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Ratemaking/Accounting
Conditions, Access to Records*
Witness: *Kimberly K. Bolin*
Sponsoring Party: *MoPSC Staff*
Type of Exhibit: *Rebuttal Testimony*
Case No.: *EM-2016-0213*
Date Testimony Prepared: *July 20, 2016*

MISSOURI PUBLIC SERVICE COMMISSION

COMMISSION STAFF DIVISION

AUDITING

REBUTTAL 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
July 2016*

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OF
KIMBERLY K. BOLIN
THE EMPIRE DISTRICT ELECTRIC COMPANY,
LIBERTY UTILITIES (CENTRAL) CO., AND LIBERTY SUB CORP.
CASE NO. EM-2016-0213**

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1 **REBUTTAL TESTIMONY**

2 **OF**

3 **KIMBERLY K. BOLIN**

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

6 **CASE NO. EM-2016-0213**

7 Q. Please state your name and business address.

8 A. Kimberly K. Bolin, P.O. Box 360, Suite 440, Jefferson City, MO 65102.

9 Q. By whom are you employed and in what capacity?

10 A. I am a Utility Regulatory Auditor for the Missouri Public Service Commission
11 (“Commission”).

12 Q. Please describe your education background and work experience.

13 A. I graduated from Central Missouri State University (now University of Central
14 Missouri) in Warrensburg, Missouri with a Bachelor of Science in Business Administration,
15 major emphasis in Accounting, in May 1993. Before coming to work at the Commission, I
16 was employed by the Missouri Office of the Public Counsel (“OPC”) as a Public Utility
17 Accountant from September 1994 to April 2005. I commenced employment with the
18 Commission in April 2005.

19 Q. What was the nature of your job duties when you were employed by OPC?

20 A. I was responsible for performing audits and examinations of the books and
21 records of public utilities operating within the state of Missouri.

22 Q. Have you previously filed testimony before this Commission?

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Kimberly K. Bolin

1 A. Yes, numerous times. Please refer to Schedule KKB-r1, attached to this
2 rebuttal testimony, for a list of the major audits in which I have assisted and filed testimony
3 with OPC and with the Commission.

4 Q. What knowledge, skills, experience, training, and education do you have in the
5 areas of which you are testifying as an expert witness?

6 A. I have received continuous training at in-house and outside seminars on
7 technical ratemaking matters both when employed by OPC and since I began my employment
8 at the Commission. I have been employed by this Commission or by OPC as a Regulatory
9 Auditor for over 20 years, and have submitted testimony on ratemaking matters numerous
10 times before the Commission. I have also been responsible for the supervision of other
11 Commission employees in rate cases and other regulatory proceedings.

12 Q. What is the purpose of this testimony?

13 A. The purpose of my rebuttal testimony is provide the Commission with an
14 overview of the proposed merger transactions between The Empire District Electric Company
15 (“Empire”) and Liberty Sub Corp. (“Liberty Sub”), as well as a listing of The Missouri Public
16 Service Commission Staff’s (“Staff”) recommended conditions that need to be in place in
17 order for this merger to not be detrimental to the public interest. I also address specific
18 conditions pertaining to merger issues concerning the acquisition premium, transaction costs,
19 transition costs, accumulated deferred income taxes, future environmental expenses and post-
20 merger access to records.

21 **BACKGROUND OF THE EMPIRE DISTRICT ELECTRIC COMPANY MERGER**
22 **WITH LIBERTY UTILITIES (CENTRAL) CO. AND LIBERTY SUB CORP.**

23 Q. Does Empire currently provide utility service within the State of Missouri?

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Kimberly K. Bolin

1 A. Yes, Empire provides electric and water utility service in Missouri. Empire
2 serves approximately 169,142 retail electric customers in Missouri, Kansas, Arkansas and
3 Oklahoma, of which approximately 150,397 are Missouri customers. Empire also provides
4 wholesale electrical services to three municipalities in Missouri and one in Kansas. Empire
5 provides regulated water services to approximately 4,435 customers in the communities of
6 Aurora, Marionville, and Verona, Missouri.

7 Through a wholly-owned subsidiary, The Empire District Gas Company (“EDG”),
8 Empire provides natural gas utility service to 42,230 Missouri customers in several counties
9 throughout the state. Also, through a wholly-owned subsidiary, Empire District Industries,
10 Inc. (“EDI”), Empire provides interexchange and private line telecommunications services in
11 Missouri.

12 Q. Does Liberty Utilities (Central) Co. (“LU Central”) provide utility service
13 within the State of Missouri?

14 A. No. LU Central is a wholly owned subsidiary of Liberty Utilities Co. (“Liberty
15 Utilities”) and is an indirect subsidiary of Algonquin Power & Utilities Corp. (“Algonquin”).
16 LU Central will not become a public utility as a result of the approval of this merger, but may
17 be subject to certain restrictions under the Commission’s rule governing affiliate transactions.
18 LU Central will be a holding company and it is expected that all of the shares of the
19 Liberty Utilities subsidiaries which operate in the central and mid-western United States will
20 ultimately be transferred to LU Central. Approval of Liberty Utilities being under the control
21 of LU Central is not being sought at this time in this application, but will possibly be sought
22 in a future application.

23 Q. Does Liberty Utilities provide utility service within the State of Missouri?

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1 A. Yes. Liberty Utilities is a holding company that owns and operates regulated
2 gas, water and sewer utilities within the State of Missouri through its subsidiaries
3 Liberty Utilities (Missouri Water), LLC and Liberty Utilities (Midstates Natural Gas) Corp.

4 Q. Please describe the operations of Algonquin.

5 A. Algonquin is a generation, transmission, and distribution utility operating in
6 the United States and Canada. Algonquin has approximately 560,000 utility customers in the
7 United States. Liberty Utilities is a subsidiary of Algonquin.

8 Q. Does Liberty Sub Corp. (“Liberty Sub”) provide utility service within the
9 State of Missouri?

10 A. No. Liberty Sub was created to be a special purpose corporation formed solely
11 for the purpose of merging with and into Empire. After the merger, Liberty Sub will cease to
12 exist, and LU Central will be the immediate parent company of Empire.

13 Q. What regulatory approvals must Empire, LU Central, and Liberty Sub receive
14 to complete this merger?

15 A. The applicants have already received approval from the state public utility
16 commissions in Oklahoma and Arkansas. An application has also been filed for approval
17 with the Kansas Corporation Commission. The applicants have also received approval from
18 the Federal Energy Regulatory Commission (FERC). The applicants will also need approval
19 from the United States Department of Treasury Committee on Foreign Investment in the
20 United States and the Federal Communications Commission.

21 Q. What is the purchase price being offered for Empire?

22 A. Empire’s stockholders will receive \$34 per common share, or approximately
23 \$1.5 million. Liberty Sub will assume approximately \$900 million dollars of debt currently

1 on Empire's balance sheet for a total purchase price of \$2.4 billion. This represents an
2 approximate \$363.7 million acquisition premium over the current book value of Empire net
3 plant assets.

