

Exhibit No.: _____
Issues: Responses to Proposed
Conditions
Witness: David Pasieka
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MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. EM-2016-0213

SURREBUTTAL TESTIMONY

OF

DAVID PASIEKA

ON BEHALF OF

LIBERTY UTILITIES (CENTRAL) CO.

**SURREBUTTAL TESTIMONY
DAVID PASIEKA
LIBERTY UTILITIES (CENTRAL) CO.
CASE NO. EM-2016-0213**

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1 least, I will respond to many of the conditions OPC asks the Missouri Public
 2 Service Commission (“Commission”) to adopt should it approve the transaction.
 3 Finally, I will address the contention of W. Keith Wilkins, the witness for The
 4 Empire District Electric Company SERP Retirees (“EDES”), that the
 5 Commission should require Empire to establish a Rabbi trust in the amount of
 6 nearly \$10 million to benefit 8 former Empire executives who are eligible for
 7 SERP benefits.

8 **Q. HAVE THE JOINT APPLICANTS AGREED TO ANY CONDITIONS**
 9 **ASSOCIATED WITH THIS TRANSACTION?**

10 A. Yes. Through stipulations and agreements, the Joint Applicants have committed
 11 to 67 conditions (including conditions that are agreeable with modifications) that
 12 are summarized below and detailed in **Sur. Schedule DP-1**. It is my view that
 13 these conditions leave little doubt that the transaction does not have net
 14 detriments.

CONDITION TOPIC	NUMBER OF CONDITIONS
Customer Protections	7
Employee Protections	7
Retiree Protections	4
Community Protections	4
Ratemaking/Accounting	4
Financing Conditions	9
Affiliate Transactions/Allocations	5
Depreciation Conditions	3
Tax Matters	2
Corporate Gov./Ring Fencing	4
Access to Records	5
Charitable Contributions	1
Energy Efficiency/Load Research	7
Natural Gas Procurement	2
Contracting Policy	1
Rate Case Moratorium	1
Parent Company Condition	1
Total	67

1 In addition to these 67 conditions, there are another 11 conditions on Sur. Sched.
2 DP-1 that are largely addressed by many of these. My testimony, in addition to
3 those of my colleagues Christopher Krygier, Peter Eichler, and Steven Fetter,
4 addresses many of these conditions.

5 **Q. HAS ALGONQUIN POWER & UTILITIES CORP. (“ALGONQUIN”) MADE ANY**
6 **COMMITMENTS REGARDING THIS TRANSACTION?**

7 A. Yes. Algonquin has agreed to uphold all of the conditions agreed to by Empire
8 and LU Central in the Staff Stipulation. This demonstrates the full organizational
9 commitment to LU Central and Empire.

10
11 **OPC’S FLAWED ANALYSIS**

12 **Q. DO YOU HAVE ANY PRELIMINARY OBSERVATIONS ABOUT OPC’S CLAIM**
13 **THAT THE PROPOSED TRANSACTION IS DETRIMENTAL TO THE PUBLIC**
14 **INTEREST?**

15 A. Yes. First and foremost, I disagree with OPC’s conclusion that the transaction is
16 detrimental to the public interest. As was described in my Direct Testimony,
17 there are no detriments associated with this transaction. LU Central has
18 committed to keeping the same employees at the same level of compensation at
19 the same location providing the same or better service to Empire’s customers
20 using the same company name. LU Central has also made the commitment that
21 there will be no rate impact as a result of the transaction. Additionally, the Joint
22 Applicants entered into six Stipulations and Agreements that provide even more
23 benefits as a result of the transaction, which I describe in detail further in my

1 testimony. With these commitments in place, I firmly believe that the standard for
2 approval has more than been met.

3 **Q. DO YOU HAVE ANY CONCERNS ABOUT THE STANDARD AGAINST WHICH**
4 **OPC MEASURES THE PROPOSED TRANSACTION?**

5 A. Yes. While I am not a lawyer, I believe that OPC's testimony inaccurately states
6 the legal standard that the Commission must use in evaluating the proposed
7 transaction. I addressed at page 4 of my Direct Testimony my understanding of
8 the standard of approval the Commission must apply in this case:

9 My understanding is the legal standard applicable to utility acquisitions
10 established by Missouri's courts is that a proposed acquisition must be
11 approved unless it can be shown to be detrimental to the public interest. I
12 also am advised by legal counsel that the Commission applies a "no net
13 detriment" test to determine if a utility acquisition meets the standard. I
14 believe LU Central's proposed acquisition of Empire satisfies this
15 standard.
16

17 While Mr. Marke appears to recognize that a finding by the Commission of no net
18 detriment is sufficient for approval of the Joint Application, he states that an
19 assessment that the *status quo* has been maintained is not sufficient. Rather, he
20 asserts that the transaction must "produce a public interest" (Marke Reb., p. 4, ll.
21 12-13), and then requests that the Commission adopt conditions in order to
22 "produce a public interest" – which is effectively arguing for net "benefits" from
23 the transaction. Mr. Marke's testimony is replete with questions about whether
24 there are "explicit benefits" from various aspects of the transaction, effectively
25 attempting to "sum up" those benefits as though the Commission's standard
26 *requires* the demonstration of "net benefits." While I firmly believe that there are
27 many benefits to the proposed transaction (which I describe below), I think it is

1 important to be clear that the standard that has been in force in Missouri for
2 many years is a no net detriment standard, not a net benefit standard.

3 **Q. DOES LIBERTY UTILITIES HAVE EXPERIENCE WITH THE MISSOURI**
4 **STANDARD FOR UTILITY ACQUISITIONS?**

5 A. Yes. Liberty Utilities has acquired four utilities in this state over the last ten years
6 and as a result is very familiar with the standard for utility acquisitions. This
7 includes: Case No. WO-2005-0206, when Liberty Utilities' affiliates first entered
8 the state with its acquisition of the Silverleaf Resorts, Inc. properties; Case No.
9 WO-2011-0328, and the acquisition of Noel Water Co., Inc. assets; Case No.
10 WO-2011-0350, and the acquisition of KMB Utility Corporation properties; and,
11 most recently in Case No. GM-2012-0037, whereby the natural gas assets of
12 Atmos Energy Corp. were acquired.

13 **Q. WAS THE ACQUISITION STANDARD CONSISTENTLY APPLIED IN THESE**
14 **CASES?**

15 A. Yes. It was consistently applied as a no net detriment test that my colleagues
16 and I describe in our respective testimonies.

17 **Q. IS MR. PFAFF'S REBUTTAL TESTIMONY SIMILARLY FLAWED?**

18 A. Yes. Mr. Pfaff also takes issue with the Missouri merger standard, seemingly
19 suggesting at pages 5 and 6 of his Rebuttal Testimony that there is no difference
20 between a "no detriment" and a "positive benefits" standard. Additionally, please
21 see the Surrebuttal Testimony of Mr. Fetter, who provides a detailed analysis on
22 the differences between these standards. Simply put, Mr. Pfaff conflates the two
23 standards.

1 **Q. MR. PFAFF REFERS THE COMMISSION TO OTHER STATES' UTILITY**
2 **MERGERS AS THOUGH THEY HAVE SOME PRECEDENTIAL VALUE HERE.**
3 **DO YOU AGREE?**

4 A. No, I do not. At pages 41-43 of his Rebuttal Testimony, Mr. Pfaff discusses a
5 number of utility mergers he claims have been denied. I question the relevance
6 of this information in the context of this case. There is no indication that the
7 merger standards in those jurisdictions are the same as in Missouri, that the
8 transactions or the relief requested were factually similar to this transaction, or
9 whether there were specific grounds that were cause for concern by the
10 regulators reviewing the transactions that apply here. What we *do* know is they
11 were not cases before this Commission, they did not involve this transaction, and
12 they had nothing to do with either Empire, Liberty Utilities, or Algonquin Power &
13 Utilities Corp. ("Algonquin"). Liberty Utilities is well known to this Commission
14 and has been, and continues to be, a successful and beneficial presence in this
15 state. The Commission should ignore Mr. Pfaff's arguments in this regard.

16 **Q. DO YOU HAVE ANY OTHER GENERAL OBSERVATIONS?**

17 A. A conceptual theme that runs throughout the testimony filed by the OPC
18 witnesses is OPC's belief that Empire will be more risky within Algonquin's
19 corporate structure because it will no longer be a pure-play, vertically integrated
20 electric utility, but rather will become an operating subsidiary within Algonquin's
21 corporate structure. (See Pfaff Reb., p. 14, and Azad Reb., p. 13) While there is
22 a legitimate need to understand this new arrangement under LU Central's
23 ownership, the claims of additional financial risk merely because Empire will now

1 be a subsidiary of another entity are misleading if not misinformed. Both Mr.
2 Eichler and Mr. Fetter address the fundamental flaws in Mr. Pfaff and Ms. Azad's
3 arguments, including the separations that already exist within Algonquin's family
4 of companies and how those separations protect each of the regulated utilities
5 against the types of concerns they raise. Mr. Fetter in particular addresses Ms.
6 Azad's misinterpretation of the views of credit rating agencies on Empire and
7 Algonquin.

8 9 **BENEFITS OF THE TRANSACTION**

10 **Q. ARE THERE ANY BENEFITS ASSOCIATED WITH THIS TRANSACTION?**

11 A. Yes, there are many benefits to the transaction, including the establishment of a
12 larger regional presence based out of Joplin, from which LU Central will operate.
13 As I have previously described, the existing Empire senior leadership team will
14 continue to run all current Empire operations out of Joplin, and this leadership
15 team will assume additional oversight responsibilities for existing Liberty Utilities'
16 Arkansas, Texas, Missouri, Iowa, and Illinois operations. This can only serve to
17 solidify Empire's presence in Joplin, and provide the opportunity to spread costs
18 over a broader base of customers. While in the case of some utility acquisitions,
19 the opposite occurs – local jobs and local control diminish -- that is not the case
20 here. Yet OPC ignores this critical difference and claims that LU Central has not
21 gone far enough to protect Empire's workers in this transaction.

22 **Q. WHAT IS LIBERTY UTILITIES' HISTORY IN CONTRIBUTING TO THE** 23 **MISSOURI ECONOMY?**

1 A. As I indicated previously, Liberty Utilities' affiliates have been a good corporate
2 citizens in Missouri since 2005, when Liberty Utilities acquired its first utility in
3 Missouri. Since then, Liberty Utilities has added approximately 30 jobs in the
4 state, constructed a significant office building in Jackson, and made significant
5 contributions to the local communities in which its employees live and work.

6 **Q. DO YOU AGREE WITH OPC WITNESS AZAD'S CONCLUSION IN REGARD**
7 **TO EMPLOYEE MATTERS?**

8 A. Absolutely not. Instead of comparing all of the protections that LU Central has
9 undertaken for employees in Section 6.10 of the Agreement and Plan of Merger,
10 the benefits added within the City of Joplin Stipulation and Agreement, and the
11 benefits added with the IBEW Locals 1464 and 1474 Stipulation and Agreement
12 compared to other transactions, Ms. Azad castigates the company for not doing
13 more. This ignores LU Central's commitment to: (a) provide to Empire
14 employees for two years post-closing salaries and wages no less favorable than
15 what they receive today and incentive compensation and employee benefits that
16 are substantially comparable to what they receive today; and, (b) for an
17 additional three years, to provide salaries, wages, incentive compensation and
18 employee benefits that are no less favorable than what are provided to similarly
19 situated employees of Algonquin and its affiliates. This is a substantial
20 commitment, one which is not required or typically given in the context of utility
21 mergers.

22

1 Moreover, as evidenced by our Stipulation with the IBEW Locals 1464 and 1474,
2 we have provided further commitments to Empire employees, which include:

- 3 • There will be no layoff of any current bargaining unit members from either
4 IBEW Local 1464 or 1474 as a result of the Transaction.
5
- 6 • Joint Applicants will fully comply with, and not cause any amendment or
7 termination of the Empire District Electric Company Employees'
8 Retirement Plan, including but not limited to the double Pay Credits
9 provisions of the Cash-Balance formula (commonly referred to as the
10 "catch-up" provisions).
11
- 12 • All Empire employees formerly employed by Aquila Energy will continue to
13 be covered under their current retirement benefit plan.
14
- 15 • For a period of ten years, the Joint Applicants will continue to abide by all
16 agreements currently in force related to employee healthcare for
17 bargaining unit members from IBEW Local 1464 and 1474, unless there is
18 an application of or amendment to the Affordable Care Act, that would
19 impair the ability of Empire to provide the benefit or that substantially
20 increases the cost to Empire of providing such benefits.
21

22 **Q. ARE THERE OTHER COMMITMENTS THAT LU CENTRAL HAS MADE**
23 **WHICH REFLECT ITS COMMITMENT TO EMPIRE EMPLOYEES?**

24 A. Yes. Our commitment to Empire's employees goes well beyond these
25 provisions. As I indicated in my Direct Testimony, LU Central has committed to
26 maintaining Empire's Joplin headquarters.¹ Further details of this commitment
27 are set forth in the Stipulation between the Joint Applicants and the City of Joplin,
28 which includes important provisions such as the following:

- 29 • Empire and LU Central shall not effect an involuntary reduction in force or
30 involuntary retirement program which results in workforce reduction of
31 greater than 10% for a period of five years from the date of the
32 Transaction. Should there be a decision to effect an involuntary reduction
33 or an involuntary retirement program resulting in a reduction of 10% or
34 more of the workforce thereafter, Empire will endeavor to provide the City
35 of Joplin with advanced notice to the degree possible under applicable

¹ Direct Testimony of David Pasieka, p. 13, lines 14-15.

