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Supplemental Executive  
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Stock Issuance Expense/  
Short-term and Long-term Compensation/  
Loss on Retirement of Assets/  
Rate Base Inclusion of Expense Trackers/  
Income Tax Expense/  
Riverton 12 Construction Audit  
**Witness/Type of Exhibit:** Hyneman/Direct  
**Sponsoring Party:** Public Counsel  
**Case No.:** ER-2016-0023

**DIRECT TESTIMONY**

**OF**

**CHARLES R. HYNEMAN**

Submitted on Behalf of the Office of the Public Counsel

**EMPIRE DISTRICT ELECTRIC COMPANY**

CASE NO. ER-2016-0023

April 1, 2016

OPC Exhibit No. 8  
Date 6-2-16 Reporter KKF  
File No. ER-2016-0023

**NP**



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**DIRECT TESTIMONY**  
**OF**  
**CHARLES R. HYNEMAN**  
**EMPIRE DISTRICT ELECTRIC COMPANY**  
**CASE NO. ER-2016-0023**

1 **I. INTRODUCTION**

2 **Q. Please state your name and business address.**

3 A. Charles R. Hyneman, PO Box 2230, Jefferson City, Missouri 65102.

4 **Q. By whom are you employed and in what capacity?**

5 A. I am employed by the Missouri Office of the Public Counsel ("OPC") as the Chief Public  
6 Utility Accountant.

7 **Q. Please describe your educational background.**

8 A. I earned an MBA from the University of Missouri - Columbia, and a Bachelor of Science  
9 degree in Accounting from Indiana State University at Terre Haute, Indiana.

10 **Q. Please describe your professional work experience.**

11 I was a member of the Missouri Public Service Commission Staff ("Staff") from April 1993  
12 to December 2015. As a member of the Staff I held various positions including Manager of  
13 the Commission's Kansas City Office. I left the Commission Staff holding the position of  
14 Regulatory Auditor V. Auditor V is a senior-level professional and supervisory position in  
15 the Commission's Auditing Department. I performed, supervised, and coordinated  
16 regulatory auditing work as an Auditor V. Please see Schedule CRH-1 for specific work  
17 experience and background information.

18 **Q. Are you a Certified Public Accountant ("CPA") licensed in the state of Missouri?**

1 A. Yes. I am also a member of the American Institute of Certified Public Accountants  
2 (“AICPA”).

3 Q. What is the AICPA?

4 A. The AICPA represents the CPA profession nationally regarding rule-making and standard-  
5 setting. Further, the organization develops standards for audits of private companies,  
6 provides educational guidance materials to its members, and monitors and enforces  
7 compliance with the profession’s technical and ethical standards. The AICPA established  
8 accountancy as a profession and developed its educational requirements, professional  
9 standards, code of professional ethics, licensing status, and a commitment to serve the public  
10 interest.

11 Q. Please list the witnesses who will be filing direct testimony on behalf of the OPC in this  
12 case and this issues they will be addressing in direct testimony.

13 A. The following individuals will be filing direct testimony on behalf of OPC in this case:

14 \*Charles Hyneman – Regulatory policy, Cost Allocation Manual, pension expense,  
15 Supplemental Executive Retirement Plan, stock issuance expense, short-term and long-term  
16 compensation, loss on retirement of assets, rate base inclusion of expense trackers, income  
17 tax expense, Riverton 12 construction audit.

18 \*Keri Roth –vegetation management expense and trackers advanced coal tax credit  
19 (ITC) over-collection, Iatan 2, Iatan common, & Plum Point operations &  
20 maintenance (O&M) expense and trackers (Generation Plant O&M Trackers) May  
21 2011 Tornado deferrals, Iatan 1, Iatan 2, & Plum Point carrying costs, Southwestern  
22 Power Administration (SWPA) Hydro reimbursement, bad debt expense Riverton  
23 12 O&M expense and tracker.

24  
25 \*Amanda Conner – materials and supplies, prepayments, rate case expense, dues &  
26 donations, corporate franchise tax, customer deposits, and customer advances.

27 \*Lena Mantle – fuel adjustment clause (FAC).

28

1 **II. REGULATORY POLICY**

2 **Q. What is the overall regulatory policy OPC applied to the issues addressed in this rate**  
3 **case?**

4 A. It is understood that the foundation of a utility's revenue requirement, as determined in a  
5 rate case proceeding, is the recovery of reasonable and prudent expenses that are necessarily  
6 incurred in the provision of regulated utility service. In addition to expense recovery, a  
7 revenue requirement designed in a rate case should also allow utility shareholders a  
8 reasonable opportunity to earn a reasonable return on their equity investment in the utility.

9 Recovery of reasonable, prudent, and necessary expenses as well as a reasonable profit on  
10 the dollars invested in utility operations is necessary in order for a regulated utility to fulfill  
11 its mandate to the public. This mandate, which is a part of the "regulatory compact"<sup>1</sup>, is to  
12 provide safe and adequate utility service at a reasonable price to its regulated utility  
13 customers. The positions taken by OPC in this rate case support that mandate.

14 **Q. Please describe the "regulatory compact".**

15 A. In exchange for a regulator granting the utility protected monopoly status within its service  
16 territory, the utility commits to supply the full quantities demanded by customers at a  
17 regulated price. A good description of the regulatory compact was provided by the Indiana  
18 Supreme Court:

19 [The regulatory compact] arises out of a "bargain" struck between the  
20 utilities and the state. As a quid pro quo for being granted a  
21 monopoly in a geographical area for the provision of a particular  
22 good or service, the utility is subject to regulation by the state to  
23 ensure that it is prudently investing its revenues in order to provide  
24 the best and most efficient service possible to the consumer. At the  
25 same time, the utility is not permitted to charge rates at the level

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<sup>1</sup> Lesser and Giacchino, Fundamentals of Energy Regulation (2007) at p.43  
(footnote omitted).



1 which its status as a monopolist could command in a free market.  
2 Rather, the utility is allowed to earn a "fair rate of return" on its "rate  
3 base." Thus, it becomes the Commission's primary task at periodic  
4 rate proceedings to establish a level of rates and charges sufficient to  
5 permit the utility to meet its operating expenses plus a return on  
6 investment which will compensate its investors. United States  
7 Gypsum, Inc. v. Indiana Gas Co. Inc., 735 N.E.2d 790, 797 (Ind.  
8 2000), citing Indiana Gas Co., Inc. v. Office of Utility Consumer  
9 Counselor ("Indiana Gas I"), 575 N.E.2d 1044, 1046  
10 (Ind.Ct.App.1991).  
11

12 **Q. What is the Missouri Public Service Commission's ("Commission") understanding of**  
13 **the "regulatory compact"?**

14 **A.** The following description of the regulatory compact was included in an article sponsored  
15 and written by Robert Kenney, former Chairman of the Commission. The article, "*Public*  
16 *Utility Regulation in the Twenty-First Century*" was published in the April 14, 2014,  
17 Financial Research Institute's "FRI News & Points of View" webpage:

18 Public utility regulation began in Missouri 100 years ago last year.  
19 The basic premise for economic regulation is that public utilities, by  
20 virtue of high capital costs and economies of scale, are natural  
21 monopolies. In the absence of competition, a monopoly enterprise  
22 will potentially charge monopoly prices, possibly decrease quality of  
23 service to increase margins, and otherwise behave in an anti-  
24 competitive manner.

25  
26 Enter the regulatory compact. In exchange for a grant of an exclusive  
27 service territory, utilities are obligated to provide service to all on a  
28 non-discriminatory basis; and they agree to be economically  
29 regulated. That same compact requires state commissions to allow  
30 the utility a reasonable opportunity to earn a fair rate of return. Rates  
31 are to be just and reasonable; just and reasonable to both the  
32 consumer and the provider.  
33  
34

1 **Q. What ratemaking principles and standards has OPC applied to the revenue**  
2 **requirement issues it is addressing and will address in this rate case?**

3 A. The positions taken by the OPC are based on and supportive of the Commission's rate case  
4 matching principle, the "known and measurable" standard, and the Commission's standard  
5 of only allowing rate recovery of necessary, reasonable, and prudent costs.

6 **Q. What is the "known and measurable" standard?**

7 A. To meet the "known and measurable" standard, an event, and the financial impact of the  
8 event, must be known to have actually occurred and must be able to be measured with a  
9 high degree of accuracy. The "known and measurable" standard is generally applied to a  
10 rate case test year.

11 **Q. What is a test year?**

12 A, A test year is a tool used to find the relationship between investment, revenues, and  
13 expenses. Certain adjustments are made to a utility's test year books and records. These  
14 adjustments include "normalization" adjustments to reflect a normal level of expenses or  
15 revenues, "annualization" adjustments to reflect the end-of-period level of investment,  
16 expenses, and revenues.

17 **Q. Are adjustments sometimes made for events occurring outside the test year?**

18 Yes, but this is rare. Including post-test year events and related revenues or expenses in a  
19 utility's cost of service creates a high likelihood of distorting the rate case matching  
20 principle.

21 **Q. What criteria does the OPC support in this case if the Commission includes post-test**  
22 **year revenues or expenses in Empire's cost of service?**



1 A. The criteria the Commission should use to determine whether a post-test year event should  
2 be included in Empire's cost of service is whether or not the proposed adjustment is (1)  
3 "known and measurable," (2) promotes the proper relationship of investment, revenues and  
4 expenses ("matching principle"), and (3) is representative of the conditions anticipated  
5 during the time the rates will be in effect. In addition, for plant and plant-related costs, the  
6 plant must be "in-service" and "used and useful" in the provision of utility service.

7 **Q. What are the Commission's ratemaking requirements related to the matching**  
8 **principle?**

9 A. In the *Findings of Fact* section of its September 2, 2015 *Report and Order* in Case No.  
10 ER-2014-0370, Kansas City Power & Light Company, the Commission explained its  
11 position on rate case matching principle:

12  
13 114. In Missouri, rates are usually established based upon a  
14 historical test year where the company's expenses and the rate base  
15 necessary to produce the revenue requirement are synchronized.  
16 The deferral of costs from a prior period results in costs associated  
17 with the production of revenues in one period being charged  
18 against the revenues in a different period, which violates the  
19 "matching principle" required by Generally Accepted Accounting  
20 Principles (GAAP) and the Uniform System of Accounts approved  
21 by the Commission.

22  
23 The matching principle is a fundamental concept of accrual basis  
24 accounting, which provides that in measuring net income for an  
25 accounting period, the costs incurred in that period should be  
26 matched against the revenue generated in the same period. Such  
27 matching creates consistency in income statements and balance  
28 sheets by preventing distortions of financial statements which  
29 present an unfair representation of the financial position of the  
30 business.