4 Q. Did Empire's Board of Directors recommend approval of the merger to
5 Empire's shareholders?

6 A. Yes.

7 Q. Did Empire's shareholders subsequently approve the merger?

8 A. Yes. At a special meeting held on June 16, 2016, Empire's shareholders
9 approved the merger by the necessary approval with 70.8 percent shareholder participation.
10 A total of 95.5 percent of these votes approved of the merger.

11 **STANDARD OF PUBLIC DETRIMENT**

12 Q. What standard did Staff utilize to develop its recommendation regarding the
13 proposed transaction?

14 A. Staff utilized the standard of "no detriment to the public interest," as it has in
15 other merger and acquisition cases. If the Joint Applicants (Empire, LU Central, et al.) fail to
16 show that the proposed merger of Empire and Liberty Sub will not be detrimental to the
17 public interest in Missouri; i.e., if it is demonstrated that the Missouri public will be harmed
18 by the proposed merger, then the Commission should reject this application and not
19 approve the proposed merger. The Missouri Public Service Commission Staff Counsel
20 ("Staff Counsel") has advised that the "not detrimental to the public interest" standard is
21 based on case law generally cited in Commission Orders such as State ex rel. City of St. Louis
22 v. Public Serv. Comm'n, 73 S. W. 2d 393 (Mo.banc 1934); State ex rel. Fee Fee Trunk Sewer
23 Co., Inc. v. Litz, 596 S.W.2d 466 (Mo.App. 1980). Staff Counsel also advises that the

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1 Commission has incorporated the “not detrimental to public interest” standard in Chapter 3 of
2 the Commission Rules, “Filing and Reporting Requirements.”

3 Q. How is Staff defining the term “public?”

4 A. Consistent with Staff’s position in other merger cases, Staff views the
5 members of the “public” that are to be protected from potential merger detriments as those
6 consumers directly taking and receiving utility service from Empire’s electric, natural gas,
7 and water operations in the State of Missouri.

8 In this case, Staff would define “public interest” as referring to the nature and level of
9 the impact or effect that Empire’s merger action will have on its Missouri customers. This
10 includes Empire’s electric, natural gas, and water customers. As public utilities in Missouri
11 are permitted to operate as regulated monopolies, there is a fundamental concern in the
12 regulation of public utilities that the public being served must not be impacted adversely or
13 harmed by those responsible for providing the monopoly services. Public utilities in Missouri
14 are charged with providing safe and adequate service at nondiscriminatory, just, fair, and
15 reasonable rates. If this merger results in net adverse or negative impacts to Empire’s
16 Missouri electric customers, natural gas customers, and water customers in the amount of
17 rates paid or in the quality of service, then the Commission should not approve the Joint
18 Applicants’ merger application or, in the alternative, should impose conditions sufficient to
19 overcome the detriments of the merger.

20 In the merger case involving Kansas Power & Light (“KPL”) and Kansas Gas and
21 Electric (“KGE”) in 1991, the Commission identified the “public” as Missouri ratepayers. At
22 pages 12 to 13 of its Report and Order (Case No. EM-91-213), the Commission stated the
23 following:

1 Based upon these findings and determinations, the Commission
2 concludes that Missouri ratepayers will be shielded from any potential
3 ill effects from the proposed merger and will suffer **no detriment** as a
4 result. Therefore, the Commission concludes that, in the absence of a
5 finding of **detriment to the public interest**, it may not withhold its
6 approval of the proposed merger and will authorize KPL to acquire and
7 merge with KGE.

8 **[emphasis added]**

9 Clearly, the Commission was identifying the Missouri ratepayers as the relevant “public” in
10 its Report and Order. This is the standard that is being applied by Staff to the current
11 proposed merger between Empire and Liberty Sub.

12 Q. Is Staff defining “detriment to the public interest” differently in this case than
13 it has in previous merger cases?

14 A. No.

15 Q. Has Staff determined that the proposed merger is detrimental to the
16 public interest?

17 A. Staff has determined that the merger would be detrimental to the public interest
18 unless the conditions recommended by Staff and listed on Schedule KKB –r2 are ordered by
19 the Commission. The following is a list of Staff witnesses who address the proposed merger
20 conditions Staff recommends the Commission order as part of any approval of this
21 application:

22 Shana Griffin – Financing Conditions

23 John Robinett – Depreciation Conditions

24 Bob Schallenberg – Affiliated Transactions and Cost Allocation Manual
25 Conditions

26 Debbie Bernsen – Customer Service Conditions

27 Brad Fortson – Energy Efficiency Conditions

28 Dave Sommerer – Natural Gas Procurement Conditions

1 Kimberly Bolin – Ratemaking/Accounting Conditions, Accumulated Deferred
2 Income Tax Condition, Access to Records Conditions

3 **ACQUISITION PREMIUM**

4 Q. What is an acquisition premium?

5 A. In traditional ratemaking, fixed assets, such as plant, are usually recorded at
6 “original cost.” Original cost, as applied to utility plant, means the cost of property to the
7 utility devoting it to public service. An acquisition premium results when utility property is
8 purchased or acquired for an amount in excess of original cost or book value. Book value is
9 the value placed on utility property and recorded on a company’s financial books and records
10 at the time the utility property is first placed in service. An acquisition premium is sometimes
11 referred to as an “acquisition adjustment” or “goodwill”

12 Q. Will this merger transaction result in an acquisition premium?

13 A. Yes. The purchase price is estimated to be \$2.4 billion which is approximately
14 \$363.7 million above the book value of Empire’s net plant assets.

15 Q. Are the Joint Applicants proposing to recover the acquisition premium
16 resulting from this transaction in the future rates charged to Empire customers?

17 A. No. Per the direct testimony of Liberty Utilities witness Peter Eichler, neither
18 LU Central nor Empire will seek to recover in any future Missouri rate proceedings the
19 premium over the net book value of the assets paid for Empire in this proceeding. At the
20 time of the closing, the acquisition premium will be accounted for as “goodwill” in
21 LU Central’s books.

22 Q. Would the recovery in rates of an acquisition premium be a detriment to the
23 public or ratepayers of Empire?

1 A. Yes, it would be a detriment to ratepayers if rate recovery of any purchase
2 price premium or purchase transaction costs is permitted. The purchase price premium and
3 transaction costs are costs of ownership that should be borne by the shareholders. These costs
4 do not represent a contribution of capital (i.e., new investment) to the public service. They
5 merely represent a purchase of the legal interests in the properties that were formerly
6 possessed by the seller. To the extent any recovery of the purchase costs is included in rates it
7 would have a detrimental effect on ratepayers because their costs will likely be higher than if
8 the sale would not have occurred.

9 Q. What condition does Staff recommend the Commission order to ensure the
10 acquisition premium is not included in future rates?

