BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Request of The Empire District Electric Company d/b/a Liberty for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in its Missouri Service Area	)))))	Case No. ER-2021-0312

REPLY POSTHEARING BRIEF

OF

MIDWEST ENERGY CONSUMERS GROUP

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COMES NOW, the Midwest Energy Consumers Group ("MECG") and provides its reply brief in this matter. In this brief, MECG addresses the positions advanced in the Initial Briefs filed by Liberty, the Office of the Public Counsel ("OPC") and the Staff of the Missouri Public Service Commission ("Staff").

1. OVERVIEW OF MECG'S POSITION

As indicated in its Initial Brief, MECG recommends that the Commission increase residential rates by 9.9%. All other rates would then be increased equally in proportion to class revenues.[1] Recognizing that the overall increase in this ordered in this case is 7.64%, MECG's position would add an additional 2.26% to the residential increase for purposes of addressing the mammoth residential subsidy implicit in Liberty's rates.

It is important to recognize that this 2.26% difference is simply a small step towards bringing residential rates towards cost of service. Both class cost of service studies in this case show that the residential class actually needs a revenue neutral increase of 18.99% to reach cost-based rates. Therefore, MECG's proposed 9.9% residential increase (which includes the 2.26% for the residential subsidy), would eliminate less than 12% of the residential subsidy.[2] Recognizing that it initially recommended elimination of 25% of the residential subsidy, MECG's revised position represents over a 50% reduction in its initial position.

In the recent Ameren case, the Commission expressed the concern that allocations, including those in a class cost of service study, is not an exact science.[3] If MECG were to recommend a movement completely to its quantification of cost of service, the Commission may have reason to be

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[1] MECG Initial Brief, pages 10, 11 and 14.
[2] (9.90% – 7.64%) / 18.99% = 11.90%
[3] Case No. ER-2021-0240, *Report and Order*, issued February 2, 2022, at page 22.

concerned with the alleged exactness of MECG's cost of service quantification and whether MECG is suggesting a level of science not indicative of allocations. Here, however, the Commission should be comforted by the fact that MECG is only recommending the elimination of 12% of the residential subsidy. By adopting MECG's position then, the Commission can demonstrate its dedication to cost-based rates while still not accepting any claimed quantification of cost of service.

2. RESPONSE TO LIBERTY

In its Brief, Liberty suggests that, based upon notions of fairness, equity and gradualism, that the Commission should implement a "slight revenue neutral shift." Specifically, based upon its position, Liberty recommends a $1.67 million increase to the residential class. Thus, while overall rates are to be increased 7.64%, Liberty suggests that residential rates should increase 8.3%.[4]

Liberty's position is laughable. Given the resolutions reached through pre-filed testimony, the residential subsidy, as quantified by both Liberty and MECG, is now $41,131,994.[5] Therefore, assuming the same minimal shift now suggested by Liberty, the residential subsidy would not be fully addressed for 24.6 rate cases.[6] Recognizing that Liberty has filed rate cases approximately every 2.14 years, the residential subsidy would exist for the next 52.6 years!

Minimal shifts comparable to those now recommended by Liberty have previously been rejected by the Commission. In 2014, the residential subsidy was quantified at 8.06%.[7] There, the Commission considered a non-unanimous stipulation advanced by Liberty, Staff and Public Counsel that would have provided for a residential shift of 0.75%.[8] Thus, in that case, the recommended shift

[4] Liberty Initial Brief, page 3.
[5] Exhibit 354, Maini Surrebuttal, Schedule KM-4s.
[6] $41,131,994 / $1,670,000 = 24.63 rate cases.
[7] *Report and Order*, Case No. ER-2014-0351, issued June 24, 2015, at page 15.
[8] *Id.*

would have taken 10.7 rate cases to eliminate (approximately 23 years). Given this, the Commission pointed out that the laughable shift envisioned by the non-unanimous stipulation was unreasonable. "An adjustment of a 0.75% increase for the residential class, it would take numerous rate cases with similar adjustments over several years for the residential rates to reach cost of service while other classes pay a disproportionate share."[9] Given the "numerous rate cases" necessary to eliminate the residential subsidy with the minimal 0.75% shift, the Commission rejected the non-unanimous stipulation and, instead, ordered the 25% shift recommended by MECG.

