

Exhibit No.:	_____
Issues:	Responses to Proposed Conditions
Witness:	Peter Eichler
Exhibit Type:	Surrebuttal
Sponsoring Party:	Liberty Utilities
Case No.:	EM-2016-0213
Date:	August 5, 2016

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. EM-2016-0213

FILED

SEP 6 2016

SURREBUTTAL TESTIMONY

Missouri Public
Service Commission

OF

PETER EICHLER

ON BEHALF OF

LIBERTY UTILITIES (CENTRAL) CO.

*Empire/
Liberty* Exhibit No. 931VP
 Date 8-30-16 Reporter KF
 File No EM-2016-0213

**SURREBUTTAL TESTIMONY
PETER EICHLER
LIBERTY UTILITIES (CENTRAL) CO.
CASE NO. EM-2016-0213**

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1 **SURREBUTTAL TESTIMONY**
 2 **PETER EICHLER**
 3 **LIBERTY UTILITIES (CENTRAL) CO.**
 4 **CASE NO. EM-2016-0213**

5
 6 **INTRODUCTION**

7
 8 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

9 A. My name is Peter Eichler and my business address is 354 Davis Road, Oakville,
 10 Ontario Canada L6J 2X1.

11 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

12 A. I am employed by Liberty Utilities (Canada) Corp. as Vice President of Strategic
 13 Planning.

14 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN THIS CASE?**

15 A. Yes, I have submitted direct testimony in this proceeding.

16
 17 **PURPOSE**

18 **Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

19 A. I will respond to the conditions proposed in the Rebuttal Testimony of the staff of
 20 the Missouri Public Service Commission (“Staff”) regarding financial conditions
 21 and affiliate transaction conditions they seek to impose on this transaction.

22 I will respond generally to the allegations found in the rebuttal testimony of the
 23 Office of the Public Counsel (“OPC”) that there are detriments associated with
 24 the proposed transaction that are not outweighed by benefits.

25 Finally, I will address the following individual issues that were raised in the OPC
 26 rebuttal testimony:

- 1 • Merger Standard;
- 2 • Montana Status;
- 3 • Ring Fencing Provisions;
- 4 • Public Company Cost Savings and CIS Conversion Benefits;
- 5 • Accounting and Tax Issues;
- 6 • Transaction and Transition Costs;
- 7 • Affiliate Transactions/CAM; and,
- 8 • SERP Benefits.

9

10

STAFF CONDITIONS

11 **Q. IN HER REBUTTAL TESTIMONY ON PAGE 7, LINES 17-19, STAFF WITNESS**
12 **BOLIN STATES THAT “STAFF HAS DETERMINED THAT THE MERGER**
13 **WOULD BE DETRIMENTAL TO THE PUBLIC INTEREST UNLESS THE**
14 **CONDITIONS RECOMMENDED BY STAFF AND LISTED ON SCHEDULE**
15 **KKB-R2 ARE ORDERED BY THE COMMISSION.” DO YOU AGREE WITH**
16 **MS. BOLIN’S STATEMENT?**

17 **A.** No. As I will explain below, I do not believe that the proposed merger represents
18 a detriment to the public interest. However, I do understand that the Staff has
19 expressed its concerns and I do not object to many of the Staff conditions, with
20 some slight modifications.

21 **Q. WITH WHAT CONDITIONS DO THE JOINT APPLICANTS AGREE?**

22 **A.** After further discussion with Staff, Staff and the Joint Applicants have entered
23 into a Stipulation and Agreement that was filed with the Commission on August

1 4, 2016. The Joint Applicants support those conditions (along with the
2 provisions found in the various stipulations and agreements filed with the
3 Commission on July 19, 2016) and believe they represent a reasonable
4 resolution of this case in a way that will certainly protect against any potential
5 detriment that might be associated with the proposed transaction and, the Joint
6 Applicants would argue, actually provide benefits to the public that would not be
7 in place in the absence of the proposed transaction.

8
9 **BENEFITS OUTWEIGH ANY POTENTIAL DETRIMENTS**

10 **Q. OPC WITNESS MARKE HAS TAKEN THE FOLLOWING POSITION IN HIS**
11 **REBUTTAL TESTIMONY: “OPC RECOMMENDS THE COMMISSION REJECT**
12 **THE APPLICATION OF THE PROPOSED ACQUISITION AS IT WOULD**
13 **RESULT IN A DETRIMENT TO RATEPAYERS.” HOW DO YOU RESPOND**
14 **TO THIS STATEMENT?**

15 A. I believe Mr. Marke is wrong. First, as I will discuss in greater detail below, I
16 believe that he is attempting to change the standard that has been previously
17 established by the Missouri Supreme Court and applied by the Missouri Public
18 Service Commission (“Commission”).
19 Second, I do not believe that there is any detriment resulting from this
20 transaction. Contrary to OPC witness Marke's assertion, “detriment” does mean
21 a decline from the *status quo*. Unlike an asset purchase or even some stock
22 purchases, there is no change in the utility operating company, assets, or
23 personnel that are associated with the proposed transaction.

1 Third, recognizing the concerns of others, the Joint Applicants have entered into
2 stipulations and agreements with the City of Joplin; Empire District Retired
3 Members & Spouses Association LLC; Missouri Division of Energy and Earth
4 Island Institute d/b/a Renew Missouri; International Brotherhood of Electrical
5 Workers (“IBEW”) Local 1464 and IBEW Local 1474; and the Laborer’s
6 International Union of North America. Moreover, as indicated above: 1) the Joint
7 Applicants have executed a Stipulation and Agreement with Staff; and, 2) the
8 Joint Applicants agree with many conditions proposed by the OPC, or slight
9 variations of those conditions.

10 Lastly, to the extent there are any perceived remaining detriments, they are offset
11 by the many commitments made by the Joint Applicants that provide assurances
12 beyond those which would exist under the *status quo*.

