Stock has been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by Parent, the posting by such Person of a bond, in such reasonable and customary amount as Parent may direct, as

indemnity against any claim that may be made against it with respect to such Certificate, the Paying Agent shall deliver and pay, in exchange for such lost, stolen or destroyed certificate, the Merger Consideration payable in respect thereof pursuant to this Agreement.

(i) Appraisal Rights. No Person who has perfected a demand for appraisal rights pursuant to Section 17-6712 of the GCC shall be entitled to receive the Merger Consideration with respect to the shares of Company Common Stock owned by such Person unless and until such Person shall have effectively withdrawn or lost such Person's right to appraisal under the GCC. Each Dissenting Stockholder shall be entitled to receive only the payment provided by Section 17-6712 of the GCC with respect to shares of Company Common Stock owned by such Dissenting Stockholder. The Company shall give Parent (i) prompt notice of any demands for appraisal, threatened demands for appraisal, attempted withdrawals of such demands, and any other instruments that are received by the Company relating to stockholders' rights of appraisal (any of the foregoing, a "**Demand**") and (ii) the opportunity to participate in and control all negotiations and proceedings with respect to any Demand. The Company shall not, except with the prior written consent of Parent, voluntarily make any payment with respect to any Demand, offer to settle or settle any such Demand.

SECTION 2.03 Equity Awards.

(a) Each Time-Vested Restricted Stock Award that is outstanding immediately prior to the Effective Time shall be cancelled and converted, as of the Effective Time, into the right to receive a lump-sum cash payment equal to the product of (i) the Merger Consideration, without interest, multiplied by (ii) the product of (1) the total number of shares of Company Common Stock underlying such Time-Vested Restricted Stock Award, multiplied by (2) the ratio equal to (x) the number of months through the Closing Date (rounding a fraction of a month to the next higher number of whole months) in the restricted period under such Time-Vested Restricted Stock Award, divided by (y) the total number of months in the restricted period under such Time-Vested Restricted Stock Award (the "**Time-Vested Restricted Stock Consideration**"). All payments of Time-Vested Restricted Stock Consideration shall be made by the Surviving Corporation, less applicable Tax withholdings, as promptly as practicable following the Effective Time (and in all events no later than the later of (A) five (5) Business Days following the Closing Date and (B) the last day of the Surviving Corporation's first regular payroll cycle following the Closing Date).

(b) Each Performance-Based Restricted Stock Award that is outstanding immediately prior to the Effective Time shall be cancelled and converted, as of the Effective Time, into the right to receive a lump-sum cash payment equal to the product of (i) the Merger Consideration, without interest, multiplied by (ii) the total number of shares of Company Common Stock that would be earned for performance at target over the performance period under such Performance-Based Restricted Stock Award (the "**Performance-Based Restricted Stock Consideration**"). All payments of Performance-Based Restricted Stock Consideration shall be made by the Surviving Corporation, less applicable Tax withholdings, as promptly as practicable following the Effective Time (and in all events no later than the later of (i) five (5) Business Days following the Closing Date and (ii) the last day of the Surviving Corporation's first regular payroll cycle following the Closing).

(c) Each Director Stock Unit that is outstanding immediately prior to the Effective Time shall be cancelled and converted, as of the Effective Time, into the right to receive an amount in cash equal to the Merger Consideration, payment of which amount shall be made by the Surviving Corporation at the time elected or provided pursuant to the terms and conditions of such Director Stock Unit, together with interest on the amount of such payment at the "U.S. Prime Rate" as quoted by the Wall Street Journal in effect at the Effective Time for the period, if any, from the Effective Time until the date of payment of such amount.

(d) Immediately prior to the Effective Time, the Employee Stock Purchase Plan and the right of any employee to continue participation in the Employee Stock Purchase Plan and any purchase period under the Employee Stock Purchase Plan then in effect shall terminate. Payment of all remaining, unused amounts credited to each participant's account under the Employee Stock Purchase Plan, together with interest as provided in the Employee Stock Purchase Plan, shall be made by the Surviving Corporation to the applicable participant as promptly as practicable following the Effective Time.

(e) Prior to the Effective Time, the Company Board or the appropriate committee thereof shall adopt resolutions providing for, and shall take any other actions that are necessary to effect, the treatment of the Time-Vested Restricted Stock Awards, the Performance-Based Restricted Stock Awards, the Director Share Units and the Employee Stock Purchase Plan as contemplated by this Section 2.03, including but not limited to obtaining participant consents (if necessary) with respect to outstanding Time-Vested Restricted Stock Awards, Performance-Based Restricted Stock Awards, and Director Share Units; provided, however, that notwithstanding any other provision hereof, in the event any participant consent is required but not obtained prior to the Effective Time with respect any outstanding award, such award shall be paid in cash in accordance with the applicable Company Benefit Plan.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except (a) as set forth in the Company Reports publicly available and filed with or furnished to the SEC prior to the date of this Agreement (excluding any statements that are predictive, cautionary or forward-looking in nature) or (b) subject to Section 9.04(j), as set forth in the corresponding section of the disclosure letter delivered by the Company to Parent concurrently with the execution and delivery by the Company of this Agreement (the "**Company Disclosure Letter**"), the Company represents and warrants to Parent and Merger Sub as follows:

SECTION 3.01 Organization, Standing and Power. Each of the Company and the Company's Subsidiaries (the "**Company Subsidiaries**") is duly organized, validly existing and in active status or good standing, as applicable, under the laws of the jurisdiction in which it is organized (in the case of active status or good standing, to the extent such jurisdiction recognizes such concept), except, in the case of the Company Subsidiaries, where the failure to be so organized, existing or in active status or good standing, as applicable, has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Each of the Company and the Company Subsidiaries has all requisite entity power and authority to enable it to own, operate, lease or otherwise hold its properties and assets and to conduct its businesses as presently conducted, except where the failure to have such power or authority would not have or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Each of the Company and the Company Subsidiaries is duly qualified or licensed to do business in each jurisdiction where the nature of its business or the ownership, operation or leasing of its properties make such qualification necessary, except in any such jurisdiction where the failure to be so qualified or licensed would not have or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. The Company has made available to Parent true and complete copies of the restated articles of incorporation of the Company in effect as of the date of this Agreement (the "**Company Articles**") and the bylaws of the Company in effect as of the date of this Agreement (the "**Company Bylaws**").

SECTION 3.02 Company Subsidiaries. All the outstanding shares of capital stock or voting securities of, or other equity interests in, each Company Subsidiary have been validly issued and are fully paid and nonassessable and are owned by the Company, by another Company Subsidiary or by the Company and another Company Subsidiary, free and clear of (a) all pledges, liens, charges, mortgag-

es, encumbrances and security interests of any kind or nature whatsoever (collectively, "**Liens**") and (b) any other restriction (including any restriction on the right to vote, sell or otherwise dispose of such capital stock, voting securities or other equity interests), except, in the case of the foregoing clauses (a) and (b), as imposed by this Agreement, the Organizational Documents of the Company Subsidiaries or applicable securities Laws. Section 3.02 of the Company Disclosure Letter sets forth, as of the date of this Agreement, a true and complete list of the Company Subsidiaries. The Company has made available to Parent true and complete copies of the articles of incorporation and bylaws (or equivalent Organizational Documents) of each Company Subsidiary in effect as of the date of this Agreement. Neither the Company nor any Company Subsidiary owns any shares of capital stock or voting securities of, or other equity interests in, any Person other than the Company Subsidiaries.

SECTION 3.03 Capital Structure.

(a) The authorized capital stock of the Company consists of (i) 100,000,000 shares of Company Common Stock, (ii) 2,500,000 shares of preference stock, including 500,000 shares of Series A Participating Preference Stock ("**Preference Stock**") and (iii) 5,000,000 shares of $10.00 par value cumulative preferred stock ("**Preferred Stock**"). At the close of business on February 8, 2016, (x) 43,763,120 shares of Company Common Stock were issued and outstanding, (y) no shares of Company Common Stock were held by the Company in its treasury and (z) no shares of Preference Stock or Preferred Stock were issued and outstanding. At the close of business on February 8, 2016, an aggregate of 1,082,414 shares of Company Common Stock were reserved and available for issuance pursuant to the Company Benefit Plans. At the close of business on February 8, 2016, an aggregate of 125,284 shares of Company Common Stock were issuable on the vesting of outstanding Time-Vested Restricted Stock Awards and Performance-Based Restricted Stock Awards (assuming full satisfaction of the applicable service conditions and maximum attainment of the applicable performance goals).

(b) All outstanding shares of Company Common Stock are validly issued, fully paid and nonassessable and not subject to, or issued in violation of, any preemptive right. Except as set forth in this Section 3.03 or Section 3.03(b) of the Company Disclosure Letter or pursuant to the terms of this Agreement, there are not issued, reserved for issuance or outstanding, and there are not any outstanding obligations of the Company or any Company Subsidiary to issue, deliver or sell, or cause to be issued, delivered or sold, (i) any capital stock of the Company or any Company Subsidiary or any securities of the Company or any Company Subsidiary convertible into or exchangeable or exercisable for shares of capital stock or voting securities of, or other equity interests in, the Company or any Company Subsidiary or (ii) any warrants, calls, options or other rights to acquire from the Company or any Company Subsidiary, or any other obligation of the Company or any Company Subsidiary to issue, deliver or sell, or cause to be issued, delivered or sold, any capital stock or voting securities of, or other equity interests in, the Company or any Company Subsidiary (the foregoing clauses (i) and (ii), collectively, "**Equity Securities**"). Except pursuant to the Company Benefit Plans, there are not any outstanding obligations of the Company or any Company Subsidiary to repurchase, redeem or otherwise acquire any Equity Securities. There is no outstanding Indebtedness of the Company having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which shareholders of the Company may vote ("**Company Voting Debt**"). No Company Subsidiary owns any shares of Company Common Stock.

SECTION 3.04 Authority; Execution and Delivery; Enforceability. The Company has all requisite corporate power and authority to execute and deliver this Agreement, to perform its covenants and agreements hereunder and to consummate the Merger, subject, in the case of the Merger, to the receipt of the Company Shareholder Approval. The Company Board has adopted resolutions, at a meeting duly called at which a quorum of directors of the Company was present, (a) determining that it is in the best interests of the Company and its shareholders, and declaring it advisable, for the Company to en-

ter into this Agreement, (b) adopting this Agreement and approving the Company's execution, delivery and performance of this Agreement and the consummation of the transactions contemplated thereby and (c) resolving to recommend that the Company's shareholders approve this Agreement (the "**Company Board Recommendation**") and directing that this Agreement be submitted to the Company's shareholders for approval at a duly held meeting of such shareholders for such purpose (the "**Company Shareholders Meeting**"). Such resolutions have not been amended or withdrawn as of the date of this Agreement. Except for (i) the approval of this Agreement by the affirmative vote of the holders of a majority of all of the outstanding shares of Company Common Stock entitled to vote at the Company Shareholders Meeting (the "**Company Shareholder Approval**") and (ii) the filing of the Certificate of Merger as required by the GCC, no other vote or corporate proceedings on the part of the Company or its shareholders are necessary to authorize, adopt or approve this Agreement or to consummate the Merger. The Company has duly executed and delivered this Agreement and, assuming the due authorization, execution and delivery by Parent and Merger Sub, this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject in all respects to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other Laws relating to or affecting creditors' rights generally and general equitable principles (whether considered in a proceeding in equity or at law) (the "**Bankruptcy and Equity Exceptions**").

SECTION 3.05 No Conflicts; Consents.

(a) The execution and delivery by the Company of this Agreement does not, and the performance by the Company of its covenants and agreements hereunder and the consummation of the Merger will not, (i) subject to obtaining the Company Shareholder Approval, conflict with, or result in any violation of any provision of, the Company Articles, the Company Bylaws or the Organizational Documents of any Company Subsidiary, (ii) subject to obtaining the Consents set forth in Section 3.05(a)(ii) of the Company Disclosure Letter (the "**Company Required Consents**"), conflict with, result in any violation of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any material obligation or to the loss of a material benefit under any Filed Company Contract or any material Permit applicable to the business of the Company and the Company Subsidiaries or (iii) subject to obtaining the Company Shareholder Approval and the Consents referred to in Section 3.05(b) and making the Filings referred to in Section 3.05(b), conflict with, or result in any violation of any provision of, any Judgment or Law, in each case, applicable to the Company or any Company Subsidiary or their respective properties or assets, except for, in the case of the foregoing clauses (ii) and (iii), any matter that would not have or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect and would not prevent or materially impede, interfere with or delay the consummation of the Merger.

(b) No consent, waiver or Permit ("**Consent**") of or from, or registration, declaration, notice or filing ("**Filing**") made to or with, any Governmental Entity is required to be obtained or made by the Company or any Company Subsidiary in connection with the Company's execution and delivery of this Agreement or its performance of its covenants and agreements hereunder or the consummation of the Merger, except for the following:

(i) (1) the filing with the Securities and Exchange Commission (the "**SEC**"), in preliminary and definitive form, of the Proxy Statement and (2) the filing with the SEC of such reports under, and such other compliance with, the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), or the Securities Act of 1933, as amended (the "**Securities Act**"), and rules and regulations of the SEC promulgated thereunder, as may be required in connection with this Agreement or the Merger;

(ii) compliance with, Filings under and the expiration of any applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder (the "**HSR Act**");

(iii) the filing of the Certificate of Merger with the Office of the Secretary of State of the State of Kansas and appropriate documents with the relevant authorities of the other jurisdictions in which Parent and the Company are qualified to do business;

(iv) (1) Filings with, and the Consent of, the Federal Energy Regulatory Commission (the "**FERC**") under Section 203 of the Federal Power Act (the "**FPA**"); (2) the CFIUS Approval, and Filings with respect thereto, (3) the Filings with, and the Consent of, the State Commissions, (4) pre-approvals of license transfers with the Federal Communications Commission (the "**FCC**") and (5) and the other Filings and Consents set forth in Section 3.05(b)(iv) of the Company Disclosure Letter (the Consents and Filings set forth in Section 3.05(b)(ii) and this Section 3.05(b)(iv), collectively, the "**Company Required Statutory Approvals**");

(v) the Company Required Consents;

(vi) Filings and Consents as are required to be made or obtained under state or federal property transfer Laws or Environmental Laws; and

(vii) such other Filings or Consents the failure of which to make or obtain would not have or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect and would not prevent or materially impede, interfere with or delay the consummation of the Merger.

SECTION 3.06 Company Reports; Financial Statements.

(a) The Company has furnished or filed all reports, schedules, forms, statements and other documents (including exhibits and other information incorporated therein) required to be furnished or filed by the Company with the SEC since January 1, 2015 (such documents, together will all exhibits, financial statements, including the Company Financial Statements, and schedules thereto and all information incorporated therein by reference, but excluding the Proxy Statement, being collectively referred to as the "**Company Reports**"). Each Company Report (i) at the time furnished or filed, complied in all material respects with the applicable requirements of the Exchange Act, the Securities Act or the Sarbanes-Oxley Act of 2002 (including the rules and regulations promulgated thereunder), as the case may be, and the rules and regulations of the SEC promulgated thereunder applicable to such Company Report and (ii) did not at the time it was filed (or if amended or superseded by a filing or amendment prior to the date of this Agreement, then at the time of such filing or amendment) contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. Each of the consolidated financial statements of the Company included in the Company Reports (the "**Company Financial Statements**") complied at the time it was filed as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, was prepared in accordance with United States generally accepted accounting principles ("**GAAP**") (except, in the case of unaudited quarterly financial statements, as permitted by Form 10-Q of the SEC) applied on a consistent basis during the periods and as of the dates involved (except as may be indicated in the notes thereto) and fairly present in all material respects, in accordance with GAAP, the consolidated financial position of the Company and the Company's consolidated Subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods shown (subject, in the case of unaudited quarterly financial statements, to normal year-end audit adjustments).

(b) Neither the Company nor any Company Subsidiary has any liability of any nature that is required by GAAP to be set forth on a consolidated balance sheet of the Company and the Company Subsidiaries, except liabilities (i) reflected or reserved against in the most recent balance sheet (including the notes thereto) of the Company and the Company Subsidiaries included in the Company Reports filed prior to the date hereof, (ii) incurred in the ordinary course of business after September 30, 2015 (the "**Balance Sheet Date**"), (iii) incurred in connection with the Merger or any other transaction or agreement contemplated by this Agreement or (iv) that have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(c) The Company maintains a system of "internal control over financial reporting" (as defined in Rule 13a-15 or 15d-15, as applicable, under the Exchange Act). Such internal control over financial reporting is effective in providing reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP in all material respects. Except as has not had, and would not be reasonably likely to have, individually or in the aggregate, a Company Material Adverse Effect, (i) the Company maintains "disclosure controls and procedures" required by Rule 13a-15 or 15d-15 under the Exchange Act that are effective to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported on a timely basis to the individuals responsible for the preparation of the Company's filings with the SEC and other public disclosure documents and (ii) the Company has disclosed, based on its most recent evaluation prior to the date of this Agreement, to the Company's outside auditors and the audit committee of the Company Board (1) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) that are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information and (2) any fraud, known to the Company, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls over financial reporting.

SECTION 3.07 Absence of Certain Changes or Events. From the Balance Sheet Date to the date of this Agreement, each of the Company and the Company Subsidiaries has conducted its respective business in the ordinary course of business in all material respects, and during such period there has not occurred any fact, circumstance, effect, change, event or development that has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

SECTION 3.08 Taxes.

(a) Except as would not have or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect:

(i) (1) each of the Company and each Company Subsidiary has timely filed, taking into account any extensions, all Tax Returns required to have been filed and such Tax Returns are accurate and complete in all respects and (2) all Taxes due on such Tax Returns have been timely paid in full;

(ii) (1) neither the Company nor any Company Subsidiary has received written notice of any audit, examination, investigation or other proceeding from any taxing authority for any amount of unpaid Taxes asserted against the Company or any Company Subsidiary that have not been fully paid or settled and (2) with respect to any tax years open for audit as of the date hereof, neither the Company nor any Company Subsidiary has granted any waiver of any statute of limitations with respect to, or any extension of a period for the assessment of, any Tax;

(iii) neither the Company nor any Company Subsidiary had any liabilities for unpaid Taxes as of the date of the latest balance sheet included in the Company Financial Statements that had not been accrued or reserved on such balance sheet in accordance with GAAP and (2) neither the Company nor any Company Subsidiary has incurred any liability for Taxes since the date of the latest balance sheet included in the Company Financial Statements except in the ordinary course of business;

(iv) neither the Company nor any Company Subsidiary has any liability for Taxes of any Person (except for the Company or any Company Subsidiary) arising from the application of Treasury Regulation Section 1.1502-6 or any analogous provision of state, local or foreign Law, or as a transferee or successor, by contract or otherwise;

(v) neither the Company nor any Company Subsidiary is a party to or is otherwise bound by any Tax sharing, allocation or indemnification agreement or arrangement, except for such an agreement or arrangement (1) exclusively between or among the Company and Company Subsidiaries, or (2) with customers, vendors, lessors or other third parties entered into in the ordinary course of business and not primarily related to Taxes;

(vi) within the past three (3) years, neither the Company nor any Company Subsidiary has been a "distributing corporation" or a "controlled corporation" in a distribution intended to qualify for tax-free treatment under Section 355 of the Code;

(vii) neither the Company nor any Company Subsidiary has engaged in any "listed transaction" as defined in Treasury Regulations Section 1.6011-4(b)(2) or Treasury Regulations Section 301.6111-2(b) in any tax year for which the statute of limitations has not expired;

(viii) Neither the Company nor any Company Subsidiary will be required, for income Tax purposes for any taxable period ending after the Closing Date, to include in its taxable income any item of income or gain or to exclude from its taxable income any item of deduction or loss as a result of any (i) change in method of accounting under Section 48l(c) of the Code (or any corresponding or similar provision of state, local or foreign law) for a taxable period ending on or prior to the Closing Date, (ii) closing agreement under Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign law) executed on or prior to the Closing Date, (iii) installment sale or open transaction disposition occurring on or prior to the Closing Date or (iv) prepaid amount received on or prior to the Closing Date; and

(ix) No written claim has been received in the last three years by the Company or any Company Subsidiary from a taxing authority in a jurisdiction where the Company or Company Subsidiary does not file Tax Returns that the Company or Company Subsidiary is or may be subject to taxation by that jurisdiction or should have been included in a combined, consolidated, affiliated, unitary or other group Tax Return of that jurisdiction.

(b) Except to the extent Section 3.09 relates to Taxes, the representations and warranties contained in this Section 3.08 are the sole and exclusive representations and warranties of the Company relating to Taxes, and no other representation or warranty of the Company contained herein shall be construed to relate to Taxes.

SECTION 3.09 Employee Benefits.

(a) Section 3.09(a) of the Company Disclosure Letter sets forth a complete and accurate list, as of the date of this Agreement, of each material Company Benefit Plan and each material Company Benefit Agreement.

(b) With respect to each material Company Benefit Plan and material Company Benefit Agreement, the Company has made available to Parent, to the extent applicable, complete and accurate copies of (i) the plan document (or, if such arrangement is not in writing, a written description of the material terms thereof), including any amendment thereto and any summary plan description thereof, (ii) each trust, insurance, annuity or other funding Contract related thereto, (iii) the most recent audited financial statement and actuarial or other valuation report prepared with respect thereto, (iv) the most recent annual report on Form 5500 required to be filed with the Internal Revenue Service (the "**IRS**") with respect thereto and (v) the most recently received IRS determination letter or opinion. No Company Benefit Plan or Company Benefit Agreement is maintained outside the jurisdiction of the United States, or covers any Company Personnel residing or working outside of the United States.

(c) Except as, individually or in the aggregate, has not had and would not reasonably be expected to have a Company Material Adverse Effect, (i) each Company Benefit Plan and each Company Benefit Agreement has been maintained in compliance with its terms and with the requirements prescribed by ERISA, the Code and all other applicable Laws, (ii) there are no pending or, to the Knowledge of the Company, threatened proceedings against any Company Benefit Plan or Company Benefit Agreement or any fiduciary thereof, or the Company or any Company Subsidiary with respect to any Company Benefit Plan or Company Benefit Agreement and (iii) all contributions, reimbursements, premium payments and other payments required to be made by the Company or any Company Commonly Controlled Entity to any Company Benefit Plan have been made on or before their applicable due dates. Except as, individually or in the aggregate, has not had and would not reasonably be expected to have a Company Material Adverse Effect, neither the Company nor any Company Commonly Controlled Entity has engaged in, and to the Knowledge of the Company, there has not been, any non-exempt transaction prohibited by ERISA or by Section 4975 of the Code with respect to any Company Benefit Plan or Company Benefit Agreement or their related trusts that would reasonably be expected to result in a liability of the Company or a Company Commonly Controlled Entity. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, no Company Benefit Plan or Company Benefit Agreement is under audit or is the subject of an administrative proceeding by the IRS, the Department of Labor, or any other Governmental Entity, nor has the Company received written notice of the commencement of any such audit or other administrative proceeding.

(d) Section 3.09(d) of the Company Disclosure Letter sets forth each Company Benefit Plan and Company Benefit Agreement that is subject to Section 302 or Title IV of ERISA or Section 412, 430 or 4971 of the Code. No Company Benefit Plan or Company Benefit Agreement is a multiemployer plan, as defined in Section 3(37) of ERISA, or a plan that has two or more contributing sponsors at least two of whom are not under common control, within the meaning of Section 4063 of ERISA, and neither the Company nor any Company Commonly Controlled Entity has contributed to or been obligated to contribute to any such plan within the six years preceding this Agreement. Except for matters that have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, neither the Company nor any Company Commonly Controlled Entity has incurred any Controlled Group Liability (as defined below) that has not been satisfied in full nor do any circumstances exist that could reasonably be expected to give rise to any Controlled Group Liability (except for the payment of premiums to the Pension Benefit Guaranty Corporation). For the purposes of this Agreement, "**Controlled Group Liability**" means any and all liabilities (i) under Title IV of ERISA, (ii) under Section 302 of ERISA, (iii) under Sections 412, 430 and 4971 of the Code or (iv) as a result of

a failure to comply with the continuation coverage requirements of Section 601 et seq. of ERISA and Section 4980B of the Code.

(e) Each Company Benefit Plan that is intended to be qualified under Section 401(a) of the Code is so qualified and such plan has received a currently effective favorable determination letter or opinion to that effect from the IRS and, to the Knowledge of the Company, there is no reason why any such determination letter should be revoked or not be reissued.

(f) Except for any liabilities that have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, neither the Company nor any Company Subsidiary has any liability for providing health, medical or other welfare benefits after retirement or other termination of employment, except for coverage or benefits required to be provided under Section 4980(B)(f) of the Code or applicable Law.

(g) Except as expressly provided in this Agreement or as set forth in Section 3.09(g) of the Company Disclosure Letter, none of the execution and delivery of this Agreement, the performance by either party of its covenants and agreements hereunder or the consummation of the Merger (alone or in conjunction with any other event, including any termination of employment on or following the Effective Time) will (i) entitle any Company Personnel to any material compensation or benefit, (ii) accelerate the time of payment or vesting, or trigger any payment or funding, of any material compensation or benefit or trigger any other material obligation under any Company Benefit Plan or Company Benefit Agreement or (iii) result in any payment that could, individually or in combination with any other such payment, not be deductible under Section 280G of the Code.

(h) The representations and warranties contained in this Section 3.09 are the sole and exclusive representations and warranties of the Company relating to Company Benefit Plans or Company Benefit Agreements (including their compliance with any applicable Law) or ERISA, and no other representation or warranty of the Company contained herein shall be construed to relate to Company Benefit Plans or Company Benefit Agreements (including their compliance with any applicable Law) or ERISA.

SECTION 3.10 Labor and Employment Matters. Except as set forth in Section 3.10 of the Company Disclosure Letter, neither the Company nor any Company Subsidiary is party to any collective bargaining agreement or similar labor union Contract with respect to any of their respective employees (the Contracts set forth in Section 3.10 of the Company Disclosure Letter, the "**Company Union Contracts**"). To the Knowledge of the Company, no employees of the Company or any Company Subsidiary are represented by any other labor union with respect to their employment for the Company or any Company Subsidiary. To the Knowledge of the Company, except as would not have or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (a) there are no labor union representation or certification proceedings with respect to employees of the Company or any Company Subsidiary pending or threatened in writing to be brought or filed with the National Labor Relations Board, and (b) there are no labor union organizing activities, with respect to employees of the Company or any Company Subsidiary. From the Balance Sheet Date until the date of this Agreement, except as would not have or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, there have been no labor union strikes, slowdowns, work stoppages or lockouts or other material labor disputes pending or threatened in writing against or affecting the Company or any Company Subsidiary.

SECTION 3.11 Litigation. There is no Claim before any Governmental Entity pending or, to the Knowledge of the Company, threatened against the Company or any Company Subsidiary that has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. There is no Judgment outstanding against or, to the Knowledge of the Company, in-

vestigation by any Governmental Entity of the Company or any Company Subsidiary or any of their respective properties or assets that has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. This Section 3.11 does not relate to Taxes; Company Benefit Plans or Company Benefit Agreements (including their compliance with any applicable Law) or ERISA; or environmental matters; or Intellectual Property, which are addressed in Sections 3.08, 3.09, 3.14 and 3.17, respectively.

SECTION 3.12 Compliance with Applicable Laws. Except as would not have or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the Company and the Company Subsidiaries are in compliance with all applicable Laws and all Permits applicable to the business and operations of the Company and the Company Subsidiaries. This Section 3.12 does not relate to Taxes; Company Benefit Plans or Company Benefit Agreements (including their compliance with any applicable Law) or ERISA; or environmental matters; or Intellectual Property, which are addressed in Sections 3.08, 3.09, 3.14 and 3.17, respectively.

SECTION 3.13 Takeover Statutes. Assuming that the representations and warranties of Parent and Merger Sub contained in Section 4.09 are true and correct, the Merger is not subject to any "fair price," "moratorium," "control-share acquisition," "affiliated transaction" or any other antitakeover statute or regulation (each, a "**Takeover Statute**") or any antitakeover provision in the Company Articles or Company Bylaws.

SECTION 3.14 Environmental Matters.

(a) Except for matters that have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect:

(i) the Company and the Company Subsidiaries are in compliance with all Environmental Laws;

(ii) with respect to Permits under Environmental Law that are necessary to conduct the respective operations of the Company or the Company Subsidiaries as currently conducted ("**Environmental Permits**"), (1) the Company and each of the Company Subsidiaries have obtained and are in compliance with, or have filed timely applications for, all such Environmental Permits, (2) all such Environmental Permits are valid and in good standing and (3) neither the Company nor any Company Subsidiary has received written notice from any Governmental Entity seeking to modify, revoke or terminate, any such Environmental Permits;

(iii) there are no Environmental Claims pending or, to the Knowledge of the Company, threatened in writing against the Company or any Company Subsidiary; and

(iv) to the Knowledge of the Company, there are and have been no Releases of Hazardous Materials at any property currently owned, leased or operated by the Company or any Company Subsidiary that would reasonably be expected to form the basis of any Environmental Claim against the Company or any Company Subsidiary.

(b) The representations and warranties contained in this Section 3.14 are the sole and exclusive representations and warranties of the Company relating to Environmental Permits, Environmental Laws, Environmental Claims, Releases, Hazardous Materials or other environmental matters.

SECTION 3.15 Contracts.

(a) Except for this Agreement, Company Benefit Plans and Company Benefit Agreements, as of the date of this Agreement, neither the Company nor any Company Subsidiary is a party to any Contract required to be filed by the Company as a "material contract" pursuant to Item 601(b)(10) of Regulation S-K under the Securities Act (a "**Filed Company Contract**") that has not been so filed.

(b) Except as would not have or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) each Filed Company Contract is a valid, binding and legally enforceable obligation of the Company or one of the Company Subsidiaries, as the case may be, and, to the Knowledge of the Company, of the other parties thereto, subject in all respects to the Bankruptcy and Equity Exceptions, (ii) to the Knowledge of the Company, each such Filed Company Contract is in full force and effect and (iii) as of the date hereof, none of the Company or any Company Subsidiary is (with or without notice or lapse of time, or both) in breach or default under any such Filed Company Contract and, to the Knowledge of the Company, no other party to any such Filed Company Contract is (with or without notice or lapse of time, or both) in breach or default thereunder.

SECTION 3.16 Real Property. Except as would not have or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, each of the Company and the Company Subsidiaries has either good title, in fee or valid leasehold, easement or other rights, to the land, buildings, wires, pipes, structures and other improvements thereon and fixtures thereto necessary to permit it to conduct its business as currently conducted. This Section 3.16 does not relate to environmental matters; or Intellectual Property, which are addressed in Section 3.14 and Section 3.17, respectively.

SECTION 3.17 Intellectual Property.

(a) Except as would not have or would not be reasonably expected to have, individually or in the aggregate, a Company Material Adverse Effect, to the Knowledge of the Company, (i) the Company and the Company Subsidiaries have the right to use all material Intellectual Property used in their business as presently conducted, and (ii) no person is violating any material Intellectual Property owned by the Company and the Company Subsidiaries.

(b) The representations and warranties contained in this Section 3.17 are the sole and exclusive representations and warranties of the Company relating to Intellectual Property, and no other representation or warranty of the Company contained herein shall be construed to relate to Intellectual Property.

SECTION 3.18 Insurance. As of the date hereof, except as would not have or would not be reasonably likely to have, individually or in the aggregate, a Company Material Adverse Effect, all material fire and casualty, general liability, director and officer, and business interruption insurance policies maintained by the Company or any of its Subsidiaries ("**Insurance Policies**") are in full force and effect and all premiums due with respect to all Insurance Policies have been paid.

SECTION 3.19 Regulatory Status.

(a) Except as set forth in Section 3.19(a)(i) of the Company Disclosure Letter, none of the Company Subsidiaries is regulated as a public utility under the FPA. Except for the Company Subsidiaries set forth in Section 3.19(a)(ii) of the Company Disclosure Letter (the "**Utility Subsidiaries**"),

none of the Company Subsidiaries are regulated as a public utility or gas utility under the applicable Law of any state.

(b) All filings (except for immaterial filings) required to be made by the Company or any Company Subsidiary since January 1, 2015, with the FERC, the FCC and the State Commissions, as the case may be, have been made, including all forms, statements, reports, agreements and all documents, exhibits, amendments and supplements appertaining thereto, including all rates, tariffs and related documents, and all such filings complied, as of their respective dates, with all applicable requirements of applicable statutes and the rules and regulations promulgated thereunder, except for filings the failure of which to make or the failure of which to make in compliance with all applicable requirements of applicable statutes and the rules and regulations promulgated thereunder, would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

SECTION 3.20 Brokers' Fees and Expenses. Except for the Person set forth in Section 3.20 of the Company Disclosure Letter (such Person, the "**Company Financial Advisor**"), the fees and expenses of which will be paid by the Company, no broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the Merger based upon arrangements made by or on behalf of the Company.

SECTION 3.21 Opinion of Financial Advisor. The Company Board has received an opinion of the Company Financial Advisor to the effect that, as of the date of such opinion and based upon and subject to the various matters, limitations, qualifications and assumptions set forth therein, the Merger Consideration to be paid to the holders of shares of Company Common Stock pursuant to this Agreement is fair from a financial point of view to such holders.

SECTION 3.22 No Additional Representations. Except for the representations and warranties expressly set forth in Article IV (as modified by the Parent Disclosure Letter), the Company specifically acknowledges and agrees that neither Parent nor any of its Affiliates, Representatives or shareholders or any other Person makes, or has made, any other express or implied representation or warranty whatsoever (whether at law (including at common law or by statute) or in equity). Except for the representations and warranties expressly set forth in this Article III (as modified by the Company Disclosure Letter), the Company hereby expressly disclaims and negates (a) any other express or implied representation or warranty whatsoever (whether at law (including at common law or by statute) or in equity), including with respect to (i) the Company or the Company Subsidiaries or any of the Company's or the Company's Subsidiaries respective businesses, assets, employees, Permits, liabilities, operations, prospects or condition (financial or otherwise) or (ii) any opinion, projection, forecast, statement, budget, estimate, advice or other information (including information with respect to filings with and consents of any Governmental Entity (including the FERC, the FCC and the State Commissions) or information with respect to the future revenues, results or operations (or any component thereof), cash flows, financial condition (or any component thereof) or the future business and operations of the Company or the Company Subsidiaries, as well as any other business plan and cost-related plan information of the Company or the Company Subsidiaries), made, communicated or furnished (orally or in writing), or to be made, communicated or furnished (orally or in writing), to Parent, its Affiliates or its Representatives, in each case, whether made by the Company or any of its Affiliates, Representatives or shareholders or any other Person (this clause (ii), collectively, "**Company Projections**") and (b) all liability and responsibility for any such other representation or warranty or any such Company Projection.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Except as set forth in the disclosure letter delivered by Parent to the Company concurrently with the execution and delivery by Parent and Merger Sub of this Agreement (the "**Parent Disclosure Letter**"), Parent and Merger Sub represent and warrant to the Company as follows:

SECTION 4.01 Organization, Standing and Power. Each of Parent and Merger Sub is duly organized, validly existing and in active status or good standing, as applicable, under the laws of the jurisdiction in which it is organized (in the case of active status or good standing, to the extent such jurisdiction recognizes such concept). Each of Parent and Merger Sub has all requisite entity power and authority to own, operate, lease or otherwise hold its properties and assets and to conduct its businesses as presently conducted, except where the failure to have such power or authority would not have or would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. Each of Parent and Merger Sub is duly qualified or licensed to do business in each jurisdiction where the nature of its business or the ownership, operation or leasing of its properties make such qualification necessary, except in any such jurisdiction where the failure to be so qualified or licensed would not have or would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

SECTION 4.02 Authority; Execution and Delivery; Enforceability. Each of Parent and Merger Sub has all requisite power and authority to execute and deliver this Agreement, to perform its covenants and agreements hereunder and to consummate the Merger. The board of directors of Parent has adopted resolutions (a) determining that it is in the best interests of Parent and its shareholders, and declaring it advisable, for Parent to enter into this Agreement and (b) adopting this Agreement and approving Parent's execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement. Such resolutions have not been amended or withdrawn as of the date of this Agreement. The board of directors of Merger Sub has adopted resolutions determining that it is in the best interests of Merger Sub and its shareholder, and declaring it advisable, for Merger Sub to enter into this Agreement, (ii) adopting this Agreement and approving Merger Sub's execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement and (iii) resolving to recommend that Parent, in its capacity as the sole shareholder of Merger Sub, approve this Agreement. Such resolutions have not been amended or withdrawn as of the date of this Agreement. No other corporate proceedings on the part of Parent or Merger Sub are necessary to authorize, adopt or approve, as applicable, this Agreement or to consummate the Merger. Parent and Merger Sub have duly executed and delivered this Agreement and, assuming the due authorization, execution and delivery by the Company, this Agreement constitutes the legal, valid and binding obligation of each of Parent and Merger Sub, enforceable against it in accordance with its terms, subject in all respects to the Bankruptcy and Equity Exceptions.

SECTION 4.03 No Conflicts; Consents.

(a) The execution and delivery of this Agreement by Parent and Merger Sub does not, and the performance by each of Parent and Merger Sub of its covenants and agreements and the consummation of the Merger will not, (i) conflict with, or result in any violation of any provision of, the Organizational Documents of Parent or Merger Sub, (ii) subject to obtaining the Consents set forth in Section 4.03(a)(ii) of the Parent Disclosure Letter (the "**Parent Required Consents**" and, together with the Company Required Consents, the "**Required Consents**"), conflict with, result in any violation of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any material obligation or to the loss of a material benefit under any material

Contract to which Parent or Merger Sub is a party or by which any of their respective properties or assets is bound or any material Permit applicable to the business of Parent and its Affiliates or (iii) subject to obtaining the Consents referred to in Section 4.03(b) and making the Filings referred to in Section 4.03(b), conflict with, or result in any violation of any provision of, any Judgment or Law, in each case, applicable to Parent or Merger Sub or their respective properties or assets, except for, in the case of the foregoing clauses (ii) and (iii), any matter that would not have or would not be reasonably expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(b) No Consent of or from, or Filing made to or with, any Governmental Entity, is required to be obtained or made by Parent or any Affiliate of Parent in connection with Parent's and Merger Sub's execution and delivery of this Agreement or their performance of their covenants and agreements hereunder or the consummation of the Merger, except for the following:

(i) compliance with, Filings under and the expiration of any applicable waiting period under the HSR Act;

(ii) (1) Filings with, and the Consent of, the FERC under Section 203 of the FPA, (2) the CFIUS Approval, and Filings with respect thereto, (3) the Filings with, and the Consent of, the State Commissions, (4) pre-approvals of license transfers with the FCC, and (5) and the other Filings and Consents set forth in Section 4.03(b)(ii) of the Parent Disclosure Letter (the Consents and Filings set forth in Section 4.03(b)(i) and this Section 4.03(b)(ii), collectively, the "**Parent Required Statutory Approvals**" and, together with the Company Required Statutory Approvals, the "**Required Statutory Approvals**");

(iii) the Parent Required Consents;

(iv) the filing of the Certificate of Merger with the Office of the Secretary of State of the State of Kansas and appropriate documents with the relevant authorities of the other jurisdictions in which Parent and the Company are qualified to do business;

(v) Filings and Consents as are required to be made or obtained under state or federal property transfer Laws or Environmental Laws; and

(vi) such other Filings and Consents the failure of which to make or obtain would not have or would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

SECTION 4.04 Litigation. There is no Claim before any Governmental Entity pending or, to the Knowledge of Parent, threatened against Parent, Merger Sub or any Affiliate of Parent that has had or would reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. There is no Judgment outstanding against or, to the Knowledge of Parent, investigation by any Governmental Entity of Parent, Merger Sub or any Affiliate of Parent or any of their respective properties or assets that has had or would reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

SECTION 4.05 Compliance with Applicable Laws. Except as would not have or would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, Parent and Merger Sub are in compliance with all applicable Laws and material Permits applicable to the business and operations of Parent and Parent's Affiliates.

SECTION 4.06 Financing. Parent has delivered to the Company true and complete fully executed copies of (a) the commitment letter, dated as of February 3, 2016, among Guarantor and Canadian Imperial Bank of Commerce, The Bank of Nova Scotia, JPMorgan Chase Bank, N.A., Wells Fargo Bank, National Association, and Wells Fargo Securities, LLC (the "**Commitment Letter**") and (b) the fee letter, among Guarantor and Canadian Imperial Bank of Commerce, The Bank of Nova Scotia, JPMorgan Chase Bank, N.A., Wells Fargo Bank, National Association, and Wells Fargo Securities, LLC, dated as of February 3, 2016 (as redacted to remove only the fee amounts, pricing caps, the rates and amounts included in the "market flex," the "**Redacted Fee Letter**"), in each case, including all exhibits, schedules, annexes and amendments to such letters in effect as of the date of this Agreement (collectively, the "**Debt Letters**"), pursuant to which and subject to the terms and conditions thereof, each of the parties thereto (other than Guarantor) have severally committed to lend the amounts set forth therein to Guarantor (the provision of such funds as set forth therein, the "**Financing**") for the purposes set forth in such Debt Letters. The Debt Letters have not been amended, restated or otherwise modified or waived prior to the execution and delivery of this Agreement, and the respective commitments contained in the Debt Letters have not been withdrawn, rescinded, amended, restated or otherwise modified in any respect prior to the execution and delivery of this Agreement. As of the execution and delivery of this Agreement, the Debt Letters are in full force and effect and constitute the legal, valid and binding obligation of each of Guarantor and the other parties thereto, subject in each case to the Bankruptcy and Equity Exceptions. There are no conditions precedent or contingencies directly or indirectly related to the funding of the Financing pursuant to the Debt Letters, other than as expressly set forth in the Debt Letters. At the Closing, Parent and Merger Sub will have sufficient funds to pay all of Parent's and Merger Sub's obligations under this Agreement, including the payment of the Merger Consideration and all fees and expenses expected to be incurred in connection therewith. As of the date of this Agreement, no event has occurred which, with or without notice, lapse of time or both, would constitute a breach or default on the part of Guarantor under the Debt Letters or any other party to the Debt Letters. As of the date of this Agreement, except for any agreements relating to any alternative equity capital markets financing (which agreements do not contain any terms that would adversely affect the conditionality, enforceability, termination, principal amount or availability of the Financing), there are no side letters or other agreements, Contracts, arrangements or understandings (written or oral) directly or indirectly related to the funding of the Financing other than as expressly set forth in the Debt Letters. Guarantor has fully paid all commitment fees or other fees required to be paid on or prior to the date of this Agreement in connection with the Financing. As of the date of this Agreement, Parent (1) is not aware of any fact, event or other occurrence that makes any of the representations or warranties of Guarantor in any of the Debt Letters inaccurate in any material respect and (2) has no reason to believe that any of the conditions to the Financing contemplated by the Debt Letters will not be satisfied on a timely basis or that the Financing contemplated by the Debt Letters will not be made available on the Closing Date.

SECTION 4.07 Brokers' Fees and Expenses. Except for any Person set forth in Section 4.07 of the Parent Disclosure Letter, the fees and expenses of which will be paid by Parent or its Affiliates, no broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the Merger based upon arrangements made by or on behalf of Parent or Merger Sub or any of their Affiliates.

SECTION 4.08 Merger Sub. The authorized capital stock of Merger Sub consists of 10,000 shares of common stock, par value $1.00 per share. All outstanding shares of capital stock of Merger Sub are duly authorized, validly issued, fully paid and nonassessable. Parent owns all of the outstanding shares of capital stock of Merger Sub. Guarantor owns, directly or indirectly, all of the outstanding shares of capital stock of Parent. Merger Sub has been incorporated solely for the purpose of merging with and into the Company and taking action incident to the Merger and this Agreement. Merger Sub has no assets, liabilities or obligations and has not, since the date of its formation, carried on any business or conducted any operations, except, in each case, as arising from the execution of this Agreement, the per-

formance of its covenants and agreements hereunder and matters ancillary thereto. Parent has approved this Agreement by written consent in its capacity as the sole shareholder of Merger Sub.

SECTION 4.09 Ownership of Company Common Stock; Related Person. Neither Parent, any Subsidiary of Parent nor any other Affiliate of Parent (i) "beneficially owns" (as such term is defined for purposes of Section 13(d) of the Exchange Act) any shares of Company Common Stock or any other Equity Securities or (ii) is a "related person" (as defined in Item 404 of Regulation S-K of the Securities Act) of the Company. Neither Parent, any Subsidiary of Parent nor any of their respective Affiliates are a Person referred to in GCC Section 17-6712.

SECTION 4.10 Regulatory Status. Guarantor is, and prior to the Effective Time Parent may become, a public utility holding company under the Public Utility Holding Company Act of 2005 ("**PUHCA 2005**"). Merger Sub is not a public utility holding company under PUHCA 2005.

SECTION 4.11 Guarantee. Concurrently with the execution of this Agreement, Parent has delivered to the Company a guaranty (the "**Guarantee**"), dated the date hereof, of the Guarantor, guaranteeing the obligations of Parent. The Guarantee is valid and in full force and effect and constitutes the valid and binding obligation of the Guarantor, enforceable in accordance with its terms.

