BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of The Empire District Electric Company's	)	
Request for Authority to File Tariffs Increasing Rates for Electric	)	Case No. ER-2019-0374
Service Provided to Customers in its Missouri Service Area	)	

THE EMPIRE DISTRICT ELECTRIC COMPANY'S RESPONSIVE BRIEF

COMES NOW The Empire District Electric Company, a Liberty Utilities company ("Empire" or the "Company"), and for its Responsive Brief, respectfully states as follows to the Missouri Public Service Commission ("Commission"):

The Non-Unanimous Global Stipulation

The terms of the Stipulation[1] should be approved as a complete resolution of this case. The filed testimony and other documentation that was offered for admission in this case will allow the Commission to issue a lawful and reasonable report and order, including detailed findings of fact and conclusions of law, approving the terms of the Stipulation as a complete resolution of this case. Approval of the terms of the Stipulation, in total and without modification, will result in just and reasonable rates and will allow Empire to continue providing safe and reliable service.

Based on the test year as updated and trued-up, the Company is experiencing an annual revenue deficiency of $21,916,462. The Company made necessary and prudent investments in its transmission and distribution systems and experienced increased costs for property taxes and

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[1] On April 15, 2020, the Company, the Staff of the Commission ("Staff"), Midwest Energy Consumers Group ("MECG"), Empire District Electric Company SERP Retirees ("EDESR"), the Empire District Retired Members & Spouses Association LLC ("EDRA"), Renew Missouri, Natural Resources Defense Council ("NRDC"), and the National Housing Trust ("NHT") (collectively, the "Signatories"), and with a non-objection from the Sierra Club, submitted for the Commission's consideration and approval a Global Stipulation and Agreement (the "Stipulation") representing resolution of all issues in this general rate case proceeding. The Office of the Public Counsel ("OPC") filed an objection to the Stipulation.

depreciation expense stemming from its additional capital investment, as well as normal and inflationary increases in operating costs. Being mindful of the extraordinary and unique financial challenges currently facing Empire's customers, however, the Company worked with the parties to create a global resolution of this case that would prevent Empire's customers from seeing a base rate increase until the effective date of rates resulting from the Company's next rate case.

In all rate cases, the Commission has the difficult task of balancing the interests of customers and investors. This balancing exercise becomes increasingly difficult under stressed economic and financial conditions. Customers and investors, however, have the common interest of needing a financially strong utility. As such, the parties thought outside the box and put together a settlement construct that balances all interests. This unique settlement construct is investment driven and not expense driven.

While the typical rate case resolution, as well as the pre-filed positions in this case, reflect changes to operating and maintenance ("O&M") expenses, the Stipulation reflects no change to O&M and keeps the Company's O&M expense recovery at 2016 levels. The Stipulation resolves all revenue requirement issues by providing that there will be no changes to the Company's retail base rates in this proceeding, no changes to the FAC base factor, no changes to the customer charges, and the continuation of the tax addendum, currently credited as a separate line item on each rate schedule as "tax rate reduction." If the Stipulation terms are approved as a complete resolution of this case, the only necessary tariff changes will be to reflect minor changes in the fuel adjustment clause ("FAC") tariff sheets.[2]

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[2] There will also be the addition of tariff sheets to implement the partial decoupling mechanism pursuant to RSMo. §386.266.3 (the SRLE - Sales Reconciliation to Levelized Expectations).

As additional customer protections, the Stipulation provides for the establishment of an accounting authority order ("AAO") regarding the retirement of the Asbury power plant and also includes: increased FAC reporting requirements; the prohibition of any fuel related costs or market related charges or revenues incurred at Asbury or related to Asbury after January 1, 2020 flowing through the FAC; the prohibition of short-term capacity costs flowing through the FAC until June 1, 2021; extensive safeguards regarding estimated meter reads and billings; new reliability benchmarking and reporting; commitments and obligations regarding AMI data, future rate design changes, and the development of determinants suitable for use in the design and development of time of use ("TOU") rates as part of the next rate case; the continuation of low-income and energy efficiency programs; and new reporting to Empire's retirees.

In balance, the Stipulation also provides for the establishment of a lawful and reasonable partial decoupling mechanism pursuant to RSMo. §386.266.3 and a phase-in rate mechanism pursuant to RSMo. §393.155.1 to capture the return "on and of" related to the net increase in plant in service and other rate base related items between the Company's filed test year balance in this proceeding and the end of the true-up in this proceeding. As is apparent from the joint list of issues originally presented to the Commission, there is no dispute regarding these rate base additions. The rate base additions for the mechanism are $102,575,958, and the depreciation and amortization for plant in service and intangible plant is $4,009,889. This provision of the Stipulation simply acknowledges that the Company made necessary and prudent investments in order to serve its customers.

A carrying cost rate of 7.3 percent will be applied to the phase-in mechanism balances, and the rate base and phase-in mechanism balances will be included in the Company's adjudicated rate base in its next general rate case. The amortization period for what is captured

by the phase-in mechanism will be determined in that case. Currently, for AFUDC (allowance for funds used during construction) purposes, the Company utilizes a return on equity ("ROE") of 9.7 percent. Although the Stipulation does not specify an authorized ROE, the phase-in mechanism carrying cost can be tied to an ROE range of 9.4 to 9.8. The 7.3 carrying cost is both lawful and reasonable and properly reflects the goals of establishing just and reasonable rates and having a financially strong utility that will be able to continue providing safe and reliable service.

The Relationship Between the Stipulation and the Joint List of Issues

The Stipulation represents a complete resolution of all rate case issues. Since OPC objected to the Stipulation, the terms of the Stipulation constitute the joint position of the signatories on all issues addressed in the Stipulation. With regard to issues not specifically addressed in the Stipulation, the terms of the Stipulation constitute the joint position of the Signatories on all revenue requirement, WNR/SRLE, and FAC issues to be decided by the Commission. If the Commission does not accept the terms of the Stipulation as the complete resolution of the case, the Commission will need to go through the traditional revenue requirement and rate design determinations.

If the Commission does not accept the terms of the Stipulation as the complete resolution of the case, there is disagreement among the signatories as to various revenue requirement, rate design, and other issues. Regardless of whether or not the Stipulation terms are approved in total, however, the Company is willing to accept the following individual terms of the Stipulation in conjunction with a more traditional revenue requirement determination:

- paragraph 5 (no changes to the customer charges in this proceeding);
- paragraph 6 (FAC), subparts c, d, e, f and g;
- paragraph 7 (FAC-wind);

- paragraph 8 (SRLE mechanism);
- paragraphs 9 and 10 (Adjustments Related to Meter Reading and Billing);
- paragraphs 11-19 (Rate Design);
- paragraphs 20-22 (Energy Efficiency and Low-Income Programs);
- paragraph 23 (Stakeholder Meeting on COVID-19 and Capital Expenditures);
- paragraphs 27 and 28 (Retired Employees Provisions); and
- paragraph 29 (SERP Retirees Provision).

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As OPC is the only party that objected to the Stipulation, this Responsive Brief focuses on the allegations and arguments of OPC, as set forth in OPC's Initial Brief. If the Commission does not accept the terms of the Stipulation as the complete resolution of the case, the Commission will need to go through the traditional revenue requirement and rate design determinations. As such, this Responsive Brief also addresses certain positions and arguments of Staff, as set forth in Staff's Initial Brief.

Unfortunately, many statements from our consumer advocate are misleading, at best. For example, OPC argues that "since the acquisition, the costs of Empire's transactions with its affiliates have increased twenty-fold." OPC Initial Brief, p. 3. OPC, however, presents no support for this statement and appears to be including all payroll costs and corporate support allocations as "transactions with its affiliates," since individuals providing services for Empire are now employed by Liberty Utilities Service Corp. Comparing affiliate costs in this manner is clearly not an apples-to-apples comparison. OPC also implies that Empire violated the provision of RSMo. §393.135 regarding a utility not recovering costs of property before that property

becomes used and useful in the provision of utility service (OPC Initial Brief, p. 3), although OPC is well aware of the fact that Empire has not sought recovery in this case for costs of any property before that property became used and useful in the provision of utility service.

Similarly, OPC argues that Empire "intentionally shutoff Asbury's fuel supply so that it last produced electricity on December 12, 2019" (OPC Initial Brief, pp. 5-6), even though thorough documentation was provided to OPC regarding there being enough coal on hand to possibly run Asbury into May of 2020 and of the fact that Asbury could not be de-designated from the market until March 1, 2020. Regarding the FAC sharing percentage, OPC argues that there is "legislative guidance" for OPC's proposal of 85/15 percent (OPC Initial Brief, p. 34), even though this so-called guidance was not provided until more than a decade after Empire's FAC was first established and is part of the PISA statutory provision, which is not being utilized by Empire. In short, OPC's arguments against approval of the Stipulation terms as a complete resolution of this case, particularly with regard to affiliate issues, the FAC, and the Asbury power plant, should be disregarded by the Commission.

ISSUE 1 - Rate of Return - Return on Equity, Capital Structure, and Cost of Debt. As noted, the Stipulation involves a unique construct that is investment driven and not expense driven. As such, it is difficult to compare the filed positions to the Stipulation terms. The Stipulation resolves the rate of return issues by providing for a carrying cost rate of 7.3% on the balance created by the phase-in rate mechanism to be established pursuant to RSMo. §393.155.1.

If the terms of the Stipulation are not approved as a complete resolution of this case, the pre-filed testimony also supports the following decisions on these issues: the return on common equity ("ROE") to be used for determining the rate of return should be 9.95 percent, within an

overall reasonable range of 9.80 percent to 10.60 percent. The capital structure to be used for determining the rate of return should include 53.07 percent common equity and 46.93 percent long-term debt. The Company's actual filed cost of debt, which is the same as the cost of debt at the true-up period, should be used.

In its Initial Brief, OPC recommends a ROE of 9.25 percent, if the Commission authorizes Mr. Murray's proposed 46.00 percent equity ratio. If the Commission authorizes the Company's actual 53.07 percent equity ratio, OPC now proposes an ROE of 8.50 percent. OPC Initial Brief, p. 8. Either combination is fatally flawed, lacks empirical or even reasonable theoretical support, and should be given no weight.

Return on Common Equity

As OPC explains, Mr. Murray applied two models to estimate the investor-required ROE for a vertically integrated electric utility such as Empire: (1) the Discounted Cash Flow ("DCF") method; and (2) the Capital Asset Pricing Model ("CAPM"). Those two methods, as Mr. Murray applied them in this case, produced estimates ranging from 4.63 percent to 5.43 percent based on the DCF method, and 5.35 percent to 6.10 percent in the case of the CAPM. OPC Initial Brief, p. 9. The midpoint of the combined ranges is 5.37 percent. Mr. Murray's "refined" analyses produced results in the range of 5.50 percent to 6.00 percent, indicating a midpoint of 5.75 percent. Although nearly eight pages of OPC's Initial Brief is spent discussing methodological issues, OPC failed to reconcile the 350 basis point difference between Mr. Murray's "refined" analytical results and his 9.25 percent ROE recommendation, or the 275 basis point gap with Mr. Murray's alternative 8.50 percent ROE recommendation.

Temporarily putting aside the many fundamental flaws in his methods, Mr. Murray's conclusions remain so distinct and disconnected from his model results that his ROE proposals

have no fundamental basis. OPC, however, urges the Commission to look away from that gap and simply accept Mr. Murray's *ipse dixit* that his recommendations somehow have an analytical footing. Mr. Murray's claims are subject to challenge, and there is no analytical footing for his opinions in this case. The 275 to 350-basis point gaps between the model results OPC observes and the returns OPC recommends are simply too wide to overcome.

Despite that analytical shortfall, OPC also would have the Commission assume there is an analytical basis for Mr. Murray's 25-basis point back-and-forth in connection with the market disruption brought about by the COVID-19 pandemic. That is, even though OPC cannot explain how Mr. Murray's 9.25 percent ROE recommendation is connected to his 5.75 percent mid-point estimate, OPC would have the Commission accept that relationship is so well understood that it can be reduced to 25-basis point increments – and toggled up or down based on short-term changes in interest rates and price to earnings ratios. OPC Initial Brief, p. 13. Even if that were the case, other market data indicate the opposite: that conditions remained strained and disrupted. As Mr. Hevert explained in his Surrebuttal Testimony:

> Although valuations for utilities and the broad market peaked during mid-February, as discussed in Section I, they have fallen considerably since then; the utility sector and the broad market lost over 30.00 percent of their value. Utility dividend yields, measured by the XLU, increased by about 120 basis points. As to P/E ratios, the Dow Jones Utility ("DJU") Index ratio fell from 34.26 on February 21 to 21.43 on March 20, a decline of about 37.50 percent. At the same time, the market P/E ratio (measured by the S&P 500) fell by about 34.00 percent.

Ex. 38 (Hevert Surrebuttal), p. 35. Mr. Hevert also noted:

> From a slightly different perspective, from January 1 to February 11, 2020, the correlation between the S&P 500 dividend yield and the utility sector dividend yield was about 18.00 percent. From February 12 to March 20, 2020 it increased to 96.00 percent [reference omitted]. That strong correlation is not surprising - as Morningstar recently explained, during volatile markets there often is little distinction in returns across assets or portfolios. That is,

> "correlations go to 1." When that happens, utility stocks lose their "defensive" quality.

Id. at 7.

Although OPC remains comfortable with Mr. Murray's subjective 25-basis point adjustments as market indices varied from time-to-time during the historic market dislocation following the end of the true-up period in this case, the Company does not. Rather, Company witness Hevert acknowledged the disruptions among economic variables that occur during such dislocations, recognized that the models used to estimate the ROE become less reliable in unstable markets, and observed that if anything, broad measures suggested investor-required returns had increased. *Id.* at 3. In the end, Mr. Hevert maintained his 9.95 percent ROE recommendation.

In short, OPC's testimony and arguments on these issues present a fundamental flaw that cannot be overcome – the significant gap between Mr. Murray's proposed ROE on the one hand and Mr. Murray's model results on the other. That gap further demonstrates the tenuous basis of OPC's alternative ROE recommendations, as well as the alternating adjustments to those recommendations as capital markets evolve.