13 **Q. OPC WITNESS PFAFF SUGGESTS THAT IT IS “CRITICAL THE**
14 **COMMISSION CONSIDER THOSE RISKS THAT ARE UNIDENTIFIABLE DUE**
15 **TO THE APPLICANTS’ LACK OF SUPPORTING EVIDENCE.” (PAGE 14,**
16 **LINES 1-5) DO YOU KNOW WHAT THE “UNIDENTIFIABLE RISKS” MIGHT**
17 **BE?**

18 A. No. This is an impossible question. However, I would point out that, collectively,
19 the parties and witnesses to this case have worked through many utility merger
20 and acquisition applications and regulated many of those entities after the closing
21 of the mergers and acquisitions. Over the past four and a half to five months,
22 those parties and witnesses have asked and the Joint Applicants have answered

1 [hundreds] of data requests, and the Commission can be assured that a thorough
2 vetting has been completed.

3 Additionally, this fear of “unidentifiable risks” ignores the fact that this
4 Commission has over ten years of positive working experience working with
5 Liberty Utilities Co. (“Liberty Utilities”) subsidiaries and its previous acquisition of
6 Missouri utilities. As Mr. Beecher points out in his Surrebuttal Testimony, The
7 Empire District Electric Company (“Empire”) was pleased to find a merger partner
8 that not only shared similar values, but was in its own backyard.

9 **Q. OPC WITNESS PFAFF FURTHER ALLEGES THAT THERE ARE**
10 **“SIGNIFICANT RISKS THAT WOULD BE TRANSFERRED TO RATEPAYERS**
11 **IF THE PROPOSED MERGER WERE APPROVED.” (PAGE 3, LINES 7-8) ARE**
12 **THERE ANY SUCH RISKS BEING TRANSFERRED?**

13 A. No. There has been no credible harm associated with the proposed transaction
14 cited by OPC. His concerns are addressed by the Joint Applicants’ testimony
15 pointing out the lack of detriment associated with the proposed transaction,
16 which, in many cases, is backed up with proposed conditions that would further
17 insure that no detriment would result from the proposed transaction.

18 **Q. WILL THE REGULATION OF EMPIRE BECOME MORE DIFFICULT FOR THE**
19 **COMMISSION AS A RESULT OF THE PROPOSED TRANSACTION AS**
20 **ALLEGED BY OPC WITNESS PFAFF? (PAGE 10, LINE 18 – PAGE 11, LINE**
21 **7)**

22 A. No. The corporate structure of Empire will not change, except for it becoming
23 fully owned by a holding company as opposed to being a publicly traded entity.

1 However, this structure is nothing that the Commission is unaccustomed to
2 seeing or regulating. To illustrate this, Empire is the only electric or natural gas
3 public utility operating in Missouri that does not have a holding company
4 structure. The Commission has shown itself capable of dealing with any issues
5 unique to this structure.

6
7 **MERGER STANDARD**

8 **Q. MR. MARKE STATES AT PAGES 3 AND 4 OPC'S POSITION ON THE**
9 **STANDARD OF APPROVAL THE COMMISSION MUST APPLY IN ITS**
10 **REVIEW OF THE JOINT APPLICATION. DO YOU AGREE WITH MR.**
11 **MARKE'S POSITION STATEMENT?**

12 **A.** I am not an attorney, but it is my understanding based on discussion with counsel
13 that the Commission must approve the Joint Application unless the proposed
14 acquisition is detrimental to the public interest. There is no need to show that
15 there is a positive benefit being derived from such a transaction; however, any
16 such showing of benefit would certainly establish that there will be no detrimental
17 impact.

18 With this standard in mind, the Joint Applicants filed the direct testimony and
19 schedules of four witnesses showing that the proposed transaction will not result
20 in a rate increase or a deleterious effect on customer service. To the contrary,
21 the Joint Applicants have demonstrated that the public will be benefitted by the
22 transaction in a number of ways, both immediately and longer term.

1 Mr. Marke's testimony on this subject is muddled. He appears to define the no
2 detriment standard, but then makes contradictory statements such as that an
3 acquisition cannot "be judged as merely a decline from the immediate *status*
4 *quo*." Shortly thereafter, he strongly suggests that any merger or acquisition
5 transaction should "produce a public benefit." He also states that an acquisition
6 "must offer enforceable promises" of new products or services, cost savings,
7 improved responsiveness to customers, or better response times. I conclude
8 from this that OPC's position on this topic is that Missouri should be a "public
9 benefits" state.

10 **Q. DOES MR. MARKE POINT TO ANY COMMISSION OR MISSOURI COURT**
11 **DECISION AS SUPPORT FOR OPC'S POSITION?**

12 A. No.

13 **Q. DO YOU AGREE WITH MR. PFAFF'S CONTENTION THAT THERE IS NO**
14 **REAL DIFFERENCE BETWEEN THE NO DETRIMENT STANDARD IN**
15 **MISSOURI AND THE POSITIVE BENEFITS TEST UTILIZED IN SOME OTHER**
16 **JURISDICTIONS?**

17 A. No. I believe the words mean what they say and that they mean two quite
18 different things. The plain language of the Commission's rule speaks for itself. If
19 Mr. Pfaff's testimony is to be accepted, there would be no need to have differing
20 standards on a state by state basis, as essentially there would only be one
21 universal merger standard. In further support of that point, attached hereto as
22 **Sur. Schedule PE-1 Proprietary** is a chart from a Regulatory Research
23 Associates ("RRA") April 6, 2016 Special Report concerning utility commission

1 merger and acquisition review standards on a state by state basis. The chart
2 specifically distinguishes between states with “no net harm” standards and those
3 with “net benefit” standards. Joint Applicant witness Steven Fetter also will testify
4 to this point.

5 **Q. DO YOU BELIEVE THE JOINT APPLICANTS HAVE MET THEIR BURDEN OF**
6 **DEMONSTRATING THAT THE PROPOSED TRANSACTION IS NOT**
7 **DETRIMENTAL TO THE PUBLIC INTEREST?**

8 A. Yes, as I noted above. Furthermore, my review of the rebuttal testimony of the
9 three OPC witnesses convinces me that they have not demonstrated that there is
10 a detrimental aspect to the transaction. To the extent there may be detriments,
11 they are addressed by agreed-to conditions or are offset by the benefits the
12 acquisition will create.

