

Exhibit No.:
Issues: Money Pool, Affiliate
Transactions, Variances
Witness: Mark T. Timpe
Type of Exhibit: Surrebuttal Testimony

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. AO-2018-0179

**IN THE MATTER OF THE APPLICATION OF THE EMPIRE DISTRICT ELECTRIC
COMPANY (EDE), THE EMPIRE DISTRICT GAS COMPANY (EDG), LIBERTY
UTILITIES (MIDSTATES NATURAL GAS) CORP. (MIDSTATES), AND LIBERTY
UTILITIES (MISSOURI WATER) LLC (WATER) FOR AN AFFILIATE
TRANSACTIONS RULE VARIANCE**

SURREBUTTAL TESTIMONY

OF

MARK T. TIMPE

****CONFIDENTIAL****

March 6, 2019

PUBLIC VERSION

SURREBUTTAL TESTIMONY
OF
MARK T. TIMPE
BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION
CASE NO. AO-2018-0179

1 **Q. Please state your name and business address.**

2 A. My name is Mark T. Timpe. My business address is 602 S. Joplin Avenue, Joplin,
3 Missouri.

4 **Q. Are you the same Mark Timpe who filed Direct Testimony in this matter on behalf**
5 **of The Empire District Electric Company (“EDE”), The Empire District Gas**
6 **Company (“EDG”), Liberty Utilities (Midstates Natural Gas) Corp., and Liberty**
7 **Utilities (Missouri Water) LLC (collectively, the “Applicants”)?**

8 A. Yes.

9 **Q. What is the purpose of your rebuttal testimony?**

10 A. The purpose of my rebuttal testimony is to correct certain factual errors found in and
11 refute certain portions of the rebuttal testimony provided by Mr. Robert E. Schallenberg
12 on behalf of the Office of the Public Counsel (“OPC”).

13 **Q. The transcript of your deposition is attached to Mr. Schallenberg’s rebuttal**
14 **testimony. Do any changes need to be made to that deposition transcript?**

15 A. Yes. I was not provided an opportunity to review and make any correcting edits to that
16 testimony prior to its usage as an exhibit by Mr. Schallenberg. The transcript also needs

1 to be reviewed to indicate confidential information. The corrections will be provided to
2 the court reporter and are attached as Exhibit MTT-S-1.

3 **Q. In Mr. Schallenberg's rebuttal testimony, he states that OPC's objection to the**
4 **Application is because the money pool would afford EDE and EDG, and thus their**
5 **customers fewer financial benefits than are currently available to them through**
6 **EDE's money pool. Do you agree with that statement?**

7 A. No, I do not. OPC has misinterpreted, misstated, and/or ignored certain salient points
8 regarding the participation of the Applicants in the Liberty Utilities money pool ("Money
9 Pool") which I believe has led them to their conclusion. At times, Mr. Shallenberg
10 appears to attribute improper motives on the part of Liberty Utilities Co. in proposing the
11 Money Pool, which could not be farther from the truth. As demonstrated by my response
12 below to Mr. Shallenberg's criticisms, Liberty Utilities Co. has developed the Money
13 Pool in order to provide low cost short term funds and higher investment income
14 potential to the Applicants which ultimately is beneficial to customers. While the
15 participants will be asked to absorb fees associated with LUCo's line of credit facility,
16 these fees are, as more fully discussed below: a) competitively set in the commercial loan
17 market based on LUCo's investment grade credit ratings; b) fairly allocated based on line
18 of credit usage and a four factor methodology which is ultimately proportional to each
19 Money Pool participant's size/needs; and c) prudent given that each Money Pool
20 participant should have at its disposal a working capital funding source with its attendant
21 fees which are commercially reasonable.

22 **Q. What are the salient points OPC has misinterpreted, misstated, and/or ignored?**

1 A. There are several, which I identify below.

2 1. (Correction) EDE and EDG will not participate in the Money Pool until Liberty
3 Utilities Co. (“LUCo”) is able ** _____ ** while Liberty
4 Utilities (Midstates Natural Gas) Corp. and Liberty Utilities (Missouri Water) LLC will
5 begin participation upon receipt of Commission approval. With LUCo having credit
6 ratings similar to EDE, ** _____
7 _____ ** and therefore not be detrimental to EDE’s or
8 EDG’s customers as Mr. Schallenberg posits.

9 2. (Mostly ignored) EDE and EDG will have the opportunity to earn a higher rate of
10 interest on any excess funds which will be lent into the Money Pool. As noted in my
11 direct testimony in this case, the interest rate paid on excess funds lent into the Money
12 Pool and re-lent to affiliates will earn a significantly higher interest rate than EDE’s
13 current high quality government money market fund investment. Mr. Schallenberg
14 suggests this advantage be countered by having EDE invest its excess cash in riskier
15 investments which would be imprudent.