Although OPC fails to explain the difference between Mr. Murray's model results and his recommendations, OPC attempts to argue that Mr. Hevert's analyses and recommendation ignore "tests of reasonableness." OPC Initial Brief, p. 14. For example, OPC argues "it is well-established in the investment community that utility stocks are viewed as bond-proxies, such that the primary cause for utility stock price changes is a change in bond yields." *Id.* In that case, utility dividend yields would decrease as interest rates fall. Chart 2 in Mr. Hevert's Surrebuttal Testimony, however, demonstrated that since mid-February 2020, the opposite was true. During that time period, utility dividend yields increased as interest rates fell. Putting aside the fact that

debt and equity are fundamentally different securities (Ex. 36, Hevert Direct, p. 6), the increased risk and uncertainty in March of 2020 affected all market sectors, including the utility sector (Ex. 38, Hevert Surrebuttal, p. 4). Refuting OPC's argument, Mr. Hevert's analysis and assessments properly found that utility stocks did not trade as "bond-proxies."

OPC further argues that equity analyst reports support the assumptions that underlie Mr. Murray's 5.75 percent (midpoint) estimate. OPC Initial Brief, p. 15. Again, OPC's argument is misplaced and easily refuted. As Mr. Hevert explained in his Surrebuttal Testimony, the reports Mr. Murray cites develop price targets based on an assumed ROE. The analyst reports relief upon by OPC do not estimate the market-required ROE based on market-provided data:

> Setting a price target or recommendation based on an assumed discount rate (*i.e.,* the Cost of Equity) is an altogether different analysis than determining the discount rate based on market prices. Our testimony focuses on the latter, not the former. Mr. Murray's Schedule DM-R-3 C 3/16 is a good example of the difference between the two analyses. There (Part 1), Evercore ISI analysts provide the "P/E Implied by [Dividend Discount Model] Results" relative to the actual P/E ratio. For all 26 companies reviewed, the implied P/E ratio is higher than the "current" P/E ratio. Put another way, the Dividend Discount Model is not used to determine the cost of capital based on current prices, it is used to determine implied prices based on an assumed cost of capital.

Ex. 38, Hevert Surrebuttal, p. 39.

Additional OPC arguments are similarly misplaced. In discussing Mr. Murray's DCF analyses, OPC states "[a] majority of a utility equity investor's return is realized through the dividend yield, with the growth in the dividend making up less than half of an investor's total return over longer holding periods." OPC Initial Brief, p. 14. With Mr. Murray's assumed dividend yield of three percent, OPC's argument holds true only if the assumed growth rate is no more than three percent. As Mr. Hevert noted in his Rebuttal Testimony, with a two percent expected rate of inflation, Mr. Murray's three percent growth rate implies real growth less than one percent. Ex. 38, p. 39. Under that assumption, utility stocks would provide a three percent

dividend yield and a modest level of protection against inflation, but "remain exposed to the risk of capital losses associated with equity ownership." *Id.* Other investments, such as Treasury Inflation Protected Securities "provide inflation protection and carry a minimal risk of capital loss (if held to maturity)." *Id.* Ultimately, OPC's position that Mr. Murray's assumed three percent growth rate has any relevance in assessing Mr. Hevert's model results is far removed from theory and practice.

In a similar fashion, OPC argues a "test of reasonableness" is to add a three to four percent equity premium to utility bond yields. Doing so produces ROE estimates of 6.40 to 6.75 percent. OPC Initial Brief, p. 14. That simple "rule of thumb" approach (Murray Direct, p. 39), however, assumes the equity risk premium remains constant. It does not. Rather, as explained by Mr. Hevert in his Rebuttal Testimony, the equity risk premium changes over time and with interest rates. Ex. 37, pp. 47-48. In fact, Mr. Hevert analyzed the difference between a "rule of thumb" approach such as Mr. Murray's on behalf of OPC and actual authorized ROEs over time. That analysis, which assumed a constant equity risk premium (4.68 percent), demonstrated the "rule of thumb" under-estimated actual authorized returns by as much as 238 basis points. Ex. 38, Hevert Surrebuttal, pp. 45-46. Under Mr. Murray's three percent equity premium, OPC's method would have underestimated the ROE by as much as 406 basis points.[3] OPC's "rule of thumb" analysis simply fails to support 6.75 percent as a reasonable estimate of the Company's ROE and also fails to demonstrate that Mr. Hevert's 9.95 percent ROE recommendation is improper.

Lastly, although OPC acknowledges Mr. Murray's ROE recommendation is far removed from ROEs authorized by other regulatory commissions for electric utilities, OPC attempts to

[3] 4.06 percent = 2.38% + (4.68% - 3.00%).

rationalize that difference by arguing that investors "have become accustomed to utility commissions authorizing ROEs that are higher than utility's actual [Cost of Equity]." OPC Initial Brief, p. 11 (clarification added). OPC then argues ". . . investors factor in the expectation that commissions will eventually reduce allowed ROEs as the actual COE continues to fall, causing the margin between allowed ROEs and COEs to widen." *Id.* That, however, has not happened. In fact, Mr. Hevert's Rebuttal Testimony explains that since 2015, there has been no trend in authorized returns for vertically integrated electric utilities. Ex. 37, p. 31. If anything, authorized returns further support Mr. Hevert's recommendation. As noted, since January 2019, the average authorized return was 9.74 percent, only six basis points from the 9.80 percent lower end of Mr. Hevert's recommended range. Ex. 38, Hevert Surrebuttal, p. 17.

<u>Capital Structure</u>

OPC argues its proposed capital structure of 46 percent common equity and 54 percent long-term debt is "just and reasonable." OPC Initial Brief, p. 19. That conclusion rests on Mr. Murray's assessment of the capital structure for Liberty Utilities Co. ("LUCo"), and his opinion that LUCo's is a "low-risk regulated utility business risk profile which affords it the ability to carry a debt ratio that has at times been as high as in the 55% to 60% range." *Id.* OPC also argues that but for Mr. Murray's testimony, "the Commission would have no evidence on a comparison of the most economical capital structure for purposes of setting Empire's ROR." *Id.* at 17. In OPC's opinion, that analysis is necessary to satisfy condition five of the Commission's merger approval order in Case No. EM-2016-0213. *Id.* at 16. OPC's arguments are without evidentiary support and should be given no weight.

Although OPC focuses on Mr. Murray's adjustments to LUCo's capital structure, OPC's initial brief does not address the analysis condition five requires – whether Liberty-Empire's capital structure is the "most economical":

> 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.

Ex. 38, Hevert Surrebuttal, at 49.

The analytical issue is straightforward: "if Liberty-Empire's 'book capital structure' differs from LUCo's, the Company must demonstrate its capital structure is 'the most economical.'" *Id.* Mr. Hevert noted that Empire's "book capital structure does not equal LUCo's capital structure whether Mr. Murray's proposed adjustment is applied, or not" and that the analytical issue is not whether Empire's capital structure is the same as LUCo's. Instead, assuming the two differ to the point that the analysis is required, the question is whether Empire's capital structure is the "most economical." *Id.* at 51.

OPC attempts to address that point by asserting its proposed capital structure would support a BBB credit rating and assuming its proposal would reduce costs to Empire's customers. OPC Initial Brief, pp. 16-17. Beyond that, OPC fails to explain its definition of the "most economical" capital structure, or how its definition would fit with condition five. Mr. Hevert's Surrebuttal Testimony, on the other hand, directly addressed that point:

> First, it is important to define "most economical" in this context. As I explained in my Rebuttal Testimony, capital structures must be set and managed to achieve multiple objectives, subject to multiple constraints. It is a matter of optimization. Yes, it is important to ensure the lowest reasonable cost to ratepayers. It also is important to ensure the financial wherewithal to efficiently access both long-term capital and short- term liquidity, regardless of market conditions.

Ex. 38, Hevert Surrebuttal, p. 51. The process of developing and maintaining the "most economical" capital structure therefore addresses multiple factors, including costs to customers, the effect of financial leverage (that is, the additional risk created by adding debt to the capital structure, as OPC's recommendation would), duration matching, capital market risk mitigation, and rating agency criteria. *Id.* at 51-58.

Put another way, an "economical" capital structure therefore seeks to "optimize the proportions of equity and debt, based on multiple factors." *Id.* at 54. Because utilities have similar financing objectives and face similar constraints, "capital structure optimization is best viewed in the capital structures in place among utility operating companies." *Id.* Mr. Hevert explained that the average equity ratio for operating utility companies within his proxy group is 53.42 percent (Ex. 36, Hevert Direct, p. 42), somewhat above Empire's actual equity ratio of 53.07 percent (Ex. 38, Hevert Surrebuttal, p. 60). OPC's proposed 46 percent equity ratio, on the other hand, falls more than two standard deviations from the proxy group average. Ex. 38, p. 55. In that important respect, Empire's capital structure is "consistent with industry practice, reflects the many factors that must be considered in developing an optimal - or economical - capital structure, and recognizes the importance of balance sheet strength, especially during volatile capital markets." Ex. 38, p. 59.

If the condition is triggered, a plain reading of condition five requires a determination of the "most economical" capital structure. *Id.* at 49. Although OPC looks to Mr. Murray's adjusted 46 percent equity ratio for LUCo, and assumes it is the "most economical," OPC fails to address the many practical factors that inform utility capital structure decisions. When those factors are considered, "regardless of how he arrived at it, Mr. Murray's 46.00 percent equity ratio cannot

be seen as the "most economical." *Id.* at 56. As such, OPC's capital structure recommendations should be disregarded by the Commission.

ISSUE 2 - Rate Design, **Other Tariff and Data Issues:** Issue 2 in the filed Joint List of Issues contains 29 subparts – questions (a) through (cc). The Stipulation resolves all of these issues, and its terms should be approved. Notably, due to the unique construct of the Stipulation, if those terms are implemented, there will be no changes to the customer charges. Also, the Company will incorporate into its direct filing for its next rate case, expected to be filed at the end of this summer: (i) allocation of interruptible credits for SC-P rate schedule consistent with MECG's recommendation in this case; (ii) allocation of the cost of the economic development rider discount on revenues pursuant to §393.1640.2; and (iii) interruptible revenues to match with cost allocation of production plant.

Additionally, the Stipulation requires the Company to identify and provide the data required to determine: primary distribution costs by voltage; secondary distribution costs by voltage; primary voltage service drops; line extension by rate schedule and voltage; and, meter costs by voltage and rate schedule. The Stipulation also contains the commitment of the Company regarding the deployment of AMI and retention of data, including individual hourly data for use in providing bill comparison tools for customers to compare rate alternatives.

The rate design section of the Stipulation also requires the Company to submit in its next rate case a rate impact analysis for the alignment of GP/TEB rates, the alignment of CB/SH rates, and the elimination of the Feed & Grain rate. Pursuant to the Stipulation, the Company will also work with parties to explore modification of the rate structures of all rate schedules to subdivide the current "Winter" billing season into a "Peak Winter" and two "Shoulder Month" seasons, to reflect at a minimum the difference in the cost of market energy among current "Winter" months

to the extent it is consistent with reasonable rate design principles, to include testimony in its next rate case regarding whether changes should be made to allow mastermetered apartments to be served under CB/SH, and to develop determinants suitable for use in the design and development of time of use ("TOU") rates as part of the next rate case.

If the terms of the Stipulation are not approved, certain parties still believe the following rate design issues need to be addressed by the Commission in this proceeding: (a)-(e), (r), and (z)-(cc). Discussion of these issues, in response to the initial briefs of the other parties, is set forth below.

(a) Should the GP and TEB rate schedules be fully consolidated? There may be benefits in the consolidation of rate schedules GP and TEB. Namely, the rate schedules have identical customer charges and rate structures; the rate schedules have similar underlying costs of service; and, consolidating rates and charges in general helps to simplify rate administration efforts and customer communication. Ex. 28, Lyons Rebuttal, p. 14.

Consolidation should not occur at this time, however, since demand charges are sufficiently different between the GP and TEB to create a concern with the possibility that some customers may experience significant bill increases as a result of the consolidation of the rate classes. *Id.*

(b) Should the CB and SH rate schedules be partially consolidated? There may be benefits in the partial consolidation of the CB and SH rates by making customer charges, head block, and summer tail block rates equal, while maintaining distinct winter tail block rates. The possible benefits include: identical rate structures and customer charges; the cost of service differences can be recognized by maintaining distinct winter tail block rates; potential bill impact concerns related to the proposed rate changes can be addressed by maintaining distinct

winter tail block rates; and, consolidating rates and charges in general helps to simplify rate administration efforts and customer communication. *Id.* at 13-14.

The Commission, however, should not combine these classes since energy charges are sufficiently different between the CB and SH rate classes due to the concern that some customers may experience significant bill increases as a result of the consolidation of the rate classes. *Id*. at 14.

(c) Should "grandfathered" multifamily customers taking service through a single meter be given the option of being served on the CB/SH rate schedule? Currently, multiple-family dwellings within a single building behind a single meter are served under the residential tariff based on the total number of dwelling units. The Company's Class Cost of Service Study ("CCOS") includes these customers in the residential rate class and does not reflect the appropriate costs and revenue in the alternate classes.

Evidence supporting the modification of the tariff to allow these customers to take service under the CB, SH, or Consolidated CB/SH rate schedule simply does not exist in this proceeding. As such, there is no assurance that the costs associated with the service are accounted for within the target rates. As with all rate design sub-issues, this issue should be resolved pursuant to the terms of the Stipulation.

(d) How should Empire's revenue requirement be allocated amongst Empire's customer rate classes (class revenues responsibilities)? An overall goal of rate design is to ensure that the various rates are fair and equitable in that they minimize inter-class subsidies. The revenue requirement should be allocated among the customer rate classes in a manner that reflects an aggregate movement toward the system rate of return ("ROR"). This is accomplished by

assigning a larger increase to classes that produce a lower ROR than the system ROR. Ex. 26, Lyons Direct, p. 28.

Based on the Company's CCOS, the Company recommends the following process to guide the allocation of the revenue requirement:

- The Residential, Miscellaneous Service, Municipal Street Lighting, and Special Lighting rate classes require higher increases relative to the system average to achieve the system rate of return.
- Based on these results, the revenue targets should set based on a four-step process that balances the rate design principles, including the equity and bill continuity and gradualism concerns.
- In the first step, the proposed revenues should be increased by a lower than average percent for those rate classes whose current rates recover more than 110.0 percent of their cost of service. This step ensures that the rate increase for these rate classes is less than the overall rate increase.
- In the second step, the proposed revenues should be increased by a slightly higher percentage than that in step 1, but slightly lower than the system average increase percent for the Large Power rate class. This step ensures that the rate increase for the Large Power rate class is somewhat less than the overall rate increase since their current rates recover more than their cost of service. In addition, the Commission should recognize that customers in the Large Power rate class tend to be energy-intensive businesses that are highly sensitive to rate changes and thus develop a separate step in setting revenue targets.
- In the third step, the proposed revenue increase should be capped a reasonable increase above the system average for those rate classes that would require significant increases to achieve the system rate of return. This step ensures that no rate class receives an unreasonable increase to address continuity and gradualism concerns.
- In the fourth and final step, the remaining revenue deficiency should be assigned to all other rate classes in proportion to their current revenues. This step represents those rate classes whose current rates recover slightly more or less than their cost of service. *Id*. at 30-31.