31  
32 One type of deferral accounting, a "tracker", has the effect of  
33 either increasing or decreasing a utility's earnings for a prior

1 period by increasing or decreasing revenues in future periods,  
2 which violates the matching principle.

3  
4 116. The broad use of trackers should be limited because they  
5 violate the matching principle, tend to unreasonably skew  
6 ratemaking results, and dull the incentives a utility has to operate  
7 efficiently and productively under the rate regulation approach  
8 employed in Missouri.  
9

10 **Q. What is the Commission's position on the known and measurable standard?**

11 A. Also its *Report and Order* in Case No. ER-2014-0370, the Commission explained its  
12 position on the "known and measurable" standard:

13 256. ...The term "known and measurable" relates to items or  
14 events affecting a utility's cost of service that must have been  
15 realized (known) and must be calculable with a high degree of  
16 accuracy (measurable).  
17

18 **Q. Are the ratemaking positions taken by OPC in this case supportive of longstanding  
19 Commission rate case policies?**

20 A. Yes, they are. To the extent OPC takes a position inconsistent with a longstanding  
21 Commission ratemaking policy, OPC will present new evidence to allow the Commission  
22 reconsideration of a position on a prior ratemaking decision.

23 **Q. Are the positions taken by OPC in this case consistent with and supportive of the  
24 Commission's rules as they apply to Empire?**

25 A. Yes. In this rate case, OPC has placed a primary emphasis on Empire's compliance with the  
26 Commission's Affiliate Transactions Rule, 4 CSR 240-20.015 ("Affiliate Transactions  
27 Rule"). Empire does not currently have a Commission-approved cost allocation manual  
28 ("CAM") as required by the Affiliate Transactions Rule. As will be discussed later in this  
29 testimony, OPC is proposing a CAM it believes will assist Empire in meeting the overall  
30 purpose as well as the specific requirements of the Affiliate Transactions Rule.

1 **Q. Is OPC concerned about the increasing number of single-issue ratemaking trackers**  
2 **included in Empire's cost of service in this case?**

3 A. Yes, it is. OPC generally opposes the implementation of single-issue ratemaking  
4 mechanisms such as trackers because they are based on ratemaking policies that are not just  
5 and reasonable.

6 **Q. Under what circumstances would OPC support an expense tracker?**

7 A. OPC would support a ratemaking mechanism, such as an expense tracker, on a short-term  
8 basis when a utility demonstrates one is needed to ensure the financial soundness of the  
9 utility. In addition, OPC would support short-term extraordinary ratemaking treatment, such  
10 as an expense tracker, when it can be demonstrated by a utility that a tracker is needed due  
11 to the lack of actual financial data on which to base a component of cost of service. An  
12 example is OPC's support of a short-term tracker for expenses related to Empire's  
13 investment in its soon-to-be-completed Riverton 12 combined cycle generation unit.

14 **Q. Does both the OPC and the Staff generally oppose the use of expense trackers?**

15 A. Yes. The Commission's Staff recognized in KCPL's 2014 rate case, case number ER-2014-  
16 0370, that eliminating the critical cost control incentives imposed on utility management by  
17 regulatory lag is one of the reasons why single-issue ratemaking mechanisms, such as  
18 expense trackers, are detrimental to Missouri ratepayers.

19 **Q. Please describe the term "regulatory lag".**

20 A. "Regulatory lag" has been defined much too simply in the  
21 past as "the time between the incurrence of a cost or revenue by a  
22 utility and the reflection of that expense or revenue in rates". A more  
23 descriptive definition is provided by Alfred E. Kahn, the most widely  
24 recognized and often-cited expert on the economics of regulation, in  
25 his book *The regulatory lag - the inevitable delay that regulation*  
26 *imposes in the downward adjustment of rate levels that produce*  
27 *excessive rates of return and in the upward adjustments ordinarily*

1 called for if profits are too low - is thus to be regarded not as a  
2 deplorable imperfection of regulation but as a positive advantage.  
3 Kahn, A.E., *The Economics of Regulation: Principles and*  
4 *Institutions* (New York: John Wiley & Sons, 1970, Chapter 2, p.48).  
5

6 **Q. What did Mr. Kahn write about the role of regulatory lag?**

7 A. Mr. Kahn wrote the use of regulatory lag is a method by which a regulatory body incents  
8 positive utility management behavior. On Page 48 (Chapter Two) of *The Economics of*  
9 *Regulation: Principles and Institutions*, he states “freezing rates for the period of the lag  
10 imposes penalties for inefficiency, excessive conservatism, and wrong guesses but offers  
11 rewards for their opposite: companies can for a time keep the higher profits they reap from a  
12 superior performance and have to suffer the losses from a poor one.”

13 Roger Sherman wrote an article in 2003 entitled “Restructuring Industries: The Carrot and  
14 the Stick”, in which he cites NYU professor and Princeton professor emeritus William  
15 Baumol as the originator of the benefits of regulatory lag:

16 The idea of using “regulatory lag”, the delay between rate cases, for  
17 incentive benefits came from Baumol (1968). He argued that the  
18 regulated firm would have incentive to control its costs while it was  
19 stuck with unchanging prices between rate cases, the fixed prices  
20 essentially serving as a stick. So he proposed a specific time period  
21 between rate cases, such as three years or five years, when prices  
22 would remain fixed. [Review of Network Economics Vol.2, Issue 4 –  
23 December 2003]  
24

25 **Q. What is the main detriment from the use of expense trackers?**

26 A. It is the elimination of regulatory lag, which is necessary and essential in setting prices for a  
27 monopoly. It is primarily through regulatory lag that cost reduction incentives are created  
28 and provide the most significant, if not the only, incentive for utility management to operate  
29 the utility at its lowest reasonable cost between rate cases.

1 Q. Is there any substitute for regulatory lag?

2 A. No. Regulatory lag is essential and there is no substitute. OPC knows of no condition or  
3 requirement the Commission can place on Empire that would restore the cost efficiency  
4 incentives eliminated through the use of expense trackers and other single-issue ratemaking  
5 mechanisms.

6 There is, however, a way to potentially somewhat limit the negative impact of the removal  
7 of regulatory lag. The creation of a rigorous and effective short-term incentive  
8 compensation plan that tracked and accurately and effectively measured specific  
9 controllable cost of service expense decreases. Such a compensation plan, to be effective,  
10 would place primary emphasis on cost of service expense reductions and would associate a  
11 significant level of employee compensation to meeting robust expense reduction standards.

12 **III. COST ALLOCATION MANUAL ("CAM")**

13 Q. What is included in a CAM?

14 A. A CAM includes the criteria, guidelines, and procedures a utility will follow to be in  
15 compliance with the Affiliate Transactions Rule.

16 Q. Why is OPC addressing the issue of a CAM in this case?

17 A. The Affiliate Transactions Rule as cited above requires Empire to use a Commission-  
18 approved CAM as a basis for its transactions with affiliates and nonregulated operations.  
19 The requirements for a Commission-approved CAM can be found in 4 CSR 240-20.015  
20 paragraphs 2(E) and 3(D):

21 Paragraph 2(E) The regulated electrical corporation shall include in  
22 its annual Cost Allocation Manual (CAM), the criteria, guidelines  
23 and procedures it will follow to be in compliance with this rule.  
24  
25

1 Paragraph 3(D) In transactions involving the purchase of goods or  
2 services by the regulated electrical corporation from an affiliated  
3 entity, the regulated electrical corporation will use a commission-  
4 approved CAM which sets forth cost allocation, market valuation  
5 and internal cost methods. This CAM can use benchmarking  
6 practices that can constitute compliance with the market value  
7 requirements of this section if approved by the commission.  
8  
9

10 Empire does not currently have a Commission-approved CAM and thus is not in  
11 compliance with 4 CSR 240-20.015. OPC is proposing the Commission order Empire to  
12 adopt the CAM that is attached to this testimony as Highly Confidential Exhibit CRH-I.  
13 OPC is classifying this proposed CAM as Highly Confidential based on a request from  
14 Empire. Empire indicated it would review the draft CAM after OPC's direct filing for  
15 possible removal of the Highly Confidential classification.

16 **Q. Were you significantly involved in the drafting of this draft Empire CAM?**

17 A. Yes. I was involved in the drafting of this CAM while I was an employee of the  
18 Commission Staff in 2014 and 2015. The CAM was essentially completed on my last day  
19 as an employee of the Staff, or November 30, 2015. The other primary drafters of this CAM  
20 are Staff members Robert Schallenberg and Steve Dottheim.

21 **Q. What is the basis of OPC's proposed CAM for Empire?**

22 A. The proposed CAM for Empire is similar to the CAM that Staff, OPC, KCPL and GMO  
23 worked on for the past several years.

24 **Q. Did Empire also file for Commission approval of a CAM?**

25 A. Yes. Empire filed a joint electric and gas operations application for CAM approval on  
26 August 23, 2011 in Case No. AO-2012-0062. This case is styled *In the Matter of the*  
27 *Application of The Empire District Electric Company and The Empire District Gas*  
28 *Company for Approval of their Cost Allocation Manual.*

1 **Q. Why has it taken so long to process the Empire CAM application in Case No. AO-**  
2 **2012-0062?**

3 A. My understanding is that Staff determined that, once the KCPL and GMO CAMs were  
4 completed and filed for Commission approval, the contents and structure of the KCPL and  
5 GMO CAMs would be used as the basis for the Empire CAM. A CAM for an electric utility  
6 is a complex document. The development of other utility CAMs involved a significant  
7 amount of discussions and negotiations over a long period of time.

8 **Q. Over the past several years, have you been involved in reviews of Affiliate**  
9 **Transactions Rule compliance and the sufficiency of the CAMs of other major**  
10 **Missouri utility companies?**

11 A. Yes. I was the Staff expert witness in the Affiliate Transactions Staff Complaint (Case No.  
12 GC-2011-0098) against Laclede Gas Company ("Laclede"). In that case, OPC, Laclede,  
13 and Staff filed a *Unanimous Partial Stipulation And Agreement And Waiver Request And*  
14 *Request For Approval Of Cost Allocation Manual* that, among other things, resolved certain  
15 affiliate transaction issues raised in the Staff complaint. The Commission issued an order  
16 approving the partial stipulation and agreement on August 14, 2013.

17 I was also the Staff expert witness in Case No. EO-2014-0189 ("0189 Case"). In the 0189  
18 Case, KCPL and GMO filed an Application for Approval of its Cost Allocation Manual as  
19 required by the Affiliate Transactions Rule.