13
14 **STANDARD & POORS NEGATIVE OUTLOOK**

15 **Q. OPC WITNESS AZAD IN HER REBUTTAL TESTIMONY (PAGES 6 THROUGH**
16 **9) DISCUSSES A REPORT ISSUED BY STANDARD & POORS (“S&P”)**
17 **CHANGING ITS OUTLOOK FOR EMPIRE FROM ‘DEVELOPING’ TO**
18 **‘NEGATIVE’ AS AN INDICATION THAT THE PROPOSED TRANSACTION IS**
19 **EVIDENCE OF FINANCIAL RISK POSING A POTENTIAL DETRIMENT. DO**
20 **YOU AGREE?**

21 A. Not at all. Joint Applicants witness Fetter addresses the context of the S&P
22 action in more detail. In doing so, he notes the concern expressed by S&P is

1 very targeted because the scenario under which any negative action would occur
2 would be if the convertible debentures are not converted to equity.

3 **Q. WHAT DO YOU HAVE TO SAY ABOUT ALGONQUIN POWER & UTILITIES**
4 **CORP.'S ("ALGONQUIN") ABILITY TO SUCCESSFULLY EXECUTE ON ITS**
5 **FINANCING PLAN?**

6 A. The structure of the convertible debentures is such that debenture holders have
7 the right to convert their debentures to equity upon the closing of the transaction.
8 Given that the conversion of the debt to equity would be priced based on share
9 price at the time of the original issuance of the convertible debt (\$10.60), which is
10 significantly lower than the recent trading range (~\$12.25-\$12.50), and that there
11 is no coupon payable on the debentures subsequent to the closing of the
12 Transaction, there is a large economic disincentive for debenture holders not to
13 convert. In other words, the scenario that Ms. Azad paints as certain is abstract
14 at best, extremely unlikely at worst.

15 **Q. MS. AZAD, AT PAGE 7 OF HER REBUTTAL TESTIMONY, ADDRESSES**
16 **S&P'S THRESHOLD FOR A RATINGS DOWNGRADE AS BEING**
17 **TRIGGERED BY AN ADJUSTED FUNDS FROM OPERATIONS ("AFFO") TO**
18 **DEBT RATIO OF LESS THAN 14%. SHE FURTHER TESTIFIES THAT THE**
19 **IMPACT OF THE PROPOSED TRANSACTION ON ALGONQUIN WILL**
20 **RESULT IN A RATIO OF APPROXIMATELY 10.5%. HOW DO YOU**
21 **RESPOND?**

22 A. Frankly, if that were true, S&P would likely have downgraded Algonquin and
23 Liberty Utilities' credit rating, which clearly it did not. As I stated above, in order

1 for Ms. Azad's hypothetical scenario to manifest itself, the convertible debentures
2 would need to remain unconverted. The practical realities of the transaction are
3 that it is near certain that the debentures will be converted; and it is for that
4 reason the S&P merely placed a negative outlook rather than any rating action or
5 credit watch.

6
7 **MONTANA ISSUES**

8 **Q. MR. PFAFF MENTIONS A REGULATORY CIRCUMSTANCE THAT**
9 **OCCURRED RECENTLY IN MONTANA AS INDICATING "A LACK OF**
10 **RESPECT FOR THE STATE REGULATORY REVIEW PROCESS." (PAGE 7,**
11 **LINE 1 – PAGE 8, LINE 2) DO YOU HAVE EXPERIENCE WITH THIS**
12 **MATTER?**

13 A. Yes.

14 **Q. CAN YOU GIVE THE COMMISSION SOME BACKGROUND AND CONTEXT**
15 **CONCERNING THE CIRCUMSTANCES THAT GAVE RISE TO THE**
16 **MOUNTAIN WATER COMPANY?**

17 A. The circumstance of the acquisition of Western Water Holdings, LLC, an entity
18 which is a parent holding company of Mountain Water Co. and its sister utilities in
19 California, Park Water, is entirely unique in that while the Montana Public Service
20 Commission ("MTPSC") does not have jurisdiction over acquisitions of holding
21 companies, it nevertheless has been a custom of utility companies to seek the
22 approval of the MTPSC. Complicating the transaction was that prior to Liberty
23 Utilities' ownership, the City of Missoula began an eminent domain proceeding to

1 acquire the assets of Mountain Water Co.. Ultimately, Liberty Utilities sought and
2 received approval in California and, given that the MTPSC's authority does not
3 extend to approving acquisitions at parent level entities, the transaction was
4 completed. Interestingly, while Mr. Pfaff went to great lengths to describe Liberty
5 Utilities' alleged "lack of respect" for the regulatory process, he conveniently
6 neglected to note that prior to the filing of his testimony, on July 6, 2016, Liberty
7 Utilities filed a joint stipulation with the Staff of the MTPSC that resolved all
8 outstanding issues between Liberty Utilities and the MTPSC.

9 This resolution and working directly together with the MTPSC staff demonstrates
10 the exact opposite of what Mr. Pfaff is implying, insomuch as that in this instance,
11 when Liberty Utilities recognized a problem, it worked proactively with the
12 MTPSC to create a solution which has demonstrated benefits for the citizens of
13 Missoula. This benefit can be encapsulated in the order issued on July 29, 2016,
14 which states:

15 "The Commission finds that the Revised Stipulation represents a reasonable
16 resolution of the issues in the case and that approval of it is in the public interest.
17 Mountain Water's agreement to provide \$150,000 to the Human Resources
18 Council will directly aid Mountain Water customers who may need assistance in
19 covering the costs associated with replacing service lines or installing meters.
20 Moreover, Mountain Water's agreement to not seek judicial review of the revenue
21 reduction ordered in Docket D2016.2.15 will ensure that customers will, for the
22 foreseeable future, directly benefit in the form of reduced rates. Mountain Water
23 customers will receive substantial value from both the available funds to help
24 cover needed costs to replace service lines and install meters, and the reduction
25 in their water rates. Mountain Water's agreement to not seek recovery of any
26 costs related to the Liberty acquisition, as well as its consent that the ring fencing
27 provisions enumerated in Docket D2011.1.8 will remain in place, and be
28 reviewed, provide additional protection to Mountain Water's customers. Mountain
29 Water ratepayers are better served by the terms and conditions of the Revised
30 Stipulation than court actions to impose fines on Mountain Water."
31

1 **Q. WHAT SHOULD THE COMMISSION KNOW IN REGARD TO THIS SUBJECT?**

2 A. As a preliminary matter, the Commission has had over 10 years of first-hand
3 experience with Liberty Utilities since its acquisition of the water and sewer
4 assets of Silverleaf Resort in 2005. More recently in 2011, the organization
5 purchased the natural gas assets of Atmos Energy Corporation. During that
6 time, the organization has endeavored to be a good corporate citizen, a
7 responsible provider of public services, and I believe it has a good working
8 relationship with Staff. Liberty Utilities at all times has striven to be responsive
9 to, and respectful of, the Commission. In this particular case, the existing
10 management team at Empire will remain in place, so there will be no change in
11 the day-to-day operations.