1 laws, statutes, regulations, contractual requirements pertaining to
2 confidentiality and employment agreements;

- 3
- 4 • Empire and LU Central shall not relocate its headquarters office for a
5 minimum of 15 years from the date of the Transaction. Headquarters is
6 defined as the location serving as the managerial and administrative
7 center of LU Central. Should there be a decision to relocate the Joplin
8 Street headquarters thereafter, Empire will provide the City of Joplin with
9 notice at least one year prior to any such action. The Headquarters shall
10 include 85% of the administrative supervisory, management and executive
11 positions that are currently staffed at the Joplin location;
- 12
- 13 • Empire and LU Central will use good faith efforts to consider and evaluate
14 Joplin for the location of any and all new positions.
- 15

16 As explained in Mr. Beecher's testimony, these provisions have real value not
17 only to the Joplin community but to Empire's employees who work and reside
18 there. The value of these commitments is significant and should be factored into
19 the Commission's evaluation of the proposed transaction.

20 **Q. ARE THERE ANY COMMITMENTS THAT EXTEND TO EMPLOYEES THAT**
21 **HAVE RETIRED FROM EMPLOYMENT AT EMPIRE?**

22 A. Yes. Our commitments are not just to those who currently work at Empire, but to
23 those employees who have retired but are still part of the Empire family. The
24 Joint Applicants have entered into a Stipulation with the Empire District Retired
25 Members & Spouses Association LLC, which provides for the following
26 protections to Empire retirees and their spouses regarding life insurance, health
27 insurance, pension funding, the continuation of retiree participation as an Empire
28 Healthcare Trustee, and continued Empire management participation in retiree
29 meetings:

- 30 • Empire will continue to provide current life insurance benefits (defined as
31 the life insurance policy and cost sharing mechanism) previously elected
32 by retirees, spouses, and surviving beneficiaries (referred to in this

1 Stipulation as “retirees) so long as the product is available, or if no longer
2 available, an alternative with comparable benefits. Should the Commission
3 deny recovery in rates of the cost of any such product on the grounds that
4 it is an unreasonable or an imprudent expense despite Empire’s best
5 efforts to include it in cost of service, Empire shall have the discretion to
6 discontinue the insurance benefit.
7

- 8 • For ten (10) years following the closing of the Transaction, Empire will not
9 make any change to any benefit offering (defined as the health benefit
10 design and cost sharing mechanism) that would be materially adverse to
11 any person qualifying for such benefit as of that date, so long as (1) there
12 is no material change of applicable state or federal law, rule or regulation,
13 or the application of existing law, that would impair the ability of Empire to
14 provide the benefit or substantially increases the cost to Empire of
15 providing the benefit; or (2) there is no change to the Commission’s
16 current practice authorizing the tracking and cost recovery of benefit
17 offerings and including such costs in cost of service for ratemaking
18 purposes. Empire agrees to use its best efforts to include in cost of service
19 the expense of the benefit offerings. After ten (10) years following the
20 close of the transaction, retirees shall be given the same benefit offering
21 as similarly situated retirees of Liberty Utilities.
22
- 23 • Notice of any disputes or controversy concerning the continued availability
24 of a benefit offering shall be provided to the opposing party in writing not
25 less than thirty (30) days prior to the initiation of any adjudicative action or
26 proceeding to enforce this commitment, including arbitration.
27

28 Arbitration will only be used to resolve any dispute by the mutual
29 agreement of the parties. If arbitration is agreed to by the parties, then the
30 American Arbitration Association (AAA) rules shall govern such
31 proceeding, with a petition to be filed with the AAA unless the parties
32 mutually agree to waive such requirement. Each party shall select one (1)
33 AAA approved arbitrator, and the two (2) party selected AAA arbitrators
34 shall then select a neutral third AAA approved arbitrator, with such third
35 neutral AAA approved arbitrator costs to be shared by the parties. All
36 arbitrators shall be experts in the field of the dispute. Each party shall bear
37 the costs associated with the arbitration, including, but not limited to, legal
38 fees and arbitrator costs for the arbitrator that party selects. All arbitrations
39 shall be held in Joplin, Missouri or in such other location as the parties
40 may agree. All procedural schedules shall be set by the arbitration panel,
41 with the final order issued no later than one-hundred fifty (150) days from
42 the date of the written notice of dispute. All arbitration awards are binding
43 on the parties.
44

- 45 • Empire will continue to fund its pension plan in accordance with the
46 procedures found in Appendix C to the Unanimous Stipulation and

1 Agreement filed on May 12, 2010, in Case No. ER-2010-0130, and
2 approved by Commission order issued May 19, 2010. Such annual
3 contributions to the pension plan are at least equal to the greater of either
4 minimum funding requirements of ERISA, or the accrued cost of the
5 pension plan, as required by the Commission.
6

- 7 • In recognition of the unique concerns of Empire's retirees with regard to
8 their pension and health benefits:
 - 9
 - 10 (i) Empire will continue the Healthcare Trustees, expanded to
11 allow for representation by Liberty Utilities and the Empire
12 District Retired Members & Spouses Association, LLC with
13 the Empire District Retired Members & Spouses Association
14 LLC representative's reasonable travel expenses to be paid
15 by Empire; and
 - 16
 - 17 (ii) Empire commits to continue management participation in the
18 retirees' periodic retirement meetings in order to provide an
19 ongoing opportunity for dialogue and sharing of information.
20

21 We believe these are important provisions to re-assure Empire retirees that
22 nothing will change under LU Central ownership.

23 **Q. HAVE THE JOINT APPLICANTS MADE OTHER COMMITMENTS THAT**
24 **RESULT IN BENEFITS TO THE TRANSACTION?**

25 A. Yes. As I indicated previously, the Joint Applicants entered into six Stipulations,
26 five of which were filed with the Commission on July 19, 2016, and the sixth of
27 which was filed on August 4, 2016. These stipulations are with the Commission
28 staff ("Staff"); the IBEW Locals 1464 and 1474; the Empire District Retired
29 Members & Spouses Association LLC; the City of Joplin; the Missouri Division of
30 Energy ("DE") and Earth Island Institute d/b/a Renew Missouri ("Renew
31 Missouri")²; and, the Laborer's International Union of North America ("LiUNA"). In
32 their totality, these represent significant commitments by the Joint Applicants to

² The DE/Renew Missouri Stipulation was later objected to by the Staff of the Commission.

1 ensure not only the continued success of Empire under LU Central's ownership,
2 but also the opportunity to explore some new ideas.

3
4 In particular, the Stipulation with Staff is comprehensive and addresses many
5 important topics, including customer protections, ratemaking/accounting,
6 financing, affiliate transactions and cost allocations, depreciation, tax, access to
7 records, energy efficiency, and natural gas procurement practices. As the
8 Commission will see when it reviews the master list of conditions in Sur.
9 Schedule DP-1, the Joint Applicants have worked hard to address the concerns
10 of all of the parties and successfully resolved all but a few of the conditions set
11 forth by the OPC and one proposed by the SERP recipients that we deemed to
12 be unreasonable. My testimony below addresses all of the benefits from these
13 stipulations, as well as the reasons why the Joint Applicants cannot accede to a
14 few of OPC's demands.

15 **Q. WHAT ARE SOME OF THE KEY PROVISIONS IN THE STAFF**
16 **STIPULATION?**

17 A. The following are some of the key provisions in the Staff Stipulation:

- 18 • **Parent Company Commitment:**
19 ○ Algonquin Power & Utilities Corp., on behalf of itself, its successors,
20 assignees, and its subsidiaries, and in consideration of the signatories'
21 support of the proposed acquisition embodied in this document, agrees
22 that it will uphold the conditions agreed to by Empire and LU Central in
23 this Stipulation.
24
- 25 • **Customer Protections:**
26 ○ The Stipulation provides assurances that Empire and Liberty Utilities will
27 strive to meet or exceed the customer service and operational levels
28 currently provided to their customers

- 1 ○ Empire and Liberty Utilities personnel will meet with Staff on a periodic
- 2 basis to review contact center and other service quality performance;
- 3 ○ Empire and Liberty Utilities will notify Staff of any material operational
- 4 changes concerning customer contact centers or other customer service
- 5 functions for 24 months after close of the Transaction;
- 6 ○ Empire and Liberty Utilities will provide to Staff within 30 days of the
- 7 closing of the Transaction organizational charts for those employees with
- 8 customer service responsibilities
- 9
- 10 • **Ratemaking/Accounting:**
- 11 ○ Goodwill associated with the acquisition premium will be maintained on
- 12 the books of LU Central with no rate recovery from Empire's customers;
- 13 ○ Empire will not seek recovery of any Transaction costs
- 14 ○ Non-capital Transition costs can be deferred on books of Empire or LU
- 15 Central and may be considered for recovery in future Empire rate cases
- 16
- 17 • **Financing:**
- 18 ○ If the corporate credit rating of Empire, or the entity on which it relies for
- 19 debt financing, is downgraded below BBB-, Empire commits to making
- 20 certain filings with the Commission
- 21 ○ If the corporate credit rating of Empire, or the entity on which it relies for
- 22 debt financing, is downgraded below BBB-, Empire or the Financing
- 23 Affiliate shall pursue additional legal and structural separation, to ensure
- 24 Empire continues to have access to capital at the least cost, and Empire
- 25 shall not pay a dividend to its upstream parent companies until there is
- 26 sufficient evidence that Empire's S&P Corporate Credit Rating has been
- 27 restored to the rating Empire had before the event
- 28 ○ If its corporate credit or the entity upon which it relies for debt financing
- 29 declines, Empire must file a comprehensive risk management plan with
- 30 the Commission
- 31 ○ Empire shall not seek an increase to the cost of capital as a result of this
- 32 Transaction or Empire's ongoing affiliation with Algonquin and its affiliates
- 33 other than Empire after the Transaction
- 34 ○ Certain provisions regarding Empire's per books capital structure in
- 35 subsequent Empire rate cases
- 36 ○ Any financing Empire obtains from an affiliate must comply with the
- 37 affiliate transaction rules
- 38 ○ Certain provisions regarding the impairment of goodwill and Empire's
- 39 future rates, as well as a commitment by LU Central to provide Staff with
- 40 information on its goodwill impairment analysis
- 41
- 42 • **Affiliate Transaction and Cost Allocation Matters:**
- 43 ○ Empire is to be in compliance with the affiliate transaction rules or may
- 44 seek variances from them

- Algonquin and its subsidiaries will commit that all of the information related to an affiliate transaction and charged to Empire will be treated in the same manner as though that information is under the control of Empire.
- Empire will not provide any preferential service, information or treatment to an affiliated entity consistent with the affiliate rules.

- **Depreciation:**

- Empire shall continue certain depreciation rates and related practices for its electric, gas and water assets

- **Taxes:**

- Empire will record on its books all deferred taxes related to income tax deductions or credits created by Empire's operations

- **Access to Records:**

- Empire will provide Staff and OPC with ongoing access to certain information, including rate analyst information
- Empire will provide Staff and OPC with access to information reasonably required to verify compliance with Empire's cost allocation manual
- Empire will maintain records supporting its affiliated transactions for at least 5 years.
- Empire will provide Staff and OPC with access to information reasonably required to verify compliance with Empire's cost allocation manual
- Empire will provide Staff and OPC with copies of Liberty Utilities, LU Central and Empire board of directors' meeting minutes and related documents
- If it is necessary for Staff to travel out of state to examine any records, Empire shall bear the costs of such travel

- **Natural Gas Procurement:**

- LU Central shall prepare a cost benefit analysis prior to any decision to materially change any existing gas procurement practices
- Prior to the effective date of the closing of the Transaction, Empire will provide Staff with evidence that no assignment of transportation and storage contracts with The Empire District Gas Company interstate pipeline suppliers will be required or that they have been obtained.