20 Finally, I was the Staff expert witness in File No. AO-2012-0062. On August 23, 2011,  
21 Empire and its gas-affiliate, Empire Gas, filed for Commission approval of its CAM  
22 pursuant to an agreement in Empire's rate case, ER-2011-0004. In that case, I met with  
23 Empire personnel and reviewed Empire's affiliate transactions policies, procedures, and  
24 internal controls as well as Empire's CAM policies, procedures, and controls. Based on my



1 review of Empire's CAM, I found it to be significantly insufficiently designed to provide  
2 criteria, guidelines, and procedures to be in compliance with the Affiliate Transaction Rule.

3 **IV. SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN ("SERP")**

4 **Q. What is a SERP?**

5 A. According to the IRS' June 2015 *Nonqualified Deferred Compensation Audit Techniques*  
6 *Guide ("IRS Audit Guide")* a SERP is a nonqualified deferred compensation ("NQDC")  
7 plan. According to the IRS Audit Guide, SERPs are maintained primarily for a select  
8 group of management or highly compensated employees.

9 A SERP is designed to supplement qualified retirement plans such as Empire's all-  
10 employee defined benefit pension plan. SERPs accomplish this by "making up" for the  
11 benefits unavailable to the base qualified plan due to IRS employee maximum  
12 compensation limits on the qualified plan. The SERP plan usually covers only the  
13 company's highest compensated employees.

14 **Q. Are there different types of SERPs?**

15 A. Yes. One type of SERP is a basic restoration plan. The plan was created solely to restore  
16 benefits an employee would receive if the IRS had no maximum income restrictions for  
17 qualified pension plans. Another type of SERP is a Restoration Plan Plus SERP.  
18 Because of a company's freedom to design a SERP as it wishes, it can include all types of  
19 compensation and other executive benefits in the SERP.

20 **Q. What type of SERP is Empire's SERP?**

21 A. Empire's SERP can be classified as a SERP Plus plan as the benefits provided by  
22 Empire's SERP are not restricted to the restoration of pension benefits limited by IRS  
23 compensation restrictions. In addition, Empire's SERP benefits are based, in part, on  
24 certain types of executive compensation such as earnings-based and equity-based

1 compensation. This Commission has not allowed Empire to include this in its cost of  
2 service.

3 **Q. What is the difference between a NQDC and qualified deferred compensation plan?**

4 A. According to the IRS Audit Guide, NQDC plans do not provide employers and  
5 employees with the tax benefits associated with qualified plans because NQDC plans do  
6 not satisfy all of the requirements of IRC § 401(a). Empire's all-employee pension plan  
7 is a qualified plan while its SERP is a non-qualified plan. Because Empire SERP is a  
8 nonqualified plan, Empire's management and Board of Directors are free to design  
9 Empire's SERP in virtually any manner desired.

10 Empire has included in its SERP pension benefits that are based on executive bonuses,  
11 stock compensation, and other compensation the Commission has not recognized as  
12 reasonably included in its cost of service.

13 **Q. Has OPC included a prudent and reasonable level of Empire's recurring SERP**  
14 **payments in its cost of service in this current rate case?**

15 A. Yes. OPC is proposing a reasonable and prudent annualized level of actual monthly  
16 recurring SERP payments made by Empire to its former executives and other highly-  
17 compensated former employees. OPC is proposing to include in Empire's cost of service  
18 \$140,000 in SERP payments.

19 **Q. Is OPC's SERP proposal for Empire also consistent with the ratemaking treatment**  
20 **of SERP costs over many years?**

21 A. Yes. It is my understanding that, because of a SERP's unique nature, and the fact that a  
22 SERP is an additional executive pension benefit over and above what is already provided  
23 in the regular pension plan, the ratemaking treatment of SERP costs is different from  
24 normal employee pension costs. SERP costs are included in cost of service if they are

1 not significant, reasonably provided for, and able to be quantified under the known and  
2 measurable standard.

3 This policy and philosophy was described in more detail in my February 27, 2004  
4 surrebuttal testimony in Case No. ER-2004-0034, Aquila's (now GMO) 2004 rate case:

5 Page 5:

6 The Staff's general treatment of SERP expenses is that if the costs are  
7 reasonable in amount and accounted for on a pay-as-you go basis, then the  
8 Staff usually recommends that the Commission allow the SERP expenses  
9 in the utility's revenue requirement.

10  
11 I have reviewed the Staff treatment of SERP expenses in several recent  
12 Missouri utility rate cases. Empire District Electric Company's (Empire)  
13 latest rate case was Case No. ER-2002-424. In 2001, Empire recorded  
14 \$14,560 in SERP costs (Staff Data Request No 110, Case No. ER-2002-  
15 0424).

16  
17 The Staff and Empire agreed on the method of accounting for pension  
18 expense in Case No. ER-2002-0034 which resulted in \$0 SERP expense  
19 included in Empire's revenue requirement in that case, which was settled  
20 by the Commission's acceptance of a stipulation and agreement.

21  
22 In Laclede Gas Company's last rate case, Case No. GR-2002-356, and  
23 AmerenUE's last gas rate case, Case No. GR-2003-0517, the Staff  
24 allowed SERP costs on a pay-as-you go basis using an average of test year  
25 and previous year SERP payments. Both of these cases were settled by the  
26 Commission's acceptance of stipulations and agreements.

27  
28 Page 12:

29 Some SERPs are strictly pension restoration plans with reasonable costs  
30 and proper accounting and are eligible to be considered for ratemaking  
31 purposes. While other SERPs include golden parachute type Change in  
32 Control provisions, with executive compensation and benefits in excess of  
33 what is covered in the all-employee qualified pension plan. The costs of  
34 this type of SERPs should not be included in a utility's cost of service.

35  
36 Page 13

37 The Staff recommends to the Commission that in any future rate case, it  
38 allow recovery only if Aquila's SERP costs are (1) accounted for on a

1 pay-as-you go basis, (2) the costs are reasonable considering Aquila's  
2 SERP expenses in previous years, (3) the terms and conditions of the  
3 SERP allow for the calculation of the SERP benefit only at the amount  
4 that is limited by tax law compensation limits, and (4) the SERP does not  
5 include Change in Control provisions which act in the manner of a "poison  
6 pill" or executive "golden parachutes."  
7  
8

9 **Q. Please describe OPC's Empire SERP adjustment in this rate case.**

10 **A.** Empire paid \$367,006 in SERP payments in 2015 for an average payment to each of the  
11 seven retired executive SERP participants of \$52,429. Based on my analysis and review,  
12 including a review of SERP cash payments made by other Missouri electric utilities, I  
13 recommend a maximum annual supplemental cash payment to members in Empire's  
14 SERP of \$20,000. This is an annual amount above what the employee is already  
15 receiving under Empire's all-employee pension plan. OPC's proposed level of SERP  
16 expenses to include in Empire's cost of service in this case is \$140,000.

17 **Q. Has Empire's SERP cash payments increased over the past five years?**

18 **A.** Yes. The chart below shows the significance of this increase.

	SERP	Retired	
Year	Payments	Executives	Avg SERP
2010	\$63,254	2	\$31,627
2011	\$191,413	4	\$47,853
2012	\$323,564	5	\$64,713
2013	\$310,741	5	\$62,148
2014	\$335,536	6	\$55,923
2015	\$367,006	7	\$52,429

19 Source: OPC DR 1006  
20

1 **V. REMOVAL OF COMMON STOCK ISSUANCE EXPENSE**

2 **Q. Is Empire seeking recovery of its common stock issuance expense in its cost of**  
3 **service in this case?**

4 A. Yes. In its "Revenue Requirement Accounting Schedules, Income Statement Detail,  
5 Account 404a", Empire shows a test year level of Stock Issuance Amortization of  
6 \$304,613. This amount is using an 85.4% allocation to reach a Missouri jurisdictional  
7 amount of \$260,187.

8 **Q. Should Empire's stock issuance expense amortizations be included in Empire's cost**  
9 **of service in this current rate case?**

10 A. No. Empire's stock issuance expense is a nonrecurring expense and should not be  
11 included in its cost of service in this rate case.

12 **Q. How so?**

13 A. On February 9, 2016, Empire announced it was being acquired by Algonquin Power &  
14 Utilities Corp (APUC). According to the *Agreement and Plan of Merger by and among*  
15 *The Empire District Electric Company, Liberty Utilities (Central) Co and Liberty Sub*  
16 *Corp* dated February 9, 2016, Empire's stock will be retired and cease to exist as of the  
17 closing date of the acquisition - scheduled for the first quarter 2017. As with any other  
18 nonrecurring expense, Empire's common stock issuance expense should not be included  
19 in a cost of service calculation to set rates on a going forward basis.

20 **Q. Can you describe the APUC-Empire transaction?**

21 Briefly, the transaction is described in Empire's February 9, 2016 press release *Algonquin*  
22 *Power & Utilities Corp. to Acquire The Empire District Electric Company in C\$3.4*  
23 *Billion (US\$2.4 Billion) Transaction*. Under the terms of the APUC-Empire transaction,  
24 each share of Empire common stock will be retired and Empire shareholders will receive

1           \$34 cash per share. This amounts to a 21% premium (or gain) to Empire shareholders to  
2           the closing price of the common stock on February 8, 2016 and a 50% premium to  
3           Empire's shareholders based on Empire's "unaffected share price" as of December 10,  
4           2015. At the close of the acquisition transaction, Empire will become a wholly-owned  
5           subsidiary of Liberty Utilities, APUC's wholly-owned regulated utility business and will  
6           cease to be a publicly-held corporation.

7   **Q. Is it likely that the APCU acquisition of Empire transaction will close in the first**  
8   **quarter of 2017?**

9   A. Yes. The Commission has a history of approving Missouri utility mergers and  
10   acquisitions.

11 **Q. Should the APUC-Empire transaction not be approved, does OPC have a proposal**  
12 **to address Empire's common stock issuance expense amortization?**

13 A. Yes. In the unlikely event that this merger does not close, OPC would support the  
14 Commission authorizing Empire to record, as a deferred debit, the dollar amount of the  
15 stock issuance expense amortization not directly recovered rates in this rate case. OPC  
16 would support rate recovery of this amount in Empire's next rate case.