SECTION 4.12 No Additional Representations. Except for the representations and warranties expressly set forth in Article III (as modified by the Company Disclosure Letter), each of Parent and Merger Sub (a) specifically acknowledges and agrees that neither the Company nor any of its Affiliates, Representatives or shareholders nor any other Person makes, or has made, any other express or implied representation or warranty whatsoever (whether at law (including at common law or by statute) or in equity), including with respect to the Company or the Company Subsidiaries or any of the Company's or the Company's Subsidiaries respective businesses, assets, employees, Permits, liabilities, operations, prospects, condition (financial or otherwise) or any Company Projection, and hereby expressly waives and relinquishes any and all rights, Claims or causes of action (whether in contract or in tort or otherwise, or whether at law (including at common law or by statute) or in equity) based on, arising out of or relating to any such other representation or warranty or any Company Projection, (b) specifically acknowledges and agrees to the Company's express disclaimer and negation of any such other representation or warranty or any Company Projection and of all liability and responsibility for any such other representation or warranty or any Company Projection and (c) expressly waives and relinquishes any and all rights, Claims and causes of action (whether in contract or in tort or otherwise, or whether at law (including at common law or by statute) or in equity) against (i) the Company in connection with accuracy, completeness or materiality of any Company Projection and (ii) any Affiliate of the Company or any of the Company's or any such Affiliate's respective Representatives or shareholders or any other Person, and hereby specifically acknowledges and agrees that such Persons shall have no liability or obligations, based on, arising out of or relating to this Agreement or the negotiation, execution, performance or subject matter hereof, including (1) for any alleged nondisclosure or misrepresentations made by any such Person or (2) in connection with accuracy, completeness or materiality of any Company Projection. Each of Parent and Merger Sub acknowledges and agrees that (A) it has conducted to its satisfaction its own independent investigation of the transactions contemplated hereby (including with respect to the Company and the Company Subsidiaries and their respective businesses, operations, assets and liabilities) and, in making its determination to enter into this Agreement and proceed with the transactions contemplated hereby, has relied solely on the results of such independent investigation and the representations and warranties of the Company expressly set forth in Article III (as modified by the Company Disclosure Letter), and (B) except for the representations and warranties of the Company expressly set forth in Article III (as modified by the Company Disclosure Letter), it has not relied on, or been induced by, any representation, warranty or other statement of or by the Company or any of its Affiliates, Representatives or shareholders or any other Person, including any Company Projection or with respect to the Company or the Company Subsidiaries or any of

the Company's or the Company's Subsidiaries respective businesses, assets, employees, Permits, liabilities, operations, prospects or condition (financial or otherwise) or any Company Projection, in determining to enter into this Agreement and proceed with the transactions contemplated hereby.

ARTICLE V

COVENANTS RELATING TO CONDUCT OF BUSINESS

SECTION 5.01 Conduct of Business.

(a) Conduct of Business by the Company. Except for matters set forth in Section 5.01 of the Company Disclosure Letter or otherwise contemplated or required by this Agreement, or as required by a Governmental Entity (including pursuant to a Judgment issued by the FERC, the FCC or any State Commission) or by applicable Law, or as contemplated by the Proceedings, or with the prior written consent of Parent (which consent shall not be unreasonably withheld, conditioned or delayed), from the date of this Agreement until the Effective Time, the Company shall use commercially reasonable efforts to, and to cause each Company Subsidiary to, (x) conduct its business in the ordinary course of business in all material respects and (y) to the extent consistent with the foregoing clause (x), preserve intact, in all material respects, its business organization and existing relationships with Governmental Entities. In addition, and without limiting the generality of the foregoing, except as set forth in the Company Disclosure Letter or otherwise contemplated or required by this Agreement, or as required by a Governmental Entity (including pursuant to a Judgment issued by the FERC, the FCC or any State Commission) or by applicable Law, or as contemplated by the Proceedings, or with the prior written consent of Parent (which consent shall not be unreasonably withheld, conditioned or delayed), from the date of this Agreement until the Effective Time, the Company shall not, and shall not permit any Company Subsidiary to, do any of the following:

(i) declare, set aside or pay any dividends on, or make any other distributions (whether in cash, stock or property or any combination thereof) in respect of, any of its capital stock, other equity interests or voting securities, except for (1) quarterly cash dividends payable by the Company or any Company Subsidiary in respect of shares of Company Common Stock on a schedule and in an amount per share of Company Common Stock consistent with the Company's past practices but without increase in the amount per share, (2) dividends and distributions by a direct or indirect Company Subsidiary to its parent and (3) a "stub period" dividend to holders of record of Company Common Stock as of immediately prior to the Effective Time equal to the product of (A) the number of days from the record date for payment of the last quarterly dividend paid by the Company prior to the Effective Time, multiplied by (B) a daily dividend rate determined by dividing the amount of the last quarterly dividend prior to the Effective Time by ninety-one (91);

(ii) amend any of its Organizational Documents (except for immaterial or ministerial amendments);

(iii) except as permitted by Section 5.01(a)(v) or for transactions among the Company and the Company Subsidiaries or among the Company Subsidiaries, split, combine, consolidate, subdivide or reclassify any of its capital stock, other equity interests or voting securities, or securities convertible into or exchangeable or exercisable for capital stock or other equity interests or voting securities, or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for its capital stock, other equity interests or voting securities;

(iv) repurchase, redeem or otherwise acquire, or offer to repurchase, redeem or otherwise acquire, any capital stock or voting securities of, or equity interests in, the Company or any Company Subsidiary or any securities of the Company or any Company Subsidiary convertible into or exchangeable or exercisable for capital stock or voting securities of, or equity interests in, the Company or any Company Subsidiary, or any warrants, calls, options or other rights to acquire any such capital stock, securities or interests, except for (1) the acquisition by the Company of shares of Company Common Stock in the open market to satisfy its obligations under all Company Benefit Plans or under the Company's dividend reinvestment and direct stock purchase plan (the "**Company DRIP**"), (2) the withholding of shares of Company Common Stock to satisfy Tax obligations with respect to awards granted pursuant to the Company Benefit Plans and (3) the acquisition by the Company of awards granted pursuant to the Company Benefit Plans in connection with the forfeiture of such awards;

(v) issue, deliver, sell, grant, pledge or otherwise encumber or subject to any Lien any Equity Securities or Company Voting Debt, in each case, except for the issuance of (1) Equity Securities pursuant to the Company Benefit Plans as permitted by Section 5.01(a)(vi), (2) shares of Company Common Stock pursuant to Director Stock Units, Time-Vested Restricted Stock Awards and Performance-Based Restricted Stock Awards outstanding on the date of this Agreement and in accordance with their terms on the date of this Agreement or granted after the date of this Agreement pursuant to the foregoing clause (1), or (3) shares of Company Common Stock under the Company DRIP;

(vi) (1) grant to any Company Personnel any increase in compensation or benefits except in the ordinary course of business and consistent with past practices, (2) grant to Company Personnel increases, in the aggregate, in change-in-control, severance, retention or termination pay, (3) enter into or amend any change-in-control, severance, retention or termination agreement with any Company Personnel, except in order to effect changes permitted by clause (2) of this Section 5.01(a)(vi), (4) establish, adopt, enter into, amend in any material respect or terminate any Company Union Contract or Company Benefit Plan or Company Benefit Agreement (or any plan or agreement that would be a Company Union Contract, Company Benefit Plan or Company Benefit Agreement if in existence on the date hereof), in each case, except in the ordinary course of business consistent with past practices or (5) take any action to accelerate the time of vesting, funding or payment of any compensation or benefits under any Company Benefit Plan or Company Benefit Agreement, except in the case of the foregoing clauses (1) through (5) for actions required pursuant to the terms of any Company Benefit Plan or Company Benefit Agreement existing on the date hereof, or as required by the terms and conditions of this Agreement;

(vii) make any material change in financial accounting methods, principles or practices, except to the extent as may have been required by a change in applicable Law or GAAP or by any Governmental Entity (including the SEC or the Public Company Accounting Oversight Board);

(viii) make any acquisition or disposition of a material asset or business (including by merger, consolidation or acquisition of stock or assets), except for (1) any acquisition or disposition for consideration that is individually not in excess of $5,000,000 and in the aggregate not in excess of $20,000,000 or (2) any disposition of obsolete or worn-out equipment in the ordinary course of business;

(ix) incur any Indebtedness, except for (1) Indebtedness incurred in the ordinary course of business, (2) as reasonably necessary to finance any capital expenditures permitted under Section 5.01(a)(x), (3) Indebtedness in replacement of existing Indebtedness, (4) guarantees

by the Company of existing Indebtedness of any wholly owned Company Subsidiary, (5) guarantees and other credit support by the Company of obligations of any Company Subsidiary in the ordinary course of business consistent with past practice, (6) borrowings under existing revolving credit facilities (or replacements thereof on comparable terms) or existing commercial paper programs in the ordinary course of business or (7) Indebtedness in amounts necessary to maintain the capital structure of the Company Subsidiaries, as authorized by the State Commissions, and to maintain the present capital structure of the Company consistent with past practice in all material respects;

(x) make, or agree or commit to make, any capital expenditure, except for capital expenditures (1) in the ordinary course of business, (2) in accordance with the capital plan set forth in Section 5.01(a)(x) of the Company Disclosure Letter, plus a 10% aggregate variance or (3) with respect to any capital expenditure not addressed by the foregoing clauses (1) or (2), not to exceed $15,000,000 in any twelve (12) month period;

(xi) (1) modify or amend in any material respect, or terminate or waive any material right under, any Filed Company Contract (except for (A) any modification, amendment, termination or waiver in the ordinary course of business or (B) a termination without material penalty to the Company or the appropriate Company Subsidiary) or (2) without limiting Parent's obligations under Section 6.03, enter into any Contract that, from and after the Closing, purports to bind Parent or any of its Affiliates (other than the Company and the Company Subsidiaries);

(xii) make or change any material Tax election, change any material method of Tax accounting, settle or compromise any material Tax liability or refund or amend any material Tax Return, in each case, except as may be required by a change in applicable Law or GAAP or by any Governmental Entity;

(xiii) waive, release, assign, settle or compromise any material Claim against the Company or any Company Subsidiary, except for (1) waivers, releases, assignments, settlements or compromises in the ordinary course of business or (2) waivers, releases, assignments, settlements or compromises that (A) with respect to the payment of monetary damages, the amount of monetary damages to be paid by the Company or the Company Subsidiaries does not exceed (I) the amount with respect thereto reflected on the Company Financial Statements (including the notes thereto) or (II) $10,000,000, in the aggregate, in excess of the proceeds received or to be received from any insurance policies in connection with such payment or (B) with respect to any nonmonetary terms and conditions thereof, would not have or would not reasonably be expected to have, individually or in the aggregate, a material effect on the continuing operations of the Company and the Company Subsidiaries (taken as a whole); or

(xiv) enter into any Contract to do any of the foregoing.

(b) Emergencies. Notwithstanding anything to the contrary herein, the Company may, and may cause any Company Subsidiary to, take reasonable actions in compliance with applicable Law (i) with respect to any operational emergencies (including any restoration measures in response to any hurricane, tornado, ice storm, tsunami, flood, earthquake or other natural disaster or weather-related event, circumstance or development), equipment failures, outages or an immediate and material threat to the health or safety of natural Persons or (ii) as the Company deems prudent based on Good Utility Practice.

(c) No Control of the Company's Business. Parent acknowledges and agrees that (i) nothing contained herein is intended to give Parent, directly or indirectly, the right to control or direct

the operations of the Company or any Company Subsidiary prior to the Effective Time and (ii) prior to the Effective Time, the Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its and the Company Subsidiaries' respective operations.

(d) Advice of Changes. Each of Parent and the Company shall promptly advise the other orally and in writing of any change or event that would prevent any of the conditions precedent described in Article VII from being satisfied.

SECTION 5.02 Proceedings. Between the date of this Agreement and the Closing, the Company and the Company Subsidiaries may (a) pursue the rate cases and other proceedings set forth in Section 5.02 of the Company Disclosure Letter, (b) initiate and pursue other rate cases and proceedings with Governmental Entities; provided that the prior written consent of Parent (such consent not to be unreasonably withheld, delayed or conditioned) shall be required to the extent any such other rate case or proceeding would reasonably be expected to result in an outcome that would be materially adverse to the Company and the Company Subsidiaries, taking into account the requests made by the Company and the Company subsidiaries in such rate case or proceeding and the resolution of similar recent rate cases or proceedings by the Company and the Company Subsidiaries, (c) initiate any other proceeding with Governmental Entities in the ordinary course of business (the foregoing clauses (a), (b) and (c), collectively, the "**Proceedings**") and (d) notwithstanding anything to the contrary herein, initiate any other proceedings with Governmental Entities or take any other action contemplated by or described in any filings or other submissions filed or submitted in connection with the Proceedings prior to the date of this Agreement. Notwithstanding the foregoing, (1) except as set forth in clause (2) of this sentence, without the prior written consent of Parent (such consent not to be unreasonably withheld, delayed or conditioned), the Company and the Company Subsidiaries will not enter into any settlement or stipulation in respect of any Proceeding if such settlement or stipulation would result in an outcome that would be materially adverse to the Company and the Company Subsidiaries, taking into account the requests made by the Company and the Company subsidiaries in the Proceeding and the resolution of similar recent proceedings by the Company and the Company Subsidiaries and (2) nothing herein or elsewhere in this Agreement shall prohibit the Company from initiating, continuing to pursue, settling or entering into any stipulation with respect to any (i) fuel adjustment filing, rate case or other proceeding, (ii) purchased gas adjustment filing, rate case or other proceeding, (iii) FERC formula rate filing, rate case or other proceeding or (iv) filing, rate case or other proceeding with the State Commissions in the States of Arkansas, Kansas or Oklahoma.

SECTION 5.03 No Solicitation by the Company; Company Board Recommendation.

(a) The Company shall not, shall cause its Affiliates not to, and shall use reasonable efforts to cause its and their respective officers, directors, principals, partners, managers, members, attorneys, accountants, agents, employees, consultants, financial advisors or other authorized representatives (collectively, "**Representatives**") not to, (i) directly or indirectly solicit, initiate or knowingly encourage, induce or facilitate any Company Takeover Proposal or any inquiry or proposal that would reasonably be expected to lead to a Company Takeover Proposal, in each case, except for this Agreement and the transactions contemplated hereby, or (ii) directly or indirectly participate in any discussions or negotiations with any Person (except for the Company's Affiliates and its and their respective Representatives or Parent and Parent's Affiliates and its and their respective Representatives) regarding, or furnish to any such Person, any nonpublic information with respect to, or cooperate in any way with any such Person with respect to, any Company Takeover Proposal or any inquiry or proposal that would reasonably be expected to lead to a Company Takeover Proposal. The Company shall, and shall cause its Affiliates and its and their respective Representatives to, immediately cease and cause to be terminated all existing discussions or negotiations with any Person (except for the Company's Affiliates and its and their respective Representatives or Parent and Parent's Affiliates and its and their respective Representatives) conducted hereto-

fore with respect to any Company Takeover Proposal, request the prompt return or destruction of all confidential information previously furnished and immediately terminate all physical and electronic data room access previously granted to any such Person or its Representatives. Notwithstanding anything to the contrary herein, at any time prior to obtaining the Company Shareholder Approval, in response to the receipt of a *bona fide* written Company Takeover Proposal made after the date of this Agreement that does not result from a breach (other than an immaterial breach) of this Section 5.03(a) by the Company and that the Company Board determines in good faith (after consultation with outside legal counsel and a financial advisor) constitutes or could reasonably be expected to lead to a Superior Company Proposal, the Company and its Representatives may (1) furnish information with respect to the Company and the Company Subsidiaries to the Person making such Company Takeover Proposal (and its Representatives) (provided that all such information has previously been provided to Parent or is provided to Parent prior to or substantially concurrently with the provision of such information to such Person) pursuant to a customary confidentiality agreement no less restrictive, in the aggregate, than the Confidentiality Agreement and (2) participate in discussions regarding the terms of such Company Takeover Proposal, including terms of a Company Acquisition Agreement with respect thereto, and the negotiation of such terms with the Person making such Company Takeover Proposal (and such Person's Representatives). Notwithstanding anything to the contrary herein, the Company may grant a waiver, amendment or release under any confidentiality or standstill agreement to the extent necessary to allow a confidential Company Takeover Proposal to be made to the Company or the Company Board so long as the Company promptly notifies Parent thereof after granting any such waiver, amendment or release.

(b) Except as set forth in Section 5.03(a), Section 5.03(c) and Section 5.03(e), neither the Company Board nor any committee thereof shall (i) withdraw, change, qualify, withhold or modify in any manner adverse to Parent, or propose publicly to withdraw, change, qualify, withhold or modify in any manner adverse to Parent, the Company Board Recommendation, (ii) adopt, approve or recommend, or propose publicly to adopt, approve or recommend, any Company Takeover Proposal, (iii) fail to include in the Proxy Statement the Company Board Recommendation or (iv) take any formal action or make any recommendation or public statement in connection with a tender offer or exchange offer (except for a recommendation against such offer or a customary "stop, look and listen" communication of the type contemplated by Rule 14d-9(f) under the Exchange Act) (any action in the foregoing clauses (i)–(iv) being referred to as a "**Company Adverse Recommendation Change**"). Except as set forth in Section 5.03(a), Section 5.03(c) and Section 5.03(e), neither the Company Board nor any committee thereof shall authorize, permit, approve or recommend, or propose publicly to authorize, permit, approve or recommend, or allow the Company or any of its Affiliates to execute or enter into, any letter of intent, memorandum of understanding, agreement in principle, agreement or commitment constituting, or that would reasonably be expected to lead to, any Company Takeover Proposal, or requiring, or that would reasonably be expected to cause, the Company to abandon or terminate this Agreement (a "**Company Acquisition Agreement**").

(c) Notwithstanding anything to the contrary herein, at any time prior to obtaining the Company Shareholder Approval, the Company Board may make a Company Adverse Recommendation Change if (i) a Company Intervening Event has occurred or (ii) the Company has received a Superior Company Proposal that does not result from a breach (other than an immaterial breach) of Section 5.03(a) by the Company and, in each case, if the Company Board determines in good faith (after consultation with outside legal counsel) that the failure to effect a Company Adverse Recommendation Change as a result of the occurrence of such Company Intervening Event or in response to the receipt of such Superior Company Proposal, as the case may be, would reasonably likely be inconsistent with the Company Board's fiduciary duties under applicable Law; provided, however, that the Company Board shall not make such Company Adverse Recommendation Change unless (1) the Company Board has provided prior written notice to Parent (a "**Recommendation Change Notice**") that it is prepared to effect a Company Adverse Recommendation Change in response to the occurrence of a Company Intervening Event or the

receipt of a Superior Company Proposal, which notice shall, in the case of a Company Adverse Recommendation Change in response to the receipt of a Superior Company Proposal, at the Company's option, either attach the most current draft of any Company Acquisition Agreement with respect to such Superior Company Proposal or include a summary of the material terms and conditions of such Superior Company Proposal (including the identity of the Person making such Superior Company Proposal), (2) if requested by Parent, during the three (3) Business Day period after delivery of the Recommendation Change Notice, the Company and its Representatives negotiate in good faith with Parent and its Representatives regarding any revisions to this Agreement and (3) at the end of such three (3) Business Day period and taking into account any changes to the terms of this Agreement committed to in writing by Parent (it being understood and agreed that if there has been any subsequent amendment to any material term of such Superior Company Proposal, the Company Board shall provide a new Recommendation Change Notice and an additional three (3) Business Day period from the date of such notice shall apply), the Company Board determines in good faith (after consultation with outside legal counsel) that the failure to make such a Company Adverse Recommendation Change would reasonably likely be inconsistent with its fiduciary duties under applicable Law.

(d) The Company shall promptly (and in any event no later than the later of (i) twenty-four (24) hours or (ii) 5 p.m. New York City time on the next Business Day) advise Parent orally and in writing of any Company Takeover Proposal and the material terms and conditions of any such Company Takeover Proposal (including the identity of the Person making such Company Takeover Proposal). The Company shall keep Parent reasonably informed in all material respects on a reasonably current basis of the material terms and status (including any change to the terms thereof) of any Company Takeover Proposal.

(e) Nothing contained in this Section 5.03 shall prohibit the Company from (i) complying with Rule 14d-9 and Rule 14e-2 promulgated under the Exchange Act or (ii) making any disclosure to the shareholders of the Company if, in the good-faith judgment of the Company Board (after consultation with outside legal counsel) failure to so disclose would reasonably likely be inconsistent with its obligations under applicable Law.

(f) For purposes of this Agreement:

(i) "**Company Takeover Proposal**" means any proposal or offer (whether or not in writing), with respect to any (1) merger, consolidation, share exchange, other business combination, recapitalization, liquidation, dissolution or similar transaction involving the Company, (2) sale, lease, contribution or other disposition, directly or indirectly (including by way of merger, consolidation, share exchange, other business combination, partnership, joint venture, sale of capital stock of or other equity interests in a Company Subsidiary or otherwise) of any business or assets of the Company or the Company Subsidiaries representing 20% or more of the consolidated revenues, net income or assets of the Company and the Company Subsidiaries, taken as a whole, (3) issuance, sale or other disposition, directly or indirectly, to any Person (or the shareholders of any Person) or group of securities (or options, rights or warrants to purchase, or securities convertible into or exchangeable for, such securities) representing 20% or more of the voting power of the Company, (4) transaction (including any tender offer or exchange offer) in which any Person (or the shareholders of any Person) would acquire (in the case of a tender offer or exchange offer, if consummated), directly or indirectly, beneficial ownership, or the right to acquire beneficial ownership, or formation of any group which beneficially owns or has the right to acquire beneficial ownership of, 20% or more of any class of capital stock of the Company or (5) any combination of the foregoing.

(ii) "**Superior Company Proposal**" means a *bona fide* written Company Takeover Proposal (provided that for purposes of this definition, the applicable percentage in the definition of Company Takeover Proposal shall be "more than 50%" rather than "20% or more"), which the Company Board determines in good faith, after consultation with outside legal counsel and a financial advisor, and taking into account the legal, financial, regulatory and other aspects of such Company Takeover Proposal and such other factors that are deemed relevant by the Company Board, is more favorable to the holders of Company Common Stock than the transactions contemplated by this Agreement (after taking into account any proposed revisions to the terms of this Agreement that are committed to in writing by Parent (including pursuant to Section 5.03(c)).

(iii) "**Company Intervening Event**" means any material fact, circumstance, effect, change, event or development that (1) is unknown to or by the Company Board as of the date hereof (or if known, the magnitude or material consequences of which were not known or understood by the Company Board as of the date of this Agreement) and (2) becomes known to or by the Company Board prior to obtaining the Company Shareholder Approval; provided, however, that neither a Company Takeover Proposal nor or any matter relating thereto or consequence thereof shall constitute a Company Intervening Event.

SECTION 5.04 Financing.

(a) Parent shall, and shall cause its Affiliates to, take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary to consummate the Financing, or any Substitute Financing, as promptly as possible following the date of this Agreement (and, in any event, no later than the Closing Date), including (i) (1) maintaining in effect the Debt Letters and complying with all of their respective obligations thereunder and (2) negotiating, entering into and delivering definitive agreements with respect to the Financing reflecting the terms contained in the Debt Letters (or with other terms agreed by Parent or its Affiliates and the Financing Parties, subject to the restrictions on amendments of the Debt Letters set forth below), so that such agreements are in effect no later than the Closing, and (ii) satisfying on a timely basis all the conditions to the Financing and the definitive agreements related thereto that are applicable to Parent and its Affiliates.

(b) In the event that all conditions set forth in Sections 7.01 and 7.03 have been satisfied or waived or, upon funding shall be satisfied or waived, Parent and its Affiliates shall cause the Persons providing the Financing (the "**Financing Parties**") to fund on the Closing Date the Financing, to the extent the proceeds thereof are required to consummate the Merger and the other transactions contemplated hereby, and shall enforce its rights under the Debt Letters (including in the event of any breach or purported breach thereof and including by taking enforcement action to cause such lenders and the other Financing Parties to fund such Financing). Parent shall not, and shall cause its Affiliates not to, take or refrain from taking, directly or indirectly, any action that would reasonably be expected to result in a failure of any of the conditions contained in the Debt Letters or in any definitive agreement related to the Financing. Parent shall not, and shall cause its Affiliates not to, object to the utilization of any "market flex" provisions by any Financing Party.

(c) Parent shall keep the Company reasonably informed on a current and timely basis of the status of the efforts of Parent or its Affiliates to obtain the Financing and to satisfy the conditions thereof, including advising and updating the Company, in a reasonable level of detail, with respect to status, proposed closing date and material terms of the definitive documentation related to the Financing, providing copies of then current drafts of the credit agreement and other primary definitive documents and giving the Company prompt notice of any material change (adverse or otherwise) with respect to the Financing. Without limiting the foregoing, Parent shall notify the Company promptly (and in any event within one (1) Business Day) if at any time prior to the Closing Date:

(i) any Debt Letter expires or is terminated for any reason (or if any Person attempts or purports to terminate or repudiate any Debt Letter, whether or not such attempted or purported termination or repudiation is valid);

(ii) Parent or any of its Affiliates obtains knowledge of any breach or default or any threatened breach or default (or any event or circumstance that, with or without due notice, lapse of time or both, would reasonably be expected to give rise to any breach or default) by any party to any Debt Letter or any definitive document related to the Financing of any provisions of the Debt Letters or any definitive document related to the Financing;

(iii) Parent or any of its Affiliates receives any communication (written or oral) from any Person with respect to any (1) actual, potential or threatened breach, default, termination or repudiation by any party to the Debt Letters or any definitive document related to the Financing of any provisions of the Debt Letters or any definitive document related to the Financing or (2) dispute or disagreement between or among any parties to the Debt Letters;

(iv) any Financing Party refuses to provide or expresses (orally or in writing) an intent to refuse to provide all or any portion of the Financing contemplated by the Debt Letters on the terms set forth therein (or expresses (orally or in writing) that such Person does not intend to enter into all or any portion of definitive documentation related to the Financing or to consummate the transactions contemplated thereby); or

(v) there occurs any event or development that could reasonably be expected to adversely impact the ability of Parent or any of its Affiliates to obtain all, or any portion of, the Financing contemplated by the Debt Letters on the terms and conditions, in the manner or from the sources contemplated by any of the Debt Letters or the definitive documents related to the Financing or if at any time for any other reason Parent no longer believes in good faith that it will be able to obtain all or any portion of the Financing on the terms and conditions, in the manner or from the sources contemplated by any of the Debt Letters or the definitive documents related to the Financing.

(d) As soon as reasonably practicable (but in any event within two (2) Business Days after the date the Company delivers to Parent a written request therefor), Parent shall provide any information reasonably requested by the Company relating to any circumstance referred to in Section 5.04(c)(i)–(v) of the immediately preceding sentence.

(e) Parent or its Affiliates may amend, modify, terminate, assign or agree to any waiver under the Debt Letters (including to add lenders, arrangers, agents, bookrunners, managers and other financing sources) without the prior written approval of the Company; provided that Parent shall not, and shall cause its Affiliates not to, without Company's prior written consent, permit any such amendment, modification, assignment, termination or waiver to be made to, or consent to any waiver of, any provision of or remedy under the Debt Letters which would (1) reduce the aggregate amount of the Financing (including by increasing the amount of fees to be paid or original issue discount), (2) impose new or additional conditions to the Financing or otherwise expand or render more burdensome to Parent or its Affiliates any of the conditions to the Financing or (3) otherwise expand, amend, modify or waive any provision of the Debt Letters in a manner that in any such case would reasonably be expected to (A) delay or make less likely the funding of the Financing (or satisfaction of the conditions to the Financing) on the Closing Date, (B) adversely impact the ability of Parent or its Affiliates to enforce its rights against the Financing Parties or any other parties to the Debt Letters or the definitive agreements with respect thereto or (C) adversely affect the ability of Parent to timely consummate the Merger and the other transactions contemplated hereby. In the event that new debt or equity commitment letters or fee let-

ters are entered into in accordance with any amendment, replacement, supplement or other modification of the Debt Letters permitted pursuant to this Section 5.04(e), such new commitment letters or fee letters shall be deemed to be a part of the "Financing" and deemed to be the "Debt Letters" for all purposes of this Agreement. Parent shall promptly deliver to the Company copies of any termination, amendment, modification, waiver or replacement of the Debt Letters.

(f) If funds in the amounts set forth in the Debt Letters, or any portion thereof, become unavailable, Parent shall, and shall cause its Affiliates, as promptly as practicable following the occurrence of such event to (i) notify the Company in writing thereof, (ii) obtain substitute financing sufficient to enable Parent to consummate the Merger and the other transactions contemplated hereby in accordance with its terms (the "**Substitute Financing**") and (iii) obtain a new financing commitment letter that provides for such Substitute Financing and, promptly after execution thereof, deliver to the Company true, complete and correct copies of the new commitment letter and the related fee letters (in redacted form reasonably satisfactory to the Persons providing such Substitute Financing removing only the fee amounts, pricing caps, the rates and amounts included in the "market flex") and related definitive financing documents with respect to such Substitute Financing; provided, however, that any such Substitute Financing shall not, without the prior written consent of the Company, (1) reduce the aggregate amount of the Financing (including by increasing the amount of fees to be paid or original issue discount), (2) impose new or additional conditions to the Financing or otherwise expand or render more burdensome to Parent or its Affiliates any of the conditions to the Financing or (3) otherwise expand, amend, modify or waive any provision of the Debt Letters in a manner that in any such case would reasonably be expected to (A) delay or make less likely the funding of the Financing (or satisfaction of the conditions to the Financing) on the Closing Date, (B) adversely impact the ability of Parent or its Affiliates to enforce its rights against the Financing Parties or any other parties to the Debt Letters or the definitive agreements with respect thereto or (C) adversely affect the ability of Parent to timely consummate the Merger and the other transactions contemplated hereby. Upon obtaining any commitment for any such Substitute Financing, such financing shall be deemed to be a part of the "Financing" and any commitment letter for such Substitute Financing shall be deemed the "Debt Letters" for all purposes of this Agreement.

(g) Parent shall pay, or cause to be paid, as the same shall become due and payable, all fees and other amounts that become due and payable under the Debt Letters.

(h) Notwithstanding anything contained in this Agreement to the contrary, Parent and Merger Sub expressly acknowledge and agree that neither Parent's nor Merger Sub's obligations hereunder are conditioned in any manner upon Parent or Merger Sub obtaining the Financing, any Substitute Financing or any other financing.

SECTION 5.05 Financing Cooperation.

(a) From the date hereof until the Closing (or the earlier termination of this Agreement pursuant to Section 8.01), subject to the limitations set forth in this Section 5.05, and unless otherwise agreed by Parent, the Company will use its reasonable best efforts to cooperate with Parent and its Affiliates as reasonably requested by Parent in connection with Parent's arrangement of the Financing (which, solely for purposes of this Section 5.05, shall include any alternative equity or debt capital markets financings contemplated by the Debt Letters). Such cooperation will include using reasonable best efforts to:

(i) make appropriate officers reasonably available, with appropriate advance notice, for participation in bank meetings, due diligence sessions, meetings with ratings agencies and road shows, reasonable assistance in the preparation of confidential information memoranda, private placement memoranda, prospectuses, presentations and similar documents as may be reason-

ably requested by Parent or any Financing Party, in each case, with respect to information relating to the Company and its Subsidiaries in connection with customary marketing efforts of Parent and its Affiliates for all or any portion of the Financing;

(ii) furnish Parent and the Financing Parties with copies of such financial data with respect to the Company and its Subsidiaries which is prepared by the Company in the ordinary course of business or can be prepared by the Company without undue burden (with any cost thereof to be promptly reimbursed by Parent) as is reasonably requested by Parent or any Financing Party and is customarily required for the arrangement and syndication of financings similar to the Financing committed pursuant to the Debt Letters, including such information necessary to allow Parent to prepare pro forma financial statements in accordance with Article 11 of Regulation S-X under the Securities Act of 1933, as amended, and identify any such financial information as suitable for distribution to "public side" lenders;

(iii) request that the Company's independent accountants participate in drafting sessions and accounting due diligence sessions and cooperate with the Financing (including as set forth in the Debt Letters as in effect on the date of this Agreement) or in connection with a customary offering of securities, including the type described in the Commitment Letter, consistent with their customary practice, including requesting that they provide customary consents and comfort letters (including "negative assurance" comfort), including in respect of historical financial statements of the Company, to the extent required in connection with the marketing and syndication of Financing (including as set forth in the Debt Letters as in effect on the date of this Agreement) or as are customarily required in an underwritten offering of securities of the type described in the Debt Letters, or as may otherwise be required pursuant to applicable Law or the rules or regulations of any national securities exchange in connection with the Merger or any alternative financing therefor, and provide customary management letters in connection with the foregoing;

(iv) furnish to legal counsel of Parent and to legal counsel of any Financing Party such information as may be reasonably requested by such counsel in connection with any legal opinion that such counsel may be required to deliver in connection with such Financing; and

(v) furnish Parent and the Financing Parties, within five (5) Business Days following written request, such documentation and other information as any Financing Party may reasonably determine is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the PATRIOT Act.

provided, further, that nothing in this Agreement shall require the Company to cause the delivery of (1) legal opinions or reliance letters or any certificate as to solvency or any other certificate necessary for the Financing, other than as provided by Section 5.05(a)(iii), (2) any financial information for any period, including any audited financial information or any financial information prepared in accordance with Regulation S-K or Regulation S-X under the Securities Act of 1933, as amended, in any case in a form not customarily prepared by the Company with respect to such period, other than as provided by Section 5.05(a)(ii) or (3) any financial information with respect to a month or fiscal period that has not yet ended or has ended less than 40 days (or, in the case of a fiscal year, 60 days) prior to the date of such request.

(b) Notwithstanding anything to the contrary contained in this Agreement (including this Section 5.05): (i) nothing in this Agreement (including this Section 5.05) shall require any such cooperation to the extent that it would (1) require the Company to pay any commitment or other fees, reimburse any expenses or otherwise incur any liabilities or give any indemnities prior to the Closing,

(2) unreasonably interfere with the ongoing business or operations of the Company or the Company Subsidiaries, (3) require the Company or any of the Company Subsidiaries to enter into or approve any agreement or other documentation effective prior to the Closing or agree to any change or modification of any existing agreement or other documentation that would be effective prior to the Closing or (4) require the Company, any of the Company Subsidiaries or any of their respective boards of directors (or equivalent bodies) to approve or authorize the Financing, and (ii) no action, liability or obligation (including any obligation to pay any commitment or other fees or reimburse any expenses) of the Company, its Subsidiaries, or any of their respective Representatives under any certificate, agreement, arrangement, document or instrument relating to the Financing shall be effective until the Closing.

(c) Parent shall (i) promptly upon request by the Company, reimburse the Company for all of its fees and expenses (including fees and expenses of counsel and accountants) incurred by the Company, any of the Company Subsidiaries, any of its or their Representatives in connection with any cooperation contemplated by this Section 5.05 and (ii) indemnify and hold harmless the Company, the Company Subsidiaries and its and their Representatives against any claim, loss, damage, injury, liability, judgment, award, penalty, fine, Tax, cost (including cost of investigation), expense (including fees and expenses of counsel and accountants) or settlement payment incurred as a result of, or in connection with, such cooperation or the Financing and any information used in connection therewith.

ARTICLE VI

ADDITIONAL AGREEMENTS

SECTION 6.01 Preparation of the Proxy Statement; Company Shareholders Meeting.

(a) The Company shall use its reasonable best efforts to prepare and cause to be filed with the SEC no later than sixty (60) days following the date hereof, except to the extent of any delay caused by Parent, a proxy statement to be mailed to the shareholders of the Company relating to the Company Shareholders Meeting (together with any amendments or supplements thereto, the "**Proxy Statement**") in preliminary form. Each of Parent and Merger Sub shall furnish all information concerning itself and its Affiliates to the Company, and provide such other assistance, as may be reasonably requested by the Company or the Company's outside legal counsel in connection with the preparation, filing and distribution of the Proxy Statement.

(b) The Company agrees that (i) none of the information supplied or to be supplied by the Company for inclusion or incorporation by reference in the Proxy Statement will, at the date it is first mailed to the Company's shareholders or at the time of the Company Shareholders Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading and (ii) except with respect to any information supplied to the Company by Parent or Merger Sub for inclusion or incorporation by reference in the Proxy Statement, the Proxy Statement will comply as to form in all material respects with the requirements of the Exchange Act and the rules and regulations of the SEC promulgated thereunder. Parent and Merger Sub agree that none of the information supplied or to be supplied by Parent or Merger Sub for inclusion or incorporation by reference in the Proxy Statement will, at the date it is first mailed to the Company's shareholders or at the time of the Company Shareholders Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading.

(c) The Company shall promptly notify Parent after the receipt of any comments from the SEC with respect to, or any request from the SEC for amendments or supplements to, the Proxy

Statement and shall provide Parent with copies of all correspondence between it and its Affiliates and Representatives, on the one hand, and the SEC, on the other hand, and:

(i) each of the Company and Parent shall use its reasonable best efforts (1) to respond as promptly as reasonably practicable to any comment from the SEC with respect to, or any request from the SEC for amendments or supplements to, the Proxy Statement and (2) to have the SEC advise the Company as promptly as reasonably practicable that the SEC has no further comments on the Proxy Statement;

(ii) the Company shall file the Proxy Statement in definitive form with the SEC and cause such definitive Proxy Statement to be mailed to the shareholders of the Company as promptly as reasonably practicable after the SEC advises the Company that the SEC has no further comments on the Proxy Statement; and

(iii) unless the Company Board has made a Company Adverse Recommendation Change, the Company shall include the Company Board Recommendation in the preliminary and definitive Proxy Statements.

Notwithstanding anything to the contrary herein, prior to filing the Proxy Statement in preliminary form with the SEC, responding to any comment from the SEC with respect to, or any request from the SEC for amendments or supplements to, the Proxy Statement or mailing the Proxy Statement in definitive form to the shareholders of the Company, the Company shall provide Parent with an opportunity to review and comment on such document or response and consider in good faith any of Parent's comments thereon. Each Party shall use its reasonable best efforts to have the SEC advise the Company, as promptly as reasonably practicable after the filing of the preliminary Proxy Statement, that the SEC has no further comments on the Proxy Statement, and each of the Company and Parent shall also take any other action (except for qualifying to do business in any jurisdiction in which it is not now so qualified) required to be taken under the Securities Act, the Exchange Act, any applicable foreign or state securities or "blue sky" Laws and the rules and regulations thereunder in connection with the Merger.

(d) If, prior to the Effective Time, any event occurs with respect to Parent or any Affiliate of Parent, or any change occurs with respect to other information supplied by Parent for inclusion in the Proxy Statement, that is required to be described in an amendment of, or a supplement to, the Proxy Statement, Parent shall promptly notify the Company of such event, and Parent and the Company shall cooperate in the prompt filing with the SEC of any necessary amendment or supplement to the Proxy Statement so that either such document would not include any misstatement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they are made, not misleading, and, as required by Law, in disseminating the information contained in such amendment or supplement to the Company's shareholders. Nothing in this Section 6.01(d) shall limit the obligations of any Party under Section 6.01(a).

(e) If prior to the Effective Time, any event occurs with respect to the Company or any Company Subsidiary, or any change occurs with respect to other information supplied by the Company for inclusion in the Proxy Statement, that is required to be described in an amendment of, or a supplement to, the Proxy Statement, the Company shall promptly notify Parent of such event, and the Company and Parent shall cooperate in the prompt filing with the SEC of any necessary amendment or supplement to the Proxy Statement so that either such document would not include any misstatement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they are made, not misleading and, as required by Law, in disseminating the information contained in such amendment or supplement to the

Company's shareholders. Nothing in this Section 6.01(e) shall limit the obligations of any Party under Section 6.01(a).

(f) The Company shall, as soon as practicable after the mailing of the definitive Proxy Statement to the shareholders of the Company, duly call, give notice of, convene and hold the Company Shareholders Meeting. Unless the Company Board has made a Company Adverse Recommendation Change, the Company shall use its reasonable best efforts to solicit and secure the Company Shareholder Approval as soon as practicable, including postponing or adjourning the Company Shareholders Meeting to allow additional solicitation of votes if necessary to obtain the Company Shareholder Approval.

(g) Parent shall be responsible for 100% of the fees, costs and expenses (except for the fees, costs and expenses of the Company's advisors), including any filings fees, associated with the preparation, filing and mailing of the Proxy Statement.

SECTION 6.02 Access to Information; Confidentiality.

(a) Subject to applicable Law and the Confidentiality Agreement, the Company shall, and shall cause each of the Company Subsidiaries to, afford to Parent and its Representatives reasonable access (at Parent's sole cost and expense), during normal business hours and upon reasonable advance notice, during the period from the date of this Agreement until the earlier of the Effective Time or termination of this Agreement pursuant to Section 8.01, to the Company's material properties, books, contracts, commitments, personnel and records, and during such period, the Company shall, and shall cause the Company Subsidiaries to, make available promptly to Parent (i) to the extent not publicly available, a copy of each material Filing made by it during such period pursuant to the requirements of securities Laws or filed with or sent to the SEC, the FERC, the FCC, the State Commissions or any other Governmental Entity and (ii) all other material information concerning its business, properties and personnel as such Parent may reasonably request; provided, however, that the Company may withhold from Parent or its Representatives any document or information that the Company believes is subject to the terms of a confidentiality agreement with a third party (provided that the Company shall use its commercially reasonable efforts to obtain the required consent of such third party to disclose such document or information) or subject to any attorney–client privilege (provided that the Company shall use its commercially reasonable best efforts to allow the disclosure of such document or information (or as much of it as possible) in a manner that does not result in a loss of attorney–client privilege) or is competitively or commercially sensitive (as determined in the Company's reasonable discretion); provided, further, that Parent and its Representatives shall not have the right to collect any air, soil, surface water or ground water samples or perform any invasive or destructive air sampling on, under, at or from any of the properties owned, leased or operated by the Company or any Company Subsidiary. Except for incidents caused by the Company's or its Affiliate's intentional misconduct, Parent shall indemnify the Company and its Affiliates and Representatives from, and hold the Company and its Affiliates and Representatives harmless against, any and all Claims, losses, liabilities, damages, judgments, inquiries, fines and reasonable fees, costs, expenses, including attorneys' fees and disbursements, and the cost of enforcing this indemnity arising out of or resulting from any access provided pursuant to this Section 6.02(a).

(b) All documents and information exchanged pursuant to this Section 6.02 shall be subject to the confidentiality and standstill agreement, dated as of November 24, 2015, between the Company and Guarantor (the "**Confidentiality Agreement**"). If this Agreement is terminated pursuant to Section 8.01, the Confidentiality Agreement shall automatically be deemed to be amended and restated such that (i) Section 10 (Standstill) of the Confidentiality Agreement shall remain in effect for two (2) years after the date of such termination, as if the Parties had never entered into this Agreement, and

(ii) the other provisions of the Confidentiality Agreement shall remain in effect for two (2) years after such termination, as if the Parties had never entered into this Agreement.

SECTION 6.03 Further Actions; Regulatory Approvals; Required Actions.

(a) Subject to the terms and conditions of this Agreement, each of the Parties shall take, or cause to be taken, all actions, and do, or cause to be done, and assist and cooperate with the other Parties in doing, all things necessary to cause the conditions to the Closing set forth in Article VII to be satisfied as promptly as reasonably practicable or to effect the Closing as promptly as reasonably practicable, including (i) making all necessary Filings with Governmental Entities or third parties, (ii) obtaining the Required Consents and all other third-party Consents that are necessary, proper or advisable to consummate the Merger, (iii) obtaining the Required Statutory Approvals and all other Consents of Governmental Entities that are necessary, proper or advisable to consummate the Merger and (iv) executing and delivering any additional instruments that are necessary, proper or advisable to consummate the Merger. Parent shall be responsible for 100% of the fees, costs and expenses (except for the fees, costs and expenses of the Company's advisors), including any filing fees associated with any Filings or Consents contemplated by this Section 6.03.

(b) In connection with and without limiting the generality of Section 6.03(a), each of Parent and the Company shall:

(i) make or cause to be made, in consultation and cooperation with the other, (1) an appropriate filing of a Notification and Report Form pursuant to the HSR Act relating to the Merger, following the filing of all initial applications for, and at least six months prior to the reasonably expected date of receipt of, all Required Statutory Approvals, and (2) all draft and final filings required in connection with the CFIUS Approval in accordance with 31 C.F.R. Part 800 as promptly as practicable after the date of this Agreement;

(ii) as promptly as practicable after the date of this Agreement, make or cause to be made all necessary Filings to the FERC relating to the Merger;

(iii) as promptly as practicable after the date of this Agreement, make or cause to be made all necessary Filings with other Governmental Entities relating to the Merger, including any such Filings necessary to obtain any Required Statutory Approval;

(iv) furnish to the other all assistance, cooperation and information reasonably required for any such Filing and in order to achieve the effects set forth in this Section 6.03;

(v) unless prohibited by applicable Law or by a Governmental Entity, give the other reasonable prior notice of any such Filing and, to the extent reasonably practicable, of any communication with any Governmental Entity relating to the Merger (including with respect to any of the actions referred to in this Section 6.03(b)) and, to the extent reasonably practicable, permit the other to review and discuss in advance, and consider in good faith the views of, and secure the participation of, the other in connection with any such Filing or communication;

(vi) respond as promptly as practicable under the circumstances to any inquiries received from any Governmental Entity or any other authority enforcing applicable Antitrust Laws for additional information or documentation in connection with antitrust, competition or similar matters (including a "second request" under the HSR Act) and not extend any waiting period under the HSR Act or enter into any agreement with any such Governmental Entity or other authorities not to consummate the Merger, except with the prior written consent of the other Party;

(vii) provide any information requested by CFIUS or any other agency or branch of the U.S. government in connection with the CFIUS review or investigation of the transactions contemplated by this Agreement; and

(viii) unless prohibited by applicable Law or a Governmental Entity, to the extent commercially reasonably practicable, (1) not participate in or attend any formal meeting with any Governmental Entity in respect of the Merger without the other Party, (2) keep the other Party apprised with respect to any meeting or substantive conversation with any Governmental Entity in respect of the Merger, (3) cooperate in the filing of any substantive memoranda, white papers, filings, correspondence or other written communications explaining or defending this Agreement or the Merger, articulating any regulatory or competitive argument or responding to requests or objections made by any Governmental Entity and (4) furnish the other Party with copies of all substantive correspondence, Filings and communications (and memoranda setting forth the substance thereof) between it and its Affiliates and their respective Representatives on the one hand, and any Governmental Entity or members of any Governmental Entity's staff, on the other hand, with respect to this Agreement or the Merger; provided that the Parties shall be permitted to redact any correspondence, Filing or communication to the extent such correspondence, Filing or communication contains commercially sensitive information.

