

Exhibit No.:
Issues: Corporate Cost Allocations,
Affiliate Transactions, Cost Allocation
Manual
Witness: Jill Schwartz
Type of Exhibit: Rebuttal Testimony
Sponsoring Party: The Empire District
Electric Company
Case No.: ER-2019-0374
Date Testimony Prepared: March 2020

**Before the Public Service Commission
of the State of Missouri**

Rebuttal Testimony

of

Jill Schwartz

on behalf of

**The Empire District Electric Company
a Liberty Utilities Company**

March 2020



REBUTTAL TESTIMONY
OF
JILL SCHWARTZ
THE EMPIRE DISTRICT ELECTRIC COMPANY
BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION
CASE NO. ER-2019-0374

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Jill Schwartz. My business address is 602 South Joplin Avenue, Joplin,
3 MO, 64802.

4 **Q. ARE YOU THE SAME MS. SCHWARTZ WHO FILED DIRECT TESTIMONY**
5 **IN THIS PROCEEDING ON BEHALF OF THE EMPIRE DISTRICT**
6 **ELECTRIC COMPANY (“LIBERTY-EMPIRE” OR “COMPANY”)?**

7 A. Yes.

8 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN THIS**
9 **PROCEEDING?**

10 A. The purpose of my rebuttal testimony is to respond to the direct testimony of Mr.
11 Robert Schallenberg, submitted on behalf of the Office of the Public Counsel (“OPC”),
12 regarding corporate allocations and affiliate transactions.

13 **Q. PLEASE SUMMARIZE YOUR UNDERSTANDING OF OPC WITNESS**
14 **SCHALLENBERG’S DIRECT TESTIMONY ON THESE ISSUES.**

15 A. My understanding is that Mr. Schallenberg alleges that Liberty-Empire does not and
16 has never complied with the Commission’s Affiliate Transaction Rule (“ATR”) for
17 electric utilities,¹ is not compliant with the conditions included in the stipulations and

¹ Missouri Public Service Commission (“Commission”) Rule 20 CSR 4240-20.015.

1 agreements from the merger case related to affiliate transactions, and therefore should
2 not be allowed to recover any of the costs allocated from its corporate affiliates.

3 **Q. DO YOU AGREE WITH MR. SCHALLENBERG'S ASSERTIONS?**

4 A. No, I do not. Mr. Schallenberg's Direct Testimony makes broad and sweeping
5 allegations of non-compliance with the Commission's ATR, but does not provide any
6 specific examples of transactions that do not comply. OPC's assertion that all of the
7 affiliate cost allocations should not be recoverable in the rates paid by Liberty-Empire's
8 Missouri electric retail customers is unreasonable and unsubstantiated. As set forth
9 below, I will address Mr. Schallenberg's assertions regarding the Company's
10 compliance with the Commission's ATR, transactions with and cost allocations from
11 affiliate companies, and the Company's Cost Allocation Manual ("CAM"). Mr.
12 Timpe's Rebuttal Testimony responds to Mr. Schallenberg's critique of the Company's
13 financing arrangement with Liberty Utilities Co.

14 **Q. PLEASE RESPOND TO OPC'S GENERAL ALLEGATION THAT LIBERTY-
15 EMPIRE DOES NOT COMPLY WITH THE COMMISSION'S ATR.**

16 A. Mr. Schallenberg takes an extreme position in this testimony that he is unaware of any
17 period of time in which the Company has complied with the Commission's ATR. Mr.
18 Schallenberg would have the Commission believe that the Company carries out its
19 business in blatant disregard of the Commission's rules, which is plainly incorrect.