11 A. Staff recommends the following condition:

12 Goodwill associated with the premium over book value of the assets
13 paid for the shares of Empire stock (referred to for purposes of this
14 stipulation as “Acquisition Premium”) will be maintained on the books
15 of LU Central. The amount of any acquisition premium paid for
16 Empire shall not be recovered in retail rates. Nothing herein shall
17 preclude any party to this Agreement from taking a position in any
18 future ratemaking proceedings involving Empire regarding the
19 ratemaking measures and adjustments necessary to ensure no impact
20 from the acquisition premium on rates. Empire will not seek direct or
21 indirect recovery or recognition of any acquisition premium through
22 any purported acquisition savings “sharing” adjustment (or similar
23 adjustment) in future rate cases.

24 **TRANSACTION COSTS**

25 Q. What are transaction costs?

26 A. Transaction costs are costs incurred by both the acquiring company and the
27 acquired company for the purpose of consummating the purchase. Examples include costs
28 and/or fees paid for legal, engineering, investment banking, and other consulting services
29 utilized to enter into and complete the merger transaction. Transaction costs are typically

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1 incurred prior to the completion of the merger since they are incurred in reaching the
2 agreement to merge and in closing the merger.

3 Q. Should rate recovery of transaction costs be allowed?

4 A. No. As with any acquisition premium, the transaction costs represent
5 ownership costs that are rightly absorbed by the owners of the acquiring and acquired
6 companies. For example, the purchase would not take place without the shareholders of both
7 companies approving the transaction. The decision on the amount of money to pay to acquire
8 a company and the amount of money to accept in selling a company is made by the board of
9 directors in their duty to the company shareholders. Once an agreement between the boards
10 of directors of both companies is reached, a special meeting is usually required to be held in
11 which both shareholder groups vote to approve or reject the purchase. A purchase is
12 approved, if, and only if, both owner groups believe it is in their best interests.

13 Ratepayer interests are not directly considered by the companies in their decision to
14 buy or sell a utility. Ratepayers, as non-owners, have no ownership rights in utility assets, no
15 vote in the decision to be a part of a purchase, and little to no influence in the structure of the
16 terms and conditions of the transaction.

17 Q. Has Liberty Utilities requested recovery of any transaction costs related to
18 this merger?

19 A. No. Liberty Utilities' witness Christopher Krygier states on page 12 of his
20 direct testimony that neither Empire or Liberty will seek to recover in rates the transaction
21 costs associated with the acquisition.

22 Q. What condition does Staff recommend to ensure that transaction costs are not
23 included in Empire rates?

1 A. Staff recommends the following condition:

2 Transaction costs include, but are not limited to, those costs relating to
3 obtaining regulatory approvals, development of transaction documents,
4 investment banking costs, costs related to raising equity incurred prior
5 to the close of the Transaction, payments to employees who invoke
6 severance payment agreements, and communication costs regarding the
7 ownership change with customers and employees. Empire will not
8 seek either direct or indirect rate recovery or recognition of any
9 transaction costs through any purported acquisition savings “sharing”
10 adjustment (or similar adjustment) in any future rate cases.

11 **TRANSITION COSTS**

12 Q. What are transition costs?

13 A. Transition costs are costs typically incurred after the merger is completed to
14 integrate and implement systems and processes of the two combining companies.

15 Q. Are transition costs sometimes deferred for potential later recovery in a future
16 rate proceeding?

17 A. Yes, some companies have received authority to defer transition costs in order
18 to seek later recovery in a future rate case. However, in such instances the company must
19 prove that such recovery is warranted, in that the transition costs were reasonable and prudent,
20 and that these costs resulted in net benefits to the company’s customers.

21 Q. What condition does Staff recommend the Commission order to address Staff’s
22 concern about future recovery of transition costs?

23 A. Staff recommends the following condition:

24 Transition costs are those costs incurred to integrate Empire under the
25 ownership of LU Central and includes integration planning and
26 execution, and “costs to achieve.” Transition costs include capital and
27 non-capital costs. Non-capital transition costs can be ongoing costs or
28 one-time costs. Non-capital transition costs can be deferred on the
29 books of LU Central or Empire to be considered for recovery in future
30 Empire rate cases. If subsequent rate recovery is sought, Empire will
31 have the burden of proving that the recoveries of any transition costs
32 are just and reasonable and the costs provide benefits to its customers.

1 **ACCUMULATED DEFERRED INCOME TAXES (“ADIT”)**

2 Q. What does ADIT represent and how is it reflected in ratemaking?

3 A. Empire’s ADIT represents, in effect, a net prepayment of income taxes by its
4 customers prior to payment by Empire. For example, because Empire is allowed to deduct
5 depreciation expense on an accelerated basis for income tax purposes, the amount of
6 depreciation expense used as a deduction for income tax purposes by Empire is considerably
7 higher than the amount of depreciation expense used for ratemaking purposes. This results in
8 what is referred to as a “book-tax timing difference,” and creates a deferral of incomes taxes
9 to sometime in the future. The net credit balance represents a source of cost-free funds to
10 Empire. Therefore, Empire’s rate base is reduced by the ADIT balance in setting rates to
11 avoid having customers pay a return on funds that are provided cost-free to the Company.

12 Q. If Empire’s existing ADIT balances are reduced or transferred away from
13 Empire as a result of this merger, would that be a merger detriment?

14 A. Yes. If the ADIT balances are reduced and/or transferred away from Empire
15 to Liberty Utilities, this would be a detriment to Empire’s ratepayers because rates in future
16 proceedings would not include, as an offset to rate base, the ADIT balances.

17 Q. What condition does Staff recommend the Commission impose to address
18 Staff’s concern about the ADIT balances being reduced and/or transferred away from
19 Empire?

20 A. Staff recommends the following condition:

21 Empire will record on its books all deferred taxes related to income tax
22 deductions or credits created by Empire’s operations.

1 **ACCESS TO RECORDS**

2 Q. Is Staff concerned that this merger may cause Staff increased difficulty in
3 obtaining access to Empire’s books and records?

4 A. Yes. Staff is concerned that, as a result of the merger, it may be more difficult
5 to obtain access to Empire’s books and records. Algonquin, which would be Empire’s
6 ultimate parent company if the merger is completed, is located in Canada. Also, most of the
7 companies that would become affiliates of Empire under this merger, and may allocate costs
8 to Empire, are not regulated by this Commission. Access to necessary information to
9 determine if proposed cost allocations to Empire are reasonable, among other items, may be
10 difficult to obtain.