(c) Parent shall not, and shall cause its Affiliates not to, take any action, including acquiring any asset, property, business or Person (by way of merger, consolidation, share exchange, investment, other business combination, asset, stock or equity purchase, or otherwise), that could reasonably be expected to adversely affect obtaining or making any Consent or Filing contemplated by this Section 6.03 or the timely receipt thereof. In furtherance of and without limiting any of Parent's covenants and agreements under this Section 6.03, Parent shall use its reasonable best efforts to avoid or eliminate each and every impediment that may be asserted by a Governmental Entity pursuant to any Antitrust Law with respect to the Merger or in connection with granting any Required Statutory Approval so as to enable the Closing to occur as soon as reasonably possible; provided, however, that notwithstanding the foregoing or any other provision of this Agreement, Parent and its Affiliates shall not be obligated to, and Company shall not and shall cause the Company Subsidiaries not to, take any action or to agree or consent to or accept any terms, conditions, liabilities, obligations, commitments, sanctions or undertakings in connection with any Required Statutory Approval that, individually or in the aggregate, would be reasonably likely to have a material adverse effect on the business, properties, financial condition or results of operations of Liberty Utilities and its Subsidiaries (including for such purpose, the Company and its Subsidiaries), taken as a whole (a "**Burdensome Effect**"). Subject to the foregoing limitation, such reasonable best efforts shall include the following:

(i) defending through litigation on the merits, including appeals, any Claim asserted in any court or other proceeding by any Person, including any Governmental Entity, that seeks to or could prevent or prohibit or impede, interfere with or delay the consummation of the Closing;

(ii) proposing, negotiating, committing to and effecting, by consent decree, hold separate order or otherwise, the sale, divestiture, licensing or disposition of any assets or businesses of Parent or its Affiliates or the Company or the Company Subsidiaries, including entering into customary ancillary agreements on commercially reasonable terms relating to any such sale, divestiture, licensing or disposition;

(iii) agreeing to any limitation on the conduct of Parent or its Affiliates (including, after the Closing, the Surviving Corporation and the Company Subsidiaries);

(iv) not withdrawing and/or refiling any HSR Act submission, extending any waiting period or entering into any agreement or understanding with any Governmental Entity without consulting and obtaining written consent from the Company; and

(v) agreeing to take any other action as may be required by a Governmental Entity in order to effect each of the following: (1) obtaining all Required Statutory Approvals as soon as reasonably possible and in any event before the End Date, (2) avoiding the entry of, or having vacated, lifted, dissolved, reversed or overturned any Judgment, whether temporary, preliminary or permanent, that is in effect that prohibits, prevents or restricts consummation of, or impedes, interferes with or delays, the Closing and (3) effecting the expiration or termination of any waiting period, which would otherwise have the effect of preventing, prohibiting or restricting consummation of the Closing or impeding, interfering with or delaying the Closing.

(d) Parent shall promptly notify the Company and the Company shall notify Parent of any notice or other communication from any Person alleging that such Person's Consent is or may be required in connection with the Merger.

SECTION 6.04 Transaction Litigation. The Company shall promptly notify Parent of any shareholder litigation arising from this Agreement or the Merger that is brought against the Company or members of the Company Board ("**Transaction Litigation**"). The Company shall reasonably consult with Parent with respect to the defense or settlement of any Transaction Litigation and shall not settle any Transaction Litigation without Parent's consent (not to be unreasonably withheld, conditioned or delayed).

SECTION 6.05 Section 16 Matters. Prior to the Effective Time, the Company shall take all such steps as may be required to cause any dispositions of Company Common Stock (including derivative securities with respect to Company Common Stock) directly resulting from the Merger by each individual who will be subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to the Company immediately prior to the Effective Time to be exempt under Rule 16b-3 promulgated under the Exchange Act.

SECTION 6.06 Governance Matters.

(a) Parent shall cause the Surviving Corporation and its Utility Subsidiaries to maintain their combined headquarters in the location of such headquarters as of immediately prior to the Closing.

(b) Upon the Effective Time, the Joplin headquarters of the Company shall become the headquarters of Parent and, following the Effective Time, Parent will cause to be transitioned to Parent management responsibilities for the distribution utility operations of Parent's Affiliates in the surrounding geographic region (including Arkansas, Iowa, Illinois, Kansas, Missouri, Oklahoma and Texas), to establish the Joplin headquarters as a regional leadership hub in the broader organization of Parent and its utility Affiliates.

(c) Upon the Effective Time, Parent will take all necessary action (i) to cause to be appointed to the board of directors of Parent the current members of the Company's board of directors, and (ii) to cause the Chief Executive Officer of the Company to be appointed as the chief executive officer of Parent, with customary responsibility for the selection of the senior leadership team of Parent and its utility Subsidiaries.

(d) Following the Effective Time, Parent will cause the governance and nominating committee of the board of directors of Guarantor to consider current members of the Company's board of directors as candidates to fill vacancies on Guarantor's board of directors, including vacancies resulting from an expected expansion of Guarantor's board of directors.

(e) Parent shall cause the Surviving Corporation and the Company Subsidiaries to maintain and operate their respective businesses under the "Empire District" brand for a period of at least five (5) years following the Effective Time, provided that such use may also include "a Liberty Utilities company" or similar co-branding designation.

(f) From and after the Effective Time, Parent shall cause the Surviving Corporation and the Company Subsidiaries to maintain historic levels of community involvement and charitable contributions and support in the existing service territories of the Company and the Company Subsidiaries, including as set forth on Section 6.06(f) of the Company Disclosure Letter.

SECTION 6.07 Public Announcements. Except with respect to (a) a Company Adverse Recommendation Change or as otherwise permitted by Section 5.03(e), (b) any dispute between or among the Parties regarding this Agreement or the transactions contemplated hereby, and (c) a press release or other public statement that is consistent in all material respects with previous press releases, public disclosures or public statements made by a Party in accordance with this Agreement, including in investor conference calls, SEC Filings, Q&As or other publicly disclosed documents, in each case under this clause (c), to the extent such disclosure is still accurate, Parent and the Company shall consult with each other before issuing, and give each other the opportunity to review and comment upon, any press release or other written public statement with respect to this Agreement or the Merger and shall not (and shall cause its respective Affiliates not to) issue any such press release or make any such written public statement prior to such consultation, except as such Party reasonably concludes may be required by applicable Law, court process or by obligations pursuant to any listing agreement with any national securities exchange or national securities quotation system. The Company and Parent agree that the initial press release to be issued with respect to this Agreement or Merger shall be in the form agreed to by the Parties prior to the date hereof. Nothing in this Section 6.07 shall limit the ability of any Party to make internal announcements to its respective employees that are consistent in all material respects with the prior public disclosures regarding the transactions contemplated by this Agreement.

SECTION 6.08 Fees, Costs and Expenses. Except as provided otherwise in this Agreement, including Section 5.05(c), Section 6.01(g), Section 6.03(a), Section 9.15 and Article VIII, all fees, costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such fees, costs or expenses, whether or not the Closing occurs.

SECTION 6.09 Indemnification, Exculpation and Insurance.

(a) Parent agrees that all rights to indemnification, advancement of expenses and exculpation from liabilities for acts or omissions occurring at or prior to the Effective Time now existing in favor of the current or former directors, officers or employees of the Company and the Company Subsidiaries as provided in their respective Organization Documents and any indemnification or other similar Contracts of the Company or any Company Subsidiary, in each case, as in effect on the date of this Agreement, shall continue in full force and effect in accordance with their terms (it being agreed that after the Closing such rights shall be mandatory rather than permissive, if applicable), and Parent shall cause the Surviving Corporation and the Company Subsidiaries to perform their respective obligations thereunder. Without limiting the foregoing, from and after the Effective Time, the Surviving Corporation agrees that it will indemnify and hold harmless each individual who is as of the date of this Agreement, or who

becomes prior to the Effective Time, a director, officer or employee of the Company or any Company Subsidiary or who is as of the date of this Agreement, or who thereafter commences prior to the Effective Time, serving at the request of the Company or any Company Subsidiary as a director, officer or employee of another Person (the "**Company Indemnified Parties**"), against all claims, losses, liabilities, damages, judgments, inquiries, fines and reasonable fees, costs and expenses, including attorneys' fees and disbursements, incurred in connection with any Claim, whether civil, criminal, administrative or investigative (including with respect to matters existing or occurring at or prior to the Effective Time (including this Agreement and the transactions and actions contemplated hereby)), arising out of or pertaining to the fact that the Company Indemnified Party is or was a director, officer or employee of the Company or any Company Subsidiary or is or was serving at the request of the Company or any Company Subsidiary as a director, officer or employee of another Person, whether asserted or claimed prior to, at or after the Effective Time, to the fullest extent permitted under applicable Law. In the event of any such Claim, (i) each Company Indemnified Party will be entitled to advancement of expenses incurred in the defense of any such Claim from Parent within ten (10) Business Days after receipt by Parent from the Company Indemnified Party of a request therefor; provided that any Person to whom expenses are advanced provides an undertaking, if and only to the extent required by applicable Law or the Surviving Corporation's Organizational Documents, to repay such advances if it is ultimately determined by final adjudication that such person is not entitled to indemnification and (ii) the Surviving Corporation shall cooperate in good faith in the defense of any such matter.

(b) In the event that Parent or the Surviving Corporation or any of its successors or assigns (i) consolidates with or merges into any other Person and is not the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers or conveys all or substantially all of its properties and assets to any Person, then, and in each such case, Parent or the Surviving Corporation, as the case may be, shall cause proper provision to be made so that the successors and assigns of Parent or the Surviving Corporation, as the case may be, assume the covenants and agreements set forth in this Section 6.09.

(c) For a period of six (6) years from and after the Effective Time, the Surviving Corporation shall either cause to be maintained in effect the current policies of directors' and officers' liability insurance and fiduciary liability insurance maintained by the Company or its Subsidiaries or provide substitute policies for the Company and its current and former directors and officers who are currently covered by the directors' and officers' and fiduciary liability insurance coverage currently maintained by the Company, in either case, of not less than the existing coverage and having other terms not less favorable to the insured persons than the directors' and officers' liability insurance and fiduciary liability insurance coverage currently maintained by the Company with respect to claims arising from facts or events that occurred on or before the Effective Time (with insurance carriers having at least an "A" rating by A.M. Best with respect to directors' and officers' liability insurance and fiduciary liability insurance), except that in no event shall the Surviving Corporation be required to pay with respect to such insurance policies in respect of any one policy year more than 300% of the aggregate annual premium most recently paid by the Company prior to the date of this Agreement (the "**Maximum Amount**"), and if the Surviving Corporation is unable to obtain the insurance required by this Section 6.09(c) it shall obtain as much comparable insurance as possible for the years within such six (6) year period for an annual premium equal to the Maximum Amount, in respect of each policy year within such period. In lieu of such insurance, prior to the Closing Date the Company may, at its option but following consultation with Parent, purchase a "tail" directors' and officers' liability insurance policy and fiduciary liability insurance policy for the Company and its current and former directors, officers and employees who are currently covered by the directors' and officers' and fiduciary liability insurance coverage currently maintained by the Company, such tail to provide coverage in an amount not less than the existing coverage and to have other terms substantially comparable (and not less favorable) to the insured persons than the directors' and officers' liability insurance and fiduciary liability insurance coverage currently maintained by the Com-

pany with respect to claims arising from facts or events that occurred on or before the Effective Time for a period of not less than six (6) years; provided that in no event shall the cost of any such tail policy in respect of any one policy year exceed the Maximum Amount. The Surviving Corporation shall maintain such policies in full force and effect, and continue to honor the obligations thereunder.

(d) The provisions of this Section 6.09 (i) shall survive consummation of the Merger, (ii) are intended to be for the benefit of, and will be enforceable by, each indemnified or insured party (including the Company Indemnified Parties), his or her heirs and his or her representatives and (iii) are in addition to, and not in substitution for, any other rights to indemnification or contribution that any such Person may have by contract or otherwise.

(e) From and after the Effective Time, Parent shall guarantee the prompt payment of the obligations of the Surviving Corporation and the Company Subsidiaries under this Section 6.09.

SECTION 6.10 Employee Matters.

(a) During the period commencing at the Effective Time and ending on the two (2) year anniversary of the Effective Time (the "**Continuation Period**"), Parent shall, and shall cause the Surviving Corporation to, provide each individual who is employed by the Company or a Company Subsidiary immediately prior to the Effective Time and who remains employed thereafter by the Surviving Corporation, Parent or any of their Affiliates (each, a "**Company Employee**") who is not covered by a Company Union Contract and who remains a Company Employee with (i) a base salary or wage rate that is no less favorable than that provided to the Company Employee immediately prior to the Effective Time, (ii) aggregate incentive compensation opportunities that are substantially comparable, in the aggregate, to those provided to the Company Employee immediately prior to the Effective Time and (iii) employee benefits that are substantially comparable, in the aggregate, to those provided to the Company Employee immediately prior to the Effective Time. During the three-year period following the Continuation Period, Parent shall, or shall cause the Surviving Corporation or its other Affiliates to, treat Company Employees with respect to the payment of base salary or wage rate, incentive compensation opportunities, employee benefits and severance benefits no less favorably in the aggregate than similarly situated employees of the Parent and its Affiliates. Prior to the third anniversary of the Closing Date, Parent shall not, and shall cause the Surviving Corporation to not, terminate or amend in any manner that is materially adverse to the participants therein, any of the Company Benefit Plans listed on Section 6.10(a) of the Company Disclosure Letter. During the three-year period following the third anniversary of the Closing Date, subject to Section 6.10(d)(ii), Parent shall, or shall cause the Surviving Corporation to, treat retirees of the Company and its Subsidiaries with respect to the provision of post-retirement welfare benefits no less favorably than similarly situated retirees of the Parent and its Affiliates. As soon as practicable following the end of the fiscal year in which the Effective Time occurs, Parent shall, or shall cause the Surviving Corporation or its other Affiliates to, pay each Company Employee who remains employed with the Surviving Corporation, Parent or any of their Affiliates through the applicable payment date an annual cash bonus for such fiscal year in an amount determined based on the level of attainment of the applicable performance criteria under the bonus plan in which such Company Employee participated as of immediately prior to the Effective Time.

(b) With respect to each Company Employee who is covered by a Company Union Contract, Parent shall, and shall cause the Surviving Corporation to, continue to honor the Company Union Contracts, in each case as in effect at the Effective Time, in accordance with their terms (it being understood that this sentence shall not be construed to limit the ability of Parent or the Surviving Corporation to amend or terminate any such Company Union Contract, to the extent permitted by the terms of the applicable Company Union Contract and applicable Law). The provisions of this Section 6.10 shall be subject to any applicable provisions of the Company Union Contracts and applicable Law in respect of

such Company Employee, to the extent the provisions of this Section 6.10 are inconsistent with or otherwise in conflict with the provisions of any such Company Union Contract or applicable Law.

(c) At the Effective Time, Parent shall, or shall cause the Surviving Corporation to, assume and honor in accordance with their terms all of the Company's and all of the Company Subsidiaries' employment, severance, retention, termination and change-in-control plans, policies, programs, agreements and arrangements (including any change-in-control severance agreement or other arrangement between the Company and any Company Employee) maintained by the Company or any Company Subsidiary, in each case, as in effect at the Effective Time, including with respect to any payments, benefits or rights arising as a result of the Merger (either alone or in combination with any other event), it being understood that this sentence shall not be construed to limit the ability of Parent or the Surviving Corporation to amend or terminate any such plans, policies, programs, agreements, or arrangements, to the extent permitted by the terms of the applicable plan, policy, program, agreement or arrangement. For purposes of any Company Benefit Plan or Company Benefit Agreement containing a definition of "change in control," "change of control" or similar term that relates to a transaction at the level of the Company, the Closing shall be deemed to constitute a "change in control," "change of control" or such similar term.

(d) With respect to all employee benefit plans of Parent, the Surviving Corporation or any of their Affiliates, including any "employee benefit plan" (as defined in Section 3(3) of ERISA) (including any vacation, paid time-off and severance plans), each Company Employee's service with the Company or any Company Subsidiary (as well as service with any predecessor employer of the Company or any such Company Subsidiary, to the extent service with the predecessor employer was recognized by the Company or such Company Subsidiary and is accurately reflected within a Company Employee's records) shall be treated as service with Parent, the Surviving Corporation or any of their Affiliates for all purposes, including determining eligibility to participate, level of benefits, vesting and benefit accruals, except (i) to the extent that such service was not recognized under the corresponding Company Benefit Plan immediately prior to the Effective Time, (ii) for purposes of any defined benefit retirement plan, any retiree welfare benefit plan, any grandfathered or frozen plan or any plan under which similarly situated employees of Parent and its Affiliates do not receive credit for prior service or (iii) to the extent that such recognition would result in any duplication of benefits for the same period of service.

(e) Parent shall, and shall cause the Surviving Corporation to, use commercially reasonable efforts to waive, or cause to be waived, any pre-existing condition limitations, exclusions, actively at work requirements and waiting periods under any welfare benefit plan maintained by Parent, the Surviving Corporation or any of their Affiliates in which Company Employees (and their eligible dependents) will be eligible to participate from and after the Effective Time, except to the extent that such pre-existing condition limitations, exclusions, actively-at-work requirements and waiting periods would not have been satisfied or waived under the corresponding Company Benefit Plan immediately prior to the Effective Time. Parent shall, or shall cause the Surviving Corporation to, use commercially reasonable efforts to recognize the dollar amount of all co-payments, deductibles and similar expenses incurred by each Company Employee (and his or her eligible dependents) during the calendar year in which the Effective Time occurs for purposes of satisfying such year's deductible and co-payment limitations under the relevant welfare benefit plans in which they will be eligible to participate from and after the Effective Time.

(f) Notwithstanding anything to the contrary herein, the provisions of this Section 6.10 are solely for the benefit of the parties to this Agreement, and no provision of this Section 6.10 is intended to, or shall, constitute the establishment or adoption of or an amendment to any employee benefit plan for purposes of ERISA or otherwise and no Company Personnel or any other individual associated therewith shall be regarded for any purpose as a third-party beneficiary of this Agreement or have the right to enforce the provisions hereof including in respect of continued employment (or resumed em-

ployment). Nothing contained herein shall alter the at-will employment relationship of any Company Employee.

SECTION 6.11 Merger Sub.

(a) Prior to the Effective Time, Merger Sub shall not engage in any activity of any nature except for activities related to or in furtherance of the Merger.

(b) Parent hereby (i) guarantees the due, prompt and faithful payment performance and discharge by Merger Sub of, and compliance by Merger Sub with, all of the covenants and agreements of Merger Sub under this Agreement and (ii) agrees to take all actions necessary, proper or advisable to ensure such payment, performance and discharge by Merger Sub hereunder.

SECTION 6.12 Takeover Statutes. If any Takeover Statute or similar statute or regulation becomes applicable to this Agreement or the Merger, the Company and the Company Board shall grant such approvals and take such actions as are reasonably appropriate to ensure that the Merger may be consummated as promptly as practicable on the terms contemplated by this Agreement.

SECTION 6.13 Stock Exchange De-Listing. Prior to the Closing Date, the Company shall cooperate with Parent and use reasonable best efforts to take, or cause to be taken, all actions, and do or cause to be done all things, reasonably necessary, proper or advisable on its part under applicable Laws and rules and policies of the NYSE to enable the delisting by the Surviving Corporation of the Company Common Stock from the NYSE and the deregistration of the Company Common Stock under the Exchange Act as promptly as practicable after the Effective Time.

SECTION 6.14 Resolution of Impediments.

(a) In the event that, prior to the End Date, any Required Statutory Approval has been denied or has been obtained but has or would be reasonably likely to have a Burdensome Effect, or any Legal Restraint has been imposed with respect to any Required Statutory Approval (each, a "**Failed Condition**"), then the Parties shall promptly confer in good faith regarding and, from the date of such occurrence until the earlier of the End Date or the date that is sixty (60) days following such occurrence, shall use reasonable best efforts to promptly agree upon a strategy to cause the conditions specified in Section 7.01 to be satisfied, which may include appropriate changes to this Agreement or to the transactions contemplated hereby; provided, however, that no Party shall in any circumstances be obligated to alter or change the amount or form of the Merger Consideration. Following written agreement, if any, of the Parties with respect to changes to this Agreement or to the transactions contemplated hereby to address a Failed Condition, the Parties shall use their reasonable best efforts to promptly give effect to and implement such agreement, cause the conditions specified in Section 7.01 to be satisfied, and effect the Closing as promptly as reasonably practicable. Notwithstanding any other provision of this Agreement, no Party shall have the right to terminate this Agreement on the basis of a Failed Condition (i) during the period specified in the first sentence of this Section 6.14(a), or (ii) if such Party has failed to comply with its obligations under this Section 6.14(a), or (iii) following written agreement, if any, of the Parties with respect to changes to this Agreement or to the transactions contemplated hereby to address such Failed Condition, except as expressly provided in such written agreement.

(b) In the event that Parent determines in good faith that any Required Statutory Approval that is required as a result of any business or assets of the Company and its Subsidiaries that generated less than ten percent (10%) of the consolidated revenues of the Company in its most recent fiscal year is not reasonably likely to be obtained prior to the End Date (as extended pursuant to any other provision of this Agreement), or if obtained is reasonably likely to impose conditions or requirements that are

materially burdensome in relation to the financial contributions of such business or assets, then upon the written request of Parent the Company shall, and shall cause the Company Subsidiaries to, reasonably cooperate with Parent to structure and pursue a disposition (whether by liquidation, dissolution, merger, consolidation, equity sale, asset sale, reorganization, recapitalization or otherwise) of such business or assets, to be effected only upon or following the Closing. Parent shall use its reasonable efforts to structure and arrange for such a disposition as promptly as reasonably practicable.

ARTICLE VII

CONDITIONS PRECEDENT

SECTION 7.01 Conditions to Each Party's Obligation to Effect the Transactions. The obligation of each Party to effect the Closing is subject to the satisfaction or waiver (by such Party) at or prior to the Closing of the following conditions:

(a) Company Shareholder Approval. The Company Shareholder Approval shall have been obtained.

(b) Required Statutory Approvals. The Required Statutory Approvals, including the expiration or termination of any waiting period applicable to the Merger under the HSR Act, shall have been obtained at or prior to the Effective Time, such approvals shall have become Final Orders and, unless waived by Parent, such approvals shall not, individually or in the aggregate, have or be reasonably likely to have a Burdensome Effect. For purposes of this Section 7.01(b), a "**Final Order**" means a Judgment by the relevant Governmental Entity that (1) has not been reversed, stayed, enjoined, set aside, annulled or suspended and is in full force and effect, (2) with respect to which, if applicable, any mandatory waiting period prescribed by Law before the Merger may be consummated has expired and (3) as to which all conditions to the consummation of the Merger prescribed by Law have been satisfied.

(c) No Legal Restraints. No Law and no Judgment, whether preliminary, temporary or permanent, shall be in effect that prevents, makes illegal or prohibits the consummation of the Merger (any such Law or Judgment, a "**Legal Restraint**").

SECTION 7.02 Conditions to Obligations of the Company. The obligation of the Company to effect Closing is further subject to the satisfaction or waiver (by the Company) at or prior to the Closing of the following conditions:

(a) Representations and Warranties. The representations and warranties of Parent and Merger Sub contained herein shall be true and correct (without giving effect to any limitation as to "materiality" or "Parent Material Adverse Effect" set forth therein) at and as of the Effective Time as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such earlier date), except where the failure of any such representation or warranty to be true and correct (without giving effect to any limitation as to "materiality" or "Parent Material Adverse Effect" set forth therein), individually or in the aggregate, has not had and would not reasonably be expected to have a Parent Material Adverse Effect.

(b) Performance of Covenants and Agreements of Parent and Merger Sub. Parent and Merger Sub shall have performed in all material respects all material covenants and agreements required to be performed by them under this Agreement at or prior to the Closing.

(c) Officer's Certificate. The Company shall have received a certificate signed on behalf of Parent by an executive officer of Parent certifying the satisfaction by Parent and Merger Sub of the conditions set forth in Section 7.02(a) and Section 7.02(b).

SECTION 7.03 Conditions to Obligations of Parent and Merger Sub. The obligations of Parent and Merger Sub to consummate the Merger is further subject to the satisfaction or waiver (by Parent and Merger Sub) at or prior to the Closing of the following conditions:

(a) Representations and Warranties. (i) The representations and warranties of the Company contained herein (except for the representations and warranties contained in Section 3.03) shall be true and correct (without giving effect to any limitation as to "materiality" or "Company Material Adverse Effect" set forth therein) at and as of the Effective Time as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such earlier date), except where the failure of any such representation or warranty to be true and correct (without giving effect to any limitation as to "materiality" or "Company Material Adverse Effect" set forth therein), individually or in the aggregate, has not had and would not reasonably be expected to have a Company Material Adverse Effect, and (ii) the representations and warranties of the Company contained in Section 3.03 shall be true and correct at and as of the Closing Date as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such earlier date), except where the failure of any such representation or warranty to be true and correct would be de minimis.

(b) Performance of Covenants and Agreements of the Company. The Company shall have performed in all material respects all material covenants and agreements required to be performed by it under this Agreement at or prior to the Closing.

(c) Absence of Company Material Adverse Effect. Since the date of this Agreement, no fact, circumstance, effect, change, event or development that, individually or in the aggregate, has had or would reasonably be expected to have Company Material Adverse Effect shall have occurred and be continuing.

(d) Officer's Certificate. Parent shall have received a certificate signed on behalf of the Company by an executive officer of the Company certifying the satisfaction by the Company of the conditions set forth in Section 7.03(a), Section 7.03(b) and Section 7.03(c).

ARTICLE VIII

TERMINATION, AMENDMENT AND WAIVER

SECTION 8.01 Termination Rights.

(a) Termination by Mutual Consent. The Company and Parent shall have the right to terminate this Agreement at any time prior to the Effective Time, whether before or after receipt of the Company Shareholder Approval, by mutual written consent.

(b) Termination by Either the Company or Parent. Each of the Company and Parent shall have the right to terminate this Agreement, at any time prior to the Effective Time, whether before or after the receipt of the Company Shareholder Approval, if:

(i) the Closing shall not have occurred by 5:00 p.m. New York City time on February 9, 2017 (the "**End Date**"); provided that if, prior to the End Date, all of the conditions to the Closing set forth in Article VII except for any condition set forth in Section 7.01(b) or Sec-

tion 7.01(c) have been satisfied or waived, as applicable, or shall then be capable of being satisfied, the End Date automatically shall be extended to a date that is six (6) months after the End Date and, if so extended, such later date shall be the End Date; provided, further, that neither the Company nor Parent may terminate this Agreement if it (or, in the case of Parent, Merger Sub) is in breach of any of its covenants or agreements and such breach has caused or resulted in either (1) the failure to satisfy the conditions to the obligations of the terminating Party to consummate the Merger set forth in Article VII prior to the End Date or (2) the failure of the Closing to have occurred prior to the End Date;

(ii) the condition set forth in Section 7.01(c) is not satisfied and the Legal Restraint giving rise to such nonsatisfaction is permanent (rather than preliminary or temporary) and has become final and nonappealable; provided, however, that the right to terminate this Agreement under this Section 8.01(b)(ii) shall not be available to any Party whose failure to comply with any provision of this Agreement has been the cause of, or materially contributed to, either the imposition of such Legal Restraint or the failure of such Legal Restraint to be resisted, resolved, lifted or vacated, as applicable; or

(iii) the Company Shareholder Approval is not obtained at the Company Shareholders Meeting duly convened (unless such Company Shareholders Meeting has been adjourned, in which case at the final adjournment thereof).

(c) Termination by the Company. The Company shall have the right to terminate this Agreement:

(i) in the event that the Company Board has made a Company Adverse Recommendation Change on the basis of a Superior Company Proposal or a Company Intervening Event, so long as (1) the Company has complied in all material respects with its obligations under Section 5.03(c) and (2) the Company prior to or concurrently with such termination (A) solely in the case of a termination due to a Company Adverse Recommendation Change on the basis of a Superior Company Proposal, enters into a Company Acquisition Agreement with respect to such Superior Company Proposal and (B) pays to Parent the Company Termination Fee in accordance with Section 8.02(b)(ii); provided, however, that the Company shall not have the right to terminate this Agreement under this Section 8.01(c)(i) after the Company Shareholder Approval is obtained at the Company Shareholders Meeting;

(ii) if Parent or Merger Sub breaches or fails to perform any of its covenants or agreements contained herein, or if any of the representations or warranties of Parent or Merger Sub contained herein fails to be true and correct, which breach or failure (1) would give rise to the failure of a condition set forth in Section 7.01, Section 7.02(a) or Section 7.02(b), as applicable, and (2) is not reasonably capable of being cured by Parent or Merger Sub by the End Date (as it may be extended pursuant to this Agreement) or is not cured by Parent within thirty (30) days after receiving written notice from the Company of such breach or failure; provided, however, that the Company shall not have the right to terminate this Agreement under this Section 8.01(c)(ii) if the Company is then in breach of any covenant or agreement contained herein or any representation or warranty of the Company contained herein then fails to be true and correct such that the conditions set forth in Section 7.03(a) or Section 7.03(b), as applicable, could not then be satisfied; or

(iii) if (1) all of the conditions set forth in Section 7.01, Section 7.02 and Section 7.03 have been satisfied or waived in accordance with this Agreement as of the date that the Closing should have been consummated pursuant to Section 1.03 (except for those conditions that by their

terms are to be satisfied at the Closing), (2) Parent and Merger Sub do not complete the Closing on the day that the Closing should have been consummated pursuant to Section 1.03, (3) a Financing Failure has occurred and (4) Parent and Merger Sub fail to consummate the Closing within five (5) Business Days following their receipt of written notice from the Company requesting such consummation.

(d) Termination by Parent. Parent shall have the right to terminate this Agreement:

(i) in the event that the Company Board or a committee thereof has made a Company Adverse Recommendation Change; provided, however, that Parent shall not have the right to terminate this Agreement under this Section 8.01(d) after the Company Shareholder Approval is obtained at the Company Shareholders Meeting; or

(ii) if the Company breaches or fails to perform any of its covenants or agreements contained herein, or if any of the representations or warranties of the Company contained herein fails to be true and correct, which breach or failure (1) would give rise to the failure of a condition set forth in Section 7.01, Section 7.03(a) or Section 7.03(b), as applicable, and (2) is not reasonably capable of being cured by the Company by the End Date (as it may be extended pursuant to this Agreement) or is not cured by the Company within thirty (30) days after receiving written notice from Parent of such breach or failure; provided, however, that Parent shall not have the right to terminate this Agreement under this Section 8.01(d)(ii) if Parent is then in breach of any covenant or agreement contained herein or any representation or warranty of Parent contained herein then fails to be true and correct such that the conditions set forth in Section 7.02(a) or Section 7.02(b), as applicable, could not then be satisfied.

SECTION 8.02 Effect of Termination; Termination Fees.

(a) In the event of termination of this Agreement by either Parent or the Company as provided in Section 8.01, this Agreement shall forthwith become void and have no effect, without any liability or obligation on the part of the Company or Parent (or any shareholder, Affiliate or Representative thereof), whether arising before or after such termination, based on, arising out of or relating to this Agreement or the negotiation, execution, performance or subject matter hereof (whether in contract or in tort or otherwise, or whether at law (including at common law or by statute) or in equity), except for (i) Section 5.05(c), Section 6.01(g), the last sentence of Section 6.02(a), the last sentence of Section 6.02(b), the last sentence of Section 6.03(a), Section 6.08, this Section 8.02 and Article IX, which provisions shall survive such termination and (ii) subject to Section 8.02(d), liability of any Party (whether or not the terminating Party) for any Willful Breach of this Agreement prior to such termination but solely to the extent such liability arises out of a Willful Breach by such Party of any covenant or agreement set forth herein that gave rise to the failure of a condition set forth in Article VII. The liabilities described in the preceding sentence shall survive the termination of this Agreement.

(b) Termination Fees.

(i) If (1) (A) either Parent or the Company terminates this Agreement pursuant to Section 8.01(b)(i) and, at the time of such termination, any of the conditions set forth in Section 7.01(b) or, in connection with the Required Statutory Approvals, Section 7.01(c) shall have not been satisfied and such conditions, if waivable by Parent, shall not have been waived by Parent, (B) either Parent or the Company terminates this Agreement pursuant to Section 8.01(b)(ii) (if and only if, the applicable Legal Restraint giving rise to such termination arises in connection with the Required Statutory Approvals) or (C) the Company terminates this Agreement pursuant to Section 8.01(c)(ii) based on a failure by Parent to perform its covenants or agreements under

Section 6.03, and in each case of the foregoing clauses (A), (B) and (C), at the time of such termination, all other conditions to the Closing set forth in Section 7.01(a), Section 7.03(a), Section 7.03(b) and Section 7.03(c) shall have been satisfied or waived (except for (I) those conditions that by their nature are to be satisfied at the Closing but which conditions would be satisfied or would be capable of being satisfied if the Closing Date were the date of such termination or (II) those conditions that have not been satisfied as a result of a breach of this Agreement by Parent), or (2) the Company terminates this Agreement pursuant to Section 8.01(c)(iii), then Parent shall pay to the Company a fee of Sixty-Five Million United States Dollars ($65,000,000) in cash (the "**Parent Termination Fee**"). Parent shall pay the Parent Termination Fee to the Company (to an account designated in writing by the Company) no later than three (3) Business Days after the date of the applicable termination.

(ii) If the Company terminates this Agreement pursuant to Section 8.01(c)(i) or Parent terminates this Agreement pursuant to Section 8.01(d)(i), the Company shall pay to Parent a fee of Fifty-Three Million United States Dollars ($53,000,000) in cash (the "**Company Termination Fee**"). The Company shall pay the Company Termination Fee to Parent (to an account designated in writing by Parent) prior to or concurrently with such termination of this Agreement by the Company pursuant to Section 8.01(c)(i) or no later than three (3) Business Days after the date of such termination of this Agreement by Parent pursuant to Section 8.01(d)(i).

(iii) If (1) either (A) Parent or the Company terminates this Agreement pursuant to Section 8.01(b)(iii), prior to the Company Shareholders Meeting a Company Takeover Proposal shall have been publicly disclosed, and as of the Company Shareholders Meeting such Company Takeover Proposal shall not have been withdrawn, or (B) Parent or the Company terminates this Agreement pursuant to Section 8.01(b)(i), prior to such termination a Company Takeover Proposal shall have been publicly disclosed, and as of such termination the Company Shareholders Meeting shall not have been held and such Company Takeover Proposal shall not have been withdrawn, or (C) Parent terminates this Agreement pursuant to Section 8.01(d)(ii) (solely with respect to breach of or failure to perform a covenant), prior to such termination a Company Takeover Proposal shall have been publicly disclosed, and as of such termination such Company Takeover Proposal shall not have been withdrawn, and (2) within nine (9) months after the termination of this Agreement, the Company shall have entered into a definitive agreement with respect to, or consummated, a Company Takeover Proposal (whether or not the same Company Takeover Proposal referred to in clause (1)), then the Company shall pay the Company Termination Fee to Parent (to an account designated in writing by Parent) within two (2) Business Days after the earlier of the date the Company enters into such definitive agreement or consummates such Company Takeover Proposal. For purposes of clause (2) of this Section 8.02(b)(iii), the term "Company Takeover Proposal" shall have the meaning assigned to such term in Section 5.01, except that the applicable percentage in the definition of "Company Takeover Proposal" shall be "more than 50%" rather than "20% or more."

(c) The Parties acknowledge that the agreements contained in Section 8.02(b) are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, the parties would not enter into this Agreement. If Parent (or the Guarantor pursuant to the Guarantee) fails to promptly pay an amount due pursuant to Section 8.02(b)(i), or the Company fails to promptly pay an amount due pursuant to Section 8.02(b)(ii) or Section 8.02(b)(iii), and, in order to obtain such payment, Parent, on the one hand, or the Company, on the other hand, commences a Claim that results in a Judgment against the Company for the amount set forth in Section 8.02(b)(ii) or Section 8.02(b)(iii), or any portion thereof, or a Judgment against Parent (or the Guarantor pursuant to the Guarantee) for the amount set forth in Section 8.02(b)(i), or any portion thereof, the Company shall pay to Parent, on the one hand, or Parent (or the Guarantor pursuant to the Guarantee) shall pay to the Company, on the other hand, its

costs and expenses (including reasonable attorneys' fees and the fees and expenses of any expert or consultant engaged by the Company) in connection with such Claim, together with interest on the amount of such payment from the date such payment was required to be made until the date of payment at the "U.S. Prime Rate" as quoted by the Wall Street Journal in effect on the date such payment was required to be made. Any amount payable pursuant to Section 8.02(b) shall be paid by the applicable Party by wire transfer of same-day funds prior to or on the date such payment is required to be made under Section 8.02(b).

(d) Without limiting any rights of the Company under Section 9.10 prior to the termination of this Agreement pursuant to Section 8.01, if this Agreement is terminated under circumstances in which Parent (or the Guarantor pursuant to the Guarantee) is obligated to pay the Parent Termination Fee under Section 8.02(b)(i), upon payment of the Parent Termination Fee and, if applicable, the costs and expenses of the Company pursuant to Section 8.02(c) in accordance herewith, neither Parent nor the Guarantor shall have any further liability with respect to this Agreement or the transactions contemplated hereby to the Company or the holders of the Company Common Stock, and payment of the Parent Termination Fee and such costs and expenses by Parent (or the Guarantor pursuant to the Guarantee) shall be the Company's sole and exclusive remedy for any Claims, losses, liabilities, damages, judgments, inquiries, fines and reasonable fees, costs and expenses, including attorneys' fees and disbursements, suffered or incurred by the Company, the Company Subsidiaries or any other Person in connection with this Agreement, the transactions contemplated hereby (and the termination thereof) or any matter forming the basis for such termination, and the Company shall not have, and expressly waives and relinquishes, any other right, remedy or recourse (whether in contract or in tort or otherwise, or whether at law (including at common law or by statute) or in equity) with respect to this Agreement or the transactions contemplated hereby, including against any Financing Source Party; provided that, regardless of whether Parent pays or is obligated to pay the Parent Termination Fee, nothing in this Section 8.02(d) shall release Parent from liability for a Willful Breach of this Agreement. If this Agreement is terminated under circumstances in which the Company is obligated to pay the Company Termination Fee under Section 8.02(b)(ii) or Section 8.02(b)(iii), upon payment of the Company Termination Fee and, if applicable, the costs and expenses of Parent pursuant to Section 8.02(c) in accordance herewith, the Company shall have no further liability with respect to this Agreement or the transactions contemplated hereby to Parent, Merger Sub or any of their respective Affiliates or Representatives, and payment of the Company Termination Fee and such costs and expenses by the Company shall be Parent's sole and exclusive remedy for any Claims, losses, liabilities, damages, judgments, inquiries, fines and reasonable fees, costs and expenses, including attorneys' fees and disbursements, suffered or incurred by Parent, Parent's Affiliates and any other Person in connection with this Agreement, the transactions contemplated hereby (and the termination thereof) or any matter forming the basis for such termination, and Parent and Merger Sub shall not have, and each expressly waives and relinquishes, any other right, remedy or recourse (whether in contract or in tort or otherwise, or whether at law (including at common law or by statute) or in equity) with respect to this Agreement or the transactions contemplated hereby. The Parties acknowledge and agree that in no event shall the Company or Parent, as applicable, be required to pay the Company Termination Fee or the Parent Termination Fee, as applicable, on more than one occasion.

(e) For purposes of this Agreement, "**Willful Breach**" means a breach that is a consequence of an act or omission undertaken by the breaching Party with the Knowledge that the taking of or the omission of taking such act would, or would reasonably be expected to, cause or constitute a material breach of this Agreement; provided that, without limiting the meaning of Willful Breach, the Parties acknowledge and agree that any failure by any Party to consummate the Merger and the other transactions contemplated hereby after the applicable conditions to the closing set forth in Article VII have been satisfied or waived (except for those conditions that by their nature are to be satisfied at the Closing, which conditions would be capable of being satisfied at the time of such failure to consummate the Merger) shall constitute a Willful Breach of this Agreement. Parent and Merger Sub acknowledge and agree that, with-

out in any way limiting the Company's rights under Section 9.10, recoverable damages of the Company hereunder shall not be limited to reimbursement of expenses or out-of-pocket costs but shall also include the benefit of the bargain lost by the shareholders of the Company (including "lost premium"), taking into consideration relevant matters, including the total amount payable to the Company's shareholders under this Agreement and the time value of money, which, in each case, shall be deemed in such event to be damages of the Company and shall be recoverable by the Company on behalf of its shareholders.

SECTION 8.03 Amendment. This Agreement may be amended by the parties at any time before or after receipt of the Company Shareholder Approval; provided, however, that (a) after receipt of the Company Shareholder Approval, there shall be made no amendment that by Law requires further approval by the shareholders of the Company without the further approval of such shareholders, (b) no amendment shall be made to this Agreement after the Effective Time, (c) except as provided above, no amendment of this Agreement shall require the approval of the shareholders of Parent or the shareholders of the Company and (d) no amendments to or waivers of any DFS Provision shall be effective without the written consent of the Financing Parties. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the Parties.

SECTION 8.04 Extension; Waiver. At any time prior to the Effective Time, the parties may, subject to Section 8.03(a), (a) extend the time for the performance of any of the obligations or other acts of the other parties, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant to this Agreement, (c) waive compliance with any covenants and agreements contained herein or (d) waive the satisfaction of any of the conditions contained herein. Any agreement on the part of a party to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such Party. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

SECTION 8.05 Procedure for Termination, Amendment, Extension or Waiver. A termination of this Agreement pursuant to Section 8.01, an amendment of this Agreement pursuant to Section 8.03 or an extension or waiver pursuant to Section 8.04 shall, in order to be effective, require, in the case of the Company, Parent or Merger Sub, action by its respective board of directors or the duly authorized designee of its board of directors. Termination of this Agreement prior to the Effective Time shall not require the approval of the shareholders of the Company. The Party desiring to terminate this Agreement pursuant to Section 8.01 shall give written notice of such termination to the other Parties in accordance with Section 9.02, specifying the provision of this Agreement pursuant to which such termination is effected.

ARTICLE IX

GENERAL PROVISIONS

SECTION 9.01 Nonsurvival of Representations, Warranties, Covenants and Agreements; Contractual Nature of Representations and Warranties. None of the representations or warranties contained herein or in any instrument delivered pursuant to this Agreement shall survive, and all rights, Claims and causes of action (whether in contract or in tort or otherwise, or whether at law (including at common law or by statute) or in equity) with respect thereto shall terminate at, the Effective Time. Except for any covenant or agreement that by its terms contemplates performance after the Effective Time, none of the covenants or agreements of the Parties contained herein shall survive, and all rights, Claims and causes of action (whether in contract or in tort or otherwise, or whether at law (including at common law or by statute) or in equity) with respect to such covenants and agreements shall terminate at, the Effective Time. The Parties hereby acknowledge and agree that (a) all representations and warranties set

forth in this Agreement are contractual in nature only, (b) if any such representation or warranty (as modified by the applicable Disclosure Letter) should prove untrue, the Parties' only rights, Claims or causes of action shall be to exercise the specific rights set forth in Section 7.02(a), Section 7.03(a), Section 8.01(c)(ii) and Section 8.01(d)(ii), as and if applicable, and (c) the Parties shall have no other rights, Claims or causes of action (whether in contract or in tort or otherwise, or whether at law (including at common law or by statute) or in equity) based on, arising out of or related to any such untruth of any such representation or warranty.

SECTION 9.02 Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed given (a) when delivered personally by hand (with written confirmation of receipt by other than automatic means, whether electronic or otherwise), (b) when sent by facsimile or email (with written confirmation of transmission) or (c) one (1) Business Day following the day sent by an internationally recognized overnight courier (with written confirmation of receipt), in each case, at the following addresses, facsimile numbers and email addresses (or to such other address, facsimile number or email address as a Party may have specified by notice given to the other Party pursuant to this provision):

To Parent or Merger Sub:

Liberty Utilities (Central) Co.
c/o Algonquin Power & Utilities Corp.
354 Davis Rd, Suite 100
Oakville, Ontario, Canada L6J 2X1
Attn: Chief Executive Officer
Facsimile: (905) 465-4514

with a copy (which shall not constitute notice) to:

Liberty Utilities (Central) Co.
c/o Algonquin Power & Utilities Corp.
354 Davis Rd, Suite 100
Oakville, Ontario, Canada L6J 2X1
Attn: Chief General Counsel
Facsimile: (905) 465-4540

and with a copy (which shall not constitute notice) to:

Husch Blackwell LLP
4801 Main Street, Suite 1000
Kansas City, Missouri 64112
Attn: James G. Goettsch
Facsimile: (816) 983-8080

To the Company:

The Empire District Electric Company
602 S. Joplin Avenue
Joplin, Missouri 64801
Attn: Chief Executive Officer
Facsimile: (417) 625-5169

with a copy (which shall not constitute notice) to:

Cahill Gordon & Reindel LLP
80 Pine Street
New York, New York 10005
Attn: Michael Sherman
Facsimile: (212) 378-2598

SECTION 9.03 Definitions. For purposes of this Agreement, each capitalized term has the meaning given to it, or specified, in Exhibit A.