> Competitive industrial rates are important for the retention and expansion of industries within Empire's service area. If businesses leave Empire's service area, Empire's remaining customers bear the burden of covering the utility's fixed costs with a smaller amount of billing determinants. This may result in increased rates for all of Empire's remaining customers. Attempting to completely eradicate the 8.1% residential rate class discrepancy in this rate case would be too punitive to the customers in that class. A revenue neutral adjustment of 25% of the 8.1% needed adjustment would increase the residential rates by approximately 2%. This 2% increase, in additional to the 3.9% revenue requirement increase, agreed to by the parties in the Revised Agreement, would raise the average residential customer's monthly bill by approximately 5.9%. . . A 2% revenue neutral adjustment for the residential class is not punitive to the residential class and helps to eliminate any residential subsidy in a shorter timeframe.[10]

Just as the Commission rejected the laughable shift suggested in the 2014 non-unanimous stipulation because it would take "numerous rate cases" to fully address the residential subsidy, the Commission should similarly reject the minimal shift now recommended by Liberty. Liberty's recommendation would require commercial and industrial customers to pay rates that are significantly above cost of service for over 50 years. Such a result is not acceptable to a Commission that has repeatedly decreed that cost-based rates are important.[11]

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[9] *Id.* at page 18.

[10] *Report and Order*, Case No. ER-2014-0351, issued June 24, 2015, at pages 18-19.

[11] *Report and Order*, Case No. ER-2011-0028, issued July 13, 2011, at pages 115-116. ("In general, it is important that

3. RESPONSE TO OPC

While the Liberty position would at least acknowledge the existence of the residential subsidy and provide minimal steps towards addressing that subsidy, OPC and Staff bury their heads in the sand and completely ignore the residential subsidy. Specifically, without a class cost of service study to support their positions, OPC and Staff both suggest that the Commission ignore the residential subsidy and, instead, apply any rate increase on an equal percentage basis to all rate classes.

In support of its position, OPC directs the Commission to its recent decision in the Ameren rate case. There, the Commission ignored the results of every class cost of service study and applied the rate increase on an equal percentage basis. While applying an equal percentage increase, the Commission specifically stated that its decision to apply the Ameren revenue requirement on an equal percentage basis was specifically "for this case."[12] As such, MECG reads the Commission's decision literally and believes that the Commission, especially after ignoring the residential subsidy in the last Empire case as well, will once again return to its pursuit of cost-based rates and competitive industrial rates. On the other hand, it is clear that OPC interprets the Commission's Ameren decision as a policy statement that the Commission has no interest in addressing the residential. As such, OPC now feels emboldened to ignore the residential subsidy in every case. MECG suggests that it is time, after the Ameren decision and the last Empire decision, that the Commission should demonstrate that it truly is concerned about cost-based rates. By <u>materially</u>

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each customer class carry its own weight by paying rates sufficient to cover the cost to serve that class. That is a matter of simple fairness in that one customer class should not be required to subsidize another. Requiring each customer class to cover its actual cost of service also encourages cost effective utilization of electricity by customers by sending correct price signals to those customers."). See also, Case No. ER-2021-0240, *Report and Order*, issued February 2, 2022, at page 24. ("The Commission continues to believe that cost-based rates are appropriate."); *Report and Order*, Case No. ER-2010-0036, issued May 28, 2010, at page 87.

[12] *Report and Order*, Case No. ER-2021-0240, issued February 2, 2022, at page 24.

addressing the residential subsidy in this case, the Commission can return some balance to the ratemaking process and demonstrate that its claimed commitment to cost-based rates was not simply empty rhetoric.[13]

In its brief OPC advances three misplaced reasons for the Commission to reject the class cost of service studies in this case and, instead, allocate the rate increase on an equal percentage basis among all classes. ***First***, in several places in its brief, OPC alleges that the class cost of service studies in this case are not relevant because the A&E methodology is not consistent with Empire's participation in the Southwest Power Pool.[14] Contrary to OPC's assertion, however, the testimony of experts in this case indicates that the class cost of service studies, including their use of the Average & Excess methodology, are consistent with Liberty's participation in the SPP integrated marketplace. For instance, relative to the use of the A&E methodology for the allocation of fixed production costs, the evidence indicates that the A&E methodology is still appropriate and widely-accepted.