11 Q. What conditions would Staff recommend to mitigate this detriment?

12 A. Staff recommends the following conditions:

13 1. Empire shall provide Staff and OPC with access, upon
14 reasonable written notice during working hours and subject to
15 appropriate confidentiality and discovery procedures, to all written
16 information provided to common stock, bond or bond rating analysts
17 which directly or indirectly pertains to Empire or any affiliate that
18 exercises influence or control over Empire or has affiliate transactions
19 with Empire. Such information includes, but is not limited to, common
20 stock analyst’s and bond rating analyst’s reports. For purposes of this
21 condition, “written” information includes, but is not limited to, any
22 written and printed material, audio and video tapes, computer disks,
23 and electronically stored information. Nothing in this condition shall
24 be deemed a waiver of any entity’s right to seek protection of the
25 information or to object, for purposes of submitting such information as
26 evidence in any evidentiary proceeding, to the relevancy or use of such
27 information by any party.

28 2. Empire agrees to make available to Staff and OPC, upon written
29 notice during normal working hours and subject to appropriate
30 confidentiality and discovery procedures, all books, records and
31 employees as may be reasonably required to verify compliance with
32 Empire’s CAM and any conditions ordered by this Commission.
33 Empire shall also provide Staff and OPC any other such information
34 (including access to employees) relevant to the Commission’s

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1 ratemaking, financing, safety, quality of service and other regulatory
2 authority over Empire; provided that any entity producing records or
3 personnel shall have the right to object on any basis under applicable
4 law and Commission rules, excluding any objection that such records
5 and personnel of affiliates; (a) are not within the possession or control
6 of Empire or (b) are either not relevant or are not subject to, the
7 Commission's jurisdiction and statutory authority by virtue of, or as a
8 result of, the implementation of the proposed Transaction.

9 3. Empire shall provide Staff and OPC access to and copies of, if
10 requested by Staff or OPC, the complete Liberty Utilities Co, Liberty
11 Utilities Central and Empire Board of Directors' meeting minutes,
12 including all agendas and related information distributed in advance of
13 the meeting, presentations and handouts, provided that privileged
14 information shall continue to be subject to protection from disclosure
15 and Empire shall continue to have the right to object to the provision of
16 such information on relevancy grounds.

17 4. Empire will maintain records supporting its affiliated
18 transactions for at least five years.

19 5. Should it be deemed necessary for Staff employees to travel to
20 locations outside of the State of Missouri to examine any records,
21 Empire shall bear all reasonable expense incurred by the employees,
22 provided, however, that before any such expense shall be incurred by
23 Staff, Empire shall be given reasonable notice to produce the records
24 requested for inspection and examination at the office of the
25 Commission at Jefferson City, Missouri or at Empire's offices in
26 Joplin, Missouri, or at such other point in Missouri, as may be mutually
27 agreed, in which case Empire shall make available at that place, at that
28 time, a person(s) who is acquainted with the records.

29 Q. Does this conclude your rebuttal testimony in this proceeding?

30 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 Rebuttal Testimony; and that the same is true and correct according to her best knowledge and belief.

Further the Affiant sayeth not.

Kimberly K. Bolin
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 19th day of July, 2016.

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

Dianna L. Vaught
Notary Public

**CASE PARTICIPATION
OF
KIMBERLY K. BOLIN**

<u>Company Name</u>	<u>Case Number</u>	<u>Testimony/Issues</u>	<u>Contested or Settled</u>
Hillcrest Utility Operating Company, Inc.	WR-2016-0064	<u>Direct</u> – Partial Disposition Agreement	Contested
Empire District Electric Company	ER-2016-0023	<u>Requirement Report</u> – Riverton Conversion Project and Asbury Air Quality Control System <u>Direct</u> – Overview of Staff’s Revenue Requirement Report and Overview of Staff’s Rate Design Filing	Settled
Missouri-American Water Company	WR-2015-0301	<u>Report on Cost of Service</u> – Corporate Allocation, District Allocations <u>Rebuttal</u> – District Allocations, Business Transformation <u>Surrebuttal</u> – District Allocations, Business Transformation, Service Company Costs	Settled
Empire District Electric Company	ER-2014-0351	<u>Direct</u> – Overview of Staff’s Filing <u>Rebuttal</u> - ITC Over-Collection, Cost of Removal Deferred Tax Amortization, State Flow-Through <u>Surrebuttal</u> – Unamortized Balance of Joplin Tornado, ITC Over-Collections, Cost of Removal Deferred Tax Amortization, State Flow-Through, Transmission Revenues and Expenses	Settled
Brandco Investments/Hillcrest Utility Operating Company, Inc.	WO-2014-0340	<u>Rebuttal</u> – Rate Base and Future Rates	Settled
Lake Region Water & Sewer	WR-2013-0461	<u>Direct</u> – Overview of Staff’s Filing <u>Report on Cost of Service</u> – True-Up, Availability Fees, Sewer Operating Expense, Sewer Equipment Maintenance Expense <u>Surrebuttal</u> – Availability Fees <u>True-Up Direct</u> – Overview of True-Up Audit <u>True-Up Rebuttal</u> – Corrections to True-Up	Contested

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KIMBERLY K. BOLIN**

<u>Company Name</u>	<u>Case Number</u>	<u>Testimony/Issues</u>	<u>Contested or Settled</u>
Empire District Electric Company	ER-2012-0345	<p><u>Direct</u> - Overview of Staff's Filing <u>Report on Cost of Service</u> – SWPA Hydro Reimbursement, Joplin Tornado AAO Asset, SPP Revenues, SPP Expenses, Regulatory Plan Amortization Impacts, SWPA Amortization, Tornado AAO Amortization <u>Rebuttal</u> – Unamortized Balance of Joplin Tornado AAO, Rate Case Expense, True-Up and Uncontested Issues <u>Surrebuttal</u> – Unamortized Balance of Joplin Tornado AAO, SPP Transmission Expense, True-Up, Advanced Coal Investment Tax Credit</p>	Settled
Missouri-American Water Company	WR-2011-0337	<p><u>Direct</u> – Overview of Staff's Filing <u>Report on Cost of Service</u> - True-Up Recommendation, Tank Painting Tracker, Tank Painting Expense <u>Rebuttal</u> - Tank Painting Expense, Business Transformation <u>Surrebuttal</u> – Tank Painting Tracker, Acquisition Adjustment</p>	Settled
Missouri-American Water Company	WR-2010-0131	<p><u>Report on Cost of Service</u> - Pension/OPEB Tracker, Tank Painting Tracker, Deferred Income Taxes, FAS 87 Pension Costs, FAS 106 – Other Post-Employment Benefits, Incentive Compensation, Group Insurance and 401(k) Employer Costs, Tank Painting Expense, Dues and Donations, Advertising Expense, Promotional Items, Current and Deferred Income Tax Expense</p>	Settled
Empire District Gas Company	GR-2009-0434	<p><u>Report on Cost of Service</u> – Prepaid Pension Asset, Pension Tracker Asset/Liability, Unamortized Accounting Authority Order Balances, Pension Expense, OPEBs, Amortization of Stock Issuance Costs, Amortization of Accounting Authority Orders <u>Direct</u> – Overview of Staff's Filing</p>	Settled
Laclede Gas Company	GT-2009-0056	<p><u>Surrebuttal Testimony</u> – Tariff</p>	Contested