16 3. (Error correction and misstatement) Mr. Schallenberg states that LUCo may charge
17 EDE and EDG a significant portion of the fees for the unused portion of LUCo’s credit
18 facilities. (see Schallenberg testimony page 4, line 11-13). That the Applicants would
19 absorb a significant portion of the fees should not be a surprise to anyone and is justified
20 given their combined LUCo allocation factor of approximately 49% (Empire’s allocation
21 factor alone is 41.49% net of its unregulated fiber business). Furthermore, as will be
22 discussed below, incurring line of credit fees is a prudent expenditure given the value

1 provided them by LUCo providing unlimited and ready access to its credit facility. Also,
2 as has been discussed with both Staff and OPC during the course of this docket, if Empire
3 absorbed its exact 41.49% allocation of LUCo's line of credit fees, that cost would total
4 ** _____ ** equal to a savings of
5 ** _____ ** compared to the ** _____ ** annual cost of Empire's former line of
6 credit commitment fees ** _____ ** Alternatively, Empire
7 could absorb up to ** _____ ** of LUCo's line of credit fees at which point the expense
8 matches the cost of its former credit facility. Empire's fees might even be less in the
9 future as LUCo makes other acquisitions whereby its "piece of the pie" will shrink and its
10 allocation percentage decline. (The line of credit fees which the Applicants may be
11 charged are outlined in Section 1.07 of the Money Pool Agreement.) Additionally, it
12 should be noted the fees on the EDE credit facility were fixed while the line of credit fees
13 for LUCo's credit facility are reduced by usage. In addition to the credit fees EDE paid
14 for its standalone credit facility, EDE also paid interest on the commercial paper it issued
15 so its total cost of borrowing was the interest plus the credit fees – just like under the
16 LUCo credit facility. On page 5, lines 3 and 4, of Mr. Schallenberg's testimony, he
17 seems to make a point about the fee not being the total cost of the LUCo facility which is
18 true but again, this was the same situation under EDE's former credit facility.

19 4. (Error correction) EDE's issuance of commercial paper does not count as usage under
20 the LUCo credit facility and therefore does not reduce the line of credit fees paid by
21 LUCo, (see Schallenberg testimony page 5 lines 10 and 11).

1 5. (Error correction/ignored fact) On page 5, line 19-23 of Mr. Schallenberg's testimony,
2 he states that "fees incurred for the unused portion of the LUCo \$500 million credit
3 facility will be charged to each "borrowing" money pool participant based on a four
4 factor formula used to determine their share. This is incorrect; Section 1.07 of the Money
5 Pool Agreement clearly states that the line of credit fees will be applied based on a 2-step
6 formula based first on actual credit facility usage with the remainder of fees apportioned
7 based on the four factor methodology. What is also grossly lacking from Mr.
8 Schallenberg's testimony is any discussion of the value the Money Pool participants
9 receive by having an unlimited borrowing limit and line of credit available at their
10 disposal provided by LUCo. All prudent businesses have lines of credit available for use
11 in emergencies, to cover temporary disruptions, timing differences in their cash flows or
12 to temporarily finance routine capital expenditures. Businesses pay a fee to their bank for
13 the privilege of having such a line of credit at their disposal and they request credit lines
14 based on the size of their business and unique needs. The language in the Money Pool
15 Agreement's Section 1.07 appropriately allocates cost first to those who borrow and then
16 allocates the remainder of the line of credit fees to all participants reflecting the value of
17 having the line of credit at their disposal. Because having the line of credit available to
18 them is beneficial to each participant, they should pay their fair share of those costs.
19 Certainly participants would incur similar types of costs if each participant individually
20 sought a line of credit from a financial institution. To not allocate those costs among all
21 participants would effectively result in any non-paying participant being a "free rider"
22 which would violate the prohibition on cross-subsidization among utility affiliates.