(e) How should the rates for each customer class be designed?

RG, CB, and SH rate design: The signatories have agreed that no changes to the customer charges are warranted for the purposes of this case. As such, any changes to the revenue requirement for these classes should be reflected in a uniform change to the energy charges. Ex. 28, Lyons Rebuttal, p. 8.

GP and TEB rate design: Any revenue increase should be included as a change to the customer charge of $80 for GP and $72 for TEB and a proportional increase in the kW facility demand charges, kW billed demand charges, and kWh volumetric charges. *Id*.

LP rate design: Any revenue increase should be included in an increase to the customer charge and facility kW demand charges. Ex. 26, Lyons Direct, pp. 35-36.

SC-P rate design: Any revenue increase should be included in a uniform increase to the rate elements. *Id*. at 35.

(r) How should any revenue requirement increase or decrease be allocated to each rate class? Please see discussion above under subpart (d).

(z) How should production-related costs be allocated to each rate class? The Commission should allocate production plant based on the Average and Excess (A&E) 12 NCP method. This production plant allocator is consistent with how costs are incurred, allocating a portion of production plant based on energy consumption and the remaining portion based on peak demands. Specifically, the energy portion of plant costs is allocated to each rate class based on average kWh sales throughout the year, while peak demands are based on peak kW demands throughout the year. Ex. 28, Lyons Rebuttal, pp. 23, 35-36.

(aa) How should plant accounts 364, 366 and 368 be classified? The Commission should classify these costs based on the minimum system study presented by the Company. While the Company does not oppose the use of a zero-intercept method which is proposed by Staff, the data used in Staff's calculations causes significant differences in the results of classification results. For example, Staff's approach classifies 22.6 percent of Account 364 costs as customer-related, while the Company's methodology classifies 53.1 percent of Account 364 costs as

customer-related. *Id*. at 25. Staff's calculations contain the following issues identified by the Company:

- For Account 364 (Poles), Staff's methodology does not consider the cost of anchors and guys that are recorded in Account 364. The Company's minimum system study accounts for anchors and guys which contributes to higher customer-related costs. Thus, the Company recommends utilizing the Company's minimum system study.
- For Account 366 (Underground Conduits), Staff's methodology does not consider the cost of vaults and pedestals that are recorded in Account 366. The Company's minimum system study accounts for such costs which shows that the minimum system costs are equal to or higher than total system costs. As a result, the Company's study classifies Account 366 as 100.0 percent customer related. The Company recommends utilizing the Company's minimum system study.
- For Account 368 (Transformers), Staff conducted a zero-intercept study using limited data (i.e., two data points): a 15kVA overhead transformer cost, and a 25kVA underground transformer cost. These costs are not apples-to-apples as installation of a 25kVA underground transformer may include higher costs than installation of a 25kVA overhead transformer. This would help to explain Staff's study results which show a negative zero-intercept. As a result, the Company recommends classification of Account 368 costs utilizing the Company's minimum system study. *Id.* pp. 25-26

(bb) How should primary and secondary distribution plant facility costs be allocated to each rate class? Primary and secondary distribution plant facility costs should be allocated based on the 6 NCP allocator as proposed by the Company. In addition to reflecting how costs are incurred, the 6 NCP method reflects how the Company plans for distribution capacity; namely, to support local peak demand in both the summer and winter months. *Id.* at 27.

(cc) How should general plant facility costs be allocated to each rate class? General plant facilities are generally used by Company employees, and these costs should be allocated based on the Company's proposed composite of labor-related O&M expenses. This approach is reasonable since it reflects the driver of these costs and is consistent with the allocation method for these costs described in the NARUC manual. *Id.* at 29.

ISSUE 3 - Jurisdictional Allocation Factors: What are the appropriate jurisdictional allocation factors to be used in the cost of service?

If the terms of the Stipulation are not approved, in total and without modification, as a complete resolution of this case, the Commission should approve the jurisdictional allocation factors used in the Company's cost of service. Ex. 5 (Richard Rebuttal), pp. 38-39; Ex. 20 (Doll Rebuttal), pp. 7-8; Ex. 57 (Richard Workpaper). In its Initial Brief, OPC simply stated on this issue: "Any allocation factors for affiliate transactions should be based on the costs and values of the goods or services provided and received." As such, no further response to OPC is required on this issue.

The jurisdictional allocators calculated and utilized by the Company are the appropriate jurisdictional allocation factors to use in the cost of service. Nevertheless, the Company generally agrees with the methodologies used by Staff to develop the jurisdictional demand and energy allocators as shown in Staff's Initial Brief. The Company, however, does not agree with the application of the jurisdictional allocators or in some instances the test year balances to which the allocators were applied, resulting in significant allocation errors. Ex. 5, Richard Rebuttal, pp. 37-38.[4] For example, the test year balances Staff utilized for FERC accounts 501 (Fuel) are incorrect. When utilizing the correct balances to apply the allocator to, it results in an under allocation of cost to the Missouri jurisdiction of $860,902. Ex. 156, Bolin Supplemental Testimony, p. 10. In addition, the jurisdictional allocator utilized for FERC account 565414 should have been a retail only allocator. Utilizing the correct allocator results in an under

[4] ". . . the Company notes that there are numerous revenue and expense accounts allocated in Staff's cost of service report where the balances are either completely Missouri jurisdictional related or are completely unrelated to Missouri in which Staff allowed a portion to flow through into the derivation of the revenue requirement when in fact Missouri retail customers should have been either allocated 100 or 0 percent of the balance of those accounts . . ."

allocation of costs to the Missouri jurisdiction of $704,344. Ex. 57, Jurisdictional Allocations Workpaper, p. 2; Ex. 156, Bolin Supplemental Testimony, p. 10. Finally, Staff incorrectly applied its jurisdictional allocator to all depreciation expense accounts to derive a Missouri retail test year amount. Distribution depreciation expenses are direct assigned. Therefore, the depreciation expense allocated to the Missouri jurisdiction resulted in an approximate under allocation of $2.5 million. Ex. 156, Bolin Supplemental Testimony, p. 11. These specific adjustments increase the costs assigned to the Missouri jurisdiction by $4.1 million.

The terms of the Stipulation represent a complete resolution of this rate case, whether or not an issue is specifically addressed, and implementation of the Stipulation terms will result in just and reasonable rates and will allow Empire to continue providing safe and reliable service. The Stipulation provides for Empire's monthly FAC submissions to include a detailed listing of all the costs incurred due to the Missouri Joint Municipal Electric Utility Commission ("MJMEUC") contracts and the revenues that Empire receives from MJMEUC including but not limited to revenue for energy generated, revenue for capacity, and reimbursement of fuel, variable O&M, and start-up costs. The Stipulation also provides that (i) the level of revenues will represent an offset to lost revenues from the current municipal customer contracts and thus will be retained by the Company until the allocations are reexamined in the next general rate case and (ii) Staff's recommendation for Empire to file additional reporting requirements with its FAC monthly reports and Fuel Adjustment Rate filing workpapers will be adopted. The Stipulation does not provide for any changes to the jurisdictional allocation factors as a result of the MJMEUC contract and the 6% load reduction occurring after the true-up period or otherwise.

ISSUE 4 - WNR and SRLE Adjustment Mechanisms: (a) Should the Commission approve, reject, or approve with modifications Empire's proposed Weather Normalization Rider? (b) Is it lawful for the Commission to authorize Empire to implement a Sales Reconciliation to Levelized Expectations ("SRLE") mechanism, such as those Staff and Empire

are proposing in this case? (c) Should the Commission adopt Staff's SRLE or approve the SRLE with modification as suggested by the Company?

As a reminder, it is Empire's position that approval of the terms of the Stipulation is the proper response to these questions. Pursuant to the Stipulation, the Commission should not adopt Empire's originally proposed Weather Normalization Rider ("WNR"), and, instead, should approve Staff's proposed SRLE mechanism as modified and set forth in the terms of the Stipulation.

OPC suggests that the Commission start a rulemaking to promulgate rules associated with the weather normalization rider in accordance with RSMo. §386.266.13, which states that the Commission "shall have previously promulgated rules to implement the application process" for such riders and alleges that there are no such rules in place and that the proposed riders are unlawful. OPC Initial Brief, p. 28. OPC, however, fails to cite §386.266.10, which states as follows:

> Prior to August 28, 2005, for subsections 1 to 3 of this section, and upon August 28, 2018, for subsection 4 of this section, the commission shall have the authority to promulgate rules under the provisions of chapter 536 as it deems necessary, to govern the structure, content and operation of such rate adjustments, and the procedure for the submission, frequency, examination, hearing and approval of such rate adjustments. Any electrical, gas, or water corporation may apply for any adjustment mechanism under this section whether or not the commission has promulgated any such rules.

RSMo. §386.266.10 (emphasis added).

Additionally, §386.266.3 (which was amended as of August 28, 2018, thirteen years after the provision cited by OPC) states in part, without limitation, that this subsection "shall apply to electrical corporations beginning January 1, 2019, and shall expire for electrical corporations on January 1, 2029." There is no contingency in that provision that relies upon promulgation of Commission rules.

OPC further suggests that the proposed riders should be "dismissed out-of-hand" because of the estimated bills used by Empire in the past. OPC Initial Brief, p. 26. Those estimated bills are addressed in Issue 23. The Company further notes that while individual customer bills might have had some import in regard to the Weather Normalization Rider ("WNR") proposed by Empire, as that mechanism was based on individual customer usage, individual customer bills have no such import in regard to the SRLE mechanism proposed by Staff, to include as modified in the Stipulation, as the SRLE measures the impact of weather on an aggregate basis. There is no evidence to suggest that there is any significant inaccuracy as to the Company's aggregate billings.

OPC further alleges that the use of a weather normalization rider is inappropriate because Empire's quarterly FAC surveillance reports show that Empire has been able to earn a fair return without a weather normalization rider. OPC Initial Brief, p. 27. Once again, OPC's argument must be rejected, as OPC has not accurately referred to the statutory requirement for the Commission to approve such a mechanism. RSMo. §386.266.5(1) states only that the Commission must find that the adopted mechanism "[i]s reasonably designed to provide the utility with a sufficient opportunity to earn a fair return on equity." Thus, it is the design of the mechanism, not past experience, which the Commission must examine.

Here, the SRLE is designed to address the misalignment of variable rates and fixed costs, which is present in Empire's rates. The portion of the Company's rates based on consumption (or kWh sales) is significant (92% for Small Heating (SH), 89% for Commercial (CB), and 90.9% for Residential (RG)). Ex. 26, Lyons Direct Testimony, p. 53. Because this misalignment can result in an under or over-collection of costs, the mechanism would mitigate customer bills as well as company revenues. Customers would receive a credit under the SRLE mechanism for

higher revenues related to weather. Ex. 29, Lyons Sur. and True-Up Dir., p. 7. The SRLE is not only "reasonably designed," as required by §386.266.5(1), it is well designed, "to provide the utility with a sufficient opportunity to earn a fair return on equity" and to make sure that customers do not pay more than is necessary to achieve that goal.

ISSUE 5 – FAC. As with all issues in this case, adoption of the terms of the Stipulation is the lawful and reasonable resolution of the FAC issues. Pursuant to the Stipulation, there should be no base rate increase in this case, no change to the FAC base, and limited FAC tariff language changes.

(a) What is the appropriate incentive mechanism in Empire's FAC for sharing between Empire and its retail customers the difference between its actual and base net fuel costs? Pursuant to the Stipulation, the FAC sharing mechanism should remain at 95/5 percent, and this should be the case whether or not the Stipulation terms are approved as a complete resolution of this case. Staff and the Company are in agreement in this regard. OPC, however, argues for a sharing percentage of 85/15.

OPC witness Lena Mantle states in her surrebuttal testimony that "Empire has recovered over 99.9% of its FAC costs placing almost all of the risk associated with its FAC costs on the customers and very little on Empire (0.1%). OPC's modest proposal would shift 0.2% more risk to Empire still leaving 99.7% of the risk on the customers." Building upon the statement from Ms. Mantle, the Commission asked as follows: "Under the current sharing percentage Empire has absorbed an average of $150,000 a year in FAC costs for the past 11 years, so what is the real harm of requiring Empire to be exposed to an additional 0.2% of FAC risk?" OPC continues this argument with its Initial Brief.

There is the potential for significant harm to result from the implementation of OPC's recommendation for the FAC sharing mechanism. As explained in Empire's Initial Brief, this issue should not be framed around shifting from 99.9% recovery to 99.7% recovery, as those percentages would not be fixed recovery amounts. Ex. 1011, Tarter Supplemental, p. 5. Instead, it is a question about moving from the 95/5 percent sharing mechanism in the current FAC to the 85/15 percent sharing mechanism advocated by OPC. "The 0.2% differential mentioned within the question is based on historical recovery percentages over a long period of time, and this could be different moving forward based on how actual FAC eligible costs compare to a given FAC base factor. The average of $150,000 per year, mentioned in the question is also a long-term historical average over the past eleven years. There have been times over the past eleven years when FAC eligible costs have been higher than the FAC base factor and the Company has absorbed costs, and times when FAC eligible costs have been lower than the FAC base factor and the Company has retained costs." Ex. 1011, p. 5. The potential harm resulting from OPC's recommendation was fully briefed in Empire's Initial Brief, so the discussion need not be repeated here.

OPC continues to make the argument that an 85/15 percent sharing mechanism "better incentivizes efficient fuel operations." OPC Initial Brief, p. 31. The sharing mechanism is sometimes referred to as an incentive mechanism, but this implies that the FAC base factor "is some kind of perfect target that the Company can manage future F&PP costs around." Ex. 1011, Tarter Supplemental, p. 7. A significant portion of Empire's Missouri electric retail customers' FAC eligible costs are recovered through base rates. If prudently incurred FAC eligible costs are either higher or lower than the level included for the setting of base rates on a per unit basis, then a percentage of that difference is either recovered from or returned to customers through the

FAC rider. "This means that unless the actual prudently incurred FAC eligible costs are exactly equal to the FAC base factor on a per unit basis, then customers will either under pay or over pay for those costs in that period." *Id.*

The FAC base factor set in a general rate case is an estimate which will be in place without adjustments until conclusion of the next general rate case. As such, OPC's proposal to put more of the over/under FAC balance at risk is viewed by the Company as less of an incentive, and more of an added risk associated with it being impossible to precisely forecast future energy costs during a general rate case. "Even if fuel analysts use production cost models to help calculate an FAC base factor, there are still many assumptions that have to be made, and it is difficult to model the marketplace due to the complex interactions of many factors including resource costs, unit outages and market prices. Moreover, the fact that future FAC eligible costs cannot be forecast with certainty is one of the primary reasons for having an FAC in the first place." *Id.* at 8.

