

Exhibit No.:
Issues: OPC Recommended
Conditions, SERP
Witness: Kimberly K. Bolin
Sponsoring Party: MoPSC Staff
Type of Exhibit: Surrebuttal Testimony
Case No.: EM-2016-0213
Date Testimony Prepared: August 5, 2016

MISSOURI PUBLIC SERVICE COMMISSION

COMMISSION STAFF DIVISION

AUDITING

SURREBUTTAL TESTIMONY

OF

KIMBERLY K. BOLIN

**THE EMPIRE DISTRICT ELECTRIC COMPANY,
LIBERTY UTILITES (CENTRAL) CO., AND LIBERTY SUB CORP.**

CASE NO. EM-2016-0213

*Jefferson City, Missouri
August 2016*

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**** Denotes Highly Confidential Information ****

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1 A. Yes. Staff and OPC recommended five similar conditions be applied if the
2 merger is approved. Attached on Schedule KKB-s1 is a listing of the conditions that Staff
3 believes are substantially the same, albeit with slightly different language. For comparison
4 purposes I have listed on Schedule KKB-s1 both Staff's conditions as previously cited in my
5 rebuttal testimony (on Schedule KKB-r2) and OPC's conditions as cited in OPC's rebuttal
6 testimony.

7 Q. Are there any conditions recommended by OPC that Staff opposes as
8 potentially causing harm to the ratepayers or would otherwise modify?

9 A. Yes. There are five conditions Staff believes may either cause harm in the
10 future to ratepayers or should otherwise be modified. Staff witness Brad Fortson will address
11 Staff's concerns with OPC condition number 28. The other conditions Staff will address in
12 my testimony are OPC condition numbers 30, 32, 33 and 39.

13 Q. What is Staff's concern with OPC condition number 30?

14 A. OPC's condition number 30 states, "Shared services costs shall be directly
15 charged. In its next base rate proceeding in Missouri, Empire shall file testimony addressing
16 shared services charges and the bases for such charges. Empire's testimony shall also explain
17 any changes in allocation procedures since its last base rate proceeding." OPC is proposing in
18 the next base rate case that Empire file testimony addressing shared services charges.
19 However, shared service charges should be addressed on an ongoing basis through
20 procedures addressed in Empire's cost allocation manual ("CAM"). For that reason, if the
21 Company was to implement OPC's proposed condition number 30 and wait until its next
22 rate to address appropriate methodologies for assigning or allocating shared services costs,
23 Staff's opinion is that the Company would actually be in violation of the Commission's

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1 affiliate transaction rule (ATR). The only appropriate way for the Company to comply with
2 this condition is to immediately file for a variance from the ATR. Staff is of the opinion that
3 this proposed condition, as stated, in effect would result in a variance to the current ATR
4 without good cause for such variance being shown. Staff has requested, as a proposed
5 condition, that the post-merger Empire entity be operated compliant with the ATR or obtain
6 any necessary variance from the ATR immediately after the merger is completed (Condition
7 #1 under Affiliate Transactions and Costs Allocation Manual Conditions, page 6 of Schedule
8 KKB-r2). To obtain any variance, Empire would have to present good cause as to why
9 Empire should not be required to follow the ATR.

10 Q. What is Staff's suggested change to OPC condition number 32?

11 A. OPC's condition number 32 states, "Empire shall notify the Commission,
12 Staff, and OPC in writing if/when it receives a notice that Liberty Utilities cost allocation
13 practices are under audit in any jurisdiction. Empire shall make any such audit reports
14 available to the Commission, its Staff, and the OPC upon request." Through this condition,
15 OPC is requesting that Empire notify Staff and OPC whenever Liberty Utilities' cost
16 allocation practices are under audit in any jurisdiction. Staff would modify this condition by
17 including audits of cost allocation practices of Algonquin and any Algonquin or Liberty
18 Utilities' affiliate in this condition.

19 Q. What is Staff's concern with OPC condition number 33?

20 A. OPC's condition number 33 states, "With its next base rate application
21 following the closing of the Merger, Empire will provide an audit report of Corporate Cost
22 Allocations performed by an independent, third-party auditor agreed-upon by the OPC and
23 Staff and approved by the Commission. The cost of the audit shall be deemed a transaction

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1 cost and not recovered in rates. The scope of said audit will be agreed-upon by the OPC and
2 Staff and approved by the Commission.” OPC is requesting Empire provide an audit report
3 concerning corporate cost allocations performed by an independent third-party auditor as part
4 of its next general rate case in Missouri. Given the corporate cost allocation scope in
5 Empire’s CAM, Staff is not sure this condition is necessary, and may be duplicative as most
6 of this type of work will be done with the approval of Empire’s CAM. Staff’s opinion is that
7 there will be more effective enforcement of corporate cost allocation practices through the
8 Commission’s CAM mechanism than through reliance upon outside audit mechanisms.