1 6. (Misinterpretation) Regarding Mr. Schallenberg's testimony on page 6 lines 6-10, it is
2 true that ** _____

3 _____ **. However, this **does not** mean that EDE and EDG could
4 never again borrow from or invest excess funds with non-affiliate vendors to take
5 advantage of more favorable terms. In fact, the Money Pool Agreement specifically
6 allows participants to exit the Money Pool simply by giving notice. Additionally, as has
7 been previously discussed, the investment rate available on excess by way of the Money
8 Pool is higher than that which EDE and EDG enjoy today and the borrowing rate, ** _____

9 _____
10 _____
11 _____ **

12 7. (Incorrect statement). On page 6, line 21-23, Mr. Schallenberg states that EDE's credit
13 usage (meaning EDE's commercial paper issuance under its program) saves LUCo
14 ** __ ** basis points on each dollar of EDE's commercial paper issuance. This statement
15 is incorrect. EDE's commercial paper program is backed by LUCo's \$500 million credit
16 facility but EDE's commercial paper issuance is not counted as usage against the LUCo
17 credit facility. However, for internal tracking purposes, LUCo counts EDE's commercial
18 paper issuance against the \$500 million credit facility since this credit facility must have
19 sufficient credit availability to pay-off EDE's commercial paper balance should the
20 commercial paper market cease to function normally.

21 8. (Incorrect statement) On page 9, lines 19-21, Mr. Schallenberg incorrectly states that
22 EDE's water operations and Liberty Utilities (Missouri Water) LLC would be better off

1 now by participating in EDE's money pool instead of using the LUCo Money Pool
2 ** _____ ** As previously noted, EDE's water
3 operations, which are part of EDE's existing internal money pool, will continue to be
4 funded by EDE and enjoy EDE's commercial paper financing rates ** _____

5 _____ ** Liberty Utilities (Missouri Water) LLC is
6 not only not worse off by receiving funding from LUCo's investment grade credit
7 facility, but actually stands to benefit from participation for many of the reasons I list
8 above. In addition, without the Money Pool, neither entity would receive the higher
9 interest income available on excess cash. Furthermore, it is not EDE's obligation or role
10 to fund its sister companies (e.g. Liberty Utilities (Missouri Water) LLC) and thereby
11 consume its credit capacity for a third party; rather, it should be funded by its parent
12 company.

13 9. (Ignored) On page 12, lines 5-7 and 18-20, of Mr. Schallenberg's testimony, he states
14 "...I am unable to find how the competitive bidding requirements of the applicable
15 MoPSC affiliate transaction rules would prohibit LUCo's money pool from operating
16 effectively. In other words, I see no "good cause" (for an exemption from the
17 competitive bidding requirement of the Affiliate Transaction Rules)." It is my
18 understanding that the Office of Public Counsel agrees with the Applicants and the Staff
19 that, as long as the Money Pool ** _____

20 _____ ** which provides not only the "good cause" rationale but also forms
21 the basis for why a waiver of the competitive bidding requirement would not harm the
22 Applicants' respective customers. Additionally, not all services lend themselves to the

1 type of competitive bidding required by the Missouri Affiliate Transaction Rules.
2 Shopping for competitive loan rates is not like shopping for office supplies or fleet
3 vehicle parts. The bank market has become much more rational over the years, from a
4 pricing perspective, due to increased regulatory oversight and new capital standards
5 which has made the banking business much more relationship oriented as opposed to its
6 prior transactional mentality. EDE's own former credit facility carried loan rates
7 comparable to LUCo's credit facility and it was (and remains) an investment grade credit
8 and EDE finds it beneficial to fund itself via commercial paper. Liberty Utilities
9 (Midstates Natural Gas) Corp. and Liberty Utilities (Missouri Water) LLC are not
10 investment grade credits and therefore would not attract credit at rates anywhere near
11 commercial paper rates. ** _____
12 _____

13 _____** they know they'll be competing against. The banks would also
14 realize that there won't be much other non-credit business from which to generate non-
15 credit fee income which further lessens their appetite to simply provide low-cost loan
16 rates. The Applicants could go through the competitive bidding process, in a serious and
17 business-like way, but it is highly unlikely, for the reasons just given, that the process
18 would result in finding better credit terms. Finally, it should not be ignored that the
19 pricing in the commercial loan (for LUCo's credit facility) and ** _____
20 _____** are competitively set on a continuous basis by market participants (banks and
21 ** _____**). These markets are driven by the borrower's/issuer's
22 underlying credit rating and industry and thus provide a form of continuous competitive

1 bidding which further negates the need for an additional competitive bidding process
2 according to the Rules. Additionally, LUCo's finance leadership meets regularly with its
3 lead banks to ensure that it is receiving the most favorable terms available for its credit
4 facility and during these meetings the banks often provide summaries of credit pricing
5 received by other like-rate US-based utilities. The above speaks to the "good cause"
6 referred to in my Deposition.

