Exhibit No.:	
Issues:	Charitable Contributions Rate Case Moratorium Access to Records Corporate Social Responsibility Most Favored Nation Provision General Response to OPC Conditions
Witness:	Christopher D. Krygier
Exhibit Type:	Surrebuttal
Sponsoring Party:	Liberty Utilities
Case No.:	EM-2016-0213
Date:	August 5, 2016

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. EM-2016-0213

SURREBUTTAL TESTIMONY

OF

CHRISTOPHER D. KRYGIER

ON BEHALF OF

LIBERTY UTILITIES (CENTRAL) CO.

_____
Denotes Highly Confidential

SURREBUTTAL TESTIMONY
CHRISTOPHER D. KRYGIER
LIBERTY UTILITIES (CENTRAL) CO.
CASE NO. EM-2016-0213

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CHRISTOPHER D. KRYGIER
LIBERTY UTILITIES (CENTRAL) CO.
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INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Christopher D. Krygier and my business address is 2751 North High Street, Jackson, Missouri 63755.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by Liberty Utilities Service Corp. as its Director of Regulatory and Government Affairs for its natural gas, water, and wastewater utilities in Missouri, Iowa, and Illinois.

Q. HAVE YOU PREVIOUSLY TESTIFIED IN THIS CASE?

A. Yes, I have submitted direct testimony in this proceeding.

PURPOSE

Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?

A. I will respond to the following issues raised in the rebuttal testimony of the Office of the Public Counsel ("OPC"):

- Charitable Contributions;
- Rate Case Moratorium;
- Access to Records;
- Corporate Social Responsibility;
- Most Favored Nation Provision; and

- General Response to OPC Conditions

Q. WOULD YOU PLEASE SUMMARIZE THE JOINT APPLICANTS' POSITION ON EACH OF THESE ISSUES ADDRESSED BY YOUR TESTIMONY?

A. Yes, I prepared a summary table that lists each issue, the proposed condition number, and the Joint Applicants' response to each issue.

Issue	**OPC Proposed Condition Number**[1]	**Joint Applicants' Response to Proposed Condition**
Charitable Contributions	26	Accept Proposed Condition with minor modifications
Rate Case Moratorium	37	Accepted Proposed Condition
Access to Records	6, 15, 17	The Commission should reject the Proposed Conditions
Corporate Social Responsibility	38	The Commission should reject the Proposed Condition
Most Favored Nation Provision	35	The Commission should reject the Proposed Condition
Various Conditions	27, 39, 40, 41, 42	The Commission should reject the Proposed Condition

CHARITABLE CONTRIBUTIONS

Q. WHAT IS OPC WITNESS PFAFF'S RECOMMENDATION REGARDING CHARITABLE CONTRIBUTIONS?

[1] Reconciles to Attachment RP-R22 of Mr. Pfaff's Rebuttal Testimony

A. On page 13, lines 12-15 of Mr. Pfaff's Rebuttal Testimony, he suggests that the Joint Applicants' commitment to charitable contributions is "hollow" because the contributions could "cease or lower these contributions" at any time.

Q. DOES MR. PFAFF EVER SAY THAT THE CHARITABLE CONTRIBUTIONS COMMITMENT BY THE JOINT APPLICANTS IS A DETRIMENT TO THE PUBLIC INTEREST?

A. No.

Q. IS THE JOINT APPLICANTS' COMMITMENT TO CHARITABLE CONTRIBUTIONS "HOLLOW" BECAUSE THE JOINT APPLICANTS COULD "CEASE OR LOWER THESE CHARITABLE CONTRIBUTIONS AT ANY TIME"?

A. Not at all. It is disingenuous for Mr. Pfaff to call the commitment hollow. The Joint Applicants provided two areas that added clarity surrounding the charitable contributions commitment. First, the Agreement and Plan of Merger provided with the Application, Section 6.06(f), speaks directly to the issue: "….Company Subsidiaries to maintain historic levels of community involved and charitable contributions and support in the existing service territories of the Company and Company Subsidiaries, including as set forth on Section 6.06(f) of the Company Disclosure Letter". Second, the Joint Applicants provided a data request response that detailed significant commitments around charitable contributions. In the response to data request OPC – Mayfield – 0007, the Joint Applicants provided a copy of the Company Disclosure Letter. In this letter, Section 6.06

(e)[2] is referenced which includes the following three specific charitable contribution commitments:

** _____

_____

_____

_____

_____

_____.

_____

_____.

_____.**

These three commitments are very specific in nature, as they detail amounts to be donated and organizations to receive donations among other items, far from hollow as Mr. Pfaff claims.

