

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

In the Matter of The Empire District Electric Company,)
Liberty Utilities (Central) Co. and Liberty Sub Corp.) **Case No. EM-2016-0213**
Concerning an Agreement and Plan of Merger and)
Certain Related Transactions.)

**OFFICE OF THE PUBLIC COUNSEL OBJECTION TO NON-
UNANIMOUS STIPULATION AND AGREEMENT**

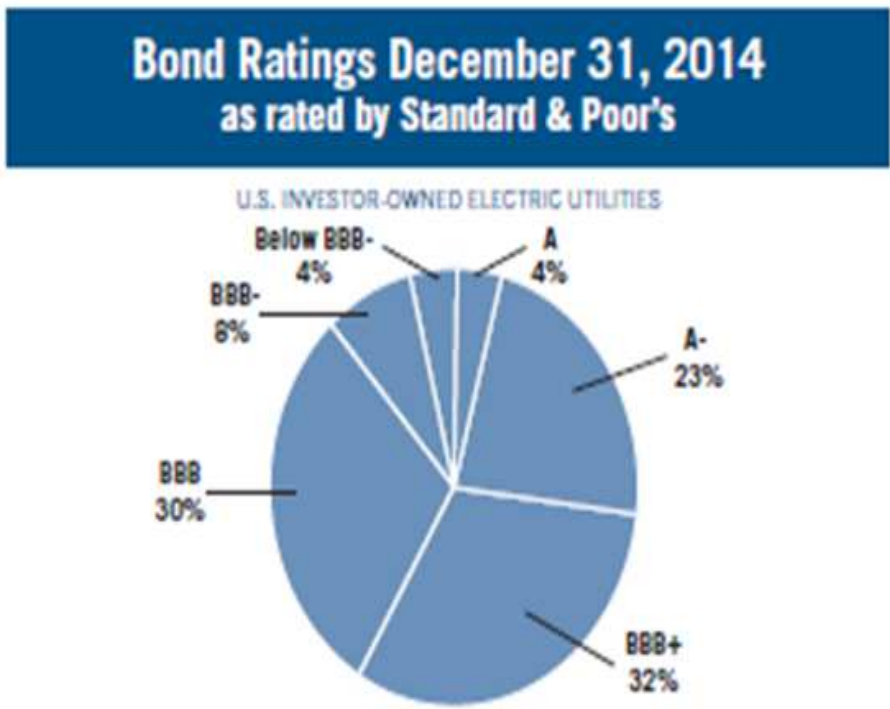
COMES NOW the Office of the Public Counsel (“OPC”), by and through counsel, and pursuant to Commission Rule 4 CSR 240-2.115(2)(B), files its objection to the Stipulation and Agreement as to the Division of Energy and Renew Missouri (“Stipulation”) filed on August 4, 2016, by the Empire District Electric Company, Empire District Gas Company, Liberty Utilities (Central) Co., Liberty Sub Corp. (collectively “Applicants”), and the Staff of the Missouri Public Service Commission (herein “Staff”). In support of its objection, OPC states:

1. Commission Rule 4 CSR 240-2.115(2)(D) requires that “A non-unanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it. All issues shall remain for determination after hearing.”

2. OPC objects to the *Stipulation and Agreement* filed on August 4, 2016 because it does not sufficiently ensure that there will be no net detriment related to this transaction. OPC provides the following grounds for its objection:

- a. The *Stipulation* calls for the Empire District Election Company (“Empire”) and/or its Financing Affiliate to notify the Commission should its Standard & Poors Corporate Credit Rating be downgraded to below a BBB-. See page 2, paragraph 1. OPC objects to the *Stipulation and Agreement* filed on August 4, 2016 because it does not sufficiently ensure that there will be no net detriment related

to this transaction. OPC has concerns related to this requirement because the conditions found in the Financing Conditions of the *Stipulation* become effective after Empire’s financial health has potentially deteriorated to the point where Empire’s credit rating is below investment grade (i.e., below BBB-). To provide some context into how rare a “rating below BBB-” is in the utility industry, see the below pie chart. Only 4% of investor-owned electric utilities were below investment grade at the time of this survey.



- b. OPC also has concerns related to the ring-fencing provisions provided in paragraph 2, page 3 of the *Stipulation*. For example, in the matter of ring-fencing, OPC has provided what it believes is a minimum set of necessary conditions in Attachment RP-R22 of Witness Pfaff’s Rebuttal Testimony. The types of ring-fencing measures discussed in the *Stipulation* could be done after the merger.

However, ring-fencing measures are regularly imposed as part of a merger review since: (1) the parent company of the utility is changing, often necessitating additional protections; and (2) the Commission has the greatest ability to influence the organizational structure of the holding company. While ring-fencing can be implemented post-merger, it is undoubtedly best to implement necessary ring-fencing measures during the approval of this merger to prevent a debilitating collapse of Empire's financial health resulting in its inability to provide safe and adequate service to its customers.

3. OPC has presented its concerns with the provision on ring-fencing in its rebuttal filing of Ryan Pfaff and will present further evidence at hearing, should the opportunity arise, regarding the reporting requirements agreed to in the *Stipulation*.

WHEREFORE, OPC respectfully provides this objection to the *Stipulation and Agreement* filed on August 4, 2016 between Applicants and Staff, as provided by Commission Rule.

Respectfully submitted,

/s/ Cydney D. Mayfield
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Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing has been served, by hand delivery, electronic mail, or First Class United States Mail, postage prepaid, to all parties of record on the Service List maintained for this case by the Data Center of the Missouri Public Service Commission, **on this 11th Day of August, 2016.**

/s/ Cydney D. Mayfield