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<u>Company Name</u>	<u>Case Number</u>	<u>Testimony/Issues</u>	<u>Contested or Settled</u>
Missouri-American Water Company	WR-2008-0311 & SR-2008-0312	<u>Report on Cost of Service</u> – Tank Painting Tracker, Lobbying Costs, PSC Assessment <u>Direct</u> – Overview of Staff’s Filing <u>Rebuttal</u> – True-Up Items, Unamortized Balance of Security AAO, Tank Painting Expense, Fire Hydrant Painting Expense <u>Surrebuttal</u> – Unamortized Balance of Security AAO, Cedar Hill Waste Water Plant, Tank Painting Expense, Fire Hydrant Painting Expense	Settled
Missouri Gas Utility, Inc.	GR-2008-0060	<u>Report on Cost of Service</u> – Plant-in Service/Capitalization Policy, Plant-in Service/Purchase Price Valuation, Depreciation Reserve, Revenues, Uncollectible Expense	Settled
Laclede Gas Company	GR-2007-0208	<u>Direct</u> - Test Year and True-Up, Environmental costs, AAOs, Revenue, Miscellaneous Revenue, Gross receipts Tax, Gas Costs, Uncollectibles, EWCR, AMR, Acquisition Adjustment	Settled
Kansas City Power and Light Company	ER-2006-0314	<u>Direct</u> - Gross Receipts Tax, Revenues, Weather Normalization, Customer Growth/Loss Annualization, Large Customer Annualization, Other Revenue, Uncollectible (Bad Debt) Expense, Payroll, A&G Salaries Capitalization Ratio, Payroll Taxes, Employer 401 (k) Match, Other Employee Benefits <u>Surrebuttal</u> - Uncollectible (Bad Debt) Expense, Payroll, A&G Salaries Capitalization Ratio, Other Employee Benefits	Contested
Missouri Gas Energy	GR-2006-0204	<u>Direct</u> - Payroll, Incentive Compensation, Payroll Taxes, Employee Benefits, Lobbying, Customer & Governmental Relations Department, Collections Contract	Settled

**CASE PARTICIPATION
OF
KIMBERLY K. BOLIN**

WHILE EMPLOYED WITH THE OFFICE OF THE PUBLIC COUNSEL

<u>Company Name</u>	<u>Case Number</u>	<u>Testimony/Issues</u>	<u>Contested or Settled</u>
Missouri Gas Energy	GU-2005-0095	<u>Rebuttal</u> - Accounting Authority Order <u>Surrebuttal</u> - Accounting Authority Order	Contested
The Empire District Electric Company	ER-2004-0570	<u>Direct</u> - Payroll	Settled
Missouri American Water Company & Cedar Hill Utility Company	SM-2004-0275	<u>Direct</u> - Acquisition Premium	Settled
Missouri Gas Energy	GR-2004-0209	<u>Direct</u> - Safety Line Replacement Program; Environmental Response Fund; Dues & Donations; Payroll; Customer & Governmental Relations Department Disallowance; Outside Lobbyist Costs <u>Rebuttal</u> - Customer Service; Incentive Compensation; Environmental Response Fund; Lobbying/Legislative Costs <u>True-Up</u> - Rate Case Expense	Contested
Osage Water Company	ST-2003-0562 / WT-2003-0563	<u>Direct</u> - Payroll <u>Rebuttal</u> - Payroll; Lease Payments to Affiliated Company; alleged Legal Requirement of a Reserve	Case Dismissed
Missouri American Water Company	WR-2003-0500	<u>Direct</u> - Acquisition Adjustment; Water Treatment Plant Excess Capacity; Retired Treatment Plan; Affiliated Transactions; Security AAO; Advertising Expense; Customer Correspondence	Settled
Empire District Electric	ER-2002-424	<u>Direct</u> - Dues & Donations; Memberships; Payroll; Security Costs <u>Rebuttal</u> - Energy Traders' Commission <u>Surrebuttal</u> - Energy Traders' Commission	Settled

**CASE PARTICIPATION
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WHILE EMPLOYED WITH THE OFFICE OF THE PUBLIC COUNSEL

<u>Company Name</u>	<u>Case Number</u>	<u>Testimony/Issues</u>	<u>Contested or Settled</u>
Laclede Gas Company	GR-2002-356	<u>Direct</u> - Advertising Expense; Safety Replacement Program and the Copper Service Replacement Program; Dues & Donations; Rate Case Expense <u>Rebuttal</u> - Gas Safety Replacement Program / Deferred Income Taxes for AAOs	Settled
Missouri-American Water Company	WO-2002-273	<u>Rebuttal</u> - Accounting Authority Order <u>Cross-Surrebuttal</u> - Accounting Authority Order	Contested
Environmental Utilities	WA-2002-65	<u>Direct</u> - Water Supply Agreement <u>Rebuttal</u> - Certificate of Convenience & Necessity	Contested
Warren County Water & Sewer	WC-2002-160 / SC-2002-155	<u>Direct</u> - Clean Water Act Violations; DNR Violations; Customer Service; Water Storage Tank; Financial Ability; Management Issues <u>Surrebuttal</u> - Customer Complaints; Poor Management Decisions; Commingling of Regulated & Non-Related Business	Contested
Laclede Gas Company	GR-2001-629	<u>Direct</u> - Advertising Expense; Safety Replacement Program; Dues & Donations; Customer Correspondence	Settled
Gateway Pipeline Company	GM-2001-585	<u>Rebuttal</u> - Acquisition Adjustment; Affiliated Transactions; Company's Strategic Plan	Contested
Empire District Electric	ER-2001-299	<u>Direct</u> - Payroll; Merger Expense <u>Rebuttal</u> - Payroll <u>Surrebuttal</u> - Payroll	Settled
Osage Water Company	SR-2000-556/ WR-2000-557	<u>Direct</u> - Customer Service	Contested