OPC also points to hedging losses as cause to change from 95/5 to 85/15, although OPC acknowledges that Empire's hedging activities were found to be prudent. OPC Initial Brief, pp. 32-33. OPC then claims that Empire abandoned its hedging policy "once its losses were publically aired and challenged" and that "Empire has realized far lower losses" since changing its policies. OPC's claims are once again without evidentiary support. As explained by Aaron Doll, the reduction in hedging costs cited in OPC's testimony was for operating year 2019, "and Empire's new policy was not approved until December 20, 2019. Although Empire had only procured 50% of its requirement for 2019 by the end of 2018, that was a small deviation from the normal 60% requirement to which Empire had been hugging for the past few years. In fact, the 50% of forecast volumes hedged, included positions from 2015, 2016, 2017, and 2018, and 2018

had less volumes hedged than either 2017 or 2016. If Empire had procured in 2018 the 20% of its requirements that its policy required as a minimum, considering 2017 hedges for 2019 were approximately 40% of expected burn, the total amount hedged would have been 58%. In short, the reduction in hedging costs could largely be attributed to market price convergence between hedging, which took place under Empire's legacy hedging program, and market prices and not due to any change in hedging policy." Ex. 1010, Doll Supplemental, pp. 4-5.

Lastly, OPC throws in the argument that there is "legislative guidance" for OPC's proposal of 85/15 percent for the sharing mechanism (OPC Initial Brief, p. 34). This is despite the fact that this argument was just disregarded by the Commission in Ameren's rate case, and even though this so-called guidance was not provided until more than a decade after Empire's FAC was first established and is part of the PISA statutory provision, which is not being utilized by Empire. OPC has failed to present any credible evidence or argument in support of an 85/15 sharing mechanism. On the other hand, Staff and the Company have provided sound support for why the sharing mechanism should remain at 95/5 percent.

(b) What FAC-related reporting requirements should the Commission impose? This sub-issue has been resolved pursuant to the terms of the Stipulation. Paragraph 6.f. of the Stipulation provides: "The Office of the Public Counsel ("OPC") and other parties to this case shall be provided the notices and the additional reported FAC submission information requested by Staff."

(c) What is the appropriate base factor? (d)(i) What is the appropriate percentage of transmission costs for the FAC? (d)(iv) Should any short-term capacity costs flow through the FAC from the effective date of this rate case?

Pursuant to the Stipulation, the FAC base factor should remain at the current $24.15/MWh with no change to the FAC eligible components as described within the Stipulation. The current FAC base factor of $24.15 was established in the Company's last general rate case, upon consideration of all factors. The Stipulation provides for no changes to base rates and no change to the FAC base factor. There is no substantial evidence which would require the FAC base factor to be changed at this time, so long as the other components remain constant and base rates are not changed. "The FAC base factor and the amount of FAC eligible costs in base rates work in concert with each other. Since a portion of fuel recovery occurs in the base rates and any over or under recovery is contingent on the FAC base factor, which is calculated in the FAC rider, it is very important that the base factor correctly matches the base energy costs and revenues in the revenue requirement so the correct amount of prudently incurred FAC eligible costs are collected in total." Ex. 1011, Tarter Supplemental, p. 2.

OPC begins this section of its Initial Brief by acknowledging that OPC "cannot independently determine the NBEC or base factor, but then boldly states that OPC "is positive that what the signatories to the stipulation offer the Commission does not accurately reflect Empire's fuel and purchased power costs." OPC Initial Brief, p. 35. Unfortunately, these inherently contradictory statements are representative of OPC's actions in this case, with OPC making far-reaching and brazen allegations with little or no evidentiary support. OPC's arguments regarding the FAC should be disregarded, and the terms of the Stipulation should be adopted.

If the Stipulation terms are not implemented as a complete resolution of this case, the FAC positions set forth in the Company's pre-filed testimony (Tarter Direct, Rebuttal and Surrebuttal and Doll Direct, Supplemental Direct, Rebuttal and Surrebuttal) should be adopted.

Pursuant to the Company's filed positions, the appropriate FAC base factor is $24.16/MWh. This is close to the existing FAC base factor, but is based on a different set of FAC eligible components. Ex. 1011, pp. 2-4.

To arrive at this FAC base factor proposal, Empire considered all eligible FAC cost components and updated all annualized and normalized model assumptions on a total company basis and utilized its production cost model to simulate the Southwest Power Pool Integrated Marketplace ("SPP IM") to calculate a net fuel and purchased power ("F&PP") cost level. Multiple sets of hourly market prices were utilized, and the market prices were correlated to the natural gas price within the model. This level of F&PP expense was developed by running the hourly production cost computer model using normalized sales levels, normalized outage data, and projected fuel and purchased power prices. Other F&PP cost/revenue components that are eligible for the FAC were normalized and added outside the model. The cost and revenue components of the FAC base factor calculation are summarized in Schedule TWT-3 of Todd W. Tarter's Direct Testimony. Ex. 1011 (Supplemental Testimony of Todd W. Tarter), p. 3.

In summary, the Company's proposed FAC, as set forth in its pre-filed testimony, consists of net F&PP energy costs (without purchased demand or natural gas firm transportation charges). This includes F&PP costs and revenues associated with selling energy from the Company's resources into the SPP IM, including ancillary and other charges, the cost of purchasing Liberty-Empire's native load energy from the market, RTO transmission expense and the net ARR/TCR offset. Additionally, costs and revenues that should flow through Liberty-Empire's FAC include fuel related costs such as unit train costs, undistributed and other costs, variable natural gas transportation expenses, Plum Point PPA O&M costs, the cost of the AQCS consumables, net emissions cost and the net sales of RECs. The FAC base is then calculated on a

per unit basis utilizing net system input expressed in kilowatt hours or megawatt hours. The appropriate amount of transmission costs that should be included in the FAC is 100% of all retail-based charges which also includes SPP Schedule 1A Tariff Administration and Schedule 12 FERC Assessment. Furthermore, this should also include any and all charges from the Midcontinent Independent System Operator ("MISO") for the pseudo-tie of Plum Point into the SPP market. Ex. 1011, pp. 3-4.

If these other proposed changes are not implemented, the FAC base factor should remain at the current $24.15/MWh with no change to the FAC eligible components as described within the Stipulation.

(d)(ii) What, if any, portion of the MJMEUC contract should be included or excluded from the FAC? Should the Company provide any additional reporting requirements within its FAC monthly reporting in regards to MJMEUC? Unless an accounting authority order ("AAO") is established to account for jurisdictional allocator changes, the FAC should not be revised to allow revenue received from the MJMEUC contract to flow through the FAC. Currently, all such revenue would be excluded from fuel due to the contract representing a requirement sales contract. The Company and Staff are in agreement on this issue, whether or not the terms of the Stipulation are approved in total. The Company's current FAC tariff specifically excludes revenue from "full or partial requirement sales to municipalities" from passing through to customers through the Off-System Sales Revenue ("OSSR") component. Since the allocation to Missouri for non-fuel production plant reflects wholesale load, any treatment different from excluding revenue from inclusion in the FAC would not be just nor reasonable. Ex. 20, Doll Rebuttal, pp.7-8.

Furthermore, the MJMEUC contract is clear that the capacity purchased is from the "Seller's System" – known as a slice of system. The "Seller's System" is defined in the MJMEUC contract as meaning Empire's "fleet of owned generators, contracts for the purchase of Capacity, Energy, or both, and all other acquisitions by Seller of Capacity, Energy, or both on which Seller relies to serve its retail load and the loads of its wholesale customers." Ex. 203, Sch. LMM-D-3. This is confirming that the capacity sold is the exact same resource fleet that served the cities prior to their aggregation and creation of the Southwest Missouri Power Electric Pool ("SWMPEP"). The transmission detail available on the Open Access Same-Time Information System ("OASIS") for the SWMPEP denotes that the same Resource Name of "EMPIRE_GENERATION" and the same sink as "EDE_MONETT" and "EDE_MTVERNON," respectively, as the current transmission reservations for the cities. Ex. 1010, Doll Supplemental, pp. 1-2. Financial arrangements regarding specific energy resources do not and cannot change the agreed capacity.

Paragraph 6(e) of the Stipulation provides as follows: "Regarding the MJMEUC issue, (i) the level of revenues will represent an offset to lost revenues from the current municipal customer contracts and thus will be retained by the Company until the allocations are reexamined in the next general rate case and (ii) Staff's recommendation for Empire to file additional reporting requirements with its FAC monthly reports and Fuel Adjustment Rate filing workpapers will be adopted. These additional reporting requirements will demonstrate that the energy purchased from Liberty-Empire related to MJMEUC's agreement will be billed to the cities (Staff understands these cities to be Monett and Mt. Vernon, Missouri) via MJMEUC and will thereby reduce a portion of the fuel expense that is allocated and billed to Liberty-Empire's retail customers. This reduced portion of fuel expense will clearly illustrate that the energy

purchased for these specific cities via MJMEUC is not flowing through the FAC in order to be collected from all Liberty-Empire's retail customers."

OPC attempts to challenge this resolution by pointing to the Commission's decision in Case No. EO-2012-0074. OPC Initial Brief, p. 39. The Company, however, specifically relied on the language of that order in determining that the MJMEUC contract, unlike the Ameren agreement at issue in the 2012 case, is a full or partial requirements contract.

The second question of this sub-issue (Should the Company provide any additional reporting requirements within its FAC monthly reporting in regards to MJMEUC?) has been resolved pursuant to the terms of the Stipulation. Paragraph 6(c) of the Stipulation provides: "Empire's monthly FAC submissions shall include a detailed listing of all the costs incurred due to the MJMEUC contracts and the revenues that Empire receives from MJMEUC including but not limited to revenue for energy generated, revenue for capacity, and reimbursement of fuel, variable O&M, and start-up costs."

(d)(iii) Should any wind project costs or revenues flow through the FAC before the wind projects revenue requirements are included in base rates? This sub-issue has been resolved pursuant to the terms of the Stipulation. Paragraph 7 of the Stipulation provides: "With respect to Empire's North Fork Ridge, Neosho Ridge, and Kings Point wind projects, the FAC tariff language shall be revised and clarified to explicitly prohibit costs associated with the wind projects and revenue generated from the wind energy sold to the Southwest Power Pool ("SPP") from being passed through to customers via the Fuel Adjustment Clause before the wind projects' revenue requirements are included in rates."

(e) When should Empire be required to provide its quarterly FAC surveillance reports? This sub-issue has been resolved pursuant to the terms of the Stipulation. Paragraph 6.g. of the

Stipulation provides: “Empire’s quarterly FAC surveillance report submissions shall, unless otherwise agreed upon or ordered by the Commission, be provided by:

Quarter Ending:	Submission Deadline
March 31	End of May
June 30	End of August
September 30	End of November
December 31	End of February”

ISSUE 6 - Credit Card Fees: (a) Should Empire’s credit card fees be included in Empire’s revenue requirement? (b) If so, what level of fees should be included?

If the terms of the Stipulation are adopted by the Commission without modification and as a complete resolution of this case, credit card fees will continue to be paid by individual customers, and the costs will not be included in the Company’s cost of service.

If the terms of the Stipulation are not adopted as a complete resolution of the case, credit card fees paid to third parties should be included in the Company’s revenue requirement so that individual fees are no longer required of Empire’s customers for this payment option on a going-forward basis. Staff supports this approach to credit card fees if the Stipulation terms are not approved. Staff Initial Brief, pp. 56-57.

OPC alleges that such inclusion of credit card fees in the cost of service would be “unduly discriminatory” towards a subset of customers unable or unwilling to use such service. OPC Initial Brief, p. 43. First, this is a service that would be available to all customers. While a customer may be unable or unwilling to use the service today, it does not mean that this will continue to be the case for an individual customer indefinitely.

Second, lack of use in the past does not mean that there is no value to the availability of a service. For example, it is generally agreed that the costs associated with the Company’s call

center should be included in the cost of service, although some customers have not used that service in the past year and may not use that service in the immediate future. Regardless, its availability is a benefit to the customers. The credit card payment option is similar in that people's needs and desires change given circumstances in their personnel lives as well as the world. There likely have been persons taking advantage of the credit card payment option during the COVID-19 quarantining that had never thought about it previously. Having that service available to those customers without the disincentive of a transactional fee is a benefit.

Customers have certainly expressed previously that this option would be seen as a benefit. Customers have consistently reported that ease of bill payment is a priority for them, including having no fees for card payments. Ex. 1, Baker Direct, p. 9. It is appropriate for the Commission to adopt this approach at this time.

Staff recommends inclusion of $1,165,283 (jurisdictional), as opposed to the $1,297,266 recommended by Empire. Staff Initial Brief, p. 57. The difference between these numbers is that Staff used the number of transactions processed during the twelve months ending March 31, 2019 (the test year) to calculate its number, while the Company used the twelve months ending January 31, 2020 (the true-up period). The Company believes its calculation is closer to what will be experienced during the period these rates will be in effect. As indicated in Empire's testimony, Empire experienced an increased desire on the part of its customers to pay electronically by card, and payments made by card have been increasing. Ex. 1, Baker Direct, p. 9. Payments made by card increased 36% from 2016-2018. *Id*. Given that trend, the more recent period used by the Company is a better measure of the number of transactions that are likely to be experienced by Empire on a going-forward basis.

Staff believes that there may be increases in usage of this payment option if the credit card fees are included in the cost of service and suggests that Empire may require fewer resources for processing such payments. Staff Initial Brief, p. 58. The Company does not necessarily agree that there is a cost savings, although reducing the number of interactions for payments will certainly allow more opportunity for the same personnel to solve other issues for customers. Ex. 1, p. 10. What Staff does not express, however, is that if the number of transactions does increase, as anticipated by both Staff and the Company, the cost associated with any such increased usage will be borne by the Company. Accordingly, using the most recent information (through the true-up period) is important and the most reasonable approach to determine the amount to be included in the Company's cost of service.