Finally, The Empire District Electric Company ("Empire") has a demonstrated history of providing financial and other support to the communities in which it serves and it is the Joint Applicants' intention to continue a normalized level of charitable contributions on a going forward basis.

Q. DO YOU FIND IT INTERESTING THAT CHARITABLE CONTRIBUTIONS ARE AN ISSUE IN THIS MATTER?

[2] It appears that the Agreement and Plan of Merger and Company Disclosure Letter had a typographical error with one referencing section "f", the other section "e".

A. Yes. Historically, charitable contributions are not treated as reasonable expenditures for purposes of setting rates in Missouri and, currently, Empire could, in Mr. Pfaff's words, "cease or lower these contributions at any time." Thus, any commitment, including what is included in the Agreement and Plan of Merger and the Company Disclosure Letter, would be another benefit associated with the proposed transaction, a benefit OPC completely ignores.

Q. DID OPC PROVIDE ANY OTHER TESTIMONY ON CHARITABLE CONTRIBUTIONS?

A. Yes. OPC Witness Azad's Rebuttal Testimony (Page 33, Lines 14 – Page 35, Line 3)[3], outlines what she believes to be a more substantial charitable contribution commitment.

Q. DOES MS. AZAD EVER SAY THAT THE LACK OF CHARITABLE CONTRIBUTIONS COMMITMENT BY THE JOINT APPLICANTS IS A DETRIMENT TO THE PUBLIC INTEREST?

A. No, similar to Mr. Pfaff, she did not identify this as a reason the Missouri Public Service Commission ("Commission") should reject the transaction.

Q. OPC WITNESS AZAD OUTLINES WHAT SHE BELIEVES TO BE A MORE SUBSTANTIAL COMMITMENT, IDENTIFYING AN AMOUNT AND A PERIOD OF TIME TO WHICH EMPIRE WOULD COMMIT. WHAT IS YOUR REACTION TO THAT PROPOSAL?

A. As discussed in my response to Mr. Pfaff's testimony, Ms. Azad does not identify any detriments; however, the Joint Applicants are generally agreeable to the

[3] Reconciles to Proposed Condition 26 of Attachment RP-R22 of Mr. Pfaff's Rebuttal Testimony.

proposed condition, creating another benefit to the transaction, with minor modifications to the five-year average calculation and the condition wording.

Q. WHY DO THE JOINT APPLICANTS WANT TO CHANGE THE FIVE-YEAR AVERAGE CALCULATED BY MS. AZAD?

A. The average calculated by OPC Witness Azad is not appropriate because it includes a one-time special payment that should be excluded. As described in the Surrebuttal Testimony of Joint Applicant Witness Kelly Walters, I understand that in 2015, EDE made an extraordinary, one-time special payment of ****_____****. Inclusion of this amount significantly distorts the five year average calculated by OPC Witness Azad. Removal of that one-time payment arrives at a new average of ****_____****, nearly identical to the ****_____**** included in the Company Disclosure Letter referenced above.

Q. DO THE JOINT APPLICANTS HAVE ANY OTHER CHANGES TO THE PROPOSED CONDITION?

A. Yes, some changes to the wording as follows make the condition clearer:

Original Proposed Condition language:

"During the five-year period following the Merger, Empire shall maintain, at a minimum, an annual level of charitable contributions and traditional local community support in the State of Missouri at or above the five-year average of ****_____****.

The Joint Applicants propose that the condition instead read:

"During the five-year period following the closing of the Merger, Empire shall maintain, on a total company basis, an annual level of charitable contributions and traditional local community support of approximately ** **."

RATE CASE MORATORIUM

Q. OPC WITNESS PFAFF PROPOSES THAT THE COMMISSION CONDITION ANY APPROVAL ON A "RATE CASE MORATORIUM." (PAGE 38, LINE 13 – PAGE 39, LINE 6). PLEASE DESCRIBE THAT RATE CASE MORATORIUM.

A. Mr. Pfaff proposes that Empire be prohibited from filing a rate case until at least one full year of data is available following the close of the transaction.