20 **Q. DOES THE COMPANY ENGAGE IN AFFILIATE TRANSACTIONS AND
21 ALLOCATE COSTS PURSUANT TO A CAM?**

22 A. Yes. As I explain in my Direct Testimony, the Company has for many years operated
23 under a CAM, which has been scrutinized by this Commission and parties in numerous
24 dockets over the years. With their filing on August 23, 2011, Liberty-Empire and its

1 subsidiary, The Empire District Gas Company (“EDG”), first sought the Commission’s
2 approval of their CAM (Case No. AO-2012-0062). Liberty-Empire, EDG, and all of
3 their Missouri affiliates then sought approval of their CAM with their filing on June
4 30, 2017 (Case No. AO-2017-0360). In addition to these two CAM-specific dockets
5 and the Company’s annual affiliate transaction filings, the Company’s affiliate
6 transactions and costs allocations pursuant to its CAM have been before the
7 Commission in various general rate cases, including Case Nos. ER-2012-0345, ER-
8 2014-0351, and ER-2016-0023.

9 **Q. WAS THE COMPANY’S CAM APPROVED BY THE COMMISSION IN**
10 **EITHER CASE NO. AO-2012-0062 OR CASE NO. AO-2017-0360?**

11 A. The Company’s CAM was neither approved nor rejected by the Commission. The
12 parties, including OPC, reached a settlement in Case No. AO-2012-0062, agreeing as
13 follows:

14 Following the merger, . . . Empire will be a wholly-owned subsidiary of
15 LU Central. It is anticipated that these transactions will close in January
16 of 2017. It is further anticipated that the relationship between EDE and
17 its affiliates, including its wholly owned subsidiary EDG, will change if
18 the Transaction is closed as contemplated. As such, the Signatories
19 believe it would be an inefficient use of resources to continue contesting
20 the contents of one or more CAMs for the current affiliate arrangement,
21 . . . Good cause exists for EDE and EDG to operate without Commission
22 approved CAMs until their respective CAMs are approved in the
23 proceedings initiated pursuant to paragraphs 8 and 9 below.

24
25 The Unanimous Stipulation and Agreement further stated as follows (emphasis added):

26 Neither the Staff nor OPC will file a complaint against EDE and/or EDG
27 *or provide support for any claim or allegation* against EDE and/or
28 EDG on the basis that EDE and/or EDG is or *has been* non-compliant
29 with the Commission's affiliate transactions rules because EDE and/or
30 EDG are conducting and/or have conducted affiliate transactions
31 without Commission approved CAMs.

32 OPC’s allegations in this proceeding, although extreme, are not particularly detailed.

33 As such, I am unclear as to whether OPC is asserting that the Company is in violation

1 of the ATR due to not operating under a Commission-approved CAM. Based on my
2 reading of the above stipulation and agreement language, however, it appears the
3 OPC's Direct Testimony in this proceeding may be in violation of the settlement
4 agreement in Case No. AO-2012-0062. The more recent CAM proceeding, Case No.
5 AO-2017-0360, is currently stayed by the Commission, awaiting implementation of
6 new affiliate transaction rules. The stay order was requested by the parties, including
7 OPC.

8 **Q. DOES LIBERTY-EMPIRE OPERATE UNDER TWO DIFFERENT CAMS?**

9 A. No. Since the Company was acquired by APUC on January 1, 2017, the Company has
10 operated under the APUC CAM, as well as under a series of affiliate service agreements
11 that were contemplated in the acquisition docket. Despite what Mr. Schallenberg states
12 on page 4 of his Direct Testimony, Liberty-Empire operates under only one CAM, the
13 APUC CAM. The "Missouri CAM," as it is referred to by Mr. Schallenberg, is an
14 appendix to the APUC CAM. It is not a separate and distinct CAM. In my Direct
15 Testimony, I explain the purpose of the Missouri-specific appendix to the APUC CAM.

16 **Q. THIS IS THE FIRST GENERAL RATE CASE FOR LIBERTY-EMPIRE SINCE**
17 **THE MERGER. HAS THE APUC CAM BEEN BEFORE THE COMMISSION**
18 **IN ANY OTHER RATE CASE?**

19 A. Yes. As the Commission is aware, APUC owns two other regulated utilities in Missouri
20 that pre-date its ownership of Liberty-Empire: Liberty Utilities (Midstates Natural Gas)
21 Corp. ("Liberty Midstates") and Liberty Utilities (Missouri Water) LLC. Liberty
22 Midstates had a rate case in 2018, which included costs from affiliates which were
23 charged under the APUC CAM and pursuant to affiliate service agreements similar to
24 those that were executed after the Liberty-Empire acquisition. In the Liberty Midstates