17 **VI. SHORT-TERM INCENTIVE COMPENSATION**

18 **Q. Describe Empire's short-term incentive compensation plan?**

19 A. The Compensation Committee of Empire's Board of Directors sets Empire's executive  
20 compensation policies and procedures. These compensation policies and procedures are set  
21 out in detail in Empire's Securities and Exchange Commission ("SEC") filings. According  
22 to Empire's March 18, 2016 Form DEF 14A ("2016 SEC Form DEF 14A"), Empire's  
23 approach to executive compensation is described below:

- 1 • Short-term incentive compensation focused on tactical near-term
- 2 objectives that support the Company's longer-term goals,
- 3 • Long-term performance-based stock awards linked to stockholder
- 4 returns over a three-year period,
- 5 • Limitations on potential incentive compensation awards equal to
- 6 200% of target opportunity for Long-Term Stock Incentive awards
- 7 and 150% of target opportunity for Annual Cash Incentive awards,
- 8 • Time-vested stock awards designed to promote an appropriate
- 9 focus on the creation of stockholder value,
- 10 • Participation in the same health and welfare benefits and qualified
- 11 pension plan offered to all our full-time employees. The pension plan
- 12 was modified in 2014 to allow current employees the option of
- 13 electing a defined benefit cash balance formula coupled with an
- 14 enhanced 401(k) matching formula or remaining under our
- 15 traditional defined benefit pension formula,
- 16 • A traditional supplemental retirement plan ("DB-SERP") available
- 17 to participants under the traditional defined benefit pension formula
- 18 option that only covers compensation not included in the qualified
- 19 pension plan due solely to tax code limitations, and
- 20 • Beginning in 2015, a supplemental non-qualified deferred
- 21 compensation plan ("DC-SERP") that allows selected individuals
- 22 electing to participate in the cash balance option of our qualified
- 23 pension plan to obtain retirement savings in the form of matching
- 24 contributions on deferred amounts that are not available to them
- 25 under the 401(k) Plan due to plan design and tax code limitations.
- 26
- 27

28 **Q. How does Empire compensate its utility employees and officers?**

29 A. Empire compensates its employees primarily through base salaries. Employee base salaries  
30 are combined with annual cash incentives to make up total cash compensation. Total cash  
31 compensation is combined with long-term stock incentives to make up total direct  
32 compensation.

33 **Q. Is OPC recommending any adjustments to the base salaries of Empire employees?**

34 A. No. Empire employees are well compensated. According to Empire's payroll workpaper,  
35 the average salary of Empire's full-time employees is \$74,000. OPC believes that given this  
36 level of compensation, Empire employees should be expected to perform job duties to



1 support utility operations at a high standard. This high standard is applied to an employee's  
2 individual contribution to the utility's performance of safe and adequate service at  
3 reasonable rates.

4 **Q. Have you performed a breakdown of the base salary levels for Empire's full-time**  
5 **management employees?**

6 A. Yes. My analysis was performed based on the data included in Empire's payroll workpapers  
7 filed with its direct testimony. The title of this workpaper is "Annualized Salaries as of  
8 6/28/2015 - No Water, Gas, Fiber". The range of salaries included in this workpaper for  
9 full-time management employees is \$21,840 to \$530,460. The chart below shows a  
10 breakdown in base salary in \$10,000 increments from \$50,000 to \$100,000. For example,  
11 this chart shows that one in five full-time Empire management employees earns a base  
12 salary in excess of \$100,000.

13 For example, this chart shows that 74 out of 364 full-time Empire non-Union management  
14 employees earn a base salary, excluding bonuses and other incentive compensation, in  
15 excess of \$100,000.

<u>FT Mgt Base Salary</u>	<u>Percent</u>
Greater than \$50,000	69%
Greater than \$60,000	58%
Greater than \$70,000	48%
Greater than \$80,000	37%
Greater than \$90,000	27%
Greater than \$100,000	20%

16  
17 **Q. Does Empire provide cash bonus payments to some of its employees?**

18 A. Yes, it does. Empire has a cash bonus program called the "Lightning Bolt" program where  
19 cash bonus payments are provided to selected employees as a reward for work performance  
20 that exceeds expectations.

1 **Q. Does OPC recommend including these cash bonus payments in Empire's cost of**  
2 **service?**

3 A. No. As noted above, Empire's utility employees are highly compensated. In addition to an  
4 average base salary in excess of \$70,000, employees receive very generous defined benefit  
5 plan pension benefits, very generous defined contribution 401-(K) pension compensation,  
6 and very generous retiree medical benefits. Empire's ratepayers, who bear the burden of  
7 Empire's very high employee compensation plans, should not pay additional compensation  
8 benefits simply for Empire's employees who perform at a high standard.

9 **Q. Does OPC support the use of a properly-designed incentive compensation for utility**  
10 **employees?**

11 A. Yes, it does. OPC believes a properly-designed incentive compensation plan should be  
12 based on factors that will incent utility management to improve the provision of safe and  
13 reliable service at reasonable rates. Reasonable utility rates are based on the lowest possible  
14 costs necessary to provide safe and reliable utility service. One of the most important factors  
15 in any incentive compensation plan is a factor measuring and rewarding employees whose  
16 performance directly leads to a reduction in the utility's cost of service.

17 **Q. Should the costs of an employee incentive compensation plan only be included in cost**  
18 **of service if the base salary compensation is set below a median level of compensation**  
19 **for the work performed?**

20 A. Yes. This arrangement allows the utility to earn above median compensation if the work  
21 performance meets the criteria in a properly-deigned incentive compensation plan.

22 **Q. What level of short-term incentive compensation does OPC recommend be included in**  
23 **Empire's cost of service in this rate case?**

1 A. OPC recommends only compensation payments directly related to achieving goals or  
2 standards related to employee and customer safety, customer service measures, plant  
3 reliability metrics, and cost of service reductions measures such as the adoption of new  
4 technology to improve the efficiency of operations and aggressive measures to reduce costs.

5 OPC does not support cost of service inclusion of any the amounts proposed by Empire that  
6 are based on net income, common stock price appreciation, or any other earnings-based  
7 factor. In addition, OPC does not support any incentive compensation payments based on  
8 plan factors that do not directly benefit electric utility operations.

9 **Q. Does Empire's short-term incentive compensation plan include factors that incent**  
10 **employees to reduce costs?**

11 A. To some extent, yes. However, as reflected in Empire's response to Staff Data Request No.  
12 168, Empire financially rewards employees who fail to meet financial budgets and to those  
13 who only meet, but do not exceed, budgets.

14 **Q. What is the Commission's position on incentive compensation?**

15 A. The Commission generally allows utility employee incentive compensation based on  
16 components or criteria that have some reasonable degree of measurability and a finding that  
17 the attainment of those criteria benefits utility operations such as the ability of the utility to  
18 provide safe and adequate service at reasonable rates.

19 Consistent with this overall philosophy, this Commission has held over many years that  
20 earnings and equity-based incentive compensation provides not only zero ratepayer benefit  
21 but results in a ratepayer detriment and therefore should not be included in utility rates.

22 **Q. Please provide the basis for your understanding of the Commission's longstanding**  
23 **policy on incentive compensation.**

1 A. In its *Report and Order* in Case No. GR-96-285, a Missouri Gas Energy (“MGE”) case, the  
2 Commission explained its policy that compensation not significantly driven by the interests  
3 of ratepayers should not be included in a utility’s revenue requirement:

4 The Commission finds that the costs of MGE’s inventive  
5 compensation program should not be included in MGE’s revenue  
6 requirement because the incentive compensation program is driven at  
7 least primarily, if not solely, by the goal of shareholder wealth  
8 maximization, and it is not significantly driven by the interests of  
9 ratepayers.

10  
11 Approximately eight years later, the Commission reiterated and emphasized yet clarified its  
12 position on rate recovery of utility incentive compensation in its *Report and Order* in Case  
13 No. GR-2004-0209.

14 The Commission agrees with Staff and Public Counsel that the  
15 financial incentive portions of the incentive compensation plan  
16 should not be recovered in rates. Those financial incentives seek to  
17 reward the company’s employees for making their best efforts to  
18 improve the company’s bottom line. Improvements to the  
19 company’s bottom line chiefly benefit the company’s shareholders  
20 not its ratepayers. Indeed, some actions that might benefit a  
21 company’s bottom line, such as a large rate increase, or the  
22 elimination of customer service personnel, might have an adverse  
23 effect on ratepayers.

24  
25 If the company wants to have an incentive compensation plan that  
26 rewards its employees for achieving financial goals that chiefly  
27 benefit shareholders, it is welcome to do so. However, the  
28 shareholders that benefit from that plan should pay the cost of that  
29 plan. The portion of the incentive compensation plan relating to the  
30 company’s financial goals will be excluded from the company’s cost  
31 of service revenue requirement.  
32

33 In a 2006 Empire rate case, the Commission again restated its positing on earnings-based  
34 incentive compensation. In its *Report and Order* in Case No. ER-2006-0315, the  
35 Commission stated:

1           The Commission finds that the Staff reasonably applied objective  
2           criteria for the exclusion of certain incentive compensation. The  
3           Staff disallowed compensation related to charitable activities and  
4           activities related to the provision of services other than retail electric  
5           service...We conclude that incentive compensation for meeting  
6           earnings goals, charitable activities, activities unrelated to the  
7           provision of retail electric service, discretionary awards, and stock  
8           options should not be recoverable in rates.  
9

10   **Q. Did the Commission apply its policy on utility incentive compensation in subsequent**  
11   **utility rate cases?**

12   **A.** Yes. The Commission reiterated its position on earnings-based incentive compensation in its  
13   *Report and Orders* in Case Nos. ER-2006-0314 and ER-2007-0291 - both KCPL rate cases.

14   **Q. Briefly, why does OPC not support incentive compensation components or criteria**  
15   **that are earnings based?**

16   **A.** The primary reason why OPC does not support the inclusion of the dollars associated with  
17   earnings-based incentive compensation in a utility's cost of service is the same as the  
18   primary reason stated by the Commission in the cases cited above. OPC believes earnings-  
19   based incentives (based on net income, return on equity, and increases in stock price)  
20   actually work as intended. However, these components of an incentive compensation plan  
21   focus utility management on maximizing net income in order to maximize their  
22   compensation. As the Commission stated in its *Report and Order* in Case No. GR-2004-  
23   0209, earnings-based incentives work to the detriment of utility ratepayers and also to the  
24   detriment of the utility itself.

25   Further, the incentives created by compensating employees through earnings-based  
26   programs provide motivations to utility management to file rate increase cases significantly  
27   higher than justified and significantly higher than needed to earn a reasonable return on  
28   equity. In addition, with utilities that have affiliates, earnings-based incentive compensation

1           incentives utility management to take actions causing utility operations to subsidize affiliate  
2           transactions and nonregulated operations.

3           **VII. LONG-TERM INCENTIVE COMPENSATION (“LTIP”)**

4           **Q.     Does OPC support the inclusion of any LTIP executive compensation in Empire’s cost**  
5           **of service in this rate case?**

6           A.     No. For the reasons discussed below, OPC does not support rate recovery of Empire’s LTIP  
7           payments to its executives.

8           **Q.     What is the purpose of Empire’s LTIP compensation?**

9           A.     According to Empire’s 2016 SEC Form DEF 14A, Empire’s long-term, stock-based  
10           incentive compensation plan is designed to promote an appropriate focus of its executives  
11           the creation of stockholder value.