Q. ARE THERE ANY ENERGY EFFICIENCY AND RELATED PROVISIONS TO WHICH THE JOINT APPLICANTS HAVE AGREED?

- A. DE and Renew Missouri expressed an interest in obtaining commitments by the Joint Applicants to explore some new ideas that would continue progression towards a more renewable future in Missouri:

1 Energy Efficiency and Renewables
2

- 3 • Empire will work with DE, the Staff of the Commission (“Staff”), the Office
4 of the Public Counsel (“OPC”) and other parties through the existing DSM
5 Advisory Group to review and consider the viability of adopting additional
6 energy efficiency programs for its customers. Within one year of the
7 Commission’s finding of substantial compliance of the Empire
8 Integrated Resource Plan that follows Commission approval of a
9 Statewide Technical Reference Manual (TRM), Empire will develop and
10 submit an application for approval of a portfolio of DSM programs under
11 the Missouri Energy Efficiency Investment Act (MEEIA).
12
- 13 • Hydroelectric Rate Impact. Within three (3) months of the completion of
14 the Transaction, Empire will provide to Staff, OPC, DE, Renew Missouri,
15 and other interested stakeholders Empire’s assessment of the rate impact
16 of eliminating or phasing-out reliance on its Ozark Beach facility for
17 compliance with the Renewable Energy Standard.
18
- 19 • Combined Heat and Power (“CHP”). Within one year of the completion of
20 the Transaction, Empire, with assistance from DE and the Midwest CHP
21 Technical Assistance Partnership (“TAP”), will complete an outreach
22 survey report of potential CHP customers within the Empire District
23 Missouri gas service territory. Target sectors will include public,
24 commercial, institutional, and industrial facilities with consistent gas
25 consumption throughout the year, indicative of consistent thermal load
26 requirements. Example customers that may generally fit this profile
27 include, but are not limited to, hospitals, large residential facilities
28 such as nursing homes and correctional facilities, universities, and food
29 manufacturers. The report shall be shared with stakeholders.
30
- 31 • Empire will be authorized to defer and record on its books, consistent with
32 the terms of its existing demand side management deferral mechanism,
33 any third party costs associated with the Hydroelectric Rate Impact
34 assessment and the Combined Heat and Power survey. Empire will be
35 authorized to maintain this regulatory asset on its books until the effective
36 date of rates resulting from Empire’s next general rate proceeding.
37
- 38 • Microgrid Industrial Consortium. Within six (6) months following the
39 completion of the Transaction and the publication of best practices
40 recommendations for microgrid interconnection by the Missouri University
41 of Science and Technology’s Microgrid Industrial Consortium, Empire will
42 meet with DE to consider a microgrid interconnection strategy consistent
43 with the best practices recommendations of the Microgrid Industrial
44 Consortium.
45

- Empire will review and consider the viability of offering a community solar or solar subscription program that provides its customers with the option of purchasing blocks of electricity generated from solar installations constructed and/or owned by Empire within the state of Missouri. Empire will solicit input and feedback on proposals and will work with Staff, OPC, DE, Renew Missouri, and other interested stakeholders to design a successful customer solar program, with the goal of submitting a formal proposal to the Commission within one year of the completion of the Transaction.

In addition, Staff and the Joint Applicants have agreed that Empire will be bound by any Commission order in ER -2016-0023 regarding Demand Side Management programs. We believe these provisions (or modifications as may be acceptable to the parties and the Commission) are important for Missouri's future, and are consistent with Liberty Utilities' actions in other jurisdictions in which it operates.

Q. DID THE STIPULATIONS PROVIDE ANY OTHER BENEFITS?

A. Yes. While I previously mentioned some of the provisions relating to Empire's commitment to maintaining employment in Joplin, there are other provisions that provide assurances to the Joplin community at large in the non-unanimous stipulation with the City of Joplin. These include:

- Empire will continue to make available employees for appointment on the City of Joplin's municipal boards and commissions.
- Empire will make available in Joplin, at least annually, the President of Liberty Utilities Co. for discussions with municipal officials.
- Empire will continue its involvement with the Joplin Chamber of Commerce, economic development initiatives, construction projects, and other community development projects.
- During the period of time in Paragraph 5³ [Paragraph relates to relocation of the Joplin headquarters and is discussed on page 10 of this testimony

³ Paragraph 5 relates to the relocation of the headquarters and is addressed previously in this testimony.

1 Sales tax collections and franchise tax collections will continue to be
2 sourced at the headquarters and all payments for the TIF District shall be
3 maintained in accordance with current obligations.
4

5 Similarly, LiUNA and the Joint Applicants have agreed to the following provision
6 which results in the establishment of a framework and guiding principles for
7 certain large construction and maintenance projects:

8 Empire commits to implementing a Responsible Contractor Policy for
9 construction and maintenance projects that include fixed-price contracts in
10 excess of \$1 million. The policy shall consider the inclusion of the
11 following principles and guidelines including experience with past projects;
12 robustness of safety programs; commitment to quality; a skilled workforce;
13 financial integrity; cost and overall prudence; and local sourcing. When
14 assessing bids from contractors who meet the principles included herein,
15 Empire will consider additional cost-savings on a project as a result of
16 contractor-funded training, apprenticeship, and certification programs. To
17 further this objective, Empire will quantify the costs associated with
18 providing similar training, apprenticeship, and certification services in-
19 house.
20

21 **OPC ISSUES**
22

23 **Q. OPC WITNESS AZAD, AT PAGE 21, LINE 16, THROUGH PAGE 22, LINE 13**
24 **OF HER REBUTTAL TESTIMONY, CHALLENGES YOUR CLAIM THAT**
25 **THERE IS A BENEFIT OF SCALE TO BE HAD WITH A COMBINATION OF**
26 **CUSTOMER INFORMATION SYSTEMS (“CIS”). DO YOU AGREE?**

27 **A.** Not at all. It is well known that CIS systems can be a significant capital
28 investment made by a utility. It is also well known that Empire plans to undertake
29 an examination of its CIS given that it is nearing the end of its useful life. While
30 Empire’s CIS continues to function today, Joint Applicant witness Ms. Walters
31 explains in her surrebuttal testimony that Empire does plan to undertake an
32 examination of how much longer it can reasonably rely on its CIS, and the time

1 frame for exploring new systems. Ms. Azad makes much ado over this study,
2 and that it has not yet occurred, when in fact conducting such a study is the
3 logical next step given the enormity of a CIS investment. With the likelihood of a
4 new CIS looming on the horizon, it is clear that without this merger, Empire's
5 217,000 customers would be shouldering the expense of an entirely new CIS on
6 their own. With the merger, there will be an opportunity to implement a new CIS
7 and share the cost of the system across Empire's 217,000 customers, plus all of
8 Liberty Utilities' 560,000 customers. Simple math makes it clear that having
9 more customers across which to spread this expense is beneficial. Mr. Eichler's
10 Surrebuttal Testimony demonstrates that math, explaining the higher projected
11 per-customer expense of a new Empire CIS without Liberty Utilities.

12 **Q. AT PAGES 7 THROUGH 9 OF HIS REBUTTAL TESTIMONY, MR. MARKE**
13 **QUESTIONS YOUR ABILITY TO SEAMLESSLY TRANSITION EMPIRE TO**
14 **NEW OWNERSHIP. DOES LIBERTY UTILITIES HAVE A HISTORY OF**
15 **SUCCESS IN THIS REGARD?**

16 A. Yes, Liberty Utilities affiliates have a demonstrated history of successfully
17 integrating utility acquisitions, having completed 7 in the last five years⁴. As
18 explained in the Joint Applicants' direct testimony, the entire premise of this
19 transaction is that Empire's day-to-day operations will continue in the same
20 fashion after the acquisition as they do today. In all respects, the same
21 employees will continue to provide the same excellent service to customers as
22 they do now – from the same location, using the same assets, under the same
23 "Empire" name. As a result, there are no operational changes that will occur

⁴ Direct Testimony of David Pasioka at 6-7.

1 once the transaction closes. Mr. Beecher, who will continue to lead the Empire
2 organization post-closing, confirms this in his Surrebuttal Testimony.

3 **Q. MR. PFAFF CLAIMS THERE WILL BE A RATEPAYER IMPACT (INCREASED**
4 **RATES) ASSOCIATED WITH PLANS LU CENTRAL MAY HAVE**
5 **CONCERNING CAPITAL INVESTMENTS.⁵ DO YOU AGREE?**

6 A. No. Mr. Pfaff's testimony goes on at length about potential differences between
7 how Empire budgets capital today versus how capital is budgeted at Liberty
8 Utilities. Mr. Pfaff's testimony wholly ignores the role of the Commission in this
9 process; that is, that rate recovery of any investment occurs *only if* the
10 Commission determines that the investment is prudent and used and useful. As
11 a result, the only impact on ratepayers is one that receives approval from this
12 Commission. Regardless, this issue is a red herring and has no relevance to
13 whether the proposed transaction will result in no net detriment.

14 **Q. AT PAGE 14 THROUGH 17, MR. PFAFF CHALLENGES YOUR CLAIM THAT**
15 **THE NEW OWNERSHIP STRUCTURE WILL RESULT IN NO MATERIAL**
16 **BUSINESS CHANGES GOING FORWARD BY POINTING TO BUDGETING**
17 **FOR EMPIRE'S CAPITAL INVESTMENT PROGRAM. DO YOU AGREE WITH**
18 **HIS ASSESSMENT?**

19 A. No. Mr. Pfaff argues that Empire will be competing with other Liberty Utilities
20 subsidiaries for both management attention and capital which will be detrimental.
21 This assertion runs counter to the very proposal before the Commission in this
22 case, which is to run Empire from Joplin with oversight by an LU Central board
23 comprised of regional representation. Further, Liberty Utilities does not operate

⁵ Pfaff Reb., page 9, lines 9-14; page 18, lines 1-25 (Highly Confidential).

1 based on a model where capital is limited to only certain companies or projects.
2 If there is a demonstrable need for a capital investment in the Empire system, the
3 capital will be made available independent of the needs of other Liberty Utilities
4 subsidiaries. This Commission certainly has ample experience regulating other
5 Liberty Utilities affiliates upon which to base its evaluation of Mr. Pfaff's claims.
6 Based on my experience at Liberty Utilities and my history with our other utility
7 acquisitions, I see no basis that Empire would not have access to the necessary
8 capital or management attention to continue to provide safe and reliable service
9 to its customers.

10
11 **OPC'S PROPOSED CONDITIONS**

12 **Q. HAVE YOU REVIEWED OPC'S RECOMMENDATION CONCERNING THE**
13 **JOINT APPLICATION?**

14 A. Yes. As summarized by Mr. Marke at page 10 of his Rebuttal Testimony, OPC
15 recommends that the Commission reject the Joint Applicants' request for
16 approval of the acquisition because Mr. Marke believes that the proposed
17 transaction "would result in a detriment to Missouri retail ratepayers." He further
18 states that Mr. Pfaff and Ms. Azad have filed testimony that proposes
19 recommendations to "mitigate risk and minimize the overall determinant [sic] to
20 the public interest."

21 **Q. DOES THE COMPANY HAVE A POSITION ON OPC'S PROPOSED**
22 **RECOMMENDATIONS?**

1 A. Yes. We have carefully reviewed all of the conditions that OPC recommends in
2 its testimony and have developed a list of each condition and the Company's
3 position on it. That list is attached to my testimony as **Sur. Schedule DP-2**. A
4 number of the conditions proposed by OPC already are addressed in stipulations
5 previously filed in this case. My testimony below will discuss those conditions to
6 which we have already agreed, those to which we can agree with modifications,
7 and those to which we cannot agree.

8 **Q. PLEASE IDENTIFY THOSE CONDITIONS TO WHICH THE JOINT**
9 **APPLICANTS HAVE ALREADY AGREED OR CAN ACCEPT.**

10 A. Yes. As indicated on Sur. Schedule DP-2, there are many conditions to which
11 the Company has already agreed in the Stipulation with Staff. While the OPC
12 and Staff conditions are not verbatim, they are conceptually very similar and
13 intended to address the same concern. I have noted on Sur. Schedule DP-2
14 where there is conceptual similarity among the conditions between OPC, Staff,
15 and other parties. Given that Staff and the Joint Applicants have already
16 resolved these issues, there is no need to adopt the OPC conditions on the same
17 topics.

18 **Q. ARE THERE CONDITIONS TO WHICH THE JOINT APPLICANTS CAN**
19 **AGREE IF OPC'S LANGUAGE IS MODIFIED?**

20 A. Yes. As reflected on Sur. Schedule DP-2, there are some conditions that, if
21 modified, would be acceptable to the Joint Applicants. These modifications are
22 intended to reflect our willingness to try to work to meet OPC's concerns.

1 **Q. PLEASE IDENTIFY THOSE CONDITIONS TO WHICH THE JOINT**
2 **APPLICANTS CANNOT AGREE.**

3 A. OPC recommends certain conditions that we simply cannot accept. These range
4 from certain financial conditions to conditions that go to how Empire operates
5 after the transaction closes. For example, OPC recommends that the
6 Commission order Empire to: (a) pay a bill credit of \$100 per customer, resulting
7 in perhaps as much as a \$21 million payment; and, (b) fund eight community
8 action agencies at an amount of \$200,000 per year for the next ten years,
9 totaling \$16 million. In total, OPC appears to request that Empire pay in excess
10 of \$37 million to obtain the Commission's approval of the transaction. There is
11 no Commission precedent for any of these proposals, nor does this transaction
12 call for that type of imposition.

13 **Q. ARE THERE OTHER OPC CONDITIONS THAT YOU CANNOT ACCEPT?**

14 A. Yes. Despite the fact that LU Central has demonstrated its commitment to
15 Empire employees both past and present through provisions in the filed
16 stipulations and its commitments to the Joplin community, the OPC attempts to
17 micromanage Algonquin's business by seeking to condition approval of this
18 transaction on the requirement that the Algonquin board of directors meet in
19 Joplin each year. Algonquin, as a publicly traded company, must be able to
20 retain the flexibility of where and when it holds its board of directors meetings.
21 There is no legal justification for the Commission to determine the location of
22 those meetings.