ISSUE 7 - Rate Case Expense: (a) How much of Empire's rate case expenses should be included in Empire's revenue requirement? (b) Should Empire's prudent rate case expenses be normalized or amortized, and over what period of time? (c) Should Empire's prudent rate case expenses be shared between Empire's shareholder and Empire's retail customers? If so, how?

The Stipulation does not address rate case expense. As noted, the Stipulation was carefully designed to balance all interests while constituting a complete resolution of all issues in this case. It is a unique settlement construct that is investment driven and not expense driven. As such, it is difficult to compare the filed positions to the Stipulation terms. The Stipulation resolves all revenue requirement issues by providing that there will be no changes to the Company's Retail Base Rates in this proceeding, no changes to the FAC base factor, and that the tax addendum, currently credited as a separate line item on each rate schedule as "tax rate reduction," will remain in place. The Stipulation also provides, however, that a phase-in rate mechanism will be established pursuant to §393.155.1, with regard to plant in service and other rate base items.

If the terms of the Stipulation are not adopted as a complete resolution of the case, an annualized amount of $222,736 for rate case expense should be included in Empire's revenue requirement. Ex. 7, Richard True-Up Direct, pp. 13, 16-17; Ex. 59 (Rate Case Expense Workpaper of Sheri Richard). The total amount of prudent rate case expense is $445,472. Ex. 59 (Rate Case Expense Workpaper of Sheri Richard). This amount should be amortized over a period of two years. Two years is reasonable, considering the Company intends to file its next rate case shortly after the conclusion of the current case. Ex. 5, Richard Rebuttal, p 35.

Fundamentally, the Commission should treat rate case expense in a way that provides a reasonable opportunity for Empire to recover that expense. The OPC suggests that rate case expense should be "normalized" over a three-year period "[s]ince Empire files rate cases every three years. . . ." OPC Initial Brief, p. 44. Three years is unreasonable given the known utility plant construction that Empire has underway and the fact that, not surprisingly, the Company intends to file its next rate case in the third quarter of this year (2020) to address that construction. Ex. 1017, Richard Supplemental Testimony, p. 17.

While Staff suggests a two year period like Empire, Staff also recommends that the rate case expense be normalized, rather than deferred and amortized. Staff Initial Brief, p. 59. Again given the known need to address the construction that is under way, the proposal to normalize the rate case expense further damages any meaningful opportunity for Empire to recover its rate case expense. "To normalize an expense is to account for an expense that is not expected to regularly occur by spreading out the cost of the expense over a number of years." *In the Matter of the Application of Kansas City Power & Light Company*, 2006 Mo. PSC Lexis 1734, 102 (Mo. P.S.C. December 21, 2006). As stated above, it is expected that Empire will experience rate case expense again in the near future.

In the *Kansas City Power & Light Company* case, the Commission used a two year "amortization" because of the unusual circumstances that were present at that time:

> While Staff and OPC point out that the Commission usually normalizes these expenses, the Experimental Regulatory Plan itself, including the construction of Iatan 2, installation of wind generation, and environmental upgrades of other facilities, is hardly normal. KCPL also acknowledged that the plan anticipates that KCPL could be back for a rate case as early as next year, or as late as 2009, and that a two year amortization was chosen as a reasonable mid-point.

Id. Empire will not be back for a rate case "next year," as was the situation in the *Kansas City Power & Light Company* case, it will likely be back this year. This situation calls for an amortization of rate case expense in order to provide the Company with a reasonable opportunity to recover this expense.

Both Staff and OPC recommend that there be a sharing of rate case expense. Staff Initial Brief, p. 61; OPC Initial Brief, p. 44. OPC suggests that "both the utilities and their customers benefit from matching prospective rates with what it takes the utility to provide prospective service. . . ," while Staff suggests that a sharing is appropriate because "a rate increase benefits both parties in different manners." *Id*.

This approach to the "sharing" of rate case expense ignores the history of this process. Empire is not regulated because it has chosen to participate in this process. Empire is regulated because the State of Missouri determined in 1913 that it should apply a complex set of statutes to certain privately-owned enterprises. Prior to the creation of this system of regulation, an investor-owned utility, like Empire, could charge whatever rate it wanted, whenever it wanted. Given the regulatory system that Missouri has chosen to implement, rate case expense is a cost of supplying service to the Company's customers and therefore should be included in the revenue requirement as a reasonable cost of service. Ex. 5, Richard Rebuttal, p. 34. Additionally,

and quite significantly, Empire was required by law to file this particular rate case. RSMo. §386.266.4(3).

ISSUE 8 - Management Expense: Should any of Empire's management expenses not be included in Empire's revenue requirement?

The Stipulation does not specifically address management expense, but the Stipulation represents a complete resolution of all issues in this case. The Stipulation resolves all revenue requirement issues, including management expense, by providing that there will be no base rate changes, no changes to the FAC base factor, and that a phase-in rate mechanism pursuant to §393.155.1 will be established.

If the terms of the Stipulation are not adopted as a complete resolution of the case, a specific finding by the Commission should be made that all of Empire's management expenses are prudent and, therefore, should not be excluded from the revenue requirement.

OPC recommends a disallowance for a significant amount of management expenses ($3,707,884). OPC Initial Brief, pp. 44-45. The argument seems to revolve around the concept that meals could not be reasonable expenses. Empire believes it is reasonable to provide meals during lunch time meetings. Often this is the only time available for an internal meeting, and most if not all of the people attending these meetings are not paid for the additional hours of work and do not receive any overtime compensation. Providing a meal for just one person can save 30 minutes of time. Multiply that times four to five people in a meeting and the Company gains 2 to 2.5 hours of productivity. This is a small price to pay compared to providing a meal. In addition, the Company feels it is inappropriate to expect someone to give up their lunch hour for additional work time without including a meal. Ex. 5, Richard Rebuttal, pp. 30-31. All of Empire's management expenses are prudent and, therefore, should not be excluded from the revenue requirement.

ISSUE 9 - Allowance for Funds Used During Construction: What metric should be used for Empire's carrying cost rate for funds it uses during construction that are capitalized?

The appropriate metric for Empire to use for funds used during construction that is capitalized is the metric prescribed by the FERC Uniform System of Accounts ("USOA") Electric Plant Instructions. The FERC instructions state the formula and elements for the computation of the allowance for funds used during construction shall be as prescribed in the Electronic Code of Federal Regulations: Title 18, Chapter 1, Subchapter C, Part 101. Ex. 60 (Richard Electric Plant Instruction AFUDC); Ex. 61 (Company's Response to OPC DR 3045).

The USOA further states the rates utilized in the AFUDC formula shall be determined annually and the balances for long-term debt, preferred stock and common equity ***shall be the actual book balances as of the end of the prior year*** (emphasis added). Empire properly utilizes its actual book balances as prescribed by the Electric Plant Instructions. In addition, the rates used to apply to those balances for long-term debt and preferred stock are the weighted average cost as determined in the manner prescribed in §35.13 of the Commission's Regulations Under the Federal Power Act.

Without legal support, OPC asserts that only short-term debt is to be applied to all of the CWIP balances when calculating AFUDC. This is clearly contrary to FERC requirements. In addition, OPC erroneously assumes short-term debt is only issued to pay dividends. This assumption is flawed from the beginning. The Company has many other costs that must be paid in the short-term. When day to day cash flows are insufficient to pay for the operational needs of the Company, short-term funding is obtained. Short-term debt is also used to fund capital projects until such time as permanent financing can be obtained as needed. Short-term debt may also be used for fuel costs or to supplement other day to day operational costs when revenues are

negatively impacted from economic downturns such as what is being experienced related to the COVID-19 pandemic.

Altering from the USOA prescribed formula for calculating AFUDC would not reflect the true cost of funds Empire incurs when investing in capital projects and, of course, would be contrary to Commission requirements that the Company follow FERC accounting.

Under Issue 9, OPC has inserted a subpart (b) regarding an affiliate financing transaction. Empire's arguments on this issue are presented under Issue 18, Affiliate Transactions, and Issue 46, Merger Conditions.

ISSUE 10 - Cash Working Capital: (a) What is the appropriate expense lag days for measuring Empire's income tax lag for purposes of cash working capital? (b) What is the appropriate expense lag days for cash vouchers? (c) Should bad debt expense be a component of cash working capital? If so, what is the appropriate lag days? (d) What is the appropriate expense lag days for employee vacation?

The Stipulation does not address these cash working capital issues. As noted, the Stipulation was carefully designed to balance all interests while constituting a complete resolution of all issues in this case. The Stipulation resolves all revenue requirement issues, including these cash working capital issues, by providing that there will be no changes to the Company's Retail Base Rates in this proceeding, no changes to the FAC base factor, and that a phase-in rate mechanism will be established pursuant to §393.155.1, with regard to plant in service and other rate base items.

OPC challenges only as to the tax lag for purposes of Cash Working Capital ("CWC"). OPC Initial Brief, p. 47. OPC argues that an expense lag of 365 days is appropriate for the tax lag because "Empire has not actually paid income tax to a government agency in at least four years." *Id*. It is erroneous to argue that Empire never uses its funds to pay taxes. Liberty Utilities

(America) Co & Subs, which is its tax paying affiliate, made quarterly payments to the IRS during the test year. The amount paid was $8.9 million. Ex 1017, Richard Supplemental, p. 13.

Staff recognizes the Internal Revenue Service requirement for the payment of corporate income taxes on a quarterly basis and therefore supports an income tax expense lag of 39.38 days. Staff Initial Brief, p. 63. This is consistent with Empire's position. Ex. 29, Lyons Surrebuttal and True-Up Direct, Sched. TSL-SR1.

ISSUE 11 - Accumulated Deferred Income Tax: (a) Should Empire's booked accumulated federal income tax include a reduction for net operating loss? (b) Should FAS 123 deferred tax asset for stock-based compensation be included in ADIT balances for rate base?

As noted, the Stipulation resolves all revenue requirement issues, whether or not specifically mentioned in the Stipulation, by providing that there will be no changes to the Company's Retail Base Rates in this proceeding, no changes to the FAC base factor, and that a phase-in rate mechanism will be established pursuant to §393.155.1, with regard to plant in service and other rate base items.

If the terms of the Stipulation are not adopted as a complete resolution of this case, the Company's positions on the Accelerated Deferred Income Tax ("ADIT") issues, as set forth in pre-filed testimony, should be adopted. Staff supports a reduction to Liberty-Empire's ADIT for net operating loss ("NOL"). Staff Initial Brief, pp. 65-66.

OPC opposes the inclusion of the NOL because Empire is included in consolidated tax returns and because OPC alleges NOLs are "tax return items." OPC Initial Brief, p. 48. The use of consolidated tax returns is not a distinction that has been previously made by courts or the Internal Revenue Service. Moreover, the argument that NOL is a tax return item fails to see the forest for the trees. NOL is no more or less a tax return item than the entire category being addressed by ADIT. The ADIT liability is also a tax return item.

As to the FAS 123 deferred tax asset for stock-based compensation, Staff argues only that this asset should not be included in rate base because Staff is not including stock-based compensation in payroll. Staff Initial Brief, p. 66. Accordingly, if this form of compensation is included by the Commission in payroll, the FAS 123 deferred tax asset should also be included.

ISSUE 12 - Tax Cut and Jobs Act of 2017 ("TCJA") federal income tax rate reduction from 35% to 21% impact for the period January 1 to August 30, 2018: (a) How should the Commission treat the 2017 TCJA regulatory liability the Commission established in Case No. ER-2018-0366 when setting rates for Empire in this case?

Paragraph 3(b) of the Stipulation provides as follows: "An amortization of the balance of the stub period amortization of $11,728,453, in the amount of $5,000 monthly, is included in the revenue requirement for this case. The amortization balance, and the appropriate amortization period, will be reevaluated in the next general rate case."

The Company urges the Commission to approve of the terms of the Stipulation, in total and without modification, as a complete resolution of this case, as this will result in just and reasonable rates and will allow Empire to continue providing safe and reliable service. The filed testimony and other documentation that is being offered in this case will allow the Commission to issue a lawful and reasonable report and order, including detailed findings of fact and conclusions of law, approving the terms of the Stipulation as a complete resolution of this rate case proceeding. Although the Stipulation includes a phase-in mechanism related to new plant-in-service investments and provides for no stub period revenues to be refunded to customers at this time, the Stipulation also provides for no increase in the customer charges and no changes to the Company's retail base rates until the effective date of rates in the Company's next rate case and the continuation of the tax addendum, currently credited as a separate line item on each rate schedule as "tax rate reduction." Ex. 1017, Richard Supplemental, p. 18.

An order in this case directing Empire to refund the stub period revenue would be detrimental to the Company. This is because an order in this case directing the Company to refund all or even part of the $11.7 million of stub period revenue would significantly impact the Company's cash flow, which is already compromised as a result of the COVID-19 pandemic and the Company's revised policies regarding no disconnects and the deferral of late fees. In addition, the Company is experiencing a significant reduction in revenue due to businesses being closed as a result of the COVID-19 pandemic and from loss of load related to abnormal weather. *Id.* at 19. If an order is issued in this case for the Company to begin refunding the collected stub period revenue, no matter the time period for the return, cash flow problems will be created for the Company. *Id.* Since the Company will be filing its next rate case shortly after the conclusion of this case, the Company encourages the Commission to delay its determination regarding the refund of any stub revenues until that time.

Additionally, and as set forth in the Company's pre-filed testimony, the amounts collected by the Company during the "stub period" were collected pursuant to lawfully approved tariffs and should remain the Company's property. The Company reviewed its financial performance from January 1 to August 30, 2018 and determined it earned less than its allowed return during that period. As a result, it would be inequitable to credit the retained sums to customers, creating significant under-earnings during this period. Also, requiring the return of these sums would constitute retroactive ratemaking, as those revenues were lawfully collected pursuant to Empire's filed and approved tariffs. Ex. 4, Richard Corrected Direct, pp. 12-14; Ex. 5, Richard Rebuttal, pp. 35-36. Although the Company was directed to establish a regulatory liability regarding the "stub period" revenues, no ratemaking determination was made in Case No. ER-2018-0366. Only Empire has presented credible evidence in this case regarding the

proper ratemaking treatment for the deferred amounts. Staff and OPC have simply stated the conclusion that the amounts collected by the Company during the "stub period" should be refunded to customers.

ISSUE 13 - Asbury: (a) Is it lawful to require Empire's customers to pay for Asbury costs through new rates? (b) Is it reasonable to require Empire's customers to pay for Asbury costs through new rates? (c) If it is unlawful and/or unreasonable to include the costs of the retired Asbury plant in rates, what amount should be removed from Empire's cost of service?