12           **Q.     Is Empire’s LTIP compensation paid in cash to Empire’s executives?**

13           A.     No. LTIP consist of time-vested restricted stock awards and performance-based restricted  
14           stock awards commonly referred to as stock-based compensation.

15           **Q.     What is stock-based compensation?**

16           A.     Many companies supplement cash compensation by awarding to employees common stock  
17           ownership of the company or the right to buy company common stock at a discount from  
18           current market price. This is commonly referred to as stock-based compensation or equity-  
19           based compensation. In Financial Accounting Standard No. 123, the Financial Accounting  
20           Standards Board (“FASB”) defined stock-based employee compensation plans as plans that:

21                     ... include all arrangements by which employees receive shares of  
22                     stock or other equity instruments of the employer or the employer  
23                     incurs liabilities to employees in amounts based on the price of the

1 employer's stock. Examples are stock purchase plans, stock options,  
2 restricted stock, and stock appreciation rights.  
3

4 **Q. Has Empire provided any new evidence showing why its stock-based long-term**  
5 **incentive compensation should be included in utility rates, i.e. that it provides a**  
6 **ratepayer benefit?**

7 **A. No.**

8 **Q. Has the Commission recognized stock-based compensation as compensation that**  
9 **should be reflected in a utility's cost of service?**

10 **A. No. To my knowledge, the Commission has never allowed rate recovery of stock-based**  
11 **compensation.**

12 **Q. If it was determined that Empire's long-term stock-based compensation provided**  
13 **benefit to utility ratepayers and utility operations, would there still be significant issues**  
14 **with including this compensation in Empire's cost of service?**

15 **A. Yes. Stock-based compensation is not a known and measurable expense. Much, if not all,**  
16 **of this compensation is based on future movements in the utility's common stock price.**

17 **VIII. LOSS ON RETIREMENT OF ASSETS –RIVERTON/ASBURY**

18 **Q. Is Empire seeking rate recovery of its loss on retirement of Riverton and Asbury**  
19 **plant assets by including this loss in rate base and by recovering this loss through an**  
20 **income statement amortization?**

21 **A. Yes. In its direct filing, Empire is seeking to charge its ratepayers \$2,955,128 related to**  
22 **what it describes as a Asbury/Riverton Reserve Deficiency. This includes a return on**  
23 **rate base of \$1,023,998 (rate base amount of \$9,655,652 X pre-tax rate of return of**  
24 **10.605%) and an amortization to account 404c of \$1,931,130. These amounts are**



1 reflected in the direct testimony of Empire witness Bryan Owens as well as supporting  
2 documents "Revenue Requirement Schedule BSO-1", "Rate Base Schedule BSO-2 and  
3 Income Statement Adjustment Schedule BSO-4" (line 106).

4 **Q. Can utility plant that is already retired from plant in service have a reserve**  
5 **deficiency?**

6 A. No. A reserve deficiency cannot exist if there is no reserve on the books for that plant.  
7 Empire is seeking rate recovery in the future for Riverton 7 that was retired in 2014.

8 **Q. Does Empire's books and records include any plant or reserve account balances for**  
9 **the Riverton and Asbury plant that has been retired?**

10 A. No. A reserve deficiency cannot exist if there is no reserve on the books for that plant. A  
11 deficiency can only exist if there are dollars on the company's balance sheet associated  
12 with that deficiency. There are no dollars on Empire's books and records for retired plant  
13 such as Riverton 7 and Asbury 2.

14 Empire has no plant or reserve account balances for the Riverton or Asbury plant  
15 because it is retired from utility service. The accounting journal entry made to Empire's  
16 plant and reserve accounts when it retired the Asbury and Riverton units removed all of  
17 the plant and depreciation reserve amounts from Empire's books and records.

18 **Q. Can a plant depreciation reserve account that has been retired and no longer exists**  
19 **have an under accrual of depreciation?**

20 A. No, it cannot. Therefore, the amount of any under-accrued depreciation expense on plants  
21 retired from utility service is actually a loss on retirement of the assets.

22 The term "reserve deficiency" is typically used to describe a depreciation reserve (contra  
23 asset) account balance related to utility plant in service and is actually "used and useful"  
24 in the provision of utility service.

1       When the depreciation reserve for that plant in service gets significantly out of balance  
2       with the balance in the plant account, a situation referred to as a “reserve deficiency”  
3       exists. If the reserve is under-accrued and if it is over-accrued, it is referred to as reserve  
4       imbalance. When a reserve deficiency or excess reserve balance is determined to exist,  
5       depreciation rates (including adjustments for cost of removal or salvage value) are  
6       typically adjusted to moderate or eliminate the deficiency or excess of depreciation  
7       expense included in the reserve.

8       The “deficient” reserve Empire is trying to recover from its customers in this case is not  
9       associated with current plant in service but the former plants in service. Therefore, no  
10       current reserve deficiency exists to be recovered from ratepayers.

11   **Q.    Is the issue of Empire’s loss on retirement of assets an issue that was addressed in**  
12   **Empire’s previous rate case?**

13   **A.    Yes. In Robert Sager’s direct testimony in Case No. ER-2014-0351 (“2014 rate case”),**  
14   **he stated Asbury 2 was retired on December 31, 2013 and Riverton 7 was retired earlier**  
15   **than anticipated in June 2014. Mr. Sager also stated that in the Case No. ER-2012-0345**  
16   **(“2012 rate case”) *Stipulation and Agreement*, the depreciation rates for Riverton 7 and**  
17   **Riverton 8 were increased to prepare for the expected retirements of these units in 2016**  
18   **when Riverton 12 comes on line as a combined cycle unit.**

19       However, as a result of an unscheduled outage in June of 2014, Empire decided to retire  
20       Riverton 7 in 2014, approximately two years prior to the scheduled 2016 retirement date.  
21       Mr. Sager at that time proposed that, despite Riverton 7 already being retired and no  
22       longer used and useful plant in service, Empire be allowed to continue to record and  
23       recover through rates the depreciation expense for Riverton 7.

24       In his rebuttal testimony to the direct testimony of Mr. Sager in the 2014 rate case, Staff  
25       witness John Robinette disagreed with the proposed continuation of depreciation of the

1 retired plants Riverton 7 and Asbury 2. The basis of Staff's position was that  
2 depreciation should not be charged on plant no longer "used and useful" as required by  
3 Section 393.135 RSMo.

4 The issue in 2014 rate case was resolved in the Commission's *Report and Order*. The  
5 Commission accepted the agreement that "Depreciation of Riverton Unit 7 and Asbury  
6 Unit 2 will be discontinued..."

7 In the current rate case, Empire consultant Thomas Sullivan proposes Empire amortize  
8 the undepreciated portion of its investment in the recently retired Riverton steam Units 7  
9 and 8 and Riverton combustion turbine 9 as well as the cost of decommissioning Riverton  
10 Units 7,8 and 9 over a five-year period.

11 **Q. You have described this issue as a "loss on retirement" of plant assets and not a**  
12 **"reserve deficiency". Does the Commission have a general policy on ratemaking**  
13 **treatment of gains and losses related to the sale of plant assets?**

14 **A. Yes. In Case No. ER-77-118 involving KCPL, the Commission held ratepayers do not**  
15 **become owners of the utility by paying their utility bills and therefore are not entitled to**  
16 **benefit from any gains on sale of plant. In its *Report and Order*, the Commission ruled:**

17 It is the Commission's position that ratepayers do not acquire any  
18 right, title and interest to the Company's property simply by paying  
19 their electric bills. It should be pointed out that Company investors  
20 finance Company while Company's ratepayers pay the cost of  
21 financing and do not thereby acquire an ownership position.  
22 Therefore, the Commission finds that the disposal of Company  
23 property at a gain does not entitle its ratepayers to benefit from that  
24 gain nor does the disposal of Company property at a loss require  
25 that Company's ratepayers absorb that loss.  
26

1 A few years later, in Case No. GM-81-368 involving Associated Natural Gas ("ANG"),  
2 the Commission again ordered that the gain on sale of utility assets recognized by ANG  
3 should be treated below-the-line for rate purposes.

4 In Case Nos. WM-82-147, WM-82-192, WR-83-14 and SR-83-15, respecting Missouri  
5 Cities Water Company, the Commission again ordered gains on the sale of utility assets  
6 should be treated as below-the-line for ratemaking purposes. The Commission once again  
7 addressed the gains on asset sales issue in Case Nos. EO-85-185 and EO-85-224 ("EO-  
8 85-185 case"). In that case, the Commission agreed with KCPL's position that ratepayers  
9 have no property interests in the utility assets; however, it said that "this fact alone does  
10 not dictate below the line accounting treatment for a gain on utility assets."

11 The Commission's ruling in the EO-85-185 case did not assign any portion of the gains to  
12 KCPL's ratepayers and allocates all of the gain to KCPL's shareholders. At page 31 of its  
13 *Report and Order*, the Commission stated:

14 Traditionally the Commission has treated gains on the sale of  
15 utility assets below the line. In Re: Missouri Cities Water, 26 Mo.  
16 P.S.C. (H.S.) 1 (1983) and Re: Associated Natural Gas, 26 Mo.  
17 P.S.C. (N.S.) 237 (1983), the Commission treated the gain on  
18 depreciable utility property below the line. However, in those cases  
19 the Commission did not base its decision on a shareholder property  
20 right theory as the Commission did in Re: Kansas City Power and  
21 Light, supra. The Commission stated in both cases that below the  
22 line treatment did not indicate a general policy. In both cases the  
23 Commission considered the arguments advanced by Staff in the  
24 instant case and considered the reasoning of the District Court of  
25 Appeals in the DCC case. In Re: Missouri Cities, the Commission  
26 suggested that the gain need not necessarily be treated below the  
27 line and discussed methods whereby a sharing of the gain might be  
28 accomplished.  
29

30 The Commission stated that the gain on sale of the land should be treated below-the line  
31 (accrue 100 percent to shareholders) as proposed by KCPL in that case.

1 **Q. In any of the cases cited above where the Commission decided the appropriate**  
2 **ratemaking treatment of gains on sale of plant assets, did the Commission ever**  
3 **decide that gains should accrue to utility ratepayers or even be shared between**  
4 **ratepayers and shareholders?**

5 **A.** No. Based on my review, the Commission awarded the gain to shareholders in 100  
6 percent of the cases. In each of these cases, the Commission reasoned ratepayers are not  
7 entitled to gain on the sale of utility assets. It stands to reason, then, the Commission  
8 would be consistent and rule that losses on the sale of utility assets should not be charged  
9 to ratepayers.