1 case, not only did OPC not propose any disallowance of affiliate cost allocations to
2 Liberty Midstates, OPC was a signatory to a unanimous stipulation agreement that
3 resolved all of the issues in the case, including affiliated corporate allocations.²

4 **Q. DOES LIBERTY-EMPIRE PARTICIPATE IN CORPORATE SUPPORT**
5 **AFFILIATE TRANSACTIONS THAT ARE PROHIBITED BY THE ATR?**

6 A. No. Subpart 20.015(2)(B) of the Commission's ATR provides as follows:

7 Except as necessary to provide corporate support functions, the
8 regulated electrical corporation shall conduct its business in such a way
9 as not to provide any preferential service, information or treatment to an
10 affiliated entity over another party at any time.

11
12 As defined in the ATR, corporate support means joint corporate oversight, governance,
13 support systems and personnel, involving payroll, shareholder services, financial
14 reporting, human resources, employee records, pension management, legal services,
15 and research and development activities. The vast majority of costs allocated to
16 Liberty-Empire and included in its proposed revenue requirement are from corporate
17 affiliates providing corporate support functions as defined by the Commission's ATR.

18 **Q. DO YOU AGREE WITH MR. SCHALLENBERG THAT IT IS REASONABLE**
19 **TO COMPARE LIBERTY-EMPIRE'S AFFILIATE ALLOCATIONS PRIOR**
20 **TO THE ACQUISITION BY APUC TO LIBERTY-EMPIRE'S AFFILIATE**
21 **TRANSACTIONS AFTER THE ACQUISITION?**

22 A. No, I do not. I do not disagree with Mr. Schallenberg that prior to the acquisition of
23 Liberty-Empire by APUC, the Company was a fully functioning electric and water
24 utility, holding company, and service company to its subsidiaries. However, comparing
25 Liberty-Empire's allocations to EDG and Empire District Industries, Inc. to allocations

² File No. GR-2018-0013, Order Approving Stipulation and Agreement issued June 6, 2018.

1 from APUC and its affiliates to Liberty-Empire is not an “apples to apples”
2 comparison. One reason being, for example is that under the APUC shared services
3 model, Liberty-Empire no longer has any employees and all of the employee support
4 is now reflected in the allocations from affiliate entities. Prior to the acquisition by
5 APUC, payroll was a direct cost on the Company’s books.

6 **Q. PLEASE RESPOND TO THE STATEMENTS MADE BY MR.**
7 **SCHALLENBERG REGARDING THE REORGANIZATION THAT HAS**
8 **OCCURRED SINCE THE ACQUISITION OF EMPIRE BY APUC.³**

9 A. Mr. Schallenberg appears highly critical that Liberty Utilities Co. relies on a service
10 company model where employees are employed by a service company instead of
11 directly by the utility, and he suggests that the Company was not forthcoming about its
12 operational plans in File No. EM-2016-0213, the acquisition docket. Specifically, Mr.
13 Schallenberg states that the non-company parties to the merger case, File No. EM-
14 2016-0213, did not anticipate the transfer of Liberty-Empire employees to a non-
15 regulated affiliate. The Company, however, was clear in its direct filed case in that
16 docket, explaining that “Liberty Utilities Service Corp. [(“LUSC”)] is the legal
17 employer of all U.S. based utility employees.” Testimony of Peter Eichler, page 11.
18 Since the acquisition closed, the Company has been transparent regarding this model,
19 providing an affiliate service agreement with Liberty Utilities Service Corp., which
20 clearly identifies the full range of services necessary to staff the utility. Despite the
21 Company’s disclosure of its service company model in 2016 and its provision of the
22 LUSC Affiliate Service Agreement in 2017, OPC has not taken any action to pursue its
23 concern, instead “lying in wait” for Liberty-Empire’s rate case to seek disallowance of

³ Direct Testimony of Robert E. Schallenberg, File No. ER-2019-0374, page 6, lines 1-11.