23

1 In a similar vein, Mr. Pfaff would have the Commission dictate the composition of
2 Empire's board of directors. (See Pfaff Reb., p. 23-24) Mr. Pfaff's
3 recommendation – that this Commission determine who sits on the board of
4 directors of a utility and/or a utility holding company – is extreme and
5 unprecedented. I have consulted with my Missouri counsel, who is unaware of a
6 single instance where the Commission has mandated any requirements
7 associated with the make-up or conduct of a utility's board of directors. These
8 are matters of corporate governance reserved to the shareholders of the
9 company. Nevertheless, as indicated on Sur. Schedule DP-2, we are committed
10 to ensuring that the boards of directors of LU Central and Empire reflect the
11 knowledge and expertise within the region, and have committed to maintain a
12 board of directors, the majority of which are independent from Algonquin.

13
14 Lastly, OPC requests that the Commission require onerous reports and analyses
15 relating to job losses and gains in Joplin. These reports are not necessary and
16 will only take Empire's time away from more useful functions in the operation of
17 its business. For that reason, we cannot support them.

18 **Q. DO OTHER JOINT APPLICANT WITNESSES ADDRESS SOME OF THE**
19 **CONDITIONS TO WHICH YOU CANNOT AGREE?**

20 A. Yes. Mr. Eichler's testimony addresses OPC's proposed ring-fencing conditions,
21 issues associated with Empire's capital structure, and the payment of dividends;
22 Ms. Walters addresses the load research and CIS conditions, as well as aspects
23 of the charitable contributions and corporate social responsibility issues; and Mr.

1 Krygier addresses the conditions relating to charitable contributions, rate case
2 moratorium, access to records, corporate social responsibility, and the most
3 favored nation clause.

4 SERP ISSUES

5 **Q. MR. WILKINS FILED REBUTTAL TESTIMONY ON BEHALF OF EDESR**
6 **REQUESTING THAT THE COMMISSION MANDATE THAT EMPIRE FUND A**
7 **RABBI TRUST FOR THE BENEFIT OF SERP PARTICIPANTS IN AN AMOUNT**
8 **OF NEARLY TEN MILLION DOLLARS. IS THERE A NEED FOR SUCH**
9 **ACTION?**

10 A. No. First, the premise for Mr. Wilkins' testimony is that the new corporate
11 structure is inherently more risky than that of Empire stand-alone. As I indicated
12 above, there is no factual basis for this claim, as explained by Mr. Fetter and Mr.
13 Eichler. Mr. Wilkins' concerns are speculative and unsubstantiated, and do not
14 represent a direct and present change of circumstance. Second, the risk that Mr.
15 Wilkins identifies (i.e., that Empire might default on its SERP obligations) already
16 exists today, yet at no time in the past has Empire ever taken steps to address
17 the risk about which Mr. Wilkins is concerned.

18 **Q. SHOULD THIS COMMISSION WANT TO INSERT ITSELF INTO THESE**
19 **TYPES OF DECISIONS?**

20 A. No. Empire's SERP is overseen by Empire's management. It would be
21 inappropriate for the Commission to mandate the full funding of a Rabbi trust for
22 the eight retirees. Not only would this be direct interference with the
23 responsibilities of Empire's management team, it would effectively bind the

1 Commission to approving the recovery of this expense in the form of rates that
2 would be higher than otherwise would be the case. How could the Commission
3 mandate an investment of this magnitude and then deny recovery of the
4 associated expenses in rates? Ironically, this might actually create a detriment to
5 the public interest in the form of higher rates, while providing financial protection
6 to a very limited class of former employees.

7 **Q. DO YOU BELIEVE THAT THE RABBI TRUST WILL ADDRESS THE**
8 **CONCERN RAISED BY EDESR?**

9 A. I do not think so. After having made due inquiry, I have satisfied myself that a
10 Rabbi trust would not necessarily provide meaningful protection from creditor
11 claims in any event. My conclusion is that this approach would represent a real
12 expense to Empire without any commensurate benefit.

13 **Q. IS THERE A DETRIMENT WITH MAINTAINING THE SERP AS IS?**

14 A. No. Even if the concerns that Mr. Wilkins articulates were legitimate ones, the
15 detriment that he claims is not a *public* detriment. The concerns of the EDESR is
16 a *private* matter with respect to which the Commission should not concern itself.
17 As to the cost of addressing Mr. Wilkins' request that Empire commit \$10 million
18 dollars to fund a Rabbi trust for the protection of a small number of executive
19 level retirees, this represents a diversion of a substantial sum of money that
20 otherwise could be used to continue to provide safe and adequate service to
21 Empire's customers.

22 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

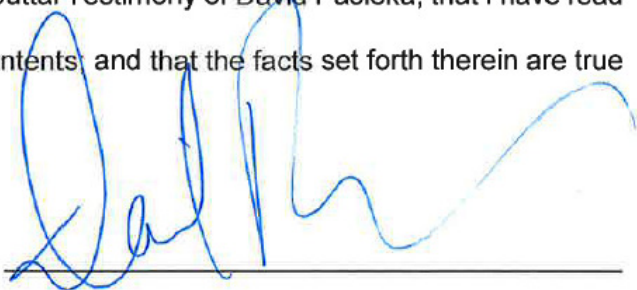
23 A. Yes, it does.

24

VERIFICATION

PROVINCE OF ONTARIO)
) ss:
CANADA)

I, David Pasieka, being first duly sworn on oath, depose and state that I am the witness identified in the foregoing Surrebuttal Testimony of David Pasieka; that I have read the testimony and am familiar with its contents and that the facts set forth therein are true and correct.



A handwritten signature in blue ink, appearing to be 'David Pasieka', written over a horizontal line.

SUBSCRIBED AND SWORN to before me this 2nd day of August, 2016.



_____ Notary Public

Commission/Appointment Expires: Does not expire



A heavily blurred notary seal, likely containing the name and commission details of the Notary Public.

Master List of All Conditions

	Proposed Condition	Source	Joint Applicants Accept or Accept with Modifications	Joint Applicants Cannot Accept
	CUSTOMER PROTECTIONS			
1.	Empire and Liberty will strive to meet or exceed the customer service and operational levels currently provided to their customers.	Staff Stipulation	Accept	
2.	Empire and Liberty will meet with Staff Consumer and Management Analysis personnel on a periodic basis (such as quarterly) or, as Staff deems necessary, after the close of the Transaction to review contact center and other service quality performance. Staff and/or OPC may request additional periodic meetings with Empire and Liberty personnel to address customer service operating procedures and the level of service being provided to Missouri customers.	Staff Stipulation	Accept	
3.	Empire and Liberty shall notify Staff of any material operational changes concerning customer contact centers, or other customer service functions, occurring within 24 months of the close of the Transaction. Material operational changes include, but are not limited to: Empire and/or Liberty employing call deferral technologies such as Virtual Hold or Call Back In Queue, outsourcing call center or other service quality processes, such as meter reading, substantial changes in billing processes, and the utilization of services or management agreements to perform any of the customer service functions currently performed by any of the previously noted three companies. Empire and Liberty agree to begin reporting the utilization of call deferral technologies if and when they are implemented. Such reports shall include 1) the number of calls offered call deferral technology, and 2) the number of calls accepting call deferral technology.	Staff Stipulation	Accept	
4.	Within thirty (30) days after closing the Transaction, Empire and LU Central shall provide Staff and OPC a current organizational chart, illustrating the positions and names of employees that have customer service responsibilities. In the event structural changes are made to Empire’s organization, updated organizational charts shall be provided to Staff and OPC within 30 days of such changes.	Staff Stipulation	Accept	

5.	Empire and Liberty agree to not make available, sell or transfer customer information to affiliated or unaffiliated entities without prior informed consent of the Missouri customer, other than as necessary to provide services to and in support of their regulated operations.	Staff Stipulation	Accept	
6.	In evaluating billing systems for future use, the Joint Applicants shall consider the ability of any billing system to maintain or improve cumulative frequency distribution of bills ending in each block in each billing cycle and the quality of existing load research and metering data.	Staff Stipulation	Accept	
7.	The Joint Applicants agree that Empire’s load research sample will take into account both the summer and winter usage of the customers in each customer class before Empire’s next subsequent rate case.	Staff Stipulation	Accept	
8.	The billing and customer information system platform at Empire will be in use for their expected useful life, which will be at least as long as their scheduled depreciation period. If, for any reason, the use of these system platforms is terminated before the end of their scheduled depreciation period, ratepayers shall not be responsible for any un-depreciated costs or lease payment obligations remaining after the date upon which use is terminated.	OPC Testimony		See Walters testimony at 4-6
EMPLOYEE PROTECTIONS				
1.	There will be no layoff of any current bargaining unit members from either IBEW Local 1464 or 1474 as a result of the Transaction.	IBEW Stipulation	Accept	
2.	Joint Applicants will fully comply with, and not cause any amendment or termination of the Empire District Electric Company Employees’ Retirement Plan, including but not limited to the double Pay Credits provisions of the Cash-Balance formula (commonly referred to as the “catch-up” provisions).	IBEW Stipulation	Accept	
3.	All Empire employees formerly employed by Aquila Energy will continue to be covered under their current retirement benefit plan.	IBEW Stipulation	Accept	
4.	For a period of ten years, the Joint Applicants will continue to abide by all agreements currently in force related to employee healthcare for bargaining unit members from IBEW Local 1464 and 1474, unless there is an application of or amendment to the Affordable Care Act, that would impair the ability of Empire to provide the benefit or that substantially increases the cost to Empire of providing such benefits.	IBEW Stipulation	Accept	
5.	Empire and LU Central shall not effect an involuntary reduction in force or involuntary retirement program which results in workforce reduction of greater than 10% for a period of five years from the date of the Transaction. Should there be a decision to effect an involuntary reduction or an involuntary retirement program resulting in a reduction of 10% or more of the workforce thereafter, Empire will endeavor to provide the City of Joplin with	City of Joplin Stipulation	Accept	

	advanced notice to the degree possible under applicable laws, statutes, regulations, contractual requirements pertaining to confidentiality and employment agreements.			
6.	Empire and LU Central shall not relocate its headquarters office for a minimum of 15 years from the date of the Transaction. Headquarters is defined as the location serving as the managerial and administrative center of LU Central. Should there be a decision to relocate the Joplin Street headquarters thereafter, Empire will provide the City of Joplin with notice at least one year prior to any such action. The Headquarters shall include 85% of the administrative supervisory, management and executive positions that are currently staffed at the Joplin location.	City of Joplin Stipulation	Accept	
7.	Empire and LU Central will use good faith efforts to consider and evaluate Joplin for the location of any and all new positions.	City of Joplin Stipulation	Accept	
8.	For a period of five years following the merger, there shall be no net reduction in employment levels of Missouri-based employees (Empire employees who reside and/or work in the State of Missouri) at Empire resulting from involuntary attrition. “Involuntary attrition,” for purposes of this commitment, includes but is not limited to transfer-or-quit offers where an employee is given the option to quit rather than be transferred to a work location outside of the State of Missouri or to accept a position that is not substantially similar to the employee’s current position.	OPC Testimony	Accept to the extent covered by Employee Protections Condition #5	
9.	Empire will file annual reports with the Commission that detail all job losses and job gains at Empire for a period of ten years following the merger. This report will include descriptions for all job losses, including title, department, reason, and a statement regarding whether the job loss was involuntary or voluntary, as well as the Company’s definition of “voluntary attrition” and “involuntary attrition” (to include, but not be limited to transfer-or-quit offers where an employee is given the option to quit rather than be transferred to a work location outside of the State of Missouri or to accept a position that is not substantially similar to the employee’s current position). In the event that a “substantially similar” position is offered to an employee who elects to resign rather than accept the position, Empire will provide a description of the job offered, including details of the major characteristics of the position, including but not limited to salary and benefits, title, office location, and reporting and supervision duties. In this report, the Applicants will also provide a detailed analysis of all costs associated with any new positions resulting from the merger for which costs are directly charged and/or indirectly allocated to utility customers in Missouri.	OPC Testimony		Condition is onerous, has privacy implications, and should not be necessary in light of commitments to City of Joplin

	<p>In this report, the Applicants will provide an analysis of the changes to the positions of current Empire Missouri employees, in sufficient detail to ascertain whether and the extent to which duties of employees expanded as a result of making Empire’s headquarters a regional headquarter (Liberty Central). The intention of this analysis and resulting information is to address whether employees are anticipated to significantly increase their duties to an extent that may jeopardize the quality of their services in a manner that is detrimental to the public interest.</p>			
10.	<p>Empire will continue to provide each Company Employee (each individual who is employed by the Empire or its subsidiary immediately prior to the merger and who remains employed thereafter by the surviving corporation, parent or any of their affiliates):</p> <p>(i) a base salary or wage rate that is no less favorable than that provided to the company employee immediately prior to the merger,</p> <p>(ii) aggregate incentive compensation opportunities that are substantially comparable, in the aggregate, to those provided to the company employee immediately prior to the merger, and</p> <p>(iii) employee benefits that are substantially comparable, in the aggregate, to those provided to the company employee immediately prior to the merger.</p> <p>In addition, for the three-year period that follows (years three through five) the merged company will:</p> <p>Treat employees with respect to the payment of base salary or wage rate, incentive compensation opportunities, employee benefits and severance benefits no less favorably in the aggregate than similarly situated employees of the Parent and its Affiliates. Prior to the third anniversary of the merger, the parent shall not, and shall cause the surviving corporation to not, terminate or amend in any manner that is materially adverse to the participants therein.</p>	OPC Testimony		This condition is already addressed in Section 6.10 of Agreement and Plan of Merger.
	RETIREE PROTECTIONS			
1.	<p>Empire will continue to provide current life insurance benefits (defined as the life insurance policy and cost sharing mechanism) previously elected by retirees, spouses, and surviving beneficiaries (referred to in this Stipulation as “retirees) so long as the product is available, or if no longer available, an alternative with comparable benefits. Should the Commission</p>	Empire District Retired Members &	Accept	