10 **Q. Is the Commission's general position on plant gains and losses consistent with how**  
11 **Empire has treated gains on sale or disposition of plant assets in the recent past?**

12 **A** Yes. Empire recognized a gain on the sale of its coal unit train in 2007. In its  
13 explanation of the gain in 2008 annual report to the SEC (Form 10-K), Empire showed  
14 how it decides whether or not gains on the sale or disposal of utility plant assets should  
15 accrue to shareholders. Utility plant accounting rules allow Empire's shareholders to  
16 enjoy the benefits of a gain on sale of plant assets if the specific plant in question is what  
17 Empire would classify as an "operating unit". If the plant that is sold or otherwise  
18 disposed of (retired) was not classified by Empire as an operating unit, Empire said it  
19 would record the gain or the loss on the transaction to the plant depreciation reserve.  
20 This explanation is spelled out below:

21 We recognized a \$1.2 million gain in the fourth quarter of 2007  
22 from the sale of our steel unit train set

23  
24 In 2007, we sold our steel unit train set, which we had previously  
25 leased to another utility. We currently lease one aluminum unit  
26 train on a full time basis and a second set is leased on an interim  
27 basis. These trains deliver Western coal to the Asbury Plant.  
28

1 Property, Plant & Equipment - The costs of additions to utility  
2 property and replacements for retired property units are  
3 capitalized. Costs include labor, material and an allocation of  
4 general and administrative costs, plus an allowance for funds used  
5 during construction (AFUDC).  
6

7 The original cost of units retired or disposed of and the costs of  
8 removal are charged to accumulated depreciation, unless the  
9 removed property constitutes an operating unit. In this case a gain  
10 or loss is recognized upon the disposal of the asset. We recognized  
11 a \$1.2 million gain from the sale of our unit train in the fourth  
12 quarter.  
13

14 **Q. Did Empire file testimony before the Commission asserting that gains on the sale of**  
15 **utility property should accrue to the benefit on Empire's shareholders?**

16 **A.** Yes. In the rebuttal testimony of Empire witness Robert Sager in Case No. ER-2012-  
17 0345, Staff Data Request 240 showed Empire provided the gain on the sale of the utility  
18 asset (an Asbury steel unit train used to transport coal) to its shareholders. In that rate  
19 case, Mr. Sager opposed allocating any portion of the gain on the sale of assets to  
20 Empire's ratepayers.

21 **Q. What basis did Mr. Sager use to justify allocating all of the gain on the sale of the**  
22 **Asbury unit train to Empire's shareholders?**

23 **A.** His justification was that it was allowed by the FERC's Uniform System of Accounts.

24 **Q. Has the Commission adopted the FERC USOA and required Missouri utilities to**  
25 **keep their books and records in accordance with the USOA?**

26 **A.** Yes, unless the utility has sought and been granted a waiver or variance by the  
27 Commission. Commission Rule 4 CSR 240-20.030 Uniform System of Accounts—  
28 Electrical Corporations (Commission's USOA Rule) states:

1 (1) Beginning January 1, 1994, every electrical corporation subject  
2 to the commission's jurisdiction shall keep all accounts in  
3 conformity with the Uniform System of Accounts Prescribed for  
4 Public Utilities and Licensees subject to the provisions of the  
5 Federal Power Act, as prescribed by the Federal Energy  
6 Regulatory Commission (FERC) and published at 18 CFR Part 101  
7 (1992) and IFERC Stat. & Regs. paragraph 15,001 and following  
8 (1992), except as otherwise provided in this rule.  
9

10 **Q. What is included in the USOA?**

11 **A. According the Commission, the USOA:**

- 12 1. Provides instruction for recording financial information about  
13 electric utilities.  
14 2. Contains definitions, general instructions, electric plant  
15 instructions, operating expense instructions, and accounts that  
16 comprise the balance sheet, electric plant, income, operating  
17 revenues, and operation and maintenance expenses.  
18

19 **Q. Does the Commission's USOA Rule have any effect on utility ratemaking in the**  
20 **state of Missouri?**

21 **A. No. While the Commission's FERC USOA rule is a very important and necessary rule**  
22 **for effective regulation of Missouri utilities, the Rule has no impact on the Commission's**  
23 **ratemaking decisions. The Commission made this very clear:**

24 (4) In prescribing this system of accounts, the commission does not  
25 commit itself to the approval or acceptance of any item set out in  
26 any account for the purpose of fixing rates or in determining other  
27 matters before the commission.  
28

29 **Q. Since the Commission's ratemaking decisions on plant-related gains and losses are**  
30 **not controlled by the FERC USOA, and since the Commission has consistently**



1           **passed through plant-related gains to shareholders, how should the Commission**  
2           **treat Empire's loss on retirement of assets in this rate case?**

3    A.     The Commission has had a general policy of not allowing ratepayers to share in gains on  
4           dispositions of utility plant. This policy is based, in part, on the Commission's  
5           determination that ratepayers do not acquire any right, title, or interest to the Company's  
6           property simply by paying their electric bills. Unless the Commission has a reason why it  
7           should not continue this general policy in this case, it should not allow rate recovery of  
8           what Empire calls "reserve deficiency". No rate base treatment and no amortization of  
9           the losses on the retirement of these former assets should be allowed in this rate case.

10   **IX. EXPENSE TRACKERS IN RATE BASE**

11   **Q.     What is OPC's position on expense trackers in rate base in this case?**

12   A.     OPC's position is that no expense trackers, with the exception of Empire's prepaid  
13           pension asset, should be included in rate base. Expense trackers are simply mechanisms  
14           to track the payment and recovery of expenses. With the exception of the prepaid pension  
15           asset, they do not represent prepayments, working capital, or capital investments. Empire  
16           has not provided any evidence in its direct filing to support rate base inclusion of its  
17           expense trackers.

18   **X. INCOME TAX EXPENSE**

19   **Q.     Does OPC have concerns with the cost of service income tax expense calculation**  
20           **included in Empire's direct filing?**

21   A.     Yes. OPC is concerned Empire is not reflecting in its cost of service all tax deductions and  
22           tax credits related to its electric utility operations allowed to take under its "stand-alone"  
23           income tax calculation. For example, Empire did not reflect the Domestic Production  
24           Activities Deduction ("DPAD").

1 **Q. What is the DPAD?**

2 **A.** The American Jobs Creation Act of 2004 authorized DPAD for income attributable to  
3 certain manufacturing and domestic production activities conducted in the United States.  
4 The DPAD amount is deducted from net income in deriving taxable income. This special  
5 deduction is allowable under Internal Revenue Code (IRC), Section 199 and is based upon  
6 taxable income derived from the production of electricity. For 2015, the deduction is 9% of  
7 electricity production taxable income.

8 **Q. What is the stand-alone income tax method of calculating utility income tax expense?**

9 **A.** There are two primary methods to reflect income tax expense in a utility's cost of service.  
10 The first method is called the "stand alone method" that treats the utility as a stand-alone  
11 company and calculates its income tax expense in its cost of service solely on regulated  
12 utility operations. This method does not allow for the reflection of any financial information  
13 associated with the utility's affiliates including its affiliated parent company and  
14 nonregulated operations.

15 The second method is referred to as the "consolidated method." that, if designed  
16 appropriately, may actually be a better method to reflect income tax expense of the utility.  
17 The consolidated method reflects the actual income tax liability of the consolidated  
18 company (both utility and non-utility operations) and allocates a *pro rata* share of the actual  
19 income tax expense attributable to each individual entity. Under this method, a regulated  
20 utility would be compensated for the fact it alone generates most if not all of the taxable  
21 income. Without the generation of taxable income, none of the affiliated income tax  
22 deductions, such as net operating losses, can be used and will expire without providing any  
23 value. It is usually only the positive taxable income generated by the regulated utility that  
24 gives these affiliated non-regulated tax deductions, net operating losses, and tax credits any  
25 value.

1 **Q. Which of the two income tax calculations does Empire employ in its cost of service?**

2 A. Empire uses the stand-alone income tax method of calculating income tax expense.

3 **Q. Are there legitimate reasons why Empire would not reflect the DPAD in its income tax**  
4 **calculation in this rate case?**

5 A. Yes. There are reasons why a regulated utility on a stand-alone basis will not have sufficient  
6 taxable income to reflect in cost of service all the tax deductions and credits it is allowed to  
7 take given sufficient taxable income. For example, Congress has extended bonus  
8 depreciation to 2015 and 2016. Therefore, bonus depreciation tax deductions may have  
9 reduced Empire's taxable income on which the deduction could be applied to \$0.

10 However, OPC's concern with Empire in this rate case is that it calculates its cost of service  
11 income tax expense using the "stand-alone tax" method for some income tax deductions but  
12 uses the "consolidated" method for others. This inconsistent application of tax methods  
13 allows a utility not to reflect a tax deduction or a tax credit in its cost of service income tax  
14 calculation because its' consolidated income tax calculation does not have sufficient taxable  
15 income to all for the deduction or credit.

16 **Q. Did OPC attempt to determine if Empire included all of its allowed income tax**  
17 **deductions and credits in the calculation of income tax expense in its direct filing?**

18 A. Yes. OPC attempted to obtain this data in OPC data request 1005 as transcribed here:

19 OPC Question: Please list each and every income tax deduction that  
20 the Company could have taken in its income tax calculation in this  
21 rate case but chose not to include in the calculation of income tax  
22 expense. Please provide a detailed explanation why the deduction  
23 was not taken in the Company's cost of service filing in this case.

24  
25 Empire Response: EDE included book/tax timing differences related  
26 to depreciation and Contributions in Aid of Construction as well as  
27 non-deductible expenses in its income tax calculation in this case.

1 EDE did not include other book/tax timing differences which do not  
2 change the cost of service computation result but merely change the  
3 mix between current and deferred income tax expense.  
4

5 Empire's answer to this question was to list what it included in its income tax calculation but  
6 not to provide a list of each and every tax deduction and tax credit that "could" have reflect  
7 in its calculation but chose not to include, such as the DPAD. OPC will be pursuing this  
8 issue further with Empire and address the issue later in this rate case.

9 **Q. What is OPC's position on the appropriate income tax calculation to use to set rates**  
10 **for Missouri ratepayers?**

11 A. OPC is open to the use of the stand-alone method or a prudent and reasonable consolidated  
12 method as long as the method is applied consistently. If the stand alone method is used, as it  
13 is in this case by Empire, OPC's position is that all tax deductions and tax credits associated  
14 with regulated utility operations should be reflected in a utility's cost of service. If a utility  
15 proposes to charge its ratepayers higher income tax expense than would be required based  
16 on a true application of the stand alone tax calculation, it should seek to use the consolidated  
17 income tax calculation for cost of service ratemaking purposes.