> Q. IS THE A&E METHOD OUTDATED NOW THAT EMPIRE AND OTHER MISSOURI UTILITIES ARE PARTICIPATING IN THE SPP MARKET?
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> A. No. as I demonstrated above, the A&E method remains compatible with Missouri utilities participating in the SPP market. All Missouri utilities, and numerous other utilities operating in vertically integrated states, also find this method to be compatible since they continue to utilize this method as noted in the most recent Ameren case, as well as the pending Empire and Evergy rate cases.[15]

In addition to its misplaced attacks on the A&E methodology, OPC also attempts to undermine the results of the class cost of service studies in this case by attacking the method use to

[13] *Id.* ("The Commission continues to believe that cost-based rates are appropriate.").
[14] OPC Initial Brief, page 4 ("It [the class cost of service studies] does not rationally divide Liberty's total revenue requirement among Liberty's customer rate classes because that study is premised on Liberty Managing its generating portfolio for sufficient capacity to supply its customers' peak demands for energy when, instead, Liberty manages that portfolio to generate energy at a cost below Southwest Power Pool ("SPP") market prices.").
[15] Exhibit 354, Maini Surrebuttal, pages 13-14.

allocate revenues associated with Liberty's participation in the SPP market. OPC claims: "It is fundamentally unfair to charge one group of customers for the costs of building and maintaining a power plant, but to provide the sales revenue from that power plant to another group of customers. This is acutely true where generation with little to no marginal costs such as fuel are concerned."[16]

As Liberty's witness explained, however, the use of the energy allocator for purposes of allocating SPP revenues is appropriate.

> Q. Okay. Staff criticized your study because you allocated SPP revenues on the basis of the energy allocator. First off, can you tell me what SPP revenues are?
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> A. My understanding is that any production that Empire has, they can sell it into the market and be able to accrue revenues associated with it.
>
> Q. And would you agree that the costs, primarily fuel, needed to derive those SPP revenues are allocated amongst the parties based upon an energy allocator?
>
> A. Yes, that's correct.
>
> Q. So by allocating the revenues on the basis of the energy allocator, you're simply replicating the same allocator for both the costs and the associated revenues?
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> A. Yes. That's correct. In the surrebuttal testimony, we pointed out that there is additional -- or there's isolated revenues related to the wind investments. And so in that case, there would be no incremental expenses associated with that. And so those revenues were apportioned based on the A and E allocator, which is consistent with how the investment is allocated. So that's -- that's the one exception to that.[17]

While the experts in this case have rejected OPC's assertion that the class cost of service and the A&E methodology are not consistent with the utilities' participation in the RTO energy markets, <u>the Commission has also summarily rejected such assertions</u>. Specifically, in the recent Ameren rate case, similar arguments were made regarding the class cost of service studies. In that case, Ameren used the same A&E methodology (for allocating fixed production costs) and energy allocator (for

[16] OPC Initial Brief, page 7 (citing to Exhibit 118, Lange Rebuttal, page 20).
[17] Tr. 77-78.

allocating RTO market revenues) as was used by Liberty and MECG in this case. There, the Commission rejected such arguments and held that "Ameren Missouri's class cost of service study offers a reasonable estimation of class cost of service."[18] Thus, OPC's unsupported assertion that the class cost of service studies are not consistent with Liberty's participation in the SPP integrated marketplace has been rejected not only by the experts, but also by the Commission.

Second, OPC asserts that the Liberty and MECG class cost of service studies are inapplicable because the underlying A&E methodology is primarily focused on class peak demands for the allocation of fixed production costs.[19] Such a claim is absolutely false! As the record shows, the A&E methodology in this case allocates a greater amount of fixed production costs on the basis of class energy and not on class peak demands. As Liberty witness Lyons concludes in this surrebuttal testimony, "the portion of average demand in the production allocator is 57.30%. This represents the energy portion of the production allocator. The portion of excess demand in the production allocator is 42.70%."[20] Thus, contrary to OPC misleading assertion, more of Liberty's generation is built to serve customers' energy needs and not its peak capacity needs.