12 The Montana experience is not a bellwether of how Empire under new ownership
13 will approach the Commission's statutory responsibilities. I am disappointed that
14 although the OPC requested responses to hundreds of data requests under
15 almost every operational area, not a single request was made for context on the
16 Montana situation. I am further disappointed by Mr. Pfaff's seemingly purposeful
17 disregard of Liberty Utilities' history as an owner of operating utilities in Missouri,
18 and facts that occurred prior to the filing of his testimony which demonstrate the
19 resolution of the issues with the Montana PSC.

20

21

RING-FENCING PROVISIONS

22 **Q. OPC WITNESS PFAFF IDENTIFIES SEVERAL SUBJECTS – CORPORATE**
23 **GOVERNANCE, LEGAL STRUCTURE, RECORDS ACCESS, AND FINANCIAL**

1 **MEASURES – UNDER THE TITLE “RING-FENCING” AND DESCRIBES THIS**
2 **AS “MEASURES THAT INSULATE A UTILITY FROM ITS AFFILIATES.”**

3 **(PAGE 22, LINE 1 – PAGE 23, LINE 5) IS THAT DEFINITION CONSISTENT**
4 **WITH YOUR USE OF THE PHRASE “RING-FENCING”?**

5 A. Generally, yes.

6 **Q. DO THE JOINT APPLICANTS OBJECT TO THE USE OF RING-FENCING**
7 **CONDITIONS?**

8 A. No. I would have no objection to reasonable ring-fencing conditions. The key is
9 determining what is reasonable.

10 **Q. ONE OF THE ITEMS OPC WITNESS PFAFF SUGGESTS AS A PART OF HIS**
11 **RING-FENCING DISCUSSION IS THAT “ALGONQUIN SHOULD INCLUDE**
12 **JOPLIN IN ITS ROTATION OF ALGONQUIN’S BOARD OF DIRECTOR’S**
13 **MEETINGS AND MEET IN JOPLIN AT LEAST ANNUALLY” TO “HELP**
14 **PROVIDE LOCAL MANAGEMENT, THIS COMMISSION, ITS STAFF, THE**
15 **OPC AND OTHER MAJOR PARTIES TO THIS PROCEEDING AN**
16 **OPPORTUNITY TO VISIT WITH THESE KEY DECISION-MAKERS WITHOUT**
17 **THE NEED TO TRAVEL TO CANADA TO DO SO, AT LEAST ONCE PER**
18 **YEAR AS A RESULT OF THIS VISIT.” (PAGE 24, LINE 14 – PAGE 25, LINE 8)**
19 **IS THIS NECESSARY?**

20 A. No. A subsidiary of Algonquin, Liberty Utilities, has operated utilities in the State
21 of Missouri for over ten years. To my knowledge, there has never been a
22 complaint that local management, the Commission, the Staff, or the OPC has
23 been unable to communicate adequately with the Company. Notwithstanding

1 this, Algonquin's Board of Directors has already held a meeting in Joplin and
2 Algonquin's senior management team intends to conduct meetings regularly in
3 Joplin as well.

4 **Q. NEVERTHELESS, ARE THE JOINT APPLICANTS WILLING TO COMMIT TO**
5 **ANNUAL MEETINGS AND VISITS WITHIN THE STATE OF MISSOURI?**

6 A. Yes. To the extent the Commission may believe this to be helpful, the Joint
7 Applicants commit that Algonquin's senior management team will conduct at
8 least one of its monthly meetings in Joplin each year.

9 **Q. UNDER THE HEADING "LEGAL STRUCTURE CONDITIONS," OPC WITNESS**
10 **PFAFF RECOMMENDS SEVERAL CONDITIONS HE BELIEVES ARE**
11 **NECESSARY FOR EMPIRE TO BE "BANKRUPTCY-REMOTE" AS TO ITS**
12 **NEW AFFILIATES. (PAGE 25, LINE 9 – PAGE 27, LINE 17) DO YOU**
13 **BELIEVE ADDITIONAL CONDITIONS ARE NECESSARY FOR EMPIRE TO**
14 **BE "BANKRUPTCY-REMOTE" AFTER THE PROPOSED TRANSACTION?**

15 A. No. As Mr. Pfaff references, we believe that the proposed acquisition is already
16 structured in a manner that will make Empire bankruptcy-remote. (Pfaff Reb.,
17 Att. RP-R16, OPC/AzP DR 5081) The reasons for that view were described in
18 an earlier response to OPC/AzP DR 5077, which stated as follows:

19 Each subsidiary of Liberty Utilities Co. has the following ring-
20 fencing measures in place which recognize and maintain the
21 separate corporate existence of each entity: (1) each subsidiary is
22 a separate legal entity which is legally separate from all other
23 businesses of APUC and its other direct and indirect subsidiaries;
24 (2) many of the subsidiaries maintain their own President or
25 General Manager based in the service territory that has full time
26 responsibility for the day-to-day operations of the utility, along with
27 operational personnel that perform daily functions for each
28 subsidiary; (3) each subsidiary maintains separate books and

1 records; (4) goods and services are generally procured through
2 contracts in the name of the particular subsidiary; (4) each
3 subsidiary is adequately capitalized, and; (5) each subsidiary owns
4 the necessary assets to conduct its business. All of these
5 measures will be applied to Empire upon consummation of the
6 transaction.