9 Q. What is Staff’s concern with OPC condition number 39?

10 A. OPC’s condition number 39 states, “Bill payment extension for residential and
11 small commercial accounts will be prolonged from twenty-one days to thirty-one days before
12 the 0.5% penalty begins effective immediately following the approval of the acquisition and
13 be in place at least until the next the rate case [sic].” This condition would require the
14 Company to extend the amount of time before the Company charges a late payment penalty to
15 customers from 21 days to 31 days. The revenue requirement impact of extending the time
16 from what is actually 22 days before the utility can assess a late fee (per 4CSR 240-13.020(7))
17 to 31 days in this manner is unknown at this time. One such possible impact would be
18 increasing the collection lag day value in the cash working capital calculation, and thereby
19 increasing revenue requirement, due to this change’s possible impact on customer payment
20 habits. Staff is also unsure if a deferral of its late payment charge would cause Empire to
21 incur costs to revise its bill format.

22 Q. Does Staff have a suggested alternative to OPC’s condition for bill payment
23 extension?

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1 A. Yes. Staff would recommend, as an alternative, that Empire conduct a study
2 examining the operational and financial impacts of extending the bill payment from
3 twenty-one days to thirty-one days and submit the results of the study for consideration
4 in Empire’s next rate case.

5 Q. Is there a condition recommended by OPC that Staff agrees should be a
6 proposed condition but was not included in Schedule KKB-r2 in rebuttal testimony as one of
7 Staff’s proposed conditions?

8 A. Yes. OPC condition number 29, which states, “The Joint Applicants agree that
9 Empire’s load research will be updated to take into account both the summer and winter usage
10 of the customers in each customer class before Empire’s next subsequent rate case.” To
11 account for the current building stock and shift to winter peaking load it is appropriate update
12 Empire’s load research sample.

13 Q. What is Staff’s position regarding the remaining conditions proposed by OPC?

14 A. Staff believes these conditions are not necessary to meet the “no deterrent”
15 standard for approval of this merger; however, Staff is not opposed to the implementation of
16 the conditions listed on Schedule KKB-s2 if the parties would otherwise agree to them.

17 Q. Has Staff changed its position on any of the merger approval conditions that it
18 recommended in rebuttal testimony and that OPC has not addressed in its list of
19 recommended conditions?

20 A. No. Staff would still recommend the Commission implement these
21 conditions which are listed in my rebuttal testimony on Schedule KKB-r2 if it approves
22 the merger transaction.

1 Q. Has Staff and Joint Applicants to this case filed a *Stipulation and Agreement*?

2 A. Yes. Staff and Joint Applicants filed a *Stipulation and Agreement* on August
3 4, 2016. This *Stipulation and Agreement* lists conditions to this merger which address Staff's
4 concerns about this merger being detrimental to the public interest.

5 Q. Is there an additional condition that was added to the *Stipulation and*
6 *Agreement* that was not listed in Staff's Recommend Conditions on Schedule KKB-r2 in
7 rebuttal testimony?

8 A. Yes. Condition number 6 on page 12 of the *Stipulation and Agreement* which
9 states, "In evaluating billing systems for future use, the Joint Applicants shall consider the
10 ability of any billing system to maintain or improve cumulative frequency distribution of bills
11 ending in each block in each billing cycle and the quality of existing load research and
12 metering data." Staff has not been able to get this information in the past; Staff is under the
13 impression that Empire's billing system does not allow this. This information would be very
14 helpful in designing future rates.

15 **SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN (SERP)**

16 Q. What is SERP?

17 A. SERP is a non-qualified retirement plan for key company employees, typically
18 executives, that provide benefits above and beyond those covered in other retirement plans
19 such as individual retirement plans, a 401(k) or pension and other post-employment plans.
20 Unlike Empire's retirement plan or 401 (k) plan, SERP is only available to a very select
21 portion of Empire retirees.