It is both lawful and reasonable for costs related to the Asbury power plant to remain in rates, and no amount should be removed from Empire's cost of service at this time to reflect the closure of the Asbury power plant in March of 2020. This is not a proper issue, however, for inclusion in statements of positions and briefing, as the Commission has repeatedly held that it will address the impacts of Asbury's retirement in Empire's next rate case proceeding. On January 28, 2020, the Commission issued its *Order Denying Public Counsel's Motion to Modify the Test Year* ("Asbury's retirement is best addressed in Empire's next rate proceeding"). On February 19, 2020, the Commission issued its *Order Denying Motion for Reconsideration*, stating:

> The Commission will not modify the test year, nor allow isolated adjustments for Asbury's retirement to be addressed in this general rate proceeding. The Commission will address the impacts of Asbury's retirement in Empire's next rate proceeding, which Empire states it will file upon the conclusion of this proceeding.

In reliance on the Commission's *Order Denying Public Counsel's Motion to Modify the Test Year* and *Order Denying Motion for Reconsideration*, the Company has not presented the evidence that would be necessary in order for the Commission to lawfully and reasonably reflect the closure of the Asbury plant in the Company's cost of service in this proceeding. In fact, the Company continues to explore opportunities related to the closure of the Asbury plant. Additionally, and quite significantly, costs of dismantlement are still being determined by an

outside expert who is conducting a dismantlement study. It would be patently unjust and unreasonable to attempt to make isolated adjustments to the revenue requirement in this case due to the retirement of Asbury.

OPC, however, continues to argue that the retirement of Asbury should be addressed in this case. Despite the fact that from its first consideration of retiring the Asbury plant, the Company has been transparent with the Commission and all stakeholders regarding its intentions for the plant, including with IRP filings, filings of Informational Notices in this rate case on August 9 and November 13, 2019, and a coal level submission on October 22, 2019, and despite the fact that OPC twice asked the Commission to look beyond the test year as updated and trued-up in order to capture Asbury's retirement, OPC now argues that the Asbury plant was retired in December of 2019. OPC Initial Brief, p. 53.

OPC points to a statement in a shift supervisor log that the words "last shutdown" should not be used, since the plant would likely be on outage until March 1. *Id.* OPC then conveniently ignores all of the other log entries which clearly demonstrate that the plant was not retired in December of 2019. Yes, the Company was concerned – and quite justifiably so – that OPC or others may misinterpret the words "last shutdown." As such, the Asbury workers were reminded to carefully choose their words to accurately reflect the fact that the Asbury plant could not be retired under SPP guidelines until March 1, 2020, and that fuel procurement efforts were going to continue. It is these efforts which resulted in the aforementioned activities to keep the plant viable.

Consistent with the orders of the Commission referenced above, the Stipulation calls for the issuance of an Asbury AAO. More specifically, the signatories to the Stipulation request that the Asbury AAO direct the Company to establish a regulatory asset/liability, beginning January

1, 2020, to reflect the impact of the closure of Asbury and require the Company to separately track and quantify the changes from the base amounts of categories of rate base and expense, including rate of return. As is appropriate for an AAO, there is no agreement at this time on ratemaking or the treatment to be given to any deferred amounts in a future rate case. There also is not agreement with the Company's stated retirement date (March 1, 2020).

The issuance of the Asbury AAO will allow the Commission to defer a final decision on the cost impact of the retirement of Asbury until the next rate case, when there will be significantly more facts known with regard to changing costs and expenses as a result of the retirement of Asbury. This ratemaking decision will not be unnecessarily delayed, as the Company will be filing its next rate case, to address its wind investments, shortly after this current rate case concludes.

ISSUE 14 - Fuel Inventories: What is the appropriate number of burn days to use for Asbury fuel inventory?

If the terms of the Stipulation are not accepted as a complete resolution of this case, and the Commission instead establishes a more traditional revenue requirement for the setting of new rates, the appropriate number of burn days to use for Asbury fuel inventory is 60 days. Ex. 15, Tarter Rebuttal, pp. 15-16.

OPC takes the position that no amounts associated with Asbury should be included. OPC Initial Brief, p. 55. As discussed above, OPC's argument in this regard should be rejected. Staff used 18 days for the Asbury fuel inventory. Staff Initial Brief, pp. 81-82. Staff's position is based in part on the Asbury retirement date of March 1, 2020. *Id*. However, making such an adjustment is inconsistent with the Commission's prior rulings as discussed in Issue 13 above.

Empire's proposal recognizes that Asbury has not operated as much as it did in the past during the test year and true-up period. However, the lower level of operation for Asbury is

already reflected in the average daily burn (in MMBtu) that Staff used in the calculation. Ex. 15, Tarter Rebuttal, pp. 15-16. That lower average burn rate serves to appropriately lower the total fuel inventory cost, even with the use of the 60-day fuel inventory used by the Company.

ISSUE 15 - Energy Efficiency: (a) Should Empire's cost of service include an amount for promoting energy efficiency and demand-side management? (b) If an amount remains in Empire's cost of service for energy efficiency, should EM&V be performed as was agreed to in Empire's last general rate case?

OPC has withdrawn this issue. As between the signatories to the Stipulation, this issue has been resolved pursuant to paragraph 20 of the Stipulation, to which OPC did not object. Pursuant to the terms of the Stipulation, no changes to energy efficiency funding levels will be made in this case.

ISSUE 16 - Operation and Maintenance Normalization: (a) What is the appropriate level of operation and maintenance expense to be included in the cost of service? (b) Should inflation factors be used to calculate operation and maintenance expense? (c) What is the appropriate normalized average of years to be used for the Riverton, State Line Combined Cycle Unit, the Common Unit and State Line 1 Unit?

Although this item is not set forth in the Stipulation as being specifically addressed, the Stipulation terms represent a full and complete resolution of this rate case. As such, like with all other issues, the Company submits that approval of the Stipulation terms would be a lawful and reasonable resolution of this issue.

OPC takes the position that amounts associated with Asbury should be removed from the non-labor operation and maintenance ("O&M") costs for the Company's generating units. OPC Initial Brief, p. 55. As discussed above, OPC's argument in this regard should be rejected.

Empire and Staff differ on the issue by approximately $3.2M ($32,124,367 v. $28,877,386). Staff Initial Brief, p. 82. Staff's proposed O&M level is not reasonable, as Staff averaged each of the plant's O&M costs based on incorrect maintenance schedules. In addition,

Staff did not include all the chemical costs related to the Mercury and Air Toxics Standards ("MATS") when performing their adjustment for Iatan 1. Ex. 5, Richard Rebuttal, p. 18.

Establishing the non-labor O&M costs for the Company's generating units is a challenge as those expenses tend to fluctuate from year to year, since unscheduled outages occur at irregular and unpredictable times, and major planned outages do not occur annually. Ex. 101 (Staff Report Cost of Service), p. 70. Historical averaging does not appropriately address this problem in part because of the variability in maintenance schedules. The costs identified by Empire are a reasonable approach to this issue.

ISSUE 17 - Pension and OPEB (FAS 87 and FAS 106): (a) Should "regulatory accounting" or "acquisition accounting" be used in setting rates for pensions and OPEBs? (b) Should FERC account 426 be included in test year pensions and OPEBs expense? What is the appropriate amount of Prepaid Pension that should be included in Empire's cost of service? (c) Should the "payment basis" or the "expense basis" be used to calculate SERP? In addition, what allocation percentage is appropriate. (d) What should the appropriate rate base and tracker amortization balances be for accounts 182353 and 254101? (e) What is the appropriate balance of prepaid pension?

As part of its unique construct balancing all interests, the Stipulation provides for all currently authorized Regulatory Assets/Trackers and Regulatory Liabilities/Trackers to remain in place under the currently authorized terms and at their current authorized amortization periods. The Company again urges the Commission to approve the terms of the Stipulation as a complete resolution of this case, including the Pension and OPEB issues. The Company's filed positions, however, should be accepted if the Stipulation terms are not approved as a complete resolution of the case. No other party addressed this issue in initial briefs, so the Company will not address the issue further at this time.

ISSUE 18 - Affiliate Transactions: (a) Are Empire's transactions with its affiliates imprudent? (b) Do Empire's transactions with its affiliates comply with Commission Rule 20 CSR 4240-20.015 (Affiliate Transactions)? (c) What amount should be included in Empire's revenue requirement for its transactions with its affiliates?

As noted, the Stipulation involves a unique construct, and, as such, it is difficult to compare the filed positions to the Stipulation terms. The Stipulation does not specifically address affiliate transactions. Instead, the Stipulation resolves all revenue requirement issues by providing that there will be no changes to the Company's Retail Base Rates in this proceeding, no changes to the FAC base factor, and that a phase-in rate mechanism will be established pursuant to §393.155.1, with regard to plant in service and other rate base related items.

If the Stipulation is not approved as a complete resolution of this case, as is urged by OPC, the Commission should make findings in line with the Company's pre-filed testimony. Empire's transactions with its affiliates are not imprudent, and Empire's transactions with its affiliates comply with Commission Rule 20 CSR 4240-20.015.

OPC asserts that all of Empire's affiliate allocations are imprudent, including all salaries. OPC goes so far as to argue that Empire's entire rate case should be dismissed by the Commission due to lack of evidence of the prudence of Empire's affiliate transactions. OPC Initial Brief, p. 56. OPC, however, fails to provide any details that would allow the Company to respond. OPC even fails to identify the "affiliate transactions" that allegedly make up the purported $100 million in affiliate transaction costs. It appears that OPC's argument is that every corporate support function and every action taken by an individual employed by Liberty Utilities Service Corp. on behalf of Empire is a separate affiliate transaction to be assessed and documented. This is nonsensical. If OPC's interpretation of the Commission's affiliate transactions rule were accepted, no utility would be able to function within a corporate parent structure. OPC's lengthy discussion regarding the prudence presumption (OPC Initial Brief, pp. 56-61) could only possibly be applied to the financing transaction which occurred on June 1, 2018, and is discussed throughout OPC's Initial Brief, as this is the only identified affiliate

transaction at issue. With regard to this affiliate transaction, Empire demonstrated both prudence and compliance with the Commission's affiliate transactions rule.

As explained by Company witness Cochrane, the affiliate transactions rule does not apply to a specific point in time for refinancing maturing long-term bonds. Ex. 44, Cochrane Surrebuttal, p. 6. The rule does, however, apply specifically to the goods or services required by the Company, and supplied by an affiliate. In this situation, the good or service required by the Company was long term debt. *Id.* In Mark Timpe's testimony, he indicated that LUCo aggregates financing through a short-term credit facility until it gets to a scale where it can be taken to the debt capital markets. In response, the Commissioners asked: "When is LUCo's short-term credit facility due to be repaid? Has this debt been taken to the capital markets to be replaced with long-term debt? If so, what are the terms of the new debt?"

Mr. Timpe explained that LUCo's bank credit facility matures on February 23, 2023, although, "in keeping with past practice and the ordinary course of business, it is reasonable to assume that the facility will be extended well in advance of its stated maturity. The amounts borrowed under the short term credit facility, or supported by the facility in the case of commercial paper, go up and down over time based on the cash flows of LUCo. Therefore the amounts borrowed or supported change over time. The future cash flows of LUCo and its resultant short term debt balances will determine when LUCo needs to return to the capital markets for new long term debt. Empire's $90 million first mortgage bond was replaced with a like amount promissory note having competitively bid market terms which resulted in a 15 year term and a 4.53% interest rate. LUCo continually monitors the status of the capital markets, its short term debt balances, future maturity schedules and projected cash flows in determining the timing of its next return to the capital markets. The impact of the COVID-19 pandemic has only

made the monitoring of these items even more critical as the Company evaluates daily its options related to capital markets and cash flows." Ex. 1015, Timpe Supplemental, p. 2.

With the referenced June 1 refinancing, the floating short-term rates do not represent the promissory note's fully distributed cost ("FDC"), as LUCo has not permanently financed the 4.53% 15-year long-term promissory note, issued by Empire, with floating rate short-term debt for the next 15 years. Ex. 44, p. 7. The FDC for this transaction, which is to replace $90 million of maturing long-term debt with new long-term debt, should be the fair market terms obtained through LUCo's most recent $750 million competitively bid issuance of long-term notes through a private placement on March 24, 2017, which was used as the basis for pricing the promissory note. The FDC should be based on the actual goods or service required by the Company, which is long-term debt. "I believe this is the optimal pricing mechanism for this transaction." *Id.* at 8. An important distinction to bear in mind, between the 4.53% interest rate on the Empire promissory note and the cost of funds LUCo has incurred and is incurring to fund that loan, is that the Empire loan from LUCo and the borrowing by LUCo are not like transactions. Empire sought and received a 15-year fixed rate loan which serves to protect its customers from rising interest rates, while LUCo bears the entire risk of funding that loan until its next long-term debt placement. It is not a fair comparison to simply look at the Empire loan rate and LUCo's cost to fund that loan without giving weight to the risk transferred to LUCo. Furthermore, OPC has not offered any evidence that a better rate was available to Empire for a 15-year fixed rate loan on June 1, 2018.

The Stipulation does not specifically address affiliate transactions, but it resolves all revenue requirement issues by providing that there will be no changes to the Company's Retail Base Rates in this proceeding, no changes to the FAC base factor, and that a phase-in rate

mechanism will be established pursuant to §393.155.1. The Stipulation terms should be approved as a complete resolution of this case. As noted, it is difficult to compare the filed positions to the Stipulation, because the filed positions include recommendations regarding changes to O&M expenses, while the Stipulation reflects no changes to O&M and keeps the Company's O&M expense recovery at 2016 levels. "If the settlement is approved in its entirety, the O&M expenses being recovered from customers would contain zero O&M costs associated with affiliate transactions from APUC as these costs will remain at the authorized levels prior to the acquisition." Ex. 1017, Richard Supplemental, p. 22.

ISSUE 19 - Riverton 12 O&M Tracker: (a) Should the Riverton 12 O&M Tracker continue? (b) What is the updated balance of the Riverton 12 O&M tracker regulatory asset and the related amortization that should be included in Empire's cost of service? (c) What level of O&M expense should be included in the cost of service for Riverton 12?

As noted, as part of its unique construct balancing all interests, the Stipulation provides for all currently authorized Regulatory Assets/Trackers and Regulatory Liabilities/Trackers to remain in place under the currently authorized terms and at their current authorized amortization periods. The Company again urges the Commission to approve the terms of the Stipulation as a complete resolution of this case, including the Riverton 12 issues. The Company's filed positions, however, should be accepted if the Stipulation terms are not approved as a complete resolution of the case. No other party addressed this issue in initial briefs, so the Company will not address the issue further at this time.