SECTION 9.04 Interpretation.

(a) Time Periods. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, (i) the date that is the reference date in calculating such period shall be excluded and (ii) if the last day of such period is a not a Business Day, the period in question shall end on the next succeeding Business Day.

(b) Dollars. Unless otherwise specifically indicated, any reference herein to $ means U.S. dollars.

(c) Gender and Number. Any reference herein to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(d) Articles, Sections and Headings. When a reference is made herein to an Article or a Section, such reference shall be to an Article or a Section of this Agreement unless otherwise indicated. The table of contents and headings contained herein are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(e) Include. Whenever the words "include," "includes" or "including" are used herein, they shall be deemed to be followed by the words "without limitation."

(f) Hereof. The words "hereof," "hereto," "hereby," "herein" and "hereunder" and words of similar import when used herein shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(g) Extent. The word "extent" in the phrase "to the extent" shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply "if."

(h) Contracts; Laws. Any Contract or Law defined or referred to herein means such Contract or Law as from time to time amended, modified or supplemented, unless otherwise specifically indicated.

(i) Persons. References to a person are also to its permitted successors and assigns.

(j) Exhibits and Disclosure Letters. The Exhibits to this Agreement and the Disclosure Letters are hereby incorporated and made a part hereof and are an integral part of this Agreement. Each of the Company and Parent may, at its option, include in the Company Disclosure Letter or the Parent Disclosure Letter, respectively, items that are not material in order to avoid any misunderstanding, and such inclusion, or any references to dollar amounts herein or in the Disclosure Letters, shall not be deemed to be an acknowledgement or representation that such items are material, to establish any stand-

ard of materiality or to define further the meaning of such terms for purposes of this Agreement or otherwise. Any matter set forth in any section of the Disclosure Letters shall be deemed to be referred to and incorporated in any section to which it is specifically referenced or cross-referenced and also in all other sections of such Disclosure Letter to which such matter's application or relevance is reasonably apparent. Any capitalized term used in any Exhibit or any Disclosure Letter but not otherwise defined therein shall have the meaning given to such term herein.

(k) Reflected On or Set Forth In. An item arising with respect to a specific representation, warranty, covenant or agreement shall be deemed to be "reflected on" or "set forth in" the Company Financial Statements included in the Company Reports, to the extent any such phrase appears in such representation, warranty, covenant or agreement if (i) there is a reserve, accrual or other similar item underlying a number on such balance sheet or financial statement reasonably related to the subject matter of such representation or (ii) such item and the amount thereof is otherwise reasonably identified on such balance sheet or financial statement (or the notes thereto).

SECTION 9.05 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule or Law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party or such Party waives its rights under this Section 9.05 with respect thereto. Upon any determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated by this Agreement are fulfilled to the extent possible.

SECTION 9.06 Counterparts. This Agreement may be executed in one or more counterparts (including by means of facsimile or email in.pdf format), all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties.

SECTION 9.07 Entire Agreement; No Third-Party Beneficiaries. This Agreement, taken together with the Company Disclosure Letter, the Gurantee and the Confidentiality Agreement, constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, between or among the Parties with respect to the Merger. Except (a) for the right of the Company on behalf of its shareholders to pursue damages (including claims for damages contemplated by the last sentence of Section 8.02(e)) in the event of Parent's or Merger Sub's breach of this Agreement (whether or not this Agreement has been terminated pursuant to Article VIII), and (b) after the Effective Time, for Section 2.01, Section 2.02, Section 2.03, the last sentence of Section 6.02(a) and Section 6.09, each Party agrees that (i) their respective representations, warranties, covenants and agreements set forth herein are solely for the benefit of the other Parties, in accordance with and subject to the terms of this Agreement and (ii) this Agreement is not intended to, and does not, confer upon any Person other than the Parties any rights or remedies hereunder, including the right to rely upon the representations and warranties set forth herein. The Financing Parties and each of their respective Affiliates and their respective current, former and future direct or indirect equity holders, controlling persons, stockholders, agents, Affiliates, members, managers, general or limited partners, assignees or representatives (collectively, the "**Financing Source Parties**") shall be express third-party beneficiaries with respect to Section 8.02(d), Section 8.03, this Section 9.07, Section 9.08, Section 9.11(b), Section 9.12 and Section 9.14 (collectively, the "**DFS Provisions**").

SECTION 9.08 Governing Law. This Agreement, and all Claims or causes of action of the Parties (whether in contract or in tort or otherwise, or whether at law (including at common law or

by statute) or in equity) that may be based on, arise out of or relate to this Agreement or the negotiation, execution, performance or subject matter hereof, shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to principles of conflict of laws; provided, that, except as otherwise set forth in the Debt Letters as in effect as of the date of this Agreement, all matters relating to the interpretation, construction, validity and enforcement (whether at law, in equity, in contract, in tort, or otherwise) against any of the Financing Source Parties in any way relating to the Debt Letters or the performance thereof or the Financing, shall be exclusively governed by, and construed in accordance with, the domestic Law of the State of New York without giving effect to any choice or conflict of law provision or rule whether of the State of New York or any other jurisdiction that would cause the application of Law of any jurisdiction other than the State of New York.

SECTION 9.09 Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by operation of law or otherwise, by any of the Parties without the prior written consent of the other Parties. Any purported assignment without such consent shall be void; provided that Parent may make as assignment of its rights (but not its obligations) under this Agreement to any Financing Party without the prior written consent of the Company. Subject to the preceding sentences, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and assigns.

SECTION 9.10 Specific Enforcement. The Parties acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached and that monetary damages, even if available, would not be an adequate remedy therefor. It is accordingly agreed that, at any time prior to the termination of this Agreement pursuant to Article VIII, the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the performance of terms and provisions of this Agreement, including the right of a Party to cause each other Party to consummate the Merger and the other transactions contemplated by this Agreement, in any court referred to in Section 9.11, without proof of actual damages (and each Party hereby waives any requirement for the securing or posting of any bond in connection with such remedy), this being in addition to any other remedy to which they are entitled at law or in equity. The Parties further agree not to assert that a remedy of specific enforcement is unenforceable, invalid, contrary to Law or inequitable for any reason, nor to assert that a remedy of monetary damages would provide an adequate remedy for any such breach. If any Party brings any Claim to enforce specifically the performance of the terms and provisions of this Agreement when expressly available to such Party pursuant to the terms of this Agreement, then, notwithstanding anything to the contrary herein, the End Date shall automatically be extended by the period of time between the commencement of such Claim and the date on which such Claim is fully and finally resolved.

SECTION 9.11 Jurisdiction; Venue.

(a) All Claims arising from, under or in connection with this Agreement shall be raised to and exclusively determined by the Court of Chancery of the State of Delaware or, if such court disclaims (or does not have) jurisdiction, the U.S. District Court for the District of Delaware, to whose jurisdiction and venue the Parties unconditionally consent and submit. Each Party hereby irrevocably and unconditionally waives any objection to the laying of venue of Claim arising out of this Agreement in such courts and hereby further irrevocably and unconditionally waives and agree not to plead or claim in any such court that any such Claim brought in any such court has been brought in an inconvenient forum. Each Party further agree that service of any process, summons, notice or document by U.S. registered mail to the respective addresses set forth in Section 9.02 hereof shall be effective service of process for any Claim brought against such Party in any such court.

(b) Notwithstanding anything to the contrary in this Agreement (including this Section 9.11), each Party agrees that it will not bring or support any action, cause of action, claim, cross-claim or third-party claim of any kind or description, whether in law or in equity, whether in contract or in tort or otherwise, against the Financing Source Parties in any way relating to this Agreement, including any dispute arising out of the Debt Letters or the performance thereof or the Financing, in any forum other than the Supreme Court of the State of New York, County of New York, or, if under applicable law exclusive jurisdiction is vested in the Federal courts, the United States District Court for the Southern District of New York (and of the appropriate appellate courts therefrom).

SECTION 9.12 Waiver of Jury Trial. **EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF THIS AGREEMENT OR THE MERGER (INCLUDING ANY PROCEEDING AGAINST THE FINANCING SOURCE PARTIES ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED HEREBY, THE DEBT LETTERS, THE FINANCING OR THE PERFORMANCE OF SERVICES WITH RESPECT THERETO). EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH PARTY WOULD NOT, IN THE EVENT OF ANY ACTION, SUIT OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATIONS IN THIS SECTION 9.12.**

SECTION 9.13 Construction. Each of the Parties has participated in the drafting and negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement must be construed as if it is drafted by all the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement.

SECTION 9.14 Financing Sources. Notwithstanding anything to the contrary contained in this Agreement, except for claims by Parent or the Merger Sub against the Financing Source Parties pursuant to the Debt Letters and any definitive documents related thereto, (a) none of the Parties nor any of their respective Subsidiaries, Affiliates, directors, officers, employees, agents, partners, managers, members or stockholders shall have any rights or claims against any Financing Source Party, in any way relating to this Agreement or any of the transactions contemplated by this Agreement, or in respect of any oral representations made or alleged to have been made in connection herewith or therewith, including any dispute arising out of or relating in any way to the Debt Letters or the performance thereof or the financings contemplated thereby, whether at law or equity, in contract, in tort or otherwise and (b) no Financing Source Party shall have any liability (whether in contract, in tort or otherwise) to any Party or any of their respective subsidiaries, Affiliates, directors, officers, employees, agents, partners, managers, members or stockholders for any obligations or liabilities of any Party under this Agreement or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby and thereby or in respect of any oral representations made or alleged to have been made in connection herewith or therewith, including any dispute arising out of or relating in any way to the Debt Letters or the performance thereof or the financings contemplated thereby, whether at law or equity, in contract, in tort or otherwise.

SECTION 9.15 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration and other such Taxes and fees (including penalties and interest) incurred in connection with the Merger and the other transactions contemplated by this Agreement shall be paid by Parent and Merger Sub when due.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement, each as of the date first written above.

THE EMPIRE DISTRICT ELECTRIC COMPANY

By: /s/ Brad Beecher
Name: Brad Beecher
Title: President and Chief Executive Officer

LIBERTY UTILITIES (CENTRAL) CO.

By: /s/ Gregory S. Sorensen
Name: Gregory S. Sorensen
Title: President

By: /s/ Richard Leehr
Name: Richard Leehr
Title: Chief Financial Officer

LIBERTY SUB CORP.

By: /s/ Gregory S. Sorensen
Name: Gregory S. Sorensen
Title: President

By: /s/ Richard Leehr
Name: Richard Leehr
Title: Chief Financial Officer

EXHIBIT A

DEFINED TERMS

Section 1.01 Certain Defined Terms. For purposes of this Agreement, each of the following terms has the meaning specified in this Section 1.01 of Exhibit A:

"**Affiliate**" of any Person means another Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person. For purposes of this definition, "**control**" (including the terms "**controlled by**" and "**under common control with**") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise. For the avoidance of doubt, Emera, Inc. and its subsidiaries shall not be deemed to be Affiliates of Parent or Merger Sub.

"**Antitrust Laws**" means the Sherman Act, as amended, the Clayton Act, as amended, the HSR Act, the Federal Trade Commission Act, as amended, all applicable state, foreign or supranational antitrust Laws and all other applicable Laws issued by a Governmental Entity that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition.

"**Business Day**" means any day except for (a) a Saturday or a Sunday or (b) a day on which banking and savings and loan institutions are authorized or required by Law to be closed in New York, New York.

"**CFIUS**" means the Committee on Foreign Investment in the United States.

"**CFIUS Approval**" means (a) a written notice issued by CFIUS that it has concluded a review or investigation of the notification voluntarily provided pursuant to the DPA, with respect to the transactions contemplated by this Agreement and has terminated all action under Section 721 of the DPA or (b) if CFIUS has sent a report to the President of the United States requesting the President's decision and (i) the President has announced a decision not to take any action to suspend or prohibit the transactions contemplated by this Agreement or (ii) having received a report from CFIUS requesting the President's decision, the President has not taken any action after fifteen (15) days from the date the President received such report from CFIUS.

"**Claim**" means any demand, claim, suit, action, legal proceeding (whether at law or in equity) or arbitration.

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Company Benefit Agreement**" means each employment, consulting, bonus, incentive or deferred compensation, equity or equity-based compensation, severance, change-in-control, retention, termination or other material Contract between the Company or any Company Subsidiary, on the one hand, and any Company Personnel, on the other hand.

"**Company Benefit Plan**" means each (a) employee benefit plan (as defined in Section 3(3) of ERISA, whether or not subject to ERISA) or post-retirement or employment health or medical plan, program, policy or arrangement, (b) bonus, incentive or deferred compensation or equity or equity-based compensation plan, program, policy or arrangement, (c) severance, change-in control, retention or termination plan, program, policy or arrangement or (d) other compensation, pension, retirement, sav-

ings or other benefit plan, program, policy or arrangement, in each case, sponsored, maintained, contributed to or required to be maintained or contributed to by the Company or any Company Subsidiary for the benefit of any Company Personnel, or for which the Company or any Company Subsidiary has any direct or indirect liability.

"**Company Commonly Controlled Entity**" means any person or entity that, together with the Company, is treated as a single employer under Section 414 of the Code.

"**Company Material Adverse Effect**" means any fact, circumstance, effect, change, event or development that has a material adverse effect on the business, properties, financial condition or results of operations of the Company and the Company Subsidiaries, taken as a whole; provided that no fact, circumstance, effect, change, event or development resulting from or arising out of any of the following, individually or in the aggregate, shall constitute or be taken into account in determining whether a Company Material Adverse Effect has occurred: (a) any change or condition affecting any industry in which the Company or any Company Subsidiary operates, including electric generating, transmission or distribution industries or the natural gas distribution, production or transmission industries (including, in each case, any changes in the operations thereof); (b) system-wide changes or developments in electric transmission or distribution systems; (c) any change in customer usage patterns or customer selection of third-party suppliers for electricity; (d) any change affecting any economic, legislative or political condition or any change affecting any securities, credit, financial or other capital markets condition, in each case in the United States, in any foreign jurisdiction or in any specific geographical area; (e) any failure in and of itself by the Company or any Company Subsidiary to meet any internal or public projection, budget, forecast, estimate or prediction in respect of revenues, earnings or other financial or operating metrics for any period; (f) any change attributable to the announcement, execution or delivery of this Agreement or the pendency of the Merger, including (i) any action taken by the Company or any Company Subsidiary that is required or contemplated pursuant to this Agreement, or is consented to by Parent, or any action taken by Parent or any Affiliate thereof, to obtain any Consent from any Governmental Entity to the consummation of the Merger and the result of any such actions, (ii) any Claim arising out of or related to this Agreement (including shareholder litigation), (iii) any adverse change in supplier, employee, financing source, shareholder, regulatory, partner or similar relationships resulting therefrom or (iv) any change that arises out of or relates to the identity of Parent or any of its Affiliates as the acquirer of the Company; (g) any change or condition affecting the market for commodities, including any change in the price or availability of commodities; (h) any change in the market price, credit rating or trading volume of shares of Company Common Stock on the NYSE or any change affecting the ratings or the ratings outlook for the Company or any Company Subsidiary, (i) any change in applicable Law, regulation or GAAP (or authoritative interpretation thereof); (j) geopolitical conditions, the outbreak or escalation of hostilities, any act of war, sabotage or terrorism, or any escalation or worsening of any such act of war, sabotage or terrorism threatened or underway as of the date of this Agreement; (k) any fact, circumstance, effect, change, event or development resulting from or arising out of or affecting the national, regional, state or local engineering or construction industries or the wholesale or retail markets for commodities, materials or supplies (including equipment supplies, steel, concrete, electric power, fuel, coal, natural gas, water or coal transportation) or the hedging markets therefor, including any change in commodity prices; (l) any hurricane, tornado, ice storm, tsunami, flood, earthquake or other natural disaster or weather-related event, circumstance or development; (m) any finding of fact or order contained in any FERC, the FCC or any State Commission Judgment issued prior to the date hereof and applicable to the Company or the Company Subsidiaries; (n) any change or effect arising from (i) any rate cases, including the Proceedings, (ii) any requirements imposed by any Governmental Entities as a condition to obtaining the Company Required Statutory Approvals or the Parent Required Statutory Approvals or (iii) any other requirements or restrictions imposed by the FERC, the FCC or the State Commissions on the Company or the Company Subsidiaries; or (o) any fact, circumstance, effect, change, event or development that results from any shutdown or suspension of operations at any power plant from which the Company or any Company Sub-

sidiary obtains electricity or facilities from which the Company or any Company Subsidiary obtains natural gas; provided, however, that any fact, circumstance, effect, change, event or development set forth in clauses (a), (b), (c), (d), (g), (i), (j) and (n)(iii) above may be taken into account in determining whether a Company Material Adverse Effect has occurred solely to the extent such fact, circumstance, effect, change, event or development has a materially disproportionate adverse effect on the Company and the Company Subsidiaries, taken as a whole, as compared to other entities (if any) engaged in the relevant business in the geographic area affected by such fact, circumstance, effect, change, event or development (in which case, only the incremental disproportionate impact may be taken into account in determining whether there has been, or would be, a Company Material Adverse Effect, to the extent such change is not otherwise excluded from being taken into account by clauses (a)–(o) of this definition).

"**Company Personnel**" means any current or former director, officer or employee of the Company or any Company Subsidiary.

"**Contract**" means any written or oral contract, lease, license, evidence of indebtedness, mortgage, indenture, purchase order, binding bid, letter of credit, security agreement, undertaking or other agreement that is legally binding.

"**Director Stock Unit**" means a common stock unit granted under the Director Stock Unit Plan.

"**Director Stock Unit Plan**" means The Empire District Electric Company Stock Unit Plan for Directors.

"**Disclosure Letters**" means, collectively, the Company Disclosure Letter and the Parent Disclosure Letter.

"**DPA**" means the Defense Production Act of 1950, as amended.

"**Employee Stock Purchase Plan**" means The Empire District Electric Company Employee Stock Purchase Plan.

"**Environmental Claim**" means any Claim against the Company or any Company Subsidiary asserted by any Person alleging liability (including liability for investigatory costs, cleanup costs, natural resources damages, property damages, personal injuries, or penalties) or responsibility arising out of, based on or resulting from (a) the presence or Release of, or exposure to, any Hazardous Materials at any location, or (b) any violation or alleged violation of Environmental Law or any Environmental Permit.

"**Environmental Laws**" means all applicable Laws relating to pollution, protection of, or damage to, the environment (including ambient air, surface water, groundwater, land surface, subsurface and sediments), natural resources climate change or human health and safety as it relates to the exposure to Hazardous Materials.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended.

"**Financing Failure**" means a refusal, for any reason, of the Financing Parties to provide the Financing in full or any other failure, for any reason, of the Financing to be provided in full, in each case, pursuant to, and in accordance with the terms and conditions of, the Debt Letters (or if definitive agreements relating to the Financing have been entered into, pursuant to such agreements).

"**Good Utility Practice**" means (a) any of the practices, methods and acts engaged in or approved by a significant portion of the electric generating, transmission or distribution industries or the industry or natural gas distribution, production or transmission industries, as applicable, during the relevant time period or (b) any of the practices, methods or acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition; provided that Good Utility Practice is not intended to be limited to optimum practices, methods or acts to the exclusion of all others but rather to be acceptable practices, methods or acts generally accepted in the geographic location of the performance of such practice, method or act.

"**Governmental Entity**" means any U.S. or foreign federal, state, provincial or local governmental authority, court, government or self-regulatory organization, commission, tribunal or organization or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, including any governmental, quasi-governmental or nongovernmental body administering, regulating, or having general oversight over gas, electricity, power, water, telecommunications, or similar commodity- or service-related markets, or any court, arbitrator, arbitration panel or similar judicial body.

"**Guarantor**" means Algonquin Power & Utilities Corp., a corporation organized under the laws of Canada.

"**Hazardous Materials**" means (a) petroleum, coal tar and other hydrocarbons and any derivatives or by-products, explosive or radioactive materials or wastes, asbestos in any form and polychlorinated biphenyls and (b) any other chemical, material, substance or waste that is regulated as a pollutant, a contaminant, hazardous or toxic under any Environmental Law.

"**Indebtedness**" means, with respect to any Person, without duplication, (a) all obligations of such Person for borrowed money (other than intercompany indebtedness), (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person evidenced by letters of credit, bankers' acceptances or similar facilities to the extent drawn upon by the counterparty thereto, (d) all capitalized lease obligations of such Person and (d) all guarantees or other assumptions of liability for any of the foregoing.

"**Intellectual Property**" means all intellectual property and industrial property rights of any kind or nature, including all U.S. and foreign trademarks, service marks, service names, internet domain names, trade dress and trade names, and all goodwill associated therewith and symbolized thereby, patents and all related continuations, continuations-in-part, divisionals, reissues, reexaminations, substitutions, and extensions thereof, trade secrets, registered and unregistered copyrights and works of authorship, proprietary rights in databases to the extent recognized in any given jurisdiction, and registrations and applications for registration of any of the foregoing.

"**Judgment**" means a judgment, order, decree, ruling, writ, assessment or arbitration award of a Governmental Entity of competent jurisdiction.

"**Knowledge**" of any Person that is not an individual means, with respect to any matter in question, the actual knowledge of such Person's executive officers.

"**Law**" means any domestic or foreign, federal, state, provincial or local statute, law, ordinance, rule, binding administrative interpretation, regulation, order, writ, injunction, directive, judgment, decree or other requirement of any Governmental Entity, including the rules and regulations of the NYSE, the FERC, the FCC and the State Commissions.

"**Liberty Utilities**" means Liberty Utilities Co., a Delaware corporation, or any successor thereto as the U.S. holding company for the U.S. electric, natural gas and water distribution utility Affiliates of Parent.

"**Merger Consideration**" means Thirty-Four United States Dollars ($34.00) in cash.

"**NYSE**" means the New York Stock Exchange.

"**Organizational Documents**" means any corporate, partnership or limited liability organizational documents, including certificates or articles of incorporation, bylaws, certificates of formation, operating agreements (including limited liability company agreement and agreements of limited partnership), certificates of limited partnership, partnership agreements, shareholder agreements and certificates of existence, as applicable.

"**Parent Material Adverse Effect**" means any fact, circumstance, effect, change, event or development that has or would reasonably be expected to have a material and adverse effect on the ability of Parent or Merger Sub to consummate, or that would reasonably be expected to prevent or materially impede, interfere with or delay Parent or Merger Sub's consummation of, the transactions contemplated by this Agreement.

"**Performance-Based Restricted Stock Award**" means an award of performance-based restricted shares under either of the Stock Incentive Plans.

"**Permit**" means a franchise, license, permit, authorization, variance, exemption, order, registration, clearance or approval of a Governmental Entity.

"**Person**" means any natural person, firm, corporation, partnership, company, limited liability company, trust, joint venture, association, Governmental Entity or other entity.

"**Release**" means any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into or through the environment (including ambient air, surface water, groundwater, land surface, subsurface and sediments).

"**State Commissions**" means the Arkansas Public Service Commission, the Kansas Corporation Commission, the Missouri Public Service Commission and the Oklahoma Corporation Commission.

"**Stock Incentive Plans**" means, collectively, The Empire District Electric Company 2015 Stock Incentive Plan and The Empire District Electric Company 2006 Stock Incentive Plan.

"**Subsidiary**" of any Person means another Person, an amount of the voting securities, other voting ownership or voting partnership interests of which is sufficient to elect at least a majority of its board of directors or other governing body (or, if there are no such voting interests, more than 50% of the equity interests of which) is owned directly or indirectly by such first Person.

"**Tax Return**" means all Tax returns, declarations, statements, reports, schedules, forms and information returns and any amended Tax return relating to Taxes.

"**Taxes**" means all taxes, customs, tariffs, imposts, levies, duties, fees or other like assessments or charges of a similar nature imposed by a Governmental Entity, together with all interest, penalties and additions imposed with respect to such amounts.

"**Time-Vested Restricted Stock Award**" means an award of time-vested restricted shares under either of the Stock Incentive Plans.

Section 1.02 Other Defined Terms. In addition to the defined terms set forth in Section 1.01 of this Exhibit A, each of the following capitalized terms has the respective meaning specified in the Section set forth opposite such term below:

Term	Section
Agreement	Preamble
Balance Sheet Date	3.06(b)
Bankruptcy and Equity Exceptions	3.04
Book-Entry Shares	2.02(b)(i)
Burdensome Effect	6.03(c)
Certificate	2.02(b)(i)
Certificate of Merger	1.02
Closing	1.03
Closing Date	1.03
Commitment Letter	4.06
Company	Preamble
Company Acquisition Agreement	5.03(b)
Company Adverse Recommendation Change	5.03(b)
Company Articles	3.01
Company Board	Recitals
Company Board Recommendation	3.04
Company Bylaws	3.01
Company Common Stock	2.01(a)(i)
Company Disclosure Letter	Article III
Company DRIP	5.01(a)(iv)
Company Employee	6.10(a)
Company Financial Advisor	3.20
Company Financial Statements	3.06(a)
Company Indemnified Parties	6.09(a)
Company Intervening Event	5.03(f)(iii)
Company Projections	3.22
Company Reports	3.06(a)
Company Required Consents	3.05(a)
Company Required Statutory Approvals	3.05(b)(iv)
Company Shareholder Approval	3.04
Company Shareholders Meeting	3.04
Company Subsidiaries	3.01
Company Takeover Proposal	5.03(f)(i)
Company Termination Fee	8.02(b)(ii)
Company Union Contracts	3.10
Company Voting Debt	3.03(b)
Confidentiality Agreement	6.02(b)
Consent	3.05(b)
Continuation Period	6.10(a)
Controlled Group Liability	3.09(d)
Debt Letters	4.06
Demand	2.02(i)

DFS Provisions	9.07
Dissenting Stockholders	2.01(a)(i)(y)
Effective Time	1.02
End Date	8.01(b)(i)
Environmental Permits	3.14(a)(ii)
Equity Securities	3.03(b)
Exchange Act	3.05(b)(i)
Excluded Share(s)	2.01(a)(i)(y)
Failed Condition	6.14(a)
FCC	3.05(b)(iv)
FERC	3.05(b)(iv)
Filed Company Contract	3.15(a)
Filing	3.05(b)
Final Order	7.01(b)
Financing	4.06
Financing Parties	5.04(b)
Financing Source Parties	9.07
FPA	3.05(b)(iv)
GAAP	3.06(a)
GCC	1.01
Guarantee	4.11
HSR Act	3.05(b)(ii)
Insurance Policies	3.18
IRS	3.09(b)
Legal Restraint	7.01(c)
Liens	3.02
Maximum Amount	6.09(c)
Merger	1.01
Merger Sub	Preamble
Parent	Preamble
Parent Disclosure Letter	Article IV
Parent Required Consents	4.03(a)
Parent Required Statutory Approvals	4.03(b)(ii)
Parent Termination Fee	8.02(b)(i)
Parties	Preamble
Paying Agent	2.02(a)
Payment Fund	2.02(a)
Performance-Based Restricted Stock Consideration	2.03(b)
Preference Stock	3.03(a)(ii)
Preferred Stock	3.03(a)(iii)
Proceedings	5.02
Proxy Statement	6.01(a)
PUHCA 2005	4.10
Recommendation Change Notice	5.03(c)
Redacted Fee Letter	4.06
Representatives	5.03(a)
Required Consents	4.03(a)
Required Statutory Approvals	4.03(b)(ii)
SEC	3.05(b)(i)
Securities Act	3.05(b)(i)
Substitute Financing	5.04(f)

Superior Company Proposal	5.03(f)(ii)
Surviving Corporation	1.01
Takeover Statute	3.13
Time-Vested Restricted Stock Consideration	2.03(a)
Transaction Litigation	6.04
Utility Subsidiaries	3.19(a)
Willful Breach	8.02(e)

Certified Copy of Resolutions

Passed by the Board of Directors

of

The Empire District Electric Company

on

February 9, 2016

I, DALE W. HARRINGTON, Secretary of The Empire District Electric Company, a corporation organized and existing under and by virtue of the laws of the State of Kansas (hereinafter called the "Company"), DO HEREBY CERTIFY that the following is a true and correct copy of resolutions adopted by the Board of Directors of the Company at a meeting duly called and held on the 9th day of February 2016; that at said meeting a majority of the Directors, constituting a quorum for the transaction of business, was present and voted in favor of said resolutions; and that said resolutions have not been amended or modified, rescinded or revoked but remain in full force and effect:

Merger Agreement

RESOLVED, that the form, terms and provisions of the Agreement and Plan of Merger (the "**Agreement**"), to be entered into by and among Liberty Utilities (Central) Co., a Delaware corporation ("**Parent**"), Liberty Sub Corp., a Kansas corporation ("**Merger Sub**"), and The Empire District Electric Company, a Kansas corporation (the "**Company**"), in the form presented to the Board of Directors of the Company (the "**Board**"), providing that Merger Sub will, on the terms and subject to the conditions set forth in the Agreement, merge with and into the Company (the "**Merger**"), with the Company as the surviving corporation, and the transactions contemplated by the Agreement, be, and they hereby are, adopted and approved and declared advisable; and be it

FURTHER RESOLVED, that the officers of the Company (the "**Authorized Officers**") be, and each of them hereby is, authorized, for and on behalf of the Company, to execute and deliver the Agreement, in the form presented to the Board, with such non-material changes, additions, or deletions therein as may be approved by the Authorized Officer of the Company executing the same, such execution and delivery to conclusively evidence the authorization and approval thereof by the Company, and each is hereby empowered to take any other action and make any such filings as such Authorized Officer deems necessary or desirable in connection with the execution, delivery and performance of the Agreement and the consummation of the transactions contemplated thereby, including the Merger; and be it

FURTHER RESOLVED, that the foregoing approvals constitute the approval of the Board, and the Board hereby approves, the Agreement and the transactions contemplated thereby, including the Merger, for all purposes under (1) the Kansas General Corporation Code, as amended, and (2) the Company's constituent documents.

Certificate of Merger

RESOLVED, that, if the Agreement is adopted by the Company's stockholders and the other closing conditions in the Agreement are satisfied or waived, then the Authorized Officers will be, and each of them hereby is, authorized and directed, for and on behalf of the Company, to execute and file with the Secretary of State of the State of Kansas a Certificate of Merger merging Merger Sub with and into the Company, and to pay, or cause to be paid, any and all costs, fees and expenses related thereto.

Special Meeting; Record Date

RESOLVED, that the Board has determined that the Agreement and the transactions contemplated thereby, including the Merger, are fair to, and in the best interests of, the Company and the Company's stockholders and hereby recommends that the stockholders of the Company adopt the Agreement; and be it

FURTHER RESOLVED, that adoption of the Agreement be submitted to a vote of the stockholders of the Company entitled to vote thereon at a special meeting of stockholders of the Company (the "**Special Meeting**"); and be it

FURTHER RESOLVED, that in accordance with Section 5 of Article II of the By-laws of the Company, the Secretary of the Company be, and he hereby is, authorized and directed to give notice of the Special Meeting to each stockholder of record entitled to notice at his or her last known post officer address not less than ten (10) nor more than fifty (50) days prior thereto; and be it

FURTHER RESOLVED, that the Chairman of the Board be and hereby is authorized to establish in advance a date, not exceeding sixty (60) nor less than ten (10) days preceding the date of the Special Meeting, as the record date for determination of stockholders entitled to vote at the Special Meeting; and be it

FURTHER RESOLVED, that the Authorized Officers be, and each of them hereby is, authorized, for and on behalf of the Company, to (i) fix the date, place and time for the Special Meeting, in compliance with the applicable law and the Company's constituent documents, (ii) adjourn or postpone the Special Meeting, if deemed necessary or appropriate by any Authorized Officer, including, if necessary, to permit further solicitation of proxies if there are not sufficient votes at the time of the Special Meeting to adopt the Agreement, and (iii) take such other actions as such

Authorized Officer deems necessary or desirable to implement the Special Meeting; and be it

FURTHER RESOLVED, that the Authorized Officers be, and each of them hereby is, authorized, for and on behalf of the Company, to engage one or more proxy solicitors, inspectors of elections and/or paying agents (such paying agent to be Wells Fargo Bank, National Association, or such other paying agent agreed to by the Company and Parent pursuant to the terms of the Agreement), as such Authorized Officers shall determine are necessary or desirable in connection with the Agreement, the Merger or the transactions contemplated thereby.

Proxy Materials

RESOLVED, that the preparation of preliminary and definitive copies of a letter to stockholders, notice of meeting of stockholders, proxy statement, form of proxy, and any other solicitation materials to be used in connection with obtaining stockholder approval of the Agreement and the Merger (collectively, the "**Proxy Materials**"), and appropriately responsive to the requirements of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**") and other applicable laws, is authorized; and be it

FURTHER RESOLVED, that the Authorized Officers of the Company be, and they hereby are, authorized and directed, for the Company, to prepare or to cause to be prepared the Proxy Materials.

Filings

RESOLVED, that the Authorized Officers of the Company be, and they hereby are, authorized to execute and deliver all such other instruments, and to do all such other acts and things as the Authorized Officers, in their discretion, may deem necessary or desirable in connection with the execution, delivery, and performance of the Agreement by the Company and the satisfaction by the Company of the requirements related to the Agreement under any federal, state or local laws, rules or regulations relating to the regulation of the Company or its subsidiaries, or any other governmental statutes or regulations that are applicable to the Agreement or to the transactions contemplated thereby, including, without limitation, obtaining consents, approvals, orders, or other action from, or findings by, the appropriate regulatory authorities of Arkansas, Kansas, Missouri and Oklahoma, from the Securities and Exchange Commission (the "**SEC**") under the Securities Act of 1933 or the Exchange Act, from the Federal Energy Regulatory Commission under the Federal Power Act, from the Federal Communications Commission and from the Committee on Foreign Investment in the United States; and be it

FURTHER RESOLVED, that the Authorized Officers of the Company be, and they hereby are, authorized to execute and deliver all such other

instruments, and to do all such other acts and things as the officers, in their discretion, may deem necessary or desirable in connection with the execution, delivery, and performance of the Agreement by the Company and the satisfaction by the Company of the requirements related to the Agreement under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, or any other governmental statutes or regulations that are applicable to the Agreement, the Merger or to the transactions contemplated thereby; and be it

FURTHER RESOLVED, that the Authorized Officers be, and each of them individually hereby is, authorized to file all such further documents and to provide such additional information and otherwise take all steps necessary and appropriate to satisfy all such filings and related requirements; and be it

FURTHER RESOLVED, that the filing of one or more Current Reports on Form 8-K under the Exchange Act and the Proxy Materials, with the SEC relating to (1) the Merger, (2) the execution and delivery of the Agreement and (3) the By-laws Amendment (as defined below), is authorized; and be it

FURTHER RESOLVED, that the Authorized Officers of the Company be, and they hereby are, authorized and directed, for the Company, to execute personally or by attorney-in-fact and to cause to be filed with the SEC said Form 8-Ks and the Proxy Materials, as applicable.

Directors Stock Unit Plan

RESOLVED, that the Stock Unit Plan for Directors of The Empire District Electric Company (the "**Plan**") be, and hereby is, effective upon and subject to the occurrence of the Merger, amended to provide that each Stock Unit credited under the Plan that is outstanding immediately prior to the Effective Time (as defined in the Agreement) shall be cancelled and converted, as of the Effective Time, into the right to receive payment of an amount in cash equal to the Merger Consideration (as defined in the Agreement) at the payment date elected or otherwise provided pursuant to the Plan, together with interest on such amount at the "U.S. Prime Rate" as quoted by the Wall Street Journal in effect at the Effective Time for the period, if any, from the Effective Time until the date of payment of such amount.

By-laws Amendment

RESOLVED, that the Amended and Restated By-laws of the Empire District Electric Company, amended as of February 6, 2014 are hereby amended and restated on the date hereof (the "**By-laws Amendment")** to add the following Article VII, Section 5:

> "Unless the Company consents in writing to the selection of an alternative forum, the state court located in Shawnee County in the

State of Kansas (or, if such state court located in Shawnee County in the State of Kansas does not have jurisdiction, the United States District Court for the District of Kansas located in Shawnee County) shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Company, (ii) any action asserting a claim for breach of a fiduciary duty owed by any director, officer, employee or agent of the Company to the Company or the Company's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the Kansas General Corporation Code, the certificate of incorporation or the by-laws of the Company (as any may be amended from time to time) or (iv) any action asserting a claim governed by the internal affairs doctrine, in each case subject to said courts having personal jurisdiction over the indispensable parties named as defendants therein."

General

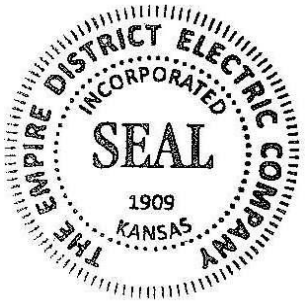
RESOLVED, that the Authorized Officers of the Company be, and each of them hereby is, authorized and empowered to do or cause to be done any and all things and to take or cause to be taken any and all actions including the negotiation, execution, delivery, acknowledgement, filing, recording and sealing of any and all certificates, notices, applications, agreements, opinions, papers, statements, instruments or other documents, the making of any expenditures, the obtaining of any necessary consents or waivers and to do or cause to be done any and all acts and things that may be necessary or in their judgment appropriate to effectuate the purpose and intent of these resolutions, or any of them, the Agreement, the transactions contemplated thereby and such other agreements and documents as may be executed by any Authorized Officer pursuant to authorization granted in these resolutions or to carry out the transactions contemplated thereby; and be it

FURTHER RESOLVED, that the Authorized Officers be, and each of them with full power to act without the others hereby is, authorized to pay all fees and expenses incurred by the Company in connection with the transactions contemplated by the Agreement and any actions or matters necessary or appropriate to give effect to the foregoing, including, but not limited to, all fees and expenses necessary or appropriate to effectuate the purpose and intent of the foregoing resolutions, or any of them, the Agreement, the transactions contemplated thereby and such other agreements and documents as may be executed by any Authorized Officer pursuant to authorization granted in these resolutions or to carry out the transactions contemplated thereby; and be it

FURTHER RESOLVED, that each Authorized Officer may authorize any other officer, employee or agent of, or counsel to, the Company or any of its subsidiaries to take any and all actions and to execute and deliver any and all certificates, documents, agreements and instruments referred to in these resolutions in place of or on behalf of such Authorized Officer, with full power as if such Authorized Officer were taking such action himself; and be it

FURTHER RESOLVED, that all actions previously taken by the officers of the Company in connection with the foregoing be, and they hereby are, ratified, approved and confirmed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Company on this 9th day of February 2016.



Secretary

Certified Copy of Resolutions

Passed by the Board of Directors

of

Liberty Utilities (Central) Co.

on

February 9, 2016

I, TODD WILEY, Secretary of Liberty Utilities (Central) Co., a corporation organized and existing under and by virtue of the laws of the State of Delaware (hereinafter called the "Company"), DO HEREBY CERTIFY that the following is a true and correct copy of resolutions adopted by the Board of Directors of the Company at a meeting duly called and held on the 9th day of February 2016; that at said meeting a majority of the Directors, constituting a quorum for the transaction of business, was present and voted in favor of said resolutions; and that said resolutions have not been amended or modified, rescinded or revoked by remain in full force and effect:

WHEREAS, the Board deems it desirable and in the best interests of the Company for the Company to enter into and perform its obligations under, and to consummate the merger and other transactions contemplated by, that certain Agreement and Plan of Merger (the "Merger Agreement") among the Company, Liberty Sub Corp., and The Empire District Electric Company, in substantially the form attached hereto as Exhibit A, and all additional documents, agreements and certificates to be delivered by the Company thereunder, in each case with such changes as any Authorized Representatives of the Company, or any of them, deem necessary and desirable as conclusively evidenced by the execution thereof by any such Authorized Representative (the "Approved Agreements");

NOW, THEREFORE, BE IT RESOLVED, FURTHER RESOLVED, that the execution, delivery, and performance by the Company of the Approved Agreements, and the consummation of the merger and all other transactions contemplated thereby be, and they hereby are, authorized and approved in all respects;

FURTHER RESOLVED, that for purposes of these resolutions and all actions taken in connection herewith, the "Authorized Representatives" of the Company shall include Ian Robertson, David Bronicheski, any officer or director of the Company, and any person to whom any of the foregoing may delegate any of their authority as an Authorized Representative;

FURTHER RESOLVED, that any two Authorized Representatives of the Company be, and each of them individually hereby is, authorized, empowered and directed, for and on behalf of the Company, to do, and to cause any and all of the Company's counsel and advisors to do, any and all acts, deeds and things, and to sign, seal, execute, acknowledge, file, record and deliver the Approved Agreements and any and all agreements, documents, instruments, notices, certificates or undertakings which may be or may become necessary, desirable or appropriate to effectuate the purposes of the foregoing resolutions, and to incur and pay all such fees and expenses as they shall in their good faith and judgment determine to be necessary, desirable or advisable to carry out fully the intent and purposes of the foregoing resolutions and the execution

by them of any such document, instrument or agreement or the payment of any such fees and expenses or the doing by them of any act in connection with the foregoing matters shall conclusively establish their authority therefor and the approval of the documents, instruments or agreements so executed, the expenses so paid, the filings so made and the actions so taken;

FURTHER RESOLVED, that all actions heretofore taken by any officer, director, or other Authorized Representative of the Company in connection with any matter referred to in or contemplated by any of the foregoing resolutions be, and hereby are, approved, ratified, and confirmed in all respects; and

FURTHER RESOLVED, that this Consent will be in lieu of a special meeting of the Board and will be included in the minutes and filed with the records of the Company in place of any minutes of such meeting.

IN WITNESS WHEREOF, I have hereunto set my hand on this 15th day of March, 2016.

Secretary

Certified Copy of Resolutions

Passed by the Board of Directors

of

Liberty Sub Corp.

on

February 9, 2016

I, TODD WILEY, Secretary of Liberty Sub Corp., a corporation organized and existing under and by virtue of the laws of the State of Kansas (hereinafter called the "Company"), DO HEREBY CERTIFY that the following is a true and correct copy of resolutions adopted by the Board of Directors of the Company at a meeting duly called and held on the 9th day of February 2016; that at said meeting a majority of the Directors, constituting a quorum for the transaction of business, was present and voted in favor of said resolutions; and that said resolutions have not been amended or modified, rescinded or revoked by remain in full force and effect:

WHEREAS, the Board deems it desirable and in the best interests of the Company for the Company to enter into and perform its obligations under, and to consummate the merger and other transactions contemplated by, that certain Agreement and Plan of Merger (the "Merger Agreement") among the Company, Liberty Utilities (Central) Co. ("Liberty Central"), and The Empire District Electric Company, in substantially the form attached hereto as Exhibit A, and all additional documents, agreements and certificates to be delivered by the Company thereunder, in each case with such changes as the Authorized Representatives of the Company, or any of them, deem necessary and desirable as conclusively evidenced by the execution thereof by any such Authorized Representative (the "Approved Agreements");

NOW, THEREFORE, BE IT RESOLVED, FURTHER RESOLVED, that the execution, delivery, and performance by the Company of the Approved Agreements, and the consummation of the merger and all other transactions contemplated thereby be, and they hereby are, authorized and approved in all respects;

FURTHER RESOLVED, that the Merger Agreement be submitted to Liberty Central, the sole stockholder of the Company, for approval, and the Board hereby recommends that Liberty Central approve, and advises Liberty Central to approve, the Company's execution, performance, and delivery of the Merger Agreement and the consummation of the merger and all other transactions contemplated thereby;

FURTHER RESOLVED, that for purposes of these resolutions and all actions taken in connection herewith, the "Authorized Representatives" of the Company shall include Ian Robertson, David Bronicheski, any officer or director of the Company, and any person to whom any of the foregoing may delegate any of their authority as an Authorized Representative;

FURTHER RESOLVED, that any two Authorized Representatives of the Company be, and each of them individually hereby is, authorized, empowered and directed, for and on behalf of the Company, to do, and to cause any and all of the Company's counsel and advisors to do, any and all acts, deeds and things, and to sign, seal, execute, acknowledge, file, record and deliver the Approved Agreements and any and all agreements, documents, instruments, notices, certificates or undertakings which may be or may become necessary, desirable or appropriate to effectuate the purposes of the foregoing resolutions, and to incur and pay all such fees and expenses as they shall in their good faith and judgment determine to be necessary, desirable or advisable to carry out fully the intent and purposes of the foregoing resolutions and the execution by them of any such document, instrument or agreement or the payment of any such fees and expenses or the doing by them of any act in connection with the foregoing matters shall conclusively establish their authority therefor and the approval of the documents, instruments or agreements so executed, the expenses so paid, the filings so made and the actions so taken;

FURTHER RESOLVED, that all actions heretofore taken by any officer, director or other Authorized Representative of the Company in connection with any matter referred to in or contemplated by any of the foregoing resolutions be, and hereby are, approved, ratified, and confirmed in all respects and

FURTHER RESOLVED, that this Consent will be in lieu of a special meeting of the Board and will be included in the minutes and filed with the records of the Company in place of any minutes of such meeting.