22 Q. Is Staff opposed to the EDESR's proposal of creating a Rabbi Trust for
23 funding of SERP benefits?

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1 A. Not directly. However, Staff will likely be opposed to the recovery in future
2 rates of any additional costs associated with prefunding of the SERP benefits through a
3 Rabbi Trust vehicle. Currently, SERP benefits are recovered in rates on a normalized level
4 based on actual benefits paid out, not on prefunded amounts based on projections of what
5 may be paid out in the future for these benefits.

6 Q. Does this conclude your surrebuttal testimony in this proceeding?

7 A. Yes, it does.

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. Concerning an)
Agreement and Plan of Merger and Certain)
Related Transactions)

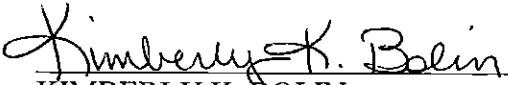
Case No. EM-2016-0213

AFFIDAVIT OF KIMBERLY K. BOLIN

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

COMES NOW Kimberly K. Bolin and on her oath declares that she is of sound mind and lawful age; that she contributed to the foregoing Surrebuttal Testimony; and that the same is true and correct according to her best knowledge and belief.

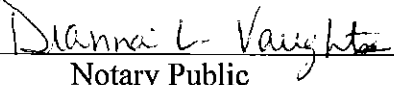
Further the Affiant sayeth not.


KIMBERLY K. BOLIN

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 4th day of August, 2016.

DIANNA L. VAUGHT
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: June 28, 2019
Commission Number: 15207377


Notary Public

Staff and OPC Recommended Similar Conditions for Case No. EM-2016-0213

Staff Recommended Conditions	OPC Recommended Conditions
<p>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.</p>	<p>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 the 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.</p>
<p>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.</p>	<p>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.</p>

<p>Empire will record on its books all deferred taxes related to income tax deductions or credits created by Empire’s operations.</p>	<p>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.</p>
<p>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.</p>	<p>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.</p>
<p>In the event Algonquin Power & Utility Company’s and/or Liberty Utility Co.’s non-regulated operations should result in The Empire District Electric Company’s credit rating, or the affiliate on which it relies on for debt capital, being downgraded to at or below BBB- (or each rating agency’s equivalent), The Empire District Electric Company, or the affiliate on which it relies on for debt capital, shall pursue additional legal and structural separation from the affiliate(s) causing the downgrade to at or below BBB-, to ensure The Empire District Electric Company continues to have access to capital at a reasonable cost. The Empire District Electric Company shall not pay a dividend to its upstream parent companies until there is sufficient evidence that The Empire District Electric Company’s credit rating has been restored to one notch above BBB-, or its equivalent.</p>	<p>19. 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>

THE EMPIRE DISTRICT ELECTRIC COMPANY,
LIBERTY UTILITES (CENTRAL) CO., AND LIBERTY SUB CORP.
EM-2016-0213

OPC Conditions Not Necessary for Merger Approval but Not Detrimental to Ratepayers

1. 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.
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 schedule 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.
7. Algonquin will include Joplin, Missouri among the locations of Algonquin's Board of Directors meetings and meet in Joplin at least annually.
8. Empire shall establish a bankruptcy remote special purpose entity (SPE) that is established solely for the purpose of being the direct owner of Empire. The 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.
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.
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.
11. Empire shall issue its own debt and maintain its own capital structure, a function of its own debt and equity.
12. Empire shall maintain its own credit rating.
13. Empire shall not assume liability for the debts issue by APUC, Liberty Utilities, or any of their subsidiaries or affiliates.
14. Empire shall maintain corporate officers who have a fiduciary duty solely to Empire.
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 Office Building in Jefferson City.

** **Denotes Highly Confidential Information** **

16. Empire shall maintain its own board of directors with a majority of non-management, independent directors.
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.
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.
20. 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.
21. 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):
 - (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.

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 rates, incentive compensation opportunities, employee benefits and severance benefits no less favorably in 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.

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.

23. Empire will file annual report 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 report and supervision duties.
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.
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 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.
26. 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 ** _____ **.
27. 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.
31. Empire shall provide copies to Staff and OPC of the portions of any external audit reports performed for Algonquin and Liberty’s shared service 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.

34. 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.
35. 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.
36. 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.
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.
38. 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 year 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:
 - Weatherization training and certification of agency personnel
 - Discretionary funds for health and hazard for on-site units (that may or may not otherwise be passed over)
 - Outreach efforts
 - Utility weatherization account
 - Hardship fund for on-bill payment
 - 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.
 - 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.
 - Any additional information is left to the Agencies discretion (e.g., estimated additional homes weatherized as a result of the expenditures).
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.

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.
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.