7
8 (Pfaff Reb., Att. RP-R17, OPC/AzP DR 5077)
9

10 **Q. IS THERE ALSO AN EXPLANATION OF THE LEGAL SIGNIFICANCE OF**
11 **THESE MEASURES THAT HAS BEEN PROVIDED?**

12 A. Yes. A Memorandum from outside legal counsel concerning the protections
13 provided by such separateness, including in the context of bankruptcy, has been
14 provided in response to discovery. The Memorandum concludes, in part, that ******

15 _____
16 _____
17 _____
18 _____
19 _____

20 ******* A copy of the referenced Memorandum is
21 attached hereto as **Sur. Schedule PE-2 HC (Liberty Only)**. It was previously
22 offered in this case as a schedule to the Rebuttal Testimony of OPC witness Ara
23 Azad. (Azad Reb., Att. AA-R28)

24 **Q. WHAT CONDITIONS DOES OPC WITNESS PFAFF RECOMMEND?**

25 A. He recommends the following conditions:

- 26 - Empire shall establish a bankruptcy remote special purpose entity ("SPE") that is
27 established solely for the purpose of being the direct owner of Empire. This SPE
28 shall have the following characteristics: (1) The SPE will be the direct owner of
29 Empire's shares. (2) The SPE will have no operational purpose except to hold

1 Empire's shares. (3) The SPE shall have at least one independent (non-
2 management) director. (4) The approval of the entire board of directors, including
3 the independent director, shall be required for the SPE to file a voluntary
4 bankruptcy petition.

5
6 - Within sixty (60) days after the close of the transaction, Empire shall obtain a
7 non-consolidation opinion from an unrelated reputable law firm that supports the
8 efficacy of the SPE structure.

9
10 - The costs of establishing the SPE, as well as the costs of the non-consolidation
11 opinion, shall be deemed transaction costs and shall not be recovered from
12 ratepayers.

13
14 - Empire shall not assume liability for the debts issued by Algonquin, Liberty
15 Utilities [Co.], or any of their subsidiaries or affiliates.

16
17 **Q. WILL THE JOINT APPLICANTS CREATE A SPE TO BE THE DIRECT**
18 **OWNER OF EMPIRE'S SHARES?**

19 A. The Joint Applicants will not establish an SPE. As stated above, we believe that
20 the separation previously practiced by the companies and the separation planned
21 by the companies, along with the opinion of counsel, should provide more than
22 adequate assurance of the bankruptcy-remoteness of the planned structure.

23 This is a common structure for utility holding companies.

24 Further, making such a change at this point in time would add additional cost and
25 time to the process. The Joint Applicants have already received approval from
26 the utility commissions in Oklahoma, as well as from the Federal Energy
27 Regulatory Commission, and have submitted a joint stipulation with Staff and the
28 Attorney General in Arkansas. Without some known risk that needs to be
29 addressed, there is no reason to require a change that would force a reopening
30 of the matters before those commissions.

1 **Q. DO THE JOINT APPLICANTS PLAN TO OBTAIN A NON-CONSOLIDATION**
2 **OPINION AS RECOMMENDED BY OPC WITNESS PFAFF?**

3 A. No. There is no need for such an opinion, and it is over-reaching on the part of
4 Mr. Pfaff.

5 **Q. LASTLY, WHAT IS YOUR POSITION AS TO THE PROPOSED CONDITION**
6 **THAT EMPIRE "NOT ASSUME LIABILITY FOR THE DEBTS ISSUED BY**
7 **ALGONQUIN, LIBERTY UTILITIES, OR ANY OF THEIR SUBSIDIARIES OR**
8 **AFFILIATES"?**

9 A. The Joint Applicants do not object to this condition. This approach is consistent
10 with the separateness practiced by Liberty Utilities and planned for Empire after
11 the closing of the proposed transaction.

12 **Q. UNDER THE CATEGORY OF "FINANCIAL MATTERS," OPC WITNESS**
13 **PFAFF HAS RECOMMENDED THE FOLLOWING CONDITIONS:**

- 14 - **EMPIRE SHALL NOT PAY A DIVIDEND WITHOUT PRIOR COMMISSION**
15 **APPROVAL IF ITS EQUITY TO TOTAL CAPITALIZATION RATIO, BASED ON**
16 **A 12-MONTH ROLLING AVERAGE, FALLS BELOW 45%, OR IF PAYMENT**
17 **OF DIVIDENDS WOULD CAUSE EMPIRE'S EQUITY TO TOTAL**
18 **CAPITALIZATION RATIO TO FALL BELOW THAT THRESHOLD.**
19
20 - **EMPIRE SHALL NOT PAY A DIVIDEND WITHOUT PRIOR COMMISSION**
21 **APPROVAL IF, AND DURING SUCH TIME THAT, ANY OF THE THREE**
22 **MAJOR CREDIT RATING AGENCIES (MOODY'S, STANDARD & POOR'S,**
23 **AND FITCH) ISSUE A RATING FOR EMPIRE BELOW INVESTMENT GRADE.**
24
25 - **EMPIRE SHALL ISSUE ITS OWN DEBT AND MAINTAIN ITS OWN CAPITAL**
26 **STRUCTURE, A FUNCTION OF ITS OWN DEBT AND EQUITY.**
27
28 - **EMPIRE SHALL MAINTAIN ITS OWN CREDIT RATING.**

29 **(PFAFF REB., PAGE 30, LINES 10-19) WHAT IS HIS STATED BASIS FOR**
30 **THESE CONDITIONS?**

1 A. He suggests generally that a parent company may “exploit its regulated utility
2 subsidiary’s reliable cash flows for purposes of supporting its other businesses
3 and/or its dividend to shareholders.”

4 **Q. IS THAT A RISK IN THIS SITUATION?**

5 A. No.

6 **Q. WHY NOT?**

7 A. While I acknowledge that Mr. Pfaff outlines a scenario which is at least
8 theoretically possible, Algonquin’s operating philosophy, its history in this and
9 other states, its shareholder value proposition, and its market outlook is entirely
10 inconsistent with that risk. As described in the Joint Applicants’ initial testimony,
11 Algonquin operates a portfolio of long-lived infrastructure assets to conservative
12 financial metrics that support long term growth and financial sustainability.