IN WITNESS WHEREOF, I have hereunto set my hand on this 15th day of March, 2016.

Secretary

Algonquin Power & Utilities Corp
Unaudited Pro Forma Consolidated Balance Sheet
September 30, 2015
(in millions of Canadian dollars)

	APUC	Empire	Pro Forma Adjustments	Pro forma Consolidated
Assets				
Currents assets:				
Cash and cash equivalents	$52	$2	$(1941) **3(b)**	$55
			1000 **3(c)**	
			(40) **3(c)**	
			(50) **3(c)**	
			1078 **3(d)**	
			(13) **3(d)**	
			(34) **3(e)**	
Accounts receivable, net	146	124		270
Natural gas in storage	28	43		71
Supplies and consumables inventory	15	37		53
Regulatory assets	27	10		36
Prepaid expenses	15	42		56
Long-term investments	35			35
Deferred income taxes	23		11 **3(c)**	47
			13 **3(c)**	
Income taxes receivable	1			1
Derivative instruments	12	3		15
Other current assets	16	6		22
Total current assets	369	268	24	661
Property, plant and equipment, net	3718	2656		6374
Intangible assets, net	80			80
Goodwill	107	53	(53) **3(b)**	1029
			923 **3(b)**	
Regulatory assets	208	270		477
Derivative instruments	76			76
Long-term investments	146			146
Deferred income taxes	38			38
Other assets	18	4		23
Total assets	4759	3251	894	8903
LIABILITIES AND STOCKHOLDERS' EQUITY				
Current liabilities:				
Accounts payable	19	58		77
Accrued liabilities	139	61		200
Dividends payable	37			37
Regulatory liabilities	35	8		44
Long-term liabilities	22	22		44
Pension and other post-employment benefits				
Other long-term liabilities	43	20		63
Derivative instruments	7	6		12
Preferred shares, Series C	1			1
Income taxes liability	5			5
Deferred income taxes				
Total current liabilities	308	175	-	483
Long-term liabilities	1592	1140	1078 **3(d)**	3809
Regulatory liabilities	116	182		298
Deferred income taxes	201	546		747
Derivative instruments	90	4		94
Pension and other post-employment benefits	154	100		254
Other long-term liabilities	185	33		218
Preferred shares, Series C	18			18
Redeemable non-controlling interest	11			11
Shareholders' equity:				
Preferred shares	214			214
Common shares	1654	58	(58) **3(g)**	2625
			1000 **3(c)**	
			(29) **3(c)**	
Subscription receipts	111			111
Additional paid-in capital	37	875	(875) **3(g)**	37
Deficit	(524)	137	(137) **3(g)**	(608)
			(34) **3(e)**	
			(37) **3(c)**	
			(13) **3(d)**	
Accumulated other comprehensive income	238			238
	1729	1071	(184)	2616
Non-controlling interest	356			356
Total stockholders' equity	2084	1071	(184)	2971
Total liabilities and shareholders equity	$4759	$3251	$894	$8903

See accompanying notes to unaudited pro forma consolidated financial statements

Algonquin Power & Utilities Corp
Unaudited Pro Forma Consolidated Statement of Operations
For the year ended December 31, 2014
(in millions of Canadian dollars)

	APUC	Empire	Pro Forma Adjustments	Pro Forma Consolidate
Revenue				
Regulated electricity distribution	$207	$652		$859
Regulated gas distribution	446	57		503
Regulated water reclamation and distribution	66	2		69
Non-regulated energy sales	202			202
Other revenue	22	9		31
	944	720		1664
Expenses				
Operating	236	147		383
Regulated fuel & electricity purchased	121	238		358
Regulated gas purchased	261	30		291
Non-regulated energy purchased	39			39
Administrative expenses	35	71		106
Depreciation of property, plant and equipment	109	80		189
Amortization of intangible assets	5			5
Other amortization		1		1
Gain on foreign exchange	(1)			(1)
	804	567		1371
Operating income from continuing operations	139	154		293
Interest expense	62	41	20 **3(d)**	124
Interest, dividend income and other income	(8)	(5)		(12)
Loss (gain) on sale of assets	-			-
Acquisition-related costs	3			3
Write-down of long-lived assets	8			8
	67	37	20	123
Earnings (loss) from operations before income taxes	72	117	(20)	170
Income tax expense (recovery)				
Current	4	(3)		1
Deferred	13	46	(8) **3(d)**	52
	17	43	(8)	52
Earnings from continuing operations	56	74	(13)	117
Loss from discontinued operations, net of tax	(2)			(2)
Net earnings (loss)	54	74	(13)	115
Net earnings attributable to the non controlling interest	(22)			(22)
Net earnings (loss) attributable to Algonquin Power & Utilities Corp	$76	$74	$(13)	$137
Weighted average shares of common stock outstanding (in millions)				
Basic	214		94 **3(h)**	308
Diluted	216		94 **3(h)**	311
Basic net earnings per share from continuing operations	$ 0.32			$ 0.42
Basic net earnings per share	$ 0.31			$ 0.41
Diluted net earnings per share from continuing operations	$ 0.32			$ 0.42
Diluted net earnings per share	$ 0.31			$ 0.41

See accompanying notes to unaudited pro forma consolidated financial statements

Algonquin Power & Utilities Corp
Unaudited Pro Forma Consolidated Statement of Operations
Nine month period ended September 30, 2015
(in millions of Canadian dollars)

	APUC	Empire	Pro Forma Adjustments		Pro Forma Consolidated
Revenue					
Regulated electricity distribution	$170	$542			$711
Regulated gas distribution	350	39			389
Regulated water reclamation and distribution	58	2			60
Non-regulated energy sales	160				160
Other revenue	31	8			39
	768	591	-		1358
Expenses					
Operating	211	136			347
Regulated electricity purchased	101	169			269
Regulated gas purchased	168	19			187
Non-regulated energy purchased	23				23
Administrative expenses	27	59			87
Depreciation of property, plant and equipment	100	76			176
Amortization of intangible assets	4				4
Other amortization	4				4
Gain on foreign exchange	(3)				(3)
	635	458			1093
Operating income from continuing operations	132	133			265
Interest expense	49	39	15	**3(d)**	103
Interest, dividend income and other income	(6)	-			(7)
Loss (gain) on sale of assets	(3)				(3)
Acquisition-related costs	1				1
Write-down of long-lived assets	2				2
Loss (gain) on derivative financial instruments	(2)				(2)
	40	39	15		94
Earnings (loss) from operations before income taxes	92	94	(15)		171
Income tax expense (recovery)					
Current	7	-			6
Deferred	25	36	(6)	**3(d)**	55
	32	35	(6)		62
Earnings from continuing operations	60	59	(9)		110
Loss from discontinued operations, net of tax	(1)				(1)
Net earnings (loss)	59	59	(9)		109
Net earnings attributable to the non controlling interest	(20)				(20)
Net earnings (loss) attributable to Algonquin Power & Utilities Corp.	$79	$59	$(9)		$129
Weighted average shares of common stock outstanding (in millions)					
Basic	252		94	**3(h)**	346
Diluted	255		94	**3(h)**	349
Basic net earnings per share from continuing operations	$ 0.29				$ 0.35
Basic net earnings per share	$ 0.29				$ 0.35
Diluted net earnings per share from continuing operations	$ 0.28				$ 0.35
Diluted net earnings per share	$ 0.28				$ 0.35

See accompanying notes to unaudited pro forma consolidated financial statements

LIBERTY UTILITIES
ORGANIZATION CHART
AS OF FEBRUARY 18, 2016

NOTES

1. Unless otherwise indicated, the ownership of all entities is 100%.
2. Defined terms have the meaning ascribed to them in Algonquin Power & Utilities Corp's ("Algonquin") most recent Annual Information Form.
3. "Non-Algonquin" means that the entity in question would not satisfy the definition of an "APCo Entity" in Algonquin's credit agreement.
4. The highlighted boxes denote facilities/assets that are owned by the legal entities, not the legal entity.

KEY

1. Corporation or LLC
2. Facility or Asset

Chart A

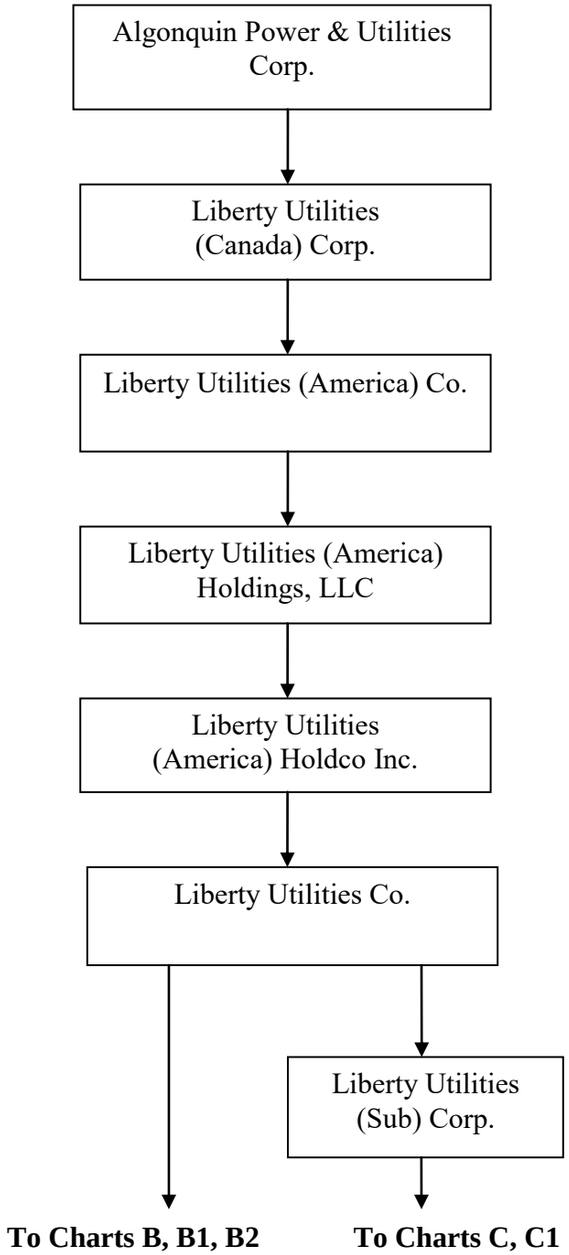

Algonquin Power & Utilities Corp.
Liberty Utilities (Canada) Corp.
Liberty Utilities (America) Co.
Liberty Utilities (America) Holdings, LLC
Liberty Utilities (America) Holdco Inc.
Liberty Utilities Co.
Liberty Utilities (Sub) Corp.
To Charts B, B1, B2
To Charts C, C1

Chart B
(Continued on Chart B1, B2)

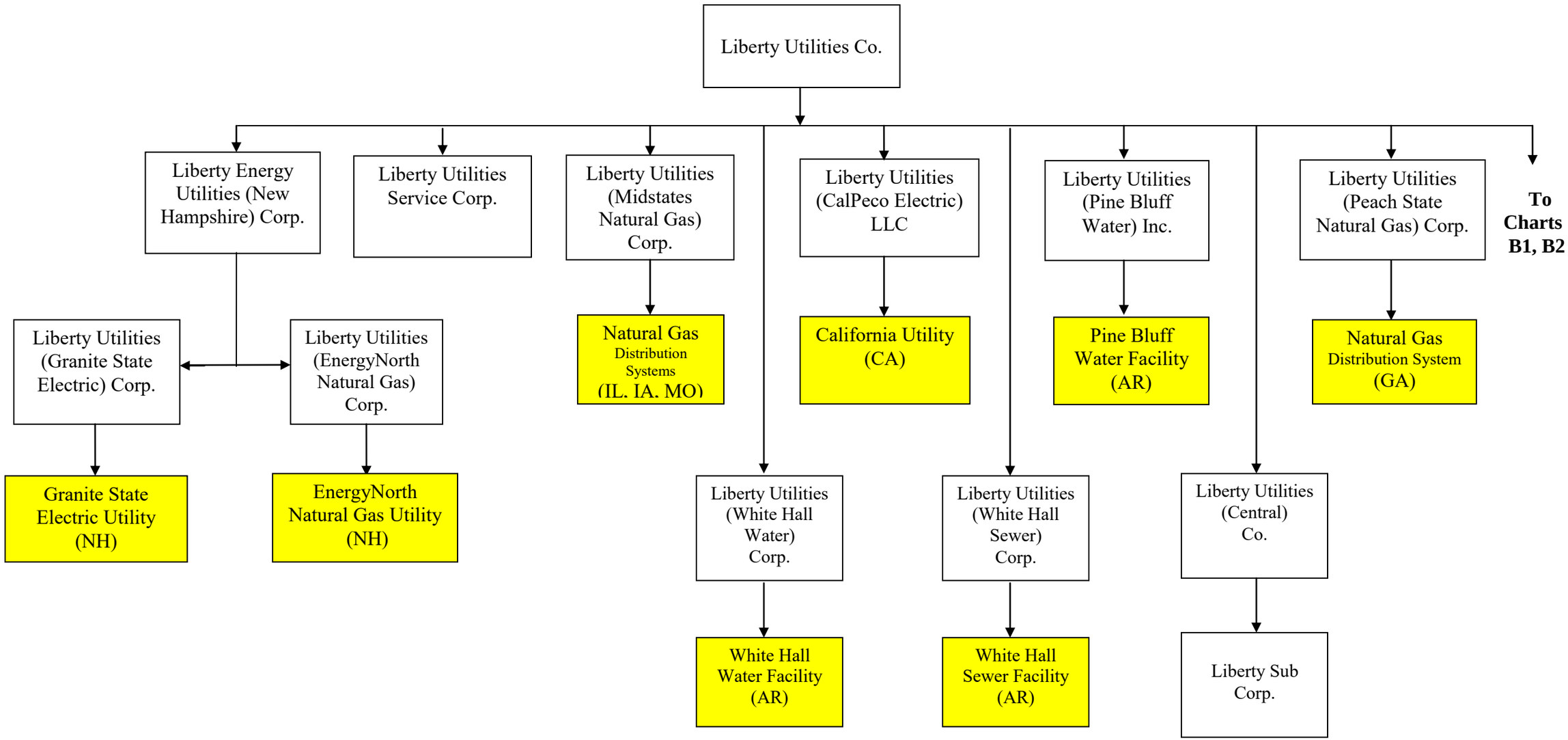


Chart B1

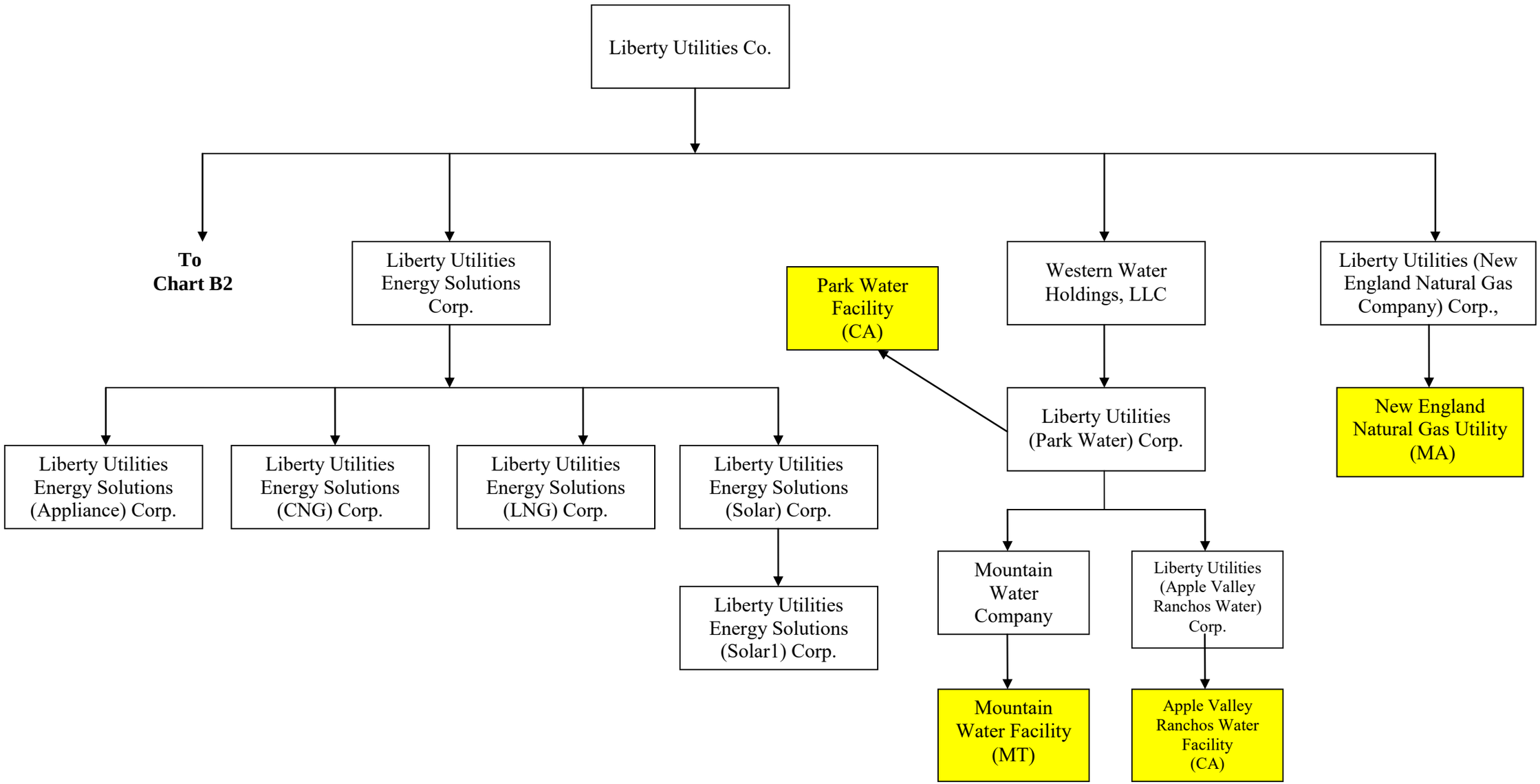

Liberty Utilities Co.
To Chart B2
Liberty Utilities Energy Solutions Corp.
Park Water Facility (CA)
Western Water Holdings, LLC
Liberty Utilities (New England Natural Gas Company) Corp.,
Liberty Utilities Energy Solutions (Appliance) Corp.
Liberty Utilities Energy Solutions (CNG) Corp.
Liberty Utilities Energy Solutions (LNG) Corp.
Liberty Utilities Energy Solutions (Solar) Corp.
Liberty Utilities (Park Water) Corp.
New England Natural Gas Utility (MA)
Liberty Utilities Energy Solutions (Solar1) Corp.
Mountain Water Company
Liberty Utilities (Apple Valley Ranchos Water) Corp.
Mountain Water Facility (MT)
Apple Valley Ranchos Water Facility (CA)

Chart B2

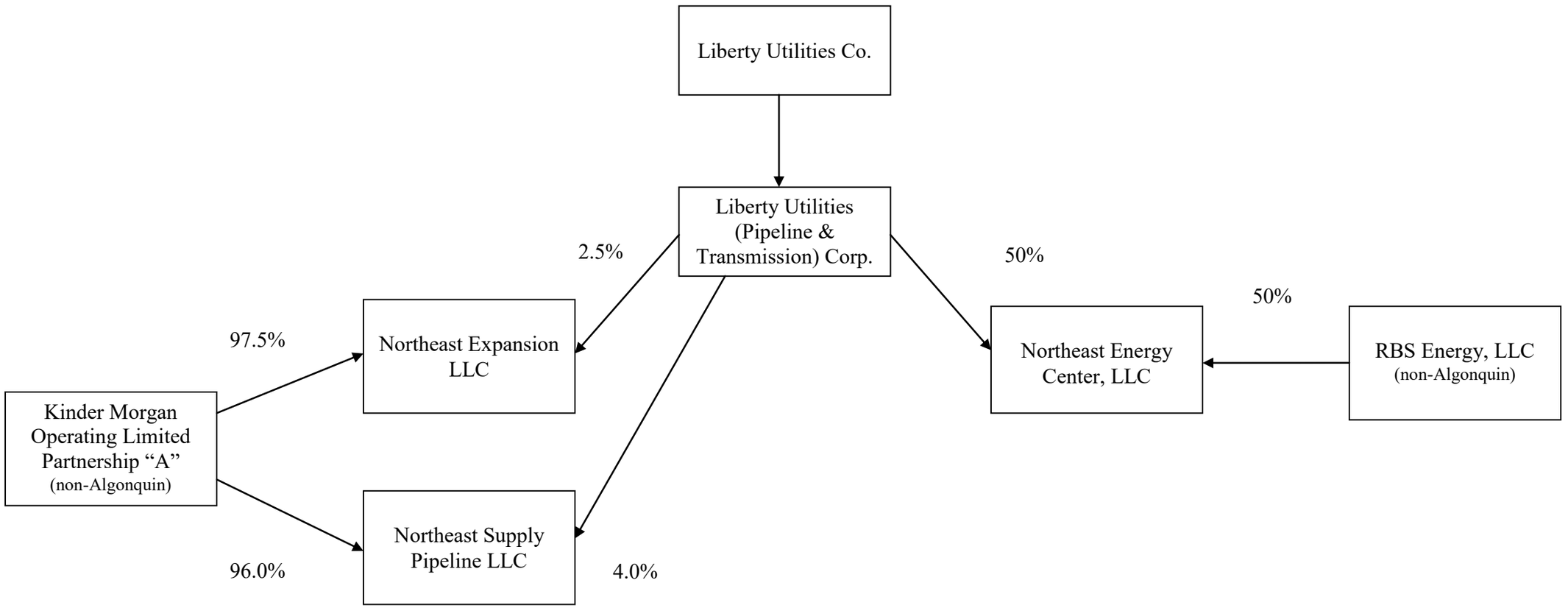

Liberty Utilities Co.
Liberty Utilities (Pipeline & Transmission) Corp.
2.5%
50%
50%
97.5%
Northeast Expansion LLC
Northeast Energy Center, LLC
RBS Energy, LLC
(non-Algonquin)
Kinder Morgan Operating Limited Partnership "A"
(non-Algonquin)
Northeast Supply Pipeline LLC
96.0%
4.0%

Chart C
(continued on Chart C1)

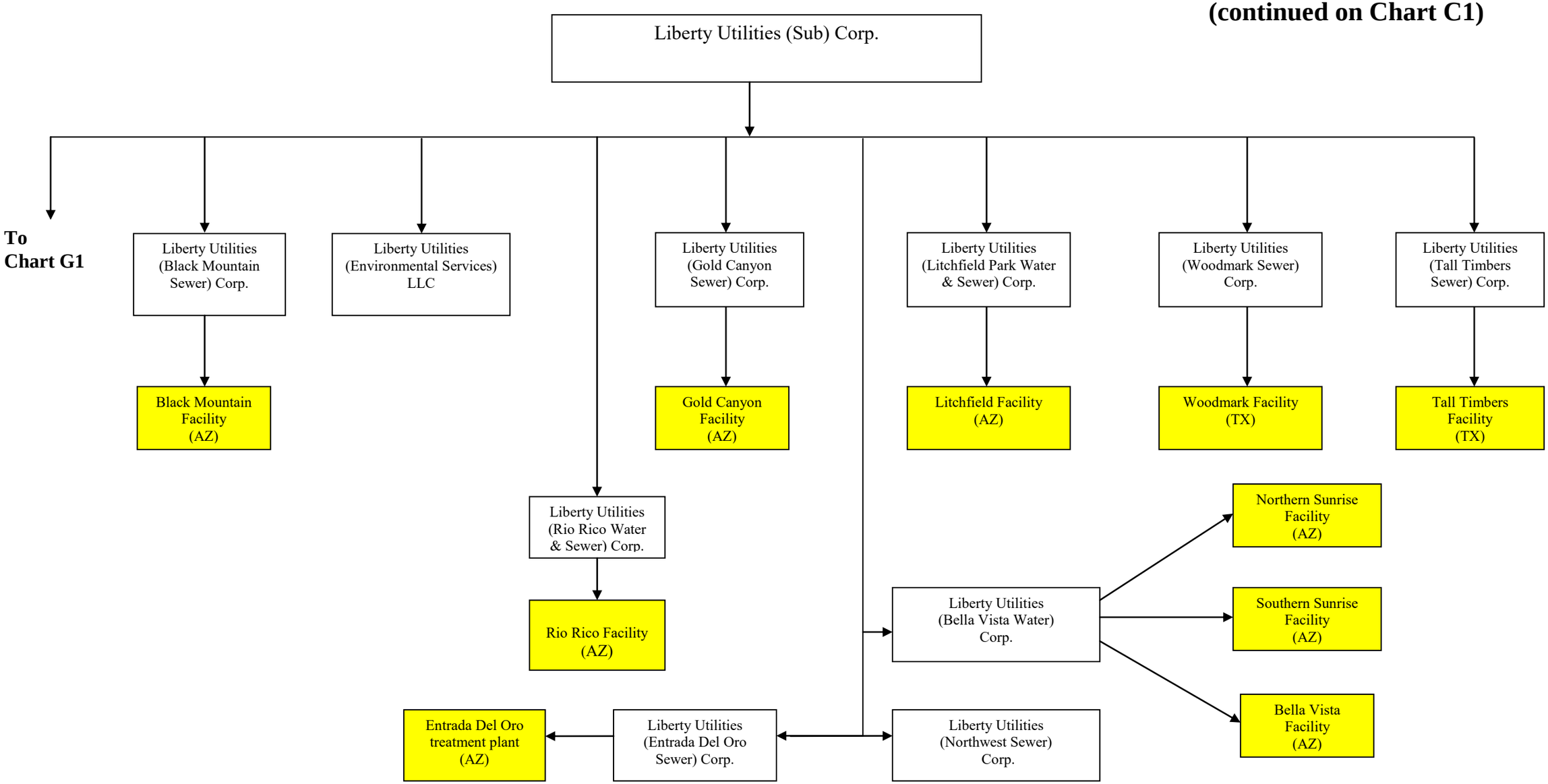
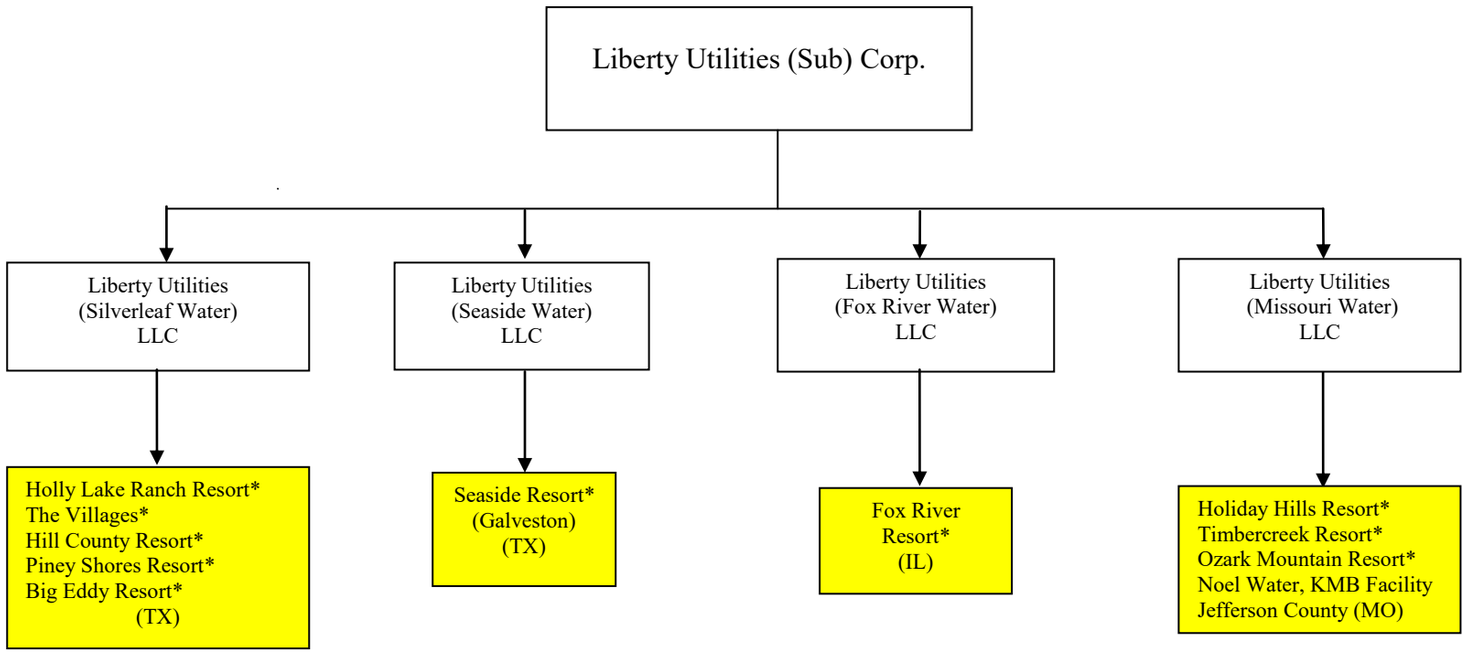


Chart C1



* Algonquin owns water treatment plants, water wells, lines, wastewater collection systems, rest line wastewater treatment plants and certain other assets located at these resorts.

LIBERTY UTILITIES
ORGANIZATION CHART
POST EMPIRE MERGER

NOTES

1. Unless otherwise indicated, the ownership of all entities is 100%.
2. Defined terms have the meaning ascribed to them in Algonquin Power & Utilities Corp's ("Algonquin") most recent Annual Information Form.
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4. The highlighted boxes denote facilities/assets that are owned by the legal entities, not the legal entity.

KEY

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Chart A

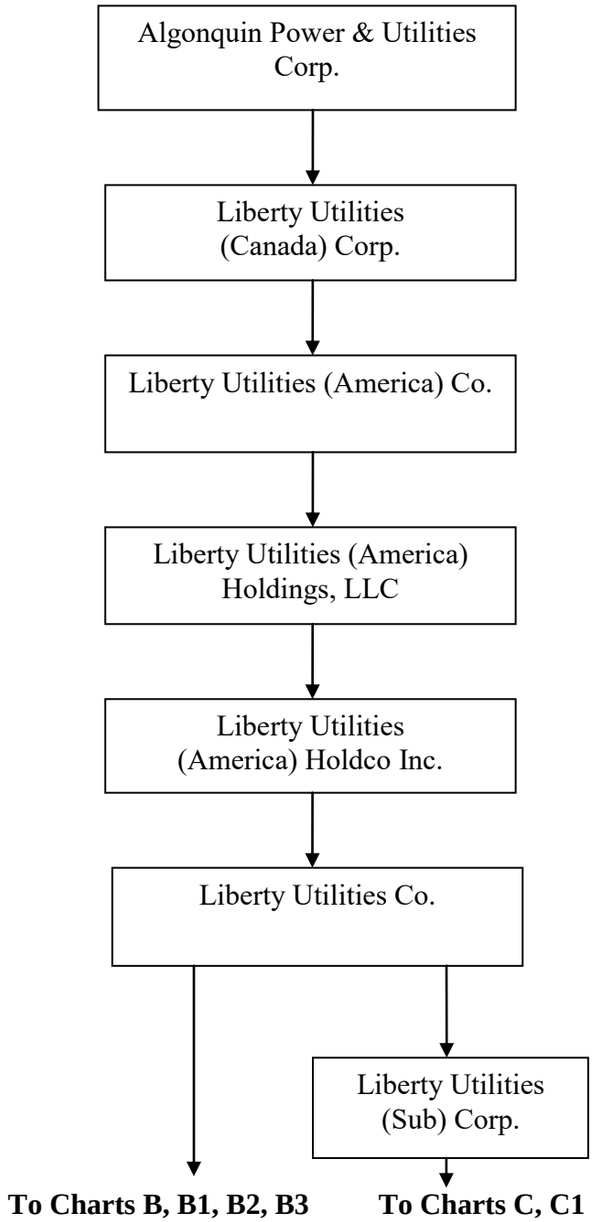

Algonquin Power & Utilities Corp.
Liberty Utilities (Canada) Corp.
Liberty Utilities (America) Co.
Liberty Utilities (America) Holdings, LLC
Liberty Utilities (America) Holdco Inc.
Liberty Utilities Co.
Liberty Utilities (Sub) Corp.
To Charts B, B1, B2, B3
To Charts C, C1

Chart B
(Continued on Chart B1, B2, B3)

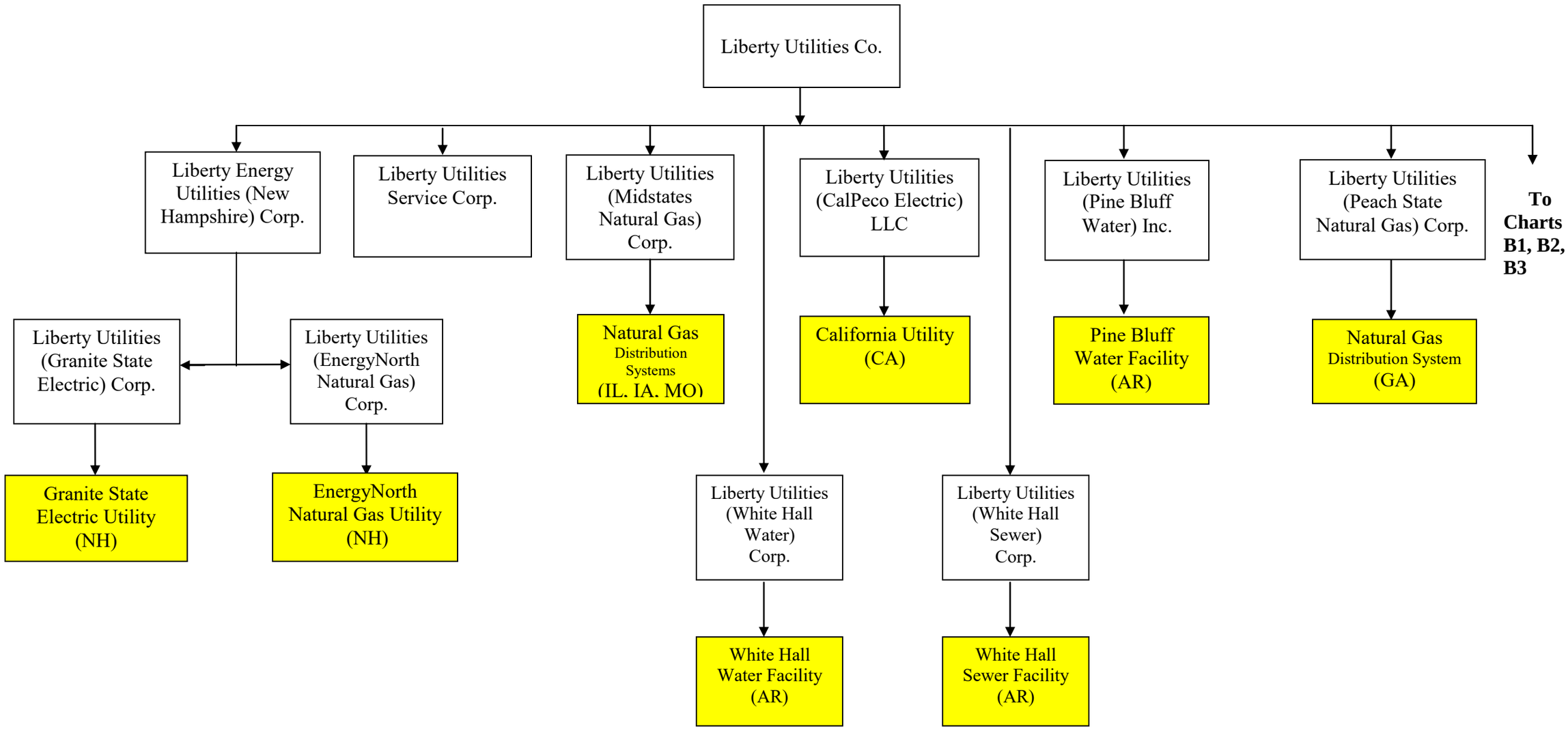
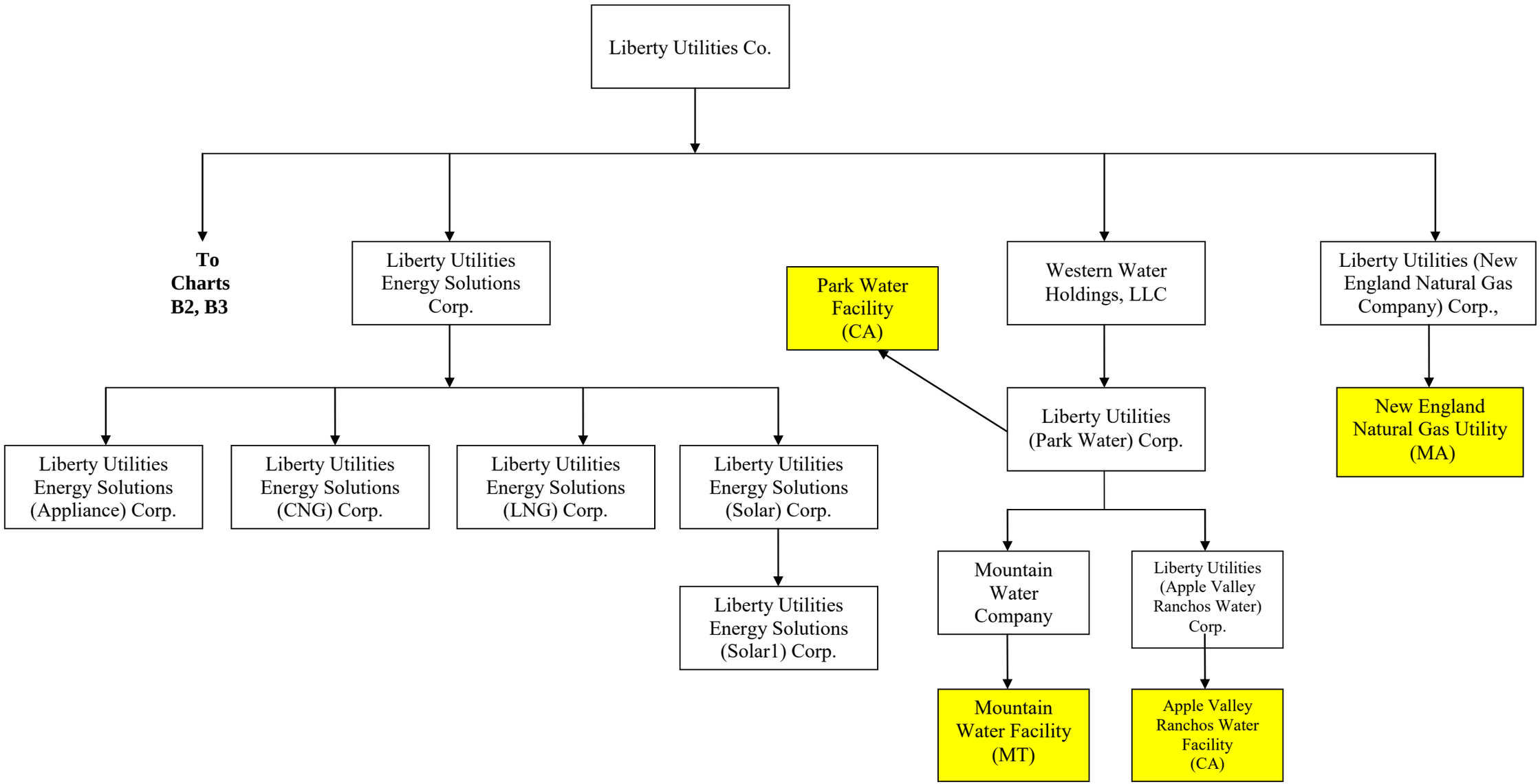


Chart B1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To Charts B2, B3
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Western Water Holdings, LLC
Liberty Utilities (New England Natural Gas Company) Corp.,
Liberty Utilities Energy Solutions (Appliance) Corp.
Liberty Utilities Energy Solutions (CNG) Corp.
Liberty Utilities Energy Solutions (LNG) Corp.
Liberty Utilities Energy Solutions (Solar) Corp.
Liberty Utilities (Park Water) Corp.
New England Natural Gas Utility (MA)
Liberty Utilities Energy Solutions (Solar1) Corp.
Mountain Water Company
Liberty Utilities (Apple Valley Ranchos Water) Corp.
Mountain Water Facility (MT)
Apple Valley Ranchos Water Facility (CA)

Chart B2

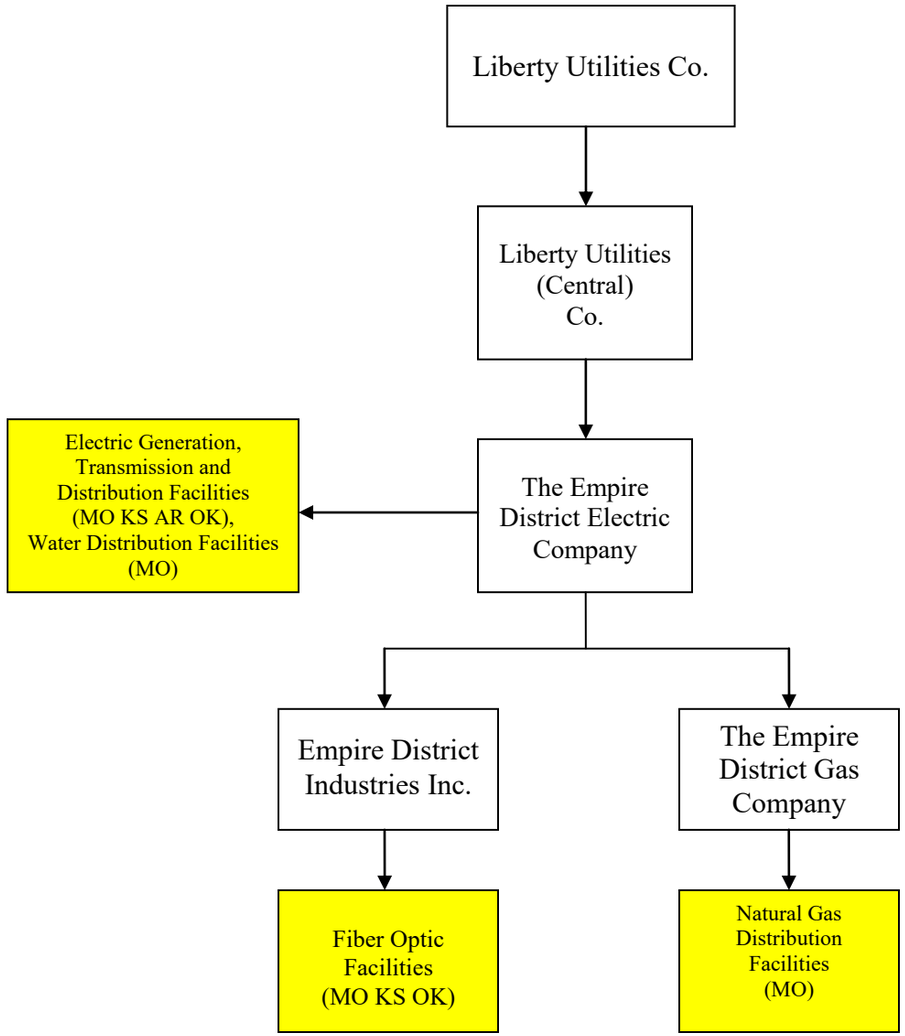
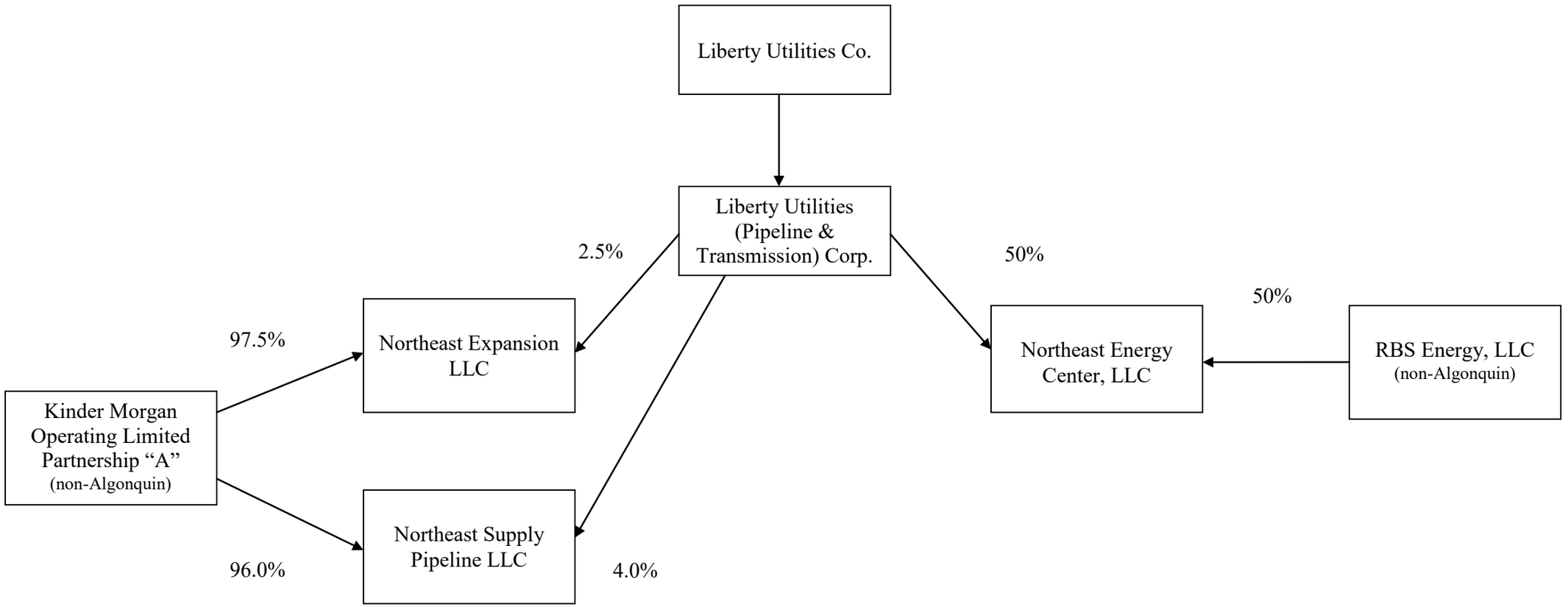