7 10 (Misinterpretation/Incorrect statement) On page 13, line 12-17, Mr. Schallenberg
8 states that the existing EDE money pool is a better money pool than LUCo's money pool
9 and that Liberty Utilities (Midstates Natural Gas) Corp. and Liberty Utilities (Missouri
10 Water) LLC should join EDE's money pool. For the reasons mentioned above, the EDE
11 money pool is and should only be utilized by EDE and EDG **_____

12 _____** and it is not appropriate for EDE to fund
13 sister companies by way of its commercial paper program. EDE's money pool also does
14 not offer the same preferable interest income opportunity as will the Money Pool.

15 11. (Misinterpretation/Facts Ignored) Mr. Schallenberg's answer, beginning on page 14,
16 line 15 and running through page 15 line 6, ignores the fact that the LUCo has created a
17 standalone money pool for its unregulated businesses to lessen the risk to the Money Pool
18 participants and plays down the ability of the Money Pool participants to exit the Money
19 Pool at any time. Additionally, as noted above, with the good cause shown for waiving
20 the Rules' competitive bidding requirement, the case for OPC's opposition is greatly
21 weakened.

1 12. (Misinterpretation/Incorrect/Imprudent Statements) On page 16, lines 9-15, of Mr.
2 Schallenberg's testimony, he incorrectly states that EDE's money pool pays a lower
3 investment rate than the Money Pool because EDE has a lower borrowing rate. EDE pays
4 a lower rate because its excess cash is invested in a highly liquid stable value money
5 market fund. Mr. Schallenberg goes on to state that EDE could cure its lower investment
6 rate paid for excess funds by investing in riskier investments which may not be good for
7 customers.

8 13. (Incorrect statement). On page 17 of Mr. Schallenberg's testimony, where he
9 summarizes OPC's opposition to the Applicants and Staff's settlement agreement, he
10 ignores the good cause shown by the Applicants, incorrectly states that Liberty Utilities
11 Service Corp. employees have "the objective of ensuring that the Missouri Applicants
12 have no capability to borrow or lend outside LUCo's money pool..." and also incorrectly
13 states that the Money Pool would be in violation of the Commission's acquisition
14 financing condition and the Rules, which it would not since good cause is shown why it
15 should be exempted from the competitive bidding requirement.

16 14. (Incorrect statement) On page 20, lines 17-26, Mr. Schallenberg asserts "the Missouri
17 Applicants will lose their ability to borrow or lend to entities other than LUCo..." which,
18 as previously discussed, is an incorrect statement.

19 15. (Incorrect statement) Beginning on line 25 of page 21 and continuing onto page 22,
20 Mr. Schallenberg claims the Money Pool violates the conditions of the Liberty/Empire
21 acquisition approval given by the Commission in Case no. EM-2016-0213. While the
22 cause of this "violation" is not repeated here, it relates to his earlier assertion that the

1 Money Pool violates the Rules and therefore the conditions of the acquisition approval
2 order. For reasons previously provided, this allegation is incorrect.

3 16. (Incorrect statement) Beginning at line 7 on page 22, Mr. Schallenberg states that
4 LUCo's allocation of line of credit fees is non-compliant with the Rules. However, he
5 misstates Section 1.07 of the Money Pool Agreement which states that the line of credit
6 fees will be first allocated based on actual usage with the unassigned portion of the line of
7 credit fees allocated based on the four factor methodology. Mr. Schallenberg also
8 incorrectly states that only borrowers will be charged line of credit fees when, in fact, all
9 Money Pool participants will bear their fair share of the line of credit fees. The allocation
10 of fees in Section 1.07 reflects the benefit that all participants receive by way of their
11 ready access to LUCo's credit facility to meet their needs for working capital funding.
12 As previously discussed, prudent businesses routinely establish such lines of credit and
13 pay fees to have them available as needed which is no different than what is
14 contemplated by the allocation process in Section 1.07. The four factor methodology
15 recognizes the fairness of charging participants based on their size since the largest
16 entities would tend to have the bigger credit facilities and vice versa. There is also no
17 mark-up applied to the line of credit fees LUCo would allocate to participants. Mr.
18 Schallenberg also states that only LUCo can access the unused portion of the credit
19 facility which is also incorrect; the credit facility is available for all Money Pool
20 participants.

21 17. (Misstatement/Incorrect statement) On page 22 beginning at line 20, Mr.
22 Schallenberg states the \$500 million LUCo credit facility was determined by Algonquin

1 officers who could not produce any documentation to support the development of the
2 \$500 million (amount) and that Mr. Timpe, LUCo “Director, Treasury” (not Treasurer)
3 was not involved in the development of the limit. Mr. Schallenberg relies on a draft
4 version of Mr. Timpe’s Deposition testimony which has since been corrected or will be at
5 the appropriate time. The fact that no one wrote a memo or created a spreadsheet in
6 support of the \$500 million figure does not invalidate its need or somehow prove the
7 amount is imprudent . The business should be given proper credence in this matter as it,
8 better than an outside party, should be in a better position to know the proper amount of
9 its credit facility needs. Also, as a for-profit business, it makes no sense for LUCo to
10 obtain a credit facility in excess of its needs given the cost which would affect its bottom
11 line. Furthermore, to assert that the “Algonquin officers,” who work for the ultimate
12 owner of the Applicants would work not in the best interests of the Applicants is without
13 basis.