Q. DOES MR. PFAFF IDENTIFY A DETRIMENT HE IS ATTEMPTING TO MITIGATE WITH THIS CONDITION?

A. Mr. Pfaff indicates that ensuring "adequate information is available"[4] as the potential detriment.

Q. IS A RATE CASE MORATORIUM SOMETHING THAT IS NECESSARY IN ANY SITUATION TO PROTECT THE PUBLIC INTEREST?

A. No. The Commission always has the duty, and is presumed, to only authorize those rates that are just and reasonable and, therefore, in the public interest.

Q. HAVING SAID THIS, IS THERE A MORATORIUM WITH WHICH THE JOINT APPLICANTS COULD AGREE?

A. Yes, the Joint Applicants agree to OPC's proposed condition that was attached as Proposed Condition 37 in Attachment RP-R22 to Mr. Pfaff's testimony: Proposed Condition language:

[4] Pfaff Reb., Page 33, Line 21

The Joint Applicants agree to refrain from filing a rate case until at least one full year of financial and operational information is available following the close of the merger.

The Joint Applicants note that this rate case moratorium commitment and the previously mentioned charitable contributions commitment are two additional benefits to customers of the proposed transaction.

ACCESS TO RECORDS

Q. WHAT IS OPC WITNESS PFAFF'S RECOMMENDATION ON ACCESS TO RECORDS?

A. On page 27, line 19 – page 28, line 22, Mr. Pfaff recommends three proposed conditions concerning potential access to records.

Q. WHAT IS THE BASIS FOR MR. PFAFF'S RECOMMENDATION?

A. Mr. Pfaff cites one data request response as support for recommending three separate proposed conditions.

Q. DOES MR. PFAFF MISCONSTRUE THE DATA REQUEST RESPONSE CITED IN HIS TESTIMONY AT PAGE 28, LINES 2-3?

A. Yes. Mr. Pfaff only cites one sentence in the data request response, completely ignoring the second half of the response which reads in part: "…utilities indirectly owned by Algonquin Power & Utilities Corp. follow the general process set forth in response to OPC – AzP – 5114."

Q. WHAT WAS PROVIDED BY THE JOINT APPLICANTS IN RESPONSE TO DATA REQUEST OPC – AZP - 5114?

A. A Highly Confidential attachment entitled **_____ _____**, a document that was, at least in part, directly responsive to OPC's data request.

Q. BASED ON THE FULL PICTURE OF THE DATA RESPONSE, SHOULD THE COMMISSION REJECT OPC'S PROPOSED CONDITIONS?

A. Yes. OPC's testimony on this issue gives no other reasons why the proposed conditions are in the public interest.

Q. DOES THE COMMISSION HAVE PREVIOUS EXPERIENCE WITH ACCESSING BOOKS AND RECORDS OF LIBERTY UTILITIES CO. ("LIBERTY UTILITIES") AND ITS AFFILIATES?

A. Yes, I would say this Commission has significant experience accessing books and records of Liberty Utilities and affiliates.

Q. PLEASE EXPLAIN.

A. Liberty Utilities has operated utilities in Missouri since approximately 2005. During this time, it has acquired four separate utilities, one natural gas and three water/wastewater utilities, and completed two rate cases. These examples demonstrate Liberty Utilities' history of working with parties in Missouri to provide access to books and records.

Q. DOES THE UTILITY HAVE BUILT-IN INCENTIVES TO PROVIDE THE COMMISSION'S STAFF ("STAFF') AND OPC ITS BOOKS AND RECORDS?

A. Yes, the utility generally has the burden of proof in its filings before the Commission. Not providing access to documents puts the utility at risk for recovering its costs; therefore, the utility is incented to provide the information to support its request.

Q. DO THE JOINT APPLICANTS HAVE ANY OTHER WAYS TO ADDRESS THIS OPC CONCERN?

A. Yes, as reflected in the Stipulation and Agreement executed with Staff, conditions were agreed to, providing access for Staff and OPC to Empire's books and records. These five conditions, in conjunction with the track record and incentives mentioned above, are more than sufficient to address any concerns OPC has.

Q. CAN YOU PLEASE SUMMARIZE YOUR RECOMMENDATION?

A. Yes. The Commission should reject OPC's proposed conditions because there is no detriment to mitigate, the Commission has significant history dealing with books and records of Liberty Utilities and its affiliates, and because these alleged concerns by OPC are more than adequately addressed by the Stipulation and Agreement entered into by the Joint Applicants and Staff.

