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Electric Company
Case No.: ER-2018-0366
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**Before the Public Service Commission
of the State of Missouri**

Direct Testimony

of

Christopher D. Krygier

**Case No. ER-2018-0366
June, 2018**



Liberty Utilities[®]
EMPIRE DISTRICT

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1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Christopher D. Krygier, and my business address is 602 South Joplin
4 Avenue in Joplin, Missouri.

5 **Q. WHO IS YOUR EMPLOYER, AND WHAT POSITION DO YOU HOLD?**

6 A. My employer is Liberty Utilities Services Corp., and I serve as the Director of Rates
7 and Regulatory Affairs for Liberty Utilities Central Region, which includes The
8 Empire District Electric Company (“Empire” or “Company”).

9 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND.**

10 A. In 2006, I completed my Bachelor of Science in Economics from the W.P. Carey
11 School of Business at Arizona State University. In 2010, I completed my Master of
12 Business Administration with an emphasis in Finance also from Arizona State
13 University. Finally, I am a Certified Management Accountant as designated by the
14 Institute of Management Accountants.

15 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE.**

16 A. I currently oversee the rates and regulatory affairs for Liberty Utilities Central Region
17 which includes electric, natural gas, water and wastewater utilities located in
18 Missouri, Kansas, Arkansas, Oklahoma, Iowa and Illinois. Prior to that, I worked for
19 Liberty Utilities affiliates located in Jackson, Missouri and Avondale, Arizona and
20 was responsible for rates and regulatory affairs. Before working for Liberty Utilities,
21 I worked for several subsidiaries of American Water Works, Inc. for approximately
22 six years in a variety of capacities, including Financial Planning and Analysis, Rates,
23 Regulatory Compliance and Capital Programs.

1 **Q. HAVE YOU TESTIFIED BEFORE ANY STATE REGULATORY**
2 **COMMISSIONS?**

3 A. Yes, I have provided testimony before the Missouri Public Service Commission
4 (“Commission”) and have also provided testimony before the public utility
5 commissions in Arizona, Arkansas, Hawaii, Illinois, Kansas, and Oklahoma.

6 **II. SENATE BILL 564 / RSMO. SECTION 393.137**

7 **Q. THIS CASE WAS OPENED BY THE COMMISSION TO CONSIDER**
8 **TAKING ACTIONS UNDER RSMO. §393.137 AND SENATE BILL 564.**
9 **WHEN DID RSMO. §393.137 TAKE EFFECT?**

10 A. Senate Bill 564 was truly agreed and finally passed by the Missouri House of
11 Representatives on May 16, 2018, and it was signed by the Governor on June 1, 2018.
12 Section 393.137 (as created by SB564) became effective the same date it was signed
13 by the Governor as the result of an emergency clause.

14 **Q. SHOULD THE COMMISSION TAKE ANY ACTION UNDER §393.137 WITH**
15 **REGARD TO EMPIRE?**

16 A. No. It is Empire’s position that this docket should be dismissed immediately.

17 **Q. PLEASE EXPLAIN WHY THIS DOCKET SHOULD BE DISMISSED.**

18 A. While I am not a lawyer, §393.137 (as created by SB564) specifically provides that it
19 is applicable only to “electrical corporations that do not have a general rate
20 proceeding pending before the commission” on the effective date of the new law.
21 This case was opened by the Commission specifically to consider the adjustment of
22 Empire’s rates pursuant to §393.137, and Empire had a general rate proceeding
23 pending before the Commission when the new law took effect. As such, §393.137
24 does not apply to Empire, and this case must be dismissed. Empire’s exemption from

1 this new law is further discussed in Empire’s Motion to Dismiss or for Summary
2 Determination filed in this matter on June 25, 2018.

3 **Q. THE OFFICE OF THE PUBLIC COUNSEL (“OPC”) ARGUES THAT THE**
4 **COMMISSION IS MANDATED TO REDUCE EMPIRE’S RATES**
5 **PURSUANT TO §393.137 WITHIN 90 DAYS OF JUNE 1, 2018, AND ALSO**
6 **ORDER EMPIRE TO DEFER THE FINANCIAL IMPACT OF THE ACT**
7 **STARTING JANUARY 1, 2018, WITH THE AMOUNT DEFERRED TO BE**
8 **INCLUDED IN EMPIRE’S REVENUE REQUIREMENT IN A FUTURE**
9 **RATE CASE. DO YOU AGREE?**

10 A. No. Even as to any electrical corporation to which §393.137 does apply, the
11 Commission is not mandated to order a one-time adjustment and/or require the utility
12 to defer the entire financial impact of the Act for the period of January 1, 2018,
13 through the date of any one-time adjustment. Section 393.137.4 states, in part, as
14 follows:

15 Upon good cause shown by the electrical corporation, the commission
16 may, as an alternative to requiring a one-time change and deferral
17 under subsection 2 of this section, allow a deferral, in whole or in part,
18 of such federal act’s financial impacts to a regulatory asset starting
19 January 1, 2018, through the effective date of new rates in such
20 electrical corporation’s next general rate proceeding. . . .