Third, OPC digs into its never-ending list of excuses for the Commission to maintain the residential subsidy. For instance, among other reasons, OPC points to the Covid pandemic, increasing inflation, the rate increase in this case and the bill impacts of the upcoming securitization dockets.[21] As Commissioner Rupp perceptively recognized in the recent Ameren deliberations, when

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[18] *Report and Order*, Case No. ER-2021-0240, issued February 2, 2022, page 23.
[19] OPC Initial Brief, pages 5-6 ("Staff witness Sarah L.K. Lange correctly identifies that both methods assume Liberty builds its generation to serve its customers' peak capacity needs, when it does not, particularly Liberty's new wind projects (Neosho Ridge, North Fork Ridge, and Kings Point), projects that are over 30% of its production plant rate base and its depreciation expense.")
[20] Exhibit 38, Lyons Surrebuttal, page 4.
[21] OPC Initial Brief, page 5.

observing that Staff and OPC had again failed to address the residential subsidy: "[t]he argument is made that this is not the right time to do it [address the residential subsidy] because it's never the right time to do it."[22]

Commissioner's Rupp implicit conclusion is that OPC and Staff will invent reasons, depending on the current conditions, to maintain the residential subsidy. Interestingly, however, the excuses advanced by OPC in this case, are not unique to the residential class. As such, the reasons do not provide any justification for continuing to provide the residential class the benefit of a mammoth residential subsidy. As the evidence shows, "[t]he effect of the health pandemic, inflation and winter storm Uri are equally applicable to the commercial and industrial rate classes as well. They are not unique to the residential class."[23]

4. RESPONSE TO STAFF

A. RECITATION OF MECG POSITION

In its Brief, Staff summarizes the positions in this case. While correctly pointing out OPC and Liberty's positions, Staff misstates MECG's positions. Specifically, Staff asserts that "MECG requests an adjustment of 25% to the disparity. This adjustment, plus the agreed Revenue Requirement increase of 7.64%, would result in an effect increase to the Residential Class of 12.3875%."[24]

Staff's recitation of MECG's position is wrong. After the settlement of the revenue requirement in this case, and upon learning the impact of its initial position, MECG modified its position in its opening statement. Specifically, MECG changed its position from a 25% elimination

[22] Ameren deliberations, January 19, 2022.
[23] Exhibit 354, Maini Surrebuttal, page 21.
[24] Staff Initial Brief, page 5.

of the residential subsidy to a position consistent with Empire's filed position - a 9.9% increase for the residential class.[25] As Liberty implicitly acknowledged in its initial filing, a 9.9% increase for the residential class is consistent with concepts of equity, bill continuity and gradualism.[26] Thus, given MECG's modification of its position during the evidentiary hearing, Staff's recitation of MECG's position is misleading.

B. ADOPTION OF PRINCIPLES OF COST-BASED RATES

In the introduction of its Initial Brief, Staff seems to adopt principles of cost-based rates. For instance, Staff points out that "[t]he goal is to match costs to cost causers, so that each customer will pay an amount approximately equivalent to what it actually costs to serve that customer."[27] Still again, Staff points out that "[t]he guiding principle is to match costs to cost causers."[28] Finally, Staff acknowledges that "[s]ometimes, rates and costs get out of alignment. In that situation, the prices charged for service no longer match the actual cost of that service. In such circumstances, some customers pay more than the actual cost of service while others pay less. This problem is addressed through cost responsibility shifts."[29]

Staff's acceptance of cost-based rates and acknowledgement that cost responsibility shifts are necessary when "rates and costs get out of alignment" is interesting given Staff's refusal to accept any cost shifts in this case.[30] For instance, while claiming allegiance to cost-based rate principles, Staff never conducted a class cost of service study in order to determine whether rates are actually

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[25] See, page 54.
[26] Exhibit 36, Lyons Direct, page 33 and Schedule TSL-9, page 2.
[27] Staff Initial Brief, page 2.
[28] *Id.*
[29] *Id.* at page 4.
[30] In fact, one necessarily wonders, given Staff's claimed acceptance of principles of cost-based rates, why hasn't Staff recommended a revenue neutral shift for over 5 years? Clearly, Staff's recitation of cost-based rate principles is simply a façade to disguise its true motivation to preserve residential subsidies in all utility rate cases for as long as possible.