CORPORATE SOCIAL RESPONSIBILITY

Q. WHAT IS OPC WITNESS PFAFF'S RECOMMENDATION REGARDING CORPORATE SOCIAL RESPONSIBILITY?

A. On page 34, line 5 – page 35, line 8 of Rebuttal Testimony, Mr. Pfaff proposes a condition requiring a non-recoverable annual community action agency ("CAA")

contribution in the amount of $1.6 million for a ten year period, totaling $16 million[5] of non-recoverable expenses.

Q. DOES MR. PFAFF IDENTIFY ANY SPECIFIC DETRIMENT HE IS ATTEMPTING TO ADDRESS WITH THIS CONDITION?

A. No. OPC Witness Pfaff simply makes a generic claim that "This condition acts as a mitigating factor against these risks and helps protect the financial interests of Empire's customers…". For this reason alone the proposed condition should be rejected.

Q. DOES MR. PFAFF IDENTIFY ANY REASON WHY THE NEW SHAREHOLDERS SHOULD ABSORB A $16 MILLION COST?

A. No.

Q. DOES MISSOURI HAVE ANY HISTORY WITH SUCH ACQUISITION CONDITIONS TO YOUR KNOWLEDGE?

A. None that I am aware of, especially of this magnitude. I reviewed the recent acquisitions by Spire Energy (then Laclede Group, Inc.) in Docket GM-2013-0254, and Liberty Utilities' acquisition of the Atmos Energy Corp's natural gas properties in Docket GM-2012-0037, and found nothing similar to Mr. Pfaff's arbitrary proposal.

Q. DOES MR. PFAFF PROVIDE ANY ANALYSIS DEMONSTRATING HOW THE PROPOSED CONDITION IS DESIGNED TO ADDRESS ANY SPECIFIC NEED?

A. No.

[5] No reference is made to the $16 million in testimony, only a one line reference on page 6 of Attachment RP-R22 and one workpaper listed the amounts.

Q. DID YOU IDENTIFY ANY OTHER PROBLEMS?

A. Yes, Mr. Pfaff's proposed gift may not directly benefit Empire customers.

Q. CAN YOU PLEASE ELABORATE ON THE POSSIBILITY THAT THESE FUNDS MAY NOT DIRECTLY BENEFIT EMPIRE CUSTOMERS?

A. Yes. Another problem is that the funding isn't designed or described to specifically benefit Empire's customers. Within Joplin and the surrounding areas are electric cooperatives and municipal utilities. Due to the lack of design and function of OPC's proposal, it is possible that these agencies could provide funds to electric coop customers and not Empire customers, creating a detriment to the proposal because funds were diverted from Empire customers to other utility customers. Additionally, I understand that the CAA's within Empire's service territory have not always have not been able to disburse their allotted funds. Joint Applicant Witness Kelly Walters will address this point in her Surrebuttal Testimony. As detailed above, this possibility is especially problematic since no structure exists to hold the agencies accountable for the funds disbursed.

Q. SHOULD THE COMMISSION REJECT THIS PROPOSED CONDITION IN ITS ENTIRETY?

A. Yes. A $16 million cost to shareholders with no associated detriment is not appropriate. Mr. Pfaff claims no detriment to be mitigated, cannot demonstrate why the new shareholders should fund such a program, and may itself create a detriment to Missouri customers.

MOST FAVORED NATION PROVISION

Q. ON PAGE 42, LINE 15 – PAGE 43, LINE 5 OF HER REBUTTAL TESTIMONY, OPC WITNESS AZAD PROPOSES THAT THE COMMISSION CONDITION ANY APPROVAL ON WHAT SHE DESCRIBES AS A "MOST FAVORED NATION" PROVISION. WHAT IS YOUR UNDERSTANDING OF THAT PROVISION?

A. My understanding is that somehow Missouri would compare its conditions to those that may be imposed by other states concerning this transaction after the hearing record is closed and the Commission has issued an Order, and, thereafter try to mimic additional conditions that might be imposed by those states.

Q. IS THIS PROPOSAL DESIGNED TO ADDRESS ANY SPECIFIC DETRIMENT THOUGHT TO BE ASSOCIATED WITH THE PROPOSED TRANSACTION?

A. No. Consistent with most of OPC's other proposed conditions, no specific detriment to be resolved is identified.

Q. DOES THE MISSOURI STANDARD OF REVIEW FOR MERGERS OR ACQUISITIONS REQUIRE THAT MISSOURI "RECEIVE AN EQUITABLE LEVEL OF MERGER BENEFITS WHEN COMPARED TO OTHER JURISDICTIONS"?