Liberty Utilities Co.
Liberty Utilities (Central) Co.
The Empire District Electric Company
Electric Generation, Transmission and Distribution Facilities (MO KS AR OK), Water Distribution Facilities (MO)
Empire District Industries Inc.
The Empire District Gas Company
Fiber Optic Facilities (MO KS OK)
Natural Gas Distribution Facilities (MO)

Chart B3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RBS Energy, LLC (non-Algonquin)
Kinder Morgan Operating Limited Partnership "A" (non-Algonquin)
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Chart C
(continued on Chart C1)

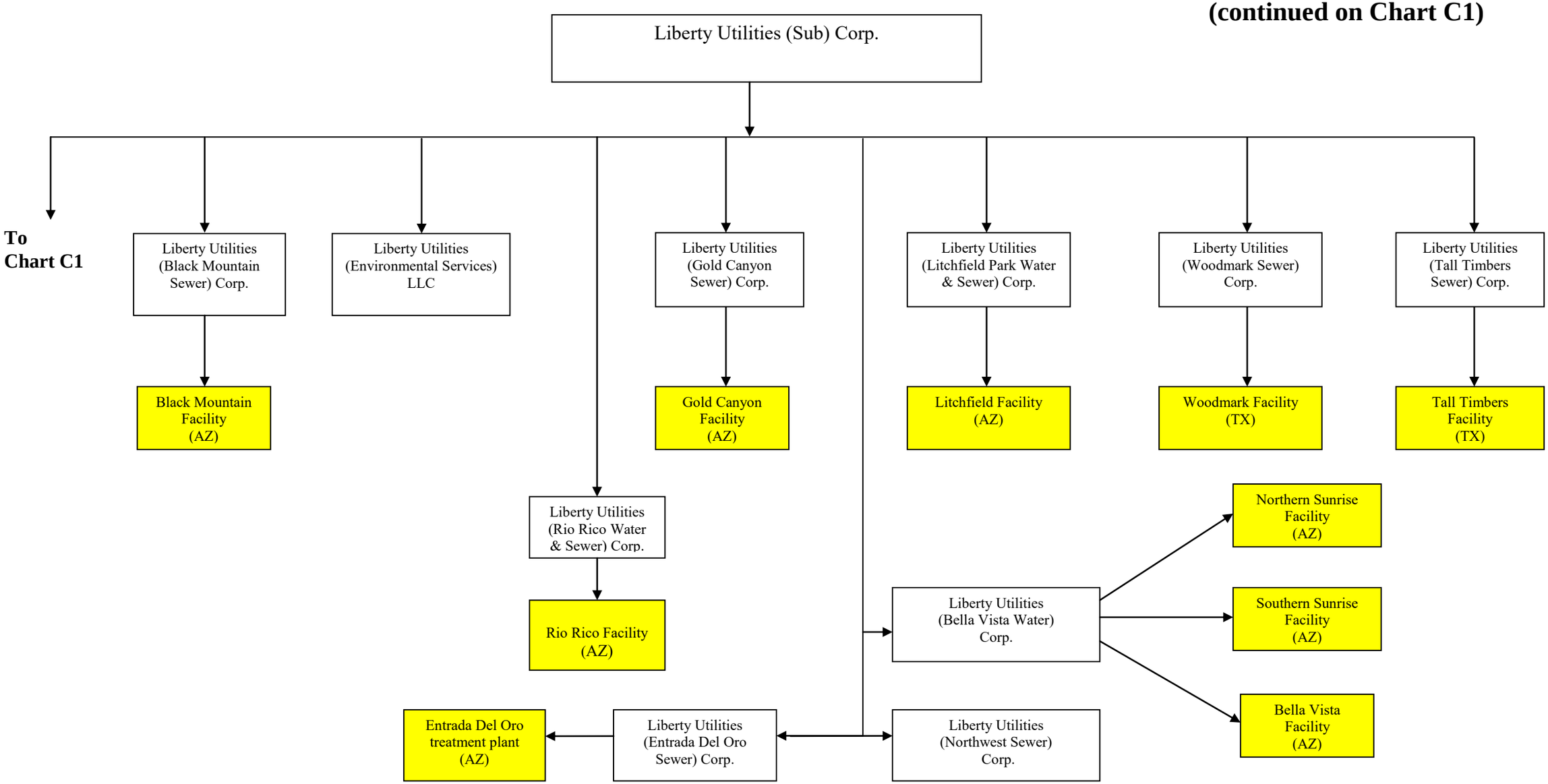
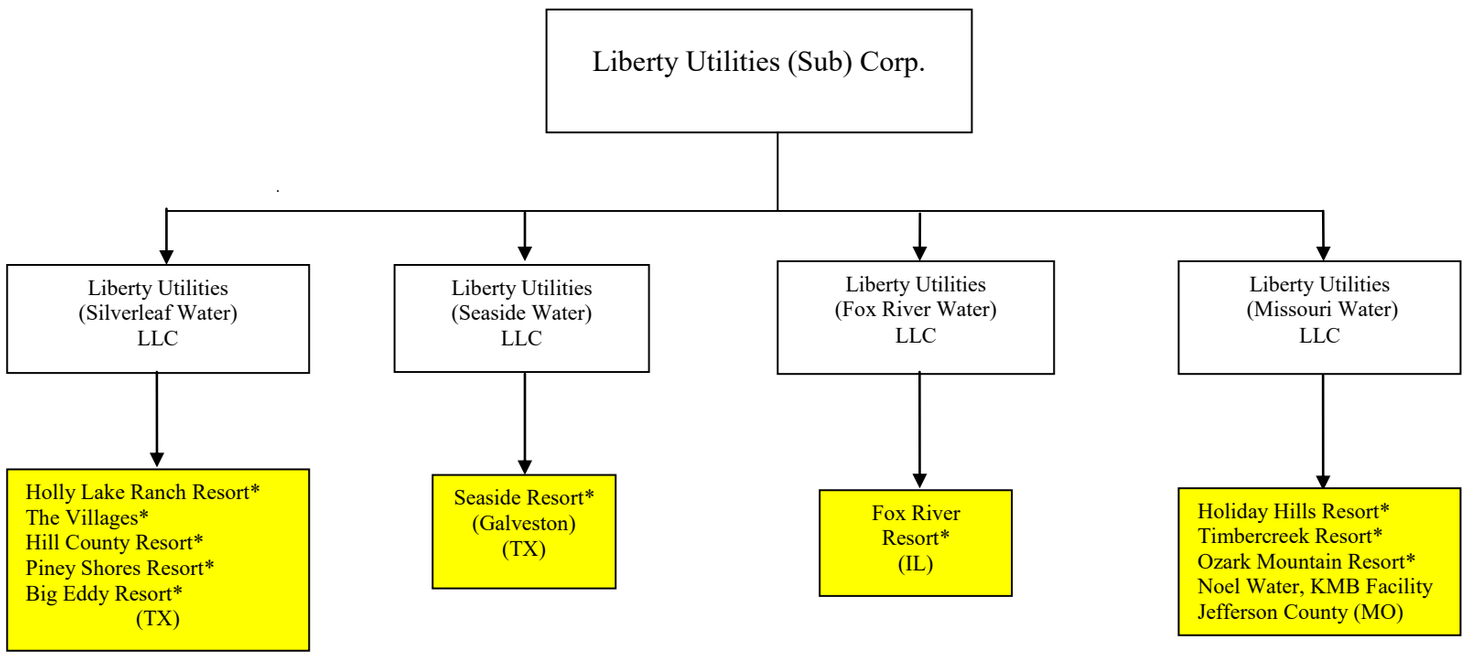


Chart C1



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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Symmetry Energy Solutions, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. GC-2021- _____
	)	
Empire District Gas Company d/b/a Liberty Utilities or Liberty,	)	
	)	
Respondent.	)	

COMPLAINT AND MOTION FOR EXPEDITED TREATMENT

Symmetry Energy Solutions, LLC ("Symmetry"), pursuant to §386.390 Revised Statutes of Missouri ("RSMo"), 20 C.S.R. 4240-2.070, 20 C.S.R. 4240-2.080(14), and the facts and law cited below, complains as follows regarding the Empire District Gas Company d/b/a Liberty Utilities or Liberty ("Empire").

I. INTRODUCTION

1. Symmetry files this Complaint because Empire is failing to comply with the requirements of its tariff by demanding that Symmetry—and Symmetry's customers—pay over $11 million in Operational Flow Order ("OFO") penalties, and because Empire is threatening to shut off Symmetry's access to Empire's distribution system if Symmetry does not pay the demanded amount in full by August 31, 2021. Symmetry seeks an order from the Commission prohibiting Empire from further attempts to collect these penalties, and from terminating Symmetry's and its customers' access to Empire's system during the pendency of this case.

2. The OFO penalties Empire is seeking to recover are improper under Empire's tariff. Empire issued the OFO in question in connection with the February 2021 Winter Storm Event known as Winter Storm Uri. The *only asserted basis* for Empire's OFO was that an

upstream pipeline had itself issued an OFO. However, that upstream pipeline later asked the Federal Energy Regulatory Commission ("FERC") to waive *all* penalties associated with its OFO. The pipeline explained that Winter Storm Uri was a historic and unprecedented event, and entities involved—including shippers like Symmetry—had collaborated to ensure system reliability, but many shippers were nevertheless "unable to adhere completely to the OFOs" due to circumstances wholly out of their control.[1] Empire's parent company tried to block the waiver, filing an official protest, but FERC granted the pipeline's request. In so doing, FERC acknowledged that Winter Storm Uri presented unprecedented circumstances, shippers collaborated with the pipeline to ensure system reliability, and imposing "extreme penalties [would] not accomplish the purpose of penalties, which is to deter behavior that could impair system reliability."[2] Furthermore, FERC explained that "*no shipper (including Empire) has a right to a windfall as the result of administration of penalties on other entities*."[3]

3. Because FERC has waived the upstream pipeline's OFO penalties, the situation that purportedly justified Empire's OFO—namely the threat of OFO penalties from an upstream supplier—no longer exists. And that FERC concluded that system integrity was maintained, and the entities involved collaborated, rendering any such penalties unnecessary as a deterrent, further undermines any argument that Empire has a basis to continue to press for their imposition. Empire's tariff requires that any OFO and associated penalties be limited "to address only the problem(s) giving rise to the need for the OFO." Because the basis on which Empire's OFO was issued no longer exists, and because no such problems arose and no associated deterrent is required, Empire is not entitled to collect the penalties it seeks.

[1] Exhibit A ¶¶ 4-5.
[2] *Id*. ¶ 25.
[3] *Id*. ¶ 26 (emphases added).

4. Nevertheless, Empire is demanding that Symmetry and its customers pay the *maximum* penalties for violation of an improper and unjustified OFO, which total over $11 million. Empire has provided no justification for this demand, and has certainly not explained how these penalties are limited or necessary to address the particular "problem" giving rise to the OFO, as required pursuant to Empire's tariff. The penalties are improper under Empire's tariff, and Empire should not be permitted to collect them.

5. Moreover, Empire's parent has already tried, and failed, to argue that penalties on this gas system are appropriate. As noted above, Empire filed a protest with FERC to try to stop the penalty waiver. Empire's protest failed, and FERC granted the waiver. Empire should not be permitted to end run its loss before FERC, and unilaterally impose penalties based on those that were waived.

6. For these reasons, the Commission should prohibit Empire from collecting these improper OFO penalties.

7. In addition, at this time the Commission should order that Empire refrain from terminating Symmetry and its customers' access to Empire's system during the pendency of this case, as Symmetry has complied with all terms of Empire's tariff, and brings this dispute regarding the application of the relevant tariff provisions in good faith, and disputes the amounts billed to it by Empire.[4]

[4] *See Whitsett v. City of St. Clair*, 80 S.W.2d 696 (Mo. App. 1935); *State ex rel. Spanish Lake Serv., Inc. v. Luten*, 500 S.W.2d 46 (Mo. App. 1973) (holding that a utility cannot threaten discontinuation of service over a billing dispute); Exhibit B (Aggregator Agreement between Empire Gas and Symmetry) ¶ 8 (limits Empire's right to discontinue services to situations where Marketer/Aggregator fails to pay *undisputed* invoices); Empire Gas Tariff Sheet No. 29, paragraph 16; Tariff Sheet No. 31, Paragraphs 22, 27. Symmetry has complied with all tariff obligations and has a good faith dispute over billing.

II. BACKGROUND

A. The Parties

8. Empire is a public utility and gas corporation incorporated under the laws of the State of Kansas, with its principal office located at 602 South Joplin Avenue, Joplin, Missouri. Empire is a wholly-owned subsidiary of The Empire District Electric Company ("Empire Electric") and an indirect subsidiary of Liberty Utilities.

9. Empire is primarily engaged in the business of distributing and transporting natural gas to customers in 42 counties in the State of Missouri. Empire is subject to the jurisdiction of the Commission under Chapters 386 and 393 of the Revised Statutes of Missouri.

10. Symmetry is a leading retail natural gas marketer providing over one trillion cubic feet of natural gas per year to approximately one hundred thousand (100,000) customers in thirty-five states, including Missouri. Symmetry's customers in certain areas of Missouri rely on Empire to transport to them the natural gas supplied by Symmetry. Symmetry's address is 1111 Louisiana Street, Houston, Texas 77002.[5]

11. Symmetry is authorized to file this Complaint against Empire under 20 C.S.R. 4240-2.070.

12. Prior to this filing, representatives from Symmetry directly communicated with Empire about this Complaint.

13. The Commission has jurisdiction over this Complaint under RSMo §§ 393.130.1, 386.390.1, 393.260 and 20 C.S.R. 4240-2.070.

[5] Effective September 30, 2021, Symmetry's address will change to 9811 Katy Freeway, Suite 1400, Houston, TX 77024.

14. The Commission is required to determine the propriety of charges and set just and reasonable rates and has the authority to suspend and defer charges. Every unjust or unreasonable charge is prohibited. RSMo §§ 393.150, 393.130.1.

B. Empire's Tariff

15. Empire's current tariff (the "Tariff") was issued on August 17, 2020 and became effective on October 16, 2020.

16. Tariff Sheets 23 through 46 govern Empire's provision of transportation service. The transportation services program "allows non-residential customers the opportunity to purchase natural gas directly from producers and arrange their own delivery or to purchase gas from marketers or aggregators [such as Symmetry] who have entered into contracts with [Empire] to act on behalf of customers to supply gas to [Empire's] city gate for delivery on a firm or interruptible basis on [Empire's] distribution system." (Sheet No. 23.)[6]

17. The Tariff allows Empire to issue OFOs in certain specified circumstances. An OFO is "[a]ny order from [Empire] or applicable Interstate Transportation pipeline(s) that requires Customer, Aggregator or Marketer to maintain the daily delivery of specified quantities of natural gas to the Receipt Point." (Sheet No. 26 at ¶ 29.) The Tariff provides that Empire may call an OFO when (1) it "experiences failure of transmission, distribution or gas storage facilities"; (2) "transmission system pressures or other unusual conditions jeopardize the operation of [Empire's] system"; (3) Empire's "transportation, storage and supply resources are being used at or near their maximum rate deliverability"; (4) "any of [Empire's] transporters or suppliers call the equivalent of an OFO or Critical Day"; or (5) Empire "is unable to fulfill its

[6] Empire and Symmetry's predecessor Seminole Energy Services, LLC also entered into a Marketer/Aggregator Agreement in April 2012 (attached hereto as Exhibit B).

firm contractual obligations or otherwise when necessary to maintain the overall operational integrity of all or a portion of [its] system." (Sheet No. 43 at ¶ 1.)

18. If a customer uses more or less gas than a marketer provides during an OFO, the customer and/or marketer may be subject to penalties. Specifically, if "Customer, Aggregator or Marketer ... take[s] delivery of an amount of natural gas from [Empire] that is ... more than the hourly or daily amount being received by [Empire] from the applicable Interstate Pipeline for the Customer's, Aggregator's or Marketer's account," then "Customer, Aggregator or Marketer shall be charged a penalty of $25.00 per Mcf, plus the Gas Daily Index price for the applicable Interstate Pipeline for such Unauthorized Overruns during the duration of the OFO," "with the exception of a 5% daily tolerance[.]" (Sheet No. 43 at ¶ 2(A).)

19. Importantly, the Tariff requires that "*[a]ny OFO, along with associated conditions and penalties, shall be limited, as practicable to address only the problem(s) giving rise to the need for the OFO*." (Sheet No. 43 at ¶ 1 (emphases added).)

C. The February 2021 Winter Storm And Empire's OFO

20. In mid-February 2021, Missouri and many other states across the Midwest, South and Southwest experienced a severe winter storm known as Winter Storm Uri. Winter Storm Uri had a severe impact on the supply and transportation of natural gas in Missouri and surrounding states.

21. The vast majority of natural gas that Symmetry supplies to its customers on Empire's system is transported to Empire on the Southern Star Central Gas Pipeline, Inc. ("Southern Star").

22. On information and belief, Empire receives a substantial portion of its gas from the Southern Star pipeline.

23. On February 9, 2021, Southern Star issued an OFO because of feared impacts of Winter Storm Uri on the integrity of Southern Star's pipeline.[7] Southern Star's OFO was in effect from February 11 to February 17, 2021. Empire's Tariff allows it to issue an OFO when "any of [its] transporters or suppliers call the equivalent of an OFO or Critical Day[.]" (Sheet No. 43 at ¶ 1.) Therefore, in response to Southern Star's OFO, Empire issued its own OFO, writing to Symmetry, as follows:[8]

> All,
>
> Please be advised Southern Star has issued an OFO effective the start of gas day **Tuesday, February 9, 2021 until Wednesday, February 17, 2021**.
>
> Empire will do the same.

Critically, Empire provided no basis for its OFO beyond the mere fact of the Southern Star OFO.

24. On March 30, 2021, Empire sent letters to Symmetry's customers on Empire's system, stating that Symmetry failed to properly nominate or deliver gas during Empire's OFO, that Empire was assessing an OFO penalty under its tariff, and that, "[w]hile these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers [i.e., Symmetry], and then we would bill any unrecovered balances to you."[9]

25. On April 15, 2021, Empire sent letters to Symmetry demanding payment of a total of $11,871,298.69 in OFO penalties.[10]

26. On April 29, 2021, Symmetry sent a letter to Empire stating that Symmetry disputes the asserted penalties.[11]

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[7] Exhibit C at 1 ("Southern Star … issued various OFOs to protect the integrity of its pipeline system under Section 10 of the General Terms and Conditions (GT&C) of its tariff during a period of sustained cold and severe winter conditions on the Southern Star System.").
[8] Exhibit D.
[9] Exhibit E.
[10] Exhibit F.
[11] Exhibit G.

D. FERC Subsequently Waives Southern Star's OFO Penalties

27. The only stated justification for Empire's OFO was that Southern Star issued an OFO for the same period.[12] But the very same Southern Star OFO on which Empire predicated its OFO and associated penalties has since been waived, the concerns that resulted in the OFO did not materialize, and FERC found that the penalties were not required as a deterrent.

28. On March 11, 2021, Southern Star submitted to FERC a request to waive all penalties associated with its OFOs during Winter Storm Uri, and on April 9, 2021, FERC granted that request.

29. As FERC explained:

> In its filing, Southern Star proposes to waive all OFO penalties for all shippers and delivery point operators who may have incurred penalties during the OFO period, in recognition of the historic nature of the winter weather event. Southern Star states that the purpose of OFOs is to deter behavior by shippers and point operators, and ensure the integrity and reliability of its pipeline and storage operations. Southern Star reports that shippers and point operators in aggregate behaved in a manner that allowed it to sustain pipeline operations during a critical weather event and continue serving its markets without curtailing primary firm service. [¶] Southern Star acknowledges that many shippers and delivery point operators were unable to adhere completely to the OFOs and would be subject to penalties absent waiver. Nevertheless, Southern Star reports that many of the shippers and delivery point operators assisted Southern Star during the event and helped it to provide firm service without curtailment. Southern Star believes that a waiver of all OFO penalties is appropriate where the aggregate level of compliance alleviated the strain on its system and the collaborative effort among shippers and delivery point operators avoided impairment of Southern Star's ability to operate its system.[13]

30. Southern Star further stated that it "believe[d] that the totality of the circumstances presented during the OFO Period, including the collaborative behavior by its

[12] *See* Exhibit D.
[13] Exhibit A ¶¶ 4-5.

shippers and delivery point operators who worked with Southern Star and assisted Southern Star in continuing to provide firm service without curtailment, warrants waiver of OFO penalties incurred during this period ... in addition to the steep increases to the costs of gas supplies during the event."[14]

31. Nine parties—including multiple local distribution companies—filed comments supporting Southern Star's waiver request.[15] *Only one party—Empire Electric, Empire's parent company—filed a protest*.[16] In its protest, Empire Electric argued, among other things, "that it believe[d] that it complied with all OFOs during the event and that it st[ood] to receive OFO penalty credits" under Southern Star's tariff unless the penalties were waived.[17]

32. FERC agreed with Southern Star (and the numerous parties who supported Southern Star's request) and granted the waiver over Empire Electric's protest. FERC noted that Southern Star has the authority under its tariff "to waive penalties incurred by shippers as a result of an OFO violation," and it granted Southern Star's further request for a waiver of penalties incurred by delivery point operators.[18] In doing so, FERC explained:

> [W]e find that Southern Star acted in good faith by collaborating with shippers and delivery point operators to ensure system reliability during the extreme weather event.... [Additionally,] we find that the requested waiver addresses a concrete problem because, absent the waiver, Southern Star's delivery point operators would face extreme penalties. ***Moreover, these extreme penalties do not accomplish the purpose of penalties, which is to deter behavior that could impair system reliability.*** The extreme weather event presented circumstances ***outside the control*** of the delivery point operators. Southern Star found no evidence of gamesmanship by any entity incurring penalties during this critical time. Rather, based upon the record in this proceeding, it appears that the cooperation of the pipeline's customers (including delivery

[14] *Id*. ¶ 17.
[15] *Id*. ¶ 8.
[16] *Id*.
[17] *Id*. ¶ 14.
[18] *Id*. ¶¶ 21-22.

> point operators), helped maintain system integrity and, as a result, they should not be burdened by extreme penalties.[19]

33. FERC specifically addressed Empire Electric's objections to the waiver and determined they were meritless:

> [W]e find that the requested waiver does not result in undesirable consequences, such as harm to third parties. Empire argues that a blanket waiver would reward delivery point operators who jeopardized pipeline security and reliability by violating Southern Star's OFO. We disagree. As noted above, Southern Star found no evidence of gamesmanship by parties incurring penalties. Instead, Southern Star explained that the cooperation of delivery point operators helped maintain system integrity. Likewise, ***no shipper (including Empire) has a right to a windfall as the result of administration of penalties on other entities***.[20]

III. THE IMPOSITION OF OFO PENALTIES VIOLATES EMPIRE'S TARIFF AND SYMMETRY'S DUE PROCESS RIGHTS

34. Empire's demand for payment of over $11 million in OFO penalties, after FERC has waived Southern Star's underlying OFO, violates Empire's Tariff and Symmetry's rights to due process.

35. Empire's Tariff provides that "[a]ny OFO, along with associated conditions and penalties, shall be limited, as practicable to address only the problem(s) giving rise to the need for the OFO." (Sheet No. 43 at ¶ 1.) The only "problem" giving rise to the purported "need" for Empire's OFO was the fact that Southern Star issued an OFO, and if Empire and other parties failed to comply with Southern Star's OFO, they faced possible penalties. However, now that Southern Star's OFO penalties have been waived, there is no "problem" for Empire's OFO to address. Therefore, pursuant to the clear terms of Empire's Tariff, Empire's OFO penalties must be waived.

[19] *Id*. ¶¶ 23, 25 (emphases added).
[20] *Id*. ¶ 26 (emphases added).

36. Moreover, to the extent that Empire argues that the relevant "problem" was the underlying threat to the integrity of the system, or the potential that system participants would not act in a collaborative way to protect the system, neither problem arose. FERC specifically found that integrity and reliability were maintained, and that participants acted cooperatively. Indeed, FERC found that the true problem was the opposite from that which Empire appears to be positing. FERC held that the waiver, rather than the penalties, "addresses a concrete problem because, absent the waiver, Southern Star's delivery point operators would face extreme penalties. Moreover, these extreme penalties do not accomplish the purpose of penalties, which is to deter behavior that could impair system reliability." The imposition of OFO penalties against Symmetry would contravene both the letter and the spirit of FERC's order.

37. Additionally, Empire is in violation of Tariff Sheet No. 43 because Empire has billed Symmetry and its customers for OFO penalties which are not allowable under the Tariff.

38. Last, penalizing Symmetry in the amount of $11 million would violate Symmetry's right to due process. As FERC specifically found, OFO penalties here do not serve the purpose of penalties because they serve no deterrent effect. To the contrary, as FERC recognized, during the unprecedented conditions of Winter Storm Uri, the relevant parties—like Symmetry—acted cooperatively and collaboratively. They tried their best to deliver gas, even though sometimes they could not do so, for reasons wholly out of their control.[21] Notably, to the extent Symmetry was short on any given day during the storm, Symmetry was balanced in its deliveries and had made Empire whole by the end of February. Understanding that the Commission has no authority to determine the constitutionality of laws,[22] to preserve this issue

[21] *See* Exhibit A ¶ 25.
[22] *Duncan v. Missouri Bd. For Architects, Professional Engrs., & Land Surveyors*, 744 S.W.2d 524, 530-31 (Mo. App. 1988).

for appellate review Symmetry asserts that Empire's attempt to collect over $11 million in penalties when Empire suffered no actual system integrity issues, Empire was not damaged, and Symmetry engaged in no misconduct, is a violation of the due process clauses of both the Missouri and United States Constitutions.

IV. MOTION FOR EXPEDITED TREATMENT TO PROHIBIT EMPIRE FROM DISCONNECTING SERVICE TO SYMMETRY AND ITS CUSTOMERS DURING THE PENDENCY OF THIS CASE

39. Symmetry moves this Commission for an order prohibiting Empire from disconnecting Symmetry and its customers from Empire's system, and from taking other retaliatory measures, during the pendency of this case. Empire has threatened to unlawfully terminate Symmetry's access to Empire's system if Symmetry does not pay the demanded amount by August 31, 2021. This is an abuse of Empire's market power and tariff, and Empire has no lawful justification for taking such drastic action.

WHEREFORE, Symmetry respectfully requests the Commission:

a. on or before August 31, 2021, issue a preliminary Order prohibiting Empire from taking any retaliatory measures against Symmetry or its Missouri customers as a result of seeking the relief requested herein or in refusing to pay the approximately $11 million in disputed penalties and charges claimed by Empire, which would include but is not limited to terminating or altering the services provided to Symmetry or its Missouri customers during the pendency of this case;

b. issue an Order voiding the OFO, or in the alternative waiving the provisions of Tariff Sheet 43 authorizing the levying of OFO penalties, or in the alternative prohibiting Empire from billing or otherwise attempting to collect from Symmetry or any Missouri customer any portion of the over $11 million in penalties claimed by Empire;

c. review this Complaint and require Empire to file a full, itemized Answer;

d. set an appropriate intervention period;

e. order Empire to preserve all evidence of its actual costs and expenses incurred, and nomination, scheduling, and balancing activities, regarding gas purchases, storage, sales and transportation service in Missouri during the month of February 2021;

f. direct Staff to conduct the necessary investigation and render the necessary recommendations under the circumstances; and

g. order such other relief to Symmetry and its Missouri customers that the Commission deems just and necessary.

Respectfully submitted,

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175 FERC ¶ 61,015
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
Neil Chatterjee, James P. Danly,
Allison Clements, and Mark C. Christie.

Southern Star Central Gas Pipeline, Inc. Docket No. RP21-618-000

ORDER GRANTING WAIVER REQUEST

(Issued April 9, 2021)

1. On March 11, 2021, Southern Star Central Gas Pipeline, Inc. (Southern Star) submitted a request for waiver of the invoicing, collection and related crediting of penalties associated with Operational Flow Orders (OFO) issued February 11 through February 19, 2021 (OFO Period), during the recent extreme winter weather event. As discussed below, we grant Southern Star's request for waiver of the invoicing, collection, and crediting of penalties as provided for in section 10 of the General Terms and Conditions (GT&C) of its tariff for non-compliance associated with the OFOs issued during the OFO Period.

I. Background and Southern Star's Filing

2. Southern Star states that it submitted reports to the Commission on February 12 and 19, 2021 to notify the Commission that it had issued OFOs to protect the integrity of its pipeline system during the extreme weather event. Southern Star reports that it issued "standard" OFOs as provided for under GT&C section 10.[1] Section 10 provides for penalties of $5 per dekatherm (Dth) or 2.5 times an index price. Furthermore, any storage shipper who exceeds withdrawal limits is assessed a penalty equal to 365 times the maximum daily reservation rate for the applicable area per Dth, subject to tolerance levels.

3. Southern Star states that it issued Storage and Delivery Location OFOs during the February weather event. The Storage OFOs were addressed to firm storage customers, requiring shippers to remain within their contractual quantities, while the Delivery Location OFOs were addressed to delivery point operators and required takes at delivery

[1] Section 10, Operational Flow Orders, is located on Sheet Nos. 249 through 256A in Southern Star's tariff.

points to not exceed the sum of the confirmed scheduled transportation quantities at the delivery point.

4. In its filing, Southern Star proposes to waive all OFO penalties for all shippers and delivery point operators who may have incurred penalties during the OFO period, in recognition of the historic nature of the winter weather event. Southern Star states that the purpose of OFOs is to deter behavior by shippers and point operators, and ensure the integrity and reliability of its pipeline and storage operations. Southern Star reports that shippers and point operators in aggregate behaved in a manner that allowed it to sustain pipeline operations during a critical weather event and continue serving its markets without curtailing primary firm service.[2]

5. Southern Star acknowledges that many shippers and delivery point operators were unable to adhere completely to the OFOs and would be subject to penalties absent waiver. Nevertheless, Southern Star reports that many of the shippers and delivery point operators assisted Southern Star during the event and helped it to provide firm service without curtailment. Southern Star believes that a waiver of all OFO penalties is appropriate where the aggregate level of compliance alleviated the strain on its system and the collaborative effort among shippers and delivery point operators avoided impairment of Southern Star's ability to operate its system.

6. Southern Star contends that GT&C section 8.8 provides it with discretion to waive any one or more defaults by a shipper.[3] Southern Star, however, states that it is appropriate to inform the Commission and seek its approval of Southern Star's proposal to waive the collection and crediting of the OFO penalties incurred for deviations from

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[2] Southern Star Filing at 2.

[3] *Id.* Southern Star cites its OFO Report in Docket No. RP15-194-000 (Nov. 21, 2014) as an example of how it has used this authority in the past. Section 8.8, Operating Conditions for Transportation Service, located on Sheet No. 225 of Southern Star's tariff, provides:

> Southern Star shall not be required to perform or continue service on behalf of any Shipper that fails to comply with the terms contained in this Section 8 and the terms of the applicable rate schedule and service agreement. Southern Star shall have the right to waive any one or more specific defaults thereof by any Shipper; provided, however, that no such waiver shall operate or be construed as a waiver of any other existing or future default or defaults, whether of a like or different character.

OFOs that occurred during this OFO Period, rather than wait until its annual report is filed to address any issues related to such waivers.

7. Southern Star also asks the Commission to approve waiver of the invoicing, collection, and related crediting of OFO penalties incurred by shippers and delivery point operators during the OFO Period. Southern Star contends a waiver serves the public interest and is consistent with prior Commission approvals under similar circumstances.[4] Southern Star requests that the Commission approve this request no later than April 9, 2021 to provide certainty regarding this billing issue prior to the issuance of invoices for the month.

II. Notice, Intervention, and Responsive Pleadings

8. Public notice of Southern Star's filing was issued on March 15, 2021. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.[5] Atmos Energy Corporation (Atmos Energy), City Utilities of Springfield, Missouri (City Utilities), The Evergy Companies (Evergy),[6] Exelon Corporation (Exelon),[7] Symmetry Energy Solutions, LLC (Symmetry), Union Electric Company d/b/a Ameren Missouri (Ameren Missouri), and WoodRiver Energy, LLC and BlueMark Energy, LLC (WoodRiver and BlueMark) filed comments supporting the filing. Spire Missouri Inc. (Spire Missouri) filed comments reserving the right to add future comments based on further evaluation of the proposal and the events that unfolded during the OFO Period. Empire District Electric Company (Empire) filed a protest.

9. On March 19, 2021, Black Hills Service Company, LLC (Black Hills) filed late comments in support of the proposal. On March 23, 2021, Midwest Energy, Inc. (Midwest Energy) also filed a late intervention and comments in support of the waiver request. On March 24, 2021, Southern Star filed a motion to leave to answer and an answer. On March 26, 2021, Empire filed a motion to leave to answer and an answer. Pursuant to Rule 214, all timely motions to intervene and any unopposed motion to

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[4] Southern Star Filing at 3 (citing *E. Tenn. Nat. Gas, LLC*, 166 FERC ¶ 61,096 (2019); *Tex. E. Transmission, LP*, 155 FERC ¶ 61241 (2016); *E. Tenn. Nat. Gas, LLC*, 151 FERC ¶ 61,106 (2015); *El Paso Nat. Gas Co.*, 136 FERC ¶ 61,219 (2011)).

[5] 18 C.F.R. § 154.210 (2020).

[6] The Evergy Companies consist of Evergy Kansas Central Inc., Evergy Metro, Inc., and Evergy Missouri West, Inc.

[7] Exelon Corporation includes its subsidiaries Exelon General Company, LLC and Constellation NewEnergy-Gas Division, LLC.

intervene out-of-time filed before the issuance date of this order are granted.[8] Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. We also accept Black Hills' and Midwest Energy's late-filed comments, given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.[9]

10. Furthermore, pursuant to Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,[10] answers to protests and answers to answers are prohibited unless otherwise ordered by the decisional authority. We accept the answers of Southern Star and Empire because they provide information that will assist us in our decision-making process.

11. Commenters supporting the requested waiver note that the unprecedented weather event caused extreme disruptions which made normal operation during the OFO Period nearly impossible.[11] Additionally, some commenters argue that because shippers and delivery point operators behaved in a manner that allowed Southern Star to continue operations without curtailment, the Commission should approve the proposal.[12] Exelon states that during the OFO Period their primary focus was ensuring that the needs of essential human needs customers were met amid wildly variable market conditions.[13] Commenters also note that the Commission has granted waivers previously for similar unprecedented conditions.[14]

12. Some commenters assert that the penalties that Southern Star wishes to waive did not work to deter the bad behavior that they are meant to deter, and that collecting the

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[8] 18 C.F.R. § 385.214 (2020).

[9] *Am. Elec. Power Serv. Corp.*, 173 FERC ¶ 61,264, at P 32 (2020).

[10] 18 C.F.R. § 385.213(a)(2) (2020).

[11] Exelon Comments at 2-3; Symmetry Comments at 2.

[12] City Utilities Comments at 3; Ameren Missouri Comments at 2; Atmos Comments at 4.

[13] Exelon Comments at 3.

[14] BlueMark and WoodRiver Comments at 2 (citing *El Paso Nat. Gas Co.*,136 FERC ¶ 61,219, at P 16); Symmetry Comments at 3 (citing *E. Tenn. Nat. Gas, LLC*, 166 FERC ¶ 61,096; *Tex. E. Transmission, LP*, 155 FERC ¶ 61,241 (2016); *E. Tenn. Nat. Gas, LLC*, 151 FERC ¶ 61,106; *El Paso Nat. Gas Co*., 136 FERC ¶ 61,219).

penalties is not intended to make other shippers whole.[15] Symmetry argues that collecting the penalties would be unjust, unreasonable, and inequitable because of the extreme natural gas prices in the region at the time of the OFO event.[16]

13. Some commenters argue that the proposal would alleviate the burden on customers, both the time spent reviewing and disputing OFO invoices and the high prices that would be paid.[17] Evergy states that the proposal will help align the competing priorities of natural gas generators in the electric and natural gas markets as both markets work to recover from the cold snap fallout.[18]

14. In its protest, Empire states that it believes that it complied with all OFOs during the event and that it stands to receive OFO penalty credits pursuant to GT&C section 10.4 unless penalties are waived.[19] Empire argues that Southern Star's authority to waive shipper defaults under GT&C section 8.8 does not relieve Southern Star of obligations under the tariff to collect and credit OFO penalties.[20] Empire asserts that GT&C section 8.8 does not apply to delivery point operators.[21] As a result, Empire contends that the proposal violates the filed rate doctrine by avoiding these obligations and that Southern Star failed to provide adequate support for waiving penalties based on individual actions.[22]

15. Empire further contends that Southern Star's request fails to address the provisions of the Commission four-factor test for granting waivers.[23] Empire asserts that a blanket waiver of penalties for all parties does not qualify as a solution that is narrowly tailored to

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[15] BlueMark and WoodRiver Comments at 2; Exelon Comments at 3; Evergy Comments at 2-3.

[16] Symmetry Comments at 3.

[17] Exelon Comments at 3; Symmetry Comments at 3; Atmos Comments at 4.

[18] Evergy Comments at 1-2.

[19] Empire Comments at 1.

[20] *Id.* at 7.

[21] *Id.*

[22] *Id.* at 6

[23] *Id.* at 7

address a specific need.[24] Empire argues Southern Star has not identified a specific concrete problem but has only offered that the waiver would save customers time, recognize the seriousness of the storm, and prevent those who cooperated with the pipeline from being penalized.[25]

16. Finally, Empire argues that the requested waiver would have undesirable consequences. Empire asserts that a blanket waiver would reward shippers and delivery point operators who jeopardized pipeline security and reliability by violating Southern Star's OFOs. Empire contends that such a broad waiver is likely to have the undesirable consequence of degrading the deterrence value of OFO penalties.[26]

17. In its answer, Southern Star states that it believes that the totality of the circumstances presented during the OFO Period, including the collaborative behavior by its shippers and delivery point operators who worked with Southern Star and assisted Southern Star in continuing to provide firm service without curtailment, warrants waiver of OFO penalties incurred during this period. Southern Star asserts that denial of the waiver request will result in undesirable consequences. Southern Star cites particular concern for small shippers, such as municipalities that may be unable to absorb the cost of such penalties in addition to the steep increases to the cost of gas supplies during the event.[27]

18. Southern Star also commits to review its tariff, and to seek customer input, regarding possible changes to enhance operations in an equitable and efficient manner, while at the same time protecting the operational integrity of the Southern Star system and its ability to meet primary firm obligations to customers. Southern Star intends to review with all its customers any potential tariff revisions prior to filing revised tariff provisions with the Commission for review and approval.

19. In its answer, Empire argues that Southern Star is essentially asking the Commission to trust that the waiver request satisfies the four-part waiver test. Empire argues that it is unclear to what extent Southern Star has actually evaluated the behavior of any individual shippers because it has not shared basic facts with the participants in this docket or the Commission. Additionally, Empire states that the waiver request is not of limited scope because of its indiscriminate application across all offenders equally.

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[24] *Id.* at 8

[25] *Id.*

[26] *Id.*

[27] Southern Star Answer at 7-8.

Lastly, Empire argues that Southern Star has not provided any support showing there will be no undesirable consequences to the waiver.

20. On April 2, 2021, Commission staff issued a data request to Southern Star asking for more information on the delivery point operators on its system, including a classification of the entities according to type of business and the level of penalties incurred during the OFO Period. In a response dated April 6, 2021, Southern Star provided a list of delivery point operators and levels of penalties for each entity. Southern Star also classifies each delivery point operator by type of business, such as distribution companies and direct end-users. The data provided by Southern Star showed impacts to a wide range of customers, including but not limited to, municipal utilities, industrial customers and local distribution companies. In general, the majority of impacted companies were small distribution companies and small direct customers.

III. Discussion

21. Under its tariff, Southern Star has the authority to waive penalties incurred by shippers as a result of an OFO violation. Specifically, section 8.8 of the GT&C provides that Southern Star may waive defaults by shippers of the applicable rate schedules and service agreements. Southern Star's rate schedules and service agreements incorporate by reference the GT&C, including section 10 pertaining to OFOs and related penalties.[28] Accordingly, we find Southern Star's proposal to waive these penalties for shippers is not an unduly discriminatory application of its tariff.

22. However, section 8.8 does not apply to delivery point operators. Regarding the penalties incurred by delivery point operators, we grant Southern Star's request for waiver of GT&C section 10. The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.[29] We find that the circumstances of the instant case satisfy the foregoing criteria.

23. First, we find that Southern Star acted in good faith by submitting this filing on March 11, 2021, in advance of the requested date for Commission action and the issuance of invoices for penalties incurred during the February weather event. Additionally, we

[28] *See, e.g.*, FTS Rate Schedule, Sheet No. 122, and Form of Service Agreement – FTS, Sheet No. 417.

[29] *See, e.g.*, *Citizens Sunrise Transmission LLC*, 171 FERC ¶ 61,106, at P 10 (2020); *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

find that Southern Star acted in good faith by collaborating with shippers and delivery point operators to ensure system reliability during the extreme weather event.

24. Second, we find that the waiver request is limited in scope because Southern Star seeks a one-time waiver of the relevant tariff provision, and only for penalties incurred during the specific time period of the February weather event (i.e., February 11 through February 19, 2021).[30]

25. Third, we find that the requested waiver addresses a concrete problem because, absent the waiver, Southern Star's delivery point operators would face extreme penalties. Moreover, these extreme penalties do not accomplish the purpose of penalties, which is to deter behavior that could impair system reliability. The extreme weather event presented circumstances outside the control of the delivery point operators. Southern Star found no evidence of gamesmanship by any entity incurring penalties during this critical time.[31] Rather, based upon the record in this proceeding, it appears that the cooperation of the pipeline's customers (including delivery point operators), helped maintain system integrity and, as a result, they should not be burdened by extreme penalties.[32]

26. Finally, we find that the requested waiver does not result in undesirable consequences, such as harm to third parties. Empire argues that a blanket waiver would reward delivery point operators who jeopardized pipeline security and reliability by violating Southern Star's OFOs. We disagree. As noted above, Southern Star found no evidence of gamesmanship by parties incurring penalties. Instead, Southern Star explained that the cooperation of delivery point operators helped maintain system integrity. Likewise, no shipper (including Empire) has a right to a windfall as the result of administration of penalties on other entities. The Commission requires pipelines to

[30] Southern Star informed the Commission that it issued nine OFOs between February 11 and February 19, 2021. *See* Southern Star Supplemental Notice of Issuance of Operational Flow Orders (Feb. 19, 2021).

[31] Southern Star Answer at 6.

[32] Southern Star informed the Commission that the price of gas on its system exceeded $600 per Dth at one point during the weather event. Because standard OFO penalties are calculated at 2.5 times the average price, the OFO penalties would add an enormous financial burden to delivery point operators. In Southern Star's April 6, 2021 data response, Southern Star reports that 27 different delivery point operators each incurred penalties exceeding $1 million. Furthermore, Southern Star estimates that in the aggregate delivery point operators incurred a total of $158 million in penalties.

credit penalties to shippers so they will not be a source of revenue to the pipeline.[33] Similarly, penalties are not intended to provide a windfall for other shippers, and these penalties do not reimburse shippers for any cost or relate to any service received by those shippers. In these circumstances, we find no harm to third parties resulting from the waiving of penalties.

27. We disagree with Empire's assertion that Southern Star's waiver request is inconsistent with the filed rate doctrine. We find that Southern Star's request is prospective in nature. In this case, Southern Star filed its request for waiver on March 11, 2021, prior to the deadline for the issuance and collection of penalties related to the February weather event. The Commission previously has granted waiver where the company has filed for authority to not issue invoices for OFO penalties in similar situations, prior to the billing date.[34]

The Commission orders:

Southern Star's request for waiver is hereby granted, as discussed in the body of this order.

By the Commission. Commissioner Danly is concurring with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[33] *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, at 31,315 (2000) (cross-referenced at 90 FERC ¶ 61,109).

[34] *E. Tenn. Nat. Gas, LLC*, 166 FERC ¶ 61,096.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southern Star Central Gas Pipeline, Inc. Docket No. RP21-618-000

(Issued April 9, 2021)

DANLY, Commissioner, *concurring*:

1. I concur with today's order regarding the request filed by Southern Star Central Gas Pipeline, Inc. (Southern Star) to prospectively waive the invoicing, collection and related crediting of penalties incurred by shippers and delivery point operators following the issuance of Operational Flow Orders (OFOs). I agree that the waiver as it applies to shippers is consistent with section 8.8 of the General Terms and Conditions (GT&C) of Southern Star's tariff.[1] I also agree that we should grant the waiver of GT&C section 10 regarding invoicing, collecting, and crediting the penalties incurred by delivery point operators.

2. I write separately to express two concerns. *First*, OFOs are necessary to protect the integrity of pipeline systems. I am therefore generally disinclined to waive tariff provisions related to the issuance of OFOs and their corresponding penalties. However, in this case, where there were extraordinary circumstances and there is no evidence of gamesmanship by the parties subject to penalties, I support waiving those tariff provisions.