ISSUE 20 - Software Maintenance Expense: (a) What is the appropriate normalized level for software maintenance expense?

As with most revenue requirement issues, this issue is not specifically addressed in the Stipulation. As noted, however, the Stipulation represents the complete resolution of all issues in this case, whether or not specifically mentioned. If the terms of the Stipulation are not accepted

as a complete resolution of this case, the appropriate level of normalized software maintenance expense, as normalized through the true-up period, is $924,820 (total company). Ex. 65 (Software Maintenance Norm. Expense Workpaper). No other party addressed this issue in initial briefs, so the Company will not address the issue further at this time.

ISSUE 21 - Advertising Expense: What is the appropriate amount of advertising expense to include?

If the terms of the Stipulation are not accepted as a complete resolution of this case, the appropriate amount of advertising expense to include in the cost of service is $155,552 (Missouri jurisdictional). Ex. 66 (Advertising Expense Workpaper). No other party addressed this issue in initial briefs, so the Company will not address the issue further at this time.

ISSUE 22 - Customer Service: (a) Is Empire providing satisfactory customer service? (i) If not, what should the Commission order to ensure better customer service?

OPC points to the issue of estimated bills, while arguing that Empire should be penalized through an ROE reduction. OPC Initial Brief, pp. 68-73. The issue of estimated bills was addressed in Empire's Initial Brief and that discussion need not be repeated here. OPC also points to various metrics and rankings that were addressed by Company witness Baker. "It is the Company's goal to become top quartile in customer satisfaction. In some of our operations at Liberty-Empire, we have top and 2nd quartile performance in operational areas, such as bad debt performance, SAIDI, SAIFI, and safety performance. Our goal is to become top quartile in operations and customer experience." Ex. 2, Baker Rebuttal, p. 7. Regarding OPC's allegations on cost, Mr. Baker explained that according to the Company's class cost of service study, the average residential usage is 1,064 kWh per month, which is $146.60 per month or $1,759 per year. While the current cost at Empire is higher than investor owned peers in Missouri, "necessary investments in reliability and improvements in our system are also spread among a

less densely populated service area - similar to cooperatives in our area. A rate comparison to Barton Electric Cooperative to our north shows a monthly cost of $157.90 or $1,894.70 per year if a customer were to use 1,064 kWh per month. Additionally, a comparison using the same amount of usage shows our rates to be similar to our investor-owned peers." Ex. 2, Baker Rebuttal, pp. 7-8.

Empire takes customer complaints very seriously, and, as demonstrated by the Company's and Staff's testimonies in this case, Empire has made significant strides in addressing these issues. To the extent concerns were raised in this proceeding regarding customer service, implementation of the terms of the Stipulation is a just and proper resolution. The Company provides safe and reliable electric service to its customers and has always prided itself on its customer service. Exhibits 1-3 (Baker Direct, Rebuttal, and Surrebuttal).

ISSUE 22 - Customer Service: (b) Is Empire providing reliable service? (i) If not, what should the Commission do?

OPC has withdrawn this issue. As between the Stipulation Signatories, this issue has been resolved pursuant to paragraph 10 of the Stipulation, to which OPC did not object. With regard to reliability concerns, the Stipulation provides that the Company will benchmark across utilities for reliability and present this information in its direct testimony in its next rate case and in subsequent reliability reports (annual basis) for the years 2021 and 2022.

ISSUE 23 - Estimated Bills. This issue has been resolved pursuant to paragraph 9 of the Stipulation, to which OPC did not object. With the Stipulation, the Company commits to the following for the years 2020, 2021, and 2022:

a. Incorporate data into its monthly reports to Commission Staff;
b. Initiate quarterly reports to the Commission Staff and OPC regarding the number of estimated meter readings;
c. Initiate quarterly reports to the Commission Staff and OPC regarding the number of estimated meter readings exceeding three consecutive estimates;

d. Initiate quarterly reports to the Commission Staff and OPC regarding the number of bills with a billing period outside of 26 to 35 days; and
e. Initiate quarterly reports to the Commission Staff and OPC regarding the Company and contract meter reader staffing levels;
f. Evaluate the authorized meter reader staffing level and take action to maintain adequate meter reader staffing levels in order to minimize the number of estimated bills.
g. Company will meet with Staff and OPC to discuss bill redesign possibilities for the future.
h. Ensure that all customers who receive estimated bills for three consecutive months receive the appropriate communication regarding estimated bills and their option to report usage as required by Service and Billing Practices, Rule 20 CSR 4240-13.020(3).
i. Ensure that all customers who receive an adjusted bill due to underestimated usage are offered the appropriate amount of time to pay the amount due on past actual usage as required by Service and Billing Practices, Rule 20 CSR 4240-13.025(1)(C).
j. Evaluate meter reading practices and take action to ensure that billing periods stay within the required 26 to 35 days, unless permitted by those exceptions listed in the Commission's rules.
k. File notice within this case by September 1, 2020, containing an explanation of the actions the Company has taken to implement the above recommendations related to billing and bill estimates.

ISSUE 24 - Material and Supplies: (a) What is the appropriate balance for material and supplies to be included in the cost of service? (b) What is the appropriate balance to remove from inventory as it relates to Non-Electric items?

The terms of the Stipulation should be accepted as a complete resolution of this case, including all revenue requirement issues. The Company's filed positions regarding material and supplies, however, should be accepted if the Stipulation terms are not approved as a complete resolution of the case. No other party addressed this issue in initial briefs, so the Company will not address the issue further at this time.

ISSUE 25 - Asset Retirement Obligations: Should Asset Retirement Obligations be included in rate base as a regulatory asset and amortized?

The terms of the Stipulation should be accepted as a complete resolution of this case, including the Asset Retirement Obligation ("ARO") issue. There was no contrary position

presented on this issue in the initial briefs of the other parties, so the Company will not address the issue further at this time.

ISSUE 26 - LED Replacement Tracker: (a) Should a tracker be established for the costs associated with replacement of mercury vapor light fixtures with LED light fixtures for private lighting customers? (b) Should a tracker be established for the costs associated with replacement of mercury vapor light fixtures with LED light fixtures for Municipal customers?

Although this item is not set forth in the Stipulation as being specifically addressed, the Stipulation terms represent a full and complete resolution of this rate case. As such, like with all other issues, the Company submits that approval of the Stipulation terms would be a lawful and reasonable resolution of this issue. In the event the terms of the Stipulation are not approved as a complete resolution of the case, the Company's filed positions should be accepted. No other party addressed these issues in initial briefs, so the Company will not address these issues further at this time.

ISSUE 27 - May 2011 Tornado Unamortized AAO Balance: Should the unamortized AAO Balance for the May 2011 Joplin Tornado be included in rate base?

If the terms of the Stipulation are not approved as a complete resolution of this case, the unamortized AAO balance resulting from the 2011 Joplin tornado should be specifically included in rate base. The exclusion of this balance would deny the Company a return on the investment it made in the system to restore electric services to its Missouri retail customers in an expedition manner. Ex. 5, Richard Rebuttal, pp. 6-7. No other party addressed this issue in initial briefs, so the Company will not address the issue further at this time.

ISSUE 28 - Depreciation and Amortization Expense: (a) What is the appropriate level of depreciation and amortization expense of plant to include in the cost of service? (b) Should depreciation expense for transportation equipment that was charged through a clearing account be removed from depreciation expense? (i) What are the authorized depreciation rates for accounts 371 & 373 to be used in the cost of service?

The terms of the Stipulation should be accepted as a complete resolution of this case, including these expense issues. The Company's filed positions on these issues, however, should be accepted if the Stipulation terms are not approved as a complete resolution of the case.

OPC's position on this issue concerns only the treatment of the Asbury associated depreciation and amortization expense. OPC Initial Brief, p. 74. As addressed under Issue 13 above, OPC's argument in this regard should be rejected.

There is a relatively small difference between Empire and Staff as to this issue. Empire suggests that the appropriate levels of depreciation and amortization expense at January 2020, are $71,515,922 and $3,821,588, respectively. Ex. 7, Richard True-Up Direct, p. 15; Ex. 71 (Annualized Depreciation Expense Workpaper); Ex. 72 (Annualized Amortization Expense Workpaper). Staff suggests levels of $71,423,882 for depreciation and $3,387,871 for amortization of electric plant. Staff Initial Brief, p. 82. Thus, the Company and Staff differ by $92,040 as to depreciation and $433,717 as to the amortization.

The difference is a result of Staff's use of two depreciation rates that were not consistent with Empire's last approved rates. Staff used a rate of 2.5% for FERC accounts 371 and 373, while the depreciation rates that should be used in this case for accounts 371 and 373 are 4.67% and 3.33%, respectively, as those are the last approved depreciation rates from Case No. ER-2016-0023. Ex. 5, Richard Rebuttal, p. 32; *Order Approving Stipulation and Agreement*, Att. A, Sch. A, File No. 2016-0023 (issued August 10, 2016); Ex. 73 (Approved Depreciation Rates Workpaper).

ISSUE 29 - Iatan/Plum Point Carrying Costs: (a) What is the appropriate level of unamortized Iatan/Plum Point Carrying Costs to include in rate base? (b) What is the appropriate level of Iatan/Plum Point Carrying amortization to include in amortization expense?

The Stipulation terms should be accepted as a complete resolution of this case. The Company's filed positions on this issue, however, should be accepted if the Stipulation terms are not approved as a complete resolution of the case. No other party addressed this issue in initial briefs, so the Company will not address the issue further at this time.

ISSUE 30 - Incentive Compensation: What is the appropriate level of incentive compensation to be included in the cost of service?

As noted, the Stipulation resolves all revenue requirement issues, whether or not specifically mentioned in the Stipulation, by providing that there will be no changes to the Company's Retail Base Rates in this proceeding, no changes to the FAC base factor, and that a phase-in rate mechanism will be established pursuant to §393.155.1. The Stipulation terms should be accepted as a complete resolution of this case. The Company's filed position on this issue, however, should be accepted if the Stipulation terms are not approved as a complete resolution of the case. No other party addressed this issue in initial briefs, so the Company will not address the issue further at this time.

ISSUE 31 - Customer Demand Program (DSM): (a) What is the appropriate rate base amount for the customer demand program? (b) What is the appropriate amortization amount for the customer demand program?

If the terms of the Stipulation are not approved as a complete resolution of this case, the appropriate rate base amount for the customer demand program at January 31, 2020 is $4,269,460. Ex. 76 (DSM Regulatory Asset and Amortization Workpaper of Sheri Richard). The appropriate level of amortization expense related to the customer demand program is $1,422,715. Ex. 76 (DSM Regulatory Asset and Amortization Workpaper of Sheri Richard). No other party addressed these issues in initial briefs, so the Company will not address these issues further at this time.

ISSUE 32 - Bad Debt Expense: (a) What is the appropriate level of bad debt expense to be included in the cost of service?

If the terms of the Stipulation are not approved as a complete resolution of this case, the appropriate amount of bad debt (or uncollectible) expense that should be included is ($143,419). Ex. 7, Richard True-Up Direct, pp. 13-14. This amount represents a normalized uncollectible expense as of January 31, 2020, using a five-year average historical uncollectible percentage. Ex. 7, p. 14. The uncollectible percentage was also applied to the revenue deficiency as of January 2020. *Id*. No other party addressed this issue in initial briefs, so the Company will not address the issue further at this time.

ISSUE 33 - Retail Revenue: (a) What is the appropriate amount to remove from retail revenue for unbilled revenue, franchise tax revenue, and FAC revenue? (b) What is the level of billing determinants per rate schedule that should be used to calculate retail rate revenue in this case? (c) Should the billing adjustment and the retail revenues be trued up to January 31, 2020 in the cost of service?

If the Stipulation terms are not approved as a complete resolution of this case, the appropriate amount to be removed from retail revenues for unbilled revenues is $5,497,448, franchise tax revenues is $9,319,510, and FAC revenues is $5,203,205. These balances are as of January 31, 2020. Exhibits 78-80. The difference between Empire and Staff is based upon the Company's use of balances as of January 31, 2020 (the end of the true-up period), while Staff used test year amounts. Staff Initial Brief, p. 83. Updating these amounts is necessary in order to maintain a proper matching of the rate components.

If the Stipulation terms are not accepted, both Empire and Staff agree that the billing determinants should be trued up to January 31, 2020.

In regard to retail revenue, OPC again refers only to its position as to Issue 13 (Asbury). OPC Initial Brief, p. 74.

ISSUE 34 - Other Revenue: What is the appropriate normalized level of revenue for rent revenue, other electric revenue, and fly ash revenues?

The Stipulation resolves all revenue requirement issues, whether or not specifically mentioned in the Stipulation, and the Stipulation terms should be accepted as a complete resolution of this case. The Company's filed positions on this issue, however, should be accepted if the Stipulation terms are not approved as a complete resolution of the case. No other party addressed this issue in initial briefs, so the Company will not address the issue further at this time.

ISSUE 35 - Tax Cut and Job Acts Revenue: (a) What is the appropriate amount of tax cut and job act revenue to remove from test year revenues? (b) Should revenues associated with the tax cut and job act stub period be removed from revenue?

If the Stipulation terms are not approved as a complete resolution of all revenue requirement issues in this case, the adjustment to calculate the appropriate amount of tax cut and job act (TCJA) revenues as of January 31, 2020, that should be included in the cost of service shows an increase to revenues by $12,024,852. This is because the adjustment trues up the revenues to reflect the annual amount ordered by the Commission in Case No. ER-2018-0092 of the deferred revenues related to the change in federal income tax rate as a result of TCJA. This adjustment encompasses the stub period as part of the annual amount ordered. Ex. 4, Richard Corrected Direct, p. 24; Ex. 5, Richard Rebuttal, pp. 11, 17; Ex. 7, Richard True-Up Direct, p. 11; Ex. 84 (Richard Workpaper, TCJA Revenue Adjustment).

ISSUE 36 - Property Insurance: What is the appropriate test year amounts before comparing to the current premium amounts?

If the Stipulation terms are not approved as a complete resolution of all revenue requirement issues in this case, the appropriate level of annualized property insurance to use in the revenue requirement is $2,027,854 (total company). Ex. 85 (Property Insurance Test Year

Expense Workpaper). No other party addressed this issue in initial briefs, so the Company will not address the issue further at this time.

ISSUE 37 - Injuries and Damages: What is appropriate amount of injuries and damages expense to include in the cost of service?