13 **Q. HAVING SAID THAT, IS THERE A CONDITION THAT THE JOINT**
14 **APPLICANTS WOULD SUGGEST AS AN ALTERNATIVE IN ORDER TO**
15 **PROVIDE ADDITIONAL ASSURANCE TO THE COMMISSION?**

16 A. Yes. The Joint Applicants would suggest that the following conditions should
17 provide adequate assurance to the Commission that Empire’s cash flows will not
18 be “exploited” after the closing of the transaction:

19 - LU Central agrees that Empire’s equity level will not fall below 40% of its
20 total capitalization as a result of any dividend payments made to LU Central or
21 any of its parent companies.

22 - Empire shall maintain its own credit rating.

1 These conditions, combined with the naturally ring-fenced nature of the
2 transaction, as outlined in the memorandum from our legal counsel, provide more
3 than adequate assurances that detriments are unlikely to occur.

4
5 **PUBLIC COMPANY COST SAVINGS AND CIS CONVERSION BENEFITS**

6 **Q. OPC WITNESS PFAFF SUGGESTS THAT YOU OVERSTATE COST SAVINGS**
7 **BECAUSE YOU DO NOT TAKE INTO ACCOUNT COSTS THAT WILL BE**
8 **ALLOCATED TO EMPIRE FROM LIBERTY UTILITIES CO. AND ALGONQUIN**
9 **AND THAT, THUS, ANY PURPORTED COST SAVINGS ARE**
10 **DRAMATICALLY REDUCED, IF NOT ELIMINATED (PAGE 10, LINES 10-17)**
11 **BECAUSE “EMPIRE WILL BE ALLOCATED A LARGE PORTION OF**
12 **ALGONQUIN’S COMPLIANCE COSTS” (PAGE, 32, LINES 16-17). HOW DO**
13 **YOU RESPOND TO THIS CRITICISM?**

14 **A.** The Joint Applicants understand that issues pertaining to the level of costs are
15 important. An estimation of the likely costs to be allocated for these matters was
16 provided in my Direct Testimony, and additional detail was provided in response
17 to AzP 5028 to some of the savings. Further, the Joint Applicants acknowledge
18 that any allocated costs will be subject to the Affiliate Transaction Rules, and
19 therefore will be subject to Commission scrutiny for appropriateness to be
20 included in rates in a future rate proceeding, including the basis for such charges.
21 For Ms. Azad’s claim to be true, there would have to be several assumptions,
22 including: a) that allocated costs for services will be higher than current (which
23 contradicts the conclusion reached in the analysis attached to my direct

1 testimony); b) that in the event allocated costs were higher, the Commission
2 would approve them for inclusion in rates; and, c) that there would be no other
3 mitigation of increased costs from other cost savings that may emerge in the
4 future (examples of these types of items include consolidated billing operations,
5 CIS implementation, etc). In other words, in the unlikely scenario that costs
6 increased, the Commission has authority to monitor and control against any
7 potential detriment through its ratemaking authority. The Joint Applicants
8 anticipate and expect that the Commission will avail itself of its jurisdiction in this
9 regard.

10 **Q. DOES MR. PFAFF FURTHER CRITICIZE THE SAVINGS YOU IDENTIFY**
11 **RESULTING FROM THE FACT THAT EMPIRE WILL NO LONGER BE A**
12 **PUBLICLY TRADED COMPANY?**

13 A. Yes. He suggests that there is a value to maintaining a separate board of
14 directors for Empire and that he is recommending this as a ring-fencing condition.
15 (Page 32, Lines 4-5) Presumably, this is condition 16 on his Attachment RP-
16 R22– “Empire shall maintain its own board of directors with a majority of non-
17 management, independent directors.”

18 **Q. IS THAT A CONDITION WHICH THE JOINT APPLICANTS COULD ACCEPT?**

19 A. Yes. The Joint Applicants would accept this condition.

20 **Q. WOULD ACCEPTING THAT OPC CONDITION CHANGE THE COST SAVINGS**
21 **YOU HAVE IDENTIFIED ABOVE?**

22 A. No.

1 **Q. IN HER REBUTTAL TESTIMONY AT PAGE 21-22, MS. AZAD CHALLENGES**
2 **MR. PASIEKA'S CLAIM THAT THERE IS A BENEFIT OF SCALE TO BE HAD**
3 **WITH A COMBINATION OF EMPIRE AND LIBERTY UTILITIES' CUSTOMER**
4 **INFORMATION SYSTEMS ("CIS") IN THE FUTURE. DO YOU HAVE ANY**
5 **EVIDENCE TO THE CONTRARY?**

6 **A. Yes. I have performed an analysis of the potential costs savings associated with**
7 **Empire's purchase of a CIS on a standalone basis versus the costs of purchasing**
8 **a new CIS as part of Liberty Utilities. A copy of my analysis is attached as Sur.**
9 **Schedule PE-3. This analysis demonstrates that there would be a post-merger**
10 **cost savings of approximately 20% by purchasing a CIS on a combined basis,**
11 **which would be a significant savings for Empire's customers.**

12

13

ACCOUNTING AND TAX ISSUES

14 **Q. IN HER REBUTTAL TESTIMONY (PAGE 14, LINE 1 – PAGE 17, LINE 22),**
15 **OPC WITNESS AZAD INTRODUCES WHAT SHE DESCRIBES AS**
16 **"ACCOUNTING AND TAX ISSUES." WITHIN THAT SECTION SHE**
17 **EXPRESSES A CONCERN AS TO THE POTENTIAL IMPACT OF THE**
18 **TRANSACTION ON THE BALANCE OF ACCUMULATED DEFERRED**
19 **INCOME TAXES ("ADIT") AND ACCUMULATED DEFERRED INVESTMENT**
20 **TAX CREDITS ("ADITC"). WHAT IS THE BASIS FOR HER CONCERN?**

21 **A. She indicates a concern because a data request response she received**
22 **indicated as follows:**

1 “[the balances of] deferred taxes, investment tax credits and contributions is not
2 **expected** to change as a result of the proposed merger and will remain on the
3 books of Empire.” (emphasis added)
4

5 **Q. WHY IS THERE NO CHANGE EXPECTED?**

6 A. Because the corporate entity that is Empire will not change as a result of this
7 transaction. Even after the merger, Empire will be the surviving corporation and
8 its books will not change as a result of the proposed transaction. This is also
9 “expected” because the Joint Applicants do not know of any reason this will not
10 be the result. Moreover, the Joint Applicants have agreed to a Staff proposed
11 condition that “Empire will record on its books all deferred taxes related to
12 income tax deductions or credits created by Empire’s operations.”