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<u>Company Name</u>	<u>Case Number</u>	<u>Testimony/Issues</u>	<u>Contested or Settled</u>
St. Louis County Water Company	WR-2000-844	<u>Direct</u> - Main Incident Expense	Settled
Missouri American Water Company	WR-2000-281/ SR-2000-282	<u>Direct</u> - Water Plant Premature Retirement; Rate Case Expense <u>Rebuttal</u> - Water Plant Premature Retirement <u>Surrebuttal</u> - Water Plant Premature Retirement	Contested
Laclede Gas Company	GR-99-315	<u>Direct</u> - Advertising Expense; Dues & Donations; Miscellaneous Expense; Items to be Trued-up	Contested
St. Joseph Light & Power	HR-99-245	<u>Direct</u> - Advertising Expense; Dues & Donations; Miscellaneous Expense; Items to be Trued-up <u>Rebuttal</u> - Advertising Expense <u>Surrebuttal</u> - Advertising Expense	Settled
St. Joseph Light & Power	ER-99-247	<u>Direct</u> - Merger Expense; Rate Case Expense; Deferral of the Automatic Mapping/Facility Management Costs <u>Rebuttal</u> - Merger Expense; Rate Case Expense; Deferral of the Automatic Mapping/Facility Management Costs <u>Surrebuttal</u> - Merger Expense; Rate Case Expense; Deferral of the Automatic Mapping/Facility Management Costs	Settled
Laclede Gas Company	GR-98-374	<u>Direct</u> - Advertising Expense; Gas Safety Replacement AAO; Computer System Replacement Costs	Settled
Missouri Gas Energy	GR-98-140	<u>Direct</u> - Payroll; Advertising; Dues & Donations; Regulatory Commission Expense; Rate Case Expense	Contested

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<u>Company Name</u>	<u>Case Number</u>	<u>Testimony/Issues</u>	<u>Contested or Settled</u>
Gascony Water Company, Inc.	WA-97-510	<u>Rebuttal</u> - Rate Base; Rate Case Expense; Cash Working Capital	Settled
Union Electric Company	GR-97-393	<u>Direct</u> - Interest Rates for Customer Deposits	Settled
St. Louis County Water Company	WR-97-382	<u>Direct</u> - Interest Rates for Customer Deposits, Main Incident Expense	Settled
Associated Natural Gas Company	GR-97-272	<u>Direct</u> - Acquisition Adjustment; Interest Rates for Customer Deposits <u>Rebuttal</u> - Acquisition Adjustment; Interest Rates for Customer Deposits <u>Surrebuttal</u> - Interest Rates for Customer Deposits	Contested
Missouri-American Water Company	WA-97-45	<u>Rebuttal</u> - Waiver of Service Connection Charges	Contested
Imperial Utility Corporation	SC-96-427	<u>Direct</u> - Revenues, CIAC <u>Surrebuttal</u> - Payroll; Uncollectible Accounts Expense; Rate Case Expense, Revenues	Settled
St. Louis Water Company	WR-96-263	<u>Direct</u> -Main Incident Repairs <u>Rebuttal</u> - Main Incident Repairs <u>Surrebuttal</u> - Main Incident Repairs	Contested
Steelville Telephone Company	TR-96-123	<u>Direct</u> - Depreciation Reserve Deficiency	Settled

**CASE PARTICIPATION
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WHILE EMPLOYED WITH THE OFFICE OF THE PUBLIC COUNSEL

<u>Company Name</u>	<u>Case Number</u>	<u>Testimony/Issues</u>	<u>Contested or Settled</u>
Missouri-American Water Company	WR-95-205/ SR-95-206	<p><u>Direct</u>- Property Held for Future Use; Premature Retirement of Sewer Plant; Depreciation Study Expense; Deferred Maintenance</p> <p><u>Rebuttal</u>- Property Held for Future Use; Premature Retirement of Sewer Plant; Deferred Maintenance</p> <p><u>Surrebuttal</u>- Property Held for Future Use; Premature Retirement of Sewer Plant</p>	Contested
St. Louis County Water Company	WR-95-145	<p><u>Rebuttal</u>- Tank Painting Reserve Account; Main Repair Reserve Account</p> <p><u>Surrebuttal</u>- Main Repair Reserve Account</p>	Contested

Staff's Recommended Conditions for Case No. EM-2016-0213

Financing Conditions

1. In the unanticipated event that The Empire District Electric Company or any of its affiliates should have its rating downgraded to at or below BBB- (or each rating agency's equivalent); The Empire District Electric Company commits to file:

- a. Notice with the Commission within five (5) business days;
- b. A pleading with the Commission within 60 days which shall include the following:
 - i. A plan identifying all reasonable steps, taking into account the costs, benefits and expected outcomes of such actions, that will be taken to maintain or restore The Empire District Electric Company's credit rating to a notch or more above BBB-. If The Empire District Electric Company's plan does not involve taking steps to maintain or restore its credit rating to a notch or more above BBB-, then The Empire District Electric Company shall concisely state why the cost of such steps is not reasonable or necessary;
 - ii. Additionally, The Empire District Electric Company shall specifically address the impact, or lack thereof, it believes the BBB- or below grade credit rating has had and will have on its capital costs;
 - iii. Documentation, including but not limited to, a cost of capital study showing how The Empire District Electric Company will not pass along higher capital costs to its Missouri customers, directly or indirectly, due to the downgrade.
 - iv. File with the Commission, every 45 days thereafter until The Empire District Electric Company has regained a credit rating above BBB-, a status report with respect to the implementation of steps to restore its credit rating above BBB-, and a study that estimates the increased cost of capital, if any, The Empire District Electric Company has incurred due to a non-investment grade credit rating.
 - v. If the Commission determines that The Empire District Electric Company's BBB- or below credit rating has caused its service to decline, The Empire District Electric Company shall be required to file a report that demonstrates to the Commission that it can adequately safeguard capital produced and secured by its public utility assets. If The Empire District Electric Company

cannot sufficiently demonstrate this ability, then The Empire District Electric shall execute reasonable steps to restore its credit rating to above BBB- status. These steps may include consideration of restoring Empire's corporate financing functions and restricting the distribution of cash flows to its affiliates.

2. 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.

3. If The Empire District Electric Company's credit ratings become impaired, or the credit rating of the affiliates which directly or indirectly provide capital to it become impaired, (i.e. if the credit ratings are downgraded to BBB- or below) due to risks associated with any of The Empire District Electric Company's affiliates, then The Empire District Electric Company shall file with the Commission a comprehensive risk management plan that assures The Empire District Electric Company's access to and cost of capital will not be further impaired, which shall include a non-consolidation opinion if required by any of the rating agencies.

4. Empire shall not seek an increase to the cost of capital as a result of this Transaction. Any net increase in the cost of capital Empire seeks shall be supported by documented proof that: (a) the increases are a result of factors not associated with the Transaction; (b) the increases are not a result of changes in business, market, economic or other conditions caused by the Transaction; and (c) the increases are not a result of changes in the risk profile of Empire caused by the Transaction. The provisions of this section are intended to recognize the Commission's authority to consider, in appropriate proceedings, whether this Transaction has resulted in capital cost increases for Empire – due to a credit ratings downgrade or any other factor resulting from the Transaction – and to disallow such capital cost increases from recovery in Empire's rates.

5. If Empire's per books capital structure is different from that of the entity or entities in which Empire relies for its financing needs, Empire shall be required to provide evidence in subsequent rate cases as to why Empire's per book capital structure is the most economical for purposes of determining a fair and reasonable allowed rate of return for purposes of determining Empire's revenue requirement.