21
22 It is Empire’s position that §393.137 did not replace the Commission’s discretion to
23 be exercised in the setting of just and reasonable rates.

24 **Q. IF THE COMMISSION DETERMINES THAT §393.137 IS APPLICABLE TO**
25 **EMPIRE, WOULD EMPIRE BE ABLE TO DEMONSTRATE “GOOD**
26 **CAUSE” PURSUANT TO §393.137.4?**

1 A. Yes. As noted, it is Empire’s position that this docket should be dismissed
2 immediately. If the new law is deemed applicable to Empire, however, the tax reform
3 provisions agreed to in the Stipulation filed in Case Nos. EO-2018-0092 and ER-
4 2018-0228 should form the basis for the “good cause” referenced by §393.137.4.
5 Additionally, even if the Stipulation is not approved, there is no rational basis to take
6 action against Empire under §393.137.3 (assuming it authorizes the creation of a
7 regulatory liability, as is discussed below), thereby creating substantial uncertainty
8 regarding Empire’s earnings, while allowing the majority of Missouri’s regulated
9 utilities to address the impact of the Federal Tax Cuts and Jobs Act (the “Act”) on
10 only a going-forward basis. This potential disparity of treatment of the various
11 Missouri utilities would also represent the “good cause” required by §393.137.4.

12 **Q. WHAT IS THE EFFECT OF A SHOWING OF GOOD CAUSE PURSUANT**
13 **TO §393.137.4?**

14 Upon a showing of good cause, even if §393.137 were deemed applicable to Empire,
15 the Commission would not be required to make a one-time change to Empire’s rates,
16 and, instead, the statute purports to authorize the Commission to order a deferral of
17 only a portion of the Act’s financial impacts, starting January 1, 2018, and continuing
18 through the effective date of new rates in Empire’s next general rate proceeding. It
19 should be noted, however, that the provisions of §393.137 which purport to provide
20 the Commission with authority to order deferral of the entire impact of the Act
21 (§393.137.3) or deferral in whole or in part (§393.137.4) speak only of a regulatory
22 *asset*.

23 **Q. WHAT IS SIGNIFICANT ABOUT THE USE OF THE WORD “ASSET” IN**
24 **THE STATUTE?**

1 A. If the Commission seeks to order a utility to defer the cost savings resulting from the
2 Act for consideration of those savings in a future rate case, the statute would need to
3 authorize deferral to a regulatory *liability* account. Senate Bill 564 uses the terms
4 regulatory asset and regulatory liability in various provisions, but, as noted, the
5 provisions of §393.137 dealing with deferrals speak only of regulatory *assets*.

6 **III. EMPIRE RATE PROCEEDINGS PENDING ON JUNE 1, 2018**

7 **Q. YOU STATED EARLIER IN YOUR TESTIMONY THAT EMPIRE HAD A**
8 **GENERAL RATE PROCEEDING PENDING ON JUNE 1, 2018. PLEASE**
9 **EXPLAIN.**

10 A. Actually, Empire was the subject of two general rate proceedings, or rate cases,
11 pending before the Commission on that date.

12 **Q. PLEASE DESCRIBE ONE OF THE RATE CASES THAT WAS PENDING**
13 **BEFORE THE COMMISSION ON JUNE 1, 2018.**

14 A. On May 31, 2018, Empire made a filing regarding its Pay As You Save (“PAYS”) study in its last rate case, Case No. ER-2016-0023. This filing was in compliance
15 with a stipulation and agreement previously executed and approved in that case. As a
16 result of the PAYS filing, the 2016 rate case was re-opened. The 2016 rate case
17 remained open until it was closed by Commission order on June 14, 2018.

18 **Q. PLEASE DESCRIBE THE OTHER EMPIRE RATE CASE THAT WAS**
19 **PENDING BEFORE THE COMMISSION ON JUNE 1, 2018.**

20 A. Although the 2016 rate case was technically pending before the Commission on June
21 1, 2018, when §393.137 took effect, it is the pendency of Case No. ER-2018-0228
22 that makes it abundantly clear that the new law does not apply to Empire. Case No.
23 ER-2018-0228, which was pending before the Commission on June 1, 2018, is
24

1 specifically delineated as a “rate case” in the Commission’s system, is captioned as
2 “In the Matter of the Propriety of the Rate Schedules for Electric Service of The
3 Empire District Electric Company,” and was opened by the Commission for the
4 specific purpose of setting just and reasonable rates for Empire. Case No. ER-2018-
5 0228 is also discussed in the Direct Testimony of Empire witness Charlotte North.