13 **Q. SIMILARLY, OPC WITNESS AZAD ALLEGES THERE MAY BE A DETRIMENT
14 BECAUSE A DATA REQUEST STATED THAT “NO REGULATORY ASSETS
15 AND/OR REGULATORY LIABILITIES ARE EXPECTED TO BE ESTABLISHED
16 AS A RESULT OF THE MERGER.” IS THIS A DETRIMENT?**

17 A. No. There are no regulatory assets or liabilities that will be established as a
18 result of the merger. However, even if they were, there would be no harm to
19 customers unless the Commission decided in a rate case that including those
20 assets in some way resulted in just and reasonable rates.

21 **Q. OPC WITNESS AZAD ALSO SUGGESTS THAT THERE IS A POTENTIAL
22 DETRIMENT ASSOCIATED WITH EMPIRE’S POSSIBLE CONSOLIDATION
23 INTO ANY FUTURE TAX FILING AND SEEKS A CONDITION THAT EMPIRE’S
24 PARENT COMPANY WILL INDEMNIFY “EMPIRE FOR ANY FEDERAL OR
25 LOCAL INCOME TAX LIABILITY IN EXCESS OF EMPIRE’S STANDALONE**

1 **LIABILITY FOR ANY PERIOD IN WHICH EMPIRE IS INCLUDED IN A**
2 **CONSOLIDATED INCOME TAX FILING.” (PAGE 17, LINES 10-16) HOW DO**
3 **YOU RESPOND TO THIS CONCERN?**

4 A. There is no potential detriment associated with this issue. It is my experience that
5 for the purposes of general rates, taxes are typically calculated within the rate
6 making process on a standalone basis and become a part of the revenue
7 requirement authorized by the Commission. The ultimate impact of federal and
8 local income tax liability for Empire is within the control of the Commission and,
9 therefore, I fail to see any potential detriment.

10
11 **TRANSACTION AND TRANSITION COSTS**

12 **Q. IN HER REBUTTAL TESTIMONY (PAGE 18, LINE 1 – PAGE 21, LINE 2), OPC**
13 **WITNESS AZAD OUTLINES HER DEFINITIONS OF TRANSACTION COSTS**
14 **AND TRANSITION COSTS AND SUGGESTS DEFINITIONS OF THESE**
15 **COSTS WITH AN EYE TOWARD TREATMENT IN FUTURE RATE CASES.**
16 **HOW DO THE JOINT APPLICANTS PROPOSE TO ADDRESS**
17 **TRANSACTION AND TRANSITION COSTS?**

18 A. Empire will not seek to recover transaction costs and will only seek to recover
19 transition costs where it believes the costs are reasonable and have provided
20 benefits to customers.

21 **Q. MS. AZAD CRITICIZES THE FORM OF COMMITMENT THAT THE JOINT**
22 **APPLICANTS HAVE MADE IN THIS REGARD. DO YOU HAVE PROPOSED**

1 **CONDITIONS THAT WOULD ADDRESS THESE MATTERS IN GREATER**
2 **DETAIL?**

3 A. Yes. In the Rebuttal Testimony of Staff Witness Kimberly Bolin (page 9, line 24 –
4 p. 11, line 32), Staff explained and proposed conditions related to both
5 transaction and transition costs. I have reviewed those proposed conditions and
6 the Joint Applicants would agree with the Commission’s imposition of such
7 conditions. These conditions are as follows:

- 8 - Transaction costs include, but are not limited to, those costs
9 relating to obtaining regulatory approvals, development of
10 transaction documents, investment banking costs, costs related to
11 raising equity incurred prior to the close of the Transaction,
12 payments to employees who invoke severance payment
13 agreements, and communication costs regarding the ownership
14 change with customers and employees. Empire will not seek
15 either direct or indirect rate recovery or recognition of any
16 transaction costs through any purported acquisition savings
17 “sharing” adjustment (or similar adjustment) in any future rate
18 cases.
19
- 20 - Transition costs are those costs incurred to integrate Empire under
21 the ownership of LU Central and includes integration planning and
22 execution, and “costs to achieve.” Transition costs include capital
23 and non-capital costs. Non-capital transition costs can be ongoing
24 costs or one- time costs. Non-capital transition costs can be
25 deferred on the books of LU Central or Empire to be considered for
26 recovery in future Empire rate cases. If subsequent rate recovery
27 is sought, Empire will have the burden of proving that the
28 recoveries of any transition costs are just and reasonable and the
29 costs provide benefits to its customers.
30

31 These Staff-proposed conditions provide workable definitions for both
32 transaction and transition costs, establish that there will be no recovery of
33 transaction costs, and establish a standard for review of transition costs
34 for possible recovery within the context of a rate case. This treatment is
35 also consistent with the treatment of the same issue in Liberty Utilities’

1 acquisition of Atmos Energy's assets in docket GM-2012-0037.

2

3

AFFILIATE TRANSACTIONS/CAM

4 **Q.**

**OPC WITNESS AZAD (PAGE 35, LINE 4 – PAGE 42, LINE 14) HAS
ADDRESSED THE RELATED ISSUES OF SHARED SERVICES AND COST
ALLOCATIONS AS A CONSEQUENCE OF EMPIRE BECOMING AN
INDIRECT SUBSIDIARY OF LIBERTY UTILITIES. ARE THE MATTERS
RAISED IN HER REBUTTAL TESTIMONY PROOF OF A DETRIMENTAL
IMPACT?**

9

10 **A.**

No. The question of business dealings as between Empire's upstream and
anticipated downstream affiliates is a legitimate issue, but one that already has
been addressed by the Commission.