	<p>deny recovery in rates of the cost of any such product on the grounds that it is an unreasonable or an imprudent expense despite Empire's best efforts to include it in cost of service, Empire shall have the discretion to discontinue the insurance benefit.</p>	<p>Spouses Association LLC Stipulation</p>		
<p>2.</p>	<p>For ten (10) years following the closing of the Transaction, Empire will not make any change to any benefit offering (defined as the health benefit design and cost sharing mechanism) that would be materially adverse to any person qualifying for such benefit as of that date, so long as (1) there is no material change of applicable state or federal law, rule or regulation, or the application of existing law, that would impair the ability of Empire to provide the benefit or substantially increases the cost to Empire of providing the benefit; or (2) there is no change to the Commission's current practice authorizing the tracking and cost recovery of benefit offerings and including such costs in cost of service for ratemaking purposes. Empire agrees to use its best efforts to include in cost of service the expense of the benefit offerings. After ten (10) years following the close of the transaction, retirees shall be given the same benefit offering as similarly situated retirees of Liberty Utilities.</p> <p>Notice of any disputes or controversy concerning the continued availability of a benefit offering shall be provided to the opposing party in writing not less than thirty (30) days prior to the initiation of any adjudicative action or proceeding to enforce this commitment, including arbitration.</p> <p>Arbitration will only be used to resolve any dispute by the mutual agreement of the parties. If arbitration is agreed to by the parties, then the American Arbitration Association (AAA) rules shall govern such proceeding, with a petition to be filed with the AAA unless the parties mutually agree to waive such requirement. Each party shall select one (1) AAA approved arbitrator, and the two (2) party selected AAA arbitrators shall then select a neutral third AAA approved arbitrator, with such third neutral AAA approved arbitrator costs to be shared by the parties. All arbitrators shall be experts in the field of the dispute. Each party shall bear the costs associated with the arbitration, including, but not limited to, legal fees and arbitrator costs for the arbitrator that party selects. All arbitrations shall be held in Joplin, Missouri or in such other location as the parties may agree. All procedural schedules shall be set by the arbitration panel, with the final order issued no later than one-hundred fifty (150) days from the date of the written notice of dispute. All arbitration awards are binding on the parties.</p>	<p>Empire District Retired Members & Spouses Association LLC Stipulation</p>	<p>Accept</p>	

3.	Empire will continue to fund its pension plan in accordance with the procedures found in Appendix C to the Unanimous Stipulation and Agreement filed on May 12, 2010, in Case No. ER-2010-0130, and approved by Commission order issued May 19, 2010. Such annual contributions to the pension plan are at least equal to the greater of either minimum funding requirements of ERISA, or the accrued cost of the pension plan, as required by the Commission.	Empire District Retired Members & Spouses Association LLC Stipulation	Accept	
4.	In recognition of the unique concerns of Empire’s retirees with regard to their pension and health benefits: (i) Empire will continue the Healthcare Trustees, expanded to allow for representation by Liberty Utilities and the Empire District Retired Members & Spouses Association, LLC with the Empire District Retired Members & Spouses Association LLC representative’s reasonable travel expenses to be paid by Empire; and (ii) Empire commits to continue management participation in the retirees’ periodic retirement meetings in order to provide an ongoing opportunity for dialogue and sharing of information.	Empire District Retired Members & Spouses Association LLC Stipulation	Accept	
5.	Establish a Rabbi trust in the amount of \$9.886 million for the benefit of SERP recipients.	Wilkins Testimony		See Eichler testimony at 28-30 and Fetter testimony at 16-19
COMMUNITY PROTECTIONS				
1.	Empire will continue to make available employees for appointment on the City of Joplin’s municipal boards and commissions.	City of Joplin Stipulation	Accept	
2.	Empire will make available in Joplin, at least annually, the President of Liberty Utilities Co. for discussions with municipal officials.	City of Joplin Stipulation	Accept	
3.	Empire will continue its involvement with the Joplin Chamber of Commerce, economic development initiatives, construction projects, and other community development projects.	City of Joplin	Accept	

		Stipulation		
4.	During the period of time in Paragraph 5 Sales tax collections and franchise tax collections will continue to be sourced at the headquarters and all payments for the TIF District shall be maintained in accordance with current obligations.	City of Joplin Stipulation	Accept	
RATEMAKING/ACCOUNTING CONDITIONS				
1.	Goodwill associated with the premium over book value of the assets paid for the shares of Empire stock (referred to for purposes of this stipulation as “Acquisition Premium”) will be maintained on the books of LU Central. The amount of any acquisition premium paid for Empire shall not be recovered in retail rates. Nothing herein shall preclude any party to this Agreement from taking a position in any future ratemaking proceedings involving Empire regarding the ratemaking measures and adjustments necessary to ensure no impact from the acquisition premium on rates. Empire will not seek direct or indirect recovery or recognition of any acquisition premium through any purported acquisition savings “sharing” adjustment (or similar adjustment) in future rate cases.	Staff Stipulation	Accept	
2.	Transaction costs include, but are not limited to, those costs relating to obtaining regulatory approvals, development of transaction documents, investment banking costs, costs related to raising equity incurred prior to the close of the Transaction, payments to employees who invoke severance payment agreements, and communication costs regarding the ownership change with customers and employees. Empire will not seek either direct or indirect rate recovery or recognition of any transaction costs through any purported acquisition savings “sharing” adjustment (or similar adjustment) in any future rate cases.	Staff Stipulation	Accept	
3.	Transition costs are those costs incurred to integrate Empire under the ownership of LU Central and includes integration planning and execution, and “costs to achieve.” Transition costs include capital and non-capital costs. Non-capital transition costs can be ongoing costs or one- time costs. Non-capital transition costs can be deferred on the books of LU Central or Empire to be considered for recovery in future Empire rate cases. If subsequent rate recovery is sought, Empire will have the burden of proving that the recoveries of any transition costs are just and reasonable and the costs provide benefits to its customers.	Staff Stipulation	Accept	
4.	The Joint Applicant’s agree for any rate cases wherein Empire seeks recovery of merger transition costs, Empire must provide documentation that demonstrates whether, and the extent to which, these transition costs resulted in cost savings for Empire customers. Empire commits to seek no recovery of merger transition costs except for those which are fully documented, justified, and supported by quantifiable cost savings.	OPC Testimony	Accept to the extent covered by Ratemaking/Accounting Condition #3	

5.	Transaction Costs are not to be recovered in rates. Transaction and Transition Costs in total shall define and encompass all costs resulting from the merger, which would not have been incurred but for the merger. Transaction costs shall include, in addition to costs associated with closing the transaction—legal and consulting fees associated with merger approvals, investment banking fees, HSR filings fees, and CFIUS filing fees—all one- time, merger-related temporary costs that do not create long-term or future benefits to ratepayers. This includes severance costs related to termination of employees as a direct result of this transaction, termination fees incurred in conjunction with the transaction, and the cost of compliance with applicable merger conditions, such as establishment of appropriate ring-fencing measures. Both Transaction and Transition costs shall be fully segregated from one another and from non-merger related expenses in a manner that enables the Commission, Staff, and the OPC to review these costs, and if they deem appropriate, in Empire’s next rate case proceeding, advocate that the costs be excluded from rates to the extent necessary	OPC Testimony	Accept to the extent covered by Ratemaking/Accounting Condition #2	
6.	The Joint Applicants shall ensure that merger accounting is rate-neutral for Empire customers. This includes but is not limited to the Joint Applicants establishing on the books of Empire no new regulatory assets related to merger accounting.	OPC Testimony	Accept	
7.	The Applicants will ensure that the merger will be rate-neutral for Empire’s customers. In ensuring that the transaction is rate-neutral, the Applicants commit that the merger will not affect the ratemaking treatments of ADIT and ADITC balances, and commit that there will be no establishment of regulatory assets as part of the merger.	OPC Testimony	Accept to the extent covered by Tax Matters Condition #2	
FINANCING CONDITIONS				
1.	<p>1. In the event The Empire District Electric Company (“Empire”), and/or the affiliate on which it relies on for its debt financing (“Financing Affiliate”), should have its Standard & Poor’s (“S&P”) Corporate Credit Rating downgraded to below BBB- , Empire commits to file:</p> <ul style="list-style-type: none"> a. Notice with the Commission within five (5) business days of such downgrade; b. A pleading with the Commission within 60 days which shall include the following: <ul style="list-style-type: none"> i. A plan identifying all reasonable steps, taking into account the costs, benefits and expected outcomes of such actions, that will be taken to restore and maintain a S&P BBB- or above credit rating for Empire and/or the Financing Affiliate. If Empire’s plan does not involve taking steps to restore and maintain an S&P BBB- or above credit rating for either or both of these entities then Empire shall concisely state why the cost of such steps is not reasonable or necessary; 	Staff Stipulation	Accept	

	<p>ii. Additionally, Empire shall specifically address the impact, or lack thereof, it believes the S&P Corporate Credit Rating of below BBB- has had and will have on its capital costs;</p> <p>iii. Documentation, including but not limited to, a cost of capital study showing how Empire will not pass along higher capital costs to its Missouri customers, directly or indirectly, due to the downgrade(s);</p> <p>iv. File with the Commission, every 45 days thereafter until Empire, and/or the Financing Affiliate, have regained an S&P Corporate Credit Rating of BBB- or above, a status report with respect to the implementation of steps to restore the Corporate Credit Ratings to BBB- or above and a study that estimates the increased cost of capital, if any, Empire has incurred due to S&P Corporate Credit Ratings of below BBB-;</p> <p>v. If the Commission determines that Empire's, and/or the Financing Affiliate's, Corporate Credit Rating decline has caused its service to decline, Empire shall be required to file a report that demonstrates to the Commission that it can adequately safeguard capital produced and secured by its public utility assets. If Empire cannot sufficiently demonstrate this ability, then Empire shall execute reasonable steps to ensure Empire's S&P Corporate Credit Rating will be based on its own stand-alone credit quality. These steps may include consideration of restoring Empire's corporate financing functions and restricting the distribution of cash flows to its affiliates in the event that Empire has transferred these activities to an affiliate.</p>			
2.	<p>In the event Empire's affiliation with Algonquin Power & Utilities Corp. and its companies should cause Empire's and/or the Financing Affiliate's S&P Corporate Credit Rating to be downgraded to below BBB-, Empire, or the Financing Affiliate, shall pursue additional legal and structural separation, if necessary, from the affiliate(s) causing the downgrade, to ensure Empire continues to have access to capital at the least cost. Empire shall not pay a dividend to its upstream parent companies until there is sufficient evidence that Empire's S&P Corporate Credit Rating has been restored to the rating Empire had before the event.</p>	Staff Stipulation	Accept	
3.	<p>If Empire's S&P Corporate Credit Rating declines, and/or the credit rating of the Financing Affiliate declines, Empire shall file with the Commission a comprehensive risk management plan that assures Empire's access to and cost of capital will not be further impaired. The plan shall include a non-consolidation opinion if required by S&P.</p>	Staff Stipulation	Accept	
4.	<p>Empire shall not seek an increase to the cost of capital as a result of this Transaction or Empire's ongoing affiliation with Algonquin Power & Utilities Corp. and its affiliates other than Empire after the Transaction. Any net increase in the cost of capital Empire seeks shall be supported by documentation that: (a) the increases are a result of factors not associated with the Transaction or the post Transaction operations of Algonquin Power & Utilities</p>	Staff Stipulation	Accept	