6 **IV. BENEFITS OF THE ACT**

7 **Q. IS EMPIRE TRYING TO DENY ITS CUSTOMERS THE BENEFITS OF THE**
8 **ACT?**

9 A. No. Empire stated in its Response to Order in File No. AW-2018-0174 on January 31,
10 2018, and in its Response to Show Cause Motion and Order in File No. ER-2018-0228
11 on March 19, 2018, that the Company would like to work with the Staff of the
12 Commission (“Staff”) and other interested stakeholders in an effort to reach a fair and
13 reasonable resolution regarding the effects of the Act, so that the appropriate level of
14 cost savings from the Act could be passed on to utility customers. Empire’s positions in
15 this regard remain unchanged.

16 **Q. HAS EMPIRE TAKEN ANY STEPS TO FLOW THE BENEFITS OF THE**
17 **ACT BACK TO EMPIRE’S CUSTOMERS?**

18 A. Yes. When Empire served its Response to Show Cause Motion and Order in File No.
19 ER-2018-0228 on March 19, 2018, on Staff, OPC, and all other parties, Empire stated
20 that it was very interested in meeting with Staff, OPC, and other stakeholders to
21 discuss the best way to move forward in the case and suggested April 10 for a
22 conference call/meeting. The conference was ultimately scheduled for April 12, 2018,
23 and Empire provided information regarding estimated tax savings resulting from the
24 Act and answered questions of the parties.

1 **Q. WHAT WAS THE RESULT OF THE APRIL 12 TECHNICAL/SETTLEMENT**
2 **CONFERENCE?**

3 A. Settlement discussions continued after the initial conference, and, on April 24, 2018,
4 Empire, the Missouri Division of Energy, the Midwest Energy Consumers Group,
5 Renew Missouri Advocates, and Staff (collectively, the “Signatories”) filed a Non-
6 Unanimous Stipulation and Agreement (the “Stipulation”) in Case Nos. ER-2018-
7 0228 (the Commission-initiated rate case for Empire) and EO-2018-0092 (Empire’s
8 Customer Savings Plan). The provisions of the Stipulation stemming from Case No.
9 ER-2018-0228, an annual base rate revenue requirement reduction and an excess
10 ADIT provision, taken together, would provide the full benefits of the Act to
11 Empire’s customers, with a rate reduction to take effect October 1, 2018.

12 **Q. WAS THE STIPULATION APPROVED BY THE COMMISSION?**

13 A. No, it has not been approved by the Commission. OPC filed an objection to the
14 Stipulation in both dockets, and a full evidentiary hearing was held in Empire’s
15 Customer Savings Plan docket, Case No. EO-2018-0092, with the Stipulation serving
16 as the joint position of the Signatories on all issues. The Commission has not yet
17 issued its report and order in Case No. EO-2018-0092.

18 **Q. IF THIS DOCKET IS DISMISSED, WILL EMPIRE’S CUSTOMERS STILL**
19 **BE ABLE TO REALIZE THE BENEFITS OF THE ACT?**

20 A. Yes. The annual base rate revenue requirement reduction and the excess ADIT
21 provision of the Stipulation filed in Case Nos. EO-2018-0092 and ER-2018-0228,
22 taken together, will provide the full benefits of the Act to Empire’s customers.

1 **Q. IF THIS DOCKET IS DISMISSED AND THE STIPULATION IS NOT**
2 **APPROVED, WILL EMPIRE’S CUSTOMERS STILL BE ABLE TO**
3 **REALIZE THE BENEFITS OF THE ACT?**

4 A. Yes. Section 393.137 (as created by SB564) does not provide the Commission with
5 any additional authority over Empire’s rates. If the Stipulation filed in Case Nos. EO-
6 2018-0092 and ER-2018-0228 is not approved, Case No. ER-2018-0228 will remain
7 open and will be the appropriate place for the Commission to take up and consider the
8 proper means by which to address the impact of the Act on Empire and its customers.
9 If the Stipulation is not approved, Empire would like to continue the settlement
10 discussions which began in Case No. ER-2018-0228 back in April of 2018, or
11 otherwise work with the parties and the Commission in the further processing of that
12 Commission-initiated general rate proceeding.

13 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

14 A. Yes.