1 100% of its costs that are charged to Liberty-Empire for all of the day-to-day staffing
2 of the utility.

3 **Q. ON PAGE SIX OF HIS DIRECT TESTIMONY, MR. SCHALLENBERG ALSO**
4 **CLAIMS THAT LIBERTY-EMPIRE’S AFFILIATES HAVE “UNFETTERED**
5 **USE OF [EMPIRE’S] REGULATED ASSETS.” DO YOU AGREE WITH**
6 **THAT STATEMENT?**

7 A. No. Mr. Schallenberg, however, does not provide a single example of this “unfettered
8 use,” which makes his allegation difficult to evaluate. I am aware that to the extent that
9 any LUSC employee works from a building that is owned by Liberty-Empire and
10 provides services to an affiliate, that the employees labor charge is “loaded” to include
11 a fair cost of use of the facilities.

12 **Q. HOW DO YOU RESPOND TO MR. SCHALLENBERG’S STATEMENTS ON**
13 **PAGE 6, LINES 17-20, OF HIS DIRECT TESTIMONY?**

14 A. Mr. Schallenberg does not specify which transactions he is referring to, though I
15 assume he is referring to the services provided by LUSC, and his claim is that Liberty-
16 Empire should have conducted a competitive solicitation and had LUSC bid as part of
17 that process to staff Liberty-Empire. Assuming this is his argument, it is nonsensical.
18 The same employees who staffed Liberty-Empire pre-acquisition service Liberty-
19 Empire post-acquisition. The difference is that they are now employed by LUSC - not
20 for the purpose of obfuscation, but for the purpose of administrative ease to have U.S.
21 employees employed by one employer. These are exactly the type of corporate support
22 functions contemplated by the Commission’s ATR. Mr. Schallenberg’s interpretation
23 of the ATR does not make sense here and should be disregarded.

1 **Q. MR. SCHALLENBERG NOTES THAT LUSC, LUCC, AND APUC FILED**
2 **FERC FORM 60 REPORTS AND THAT THE COSTS ON THE FORM 60**
3 **REPORTS DO NOT MATCH THE AMOUNTS ON EMPIRE'S AFFILIATE**
4 **TRANSACTION REPORTS FILED WITH THE COMMISSION. WHY IS**
5 **THIS?**

6 A. There are a few reasons why the amounts reflected in the FERC Form 60 reports do
7 not tie exactly to the amounts reflected in the affiliate transaction report filed by
8 Liberty-Empire in Missouri, none of which indicate an improper motive or unlawful
9 act. In general, there is a one-month difference in the time period of the costs reflected
10 on the reports. Specifically, the 2018 FERC Form 60 reports reflect the costs billed by
11 each corporate affiliate from January 2018 through December 2018. However, the
12 2018 Liberty-Empire Affiliate Transaction Report reflects the allocated costs recorded
13 in the appropriate FERC accounts on Liberty-Empire's general ledger from January
14 2018 through December 2018. As an example, the costs billed by APUC in January
15 2018 are recorded in the appropriate FERC accounts on Liberty-Empire's books in
16 February 2018.

17 In addition to the timing difference, there is variance in the amount of allocated
18 costs from APUC and LUCC related to the conversion of a foreign currency to US
19 dollars. APUC's and LUCC's books and records are maintained in Canadian dollars
20 that have to be converted to US dollars. For FERC Form 60 reporting purposes, an
21 average foreign exchange rate is applied to the total amount of allocated costs in
22 Canadian dollars from January 2018 through December 2018. However, Liberty-
23 Empire's Affiliate Transaction Report reflects the actual allocated dollars recorded
24 each month, based on the foreign exchange rate applied for each individual month's

1 billings. As an example, the average foreign exchange rate applied for 2018 FERC
2 Form 60 reporting purposes was 1.296083, whereas the foreign exchange rate applied
3 for costs billed in December 2018 was 1.364200.