6. The Missouri Public Service Commission Staff (“Staff”) recommends that the Commission grant no authority in this case to the applicants authorizing a transfer of EDE’s financing activities to an affiliate, unless such transfer complies with Missouri’s Affiliate Transaction Rules.

7. To the extent the goodwill assigned to LU Central is impaired and negatively effects Empire’s’ cost of capital primarily as a result of this transaction, all net costs associated with the decline in Empire’s credit quality, considering all other capital cost effects of the Transaction and the impairment, shall be excluded from the determination of rates.

8. For the first five years after closing of the Transaction, LU Central shall provide Staff and OPC its annual goodwill impairment analysis in a format that includes spreadsheets in their original format with formulas and links to other spreadsheets intact and any written and printed materials within 30 days after it is performed. Thereafter, this analysis will be made available for Staff and OPC upon request.

9. Staff will retain a copy of Liberty Utilities’ financial/valuation model to use as a frame of reference for future cases as a way for Staff to verify what was represented in this acquisition/merger case. Staff will continue to protect the confidentiality of the information contained within that model.

Depreciation Conditions

1. Electric Assets

a. For purposes of accruing depreciation expense, Empire shall use the ordered depreciation rates for The Empire District Electric Company that are awaiting approval by the Commission in Case No. ER-2016-0023, and those depreciation rates attached hereto that were attached to the Stipulation and Agreement in that case as Schedule JAR(DEP)-r2. Depreciation rates resulting from Case No. ER-2016-0023 are to remain in effect until they are changed in a subsequent rate proceeding.

b. Empire shall continue to book all plant and depreciation reserve records in compliance with the format set forth in Title 18: Conservation of Power and Water Resources, Part 101—Uniform System Of Accounts Prescribed For Natural Gas Companies Subject To The Provisions Of The Federal Power Act (FERC USOA).

c. Empire will continue to prepare and maintain its books in accordance with the FERC Uniform System of Accounts (USOA).

d. Empire shall submit the following information in accordance with 4 CSR 240-3.175 - Submission Requirements for Electric Utility Depreciation Studies.

- i. FERC USOA requires the following information to be recorded as part of a Continuing Plant Inventory Record (CPR).
- ii. FERC USOA CPR Rule 8. Continuing plant inventory record means company plant records for retirement units and mass property that provide, as either a single record, or in separate records readily obtainable by references made in a single record, the following information:
 1. For each retirement unit:
 - a. The name or description of the unit, or both;
 - b. The location of the unit;
 - c. The date the unit was placed in service;
 - d. The cost of the unit as set forth in Plant Instructions 2 and 3 of this part; and
 - e. The plant control account to which the cost of the units is charged; and
 2. For each category of mass property:
 - a. A General description of the property and quantity;
 - b. The quantity placed in service by vintage year;
 - c. The average cost as set forth in Plant Instructions 2 and 3 of this part; and
 - d. The plant control account to which the costs are charged.

2. Gas Assets

- a. For purposes of accruing depreciation expense, Empire shall ensure that The Empire District Gas Company (“EDG”) uses the currently ordered depreciation rates for EDG approved by the Commission in File No. GR-2009-0434, and attached as Schedule JAR(DEP)-r3 until changed in a subsequent rate proceeding.
- b. Empire shall ensure that EDG continues to book all plant and depreciation reserve records in compliance with the format set forth in Title 18: Conservation of Power and Water Resources, Part 201—Uniform System Of Accounts Prescribed For Natural Gas Companies Subject To The Provisions Of The Natural Gas Act (FERC USOA).
- c. Empire shall ensure that EDG prepares and maintains its books in accordance with the FERC Uniform System of Accounts (USOA).

d. Empire shall ensure that EDG submits the following information in accordance with 4 CSR 240-3.275 Submission Requirements for Gas Utility Depreciation Studies.

i. FERC USOA requires the following information shall be recorded as part of a Continuing Plant Inventory Record (CPR).

ii. FERC USOA CPR Rule 8. Continuing plant inventory record means company plant records for retirement units and mass property that provide, as either a single record, or in separate records readily obtainable by references made in a single record, the following information:

1. For each retirement unit:

- a. The name or description of the unit, or both;
- b. The location of the unit
- c. The date the unit was placed in service;
- d. The cost of the unit as set forth in Plant Instructions 2 and 3 of this part; and
- e. The plant control account to which the cost of the units is charged; and

2. For each category of mass property:

- a. A general description of the property and quantity;
- b. The quantity placed in service by vintage year;
- c. The average cost as set forth in Plant Instructions 2 and 3 of this part; and
- d. The plant control account to which the costs are charged.

3. Water Assets: Empire shall continue to utilize the depreciation rates ordered in Case No. WR-2012-0300, attached hereto as Schedule JAR(DEP)-r4, and those depreciation rates shall remain in effect until they are changed in a subsequent rate proceeding.

Deferred Taxes Conditions

1. Empire will record on its books all deferred taxes related to income tax deductions or credits created by Empire's operations.

Ratemaking/Accounting Conditions

1. Goodwill associated with the premium over book value of the assets paid for the shares of Empire stock (referred to for purposes of this stipulation as “Acquisition Premium”) will be maintained on the books of LU Central. The amount of any acquisition premium paid for Empire shall not be recovered in retail rates. Nothing herein shall preclude any party to this Agreement from taking a position in any future ratemaking proceedings involving Empire regarding the ratemaking measures and adjustments necessary to ensure no impact from the acquisition premium on rates. Empire will not seek direct or indirect recovery or recognition of any acquisition premium through any purported acquisition savings “sharing” adjustment (or similar adjustment) in future rate cases.

2. 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.

3. 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.

Affiliate Transactions and Cost Allocation Manual (CAM) Conditions

1. EDE is to be operated after the purchase compliant with the affiliate transaction rule, or any necessary variances from the MoPSC’s affiliate transaction rule as defined in 4 CSR 240-20-015(10) and 4 CSR 240-40-015(10) are obtained,

2. Algonquin and its subsidiaries will commit that all information related to an affiliate transaction consistent with 4 CSR 240-20.015(5)(A)(1)-(2) and 4 CSR 240-40.015(5)(A)(1)-(2) charged to EDE will be treated in the same manner as if that information is under the control of EDE, and

3. EDE will provide no preferential service, information, or treatment to an affiliated entity over another party at any other time consistent with 4 CSR 240-20.015(2)(1)(B) and 4 CSR 240-40.015(2)(1)(B).