## 18 **XI. RIVERTON 12 CONSTRUCTION AUDIT**

19 **Q. Did OPC conduct a separate construction audit for Riverton 12?**

20 A. No. However, OPC is aware Staff is currently conducting a Riverton 12 construction audit.  
21 Staff addressed this audit beginning at page 6 of the Staff Report Revenue Requirement  
22 ("Staff Report") filed on March 25, 2016. At page 8 of the Staff Report, it was noted that  
23 Staff is continuing to conduct the construction audit of Riverton 12 and will "provide the  
24 results of that audit during the true-up phase of this rate case proceeding."

1 **Q. In its direct testimony is OPC proposing any adjustments to the Riverton 12**  
2 **construction costs sought by Empire to be included in this rate case?**

3 **A. No.**

4 **Q. Will OPC potentially propose adjustments to the Riverton 12 construction cost in its**  
5 **true-up direct testimony?**

6 **A. Yes. In addition to data request responses, construction change orders, Staff's construction**  
7 **audit findings, and the actual construction budget at the March 31, 2016 true-up cutoff date,**  
8 **OPC may propose adjustments in its true-up direct testimony. Currently this is scheduled for**  
9 **June 15, 2016.**

10 **Q. Does this conclude your testimony?**

11 **A. Yes.**

12

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CASE PARTICIPATION

Date Filed	Case Name	Case Number	Issue	Exhibit
3/4/16	Missouri American Water Company	WR-2016-0301	Environmental Cost Adjustment Mechanism (ECAM)/ Short-Term Incentive Compensation /Long-Term Incentive Compensation/ Income Taxes/Normalization Violation/Ratemaking Principles/Pension Trackers/	Surrebuttal
2/11/16	Missouri American Water Company	WR-2016-0301	Ratemaking Theory/ Single-Issue Ratemaking/ Regulatory Lag/ Revenues/ Environmental Cost Adjustment Mechanism (ECAM)/ Revenue Stability Mechanism (RSM)	Rebuttal
12/23/15	Missouri American Water Company	WR-2016-0301	Infrastructure System Replacement Surcharge/ Rate case expense/ Severance Payments/ Charitable Contributions/ Lobbying/ Shared Services Adjustments/ Water Affiliate Transaction Rule/Cost Allocation Manual	Direct
12/18/15	Kansas City Power & Light Company	EC-2015-0309	Affiliate Transactions Complaint Case	Surrebuttal
8/21/15	Kansas City Power & Light Company	EC-2015-0309	Affiliate Transactions Complaint Case	Direct
7/07/15	Kansas City Power & Light Company	ER-2014-0370	La Cygne Construction Audit	True-Up Direct
6/05/15	Kansas City Power & Light Company	ER-2014-0370	Corporate Allocation Affiliate Transactions	Surrebuttal
5/07/15	Kansas City Power & Light Company	ER-2014-0370	Regulatory Lag	Rebuttal
4/03/15	Kansas City Power & Light Company	ER-2014-0370	Corporate Allocation Affiliate Transactions Officer Expenses	Staff Report - Revenue Requirement - Cost of Service
3/31/15	Missouri Gas Energy	GO-2015-0179	Infrastructure system replacement surcharge (ISRS)	Staff Recommendation

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CASE PARTICIPATION

Date Filed	Case Name	Case Number	Issue	Exhibit
3/31/15	Laclede Gas Company	GO-2015-0178	Infrastructure system replacement surcharge (SISRS)	Staff Recommendation
11/13/14	Missouri American Water Company	WO-2015-0059	Infrastructure system replacement surcharge (ISRS)	Staff Recommendation
9/23/14	Laclede Gas Company	GR-2015-0026	Infrastructure system replacement surcharge (ISRS)	Staff Recommendation
9/23/14	Missouri Gas Energy	GR-2015-0025	Infrastructure system replacement surcharge (ISRS)	Staff Recommendation
6/20/14	Kansas City Power and Light Company, Kansas City Power and Light Company-Greater Missouri Operations, Transource Missouri	EO-2014-0189	Affiliate Transactions - Staff submission of Proposed Cost Allocation Manual for KCPL and GMO	Rebuttal
01/30/2013	Kansas City Power and Light Company, Kansas City Power and Light Company-Greater Missouri Operations, Transource Missouri	EA-2013-0098 EO-2012-0367	KCPL/GMO Transfer of SPP Transmission Project NTCs to Transource Missouri, Waiver of Missouri PSC Affiliate Transaction Rules	Rebuttal
10/10/2012	Kansas City Power and Light Company-Greater Missouri Operations, Transource Missouri	ER-2012-0175	Fuel Adjustment Clause Deferred Taxes, Hedge Settlements, FAS 87 Pension Plan Actuarial Assumptions, Supplemental Executive Retirement Plan (SERP), Southwest Power Pool Transmission Expenses, Regulatory Lag	Surrebuttal
09/12/2012	Kansas City Power and Light Company-Greater Missouri Operations, Transource Missouri	ER-2012-0175	Regulatory Lag	Rebuttal

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CASE PARTICIPATION

Date Filed	Case Name	Case Number	Issue	Exhibit
08/13/2012	Kansas City Power and Light Company-Greater Missouri Operations, Transource Missouri	ER-2012-0175	Income Tax Expense, Accumulated Deferred Income Taxes, FAS 87 Pension costs, FAS 106 OPEBs, Supplemental Executive Retirement Plan (SERP), Organizational Realignment/Voluntary Separation (ORVS), Regulatory Lag, SPP Admin Fees, Transmission Expense, Hedge Settlements	Direct
10/08/2012	Kansas City Power and Light Company	ER-2012-0174	Kansas City Income Tax Expense, FAS 87 Pension costs, FAS 106 OPEBs, Supplemental Executive Retirement Plan (SERP), Southwest Power Pool Transmission Expenses Iatan 2 Advanced Coal Tax Credit	Surrebuttal
09/05/2012	Kansas City Power and Light Company	ER-2012-0174	Regulatory Lag	Rebuttal
08/02/2012	Kansas City Power and Light Company	ER-2012-0174	Income Tax Expense, Accumulated Deferred Income Taxes, FAS 87 Pension costs, FAS 106 OPEBs, Supplemental Executive Retirement Plan (SERP), Organizational Realignment/Voluntary Separation (ORVS), Regulatory Lag, SPP Admin Fees, Transmission Expense	Direct
03/21/2012	Kansas City Power and Light Company-Greater Missouri Operations	EO-2011-0390	GMO Hedging Rate Case History, Accounting for Hedging Activities	Rebuttal
05/12/11	Laclede Gas Company	GC-2011-0098	Affiliate Transactions	Surrebuttal
04/28/11	The Empire District Electric Company	ER-2011-0004	Iatan 2 Project Construction Disallowances	Surrebuttal
04/19/11	Laclede Gas Company	GC-2011-0098	Affiliate Transactions	Rebuttal
03/22/11	Laclede Gas Company	GC-2011-0098	Affiliate Transactions	Direct



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CASE PARTICIPATION

Date Filed	Case Name	Case Number	Issue	Exhibit
02/25/11	The Empire District Electric Company	ER-2011-0004	Iatan 1 and Iatan 2 and Common Plant Construction Audit and Prudence Review	Staff's Construction Audit And Prudence Review Of Iatan Construction Project For Costs Reported As Of October 31, 2010
02/23/11	The Empire District Electric Company	ER-2011-0004	Generally Accepted Auditing Standards (GAAS)/ Iatan 1 and Iatan 2 and Common Construction Audit and Prudence Review/Plum Point Construction Audit and Prudence Review	Direct
02/23/11	The Empire District Electric Company	ER-2011-0004	Staff's Construction Audit and Prudence Review of Plum Point	Cost of Service Report
02/22/11	Kansas City Power and Light Company-Greater Missouri Operations	ER-2010-0356	Iatan Construction Audit and Prudence Review	True-Up Direct
02/22/11	Kansas City Power and Light Company	ER-2010-0355	Iatan Construction Audit and Prudence Review	True-Up Direct
01/12/11	Kansas City Power and Light Company-Greater Missouri Operations	ER-2010-0356	Iatan Construction Project	Surrebuttal
01/05/11	Kansas City Power and Light Company	ER-2010-0355	Iatan Construction Project	Surrebuttal
12/15/10	Kansas City Power and Light Company-Greater Missouri Operations	ER-2010-0356	Iatan Construction Project	Rebuttal
12/08/10	Kansas City Power and Light Company	ER-2010-0355	Iatan Construction Project	Rebuttal
11/18/2010	Kansas City Power and Light Company-Greater Missouri Operations	ER-2010-0356	Iatan Construction Project	Cost of Service Report

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CASE PARTICIPATION

Date Filed	Case Name	Case Number	Issue	Exhibit
11/17/10	Kansas City Power and Light Company-Greater Missouri Operations	ER-2010-0356	Overview Iatan Unit 1 AQCS, Iatan 2 and Iatan Common Plant; GAAS	Direct
11/10/10	Kansas City Power and Light Company	ER-2010-0355	Overview Iatan Unit 1 AQCS, Iatan 2 and Iatan Common Plant; GAAS	Direct
11/10/2010	Kansas City Power and Light Company	ER-2010-0355	Iatan Construction Project	Cost of Service Report
11/04/10	Kansas City Power and Light Company-Greater Missouri Operations	ER-2010-0356	Iatan 1 and Iatan 2 and Common Plant Construction Audit and Prudence Review	Staff's Construction Audit And Prudence Review Of Iatan Construction Project For Costs Reported As Of June 30, 2010
11/04/10	Kansas City Power and Light Company	ER-2010-0355	Iatan 1 and Iatan 2 and Common Plant Construction Audit and Prudence Review	Staff's Construction Audit And Prudence Review Of Iatan Construction Project For Costs Reported As Of June 30, 2010

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CASE PARTICIPATION

Date Filed	Case Name	Case Number	Issue	Exhibit
08/06/2010	Kansas City Power and Light Company-Greater Missouri Operations	ER-2010-0356	Iatan 1 AQCS Construction Audit and Prudence Review	Staff's Construction Audit And Prudence Review Of Iatan 1 Environmental Upgrades (Air Quality Control System - AQCS) For Costs Reported As Of April 30, 2010
08/06/2010	Kansas City Power and Light Company	ER-2010-0355	Iatan 1 AQCS Construction Audit and Prudence Review	Staff's Construction Audit And Prudence Review Of Iatan 1 Environmental Upgrades (Air Quality Control System - AQCS) For Costs Reported As Of April 30, 2010

