

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Empire District Electric Company,)
Liberty Utilities (Central) Co. and Liberty Sub Corp.) Case No. EM-2016-0213
Concerning an Agreement and Plan of Merger and)
Certain Related Transactions.)

STIPULATION AND AGREEMENT AS TO EDRA

COME NOW The Empire District Electric Company (“Empire”), Liberty Utilities (Central) Co. (“LU Central”), and Liberty Sub Corp. (sometimes collectively hereinafter “Joint Applicants”), and the Empire District Retired Members & Spouses Association LLC, by and through their undersigned counsel and, pursuant to Missouri Public Service Commission (“Commission”) rule 4 CSR 240-2.115, request that the Commission approve this agreement as a settlement of the Empire District Retired Members & Spouses Association LLC’s issues related to the Joint Application filed by the Joint Applicants. In support thereof, the signatories hereto state the following:

The Signatories hereto agree as follows:

The Signatories hereto recommend that the Commission approve the proposed Transaction subject to the following conditions:

Retirees Plan

- (1) 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 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.

(2) 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.

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 .

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.

- (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.

(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.

I. General Provisions

- A. This Stipulation has resulted from negotiations among the Signatories and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation in total, then this Stipulation shall be void and no Signatory shall be bound by any of the agreements or provisions hereof. The stipulations herein are specific to the resolution of this proceeding, and all stipulations are made without prejudice to the rights of the Signatories to take other positions in other proceedings except as otherwise provided herein. The Signatories agree that any and all discussions related hereto shall be privileged and shall not be subject to discovery, admissible in evidence, or in any way used, described or discussed.
- B. This Stipulation is being entered into for the purpose of disposing of the Empire District Retired Members & Spouses Association LLC's issues in this case. The

Signatories represent that the terms of this Stipulation constitute a fair and reasonable resolution of the issues addressed herein, in a manner which is not detrimental to the public interest. Except as otherwise addressed herein, none of the Signatories to this Stipulation shall be deemed to have approved, accepted, agreed, consented or acquiesced to any accounting principle, ratemaking principle or cost of service determination underlying, or supposed to underlie any of the issues provided for herein.

- C. The Signatories further understand and agree that the provisions of this Stipulation relate only to the specific matters referred to in the Stipulation, and no Signatory or person waives any claim or right which it otherwise may have with respect to any matter not expressly provided for in this Stipulation. The Signatories further reserve the right to withdraw their support for the settlement in the event that the Commission modifies the Stipulation in a manner which is adverse to the Signatory, and further, the Signatories reserve the right to contest any such Commission order modifying the settlement in a manner which is adverse to the Signatory contesting such Commission order. The Signatories agree that the details of this Stipulation have no precedential value in any future proceeding not related to enforcement of this agreement.
- D. The non-utility Signatory Parties enter into this Stipulation in reliance upon information provided to them by the Joint Applicants and this Stipulation is explicitly predicated upon the truth of representations made by the Joint Applicants.

- E. In the event the Commission accepts the specific terms of this Stipulation without modification, the Signatories waive, with respect to the issues resolved herein: their respective rights pursuant to Section 536.070(2), RSMo 2000 to call, examine and cross-examine witnesses; their respective rights to present oral argument or written briefs pursuant to Section 536.080.1, RSMo 2000; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2, RSMo 2000; their respective rights to seek rehearing pursuant to Section 386.500, RSMo 2000; and their respective rights to judicial review pursuant to Section 386.510, RSMo 2000. Furthermore, in the event the Commission accepts the specific terms of this Stipulation without modification, the Signatories agree that the pre-filed testimony of all witnesses who have pre-filed testimony in this case shall be included in the record of this proceeding without the necessity of such witnesses taking the stand.
- F. Except as otherwise addressed in this Stipulation, Commission approval of the acquisition by LU Central and Liberty Sub Corp. of the stock of Empire, and for the Joint Applicants to execute and perform in accordance with the terms of the Agreement, does not in any way, limit, form a basis for determination, or constitute a defense against any Signatory proposing, or the Commission ordering, the disallowance and/or imputation of account balances, expenses, revenues and/or other ratemaking findings, regarding Empire's operations in a future rate proceeding.
- G. To assist the Commission in its review of this Stipulation, the Signatories also request that the Commission advise them of any additional information that the

Commission may desire from the Signatories relating to the matters addressed in this Stipulation, including any procedures for furnishing such information to the Commission.

WHEREFORE, the Signatories hereto recommend that the acquisition by LU Central and Liberty Sub Corp. of the stock of Empire as contemplated by the Agreement and Plan of Merger is reasonable and not detrimental to the public interest and respectfully request that the Commission approve this Stipulation and Agreement subject to the conditions contained herein.

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent via U.S. Mail, postage prepaid, hand-delivery, electronic filing system, or electronically, this 19th day of July, 2016, to the following:

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