Customer Service Conditions

1. Empire and Liberty will strive to meet or exceed the customer service and operational levels currently provided to their customers.
2. Empire and Liberty will meet with Staff Consumer and Management Analysis personnel on a periodic basis (such as quarterly) and, as Staff deems necessary, after the close of the Transaction to review contact center and other service quality performance. Staff and/or OPC may request additional periodic meetings with Empire and Liberty personnel to address customer service operating procedures and the level of service being provided to Missouri customers.
3. Empire and Liberty shall notify Staff of any material operational changes concerning customer contact centers, or other customer service functions, occurring within 24 months of the close of the Transaction. Material operational changes include, but are not limited to: Empire and/or Liberty employing call deferral technologies such as Virtual Hold or Call Back In Queue, outsourcing call center or other service quality processes, such as meter reading, substantial changes in billing processes, and the utilization of services or management agreements to perform any of the customer service functions currently performed by any of the previously noted three companies. Empire and Liberty agree to begin reporting the utilization of call deferral technologies if and when they are implemented. Such reports shall include 1) the number of calls offered call deferral technology, and 2) the number of calls accepting call deferral technology.
4. Within thirty (30) days after closing the Transaction, Empire and Liberty shall provide Staff and OPC a current organizational chart, illustrating the positions and names of employees that have customer service responsibilities. In the event structural changes are made to Empire's organization, updated organizational charts shall be provided to Staff and OPC within 30 days of such changes.
5. Empire and Liberty agree to not make available, sell or transfer customer information to affiliated or unaffiliated entities without prior informed consent of the Missouri customer, other than as necessary to provide services to and in support of their regulated operations.

Access to Records Conditions

1. 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.

2. Empire agrees to make available to Staff and OPC, upon written notice during normal working hours and subject to appropriate confidentiality and discovery procedures, all books, records and employees as may be reasonably required to verify compliance with Empire's CAM and any conditions ordered by this Commission. Empire shall also provide Staff and OPC any other such information (including access to employees) relevant to the Commission's ratemaking, financing, safety, quality of service and other regulatory authority over Empire; provided that any entity producing records or personnel shall have the right to object on any basis under applicable law and Commission rules, excluding any objection that such records and personnel of affiliates; (a) are not within the possession or control of Empire or (b) are either not relevant or are not subject to, the Commission's jurisdiction and statutory authority by virtue of, or as a result of, the implementation of the proposed Transaction.

3. Empire shall provide Staff and OPC access to and copies of, if requested by Staff or OPC, the complete Liberty Utilities Co, Liberty Utilities Central and Empire Board of Directors' meeting minutes, including all agendas and related information distributed in advance of the meeting, presentations and handouts, provided that privileged information shall continue to be subject to protection from disclosure and Empire shall continue to have the right to object to the provision of such information on relevancy grounds.

4. Empire will maintain records supporting its affiliated transactions for at least five years.

5. Should it be deemed necessary for Staff employees to travel to locations outside of the State of Missouri to examine any records, Empire shall bear all reasonable expense incurred by the employees, provided, however, that before any such expense shall be incurred by Staff, Empire shall be given reasonable notice to produce the records requested for inspection and examination at the office of the Commission at Jefferson City, Missouri or at Empire's offices in Joplin, Missouri, or at such other point in Missouri, as may be mutually agreed, in which case Empire shall make available at that place, at that time, a person(s) who is acquainted with the records.

Energy Efficiency Conditions

1. **Current DSM/Energy Efficiency:** Empire's current Demand Side Management ("DSM") programs will continue to be offered, with the total annual budget for all DSM programs remaining at \$1.25 million.

a. The incentive structure for the current Commercial and Industrial ("C&I") program will be modified to a range of \$0.06 to \$0.10/kWh of first year energy savings, which the Company can adjust to maximize program participation.

- b. Remaining DSM portfolio funds for the 2016 calendar year not anticipated to be used by residential programs may be utilized by the C&I program, so that the C&I program will again be made available to customers as soon as possible following Commission approval of the Stipulation in Case No. ER-2016-0023.
- c. Empire will spend at least 5% of the annual DSM budget on marketing DSM programs other than C&I and will report quarterly marketing expenditures in its quarterly reports to the DSM Advisory Group (“DSMAG”).
- d. Rates shall be designed so that DSM expenditures will be collected from the Residential and C&I rate groups according to which groups those programs are offered.
- e. Current regulatory asset treatment and rate base inclusion for costs will be continued.
- f. The current DSM programs will be discontinued when Empire’s new DSM program tariffs become effective. The new DSM programs shall take effect on January 1, 2017, or as soon as possible after January 1, 2017.

2. Planned DSM/Energy Efficiency: Between the effective date of this Stipulation in Case No. ER-2016-0023 and January 1, 2017, or as soon as possible after January 1, 2017, the parties will work together through the existing DSMAG to develop four (4) new DSM programs, namely, a Residential HVAC, a C&I custom rebate, a low-income multi-family, and either a non-low-income multi-family, single family low-income or an on-bill financing program targeted at low-income families.

- a. The DSMAG will model these programs to the extent possible on existing programs in the state of Missouri and/or other best practices identified by the DSMAG.
- b. Each program developed will include a proposed annual budget, energy and demand savings target(s), and marketing strategy.
- c. All programs will have impact and process evaluation, measurement and verification (“EM&V”) performed by a third party independent contractor for the first two (2) full program years at a budget of 5% of the actual expenditures for the two (2) full program years.
- d. The DSMAG will investigate Pay As You Save (“PAYS”) Financing and similar programs, the feasibility of administering PAYS Financing and similar programs in Empire’s service territory, and Empire will arrange for a presentation on PAYS Financing or a similar program at a Commission Agenda meeting.
- e. Empire will implement these or similar programs on January 1, 2017, or as soon as possible after January 1, 2017.

- f. The programs implemented on January 1, 2017, or as soon as possible after January 1, 2017, will have a term of not less than two (2) years.
 - g. Current regulatory asset treatment and rate base inclusion for costs will be continued as specified in the paragraph below.
 - h. If the Commission orders a low-income rate pilot program Case No. ER-2016-0023, the cost of the program will also receive regulatory asset/rate base treatment as specified in the paragraph below.
- 3. DSM Regulatory Asset: Empire will continue amortization of the DSM regulatory asset for costs incurred during the Regulatory Plan, Case No. EO-2005-0263, for a total term of ten (10) years.
 - 4. DSM Program Costs: Empire will continue amortization for the DSM program costs incurred after the end of the Regulatory Plan and prior to any program implementation under MEEIA for a total term of six (6) years.

Natural Gas Procurement Practices

- 1. LU Central shall prepare a cost benefit analysis prior to any decision to materially change any existing gas procurement practices of EDG to a LU Central gas procurement approach. This should include, but not be limited to, an evaluation of EDG's existing supplier availability, hedging methods, gas volume accounting systems, transportation balancing systems, PGA and ACA recordkeeping and other existing EDG gas procurement practices as contrasted to changing a materially different gas procurement practice.
- 2. Prior to the effective date of the closing of the Transaction, Empire will provide Staff with evidence that no assignment of transportation and storage contracts with EDG interstate pipeline suppliers will be required due to the merger, or that acceptance of such assignment has been obtained. Further, Empire will provide evidence that no transfer of existing gas hedges for Empire or EDG will be required as a result of the merger, or that acceptance of such transfer has been obtained.