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CASE PARTICIPATION

Date Filed	Case Name	Case Number	Issue	Exhibit
01/01/2010	Kansas City Power and Light Company-Greater Missouri Operations	ER-2009-0090	Iatan 1 AQCS Construction Audit and Prudence Review	Staff's Report Regarding Construction Audit and Prudence Review of Environmental Upgrades to Iatan 1 and Iatan Common Plant
12/31/2009	Kansas City Power and Light Company	ER-2009-0089	Iatan 1 AQCS Construction Audit and Prudence Review	Staff's Report Regarding Construction Audit and Prudence Review of Environmental Upgrades to Iatan 1 and Iatan Common Plant
04/09/2009	Kansas City Power and Light Company-Greater Missouri Operations	ER-2009-0090	Transition costs, SJLP SERP, Acquisition Detriments, Capacity Costs, Crossroads Deferred Taxes	Surrebuttal
04/07/2009	Kansas City Power and Light Company	ER-2009-0089	Transition Costs, Talent Assessment Program, SERP, STB Recovery, Settlements, Refueling Outage, Expense Disallowance	Surrebuttal
03/13/2009	Kansas City Power and Light Company-Greater Missouri Operations	ER-2009-0090	Crossroads Energy Center, Acquisition Saving and Transition Cost Recovery	Rebuttal

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CASE PARTICIPATION

<b>Date Filed</b>	<b>Case Name</b>	<b>Case Number</b>	<b>Issue</b>	<b>Exhibit</b>
03/11/2009	Kansas City Power and Light Company	ER-2009-0089	KCPL Acquisition Savings and Transition Costs	Rebuttal
02/27/2009	Kansas City Power and Light Company-Greater Missouri Operations	ER-2009-0090	Various Ratemaking issues	Cost of Service Report
02/11/2009	Kansas City Power and Light Company	ER-2009-0089	Corporate Costs, Merger Costs, Warranty Payments	Cost of Service Report
09/24/2007	Kansas City Power and Light Company	ER-2007-0291	Miscellaneous A&G Expense	Surrebuttal
07/24/2007	Kansas City Power and Light Company	ER-2007-0291	Miscellaneous	Cost of Service Report
07/24/2007	Kansas City Power and Light Company	ER-2007-0291	Talent Assessment, Severance, Hawthorn V Subrogation Proceeds	Direct
03/20/2007	Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L&P	ER-2007-0004	Hedging Policy Plant Capacity	Surrebuttal
02/20/2007	Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L&P	ER-2007-0004	Natural Gas Prices	Rebuttal
01/18/2007	Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L&P	ER-2007-0004	Fuel Prices Corporate Allocation	Direct
11/07/2006	Kansas City Power and Light Company	ER-2006-0314	Fuel Prices	True-Up
10/06/2006	Kansas City Power and Light Company	ER-2006-0314	Severance, SO <sub>2</sub> Liability, Corporate Projects	Surrebuttal
08/08/2006	Kansas City Power and Light Company	ER-2006-0314	Fuel Prices Miscellaneous Adjustments	Direct
12/13/2005	Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L&P	ER-2005-0436	Natural Gas Prices; Supplemental Executive Retirement Plan Costs; Merger Transition Costs	Surrebuttal

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CASE PARTICIPATION

Date Filed	Case Name	Case Number	Issue	Exhibit
12/13/2005	Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L&P	HR-2005-0450	Natural Gas Prices; Supplemental Executive Retirement Plan Costs; Merger Transition Costs	Surrebuttal
11/18/2005	Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L&P	ER-2005-0436	Natural Gas Prices	Rebuttal
10/14/2005	Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L&P	ER-2005-0436	Corporate Allocations, Natural Gas Prices Merger Transition Costs	Direct
10/14/2005	Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L&P	HR-2005-0450	Corporate Allocations, Natural Gas Prices Merger Transition Costs	Direct
02/15/2005	Missouri Gas Energy	GU20050095	Accounting Authority Order	Direct
01/14/2005	Missouri Gas Energy	GU20050095	Accounting Authority Order	Direct
06/14/2004	Missouri Gas Energy	GR20040209	Alternative Minimum Tax; Stipulation Compliance; NYC Office; Executive Compensation; Corporate Incentive Compensation; True-up Audit; Pension Expense; Cost of Removal; Lobbying.	Surrebuttal
04/15/2004	Missouri Gas Energy	GR20040209	Pensions and OPEBs; True-Up Audit; Cost of Removal; Prepaid Pensions; Lobbying Activities; Corporate Costs; Miscellaneous Adjustments	Direct
02/13/2004	Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L&P	HR20040024	Severance Adjustment; Supplemental Executive Retirement Plan; Corporate Cost Allocations	Surrebuttal
02/13/2004	Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L&P	ER20040034	Severance Adjustment; Corporate Cost Allocations; Supplemental Executive Retirement Plan	Surrebuttal

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CASE PARTICIPATION

Date Filed	Case Name	Case Number	Issue	Exhibit
01/06/2004	Aquila, Inc.	GR20040072	Corporate Allocation Adjustments; Reserve Allocations; Corporate Plant	Direct
12/09/2003	Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks- L&P	HR20040024	Current Corporate Structure; Aquila's Financial Problems; Aquila's Organizational Structure in 2001; Corporate History; Corporate Plant and Reserve Allocations; Corporate Allocation Adjustments	Direct
12/09/2003	Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks- L&P	ER20040034	Corporate Plant and Reserve Allocations; Corporate Allocation Adjustments; Aquila's Financial Problems; Aquila's Organizational Structure in 2001; Corporate History; Current Corporate Structure	Direct
03/17/2003	Southern Union Co. d/b/a Missouri Gas Energy	GM20030238	Acquisition Detriment	Rebuttal
08/16/2002	The Empire District Electric Company	ER2002424	Prepaid Pension Asset; FAS 87 Volatility; Historical Ratemaking Treatments-Pensions & OPEB Costs; Pension Expense-FAS 87 & OPEB Expense-FAS 106; Bad Debt Expense; Sale of Emission Credits; Revenues	Direct
04/17/2002	UtiliCorp United, Inc. d/b/a Missouri Public Service & St. Joseph Light & Power	GO2002175	Accounting Authority Order	Rebuttal
01/22/2002	UtiliCorp United, Inc. d/b/a Missouri Public Service	ER2001265	Acquisition Adjustment	Surrebuttal
01/22/2002	UtiliCorp United, Inc. d/b/a Missouri Public Service	EC2001265	Acquisition Adjustment; Corporate Allocations;	Surrebuttal
01/08/2002	UtiliCorp United, Inc. d/b/a Missouri Public Service	EC2002265	Acquisition Adjustment	Rebuttal
01/08/2002	UtiliCorp United, Inc. d/b/a Missouri Public Service	ER2001672	Acquisition Adjustment	Rebuttal

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CASE PARTICIPATION

Date Filed	Case Name	Case Number	Issue	Exhibit
12/06/2001	UtiliCorp United, Inc. d/b/a Missouri Public Service	ER2001672	Corporate Allocations	Direct
12/06/2001	UtiliCorp United, Inc. d/b/a Missouri Public Service	EC2002265	Corporate Allocations	Direct
04/19/2001	Missouri Gas Energy, a Division of Southern Union Company	GR2001292	Revenue Requirement; Corporate Allocations; Income Taxes; Miscellaneous Rate Base Components; Miscellaneous Income Statement Adjustments	Direct
11/30/2000	Holway Telephone Company	TT2001119	Revenue Requirements	Rebuttal
06/21/2000	UtiliCorp United, Inc. / The Empire District Electric Company	EM2000369	Merger Accounting Acquisition	Rebuttal
05/02/2000	UtiliCorp United, Inc. / St. Joseph Light and Power	EM2000292	Deferred Taxes; Acquisition Adjustment; Merger Benefits; Merger Premium; Merger Accounting; Pooling of Interests	Rebuttal
03/01/2000	Atmos Energy Company and Associated Natural Gas Company	GM2000312	Acquisition Detriments	Rebuttal
09/02/1999	Missouri Gas Energy	GO99258	Accounting Authority Order	Rebuttal
04/26/1999	Western Resources Inc. and Kansas City Power and Light Company	EM97515	Merger Premium; Merger Accounting	Rebuttal
07/10/1998	Missouri Gas Energy, a Division of Southern Union Company	GR98140	SLRP AAOs; Reserve; Deferred Taxes; Plant	True-Up
05/15/1998	Missouri Gas Energy, a Division of Southern Union Company	GR98140	SLRP AAOs; Automated Meter Reading (AMR)	Surrebuttal
04/23/1998	Missouri Gas Energy, a Division of Southern Union Company	GR98140	Service Line Replacement Program; Accounting Authority Order	Rebuttal
03/13/1998	Missouri Gas Energy, a Division of Southern Union Company	GR98140	Miscellaneous Adjustments; Plant; Reserve; SLRP; AMR; Income and Property Taxes;	Direct



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CASE PARTICIPATION

Date Filed	Case Name	Case Number	Issue	Exhibit
11/21/1997	UtiliCorp United, Inc. d/b/a Missouri Public Service	ER97394	OPEB's; Pensions	Surrebuttal
08/07/1997	Associated Natural Gas Company, Division of Arkansas Western Gas Company	GR97272	FAS 106 and FAS 109 Regulatory Assets	Rebuttal
06/26/1997	Associated Natural Gas Company, Division of Arkansas Western Gas Company	GR97272	Property Taxes; Store Expense; Material & Supplies; Deferred Tax Reserve; Cash Working Capital; Postretirement Benefits; Pensions; Income Tax Expense	Direct
10/11/1996	Missouri Gas Energy	GR96285	Income Tax Expense; AAO Deferrals; Acquisition Savings	Surrebuttal
09/27/1996	Missouri Gas Energy	GR96285	Income Tax Expense; AAO Deferrals; Acquisition Savings	Rebuttal
08/09/1996	Missouri Gas Energy	GR96285	Income Tax Expense; AAO Deferrals; Acquisition Savings	Direct
05/07/1996	Union Electric Company	EM96149	Merger Premium	Rebuttal
04/20/1995	United Cities Gas Company	GR95160	Pension Expense; OPEB Expense; Deferred Taxes; Income Taxes; Property Taxes	Direct
05/16/1994	St. Joseph Light & Power Company	HR94177	Pension Expense; Other Postretirement Benefits	Direct
04/11/1994	St. Joseph Light & Power Company	ER94163	Pension Expense; Other Postretirement Benefits	Direct
08/25/1993	United Telephone Company of Missouri	TR93181	Cash Working Capital	Surrebuttal
08/13/1993	United Telephone Company of Missouri	TR93181	Cash Working Capital	Rebuttal
07/16/1993	United Telephone Company of Missouri	TR93181	Cash Working Capital; Other Rate Base Components	Direct

Exhibit CRH-1

has been deemed

“Highly Confidential”

in Its Entirety