	Corp. or its non-Empire affiliates; (b) the increases are not a result of changes in business, market, economic or other conditions caused by the Transaction or the post Transaction operations of Algonquin Power & Utilities Corp. or its non-Empire affiliates; and (c) the increases are not a result of changes in the risk profile of Empire caused by the Transaction or the post Transaction operations of Algonquin Power & Utilities Corp. or its non-Empire affiliates. The provisions of this section are intended to recognize the Commission’s authority to consider, in appropriate proceedings, whether this Transaction or the post Transaction operations of Algonquin Power & Utilities Corp. or its non-Empire affiliates has resulted in capital cost increases for Empire. Nothing in this agreement shall restrict the Commission from disallowing such capital cost increases from recovery in Empire’s rates.			
5.	If Empire’s per books capital structure is different from that of the entity or entities in which Empire relies for its financing needs, Empire shall be required to provide evidence in subsequent rate cases as to why Empire’s per book capital structure is the most economical for purposes of determining a fair and reasonable allowed rate of return for purposes of determining Empire’s revenue requirement.	Staff Stipulation	Accept	
6.	The Joint Applicants will not obtain Empire financing services from an affiliate, unless such services comply with Missouri’s Affiliate Transaction Rules.	Staff Stipulation	Accept	
7.	To the extent the goodwill arising from the Transaction which is assigned to LU Central becomes impaired and such impairment negatively effects Empire’s cost of capital, all net costs associated with the decline in Empire’s credit quality specifically attributed to the goodwill impairment, considering all other capital cost effects of the Transaction and the impairment, shall be excluded from the determination of its rates.	Staff Stipulation	Accept	
8.	For the first five years after closing of the Transaction, LU Central shall provide Staff and OPC, its annual goodwill impairment analysis in a format that includes spreadsheets in their original format with formulas and links to other spreadsheets intact and any printed materials within 30 days after it is performed. Thereafter, this analysis will be made available to Staff and OPC upon request.	Staff Stipulation	Accept	
9.	Staff will retain a copy of Liberty Utilities’ financial/valuation model. Staff will continue to protect the confidentiality of the information contained within that model.	Staff Stipulation	Accept	
	AFFILIATE TRANSACTION AND COST ALLOCATION MATTERS			
1.	Empire is to be operated after the purchase in compliance with the affiliate transaction rule, or will obtain any necessary variances from the MoPSC’s affiliate transaction rule as defined in 4 CSR 240-20-015(10) and 4 CSR 240-40-015(10).	Staff Stipulation	Accept	

2.	Algonquin Power & Utilities Corp. and its subsidiaries will commit that all information related to an affiliate transaction consistent with 4 CSR 240-20.015(5)(A)(1)-(2) and 4 CSR 240-40.015(5)(A)(1)-(2) charged to Empire will be treated in the same manner as if that information is under the control of Empire.	Staff Stipulation	Accept	
3.	Empire will provide no preferential service, information, or treatment to an affiliated entity over another party at any other time, consistent with 4 CSR 240-20.015(2) and 4 CSR 240-40.015(2).	Staff Stipulation	Accept	
4.	Shared services costs shall be directly charged. In its next base rate proceeding in Missouri, Empire shall file testimony addressing shared services charges and the bases for such charges. Empire's testimony shall also explain any changes in allocation procedures since its last base rate proceeding.	OPC Testimony	Accept to the extent covered by Affiliate Transaction and Cost Allocations Matters Condition #1	
5.	Empire shall provide copies to Staff and OPC of the portions of any external audit reports performed for Algonquin and Liberty's shared services pertaining directly or indirectly to determinations of direct billings and cost allocations to Empire. Such material shall be provided no later than thirty (30) days after the final report is completed.	OPC Testimony	Accept	
6.	Empire shall notify the Commission, Staff, and the OPC in writing if/when it receives a notice that Liberty Utilities cost allocation practices are under audit in any jurisdiction. Empire shall make any such audit reports available to the Commission, its Staff, and the OPC upon request.	OPC Testimony	Accept, provided that this is time limited for 2 years following the close of the transaction and requested by the parties.	
7.	With its next base rate application following the closing of the Merger, Empire will provide an audit report of Corporate Cost Allocations performed by an independent, third-party auditor agreed-upon by the OPC and Staff and approved by the Commission. The cost of the audit shall be deemed a transaction cost and not recovered in rates. The scope of said audit will be agreed-upon by the OPC and Staff and approved by the Commission.	OPC Testimony		There is no evidence that an audit is required. If one is required in the future the MPSC can order one outside of the

				context of the acquisition
	DEPRECIATION CONDITIONS			
1.	<p>1. Electric Assets</p> <p>a. For purposes of accruing depreciation expense, Empire shall use the ordered depreciation rates for Empire that are awaiting approval by the Commission in Case No. ER-2016-0023, and those depreciation rates attached hereto that were attached to the Stipulation and Agreement in that case as Schedule JAR(DEP)-r2. Depreciation rates resulting from Case No. ER-2016-0023 are to remain in effect until they are changed in a subsequent rate proceeding.</p> <p>b. Empire shall continue to book all plant and depreciation reserve records in compliance with the format set forth in Title 18: Conservation of Power and Water Resources, Part 101—Uniform System Of Accounts Prescribed For Public Utilities and Licensees Subject To The Provisions Of The Federal Power Act (FERC USOA).</p> <p>c. Empire will continue to prepare and maintain its books in accordance with the FERC Uniform System of Accounts (USOA).</p> <p>d. Empire shall submit the following information in accordance with 4 CSR 240-3.175 - Submission Requirements for Electric Utility Depreciation Studies.</p> <p>i. FERC USOA requires the following information to be recorded as part of a Continuing Plant Inventory Record (CPR).</p> <p>ii. FERC USOA CPR Rule 8. Continuing plant inventory record means company plant records for retirement units and mass property that provide, as either a single record, or in separate records readily obtainable by references made in a single record, the following information:</p> <p style="padding-left: 40px;">1. For each retirement unit:</p> <p>a. The name or description of the unit, or both;</p> <p>b. The location of the unit;</p> <p>c. The date the unit was placed in service;</p> <p>d. The cost of the unit as set forth in Plant Instructions 2 and 3 of this part; and</p> <p>e. The plant control account to which the cost of the units is charged; and</p> <p style="padding-left: 40px;">2. For each category of mass property:</p> <p>a. A General description of the property and quantity;</p> <p>b. The quantity placed in service by vintage year;</p> <p>c. The average cost as set forth in Plant Instructions 2 and 3 of this part; and</p>	Staff Stipulation	Accept	

	d. The plant control account to which the costs are charged.			
2.	<p>Gas Assets</p> <p>a. For purposes of accruing depreciation expense, Empire shall ensure that The Empire District Gas Company (“EDG”) uses the currently ordered depreciation rates for EDG approved by the Commission in File No. GR-2009-0434, and attached as Schedule JAR(DEP)-r3 until changed in a subsequent rate proceeding.</p> <p>b. Empire shall ensure that EDG continues to book all plant and depreciation reserve records in compliance with the format set forth in Title 18: Conservation of Power and Water Resources, Part 201—Uniform System Of Accounts Prescribed For Natural Gas Companies Subject To The Provisions Of The Natural Gas Act (FERC USOA).</p> <p>c. Empire shall ensure that EDG prepares and maintains its books in accordance with the FERC Uniform System of Accounts (USOA).</p> <p>d. Empire shall ensure that EDG submits the following information in accordance with 4 CSR 240-3.275 Submission Requirements for Gas Utility Depreciation Studies.</p> <p>i. FERC USOA requires the following information shall be recorded as part of a Continuing Plant Inventory Record (CPR).</p> <p>ii. FERC USOA CPR Rule 8. Continuing plant inventory record means company plant records for retirement units and mass property that provide, as either a single record, or in separate records readily obtainable by references made in a single record, the following information:</p> <p>1. For each retirement unit:</p> <p>a. The name or description of the unit, or both;</p> <p>b. The location of the unit</p> <p>c. The date the unit was placed in service;</p> <p>d. The cost of the unit as set forth in Plant Instructions</p> <p>2 and 3 of this part; and</p> <p>e. The plant control account to which the cost of the units is charged;</p> <p>and</p> <p>2. For each category of mass property:</p> <p>a. A general description of the property and quantity;</p> <p>b. The quantity placed in service by vintage year;</p> <p>c. The average cost as set forth in Plant Instructions 2 and 3 of this part; and</p> <p>d. The plant control account to which the costs are charged.</p>	Staff Stipulation	Accept	

3.	Water Assets: Empire shall continue to utilize the depreciation rates ordered in Case No. WR-2012-0300, attached hereto as Schedule JAR(DEP)-r4, and those depreciation rates shall remain in effect until they are changed in a subsequent rate proceeding.	Staff Stipulation	Accept	
	TAX MATTERS			
1.	Empire's parent company will indemnify Empire for any federal or local income tax liability in excess of Empire's standalone liability for any period in which Empire is included in a consolidated income tax filing.	OPC Testimony	Accept; rates are set on a standalone basis.	
2.	Empire will record on its books all deferred taxes related to income tax deductions or credits created by Empire's operations.	Staff Stipulation	Accept	
	CORPORATE GOVERNANCE AND RING-FENCING			
1.	Empire shall maintain its own credit rating.	OPC Testimony	Accept	
2.	Empire shall not assume liability for the debts issued by APUC, Liberty Utilities, or any of their subsidiaries or affiliates.	OPC Testimony	Accept	
3.	Empire shall maintain corporate officers who have a fiduciary duty solely to Empire.	OPC Testimony	Accept with the modification of deleting "solely"	
4.	Empire shall maintain its own board of directors with a majority of non-management, independent directors.	OPC Testimony	Accept	
5.	Empire will maintain its corporate headquarters in Joplin, Missouri and must seek approval from the Public Service Commission of any intention to move its corporate headquarters from Joplin, Missouri with a requirement that such a move is in the best interest of ratepayers.	OPC Testimony	Accept to the extent covered by Employee Protection Condition #6	
6.	Algonquin, Liberty Utilities, and Empire shall be signatories on this and all future proceedings involving Empire, and shall provide Staff and OPC unrestricted access to all written correspondence with any and all debt and equity analysts.	OPC Testimony	Accept to the extent covered by Parent Company Condition #1	Reject as to Algonquin and Liberty Utilities being signatories on all future proceedings and

				unrestricted access to analyst correspondence
7.	Empire shall not pay a dividend without prior Commission approval if its equity to total capitalization ratio, based on a 12-month rolling average, falls below 45%, or if payment of dividends would cause Empire's equity to total capitalization ratio to fall below that threshold.	OPC Testimony		Addressed in Staff's financing conditions
8.	Empire shall not pay a dividend without prior Commission approval if, and during such time, any of the three major credit rating agencies (Moody's, Standard & Poor's, and Fitch) issues a rating for Empire below investment grade.	OPC Testimony		Addressed in Staff's financing conditions
9.	Empire shall establish a bankruptcy remote special purpose entity (SPE) that is established solely for the purpose of being the direct owner of Empire. This SPE shall have the following characteristics: (1) The SPE will be the direct owner of Empire's shares. (2) The SPE will have no operational purpose except to hold Empire's shares. (3) The SPE shall have at least one independent (non-management) director. (4) The approval of the entire board of directors, including the independent director, shall be required for the SPE to file a voluntary bankruptcy petition.	OPC Testimony		Impractical, unnecessary, and onerous
10.	Within sixty (60) days after the close of the transaction, Empire shall obtain a non-consolidation opinion from an unrelated reputable law firm that supports the efficacy of the SPE structure.	OPC Testimony		Impractical, unnecessary, and onerous
11.	The costs of establishing the SPE, as well as the costs of the non-consolidation opinion, shall be deemed transaction costs and shall not be recovered from ratepayers.	OPC Testimony		Joint Applicants oppose establishing an SPE
12.	Algonquin will include Joplin, Missouri among the locations of Algonquin's Board of Directors meetings and meet in Joplin at least annually.	OPC Testimony		
13.	Empire shall issue its own debt and maintain its own capital structure, a function of its own debt and equity.	OPC Testimony		Inconsistent with planned business

				model and addressed by Staff financing conditions
	ACCESS TO RECORDS			
1.	Empire shall provide Staff and OPC with access, upon reasonable written notice during working hours and subject to appropriate confidentiality and discovery procedures, to all written information provided to common stock, bond or bond rating analysts which directly or indirectly pertains to Empire or any affiliate that exercises influence or control over Empire or has affiliate transactions with Empire. Such information includes, but is not limited to, common stock analyst's and bond rating analyst's reports. For purposes of this condition, "written" information includes, but is not limited to, any written and printed material, audio and video tapes, computer disks, and electronically stored information. Nothing in this condition shall be deemed a waiver of any entity's right to seek protection of the information or to object, for purposes of submitting such information as evidence in any evidentiary proceeding, to the relevancy or use of such information by any party.	Staff Stipulation	Accept	
2.	Empire agrees to make available to Staff and OPC, upon written notice during normal working hours and subject to appropriate confidentiality and discovery procedures, all books, records and employees as may be reasonably required to verify compliance with Empire's CAM and any conditions ordered by this Commission. Empire shall also provide Staff and OPC any other such information (including access to employees) relevant to the Commission's ratemaking, financing, safety, quality of service and other regulatory authority over Empire; provided that any entity producing records or personnel shall have the right to object on any basis under applicable law and Commission rules, excluding any objection that such records and personnel of affiliates; (a) are not within the possession or control of Empire or (b) are either not relevant or are not subject to, the Commission's jurisdiction and statutory authority by virtue of, or as a result of, the implementation of the proposed Transaction.	Staff Stipulation	Accept	
3.	Empire shall provide Staff and OPC access to and copies of, if requested by Staff or OPC, the complete Liberty Utilities Co, LU Central and Empire Board of Directors' meeting minutes, including all agendas and related information distributed in advance of the meeting, presentations and handouts, provided that privileged information shall continue to	Staff Stipulation	Accept	

	be subject to protection from disclosure and Empire shall continue to have the right to object to the provision of such information on relevancy grounds.			
4.	Empire will maintain records supporting its affiliated transactions for at least five years.	Staff Stipulation	Accept	
5.	Should it be deemed necessary for Staff employees to travel to locations outside of the State of Missouri to examine any records deemed relevant to the subject matter at hand Empire shall bear all reasonable expense incurred by the employees, provided, however, that before any such expense shall be incurred by Staff, Empire shall be given reasonable notice to produce the records requested for inspection and examination at the office of the Commission at Jefferson City, Missouri or at Empire’s offices in Joplin, Missouri, or at such other point in Missouri, as may be mutually agreed, in which case Empire shall make available at that place, at that time, a person(s) who is acquainted with the records.	Staff Stipulation	Accept	
6.	For all future proceedings, Empire shall not claim that information and documents in possession of an affiliate, including its parent company, are “not within the possession or control of Empire” and will provide such documents as requested by the Commission, its Staff, OPC, or other requesting party.	OPC Testimony	Accept to the extent covered by Access to Records Condition #2	
7.	Empire shall maintain separate books and records, and make them available for review by Staff and OPC upon request and provided at the Governor’s Office Building in Jefferson City.	OPC Testimony	Accept to the extent covered by Access to Records Condition #5	
CHARITABLE CONTRIBUTIONS AND COMMUNITY SUPPORT				
1.	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 <u> ** </u>	OPC Testimony	Modified language: 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 <u> ** </u>	