A. I am not familiar with any such requirement.

Q. IS THIS PROPOSED CONDITION NECESSARY FOR THE COMMISSION TO RULE THAT THE MERGER IS NOT DETRIMENTAL TO THE PUBLC INTEREST?

A. No. The merger provides many other benefits as described in the Direct Testimony of Joint Applicants' witnesses, along with the agreed-to Stipulations[6] and additional commitments made by the Joint Applicants in Surrebuttal Testimony that support approving the transaction.

Q. AS A PRACTICAL MATTER, WHAT WOULD APPROVAL OF THIS TYPE OF CLAUSE MEAN?

A. In reality, nothing. The Joint Applicants have already received approval from the Oklahoma Corporation Commission and the Federal Energy Regulatory Commission; and have submitted a joint stipulation with Staff and the Attorney General in Arkansas. This proposed condition really only concerns the state of Kansas, which has not yet approved the merger.

Q. IS EMPIRE'S SERVICE IN KANSAS AND MISSOURI SIMILARLY SITUATED?

A. No, Missouri's service area is significantly different from its Kansas service area. First, customer counts are significantly different. Empire's electric, natural gas, and water operations in Missouri serve approximately 198,000[7] customers, whereas it serves approximately 9,700 customers in Kansas. Thus, the Kansas customer base is approximately one-twentieth of the Missouri customer base. Besides customer counts, the states' economic interests are also different given the location of Empire's headquarters and majority of employees in Missouri.

Q. DO YOU SEE ANY PRACTICAL PROBLEMS WITH IMPLEMENTATION OF THIS CONDITION?

[6] On July 19, 2016, the Joint Applicants executed Stipulations and Agreements with the City of Joplin, the Empire District Retiree Association, IBEW Local No. 1464 and 1474 and LIUNA. None of these Stipulations and Agreements were objected to by the other parties. On August 4, 2016, the Joint Applicants also executed a Stipulation and Agreement with Staff

[7] Direct Testimony of Brad Beecher, Page 3, Lines 10-18

A. Yes. First, what constitutes a benefit in Missouri may not be a benefit in another state and vice-versa. Second, these benefits are extremely difficult to measure. As a hypothetical, if the Joint Applicants agree to open a new service center in another state as a result of the transaction, does that mean it has to open one service center in Missouri, or does it mean Missouri should open more service centers since it proportionally has more customers than its other three state service territories.

Q. WHAT IS THE JOINT APPLICANTS' POSITION AS TO THE MOST FAVORED NATION CONDITION?

A. The Joint Applicants oppose this condition because there is no detriment to be mitigated, is impractical to implement, and may not bring any benefits to Missouri customers.

GENERAL RESPONSE TO OPC CONDITIONS

Q. DO YOU HAVE ANY OTHER RESPONSE TO THE CONDITIONS PROPOSED BY THE OPC?

A. Yes. I note that there are five OPC proposed conditions listed on Mr. Pfaff's Attachment RP-R22 to his Rebuttal Testimony that are not otherwise explained in OPC's Testimony in any fashion – Proposed Conditions 27, 39, 40, 41, and 42.

Q. WHAT IS YOUR RESPONSE TO THOSE PROPOSED CONDITIONS?

A. I recommend that the Commission reject these Proposed Conditions, as no OPC witnesses provided testimony as to what detriments these provisions

are attempting to mitigate or how these conditions might be designed to mitigate any potential detriment.

Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?

A. Yes, it does.

AFFIDAVIT

STATE OF MISSOURI)
) ss
COUNTY OF CAPE GIRARDEAU)

I, Christopher D. Krygier, state that I am employed by Liberty Utilities Services Corp. as its Director of Regulatory and Government Affairs for its natural gas, water and wastewater utilities in Missouri, Iowa and Illinois; that the Surrebuttal Testimony attached hereto has been prepared by me or under my direction and supervision; and, that the answers to the questions posed therein are true to the best of my knowledge, information and belief.

Christopher D. Krygier 8/3/16

Subscribed and sworn to before me this 3rd day of August, 2016.

Gena G Welker
Notary Public

My Commission Expires:

May 2, 2020

GENA G WELKER
Notary Public – Notary Seal
State of Missouri, Bollinger County
Commission # 12335397
My Commission Expires May 2, 2020

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