If the Stipulation terms are not approved as a complete resolution of all revenue requirement issues in this case, the appropriate amount of injuries and damages expense to include in the cost of service is $312,562 (total company). Ex. 86 (Injuries and Damages to include in Cost of Service Workpaper). No other party addressed this issue in initial briefs, so the Company will not address the issue further at this time.

ISSUE 38 - Payroll and Overtime: (a) What is the appropriate test year amount of payroll expense? (b) What is the appropriate test year amount for overtime expense?

OPC's position on this issue relies only on its arguments in regard to Affiliate Transactions (Issue 18) as discussed above. OPC Initial Brief, p. 75. Staff utilizes a figure of $40,750,944, which includes regular payroll, overtime payroll and allowed incentive compensation. Staff Initial Brief, p. 107. Empire believes that its test year level regular payroll (excluding Iatan, overtime and incentive compensation) of $33,190,797 (total company) matches that used by Staff (before its consideration of overtime and incentive compensation). Ex. 87 (Test Year Payroll and Overtime Workpaper). The appropriate amount of test year level overtime payroll is $4,502,541 (total company). Ex. 87 (Test Year Payroll and Overtime Workpaper).

ISSUE 39 - Retention Bonuses: Should proposed retention bonuses for lineman be included in the cost of service?

If the Stipulation terms are not approved as a complete resolution of all revenue requirement issues in this case, a total of $1,021,080 should be included in the cost of service related to lineman retention bonuses. Ex. 7, Richard True-Up Direct, pp. 20-21; Ex. 88

(Retention Bonus Calculations Workpaper). No other party addressed this issue in initial briefs, so the Company will not address the issue further at this time.

ISSUE 40 - Employee Benefits: What is the appropriate level of employee benefits to include in the cost of service?

Again, OPC's position on this issue relies only on its arguments in regard to Affiliate Transactions (Issue 18) as discussed above. OPC Initial Brief, p. 75. Staff normalized the Dental, Vision, Healthcare, and Life Insurance benefits by examining the individual costs over a three-year period. Staff Initial Brief, p. 109. As a result, Staff recommends that the amount included in Empire's cost of service for employee benefits should be $7,506,683 (Total Company). *Id.* at pp. 109-110.

Staff's number only examined the trailing three years through the update period ending September 30, 2019. Ex. 101 (Staff Report Cost of Service), p. 63. If the Stipulation terms are not approved as a resolution of the revenue requirement issues in this case, the appropriate amount of employee benefits, including dental, vision and healthcare, that should be included in the Company's cost of service is $6,682,463 (jurisdictional), when the balances are updated as of January 30, 2020. Ex. 89 (Employee Benefits to include in Cost of Service of Sheri Richard).

ISSUE 41 - Property Taxes: (a) What is the appropriate amount of property taxes to include in the cost of service? (b) What is the proper method to be used for calculating the property tax amount to be included in the cost of service?

If the Stipulation terms are not approved as a complete resolution of all revenue requirement issues in this case, the appropriate Missouri jurisdictional amount of property taxes to be included in the cost of service is $25,985,842. Ex. 90 (Property Tax Calculation Workpaper).

OPC's position on this issue concerns only the treatment of the Asbury associated depreciation and amortization expense. OPC Initial Brief, p. 75. Because Asbury was owned by

Empire as of December 31, 2019, it will be included in the calculation of the property taxes to be paid by the Company in 2020. Thus, regardless of how the Commission treats Asbury for the purpose of other issues, it should not have an impact on the property tax issue.

Staff indicates that the appropriate level of property taxes to include in the cost of service is $25,138,294. Staff Initial Brief, p. 85. As stated in Empire's Initial Brief, Staff did not consider all elements of the tax valuation process.

ISSUE 42 - Dues and Donations: (a) What is the appropriate amount of dues and donations that should be included in the cost of service? (b) Should Edison Electric Institute dues be included in the cost of service?

If the Stipulation terms are not approved as a complete resolution of all revenue requirement issues in this case, $179,693 should be added to the cost of service. Ex. 91 (Dues and Donations Workpaper of Sheri Richard), p. 5. No other party addressed this issue in initial briefs, so the Company will not address the issue further at this time.

ISSUE 43 - Outside Services: What is the appropriate amount of outside services to include in the cost of service?

If the Stipulation terms are not approved as a complete resolution of all revenue requirement issues in this case, the appropriate amount of outside services to be included in the cost of service is $2,326,254. Ex. 92 (Workpaper – Outside Services to include in Cost of Service). This amount represents the total Company's five-year average of the two outside service expense accounts. Ex. 7, Richard True-Up Direct, p. 19. Staff and the Company agree on this amount. Staff Initial Brief, pp. 110-111.

OPC opines that amounts for outside services should not include affiliate transactions. OPC Initial Brief, p. 75. Affiliate transactions issues are discussed under Issue 18.

ISSUE 44 - Common Property Removed from Plant and Accumulated Depreciation: What is the appropriate method and amount for removal of common property from plant in service and accumulated depreciation?

Once again, OPC's position on this issue concerns only the treatment of the Asbury associated depreciation and amortization expense. OPC Initial Brief, p. 75. As explained in Empire's Initial Brief, there should be a total company adjustment to reduce plant and accumulated depreciation by $4,882,321 and $2,839,974, respectively. Ex. 7, Richard True-Up Direct, p. 6; Ex. 93 (Common Property Adjustment Workpaper). This differs from the number used by Staff because Staff erred by applying its allocation factor to the entire balances in FERC accounts 389 through 398, as the entire balances in those accounts are not all considered common plant. Ex. 5, Richard Rebuttal, p. 3. The Company's amounts should be used if the Stipulation terms are not approved as a complete resolution of all revenue requirement issues in this case.

ISSUE 45 - Retirement: (a) Should Empire be required to externally fund, through a Rabbi Trust, its SERP benefits obligation? (b) Should Empire be required to provide, to a designated EDRA contact, the following documents of The Empire District Electric Company in the years 2020-2026: (i) IRS filings (specifically Form 5500 for each plan), (ii) Actuarial valuation reports, (iii) Financial disclosures, (iv) Annual funding notice to pension plan participants (v) Annual health care premium and coverage letter to retirees, (vi) FERC Form 1 and summary and full annual reports. (c) In addition, should the company be required to designate a contact person for EDRA to contact regarding these matters?

These issues have been resolved pursuant to paragraphs 27-29 of the Stipulation, to which OPC did not object. The Stipulation carefully balances all interests and allows for the Company to be able to continue providing safe and reliable service, while also allowing Empire's retail customers in Missouri to not experience a base rate increase until the effective date of rates resulting from the Company's next rate case. As such, the Stipulation terms should be approved as a complete resolution of this case.

With regard to the retirement issues, the Stipulation requires Empire to provide, to a designated EDRA contact, the following Empire documents in the years 2020-2026: IRS filings (specifically Form 5500 for each plan), actuarial valuation reports, financial disclosures, annual funding notice to pension plan participants, annual health care premium and coverage letter to retirees, and FERC Form 1 and summary and full annual reports. In addition, the company will designate a contact for these matters.

With regard to EDESR's issues in this case, the Stipulation provides that the Company shall discuss with Staff and OPC, in or prior to July of 2020, the possibility of external funding (Rabbi Trust) of SERP benefits. If an agreement is reached between EDESR, the Company, Staff, and OPC in which: (1) EDESR, Staff, and OPC agree that, using reasonable assumptions, the annual costs and expenses of funds contributed by Empire using a Rabbi trust (including contributions to the trust) to provide benefits are essentially the same or less than the costs and expenses to customers of providing the alternate of SERP benefits from Empire's general funds and (2) none of these parties (EDESR, Staff, OPC) oppose the rate recovery of the Rabbi trust consistent with the Willis Towers Watson SERP funding analysis dated July 17, 2019 (but with currently approved weighted average cost of capital) in place of the SERP funded from general funds and will support said rate recovery in future cases, Empire will fund SERP benefits via a Rabbi trust within 30 days of execution of the written agreement.

ISSUE 46 - Case No. EM-2016-0213 Commission-ordered conditions: (a) Has Empire complied with Condition A.4 the Commission imposed in Case No. EM-2016-0213? (i) If not, what relief should the Commission grant? (b) Has Empire complied with Condition A.5 the Commission imposed in Case No. EM-2016-0213? (i) If not, what relief should the Commission grant? (c) Has Empire complied with Condition A.6 the Commission imposed in Case No. EM-2016-0213? (i) If not, what relief should the Commission grant? (d) Has Empire complied with Condition G.3 the Commission imposed in Case No. EM-2016-0213? (i) If not, what relief should the Commission grant?

These issues are not specifically addressed in the Stipulation, but, as noted, approval of the Stipulation terms is the proper resolution of this entire case. Additionally, there is no credible evidence before the Commission that would support a finding that the Company has violated the referenced merger conditions or a conclusion that any "relief" should be granted accordingly. The Company has fully complied with the merger conditions from Case No. EM-2016-0213, and, as such, no action on the part of the Commission is required and none would be appropriate.

Condition A.4. OPC argues Empire has not satisfied this condition which requires the Company to demonstrate that any increase in its cost of capital is unrelated to the merger or its affiliate relationships, because "Empire has not provided any testimony comparing Empire's cost of capital before APUC acquired it with its cost of capital after APUC acquired it." OPC Initial Brief, p. 76. OPC points to Mr. Murray's testimony, which notes that the Company's proposed ROE in this case is five basis points higher that its proposed ROE in Case ER-2016-0023. *Id.* The five-basis point difference between the Company's proposal in Case ER-2016-0023 and this proceeding is irrelevant. As Mr. Hevert explained, the Cost of Equity is based on the economic principle of "opportunity costs," or the forgone return on investments of comparable risk. Ex. 36, Hevert Direct, p. 6.

The proposed ROE of 9.95 percent in this case, therefore, is based on a group of proxy companies, none of which are affiliates of, or affiliated with Empire or APUC. *Id.* at 7. In fact, at page 45 of his Direct Testimony, Mr. Hevert explained that the proxy group specifically excluded APUC:

> Q. DID YOU INCLUDE ALGONQUIN POWER UTILITIES CORPORATION IN YOUR PROXY GROUP?

> A. No. APUC is publicly traded (ticker: AQN), but not part of the Value Line universe of Electric Utilities. Even if it were and met the screening criteria discussed earlier, to avoid the circular logic that otherwise would occur, it has been my consistent practice to exclude the subject company (or its parent) from the proxy group.

To be clear, the 9.95 percent proposed ROE in this case is based on the required return for investments in companies that are comparable to Empire, but are not affiliated with it, or with the merger transaction.

Aside from the fact it is estimated based on a group of proxy companies, the proposed ROE in this case reflects economic and market conditions *in this case*. Mr. Hevert's Surrebuttal Testimony at pages 4-9 discuss the highly unstable, and distinct, market conditions that have prevailed during this proceeding. Although Mr. Hevert did not increase his 9.95 percent recommendation in connection with those highly unstable conditions, he noted that "[c]urrent conditions indicate, however, that the investor-required ROE now falls toward the top of [his] range." Ex. 38, Hevert Surrebuttal, p. 9.

To summarize, Empire's proposed ROE is based on a group of proxy companies unaffiliated with APUC, and reflects the current, unstable capital market. Both are factors not associated with the merger transaction. Empire clearly met its burden with regard to this merger condition.

Condition A.5. The plain reading of merger condition A.5 is straightforward: if Empire's "book capital structure" differs from LUCo's, the Company must demonstrate its capital structure is "the most economical." The difference in book capital structures between the two is minimal; 53.00 percent common equity at LUCo relative to 52.90 percent equity at Empire. "I do not see a need to reconcile that modest difference, as Mr. Murray appears to have expected." Ex. 38, Hevert Surrebuttal, p. 49. Mr. Hevert goes on to explain, "(a)ssuming the ten-basis point

difference between the two rises to the threshold of a difference for the purpose of Merger Condition 5, the central issue is whether Liberty-Empire's capital structure is the most economical. As discussed in my Rebuttal Testimony, and as I explain below (in response to Mr. Chari's rebuttal testimony), determining whether a given capital structure is "economical" is a complicated assessment." *Id.* at 49-50. The issue of what constitutes an "economical" capital structure has already been fully briefed.

To summarize, "regardless of how he arrived at it, Mr. Murray's 46.00 percent equity ratio cannot be seen as the 'most economical.'" Ex. 38, Hevert Surrebuttal, p. 56. Empire's proposed equity ratio on the other hand, is consistent with industry practice, reflects the fundamental financing principle of duration matching (Ex. 38, p. 54), recognizes the importance of maintaining a strong balance sheet during unstable markets (Ex. 38, p. 57), and properly reflects the relationship between debt leverage and the Cost of Equity (Ex. 38, pp. 52-53). It is the "most economical." Contrary to OPC's assertion, the Company once again met its burden with regard to this merger condition.

Condition A.6. With regard to the financing merger condition, OPC takes issue with the refinancing of Empire's $90 million first mortgage bonds that matured on June 1, 2018. As explained above, and contrary to OPC's allegations, this refinancing was conducted in compliance with the Commission's affiliate transactions rule, and, as such, was in compliance with the financing merger condition.

Condition G.3. In objecting and responding to data requests in this case, the Company has fully complied with the merger stipulation and the Commission's rules, contrary to OPC's allegations in this regard. The merger stipulation specifically contemplated objections for lack of relevance. Ex. 6, Richard Surrebuttal, pp. 8-9. Also, as noted in Empire's Initial Brief, this issue

is not properly before the Commission. OPC did not challenge the Company's objections pursuant to the Commission's rules and the orders in this case. As such, no action on the part of the Commission is required on this issue and none would be appropriate.

Conclusion

OPC's assertion that new rates should be designed for Empire "to collect about $160 million less annually than Empire's current rates are designed to collect" (OPC Initial Brief, p. 82) is wholly without merit and is not supported by competent and substantial evidence. Implementation of the Company's requested rate increase, however, based on an annual revenue requirement deficiency of $21,916,462, as set forth in and supported by the Company's direct, rebuttal, surrebuttal, true-up, and supplemental testimony, would be lawful and reasonable. The Company is mindful of the financial challenges facing Empire's customers and the Company's obligations, and, as such, urges the Commission to approve the terms of the Stipulation, in total and without modification, as a complete resolution of this rate case. This will allow the Company to continue providing safe and reliable service and will allow Empire's retail customers in Missouri to not experience a base rate increase until the effective date of rates resulting from the Company's next rate case.

WHEREFORE, The Empire District Electric Company submits its Responsive Brief for the Commission's consideration.

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 12th day of May, 2020, with notification of the same being sent to all counsel of record.

/s/ Diana C. Carter