cost-based. Instead, Staff refused to conduct such a study and, instead, blindly assumed that rates and costs are in alignment – thus justifying its recommendation that the Commission apply the rate increase in this case on an equal percentage basis to all customer classes. Staff's recommendation, without a supporting class cost of service study, is rendered all the more remarkable when one recognizes that both class cost of service studies in this case unequivocally conclude that the residential class is paying rates that are significantly below cost of service. Specifically, the final class cost of service studies in this case show that, in order to reach cost-based rates, the residential class needs a 18.99% revenue neutral shift in cost responsibility. In contrast, all other non-lighting classes, need revenue neutral negative shifts.[31]

Rate Class	Revenue Neutral % Shift
Residential	18.99%
Commercial	-4.19%
Small Heating	-2.20%
General Power	-19.80%
Transmission Service	-31.84%
Total Electric Building	-23.36%
Feed Mill / Grain Elevator	-9.58%
Large Power	-19.58%
Miscellaneous	37.42%
Municipal Street Lighting	39.94%
Private Lighting	-30.43%
Special Lighting	428.1%

Source: Exhibit 354, Maini Surrebuttal, Schedule KM-4s (page 2)

Clearly then, given Staff's recommended equal percentage proposal in the face of the undeniable results of the two class cost of service studies in this case, it is peculiar that Staff professes acceptance of principles of cost-based rates and the appropriateness of cost shifts when "rates and costs get out of alignment."

[31] Exhibit 354, Maini Surrebuttal, Schedule KM-4s (page 2 of 2)

C. RELIABILITY OF CLASS COST OF SERVICE STUDIES

After expressly adopting principles of cost-based rates, Staff then acknowledges its predicament. "Why would Staff oppose these proposed [class cost shift] adjustments, based on notions of fundamental fairness? . . . Staff believes that the Empire and MECG studies are flawed and therefore should not be trusted. Staff is strongly opposed to making class cost responsibility adjustments based on untrustworthy studies."[32]

As an initial matter, Staff's suggestion that the class cost of service studies in this case are "untrustworthy" is self-serving. It is important to recognize that despite its multitude of resources, Staff did not conduct a class cost of service study in this case. Its refusal to conduct such a study stands in stark contrast to every other rate case for decades in which Staff has used its resources to conduct such a study.

Rather than conduct such a study, Staff instead decided it could reach its same goal (preservation of the residential subsidy) by simply criticizing the other studies in this case. After justifying its rejection of the other studies, Staff then makes a mammoth assumption that current rates are cost-based and that applying the rate increase on an equal percentage to all rate classes is appropriate. Frankly, there is ***ZERO*** evidence in this case to support the assumption that current rates are cost-based. The only studies conducted in this case both absolutely conclude that current rates are NOT cost-based.

Ultimately Staff's position here is akin to Staff refusing to conduct an audit, criticizing the utility's proposed rate increase as "untrustworthy", and assuming that the current revenue requirement is cost-based. Certainly, the Commission would not condone such a strategy with

[32] Staff Initial Brief, page 6.

regards to revenue requirement. If it would not accept Staff refusal to conduct a revenue requirement audit, why would the Commission condone Staff's strategy of not conducting a class cost of service study?

Ultimately one has to wonder then, if the Commission accepts Staff's strategy in this case, will Staff ever conduct another class cost of service study? After all, as MECG pointed out in its Initial Brief, "why conduct a study that may confirm the existence of a residential subsidy when you can distract the Commission with other ancillary concerns?" The Commission should not simply allow the Staff to assume that current rates are cost-based. Instead, the Commission should require the Staff to fulfill its duties and conduct a class cost of service study to justify this mammoth assumption.

D. STAFF SPECIFIC CONCERNS

As mentioned, Staff's strategy in this case is to preserve the residential subsidy by refusing to conduct a class cost of service study and, instead, simply criticizing the other class cost of service studies. In pursuit of this strategy Staff levels five primary criticisms.

