

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of The Empire)
District Electric Company, et al., for an) Case No. AO-2018-0179
Affiliate Transactions Rule Variance)

STATEMENT OF POSITIONS

COME NOW the Applicants, The Empire District Electric Company, The Empire District Gas Company, Liberty Utilities (Midstates Natural Gas) Corp., and Liberty Utilities (Missouri Water) LLC (the “Missouri Utilities”), and in response to the *Order Granting Motion for Additional Time, Order Granting Expedited Treatment and Order Setting Hearing*, dated April 18, 2019, respectfully submit this Statement of Positions to the Missouri Public Service Commission (“Commission”).

On April 12, 2019, the Staff of the Commission (“Staff”) and the Missouri Utilities submitted a List of Issues. The only issue presented is: Should the Commission grant the Applicants a variance from sections 4 CSR 240-20.015(3)(A) and 4 CSR 240-40.015(3)(A), the bidding requirements of the Commission’s electric and gas affiliate transaction rules? Also on April 12, 2019, the Office of the Public Counsel (“OPC”) submitted its own List of Issues, asserting that the following six issues should be tried to and decided by the Commission in this matter:

1. Have [the Missouri Applicants] shown good cause for the Commission to grant them variances from the bidding requirements of the Commission’s affiliate transactions rules (4 CSR 240- 20.015(3)(A) and 4 CSR 240-40.015(3)(A)) for the purpose of them joining and participating in LUCo’s money pool with its regulated subsidiaries?

2. Do the terms of Section 1.07(b) of LUCo’s money pool agreement with its regulated subsidiaries for allocating to the Applicants specific costs of 2 their affiliate LUCo’s credit lines that may fund that money pool comply with the Commission’s affiliate transactions rules standards which require that “[a] regulated electrical [or gas] corporation shall not provide a financial advantage to an affiliated entity” (4 CSR 240-20.015(2)(A) and 4 CSR 240-40.015(2)(A))?

3. Are the terms of Sections 2.01 and 2.06 of LUCo's money pool agreement with its regulated subsidiaries sufficiently vague that how LUCo may select the basis for charging operational money pool costs and the method to determine its costs provides a preference to LUCo that does not comply with the Commission's affiliate transactions rules standards which require that "[e]xcept as necessary to provide corporate support functions, the regulated electrical [or gas] corporation shall conduct its business in such a way as not to provide any preferential service, information or treatment to an affiliated entity over another party at any time (4 CSR 240- 20.015(2)(B) and 4 CSR 240-40.015(2)(B))"? Will any increased interest, investment revenues or decreased borrowing costs to The Empire District Electric Company, The Empire District Gas Company, and Liberty Utilities (Midstates Natural Gas) Corp due to their participation in LUCo's money pool with its regulated subsidiaries benefit their captive retail customers? Will interest, investment revenues be offset by LUCo's money pool expenses?

4. Have The Empire District Electric Company, The Empire District Gas Company, Liberty Utilities (Midstates Natural Gas) Corp, and Liberty Utilities (Missouri Water) LLC complied with the Commission's rules and orders since they became subsidiaries of Algonquin Power & Utilities Corp.?

5. Does LUCo's money pool agreement with its regulated subsidiaries address the Applicants' record-keeping requirements and access to LUCo's books and records for the Commission to ensure compliance with the Commission's affiliate transactions rules as expressed in rules 4 CSR 240- 20.015(5)&(6) and 4 CSR 240-40.015(5)&(6)?

6. Is The Empire District Electric Company complying with the following conditions the Commission imposed on it in Case No. EM-2016-0213: a. Empire will not obtain financing services from an affiliate unless such services comply with Missouri's Affiliate Transaction Rules 4 CSR 240-20.015 and 4 CSR 240-40.015; b. "Empire shall maintain corporate officers who have a fiduciary duty to Empire"; and c. "Empire shall maintain its own board of directors with a majority of non-management independent directors?"

The issue presented by Staff and the Missouri Utilities and OPC's Issue No. 1 are essentially the same, and that issue is addressed below. The Missouri Utilities, however, object to OPC Issue Nos. 2-6 being made a part of this proceeding.

Should the Commission grant the Applicants a variance from Commission Rules 4 CSR 240-20.015(3)(A) and 4 CSR 240-40.015(3)(A), the bidding requirements of the Commission's electric and gas affiliate transaction rules?

Yes. As set forth in the Nonunanimous Stipulation and Agreement executed and filed herein by Staff and the Missouri Utilities on January 24, 2019 (the "Stipulation"), the

Commission should grant the requested variance from the competitive bidding requirements of the Commission's Affiliate Transaction Rules with regard to the Missouri Utilities' participation in a "money pool" agreement. As explained in the Stipulation and the direct and surrebuttal testimonies of Mark Timpe, witness for the Missouri Utilities, and Commission Staff witnesses David Murray and Kim Bolin, good cause exists for the grant of the requested variance.

Direct Testimony of Mark T. Timpe, pp. 3-11

Direct Testimony of Kimberly K. Bolin, pp. 4-8

Direct Testimony of David Murray, pp. 1-4

Surrebuttal Testimony of Mark T. Timpe, pp. 2-14

Surrebuttal Testimony of Kimberly K. Bolin, pp. 1-9

Surrebuttal Testimony of David Murray, pp. 1-4

The Commission should strike OPC's proposed Issue Nos. 2-6.

With their original application, the Missouri Utilities sought two variances from the Commission's affiliate transaction rules with regard to what is known as a "money pool." At this time, and pursuant to the Stipulation, the Missouri Utilities are seeking only a variance regarding competitive bidding requirements in relation to the money pool. At no time did the Missouri Utilities request approval of the money pool as a whole, and the Missouri Utilities are not seeking any ratemaking treatment in this proceeding. OPC's proposed Issue Nos. 2-6 are irrelevant, seek impermissible advisory opinions from the Commission, attempt to address actions that may or may not take place in the future, and request that the Commission engage in a fishing expedition.

Essentially, OPC's proposed Issue Nos. 2-6 represent an ad hoc complaint against the Missouri Utilities regarding their compliance with all rules, as well as compliance with orders issued in Commission Case No. EM-2016-0213. If OPC believes the Missouri Applicants have violated a Commission rule or order, OPC is not without recourse. OPC may bring a complaint or challenge allocated costs in a rate case. Making these issues a part of the Missouri Utilities'

variance request proceeding would improperly shift the burden of proof, and the addition of these issues, after the filing of written testimony, would interfere with the Missouri Utilities' due process rights.

WHEREFORE, the Missouri Utilities submit this Statement of Position and request that the Commission grant the Missouri Utilities a variance from sections 4 CSR 240-20.015(3)(A) and 4 CSR 240-40.015(3)(A), the bidding requirements of the Commission's electric and gas affiliate transaction rules. The Missouri Utilities request such additional relief as is just and proper under the circumstances.

Respectfully submitted,

/s/ Diana C. Carter

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CERTIFICATE OF SERVICE

I hereby certify that the above document was filed in EFIS on this 13th day of June, 2019, and sent by electronic transmission to the Staff of the Commission and the Office of the Public Counsel.

/s/ Diana C. Carter