4 And notably, the biggest difference relates to the amount of allocations reported
5 from LUSC. As noted in Mr. Schallenberg's Direct Testimony, the LUSC FERC Form
6 60 reflects \$12,783,683 being allocated to Liberty-Empire, while the 2018 Affiliate
7 Transaction Report reflects \$79,201,970 of costs from LUSC. Liberty-Empire's
8 Affiliate Transaction Report includes the payroll funding and benefits, which, properly,
9 is not reflected in the FERC Form 60.

10 **Q. HAS LIBERTY-EMPIRE COMPLIED WITH THE CONDITIONS SET**
11 **FORTH IN THE STIPULATIONS AND AGREEMENTS IN THE MERGER**
12 **CASE REGARDING AFFILIATE TRANSACTIONS AND THE CAM?**

13 A. Yes. As discussed in the Direct Testimony of Company witness Sheri Richard, and for
14 all the reasons set forth in my Direct Testimony and this Rebuttal Testimony, Liberty-
15 Empire has complied with the conditions of the stipulations and agreements related to
16 affiliate transactions and the CAM. The Company continues to be operated in
17 compliance with the Commission's ATR and its CAM. Documentation of the affiliate
18 costs allocated and methods of allocations are maintained in accordance with the
19 Commission's ATR, and Liberty-Empire provides no prohibited preferential service,
20 information, or treatment to affiliate entities.

21 **Q. DID LIBERTY-EMPIRE HAVE CONTRACTS WITH EDG AND EDI PRIOR**
22 **TO THE ACQUISITION BY APUC?**

23 A. No, and Liberty-Empire conducts business with its subsidiaries, EDG and EDI, in the
24 same manner as prior to the acquisition of the Company by APUC.

1 **Q. DO LIBERTY-EMPIRE’S AFFILIATE TRANSACTIONS NEGATIVELY**
2 **AFFECT ITS ABILITY TO PROVIDE ELECTRIC RETAIL CUSTOMERS IN**
3 **MISSOURI WITH SAFE AND ADEQUATE SERVICE AT JUST AND**
4 **REASONABLE RATES?**

5 A. No. Mr. Schallenberg’s assertion that Liberty-Empire is not providing adequate service
6 to its Missouri electric retail customers is just not true. As referenced in Company
7 witness Jeff Westfall’s Direct Testimony, the Company has made significant
8 investments in reliability which are reflected in the improvement in its System Average
9 Interruption Duration Index (“SAIDI”) and System Average Interruption Frequency
10 Index (“SAIFI”) metrics. In addition, as discussed in my Direct Testimony, the APUC
11 CAM is based on the National Association of Regulatory Utility Commissions
12 (“NARUC”) Guidelines for Cost Allocations and Affiliate Transactions. The
13 fundamental premise of those guidelines and the APUC CAM (which, again, includes
14 the Missouri-specific appendix) is to direct charge costs for goods and services
15 provided as much as possible. When it is not possible to direct charge, the use of
16 reasonable allocation factors, such as Revenues, Operation & Maintenance Expense,
17 Net Plant, Customers, Non-Labor and Labor Expenses, is appropriate to ensure an
18 equitable distribution of costs to benefiting affiliate entities. The APUC CAM uses
19 weightings and multiple allocation factors to further ensure an equitable allocation of
20 indirect costs.


21 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

22 A. Yes.

AFFIDAVIT OF JILL SCHWARTZ

STATE OF MISSOURI)
) ss
COUNTY OF JASPER)

On the 2nd day of March, 2020, before me appeared Jill Schwartz, to me personally known, who, being by me first duly sworn, states that she is Senior Manager of Rates and Regulatory Affairs of The Empire District Electric Company – Liberty Utilities Central and acknowledges that she has read the above and foregoing document and believes that the statements therein are true and correct to the best of her information, knowledge and belief.



Jill Schwartz

Subscribed and sworn to before me this 2nd day of March, 2020.

ANGELA M. CLOVEN
Notary Public - Notary Seal
State of Missouri
Commissioned for Jasper County
My Commission Expires: November 06, 2023
Commission Number: 15262659



Notary Public

My commission expires: 11/06/23.