3. *Second*, I write to express my anxiety that this order may later serve as a model for an end-run around the filed rate doctrine. The tariff provisions establishing OFOs and associated penalties were not themselves the subject of this waiver request, but instead waiver was sought for the tariff provisions that relate to the ministerial actions that perfect already-incurred penalties. In cases such as this, it is doubly important for the Commission to make an honest and clear-eyed assessment of the propriety of the requested waiver under its four-part test. In particular, the Commission must engage in a searching examination of whether there are unintended consequences such as harm to third parties under the test's fourth factor. In this case, I am satisfied that no third party is being deprived of payments to which they would otherwise be entitled.

---

[1] While the waiver request is consistent with GT&C section 8.8 and Commission policy, the language in that section appears to be overly broad and potentially inconsistent with Commission precedent. *See Panhandle E. Pipe Line Co., LP*, 174 FERC ¶ 61,237 (2021) (Danly, Comm'r, concurring).

For these reasons, I respectfully concur.

_____

James P. Danly
Commissioner

February 19, 2016

Dear Valued Counterparty,

As you may be aware, Continuum Energy, L.L.C. ("Continuum") has entered into an agreement to sell its wholly owned subsidiary Continuum Retail Energy Service, L.L.C. and Continuum's natural gas wholesale business, currently operated by Continuum through its wholly owned subsidiary Continuum Energy Services, L.L.C., to CenterPoint Energy Services, Inc. (an indirect, wholly-owned subsidiary of CenterPoint Energy, Inc. (NYSE: CNP) (collectively "CenterPoint") (the "Transaction"). A copy of the press release announcing and further describing this transaction is attached.

As you are also aware, Continuum has an operational relationship with you and has entered into certain agreements with you as Continuum Energy Services, L.L.C. (f/k/a Seminole Energy Services, L.L.C.) as shown in the attached Schedule A. In anticipation of Continuum and CenterPoint closing the contemplated transaction, Continuum is requesting that the current agreements with you and **Continuum Energy Services, L.L.C.** be assigned to **Continuum Retail Energy Services, L.L.C**. effective with the Transaction, currently anticipated to be March 1, 2016.

We at Continuum understand that some documentation and information may be required for this assignment to be complete and we will work quickly to complete the requirements to effectuate the assignment. We will be in touch shortly to discuss such documentation. However, if no additional documentation is necessary for your company, please sign below (by an authorized representative) where indicated to memorialize your consent to assignment to those agreements shown on the attached Schedule A.

Below we have listed to some pertinent information about the entities to assist in the process. Please let us know what additional information be necessary.

Assignor: Continuum Energy Services, L.L.C.
Duns#: [redacted]
EIN:
W-9 EIN:*
* Entity is a Single Member LLC and Disregarded for IRS W-9 purposes

Assignee: Continuum Retail Energy Services, L.L.C.
Duns#: [redacted]
EIN:
W-9 EIN:*
* Entity is a Single Member LLC and Disregarded for IRS W-9 purposes

Both Assignor and Assignee are wholly subsidiaries of Continuum Energy, L.L.C.

For additional information you may contact your normal point of contact or me, Jay House VP of Corporate Business Development at (918) 492-2840.

Phone (918) 492-2840
continuumenergyservices.com

1323 East 71st Street
Suite 300
Tulsa, OK 74136

Thank you in advance for you time and attention to this matter.

Sincerely,

Jay House, VP Corporate Business Development

Assignment agreed and consented to this 19 day of February, 2016, to be effective on the closing of the Transaction.

The Empire District Gas Company
Print Company Name

By: _____
Sign Name Authorized Representative

Ron Gatz
_____
Print Name

Vice President and COO Gas
Print Title

Enclosure

SCHEDULE A
LIST OF CONTRACTS TO BE ASSIGNED

SEMINOLE ENERGY SERVICES, L.L.C
DATED APRIL 22, 2012 (AGREEMENT IS ATTACHED)

THIS AGREEMENT WAS SUBSEQUENTLY ASSIGNED TO CONTINUUM ENERGY SERVICES, L.L.C.
DATED JULY 2, 2014 (ASSIGNMENT ATTACHED)

MARKETER/AGGREGATOR AGREEMENT

This Marketer/Aggregator Agreement ("Agreement") is made and entered into by and between **Seminole Energy Services, L.L.C.** ("Marketer/Aggregator") and The Empire District Gas Company ("Company").

WHEREAS, the Company's tariff sheets on file with the Missouri Public Service Commission ("Commission") allow qualified Customers of the Company to secure natural gas supplies directly from Company approved third parties and transport such supplies on the Company's local gas distribution system(s);

WHEREAS, the Company's tariff sheets on file with the Commission also allow a Marketer (as defined in the Company's transportation service tariff sheets) to combine and aggregate nominations, usage and balancing of natural gas receipts and deliveries for Customers; and, if a Marketer becomes responsible for the aggregation of Customers into an aggregation pool as prescribed in the Company's transportation service tariff sheets, then a Marketer will also become an Aggregator under the terms of the Company's transportation service tariff sheets and this Agreement;

WHEREAS, Marketer/Aggregator will provide natural gas to certain Customers pursuant to agreement(s) between such Customers and the Marketer/Aggregator, and the Marketer/Aggregator desires to transport such gas to Company's local gas distribution system(s) on behalf of the Customers;

WHEREAS, Company will transport gas supplies sold by Marketer/Aggregator to Customers over Company's local distribution system(s) to Customer's delivery points, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the above premises and the mutual covenants contained herein, Marketer/Aggregator and Company hereby agree as follows:

1. **Customer Authorization and Verification.** Marketer/Aggregator has entered into, or will enter into one or more agreements with various Customers pursuant to which Marketer/Aggregator will sell and Customers will purchase natural gas. Marketer/Aggregator will obtain from each Customer a signed Customer Verification form. Marketer/Aggregator shall forward the Customer Verification form to the Company. All Customer forms must be received at least 30 days prior to the beginning of the month in which the Customer will begin transportation services subject to the Company's transportation service tariff sheets. Notice to the Company must be made by Marketer/Aggregator pursuant to the terms of the Company's transportation service tariff sheets on file with the Commission prior to a Customer leaving the services of Marketer/Aggregator or an aggregation pool.

2. **Rate.** Rates applicable to Marketer/Aggregator are identified in the Company's tariff sheets on file with the Commission, as the same may be amended from time to time.

3. **Balancing.** Imbalances created by Customer and/or Marketer/Aggregator will be reconciled in accordance with the Company's transportation service tariff sheets on file with the Commission.

4. **Capacity Assignment.** The assignment of capacity hereunder will be subject to the provisions of the Company's transportation service tariff sheets on file with the Commission.

5. **Termination of Participation of Aggregation Program.** Marketer/Aggregator shall notify Company of its intent to terminate its aggregation pooling program at least 90 days prior to the applicable month in which the pool program can be terminated subject to the Company's transportation service tariff sheets on file with the Commission.

6. **Billing and Payment.** Company shall read Customer's meters and Company shall provide the results of such meter readings to Marketer/Aggregator. Company will bill Customers directly for the Customer Charge, Delivery Charge, Imbalance Fees, (if not in a pool) Franchise Tax, State Tax, City Tax, Federal Tax and associated interim ACA, Refund, and any other applicable costs as described in the Company's tariff sheets on file with the Commission. Company will bill Marketer/Aggregator separately and directly for any applicable Marketer and/or Aggregator charges as provided in the Company's tariff sheets on file with the Commission.

7. **Security Performance.** In the Company's sole discretion and subject to the Company's tariff sheets on file with the Commission, Marketer/Aggregator will be responsible for providing the Company with a cash deposit, surety bond, irrevocable letter of credit, corporate guarantee or such other financial instrument satisfactory to the Company.

8. **Default.** In the event Customer and/or Marketer/Aggregator fails to pay Company's undisputed charges as billed by Company or are otherwise in default under this Agreement, Company may discontinue service to the Customer and/or Marketer/Aggregator and/or take any such actions as are authorized by the Company's tariff sheets on file with the Commission and other applicable law.

9. **Term.** This Agreement shall take effect when signed by both the Company and the Marketer/Aggregator. This Agreement may be terminated by either party upon 90 days written notice to the other party, and this Agreement may be terminated by the Company as otherwise provided in the Company's transportation service tariff sheets on file with the Commission.

10. **Curtailment and Operational Flow Orders.** Marketer/Aggregator is subject to and shall comply with Company's gas curtailment and Operational Flow Order policies when it provides gas to Customers and may be subject to the penalties and charges as set forth in the Company's tariff sheets on file with the Commission.

11. **Indemnification.** Marketer/Aggregator shall indemnify and hold Company harmless from and against all costs, damages, claims and expenses including but not limited to attorneys' fees, pipeline charges, penalties and all other charges assessed against or incurred by the Company as a result of Marketer/Aggregator's acts, omissions, or

nonperformance under this Agreement, the Company's tariff sheets on file with the Commission, and/or Marketer/Aggregator's customer agreement(s).

12. **Nominations.** Marketer/Aggregator shall comply with the nomination procedures, guidelines and requirements of all applicable upstream transporting pipelines.

13. **Notices.** Notices required or otherwise given under this Agreement shall be provided in writing, either by facsimile, email, or first class mail, to the other party at the addresses provided below.

The Empire District Gas Corporation
Attention: Connie Carlile
602 S. Joplin
Joplin, Mo. 64801
Phone: 417-625-4291
Fax: 417-625-4251
E-Mail: ccarlile@empiredistrict.com

Marketer/Aggregator: Seminole Energy Services, L.L.C.
Contact Person: Joyce Moore
Address: 1323 East 71st Street, Suite 300
Tulsa, OK 74136
Phone: 918-477-3417 Fax: 918-492-3075
E-Mail: jmoore@seminoleenergy.com

14. **Assignment.** This Agreement may not be assigned by Marketer/Aggregator without the prior written consent of Company.

15. **Governing Laws.** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri, without regard to principles of conflicts of law. Marketer/Aggregator shall operate pursuant to and in compliance with the Company's tariff sheets on file with the Commission, as the same may be revised, amended, and/or superseded from time to time, all applicable orders, rules, and regulations of the Commission, all applicable statutes, all applicable federal orders, rules, and regulations, and all rules and regulations of any upstream interstate pipeline companies. **In the event of any conflict between this Agreement and the Company's tariff sheets, the Company's tariff sheets then in effect and on file with the Commission shall control.**

16. **No Waiver.** Any failure or delay by either party to exercise any right, in whole or in part, hereunder shall not be construed as a waiver of the right to exercise the same, or any other right, at any time thereafter.

Marketer/Aggregator: SA
Seminole Energy Services, L.L.C.

By: _____
Title: Mike Westbrock, Vice President
Date: April 22, 2012

The Empire District Gas Company:

By: _____
Title: Manager Gas Operation
Date: 4-24-12

Seminole Energy Services

Depend on Seminole Energy.

July 2, 2014

RE: Notice of Name Change

This letter is being sent to you to make you aware that effective July 1, 2014, Seminole Energy Services, L.L.C. changed its name to **Continuum Energy Services, L.L.C.**

This change does not affect our contractual relationship. The contracts we have with you will be unaffected by this change and will continue operating as they did prior to the change.

Enclosed for your records are the Amended Certificate of Limited Liability Company and an updated W-9. Please note that our tax ID, our DUNS number ([redacted]), our billing addresses and our payment instructions (as set forth below) have not changed.

Payment by Check:	Continuum Energy Services, L.L.C. P.O. Box 26706, Sect. 4130 Oklahoma City, OK 73126-0706
Payment by Wire:	International Bank of Commerce ABA: Account: [redacted] Branch: Oklahoma
Payment by ACH:	International Bank of Commerce ABA: Account: [redacted]

If you have any questions regarding this matter, please contact me at (918) 477-3421.

Sincerely,

Julie M. Agro
Attorney

Enclosures

Stay tuned for more from CONTINUUM energy

Form **W-9**
(Rev. August 2013)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)
Continuum Energy Services, LLC

Business name/disregarded entity name, if different from above

Check appropriate box for federal tax classification:
☐ Individual/sole proprietor ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☑ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ P

☐ Other (see instructions) ▶

Exemptions (see instructions):
Exempt payee code (if any) _____
Exemption from FATCA reporting code (if any) _____

Address (number, street, and apt. or suite no.)
1323 East 71st Street, Suite 300

Requester's name and address (optional)

City, state, and ZIP code
Tulsa, OK 74136

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
[ ][ ][ ] - [ ][ ] - [ ][ ][ ][ ]

Employer identification number
[redacted]

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below), and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here Signature of U.S. person ▶ [signature] Date ▶ 7/1/14

Brendelee Marshall
Tax Manager
p. (918) 477-3426
f. (918) 858-4819
bmarshall@seminoleenergy.com

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. The IRS has created a page on IRS.gov for information about Form W-9, at *www.irs.gov/w9*. Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) will be posted on that page.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, payments made to you in settlement of payment card and third party network transactions, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct.

Note. If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

OFFICE OF THE SECRETARY OF STATE

STATE OF OKLAHOMA

AMENDED CERTIFICATE
OF
LIMITED LIABILITY COMPANY

WHEREAS, the Amended Articles of Organization of

CONTINUUM ENERGY SERVICES, L.L.C.

an Oklahoma limited liability company has been filed in the office of the Secretary of State as provided by the laws of the State of Oklahoma.

NOW THEREFORE, I, the undersigned, Secretary of State of the State of Oklahoma, by virtue of the powers vested in me by law, do hereby issue this certificate evidencing such filing.

IN TESTIMONY WHEREOF, I hereunto set my hand and cause to be affixed the Great Seal of the State of Oklahoma.

GREAT SEAL OF THE STATE OF OKLAHOMA 1907

Filed in the city of Oklahoma City this
12th day of June, 2014

Secretary of State

Southern Star Central Gas Pipeline, Inc.
4700 State Route 56
P.O. Box 20010
Owensboro, Kentucky 42304-0010
Phone 270/852-5000

Scott LaMar
Director, Rates
Phone: (270) 852-4560
Email: g.scott.lamar@southernstar.com

March 11, 2021

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Southern Star Central Gas Pipeline, Inc.
Request for OFO Penalties Waiver
Docket No. RP21-___-000

Dear Ms. Bose:

Southern Star Central Gas Pipeline, Inc. ("Southern Star") respectfully requests that the Federal Energy Regulatory Commission ("Commission") approve Southern Star's waiver of the collection and crediting of operational flow order ("OFO") penalties that may have been incurred by Shippers and/or Point Operators during the period from gas day February 11, 2021, through gas day February 19, 2021 (the "OFO Period"). The OFO period coincides with the unprecedented severe and extreme cold and winter weather conditions experienced on Southern Star's system during that period ("Polar Vortex").

Reference is made to the Report dated February 12, 2021 and the Supplemental Report dated February 19, 2021, (collectively, the "OFO Reports") where Southern Star notified the Commission that it had issued various OFOs to protect the integrity of its pipeline system under Section 10 of the General Terms and Conditions (GT&C) of its tariff during a period of sustained cold and severe winter conditions on the Southern Star system. The specific details of the OFOs and Southern Star's actions in response to the extreme winter conditions are summarized in the OFO Reports.

Southern Star issued Storage and Delivery Location OFOs during the Polar Vortex event. The Storage OFOs were addressed to Southern Star's firm storage customers, requiring those Shippers to remain within their contractual quantities, specifically (i) not to withdraw more than the applicable Maximum Daily Withdrawal Quantity ("MDWQ") under each agreement and (ii) to maintain Storage inventories at or above 0% of its contractual Maximum Storage Quantity ("MSQ") under each agreement. The Delivery Location OFOs were addressed to delivery Point Operators requiring takes at delivery points to not exceed the sum of the confirmed scheduled transportation quantities at the delivery point, plus any available no-notice Maximum Daily Quantities (MDQs) at that point. At the onset of the Polar Vortex, the delivery location OFOS were addressed to Specific Line Segments. As the Polar Vortex continued,

Southern Star expanded the Delivery Location OFO to System Wide which covered delivery locations on all line segments through the bulk of the Polar Vortex. As the Polar Vortex event was ending, Southern Star was able to reduce the Delivery Location OFO to Specific Line Segments.

All of the OFOs issued during the Polar Vortex event were standard OFOs under GT&C Section 10. Generally, the penalty for violating a standard OFO is the greater of $5 per dekatherm or 2.5 times the average Gas Daily Index for Southern Star for each day the OFO is in effect. However, a different penalty is assessed to any storage shipper who exceeds its MDWQ; the penalty for violating this Storage OFO is equal to 365 times the maximum daily reservation rate for the applicable area per Dth. OFOs are subject to tolerance levels and, in the case of delivery location OFOs, at least 97% of the authorized delivery quantity must be measured by electronic flow measurement (EFM). Instead of the normal ten days to make payment once an invoice is rendered, GT&C Section 10.4 gives Shippers 30 days to review and dispute OFO invoices due to "the unusual nature of OFO penalty invoices."[1]

In lieu of customers spending time reviewing invoices associated with OFO penalties, and in recognition of the historic nature of the Polar Vortex event, Southern Star proposes to waive all OFO penalties for all Shippers and Point Operators who may have incurred penalties during the OFO Period. The purpose of issuing OFOs under Southern Star's tariff is to deter certain behaviors by Shippers and Point Operators on its system to ensure the integrity and reliability of its pipeline and storage operations during an event. During this OFO Period, Shippers and Point Operators as a whole behaved in a manner that allowed Southern Star to sustain pipeline operations during a critical weather event and continue serving its markets without curtailing primary firm service. Although many Shippers and Point Operators were unable to adhere completely to the OFOs, and without a waiver would be subject to OFO penalties, many of those same Shippers and Point Operators also took actions that assisted Southern Star during this Polar Vortex event and helped enable the pipeline to continue to provide firm service without curtailment; however, the current OFO tariff provisions provide no mechanism for recognizing such equitable collaborations in the calculation of penalties. Southern Star believes that a waiver of all such penalties is appropriate in these circumstances. The aggregate level of compliance with the OFOs was sufficient to address the strain on the system due to the Polar Vortex event. Because of the collaborative effort among Shippers and Point Operators, the amount of OFO non-compliance did not impair Southern Star's ability to operate its system. In addition, given that standard OFO penalties are calculated at 2.5x the average Gas Daily Index -- and that index peaked on one day at over $600 per Dth – the OFO penalties would add an enormous burden to what were already exorbitant gas costs for customers.

Southern Star has discretion under GT&C Section 8.8 to waive any one or more defaults by a Shipper under its tariff. Southern Star has used this discretion in the past, on a non-discriminatory basis, to waive certain OFO penalties.[2] Southern Star is required to credit payments received for OFO penalties each year and to file a refund plan related to such payments no later than November 1. Given the unprecedented confluence of events on its system during the Polar Vortex, Southern Star believes it is appropriate to inform the Commission and seek its approval of Southern Star's proposal to waive the

[1] This differs from GT&C Section 18 which requires Shippers to make payment within 10 days from when the invoice is rendered.

[2] *See* Southern Star's Annual Operational Flow Order Report dated November 21, 2014 in Docket No. RP15-194 (implementing proposed waivers that the Commission was advised of in Southern Star's tariff filing in Docket No. RP14-1206).

collection and crediting of the OFO penalties incurred for deviations from OFOs that occurred during this OFO Period, rather than wait until its annual report is filed to address any issues related to such waivers.

Accordingly, Southern Star asks the Commission to approve waiver of the invoicing, collection, and related crediting of operational flow order penalties incurred by Shippers and Point Operators during the OFO Period. Granting a waiver serves the public interest and is consistent with prior Commission approvals under similar circumstances.[3] To provide certainty regarding this billing issue prior to the issuance of bills, Southern Star respectfully requests that the Commission approve this request no later than April 9, 2021.

Southern Star respectfully requests that all Commission orders and correspondence, as well as pleadings and correspondence from other persons, concerning this request for waiver be served upon each of the following:

Scott LaMar
Director, Rates
Southern Star Central Gas Pipeline, Inc.
4700 State Route 56
Owensboro, KY 42301
Phone: (270) 852-4560
g.scott.lamar@southernstar.com

Douglas Field
Senior Attorney
Southern Star Central Gas Pipeline, Inc.
4700 State Route 56
Owensboro, KY 42301
Phone: (270) 852-4657
w.doug.field@southernstar.com

Stefan M. Krantz
Hogan Lovells US LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20004
202-637-5517
stefan.krantz@hoganlovells.com

If there are any questions pertaining to this filing, please contact any of the parties listed above.

Copies of this filing are being served upon all of Southern Star's jurisdictional customers and interested state commissions, as well as posted on CSI, Southern Star's online customer service system.

Sincerely,

SOUTHERN STAR CENTRAL GAS PIPELINE, INC.
By: */s/ Scott LaMar*
Scott LaMar
Director, Rates
(270) 852-4560

[3] *See East Tennessee Natural Gas, LLC*, 166 FERC ¶ 61,096 (2019); *Texas Eastern Transmission, LP*, 155 FERC ¶ 61241 (2016); *East Tennessee Natural Gas, LLC*, 151 FERC ¶ 61,106 (2015) *El Paso Natural Gas Co.*, 136 FERC ¶ 61,219 (2011).

From: Keen, Michael
Sent: Tuesday, February 9, 2021 12:48 PM
To: Tatiana Earhart; Wolf, Mark; Pemberton, Rick
Cc: Deborah Gilbertson
Subject: RE: SSSCGP**OFO** February 9, 2021
Attachments: Critical, Operational Flow Order,20210211, Southern Star, 007906233

The OFO is in effect GD11-16

Michael H. Keen

Gas Scheduler III
713.207.4676 w. | 832.218.0371 c.
SymmetryEnergy.com

From: Tatiana Earhart <Tatiana.Earhart@libertyutilities.com>
Sent: Tuesday, February 9, 2021 2:37 PM
To: Wolf, Mark <mark.wolf@symmetryenergy.com>; Pemberton, Rick <rick.pemberton@symmetryenergy.com>; Keen, Michael <michael.keen@symmetryenergy.com>
Cc: Deborah Gilbertson <Deborah.Gilbertson@libertyutilities.com>
Subject: SSSCGP**OFO** February 9, 2021
Importance: High

All,

Please be advised Southern Star has issued an OFO effective the start of gas day **Tuesday, February 9, 2021 until Wednesday, February 17, 2021**.

Empire will do the same.

Please adjust your nominations to ensure you are NOT SHORT. OFO Penalties will apply to unauthorized deliveries.

O. OPERATIONAL FLOW ORDERS (OFO)

1. Issuance: Company will have the right to issue an Operational Flow Order that will require actions by the Customer to alleviate conditions that, in the sole judgment of the Company, jeopardize the operational integrity of Company's system required to maintain system reliability. Customer shall be responsible for complying with the directives set forth in the OFO. Any OFO, along with associated conditions and penalties, shall be limited, as practicable to address only the problem(s) giving rise to the need for the OFO.

Company may call an OFO by pipeline, delivery zone or town border station when:

- Company experiences failure of transmission, distribution or gas storage facilities;
- When transmission system pressures or other unusual conditions jeopardize the operation of Company's system;
- When Company's transportation, storage and supply resources are being used at or near their maximum rate deliverability;
- When any of Company's transporters or suppliers call the equivalent of an OFO or Critical Day;
- When Company is unable to fulfill its firm contractual obligations or otherwise when necessary to maintain the overall operational integrity of all or a portion of Company's system.

2. Customer Compliance: Upon issuance of an OFO, the Company will direct customer to comply with one of the following conditions:

A. Unauthorized Deliveries: Customer, Aggregator or Marketer must take delivery of an amount of natural gas from the Company that is no more than the hourly or daily amount being received by the Company from the applicable Interstate Pipeline for the Customer's, Aggregator's or Marketer's account. All volumes delivered to the Customer, Aggregator or Marketer in excess of volumes received by the Company from the applicable Interstate Pipeline for the Customer's, Aggregator's or Marketer's account, that are in violation of the above condition, with the exception of a 5% daily tolerance, shall constitute an Unauthorized Overrun by Customer, Aggregator or Marketer on the Company's system. Customer, Aggregator or Marketer shall be charged a penalty of $25.00 per Mcf, plus the Gas Daily Index price for the applicable Interstate Pipeline for such Unauthorized Overruns during the duration of the OFO.

B. Unauthorized Receipts: Customer, Aggregator or Marketer must take delivery of an amount of natural gas from the Company that is no less than the hourly or daily amount being received by the Company from the Connecting Pipeline Company for the Customer's account. All volumes delivered to the Customer, Aggregator or Marketer which are less than volumes received by the Company from the applicable Interstate Pipeline for the Customer's, Aggregator's or Marketer's account, that are in violation of the above condition, with the exception of a 5% daily tolerance, shall constitute an Unauthorized Delivery by Customer to Company. Customer shall be charged a penalty of $25.00 per Mcf for such Unauthorized Deliveries to Company's system.

Thank you for your cooperation,

Tatiana

Tatiana Earhart | **Liberty Utilities** (Missouri) | Gas Transportation Supervisor
P: 417-625-4245 | C: 417-438-2307 | E: Tatiana.Earhart@libertyutilities.com
602 S Joplin Ave, Joplin, MO 64801

From: csinotices@southernstar.com
Sent: Tuesday, February 9, 2021 7:13 AM
Subject: Critical, Operational Flow Order,20210211, Southern Star, 007906233

TSP Name: Southern Star Central Gas Pipeline, Inc.
TSP: 007906233
Notice ID: 9676
Critical: Y
Notice Type: Operational Flow Order
Notice Stat Desc: Initiate
Notice Eff Date / Time: 2/11/2021 9:00 AM
Notice End Date / Time: 2/17/2021 9:00 AM
Reqrd Rsp Desc: No response required.
Post Date / Time: 2/9/2021 8:45 AM
Subject: Storage Operational Flow Order (OFO) – System Wide

Notice Text

Per Section 10.2 of the General Terms and Conditions ("GT&C") of its FERC approved tariff, Southern Star Central Gas Pipeline ("Southern Star") is issuing a system wide Standard Operational Flow Order ("Standard OFO"), to be effective at 9:00 A.M. CST February 11, 2021. This notice is being issued to all storage customers under Rate Schedules TSS, STS, FSS, and FS1 to protect the integrity of the Southern Star's storage facilities due to high withdrawal levels from Southern Star's storage fields.

This OFO requires each shipper with an agreement or agreements under Rate Schedules TSS, STS, FSS, or FS1 to adjust its receipts and/or deliveries so as to maintain

1. Storage withdrawals at or below the applicable Maximum Daily Withdrawal Quantity ("MDWQ") under each agreement; and
2. Storage inventories at or above 0% of its contractual Maximum Storage Quantity ("MSQ") under each agreement.

Failure to specifically adhere to this OFO will result in penalties for all quantities withdrawn from storage on any day above the applicable MDWQ and/or for inventories below 0% of the MSQ. Penalties for failure to comply will be as set forth in GT&C Sections 10.3 and 10.4.

Customer specific information is available on CSI (https://csi.southernstar.com). Storage Operators can review their daily storage balances by running report CSI041 Storage Information found in the Reports Section of CSI under the Imbalance heading.

This OFO shall remain in effect through the February 16, 2021 gas day; however, Southern Star will monitor storage withdrawals and may, by additional notice, either adjust this Standard OFO to an Emergency OFO, extend it beyond such date or terminate it earlier as operational conditions warrant. Thank you in advance for your

cooperation in this matter. If you have any questions regarding this notice, please contact one of the Customer Service Representatives listed below.

Scott Warren	Office: (270) 852-4559	Cell: (270) 302-6433
Chris Williams	Office: (270) 852-4544	Cell: (270) 302-1143
Buster Ashley	Office: (270) 852-4546	Cell: (270) 314-1436
Will Wathen	Office: (270) 852-4483	Cell: (270) 925-1969
Robin Joska	Office: (270) 852-4565	Cell: (270) 302-5007
Scheduling	Office: (855) 730-2926	

Liberty™

Liberty
602 S. Joplin Ave.
Joplin, MO 64801
T: 1-800-424-0427
Libertyutilities.com

March 30, 2021

[redacted]

Dear [redacted]

We wanted to provide you with information regarding the recent winter weather event, known as Winter Storm Uri, and its impact on your account. The increase in natural gas prices that Liberty and other utilities experienced are reflected on the enclosed bill.

During the event, Operational Flow Orders ("OFOs") were issued to help make sure that the gas system continued to operate effectively. Natural gas marketers or aggregators for some customers, however, did not properly nominate or deliver gas (or both) despite these OFOs. This created situations for which penalties are assessable. We wanted to alert you about such penalties and how we expect to apply them.

Under Liberty's applicable Missouri tariff Large Volume Firm Transportation Service and contracts, we believe that customers and their marketers or aggregators together have responsibility for nominations, for compliance with OFOs, and for any related Unauthorized Deliveries or Unauthorized Overruns. When a customer, marketer, or aggregator fails in any of these respects, and the tariff provides for penalties, Liberty will calculate the penalty amount for the relevant account.

The penalty amount calculated for your account during this billing cycle is $290,608.13. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

We recognize the nature of this winter weather event and its impact on you and our other customers. Please contact me if you have questions or concerns or need additional information or support at 417-625-4245

Sincerely,

Tatiana Earhart

Energy and water for life

Liberty™

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March 30, 2021

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The penalty amount calculated for your account during this billing cycle is $68,345.50. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

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The penalty amount calculated for your account during this billing cycle is $708,178.16. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

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The penalty amount calculated for your account during this billing cycle is $9,914.34. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

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March 30, 2021

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The penalty amount calculated for your account during this billing cycle is $158,860.62. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

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March 30, 2021

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The penalty amount calculated for your account during this billing cycle is $204,782.00. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

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March 30, 2021

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The penalty amount calculated for your account during this billing cycle is $1,011,887.46. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

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March 30, 2021

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The penalty amount calculated for your account during this billing cycle is $80,780.07. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

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The penalty amount calculated for your account during this billing cycle is $1,231,890.10. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

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March 30, 2021

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The penalty amount calculated for your account during this billing cycle is $30,132.30. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

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The penalty amount calculated for your account during this billing cycle is $111,724.37. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

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The penalty amount calculated for your account during this billing cycle is $370,827.30. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

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The penalty amount calculated for your account during this billing cycle is $5,067,227.94. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

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Dear [redacted]

We wanted to provide you with information regarding the recent winter weather event, known as Winter Storm Uri, and its impact on your account. The increase in natural gas prices that Liberty and other utilities experienced are reflected on the enclosed bill.

During the event, Operational Flow Orders ("OFOs") were issued to help make sure that the gas system continued to operate effectively. Natural gas marketers or aggregators for some customers, however, did not properly nominate or deliver gas (or both) despite these OFOs. This created situations for which penalties are assessable. We wanted to alert you about such penalties and how we expect to apply them.

Under Liberty's applicable Missouri tariff Large Volume Firm Transportation Service and contracts, we believe that customers and their marketers or aggregators together have responsibility for nominations, for compliance with OFOs, and for any related Unauthorized Deliveries or Unauthorized Overruns. When a customer, marketer, or aggregator fails in any of these respects, and the tariff provides for penalties, Liberty will calculate the penalty amount for the relevant account.

The penalty amount calculated for your account during this billing cycle is $24,022.33. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

Energy and water for life

We recognize the nature of this winter weather event and its impact on you and our other customers. Please contact me if you have questions or concerns or need additional information or support at 417-625-4245.

Sincerely,

Tatiana Earhart

Energy and water for life

Liberty
602 S. Joplin Ave.,
Joplin, MO 64801
T: 1-800-424-0427
Libertyutilities.com

March 30, 2021

[redacted]

Dear [redacted]

We wanted to provide you with information regarding the recent winter weather event, known as Winter Storm Uri, and its impact on your account. The increase in natural gas prices that Liberty and other utilities experienced are reflected on the enclosed bill.

During the event, Operational Flow Orders ("OFOs") were issued to help make sure that the gas system continued to operate effectively. Natural gas marketers or aggregators for some customers, however, did not properly nominate or deliver gas (or both) despite these OFOs. This created situations for which penalties are assessable. We wanted to alert you about such penalties and how we expect to apply them.

Under Liberty's applicable Missouri tariff Large Volume Firm Transportation Service and contracts, we believe that customers and their marketers or aggregators together have responsibility for nominations, for compliance with OFOs, and for any related Unauthorized Deliveries or Unauthorized Overruns. When a customer, marketer, or aggregator fails in any of these respects, and the tariff provides for penalties, Liberty will calculate the penalty amount for the relevant account.

The penalty amount calculated for your account during this billing cycle is $7,942.47. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

Energy and water for life

We recognize the nature of this winter weather event and its impact on you and our other customers. Please contact me if you have questions or concerns or need additional information or support at 417-625-4245.

Sincerely,

Tatiana Earhart

Energy and water for life

Liberty
602 S. Joplin Ave.,
Joplin, MO 64801
T: 1-800-424-0427
Libertyutilities.com

April 15, 2021

Symmetry Energy Solutions LLC
f/k/a Seminole Energy Services, L.L.C.
1111 Louisiana St. B-241
Houston, TX 77002-5228

Amounts Owed for Operational Flow Order Penalties

Ladies and Gentlemen:

This letter is a bill for amounts owed by your company to The Empire District Gas Company ("Empire") with respect to Operational Flow Order ("OFO") penalties. These penalties were incurred by your company for transportation of gas by Empire and delivery to customers for which your company is the marketer or aggregator.

The total penalty amount due is $9,377,123.08, not including the penalties in our separate enclosed letter concerning the small volume pool SEM SSCP MKTZNE for which your company is the aggregator. Please pay Empire in accord with the enclosed invoice.

Your company is a Marketer/Aggregator pursuant to a Marketer/Aggregator Agreement executed by it on April 22, 2012 (the "Agreement) and the related Empire tariff on file with the Missouri Public Service Commission (the "Tariff"). Under Section 5 of the Agreement, Empire bills your company "separately and directly for any applicable Marketer and/or Aggregator charges as provided in the" Tariff. Under Section 10 of the Agreement, your company is "subject to the penalties and charges as set forth in the Company's Empire's tariff sheet on file with the Missouri Public Service Commission."

During the peak demand days of the severe winter weather event in Empire's service area in February, 2021, OFOs were in place for the interstate pipeline or pipelines from which your company acquired gas for transport on the Empire network to your company's customers. Equivalent OFOs were in place from Empire during those same days. During those OFOs, more gas was transported for you to your customers than permitted by the OFOs. These deliveries

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constituted "Unauthorized Overruns" or "Unauthorized Deliveries" for purposes of the Tariff.

Under Section O.E of Sheet 44 of the Transportation Service Natural Gas provisions of the Tariff, "Aggregators and Marketers who fail to deliver to Company Empire for the account of Customer(s) specified operational flow ordered quantities of gas shall be bill appropriate 'Unauthorized Delivery' charges." Under Section O.2.A of Sheet 43 of the Transportation Service Natural Gas provisions of the Tariff, the penalties for "Unauthorized Deliveries" and "Unauthorized Overruns" are calculated based on the Gas Daily Index Price per MMBtu. Under that same Section, an additional $25.00 per Mcf is added to the resulting price penalty. The penalty amount assessed above has been calculated in accord with these provisions.

This letter concerns only OFO penalties. Empire reserves its rights with respect to any other amounts that may be due from your company. Empire looks forward to receiving payment in full for the penalty amount above within 30 days.

Sincerely,

Tatiana Earhart

Tatiana Earhart

Encl.

Energy and water for life

Liberty
602 S. Joplin Ave.
Joplin, MO 64801
T: 1-800-424-0427
Libertyutilities.com

April 15, 2021

Symmetry Energy Solutions LLC
f/k/a Seminole Energy Services, L.L.C.
1111 Louisiana St. B-241
Houston, TX 77002-5228
Facsimile: 918-492-3075

RE: **Amounts Owed by Symmetry Energy Solutions LLC for Undernominations for a Small Volume Pool**

Ladies and Gentlemen:

This letter is to provide Seminole Energy Services, L.L.C., now Symmetry Energy Solutions, LLC ("Symmetry"), with notice of amounts owed by Symmetry to The Empire District Gas Company ("Empire") with respect to a small volume pool (SEM SSCP MKTZNE or the "Pool") for which Symmetry is the aggregator. This pool uses gas from the Southern Star pipeline transported by Empire.

Symmetry owes Empire $2,494,175.61 in penalties for the period February 11, 2021 through February 18, 2021 pursuant to the terms of the Empire tariff for Small Volume Firm Transportation Services Rate Schedule SVFT [1] and the Marketer/Aggregator Agreement executed April 4 and 22, 2012 by Seminole Energy Services, L.L.C. with Empire (the "Symmetry Contract").

The Pool consists largely of schools. From February 1 through February 18, 2021, Symmetry failed properly to nominate gas for the pool. Rather than nominating amounts reflecting predicted use, Symmetry nominated amounts roughly two to five times smaller than would reasonably be expected for the needs of the Pool. This caused Empire to deplete reserves which it then had to renew to maintain service and reliability for other customers. Symmetry further failed to nominate

[1] See P.S.C. Mo. No. 2, 1st Revised, Sheets 34-35 and Transportation Service Natural Gas, P.S.C. Mo. No. 2, 1st Revised, Sheets 41-44 (eff. Apr. 1, 2020, and collectively the "Tariff")

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required volumes of gas for the actual use made by the Pool during a period in which an Operational Flow Order ("OFO") was in place, worsening this situation.

Under the standard Empire District Gas Company Small Volume Customer Transportation Agreement with the members of the Pool, Symmetry, as the aggregator for the Pool, is "responsible for all daily gas nominations and balancing activities required by the tariff on behalf of Customer and must abide by all terms, rules and regulations applicable to this service as stated in the EDG tariffs on file with the Missouri Public Service Commission." Consistent with this, Symmetry was obliged to Empire and the members of the Pool to comply with the relevant tariff requirements of the members of the Pool. Under Section M.1 at Sheet No. 41 of the Tariff (emphasis added), Symmetry was therefore responsible "for providing daily natural gas Receipts adjusted for L&U gas to the Company [Empire] . . . *which accurately reflects the customer's expected consumption*." As Symmetry's drastic undernominations of gas indicate, it failed to do that from at least February 1 through February 18, 2021.

While the Tariff provides for monthly balancing of nominations and usage of gas by customers, that provision for monthly balancing does not permit Symmetry to breach the separate obligation to nominate amounts that would "accurately reflect[]" the expected daily needs of the Pool. Nor does monthly balancing excuse Symmetry from liability for the additional costs, damages, and expenses caused by its breach of those nomination obligations.

In addition, in the time period of February 11 through 18, 2021, an OFO was issued requiring the Pool not to take from the Empire distribution system more than (within a tolerance of 5%) the amount of gas actually nominated by Symmetry for transport to the Pool. There was no question that the Pool needed gas and would be burning gas. But Symmetry failed to nominate the gas required by the Pool. This included almost no nomination on February 16, 2021 and zero nominations on February 17 and 18, 2021. (Note that the zero nominations violated yet another provision, Section L.1, of the applicable Tariff that "Aggregator(s) must nominate at least 1 MMBtu on a daily basis.") This meant that Empire had to buy gas at higher rates than would otherwise have been the case to replace the now-critical amounts depleted by Symmetry's pervasive undernominations before and during that time.

In its calculation of the amounts owed to Empire for this undernomination scheme, Empire has at this point credited the value of gas subsequently overnominated by Symmetry for the Pool from February 19 through 28, 2021, even though those overnominations are also accounted for in the monthly balancing calculation benefiting Symmetry. Those overnominations do not offset the cost of Symmetry's earlier breaches of contract and tariff, however, because the price of gas was much lower at the end of February than in the middle, when Empire had to buy gas.

Symmetry owes Empire these damages for breach of the obligation properly to nominate gas because, under Section 11 of the Symmetry Contract (emphasis added), Symmetry has promised that it:

> *shall* indemnify and hold Company [Empire] harmless from and against *all* costs, damages, . . . and expenses, including but not limited to attorneys' fees, pipeline charges, penalties and all other charges assessed against or incurred by the Company as a result of Aggregator/Marketer's [Symmetry's] acts, omissions, or nonperformance under this Agreement, the Company's tariff sheets on file with the Commission, and/or Marketer/Aggregator's [Symmetry's] customer agreement[s].

As the aggregator for the Pool, Section 10 of Symmetry Contract makes Symmetry "subject to the penalties and charges as set forth in the Company's [Empire's] tariff sheet on file with the Commission" in Missouri for Unauthorized Overruns during the OFO period. By using 2020 historical usage to predict 2021 actual usage during this period, Empire has calculated that Symmetry undernominated 8,673.8 MMBtu, or 8,277.1 Mcf, of gas for the Pool, producing "Unauthorized Overruns" of that amount under Section O.2.A of the Tariff. The "Gas Daily Index Price" for that amount ranged from $9.620 to $622.785 per MMBtu on the relevant days. Under the Tariff, an additional $25.00 per Mcf is added to the resulting price penalty. This results in a penalty (calculated as Gas Daily Index Price per MMBtu plus $25 per Mcf) that totals $2,494,175.61 for the Unauthorized Overruns for which Symmetry is responsible. *See also* Symmetry Contract §§ 2, 3, 6, 10.

None of the problems resulting in the damages and penalties described above were unknown to Symmetry. Empire communicated with Symmetry as the problems worsened in mid-February, but Symmetry simply did not comply with

its obligations. Empire looks forward to receiving payment in full from Symmetry for the amounts above within 30 days.

Sincerely,

Tatiana Earhart

Tatiana Earhart

Energy and water for life

John Williamson
Chief Financial Officer
John.Williamson@symmetryenergy.com
1111 Louisiana St., Ste. B-241
Houston, TX 77002

April 29, 2021

VIA EMAIL AND FEDERAL EXPRESS

LIBERTY UTILITIES
602 S. Joplin Ave.
Joplin, Missouri 64801
Attn: Ms. Tatiana Earhart
Via Email: Tatiana.Earhart@libertyutilities.com

RE: NOTICE OF DISPUTE OF DEMAND LETTER

Dear Ms. Earhart:

Symmetry Energy Solutions, LLC ("***Symmetry***") is in receipt of written correspondence from you dated April 15, 2021, including (a) a letter demanding payment for alleged Operational Flow Order Penalties of $9,377,123.08, and (b) a separate letter demanding payment for alleged undernominations for a Small Volume Pool of $2,494,175.61. We note that your letters include no invoice(s) or calculations to substantiate any of the amounts demanded or the volumes on which they may be based.

Symmetry hereby notifies Liberty that Symmetry disputes the Operational Flow Order Penalties in the amount of $9,377,123.08 and the alleged undernominations for a Small Volume Pool of $2,494,175.61.

Symmetry welcomes the opportunity to have our respective companies work together to expeditiously resolve this matter.

Best regards,

John Williamson

John Williamson
Chief Financial Officer

cc: Ms. Donna M. Poresky
SVP and General Counsel
Symmetry Energy Solutions, LLC

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Symmetry Energy Solutions, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	File No. GC-2022-0062
	)	
The Empire District Gas Company	)	
	)	
Respondent.	)	

ANSWER OF THE EMPIRE DISTRICT GAS COMPANY

Pursuant to Missouri Public Service Commission (the "Commission") Rule 20 CSR 4240-2.070(9) and the Commission's August 31, 2021 Notice of Complaint and Order to Not Discontinue Service, The Empire District Gas Company d/b/a Liberty Utilities or Liberty ("Empire"), by and through its undersigned counsel, hereby answers the August 30, 2021 Complaint filed by Symmetry Energy Solutions, LLC ("Symmetry").

Under the terms of Empire's Tariff on file with the Commission and the parties' Marketer/Aggregator Agreement, Symmetry's Complaint must be denied. Throughout Winter Storm Uri and its aftermath Empire acted appropriately and consistent with its Tariff to preserve its gas distribution system and ensure that its customers (and Symmetry's) were able to continue to burn gas during the extreme winter weather. The same cannot be said for Symmetry. When Empire called an Operational Flow Order ("OFO") and ordered Symmetry to adjust its "nominations to ensure you are NOT SHORT," Symmetry did the opposite. It nominated only nominal amounts of gas while the OFO was in effect. Meanwhile Symmetry's customers in some cases *increased* their gas consumption. Symmetry's actions jeopardized Empire's system and

forced it to cover for Symmetry by purchasing gas on its behalf—at times when the price reached over $600 Mcf—and depleting its own storage reserves. Symmetry did not, as its Complaint alleges, act cooperatively and collaboratively. Rather its conduct was the exact sort of conduct that OFO penalties are intended to deter. Yet in filing this Complaint, Symmetry seeks to evade all responsibility for its patently irresponsible conduct and shift the enormous costs Empire incurred on its behalf to Empire's retail customers.

In imposing OFO penalties on Symmetry, Empire has followed the exact terms of its Tariff. Empire provides bundled natural gas service to its retail customers pursuant to its Tariff. In connection with this retail service, Empire holds interstate natural gas transportation and storage capacity on Southern Star Central Gas Pipeline, Inc. ("Southern Star"). Empire also provides a transportation only service that allows non-residential customers to contract with natural gas marketers (like Symmetry) for the purchase of natural gas that will then be delivered over Empire's local gas distribution system. Marketers are responsible for keeping their accounts in balance by nominating or delivering as much gas as their customers burn. If a marketer fails to keep its account in balance it is required, under the terms of the Tariff, to pay penalties associated with the imbalance.