First, as reflected at page 7 of its Initial Brief, Staff suggests that the class cost of service studies conducted by Liberty and MECG are unreliable because of "rate switching". While leveling this concern, Staff did not present any evidence that the rate switching that occurred during the test year was abnormal as to impact the reliability of the class cost of service studies. Staff's failure to provide such evidence is notable when one recognizes that Liberty showed that the rate switching was at normal levels. As Liberty witness Lyons explains, "[w]hile the Company agrees that rate switching occurred in the test year, rate switching generally occurs in any year – and the level that occurred in the test year did not appear to be extraordinary. Furthermore, the rate switching that

occurred in the test year did not impact the overall results of the CCOS study since the results of the CCOS study are generally consistent with prior studies, as discussed below."[33]

Second, at page 8, Staff criticizes the Liberty and MECG class cost of service studies for their alleged "reliance on class peak demand." As was explained earlier, however, the Liberty and MECG class cost of service studies rely much more heaving on class energy usage than class peak demand. As Liberty witness Lyons points out, "the portion of average demand in the production allocator is 57.30%. This represents the energy portion of the production allocator. The portion of excess demand in the production allocator is 42.70%."[34] Thus, contrary to Staff's misleading assertion, the class cost of service studies are NOT overly reliance on class peak demand.

Third, Staff suggests that the class cost of service studies are unreliable because they assume that generating "plant was built primarily for meeting peak capacity requirements."[35] As was just shown, however, the class cost of service studies allocated generating plant investment primarily on the basis of class energy needs. Therefore, Staff's suggestions that the studies assume that plant is "built primarily for meeting peak capacity requirements" is false. At least for Liberty, the A&E methodology actually assumes that generating plants are built primarily for meeting energy requirements.

Fourth, Staff raises a similar criticism to that which was rejected by the Commission in the recent Ameren case. Specifically, at page 9, Staff suggests that it is inappropriate to allocate fixed production costs on the basis of the A&E methodology and then allocate the SPP revenues on the basis of the energy allocator. In order to correct this perceived issue, Staff suggests that "[t]he most

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[33] Exhibit 38, Lyons Surrebuttal, page 2.
[34] Exhibit 38, Lyons Surrebuttal, page 4.
[35] Staff Initial Brief, page 8.

reasonable and simplest allocation approach to apply within the context of Empire's CCOS would be to allocate non-dispatchable generation [wind] on class energy requirements."[36]

Staff raised this exact issue in the recent Ameren rate case. There, Staff allocated the fixed production costs associated with nuclear and fossil units on the basis of various NARUC-approved methods, but then allocated the investment in wind (non-dispatchable generation) on the basis of class energy requirements. As numerous parties, including Ameren, pointed out, however, the allocation of the investment costs in wind on the basis of class energy is inappropriate in that it assumes that wind resources are built entirely to meet energy needs and do not contribute to meeting the utility system peak. Ultimately, the Commission rejected Staff's suggestion that investment in non-dispatchable generation (wind) be allocated on the basis of class energy requirements. "Ameren Missouri's class cost of service study offers a reasonable estimation of class cost of service."[37]

Fifth, at page 10-11, Staff criticizes the fact that SPP revenues are allocated on the basis of the energy allocator while the fixed production costs are allocated on the basis of the A&E methodology. In support of this criticism, Staff criticizes the long-standing nature of the A&E methodology. "The A&E study predates the development and implementation of today's integrated energy markets, such as the SPP IM in which Empire participates." The evidence indicates, however, that despite its long-standing acceptance the A&E methodology is still relevant and accepted. "[T]he A&E method remains compatible with Missouri utilities participating in the SPP market. All Missouri utilities, and numerous other utilities operating in vertically integrated states, also find this method to be compatible since they continue to utilize this method as noted in the most recent

[36] Staff Initial Brief, page 9.
[37] *Report and Order*, Case No. ER-2021-0240, issued February 2, 2022, page 23.

Ameren case, as well as the pending Empire and Evergy rate cases."[38] More important to the fact that the Missouri utilities all continue to utilize the A&E methodology despite their participation in RTO markets, the Commission also continues to utilize the A&E methodology. Specifically, as pointed out, the Commission expressly accepted Ameren's class cost of service study, including its use of the A&E methodology, in the recent Ameren rate case.