14 18. On page 26, lines 13 and 14, Mr. Schallenberg takes issue with the Money Pool
15 Agreement’s Joinder Agreement. As shown below, the Joinder Agreement clearly binds
16 any new entrant to the terms of the Money Pool Agreement. Therefore, it stands to
17 reason that, if the term of the Money Pool Agreement are approved, there should be no
18 need to restate a compliance with MoPSC Affiliate Transaction Rules in the Joinder
19 Agreement.

20 Money Pool Agreement

21 Section 3.03 Joinder of New Parties and Withdrawal of Participants. Other direct
22 and indirect subsidiaries or affiliates of LUCo may become Parties to this

1 Agreement by signing and delivering to the other Parties a Joinder Agreement, a
2 form of which is attached hereto as Exhibit A, that such subsidiary agrees to be
3 bound by this Agreement.
4

5 Text from the Joinder Agreement

6 [ENTITY NAME] hereby acknowledges and agrees with the Parties that it is a
7 signatory and party to the Money Pool Agreement as of the date first written
8 above and thus subject to all terms and conditions of the Money Pool Agreement
9 applicable to each Party.
10

11 **Q. Did Mr. Shallenberg raise any other concerns about the Money Pool?**

12
13 A. Yes. Among other things, Mr. Shallenberg claims: A) that I have no authority to act for
14 Liberty Utilities Co. because I am an employee of Liberty Utilities Service Corp.
15 (LUSC), and there is no written directive by LUCo authorizing me to act on its behalf; B)
16 that EDE and EDG will be charged for the development costs associated with the Money
17 Pool, and C) that LUCo will receive a subsidy from the Money Pool participants since the
18 Money Pool participants will be assessed the Liberty Utilities Co credit agreement's line
19 of credit fees.

20 **Q. Do you agree with his opinion?**

21 A. No, I do not, for the following reasons (response numbering matches the concerns noted
22 immediately above): A) While the Algonquin Power & Utilities Corp. family of
23 businesses has put in effect affiliate service agreements among its regulated utilities and
24 service companies and holding companies, there is no legal requirement that LUSC or
25 LUCO develop agreements among one another regarding the provision of services. Mr.
26 Shallenberg's criticism is wholly without significance to this docket and is a red herring;

1 B) Regarding Money Pool development costs, it only makes sense that any potential
2 applicant should absorb its jurisdiction specific costs associated with it obtaining
3 approvals required to participate since they will be the ones enjoying the benefits of
4 money pool participation; and C) as noted above, LUCo's credit facility exists primarily
5 to support the needs of its subsidiaries who have an unlimited borrowing limit and ready
6 access to this credit line. Any usage by LUCo actually benefits the Money Pool
7 participants since the fees are based on the unused balance of the credit facility and
8 therefore, the more LUCo uses the credit facility the lower the allocated fees will be.
9 Finally, Mr. Schallenberg fails to mention that, as reported in response to OPC data
10 request 1002, LUCo advanced nearly \$145 million to its subsidiaries since the inception
11 date of its \$500 million credit facility while only drawing \$74 million on the credit
12 facility to support those advances. This clearly supports the argument that the credit
13 facility's primary purpose is to support the needs of its subsidiaries.

14 **Q. Does this conclude your Surrebuttal testimony?**

15 A. Yes, it does.

AFFIDAVIT OF MARK TIMPE

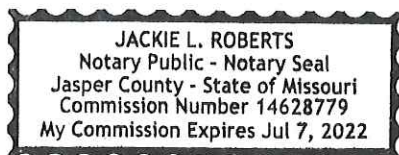
STATE OF MISSOURI)
) ss
COUNTY OF JASPER)

On the 6th day of March, 2019, before me appeared Mark Timpe, to me personally known, who, being by me first duly sworn, states that he is Director – Treasury of The Empire District Electric Company – Liberty Utilities Central and acknowledges that he has read the above and foregoing document and believes that the statements therein are true and correct to the best of his information, knowledge and belief.

Mark Timpe

Mark Timpe

Subscribed and sworn to before me this 6th day of March, 2019.



Jackie L. Roberts

Notary Public

My commission expires: 07/07/2022.