2.	The Joint Applicants agree to extend the Liberty Gas Energy Educators Workshops to the Empire Electric and Gas service areas for an annual amount of \$25,000 for the next five years. The costs of these community support programs shall not be recovered in rates.	OPC Testimony		See Krygier testimony at 15
ENERGY EFFICIENCY & LOAD RESEARCH				
1.	Empire will work with DE, the Staff of the Commission (“Staff”), the Office of the Public Counsel (“OPC”) and other parties through the existing DSM Advisory Group to review and consider the viability of adopting additional energy efficiency programs for its customers. Within one year of the Commission’s finding of substantial compliance of the Empire Integrated Resource Plan that follows Commission approval of a Statewide Technical Reference Manual (TRM), Empire will develop and submit an application for approval of a portfolio of DSM programs under the Missouri Energy Efficiency Investment Act (MEEIA).	DE and Renew Missouri Stipulation	Accept	
2.	Hydroelectric Rate Impact. Within three (3) months of the completion of the Transaction, Empire will provide to Staff, OPC, DE, Renew Missouri, and other interested stakeholders Empire’s assessment of the rate impact of eliminating or phasing-out reliance on its Ozark Beach facility for compliance with the Renewable Energy Standard.	DE and Renew Missouri Stipulation	Accept	
3.	Combined Heat and Power (“CHP”). Within one year of the completion of the Transaction, Empire, with assistance from DE and the Midwest CHP Technical Assistance Partnership (“TAP”), will complete an outreach survey report of potential CHP customers within the Empire District Missouri gas service territory. Target sectors will include public, commercial, institutional, and industrial facilities with consistent gas consumption throughout the year, indicative of consistent thermal load requirements. Example customers that may generally fit this profile include, but are not limited to, hospitals, large residential facilities such as nursing homes and correctional facilities, universities, and food manufacturers. The report shall be shared with stakeholders.	DE and Renew Missouri Stipulation	Accept	
4.	Empire will be authorized to defer and record on its books, consistent with the terms of its existing demand side management deferral mechanism, any third party costs associated with the Hydroelectric Rate Impact assessment and the Combined Heat and Power survey. Empire will be authorized to maintain this regulatory asset on its books until the effective date of rates resulting from Empire’s next general rate proceeding.	DE and Renew Missouri Stipulation	Accept	

5.	Microgrid Industrial Consortium. Within six (6) months following the completion of the Transaction and the publication of best practices recommendations for microgrid interconnection by the Missouri University of Science and Technology’s Microgrid Industrial Consortium, Empire will meet with DE to consider a microgrid interconnection strategy consistent with the best practices recommendations of the Microgrid Industrial Consortium.	DE and Renew Missouri Stipulation	Accept	
6.	Empire will review and consider the viability of offering a community solar or solar subscription program that provides its customers with the option of purchasing blocks of electricity generated from solar installations constructed and/or owned by Empire within the state of Missouri. Empire will solicit input and feedback on proposals and will work with Staff, OPC, DE, Renew Missouri, and other interested stakeholders to design a successful customer solar program, with the goal of submitting a formal proposal to the Commission within one year of the completion of the Transaction.	DE and Renew Missouri Stipulation	Accept	
7.	Upon the close of the Transaction, Empire shall comply with any Commission order in ER - 2016-0023 regarding Demand Side Management programs.	Staff Stipulation	Accept	
8.	Empire shall introduce an on-bill financing tariff for energy efficient upgrades for residential ratepayers in its next subsequent rate case.	OPC Testimony		See Krygier testimony at 15
9.	The Joint Applicants agree that Empire’s load research will be updated to take into account both the summer and winter usage of the customers in each customer class before Empire’s next subsequent rate case.	OPC Testimony	Accept to the extent covered by Customer Protections Condition #7	
	NATURAL GAS PROCUREMENT PRACTICES			
1.	LU Central shall prepare a cost benefit analysis prior to any decision to materially change any existing gas procurement practices of EDG to a LU Central gas procurement approach. This should include, but not be limited to, an evaluation of EDG’s existing supplier availability, hedging methods, gas volume accounting systems, transportation balancing systems, PGA and ACA recordkeeping and other existing EDG gas procurement practices as contrasted to changing a materially different gas procurement practice.	Staff Stipulation	Accept	
2.	Prior to the effective date of the closing of the Transaction, Empire will provide Staff with evidence that no assignment of transportation and storage contracts with EDG interstate pipeline suppliers will be required due to the merger, or that acceptance of such assignment has been obtained. Further, Empire will provide evidence that no transfer of existing gas	Staff Stipulation	Accept	

	hedges for Empire or EDG will be required as a result of the merger, or that acceptance of such transfer has been obtained.			
	CONTRACTING POLICY			
1.	Empire commits to implementing a Responsible Contractor Policy for construction and maintenance projects that include fixed-price contracts in excess of \$1 million. The policy shall consider the inclusion of the following principles and guidelines including experience with past projects; robustness of safety programs; commitment to quality; a skilled workforce; financial integrity; cost and overall prudence; and local sourcing. When assessing bids from contractors who meet the principles included herein, Empire will consider additional cost-savings on a project as a result of contractor-funded training, apprenticeship, and certification programs. To further this objective, Empire will quantify the costs associated with providing similar training, apprenticeship, and certification services in-house.	LiUNA Stipulation	Accept	
	MOST FAVORED NATION PROVISION			
1.	Missouri will be provided protections and benefits at a level at least as beneficial as any other jurisdiction in which Empire operates. This provision will not, under any circumstance, cause the benefits or conditions committed to be provided in the state of Missouri to be reduced or diminished.	OPC Testimony		See Krygier testimony at 12-15
	BILL CREDIT & RATE CASE MORATORIUM			
1.	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.	OPC Testimony	Accept	
2.	The Joint Applicants will provide ratepayer financial protections to the State of Missouri with a value totaling \$100 per customer. Empire will not seek recovery of any portion of this amount in utility rates. These funds will be allocated as set forth in the paragraphs below. a. The Joint Applicants will provide a direct bill credit of \$100 per customer to be distributed within sixty (60) days of the Merger closing. The bill credit will be distributed to customer accounts open as of the billing cycle on the date on which the Merger is consummated.	OPC Testimony		See Pasioka testimony at 23
	CORPORATE SOCIAL RESPONSIBILITY			
1.	Empire will commit to having a link on their front homepage signaling clearly for ratepayers with a “Troubling Paying Your Bill” signage. Said link will contain	OPC Testimony		See Krygier testimony at

	information on the Company’s delinquency policy, including fees, timelines, cut-off practices, Community Action Agency other 3rd party contacts (e.g., Salvation Army, United Way, etc...), LIHEAP, LIWAP, and additional Company specific programs (e.g., EASE, etc...). Said link will also contain contact information for prospective at-risk ratepayers.			15
2.	Empire commits to an annual meeting with each local Community Action Agencies in-person for the next five years in Joplin, Missouri at Empire’s headquarters with extended invitations to (at least) the Commission Staff, OPC, and the Division of Energy to discuss progress to date Strengths, Weaknesses, Opportunities, and Threats to Empire’s low-income population.	OPC Testimony		See Krygier testimony at 15
3.	Beginning January 1st of the year following the Company’s approved acquisition, Empire commits to funding an annual amount of \$200,000 to each of the eight Community Action Agencies in its service territory for the next ten years which include: a. Ozarks Area Community Action Corporation (OACAC) b. Economic Security Corporation of the Southwest Area (ESC) c. West Central Missouri Community Action Agency (WCMCAA) d. Community Action Partnership of Greater St. Joseph (CAPSTJOE) e. Community Services, Inc. (CSI) f. Community Action Partnership of North Central Missouri (CAPNCM) g. Missouri Valley Community Action Agency (MVCAA) h. Central Missouri Community Action (CMCA) Overall ask: \$200,000 per year for ten years over eight agencies = \$16 million dollar (over ten-year) commitment Said funds will be below the line and not recovered in rates. The funds will be prioritized towards the creation of an additional position(s) within the Community Action Agency to better enable the utilization of weatherization dollars. To the extent that agencies are unable to expend annual funds for the creation of an additional position(s), the agency will place the remaining funds in any one of the following categories at said agencies discretion: o Weatherization training and certification of agency personnel o Discretionary funds for health and hazard for on-site units (that may or may not otherwise be passed over)	OPC Testimony		See Krygier testimony at 10-12

	<ul style="list-style-type: none"> o Outreach efforts o Utility weatherization account o Hardship fund for on-bill payments <p>If any Community Action Agency ceases to exist during this period, funds will be distributed to the Community Action Agency absorbing said territory. If no Community Action Agency is operating in the territory, the funds will be distributed evenly amongst the remaining agencies.</p> <p>Empire will distribute funds on an annual basis to each agency on the 1st of January each year. Each agency is required to provide documentation to the Company to verify how expenditures were occurred. Community action agencies are required to file annual report with the Company on how funds were expended. Empire will file a condensed report of each of the eight agencies annual reports with the Commission Staff, OPC and the Division of Energy as to how annual funds were expended.</p> <ul style="list-style-type: none"> o Any additional information is left to the Agencies discretion (e.g., estimated additional homes weatherized as a result of the expenditures). 			
4.	<p>Bill payment extension for residential and small commercial accounts will be prolonged from twenty-one days to thirty-one days before the 0.5% penalty begins effective immediately following the approval of the acquisition and be in place at least until the next the rate case.</p>	<p style="text-align: center;">OPC Testimony</p>		<p style="text-align: center;">See Krygier testimony at 15</p>
5.	<p>Existing (as of the date of the approved acquisition) bad debt and arrearage will be matched by the Company (below the line) dollar (customer) for two-dollar (Company) at least until the next rate case. The Company will record any and all action taken on the customer-side to pay the amount towards the reduction of said bad debt/arrearages and file a comprehensive report of actions to date in future rate cases.</p>	<p style="text-align: center;">OPC Testimony</p>		<p style="text-align: center;">See Krygier testimony at 15</p>

	PARENT COMPANY CONDITION			
1.	Algonquin Power & Utilities Corp., on behalf of itself, its successors, assignees, and its subsidiaries, and in consideration of the signatories' support of the proposed acquisition embodied in this document, agrees that it will uphold the conditions agreed to by Empire and LU Central in this Stipulation.	Staff Stipulation	Accept	