E. RELEVANCE OF EEI DATA

At page 14 of its Initial Brief, Staff criticizes MECG's utilization of EEI data to demonstrate that Liberty's industrial rates are not competitive with other state, regional and national utilities. As MECG pointed out in its Initial Brief, however, the EEI data is widely accepted by state utility commissions, utilities and customers.

For instance, in assessing the competitiveness of a utility's rates, the Commission has relied upon testimony that utilized the EEI Typical Bills and Average Rates Report.[39] In addition, utilities use the same report in order to benchmark the competitiveness of their own rates relative to other utilities. Finally, customers also use the EEI report "to evaluate and benchmark utility costs within the state, regionally and nationally."[40]

For instance, in recent testimony, Walmart pointed out:

> Walmart operates in all 50 states and the District of Columbia, so we are able to easily benchmark our utility cost in one market against other utilities in the market as well as regional and national benchmarks. . . Our experience mirrors the results of the EEI Report and reinforces large customer concerns about the competitiveness of EDE's rates.[41]

Praxair provided similar testimony:

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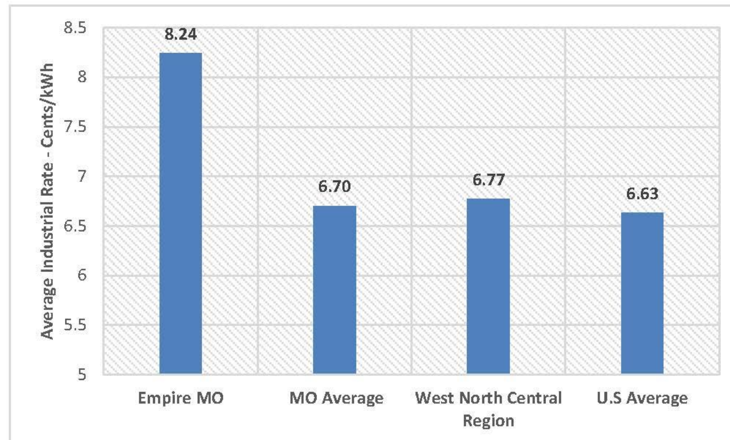
[38] Exhibit 354, Maini Surrebuttal, pages 13-14.
[39] *Id.*
[40] Exhibit 354, Maini Surrebuttal, page 19.
[41] *Id.* at page 20.

> Praxair has comparison data from twenty-six states and provinces in the United States and Canada in which Praxair operates production plants. Of those twenty-six places, just one – California – has higher rates than Empire for electric power supplied by regulated utilities. . . The uncompetitive nature of Empire's industrial rate, as depicted in the EEI data, is consistent with the real life costs that Praxair pays, day in, day out. Specifically, when compared to other regional utilities, Empire's industrial rate is not competitive with other service areas.[42]

Staff's desire to convince the Commission to disregard the EEI data is obvious – that data conclusively demonstrates that Empire's industrial rates are **NOT** competitive. Specifically, Empire's industrial rates are now more than 22% above the state, regional and national average industrial rates.



Source: Exhibit 352, Maini Direct, page 9.

Furthermore, because the Commission refused to address the residential subsidy in the last rate case, the competitiveness of Empire's industrial rates has worsened. "In 2015, the average industrial rate was approximately 17% above the national average, in 2019 Empire's industrial rate was 21% above the national average and in 2020 it is 24% above the national average."[43]

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[42] *Id.*

[43] Exhibit 352, Maini Direct, page 10.

F. <u>CONCLUSION</u>

Ultimately, MECG asks that the Commission reject Staff's criticisms. Ultimately, it is ironic that, in the recent Ameren rate case, Staff criticized the class cost of service studies because class cost of service studies are more of an art than a science. While claiming that class cost of service studies are not a science, Staff's criticisms are symptomatic of a party that expects those studies to be scientifically precise. Such a position is all the more puzzling when one recognizes that MECG is not seeking to move entirely towards an exact cost-based rate. Rather, MECG is only seeking to move less than 12% of the way towards its quantification of cost-based rates. As such, MECG asks that the Commission demonstrate its commitment to cost-based rates and towards remedying Liberty's uncompetitive industrial rates.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email to all parties by their attorneys of record as provided by the Secretary of the Commission.

/s/ David Woodsmall
David L. Woodsmall

Dated: March 8, 2022