In situations where the "operational integrity" of Empire's system is jeopardized—as it was with Winter Storm Uri—Empire's Tariff allows it to call an OFO and impose OFO penalties on marketers who fail to comply with the OFO instructions. The Tariff grants Empire broad discretion to issue an OFO when in its "sole judgment" it is necessary to maintain system reliability, including when transmission system pressures or other unusual conditions jeopardize the operation of Empire's system, its transportation, storage and supply resources are being used at or near their maximum rate deliverability, and any of Empire's transporters or suppliers call the

equivalent of an OFO or Critical Day. The OFO call will include an instruction to either not burn more gas than is being delivered (i.e. an unauthorized delivery) or to not deliver more gas than is being burned (i.e. an unauthorized receipt).

As forecasts began warning the Midwest and Southern U.S. about Winter Storm Uri, on February 9, 2021, Empire called an OFO (which it subsequently extended on February 11, 2021) and instructed Symmetry (as well as all other marketers on its system) that "OFO Penalties will apply to unauthorized deliveries,"—that is burning more gas than it nominates. Empire's OFO coincided with a separate OFO called by Southern Star for its interstate pipeline. Rather than complying with Empire's OFO, Symmetry nominated little or no gas on several critical OFO days while its customers burned increasing amounts of gas as the OFO period went on. To make matters worse, Symmetry went silent and failed to respond for several days to Empire's repeated requests as to how it planned to make up for the major shortfall between its gas nominations and customers' use. To address Symmetry's failures and ensure the stability of its system, Empire was forced to purchase additional gas (at a significant cost) to meet its retail customers' needs as well as the needs of Symmetry's customers. Following the OFO period, Empire billed Symmetry for the OFO penalties it incurred pursuant to the terms of the Tariff.

Symmetry is now requesting that Commission excuse its utter failure to comply with Empire's OFO and shift its non-compliance costs to Empire's retail customers despite there being no basis for such excuse in the Tariff, the parties' Marketer/Aggregator Agreement, or Missouri law. Symmetry instead points to a Federal Energy Regulatory Commission ("FERC") proceeding in which FERC granted a request by Southern Star to waive OFO penalties for its interstate pipeline based upon a waiver provision contained in Southern Star's FERC-jurisdictional Tariff as the primary basis for excusing its failure to comply with Empire's Missouri Tariff. Empire's Tariff,

however, does not have an OFO waiver provision like Southern Star's FERC Tariff has. And even if Empire's Tariff did have such a provision, there is no requirement that it seek a waiver for its OFO penalties which are separate and distinct (just as Empire's OFO was) from any penalties Southern Star could have imposed. In short, FERC's decision to waive Southern Star's OFO penalties has no bearing on this proceeding and, as this Commission has made clear, "FERC has no jurisdiction over LDCs which come under the authority of their respective state regulatory commissions." *Mo. Pub. Service Co.*, Opinion, File No. GR-89-104, 30 Mo. P.S.C. (N.S.) 39, 1989 Mo. PSC LEXIS 19, at 5 (Oct. 19, 1989).

Aside from the fact that an OFO waiver is not allowed under the Tariff, Symmetry's behavior far from justifies one. Symmetry nominated little or no gas throughout the duration of the OFO. Its customers continued to burn gas as if Symmetry had failed to inform them that it was not delivering gas for their account. And it refused to even communicate with Empire for much of the OFO regarding what its plans were for addressing the widening gap between its gas nominations and customers' use. When Winter Storm Uri struck Symmetry essentially washed its hands of all responsibilities leaving Empire to address its major imbalance and keep Symmetry's own customers burning. OFO penalties were designed to deter exactly the sort of irresponsible behavior that Symmetry engaged in and to let it off the hook in this instance would only incentivize similar bad behavior in the future.

Symmetry's argument that it brought its account into balance by the end of February—when gas prices had significantly declined—and "made Empire whole" should also be rejected. The purpose of an OFO is to maintain system integrity during extreme events like Winter Storm Uri by keeping accounts in balance on an hourly or daily basis. That is why the Tariff clearly imposes penalties on marketers for burning "more than the hourly or daily amount being

received…" To let marketers wait until an OFO ends and gas prices decline to bring their accounts into balance would defeat the purpose of an OFO. It would also not reduce the burden placed on Empire's retail customers who would be forced to shoulder the costs when Empire is required to buy gas at its highest price point in order to cover Symmetry's customers.

As with many other aspects of its Complaint, Symmetry ignores the terms of the Tariff in claiming that Empire had threatened to terminate Symmetry's access to Empire's system if it failed to pay the OFO penalties. Empire has made no such threat. Empire only informed Symmetry that if it did not receive the properly assessed OFO penalty payment it would—as it is first required to do under the terms of the Tariff—provide notice that it was terminating Symmetry's access to its system. That has not occurred yet and thus Symmetry's alarmism is unwarranted.

The Tariff is clear that OFO penalties apply when a marketer fails to nominate as much gas as its customers burn while an OFO is in effect. That is what Symmetry did and Empire has imposed the associated OFO penalties in accordance with the Tariff. There is no basis under the Tariff, the parties' Marketer/Aggregator Agreement, or Missouri law that allows, much less requires, the OFO penalties be waived. FERC's decision to grant a waiver to interstate pipeline Southern Star pursuant to a waiver provision contained in its Tariff for OFO penalties that were separately incurred for a different OFO has no relevance to this proceeding. Even if the OFO penalties at issue could be waived, Symmetry's behavior far from justifies it. The penalty is also necessary to ensure that Empire's residential customers do not bear the costs of Symmetry's irresponsible actions; it is not a windfall to Empire. For the above reasons, Symmetry's Complaint should be dismissed.

Empire specifically responds to the allegations contained in the Complaint in the corresponding enumerated paragraphs as follows:

1. Empire admits that it has billed Symmetry—pursuant to the plain terms of its Tariff on file with the Commission—for over $11 million in Operational Flow Order ("OFO") penalties that Symmetry incurred. Empire informed Symmetry that if it did not pay all amounts due under Empire's Tariff and the Marketer/Aggregator Agreement between Empire and Symmetry by August 31, 2021, it would provide notice to terminate Symmetry's transportation service. Empire, however, has not provided such notice. Empire denies each and every other allegation contained in paragraph 1 of the Complaint.

2. Empire admits that it issued the OFO in question in connection with the February 2021 winter storm event known as Winter Storm Uri. Empire admits that The Empire District Electric Company protested a waiver sought by the interstate pipeline company Southern Star from the FERC for a separately issued OFO with penalties and tariff provisions entirely distinct from those of Empire's. FERC's order speaks for itself, but is irrelevant to this proceeding and all references to it should be struck pursuant to Commission Rule 20 CSR 4240-2.070(7). Empire denies each and every other allegation contained in paragraph 2 of the Complaint.

3. Empire admits that its Tariff states that "Any OFO, along with associated conditions and penalties, shall be limited, as practicable to address only the problem(s) giving rise to the need for the OFO." Empire denies each and every other allegation contained in paragraph 3 of the Complaint.

4. Empire admits that it has billed Symmetry for its OFO violations consistent with the Tariff, has provided Symmetry with multiple explanations (both in writing and verbally) as to the over $11 million it owes in penalties, and has provided Symmetry with detailed calculations for the OFO penalties. Empire denies each and every other allegation contained in paragraph 4 of the Complaint.

5. Empire admits that The Empire District Electric Company filed a protest regarding Southern Star's request for FERC to waive penalties for an OFO that it issued under its Tariff. Empire did not participate in such proceeding and it has no bearing on the OFO and associated penalties that Empire separately issued under its Tariff to protect its local gas distribution system that is subject to this Commission's jurisdiction and not that of FERC's. Empire denies each and every other allegation contained in paragraph 5 of the Complaint.

6. Empire denies each and every allegation contained in paragraph 6 of the Complaint.

7. Empire affirmatively states that it has provided no notice to Symmetry (or its customers) that it would be terminating access to Empire's distribution system. Symmetry has engaged in blatant violations of Empire's Tariff. Empire denies each and every allegation contained in paragraph 7 of the Complaint.

8. Empire admits that it is a wholly-owned subsidiary of The Empire District Electric Company.

9. Empire admits its jurisdictional status.

10. Empire admits that Symmetry is a natural gas marketer. Empire is without sufficient information or belief to admit or deny each and every other allegation contained in paragraph 10 of the Complaint and therefore denies the same.

11. The Commission's Rules of Practice and Procedure speak for themselves.

12. Empire admits that a representative from Symmetry communicated with Empire that it was filing the Complaint.

13. The State of Missouri's Statutes and the Commission's Rules of Practice and Procedure speak for themselves.

14. The State of Missouri's Statutes speak for themselves.

15. Empire admits the allegations contained in paragraph 15 of the Complaint.

16. The terms of Empire's Tariff speak for themselves.

17. The terms of Empire's Tariff speak for themselves. Empire has broad discretion to issue an OFO. Empire denies each and every allegation contained in paragraph 17 of the Complaint that attempts to give the Tariff's terms any meaning other than their plain meaning.

18. Empire denies the allegations contained in paragraph 18 of the Complaint to the extent it construes OFO penalties as something that "may" be imposed. Empire's Tariff provides that a customer, aggregator, or marketer that takes unauthorized deliveries "shall be charged a penalty…" The terms of Empire's Tariff speak for themselves.

19. The terms of Empire's Tariff speak for themselves. Empire denies that any one Tariff term is more or less important than the other terms.

20. Empire admits the allegations contained in paragraph 20 of the Complaint.

21. Empire is without sufficient knowledge or belief to admit or deny the allegations contained in paragraph 21 of the Complaint and therefore denies the same.

22. Empire admits that it receives a portion of its gas from Southern Star.

23. Empire admits that Southern Star issued an OFO for its interstate pipeline on February 9, 2021 and that it remained in effect from February 11 to February 17, 2021. Empire admits that it issued its own OFO on February 9, 2021. However, both Southern Star and Empire subsequently issued new OFOs that extended until Gas Day February 19, 2021. The documents and Tariff provision cited in paragraph 23 of the Complaint speak for themselves. Empire either denies or is without sufficient knowledge or belief to admit or deny the other allegations contained in paragraph 23 of the Complaint and therefore denies the same.

24. Empire admits that it sent letters to Symmetry's customers on March 30, 2021. The letters speak for themselves. Empire denies each and every other allegation contained in paragraph 24 of the Complaint.

25. Empire admits that it sent letters to Symmetry on April 15, 2021 and that the letters speak for themselves.

26. Empire admits that it received an April 29, 2021 letter from Symmetry and that the letter speaks for itself.

27. Empire admits that FERC waived OFO penalties for Southern Star, but denies each and every other allegation contained in paragraph 27 of the Complaint.

28. Empire admits that Southern Star submitted a waiver request on March 11, 2021 and that FERC granted the waiver request for Southern Star (subject to rehearing) on April 9, 2021. The waiver request and FERC's order speak for themselves.

29. FERC's order speaks for itself.

30. Southern Star's waiver request speaks for itself.

31. The documents filed in FERC Docket No. RP21-618, including The Empire District Electric Company's protest speak for themselves.

32. Empire admits that FERC granted Southern Star's waiver request and did so for the reasons stated in FERC's order, including that Southern Star has authority under its tariff "to waive penalties incurred by shippers as a result of an OFO violation"—something that Empire's Tariff is lacking. Empire denies each and every other allegation contained in paragraph 32 of the Complaint.

33. FERC's order speaks for itself. Empire denies each and every other allegation contained in paragraph 33 of the Complaint.

34. Empire denies each and every allegation contained in paragraph 34 of the Complaint.

35. The terms of Empire's Tariff speak for themselves and do not allow, much less require, that Symmetry's OFO penalties be waived because an interstate pipeline called its own separate OFO that subjected its own customers to OFO penalties under the terms of its own Tariff that were ultimately waived by a federal agency that has no jurisdiction over Empire's local gas distribution system. Empire denies each and every other allegation contained in paragraph 35 of the Complaint.

36. Empire denies each and every allegation contained in paragraph 36 of the Complaint. Empire affirmatively asserts that FERC made no finding as to the integrity of its local gas distribution system during Empire's OFO.

37. Empire denies each and every allegation contained in paragraph 37 of the Complaint.

38. Empire admits that Symmetry had balanced its deliveries by the end of February, but that does not excuse its failure to comply with the Tariff while Empire's OFO was in effect. Empire denies each and every other allegation contained in paragraph 38 of the Complaint.

39. Empire denies each and every allegation contained in paragraph 39 of the Complaint.

Any allegation not specifically admitted herein is denied by Empire. Empire respectfully requests that the Commission deny Symmetry's Complaint.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief may be granted and therefore must be dismissed.

2. The Complaint requests relief that is beyond the statutory authority of the Commission to grant since Empire has no Tariff provision allowing for a waiver of OFO penalties.

WHEREFORE, The Empire District Gas Company submits this Answer and respectfully requests an order of the Commission denying Symmetry's Complaint. Empire requests such additional relief as is just and proper under the circumstances.

/s/ Elizabeth W. Whittle

Elizabeth W. Whittle (*Admitted Pro Hac Vice*)
Benjamin N. Reiter (*Admitted Pro Hac Vice*)
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Counsel to The Empire District Gas Company

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55 West 46th Street, Tower 46
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Counsel to The Empire District Gas Company

Sarah Knowlton (# 71361)
Liberty Algonquin Business Services
General Counsel, Liberty Utilities
116 North Main Street
Concord, NH 03301
(603) 724-2123
Sarah.knowlton@libertyutilities.com

Diana Carter (MBE#50527)
The Empire District Gas Company
602 S. Joplin Avenue
Joplin, MO 64802
(573) 289-1961 or (417) 626-5976
Diana.Carter@libertyutilities.com

Dated: September 17, 2021

Certificate of Service

I hereby certify that this document was filed in EFIS, with notice sent to all counsel of record, and also sent by email to Staff, OPC, and all other counsel of record.

Dated this 17th day of September 2021.

/s/ Diana Carter
Diana Carter

STATE OF MISSOURI, PUBLIC SERVICE COMMISSION

P.S.C. MO. No. 2 1st Revised Sheet No. 23
Canceling P.S.C. MO. No. 2 Original Sheet No. 23

THE EMPIRE DISTRICT GAS COMPANY
JOPLIN, MO 64802

FOR: All Communities and Rural Areas Receiving Natural Gas Service

TRANSPORTATION SERVICE
NATURAL GAS

A. PURPOSE

This program allows non-residential customers the opportunity to purchase natural gas directly from producers and arrange their own delivery or to purchase gas from marketers or aggregators who have entered into contracts with the Company to act on behalf of customers to supply gas to the Company's city gate for delivery on a firm or interruptible basis on the Company's distribution system.

B. AVAILABILITY OF TRANSPORTATION SERVICE

Natural Gas Transportation Service ('NGTS") is available to qualifying non-residential customer (s) upon Customer (s) request provided the Company has sufficient distribution capacity to supply such service. All transportation customers must meet the criteria set out below and be able to arrange for the delivery of sufficient natural gas supplies for Customer's account to the appropriate Company city gate. NGTS is available under the following rate schedules:

1. Small Volume Firm Transportation Service Small (SVFTS)
2. Small Volume Firm Transportation Service Medium (SVFTM)
3. Small Volume Firm Transportation Service Large (SVFTL)
4. Large Volume Firm Transportation Service (LVFT)

5. Large Volume Flexible Rate Transportation Service (LVFRT)
6. Customers are eligible for NGTS on Company's South, North or Northwest distribution systems if the customer qualifies for sales service under one or more of the following rate schedules:
   a. Small Commercial Firm Service Medium;
   b. Small Commercial Firm Service Large;
   c. Large Volume Firm Service;
   d. Large Volume Interruptible Service;
   e. School Districts as defined pursuant to Section 393.310, RSMo; and
   f. New Customers providing sufficient documentation and qualifying for service under the above rate schedules

C. DEFINITIONS

1. AGGREGATION – The combination of nominations and balancing of natural gas supplies by an Aggregator for deliveries to more than one Customer from Receipt Point(s) served by a common Interstate Pipeline. To qualify for Aggregation service, Customer (s) must be served by a common Interstate Pipeline in the same Interstate Pipeline operating zone and be on the same rate schedule.

2. AGGREGATION POOL – A group of more than one Customer, with each Customer meter qualifying under the applicable rate schedule for transportation service. Any Aggregator or Marketer that serves more than one Customer that is eligible for the purpose of forming an Aggregation Pool will be deemed to be an Aggregator, and will be required to execute an Aggregator Agreement.

3. AGGREGATOR – An entity that is responsible for the Aggregation of natural gas to be delivered to more than one Customer. Any Aggregator or Marketer that serves more than one Customer that is eligible to be pooled for the purpose of forming an Aggregation Pool will be deemed to be an Aggregator, and will be required to execute an Aggregator Agreement as well as a Marketer Agreement.

4. AGGREGATOR AGREEMENT- A contract between the Company and an Aggregator that sets out the services requested, the responsibilities of the parties and the term of the agreement.

5. ANCILLARY SERVICE- A service that is ancillary to the receipt or delivery of Natural Gas, including without limitation storage and balancing.

STATE OF MISSOURI, PUBLIC SERVICE COMMISSION

P.S.C. MO. No. 2 1st Revised Sheet No. 26
Canceling P.S.C. MO. No. 2 Original Sheet No. 26

THE EMPIRE DISTRICT GAS COMPANY
JOPLIN, MO 64802

FOR: All Communities and Rural Areas Receiving Natural Gas Service

TRANSPORTATION SERVICE
NATURAL GAS

22. LOST AND UNACCOUNTED FOR ("L&U") - The quantity of natural gas used and/or lost as part of the Company's normal operation of the South, North and NW distribution systems. L&U charges will be based upon the Company's South, North and NW individual system-wide L&Us as computed in the Company's annual PGA filing and applied on a volumetric basis to the quantity of gas delivered to the Customer in the year following the PGA filing. See Sheets 62, 63 and 64 of the Company's tariff.

23. MARKETER – An entity that is responsible for acquiring natural gas supplies and reselling these natural gas supplies to a Customer(s). Any Aggregator or Marketer that serves more than one Customer that is eligible to be pooled for the purpose of forming an Aggregation Pool will be deemed to be an Aggregator, and will be required to execute an Aggregator Agreement as well as a Marketer Agreement.

24. MARKETER AGREEMENT- The written contract between Company and Marketer that specifies the services to be provided, the responsibilities of the parties and the term of the agreement.

25. MAXIMUM DAILY IMBALANCE - The maximum quantity of natural gas which at the end of any Gas Day Company will allow Customer, Marketer or Aggregator to be out-of-balance (Imbalance) without additional charge.

26. MONTH - The period beginning on the first Day of a calendar month and ending on the beginning of the first Day of the next succeeding calendar month.

27. MONTHLY IMBALANCE - The difference between monthly confirmed Receipts and Deliveries.

28. NOMINATION - The quantity of natural gas that a Customer, Marketer or Aggregator causes to be received by the Company at each Receipt Point during a Gas Day for the account of the Customer (s). The Customer, Marketer or Aggregator has the obligation to nominate a quantity of gas at the Receipt Point that matches the quantity of gas Deliveries to the Customer (s), including L&U to avoid the creation of Imbalances on the Company's distribution system. The quantity of natural gas nominated must be equalized as far as practicable over a Gas Day and for the services provided hereunder natural gas is assumed to have been received by the Company uniformly during each hour of the Gas Day.

29. OPERATIONAL FLOW ORDER ("OFO") - Any order from the Company or applicable Interstate Transportation pipeline(s) that requires Customer, Aggregator or Marketer to maintain the daily delivery of specified quantities of natural gas to the Receipt Point. Notification of a Company issued OFO shall be made via Company's website, facsimile or electronic mail. Any OFO declared by an applicable Interstate Pipeline is also an OFO on that part of the Company's system served by the Interstate Pipeline issuing the OFO. Notification of an Interstate Pipeline OFO shall come from the Interstate Transportation pipeline.

30. RECEIPTS - The quantity of natural gas actually delivered to Company for the account of a Customer, Marketer or Aggregator at Receipt Point(s) as confirmed by the delivering Interstate Transportation pipeline.

31. RECEIPT POINT OR CITY GATE – Interconnection point between Company and Interstate Pipeline delivering natural gas to Company's local distribution system.

32. TELEMETRY – An electronic recording device with remote monitoring features that is capable of obtaining, accumulating, recording and transmitting a Customer's daily gas consumption on a real time basis for natural gas delivered by the Company to the Customer's Facility.

33. TRANSPORTATION CONTRACT - The written document between Company and Customer that specifies the transportation services to be provided, the responsibilities of the parties and the term of the agreement.

34. TRANSPORTATION CUSTOMER WEBSITE – The Company supplied website that displays an individual Customer's transportation metrics, such as, nominations, natural gas consumption and imbalance status.

STATE OF MISSOURI, PUBLIC SERVICE COMMISSION

P.S.C. MO. No. 2 1st Revised Sheet No. 43
Canceling P.S.C. MO. No. 2 Original Sheet No. 43

THE EMPIRE DISTRICT GAS COMPANY
JOPLIN, MO 64802

FOR: All Communities and Rural Areas Receiving Natural Gas Service

TRANSPORTATION SERVICE
NATURAL GAS

O. OPERATIONAL FLOW ORDERS (OFO)

1. Issuance: Company will have the right to issue an Operational Flow Order that will require actions by the Customer to alleviate conditions that, in the sole judgment of the Company, jeopardize the operational integrity of Company's system required to maintain system reliability. Customer shall be responsible for complying with the directives set forth in the OFO. Any OFO, along with associated conditions and penalties, shall be limited, as practicable to address only the problem(s) giving rise to the need for the OFO.

Company may call an OFO by pipeline, delivery zone or town border station when:

- Company experiences failure of transmission, distribution or gas storage facilities;
- When transmission system pressures or other unusual conditions jeopardize the operation of Company's system;
- When Company's transportation, storage and supply resources are being used at or near their maximum rate deliverability;
- When any of Company's transporters or suppliers call the equivalent of an OFO or Critical Day;
- When Company is unable to fulfill its firm contractual obligations or otherwise when necessary to maintain the overall operational integrity of all or a portion of Company's system.

2. Customer Compliance: Upon issuance of an OFO, the Company will direct customer to comply with one of the following conditions:

A. Unauthorized Deliveries: Customer, Aggregator or Marketer must take delivery of an amount of natural gas from the Company that is no more than the hourly or daily amount being received by the Company from the applicable Interstate Pipeline for the Customer's, Aggregator's or Marketer's account. All volumes delivered to the Customer, Aggregator or Marketer in excess of volumes received by the Company from the applicable Interstate Pipeline for the Customer's, Aggregator's or Marketer's account, that are in violation of the above condition, with the exception of a 5% daily tolerance, shall constitute an Unauthorized Overrun by Customer, Aggregator or Marketer on the Company's system. Customer, Aggregator or Marketer shall be charged a penalty of $25.00 per Mcf, plus the Gas Daily Index price for the applicable Interstate Pipeline for such Unauthorized Overruns during the duration of the OFO.

B. Unauthorized Receipts: Customer, Aggregator or Marketer must take delivery of an amount of natural gas from the Company that is no less than the hourly or daily amount being received by the Company from the Connecting Pipeline Company for the Customer's account. All volumes delivered to the Customer, Aggregator or Marketer which are less than volumes received by the Company from the applicable Interstate Pipeline for the Customer's, Aggregator's or Marketer's account, that are in violation of the above condition, with the exception of a 5% daily tolerance, shall constitute an Unauthorized Delivery by Customer to Company. Customer shall be charged a penalty of $25.00 per Mcf for such Unauthorized Deliveries to Company's system.

C. Other: Any penalties charged due to unauthorized overruns or deliveries during an OFO will be in addition to any cash out charges described in Subsection L above.

D. Interstate Pipeline Overrun Penalties: The Company may charge the Customer, Aggregator or Marketer for any daily or monthly overrun penalties assessed to the Company, which are applicable to the Customer, Aggregator or Marketer by the applicable Interstate Pipeline.

From: Tatiana Earhart <Tatiana.Earhart@libertyutilities.com>
Sent: Tue, 9 Feb 2021 15:01:22 -0600 (CST)
To: "Keen, Michael" <michael.keen@symmetryenergy.com>; "Wolf, Mark"<mark.wolf@symmetryenergy.com>; "Pemberton, Rick"<rick.pemberton@symmetryenergy.com>
Cc: Deborah Gilbertson <Deborah.Gilbertson@libertyutilities.com>
Subject: RE: SSSCGP**OFO** February 11, 2021

Michael,

You're correct. I have received several notices today and mistyped.

Thanks for catching this.

Tatiana

Tatiana Earhart | Liberty Utilities (Missouri) | Gas Transportation Supervisor
P: 417-625-4245 | C: 417-438-2307 | E: Tatiana.Earhart@libertyutilities.com

From: Keen, Michael <michael.keen@symmetryenergy.com>
Sent: Tuesday, February 9, 2021 2:48 PM
To: Tatiana Earhart <Tatiana.Earhart@libertyutilities.com>; Wolf, Mark <mark.wolf@symmetryenergy.com>; Pemberton, Rick <rick.pemberton@symmetryenergy.com>
Cc: Deborah Gilbertson <Deborah.Gilbertson@libertyutilities.com>
Subject: RE: SSSCGP**OFO** February 9, 2021

The OFO is in effect GD11-16

symmetry
Michael H. Keen
Gas Scheduler III
713.207.4676 w. | 832.218.0371 c.
SymmetryEnergy.com

From: Tatiana Earhart <Tatiana.Earhart@libertyutilities.com>
Sent: Tuesday, February 9, 2021 2:37 PM
To: Wolf, Mark <mark.wolf@symmetryenergy.com>; Pemberton, Rick <rick.pemberton@symmetryenergy.com>; Keen, Michael <michael.keen@symmetryenergy.com>
Cc: Deborah Gilbertson <Deborah.Gilbertson@libertyutilities.com>
Subject: SSSCGP**OFO** February 9, 2021
Importance: High

All,

Please be advised Southern Star has issued an OFO effective the start of gas day **Tuesday, February 9, 2021 until Wednesday, February 17, 2021**.

Empire will do the same.

Please adjust your nominations to ensure you are NOT SHORT. OFO Penalties will apply to unauthorized deliveries.

O. OPERATIONAL FLOW ORDERS (OFO)

1. Issuance: Company will have the right to issue an Operational Flow Order that will require actions by the Customer to alleviate conditions that, in the sole judgment of the Company, jeopardize the operational integrity of Company's system required to maintain system reliability. Customer shall be responsible for complying with the directives set forth in the OFO. Any OFO, along with associated conditions and penalties, shall be limited, as practicable to address only the problem(s) giving rise to the need for the OFO.

Company may call an OFO by pipeline, delivery zone or town border station when:

- Company experiences failure of transmission, distribution or gas storage facilities;
- When transmission system pressures or other unusual conditions jeopardize the operation of Company's system;
- When Company's transportation, storage and supply resources are being used at or near their maximum rate deliverability;
- When any of Company's transporters or suppliers call the equivalent of an OFO or Critical Day;
- When Company is unable to fulfill its firm contractual obligations or otherwise when necessary to maintain the overall operational integrity of all or a portion of Company's system.

2. Customer Compliance: Upon issuance of an OFO, the Company will direct customer to comply with one of the following conditions:

A. Unauthorized Deliveries: Customer, Aggregator or Marketer must take delivery of an amount of natural gas from the Company that is no more than the hourly or daily amount being received by the Company from the applicable Interstate Pipeline for the Customer's, Aggregator's or Marketer's account. All volumes delivered to the Customer, Aggregator or Marketer in excess of volumes received by the Company from the applicable Interstate Pipeline for the Customer's, Aggregator's or Marketer's account, that are in violation of the above condition, with the exception of a 5% daily tolerance, shall constitute an Unauthorized Overrun by Customer, Aggregator or Marketer on the Company's system. Customer, Aggregator or Marketer shall be charged a penalty of $25.00 per Mcf, plus the Gas Daily Index price for the applicable Interstate Pipeline for such Unauthorized Overruns during the duration of the OFO.

B. Unauthorized Receipts: Customer, Aggregator or Marketer must take delivery of an amount of natural gas from the Company that is no less than the hourly or daily amount being received by the Company from the Connecting Pipeline Company for the Customer's account. All volumes delivered to the Customer, Aggregator or Marketer which are less than volumes received by the Company from the applicable Interstate Pipeline for the Customer's, Aggregator's or Marketer's account, that are in violation of the above condition, with the exception of a 5% daily tolerance, shall constitute an Unauthorized Delivery by Customer to Company. Customer shall be charged a penalty of $25.00 per Mcf for such Unauthorized Deliveries to Company's system.

Thank you for your cooperation,

Tatiana

Tatiana Earhart | Liberty Utilities (Missouri) | Gas Transportation Supervisor
P: 417-625-4245 | C: 417-438-2307 | E: Tatiana.Earhart@libertyutilities.com
602 S Joplin Ave, Joplin, MO 64801

From: "Wolf, Mark" <mark.wolf@symmetryenergy.com>
Sent: Thu, 11 Feb 2021 12:01:32 -0600 (CST)
To: "Tatiana Earhart" <Tatiana.Earhart@libertyutilities.com>
Cc: "Deborah Gilbertson" <Deborah.Gilbertson@libertyutilities.com>
Subject: Re: Critical, Operational Flow Order,20210213, Southern Star, 007906233

Mark Wolf
Symmetry Energy
Mobile: 816.832.1212

From: Tatiana Earhart <Tatiana.Earhart@libertyutilities.com>
Sent: Thursday, February 11, 2021 12:00:18 PM
To: Tatiana Earhart <Tatiana.Earhart@libertyutilities.com>
Cc: Deborah Gilbertson <Deborah.Gilbertson@libertyutilities.com>
Subject: FW: Critical, Operational Flow Order,20210213, Southern Star, 007906233

All,

Please be advised Southern Star has issued a new System Wide OFO effective the start of gas day **Saturday, February 13, 2021 until no end date**.

Empire will do the same.

Please adjust your nominations to ensure you are NOT SHORT. OFO Penalties will apply to unauthorized deliveries.

Tatiana

Tatiana Earhart | Liberty Utilities (Missouri) | Gas Transportation Supervisor
P: 417-625-4245 | C: 417-438-2307 | E: Tatiana.Earhart@libertyutilities.com
602 S Joplin Ave, Joplin, MO 64801

From: csinotices@southernstar.com <csinotices@southernstar.com>
Sent: Thursday, February 11, 2021 11:44 AM
Subject: Critical, Operational Flow Order,20210213, Southern Star, 007906233

TSP Name: Southern Star Central Gas Pipeline, Inc.
TSP: 007906233
Notice ID: 9686
Critical: Y
Notice Type: Operational Flow Order
Notice Stat Desc: Initiate
Notice Eff Date / Time: 2/13/2021 9:00 AM
Notice End Date / Time: 12/31/9999 11:59 PM
Reqrd Rsp Desc: No response required.
Post Date / Time: 2/11/2021 11:35 AM
Subject: Delivery Location Operational Flow Order (OFO) – System Wide -- ALL Line Segments

Notice Text

Southern Star Central Gas Pipeline ("SSCGP") is issuing a Standard OFO applicable to Receiving Parties taking deliveries on ALL Line Segments, pursuant to Section 10 of its FERC Gas Tariff's General Terms and Conditions ("GT&C"), due to point operators taking more gas off the system than is scheduled, and considering any no-notice Maximum Daily Quantity ("MDQ") at the location, during the current below normal temperatures and high demands. This order will be effective at 9:00 A.M. CST on February 13, 2021. Requirements of this OFO are listed below.

Requirements of this Standard OFO

On a daily basis:

1. Takes at any delivery point on ALL Line Segments shall not exceed the sum of the quantity scheduled by Southern Star and confirmed by the Receiving Party for the account of all Shippers delivering gas at that point, plus the remaining MDQ(s) for that Delivery Point under Rate Schedules TSS and STS. Receiving Parties who take gas in excess of that amount at any delivery point will be subject to penalties pursuant to GT&C Section 10 for failure to comply with this OFO.

This OFO will remain in effect at least through the February 16, 2021 gas day; however, SSCGP will monitor operations and may, by additional notice, either adjust this Standard OFO to an Emergency OFO, extend it beyond such date or terminate it earlier as operational conditions warrant. Thank you in advance for your cooperation in this matter. If you have any questions regarding this notice, please contact one of the Customer Service Representatives listed below.

Scott Warren	Office: (270) 852-4559	Cell: (270) 302-6433
Chris Williams	Office: (270) 852-4544	Cell: (270) 302-1143
Buster Ashley	Office: (270) 852-4546	Cell: (270) 314-1436
Will Wathen	Office: (270) 852-4483	Cell: (270) 925-1969
Robin Joska	Office: (270) 852-4565	Cell: (270) 302-5007
Scheduling	Office: (855) 730-2926	

Southern Star Central Gas Pipeline, Inc.
FERC Gas Tariff
First Revised Volume No. 1

First Revised Sheet No. 203
Superseding
Original Sheet No. 203

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS (Cont'd)

1.21 Maximum Storage Quantity ("MSQ") - means the maximum number of Dth a Shipper is entitled to store in Southern Star's storage facilities.

1.22 "MCF" - means one thousand cubic feet of gas measured at base conditions of 14.73 psia and 60 degrees Fahrenheit.

1.23 “MDP” – means minimum delivery pressure.

1.24 "Month" - means a calendar month.

1.25 "Operational Balancing Agreement" ("OBA") - means a contract between two parties which specifies the procedures to manage operating variances at an interconnect. Southern Star shall offer Operational Balancing Agreements on a non-discriminatory basis.

1.26 Operation Flow Order ("OFO") - means an order issued to alleviate conditions, inter alia, which threaten or could threaten the safe operations or system integrity, of Southern Star's system, or to maintain operations required to provide efficient and reliable firm service. Whenever Southern Star experiences these conditions, any pertinent order will be referred to as an Operational Flow Order.

1.27 "Point Operator" - means any party who is either a Receiving Party or Delivering Party.

1.28 "Predetermined Allocation Agreement" ("PDA") - means an agreement under which the operator of the facilities at a receipt or delivery point specifies how gas received by or delivered by Southern Star shall be allocated in accordance with confirmed nominations at such point, including how any underage or overage of actual receipts or deliveries from confirmed nominations shall be allocated. Southern Star shall offer predetermined allocation agreements on a non-discriminatory basis. An OBA is a type of PDA.

1.29 "psia" - means pressure expressed in pounds per square inch absolute.

1.30 "psig" - means pressure expressed in pounds per square inch gauge.

1.31 "Receiving Party" - means the owner or operator of the facilities into which Southern Star physically delivers gas for Shipper.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Symmetry Energy Solutions, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. GC-2022-0062
	)	
The Empire District Gas Company d/b/a Liberty Utilities or Liberty,	)	
	)	
Respondent.	)	

AFFIDAVIT OF SHON PURCELL IN SUPPORT OF SYMMETRY'S OPPOSITION TO EMPIRE'S MOTION FOR SUMMARY DETERMINATION

I, Shon Purcell, being first duly sworn, state as follows:

1. My name is Shon Purcell. I am the Director of Trading for the West Region of Symmetry Energy Solutions, LLC ("Symmetry"). My business address is 6100 South Yale Avenue #200, Tulsa, Oklahoma 74136.

2. I have been employed by Symmetry or its predecessor companies since 2001. Prior to becoming Director of Trading for the West Region, I was the Vice President of Wholesale Trading and Supply, Director of Mid-Continent Trading, and a Derivatives Trader.

3. In my role as Director of Trading for the West Region, I manage the team responsible for procuring and scheduling gas for delivery to Symmetry customers behind The Empire District Gas Company ("Empire") city gate.

4. In February 2021, the central United States experienced a number of days of extreme cold. During that time, demand for natural gas increased substantially, and at the same time the freezing temperatures and other factors caused significant disruptions in supply. This combination of demand and supply factors caused a shortage of available gas that was

unprecedented in my twenty years of experience in the industry.

5. During the February 2021 winter storm, Symmetry suffered significant cuts to its upstream gas supply. Many of Symmetry's suppliers claimed they could not supply gas due to *force majeure*, and other suppliers simply failed to deliver contracted quantities of gas.

6. An Empire representative emailed Symmetry employees on February 9, 2021 to notify Symmetry that the Southern Star Central Gas Pipeline ("Southern Star") had issued an Operational Flow Order ("OFO") "effective the start of gas day Tuesday, February 9, 2021 until Wednesday, February 17, 2021," and wrote that "Empire will do the same." A copy of an email chain which includes that email is attached to this filing as **Oppose MSD Ex - 7**.

7. On February 11, 2021, an Empire representative sent an email to herself and another "libertyutilities.com" email address, stating, "Please be advised Southern Star has issued a new System Wide OFO effective the start of gas day Saturday, February 13, 2021 until no end date. Empire will do the same." It appears one or more Symmetry employees may have been blind carbon copied on that email. A copy of an email chain which includes that email is attached to this filing as **Oppose MSD Ex - 8**.

8. Throughout the period of Empire's above-referenced OFOs, Symmetry endeavored to procure gas for delivery to Empire's city gate sufficient to cover the needs of Symmetry's customers, including by attempting to make daily incremental gas purchases when it became apparent that gas supplies Symmetry had purchased in advance were being cut by Symmetry's suppliers. However, and despite its attempts to do so, Symmetry was unable to purchase sufficient quantities of gas on the daily spot market to make up for supply cuts by Symmetry's upstream suppliers. In many instances, the gas that Symmetry was able to purchase on the spot market simply never arrived due to upstream supply cuts and transportation issues.

9. As a general matter, during the period of the above-referenced OFOs, Symmetry

nominated for delivery to Empire's city gate the quantity of gas that it expected its customers to burn. Symmetry did not, and could not, learn until later whether its customers burned more gas on some days than Symmetry expected, or whether some of the gas that Symmetry nominated for delivery did not arrive because of cuts by Symmetry's suppliers. To the extent Symmetry nominated less gas than it expected its customers to burn on any particular day during the OFOs, or to the extent Symmetry delivered less gas to Empire's city gate than it nominated, those under-nominations or under-deliveries were caused by cuts to Symmetry's upstream supply and available transport.

10. To my knowledge, Empire's system did not suffer any significant pressure drops during the February winter storm, nor was Empire ever unable to deliver gas to customers on its system.

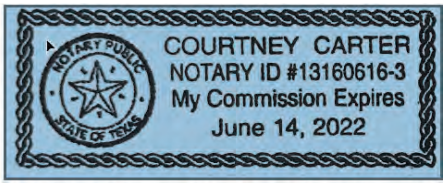
11. By the end of February 2021, Symmetry had delivered sufficient gas to Empire's city gate to make up for any under-deliveries within the month. Therefore, Symmetry and its customers behind Empire's city gate were volumetrically balanced over the month of February. To the extent Empire covered any of Symmetry's purported delivery shortfalls by withdrawing gas from Empire's storage, by the end of February Symmetry had delivered gas to Empire sufficient to replace any gas Empire withdrew from storage to serve Symmetry's customers.

12. I hereby swear and affirm that to the best of my knowledge and belief, the information herein is true and correct.

DocuSigned by:
Shon Purcell
2FAD35E023864A6...

Shon Purcell

Subscribed and sworn to before me this 18th day of October, 2021.



Courtney Carter

Notary Public

My commission expires: 06/14/2022

STATE OF MISSOURI, PUBLIC SERVICE COMMISSION

P.S.C. MO. No.	2	1st	Revised	Sheet No.	31
Canceling P.S.C. MO. No.	2		Original	Sheet No.	31

THE EMPIRE DISTRICT GAS COMPANY
JOPLIN, MO 64802

FOR: All Communities and Rural Areas Receiving Natural Gas Service

TRANSPORTATION SERVICE
NATURAL GAS

22. Failure to Comply: If a Customer, Marketer or Aggregator fails to comply with or perform any of the obligations of its part, the Company shall have the right to give the Customer, Marketer or Aggregator written notice of the Company's intention to terminate the transportation service on account of such failure. The Company shall then have the right to terminate such transportation service five days after giving said notice, unless the Customer, Marketer or Aggregator shall make good such failure. Termination of such transportation service for any such cause shall be a cumulative remedy as to the Company, and shall not release the Customer, Marketer or Aggregator from its obligation to make payment of any amount or amounts due or to become due from the Customer, Marketer or Aggregator to the Company under the applicable rate. In order to resume transportation service after termination of service hereunder, it shall be necessary for the Customer to reapply for Transportation Service.

23. Security Performance:The Aggregator or Marketer shall upon request of the Company agree to maintain a cash deposit, surety bond, irrevocable letter of credit, corporate guarantee or such other financial instrument satisfactory to cover a reasonable assessment of risk of each particular situation. Factors that shall be incorporated into this assessment of risk may include but not limited to, the following: the volume of natural gas to be transported in behalf of an Aggregation Pool, the general credit worthiness of the Aggregator or Marketer, and the Aggregator's or Marketer's prior credit record with the Company, if any. In the event that the Aggregator or Marketer defaults on its obligations under this rate schedule, the Company shall have the right to use such cash deposit, or proceeds from such bond, irrevocable letter of credit, or other financial instrument to satisfy the Aggregator's obligation hereunder. In the case of default by the Aggregator or Marketer, the Company reserves the right to recalculate the charges and bill the appropriate Aggregator Pool Customers directly as though no Aggregation Pool arrangement existed. Specific terms and conditions regarding credit requirements shall be included in the Aggregator's or Marketer's Agreement. Proceeds from insurance payments or bonds payable in the event of a default shall flow through the Company's PGA to the degree necessary to safeguard sales customers from negative repercussion of a contract customer's default..

24. Small Volume Customer Participation: All small volume transportation customers must belong to an Aggregation Pool. Small Volume Customers may only begin transportation service or return to sales service on either May 1 or October 1 of each calendar year.

25. Large Volume Customer Participation: All large volume transportation customers requesting to return to sales service must elect to do so in writing by May 1st each calendar year. All large volume sales service customers requesting transportation service must elect to do so in writing by May 1st each calendar year. If all other conditions for service are met, all changes in service status will take effect on June 1, of each calendar year.

26. Aggregator Pool Customer Notification: Aggregators must notify Company of any small volume pool additions or deletions no later than April 1 or September 1 of each calendar year. Customers shall notify the company whenever a Customer ceases to be a part of an Aggregator's Pool. Interstate Pipeline Capacity initially assigned and necessary to service the Customer shall remain with the Customer. Customers that choose service from another Aggregator or Marketer must notify the Company with a signed Customer Verification Form. Forms are available from the Company. Notification is required by April 1 or September 1.

27. Termination of Participation: The Aggregator or Marketer Agreement may be terminated by the Company upon 30 days written notice if an Aggregator or Marketer fails to meet any condition of the Transportation rate schedule or Transportation Contract. An Aggregation Pool may also be terminated by the Company upon 30 days written notice if the Aggregator or Marketer has payments due the Company that are in arrears. Written notice of termination of the Agreement(s) by the Company shall be provided to the Aggregator or Marketer as well as to each of the Customers served by the Aggregator or Marketer subject to such termination.

STATE OF MISSOURI, PUBLIC SERVICE COMMISSION

P.S.C. MO. No.	2	1st	Revised	Sheet No.	44
Canceling P.S.C. MO. No.	2		Original	Sheet No.	44

THE EMPIRE DISTRICT GAS COMPANY
JOPLIN, MO 64802

FOR: All Communities and Rural Areas Receiving Natural Gas Service

TRANSPORTATION SERVICE
NATURAL GAS

E. Operational Flow Order Penalty: Aggregators and Marketers who fail to deliver to Company for the account of Customer (s) specified operational flow ordered quantities of gas shall be billed appropriate "Unauthorized Delivery" charges. Aggregators or Marketers who repeatedly fail to deliver to Company specified operational flow order quantities of gas will not be permitted to continue transportation service.

P. MEASUREMENT:

1. All transport gas shall be measured on a volumetric basis. Measurement shall be based on available information regarding volumes received and delivered, pressure and temperature conditions, and energy content of the gas stream. Company shall determine the measurement equipment required to determine the Receipts and Deliveries of end-user owned gas transported hereunder.

Q. RECORDING AND TELEMETRY EQUIPMENT:

1. The Company shall notify Customer if existing equipment is not sufficient to measure service under the applicable rate schedule. Company shall not be unreasonable in such determination. If existing equipment is found to be insufficient, the Company may install such equipment as it deems necessary.

2. The Company shall be allowed access for maintaining and operating such equipment. The Customer shall be responsible for the costs associated with the Company acquiring and installing recording and/or telemetry equipment at the delivery point. When telemetry equipment is installed, the Customer will be required to provide telephone or other interfaces agreed to by the Company along with electrical connections available at the meter location.

3. If recording and/or telemetry equipment is deemed necessary, but the Customer is unwilling or unable to pay for the cost of such equipment, then the Customer may return to sales service, provided all other requirements of paragraph D 12 have been met. All Small Volume transportation customers must have the Company install telemetry equipment or purchase the Balancing Service. Customers must reimburse the Company for the actual cost incurred by Company to install telemetry equipment and for the actual cost of any other improvements made by Company in order to provide this transportation service. The customer shall also provide telephonic access and service to this telemetry equipment. The telemetry equipment and any other improvements made by the Company shall remain the property of the Company, and will be maintained by the Company. All funds contributed by Customer shall be used by Company as an offset to the cost of the telemetry investment.

4. The Company will offer financing for a Customer for telemetry equipment for periods up to 90 days interest free. The Company will offer financing with interest at a rate of prime plus 1% to a Customer to pay for the installation of telemetry equipment for a period of more than 90 days, but not more than 12 consecutive months. The telemetry equipment and any other improvements made by the Company shall remain the property of the Company, and will be maintained by the Company.