OPC Conditions and Joint Applicants Response

	OPC Condition	Joint Applicants Accept or Accept with Modifications	Joint Applicants Cannot Accept
1.	RATEPAYER PROTECTIONS The Joint Applicants shall ensure that merger accounting is rate-neutral for Empire customers. This includes but is not limited to the Joint Applicants establishing on the books of Empire no new regulatory assets related to merger accounting.	Accept	
2.	The billing and customer information system platform at Empire will be in use for their expected useful life, which will be at least as long as their scheduled depreciation period. If, for any reason, the use of these system platforms is terminated before the end of their scheduled depreciation period, ratepayers shall not be responsible for any un-depreciated costs or lease payment obligations remaining after the date upon which use is terminated.		See Walters testimony at 4-6
3.	The Joint Applicant's agree for any rate cases wherein Empire seeks recovery of merger transition costs, Empire must provide documentation that demonstrates whether, and the extent to which, these transition costs resulted in cost savings for Empire customers. Empire commits to seek no recovery of merger transition costs except for those which are fully documented, justified, and supported by quantifiable cost savings.	Accept to the extent covered by Staff Stipulation Ratemaking/Accounting Condition #3	
4.	Transaction Costs are not to be recovered in rates. Transaction and Transition Costs in total shall define and encompass all costs resulting from the merger, which would not have been incurred but for the merger. Transaction costs shall include, in addition to costs associated with closing the transaction— legal and consulting fees associated with merger approvals, investment banking fees, HSR filings fees, and CFIUS filing fees—all one- time, merger-related temporary costs that do not create long-term or future benefits to ratepayers. This includes severance costs related to termination of employees as a direct result of this transaction, termination fees incurred in conjunction with the transaction, and the cost of compliance with applicable	Accept to the extent covered by Staff Stipulation Ratemaking/Accounting Condition #2	

	merger conditions, such as establishment of appropriate ring-fencing measures. Both Transaction and Transition costs shall be fully segregated from one another and from non-merger related expenses in a manner that enables the Commission, Staff, and the OPC to review these costs, and if they deem appropriate, in Empire’s next rate case proceeding, advocate that the costs be excluded from rates to the extent necessary.		
5.	The Applicants will ensure that the merger will be rate-neutral for Empire’s customers. In ensuring that the transaction is rate-neutral, the Applicants commit that the merger will not affect the ratemaking treatments of ADIT and ADITC balances, and commit that there will be no establishment of regulatory assets as part of the merger.	Accept to the extent covered by Staff Stipulation Tax Matters Condition #2	
6.	CONSENT TO JURISDICTION & IMPACT ON REGULATION For all future proceedings, Empire shall not claim that information and documents in possession of an affiliate, including its parent company, are “not within the possession or control of Empire” and will provide such documents as requested by the Commission, its Staff, OPC, or other requesting party.	Accept to the extent covered by Staff Stipulation Access to Records Condition #2	
7.	CORPORATE PRESENCE IN THE STATE OF MISSOURI Algonquin will include Joplin, Missouri among the locations of Algonquin’s Board of Directors meetings and meet in Joplin at least annually.		Joint Applicants propose regular Algonquin Senior Management meetings in Joplin
8.	CORPORATE GOVERNANCE AND RING-FENCING Empire shall establish a bankruptcy remote special purpose entity (SPE) that is established solely for the purpose of being the direct owner of Empire. This SPE shall have the following characteristics: (1) The SPE will be the direct owner of Empire’s shares. (2) The SPE will have no operational purpose except to hold Empire’s shares. (3) The SPE shall have at least one independent (non-management) director. (4) The approval of the entire board of directors, including the independent director, shall be required for the SPE to file a voluntary bankruptcy petition.		Impractical, unnecessary and onerous

9.	Within sixty (60) days after the close of the transaction, Empire shall obtain a non- consolidation opinion from an unrelated reputable law firm that supports the efficacy of the SPE structure.		Impractical, unnecessary and onerous
10.	The costs of establishing the SPE, as well as the costs of the non- consolidation opinion, shall be deemed transaction costs and shall not be recovered from ratepayers.		Joint Applicants oppose establishing an SPE
11.	Empire shall issue its own debt and maintain its own capital structure, a function of its own debt and equity.		Inconsistent with planned business model and addressed by Staff financing conditions
12.	Empire shall maintain its own credit rating.	Accept	
13.	Empire shall not assume liability for the debts issued by Algonquin, Liberty Utilities, or any of their subsidiaries or affiliates.	Accept	
14.	Empire shall maintain corporate officers who have a fiduciary duty solely to Empire.	Accept with the modification of deleting “solely”	
15.	Empire shall maintain separate books and records, and make them available for review by Staff and OPC upon request and provided at the Governor’s Office Building in Jefferson City.	Accept to the extent covered by Staff Stipulation Access to Records Condition #5	
16.	Empire shall maintain its own board of directors with a majority of non- management, independent directors.	Accept	
17.	Algonquin, Liberty Utilities, and Empire shall be signatories on this and all future proceedings involving Empire, and shall provide Staff and OPC unrestricted access to all written correspondence with any and all debt and equity analysts.	Accept to the extent covered by Staff Stipulation Parent Company Condition #1	Reject as to Algonquin and Liberty Utilities being signatories on all future proceedings and unrestricted access to analyst correspondence
18.	Empire shall not pay a dividend without prior Commission approval if its equity to total capitalization ratio, based on a 12-month rolling average, falls below 45%, or if payment of dividends would cause Empire’s equity to total capitalization ratio to fall below that threshold.		Addressed in Staff’s financing conditions

19.	<p>Empire shall not pay a dividend without prior Commission approval if, and during such time, any of the three major credit rating agencies (Moody's, Standard & Poor's, and Fitch) issues a rating for Empire below investment grade.</p>		Addressed in Staff's financing conditions
20.	<p>Empire will maintain its corporate headquarters in Joplin, Missouri and must seek approval from the Public Service Commission of any intention to move its corporate headquarters from Joplin, Missouri with a requirement that such a move is in the best interest of ratepayers.</p>	Accept to the extent covered by City of Joplin Stipulation Condition #5	
21.	<p>EMPLOYMENT IN THE STATE OF MISSOURI</p> <p>Empire will continue to provide each Company Employee (each individual who is employed by the Empire or its subsidiary immediately prior to the merger and who remains employed thereafter by the surviving corporation, parent or any of their affiliates):</p> <ul style="list-style-type: none"> (i) a base salary or wage rate that is no less favorable than that provided to the company employee immediately prior to the merger, (ii) aggregate incentive compensation opportunities that are substantially comparable, in the aggregate, to those provided to the company employee immediately prior to the merger, and (iii) employee benefits that are substantially comparable, in the aggregate, to those provided to the company employee immediately prior to the merger. <p>In addition, for the three-year period that follows (years three through five) the merged company will: Treat employees with respect to the payment of base salary or wage rate, incentive compensation opportunities, employee benefits and severance benefits no less favorably in the aggregate than similarly situated employees of the Parent and its Affiliates. Prior to the third anniversary of the merger, the parent shall not, and shall cause the surviving corporation</p>		This condition is already addressed in Section 6.10 of Agreement and Plan of Merger

	to not, terminate or amend in any manner that is materially adverse to the participants therein.		
22.	For a period of five years following the merger, there shall be no net reduction in employment levels of Missouri-based employees (Empire employees who reside and/or work in the State of Missouri) at Empire resulting from involuntary attrition. “Involuntary attrition,” for purposes of this commitment, includes but is not limited to transfer-or-quit offers where an employee is given the option to quit rather than be transferred to a work location outside of the State of Missouri or to accept a position that is not substantially similar to the employee’s current position.	Accept to the extent covered by City of Joplin Stipulation Condition #4	
23.	Empire will file annual reports with the Commission that detail all job losses and job gains at Empire for a period of ten years following the merger. This report will include descriptions for all job losses, including title, department, reason, and a statement regarding whether the job loss was involuntary or voluntary, as well as the Company’s definition of “voluntary attrition” and “involuntary attrition” (to include, but not be limited to transfer-or-quit offers where an employee is given the option to quit rather than be transferred to a work location outside of the State of Missouri or to accept a position that is not substantially similar to the employee’s current position). In the event that a “substantially similar” position is offered to an employee who elects to resign rather than accept the position, Empire will provide a description of the job offered, including details of the major characteristics of the position, including but not limited to salary and benefits, title, office location, and reporting and supervision duties.		Condition is onerous, has privacy implications, and should not be necessary in light of commitments to City of Joplin
24.	In this report, the Applicants will also provide a detailed analysis of all costs associated with any new positions resulting from the merger for which costs are directly charged and/or indirectly allocated to utility customers in Missouri.		Condition is onerous, has privacy implications, and should not be necessary in light of commitments to City of Joplin
25.	In this report, the Applicants will provide an analysis of the changes to the positions of current Empire Missouri employees, in sufficient detail to		Condition is onerous, has privacy implications, and

	services charges and the bases for such charges. Empire’s testimony shall also explain any changes in allocation procedures since its last base rate proceeding.	Allocation Manual (CAM) Condition #1	
31.	Empire shall provide copies to Staff and OPC of the portions of any external audit reports performed for Algonquin and Liberty’s shared services pertaining directly or indirectly to determinations of direct billings and cost allocations to Empire. Such material shall be provided no later than thirty (30) days after the final report is completed.	Accept	
32.	Empire shall notify the Commission, Staff, and the OPC in writing if/when it receives a notice that Liberty Utilities cost allocation practices are under audit in any jurisdiction. Empire shall make any such audit reports available to the Commission, its Staff, and the OPC upon request.	Accept, provided that this is time limited for 2 years following the close of the transaction and requested by the parties.	
33.	With its next base rate application following the closing of the Merger, Empire will provide an audit report of Corporate Cost Allocations performed by an independent, third-party auditor agreed-upon by the OPC and Staff and approved by the Commission. The cost of the audit shall be deemed a transaction cost and not recovered in rates. The scope of said audit will be agreed-upon by the OPC and Staff and approved by the Commission.		There is no evidence that an audit is required. If one is required in the future, the MPSC can order one outside of the context of the acquisition.
34.	TAX INDEMNITY Empire’s parent company will indemnify Empire for any federal or local income tax liability in excess of Empire’s standalone liability for any period in which Empire is included in a consolidated income tax filing.	Accept; rates are set on a standalone basis	
35.	MOST FAVORED NATION PROVISION Missouri will be provided protections and benefits at a level at least as beneficial as any other jurisdiction in which Empire operates. This provision will not, under any circumstance, cause the benefits or conditions committed to be provided in the state of Missouri to be reduced or diminished.		See Krygier testimony at 12-15

36.	<p>BILL CREDIT & RATE CASE MORATORIUM</p> <p>The Joint Applicants will provide ratepayer financial protections to the State of Missouri with a value totaling \$100 per customer. Empire will not seek recovery of any portion of this amount in utility rates. These funds will be allocated as set forth in the paragraphs below.</p> <p style="padding-left: 40px;">a. The Joint Applicants will provide a direct bill credit of \$100 per customer to be distributed within sixty (60) days of the Merger closing. The bill credit will be distributed to customer accounts open as of the billing cycle on the date on which the Merger is consummated.</p>		See Pasioka testimony at 23
37.	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.	Accept	
38.	<p>CORPORATE SOCIAL RESPONSIBILITY</p> <p>Beginning January 1st of the year following the Company’s approved acquisition, Empire commits to funding an annual amount of \$200,000 to each of the eight Community Action Agencies in its service territory for the next ten years which include:</p> <p style="padding-left: 40px;">a. Ozarks Area Community Action Corporation (OACAC) b. Economic Security Corporation of the Southwest Area (ESC) c. West Central Missouri Community Action Agency (WCMCAA) d. Community Action Partnership of Greater St. Joseph (CAPSTJOE) e. Community Services, Inc. (CSI) f. Community Action Partnership of North Central Missouri (CAPNCM) g. Missouri Valley Community Action Agency (MVCAA) h. Central Missouri Community Action (CMCA)</p> <p>Overall ask: \$200,000 per year for ten years over eight agencies = \$16</p>		See Krygier testimony at 15

	<p>million dollar (over ten-year) commitment. Said funds will be below the line and not recovered in rates. The funds will be prioritized towards the creation of an additional position(s) within the Community Action Agency to better enable the utilization of weatherization dollars. To the extent that agencies are unable to expend annual funds for the creation of an additional position(s), the agency will place the remaining funds in any one of the following categories at said agencies discretion:</p> <ul style="list-style-type: none"> o Weatherization training and certification of agency personnel o Discretionary funds for health and hazard for on-site units (that may or may not otherwise be passed over) o Outreach efforts o Utility weatherization account o Hardship fund for on-bill payments <p>If any Community Action Agency ceases to exist during this period, funds will be distributed to the Community Action Agency absorbing said territory.</p> <p>If no Community Action Agency is operating in the territory, the funds will be distributed evenly amongst the remaining agencies.</p> <p>Empire will distribute funds on an annual basis to each agency on the 1st of January each year.</p> <p>Each agency is required to provide documentation to the Company to verify how expenditures were occurred.</p> <p>Community action agencies are required to file annual report with the Company on how funds were expended. Empire will file a condensed report of each of the eight agencies annual reports with the Commission Staff, OPC and the Division of Energy as to how annual funds were expended.</p> <ul style="list-style-type: none"> • Any additional information is left to the Agencies discretion (e.g., estimated additional homes weatherized as a result of the expenditures). 		
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39.	Bill payment extension for residential and small commercial accounts will be prolonged from twenty-one days to thirty-one days before the 0.5% penalty begins effective immediately following the approval of the acquisition and be in place at least until the next the rate case.		See Krygier testimony at 15
40.	Existing (as of the date of the approved acquisition) bad debt and arrearage will be matched by the Company (below the line) dollar (customer) for two-dollar (Company) at least until the next rate case. The Company will record any and all action taken on the customer-side to pay the amount towards the reduction of said bad debt/arrearages and file a comprehensive report of actions to date in future rate cases.		See Krygier testimony at 15
41.	Empire will commit to having a link on their front homepage signaling clearly for ratepayers with a “Troubling Paying Your Bill” signage. Said link will contain information on the Company’s delinquency policy, including fees, timelines, cut-off practices, Community Action Agency other 3rd party contacts (e.g., Salvation Army, United Way, etc...), LIHEAP, LIWAP, and additional Company specific programs (e.g., EASE, etc...). Said link will also contain contact information for prospective at-risk ratepayers.		See Krygier testimony at 15
42.	Empire commits to an annual meeting with each local Community Action Agencies in- person for the next five years in Joplin, Missouri at Empire’s headquarters with extended invitations to (at least) the Commission Staff, OPC, and the Division of Energy to discuss progress to date Strengths, Weaknesses, Opportunities, and Threats to Empire’s low- income population.		See Krygier testimony at 15