12

13 **Q.**

HOW HAS THE COMMISSION ADDRESSED THIS MATTER?

14 **A.**

Concerns about the prospect of questionable business practices as between
operating companies and unregulated affiliates is nothing new. Since as early as
2003, the Commission has had in place detailed rules establishing accounting
and ratemaking standards regarding an electric utility's business dealings and
overhead cost allocations with unregulated affiliated companies. The general
rule is 4 CSR 240-20.015. Post-acquisition, Empire will be subject to the
requirements of this rule.

20

21 **Q.**

DID THE JOINT APPLICANTS ADDRESS THIS ISSUE IN ITS DIRECT CASE?

22 **A.**

Yes, I addressed this topic at page 13 of my Direct Testimony as follows:

23

**Q. What will be done by Empire and LU Central with regard to the
Commission's supervision of affiliate transactions?**

24

1
2 A. The utility business operated by Empire will continue to be under the
3 direct regulation of the Commission. LU Central will commit to comply with
4 the Commission's Affiliated Transaction, Marketing Affiliate Transaction
5 and HVAC Services Affiliate Transactions rules, 4 CSR 240-40.015 –
6 40.017 and 4 CSR 240-20.015 - 20.017, by keeping such records and
7 making such reports as are required by those rules. Moreover, LU Central
8 shall make records of its affiliated entities available to the Commission's
9 staff and the Office of the Public Counsel as required by those rules.

10
11 **Q. DOES LIBERTY UTILITIES CURRENTLY HAVE A COST ALLOCATION**
12 **MANUAL ("CAM") IN PLACE?**

13 A. Yes, as noted in my direct testimony, Liberty Energy (Midstates Natural Gas)
14 Corp. (now named Liberty Utilities (Midstates Natural Gas) Corp.) filed the CAM
15 in Case No. GM-2012-0037, and in Docket No. GR-2014-0152. Thereafter, a
16 complete copy of the CAM has been filed annually in March in accordance with
17 the Stipulation and Agreement filed in Case No. GM-2012-0037.

18 **Q. HOW WILL THIS ISSUE BE HANDLED DURING THE INTERIM?**

19 A. The issue can be handled in the interim by Empire and LU Central submitting an
20 Interim Cost Allocation Manual ("Interim CAM") which demonstrates the
21 processes and procedures, training, and governance required to comply with the
22 Commission's Affiliate Transaction Rules within 2 weeks of closing the
23 Transaction. This would provide the ability to comply with the Commission rules
24 while allowing the operating flexibility to finalize a permanent CAM which can be
25 submitted to the Commission for its approval.

26 **Q. HAVE ANY OTHER WITNESSES ADDRESSED THE ISSUE OF AFFILIATE**
27 **TRANSACTIONS?**

1 A. Yes. Staff witness Robert Schallenberg addresses this issue in his rebuttal
2 testimony. Among other things, Mr. Schallenberg at page 14 of his Rebuttal
3 Testimony claims that this situation will represent non-compliance with the rule
4 by Empire for a six-month period.

5 **Q. DO YOU AGREE WITH THIS STATEMENT?**

6 A. No. The affiliate transaction rule does not require a Commission-approved CAM.
7 In fact, I understand few Missouri utilities currently have a Commission-approved
8 CAM. Having said this, I agree that compliance for the utility and regulator is
9 certainly easier when allocations are made in accordance with an established
10 CAM. Unfortunately, what Mr. Schallenberg identifies is something of a chicken-
11 and-egg conundrum. No CAM can be worked out prior to the closing because
12 Empire currently is an entity entirely independent of Liberty Utilities. Day one
13 after the closing, Empire would be owned directly by LU Central and indirectly by
14 Liberty Utilities, and cost allocation practices become a legitimate regulatory
15 consideration. The fact of the matter is that there will be an unavoidable gap
16 necessary to revise the CAM to address new circumstances and to file it with the
17 Commission. The question becomes how to handle the situation in the
18 meantime such that there is no adverse impact on customer rates.

19 **Q. DO YOU BELIEVE THE SITUATION CAN BE ADDRESSED IN A**
20 **SATISFACTORY MANNER?**

21 A. Yes. As I described above, an Interim CAM can be developed for a short period
22 of time until a more permanent CAM can be submitted, and to the extent
23 necessary, approved by the Commission.

1 Q. MR. SCHALLENBERG AT PAGE 16 OF HIS REBUTTAL TESTIMONY HAS
2 PROPOSED THREE CONDITIONS TO APPROVAL OF THE JOINT
3 APPLICATION TO ADDRESS HIS CONCERNS ABOUT AFFILIATE
4 TRANSACTIONS AND CAM CONSIDERATIONS. ARE THOSE CONDITIONS
5 ACCEPTABLE TO THE JOINT APPLICANTS?

6 A. Yes. The Joint Applicants would not object to an order approving the Joint
7 Application that contains the conditions proposed by Mr. Schallenberg.
8

9 **SERP BENEFITS/HOLDING COMPANY STRUCTURE**

10 Q. W. KEITH WILKINS FOR THE EMPIRE DISTRICT ELECTRIC SERP
11 RETIREES (“EDES”) HAS FILED TESTIMONY REQUESTING THAT THE
12 COMMISSION MANDATE THAT EMPIRE CONTRIBUTE NEARLY \$10
13 MILLION DOLLARS TO A RABBI TRUST FOR THE BENEFIT OF ITS
14 SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN (“SERP”)
15 PARTICIPANTS. WHAT IS YOUR RESPONSE?

16 A. Mr. Pasioka addresses this topic in his Surrebuttal Testimony and I certainly
17 agree with his assessment. I would simply observe that the detriments alleged
18 by Mr. Wilkins are based on speculation and conjecture. They are not real,
19 measurable, or likely to occur. He does not identify any actual, present detriment
20 to the SERP participants that will come about as a consequence of the proposed
21 transaction. To the contrary, the terms of the Agreement and Plan of Merger
22 actually provide more assurances to the SERP participants than they currently

1 enjoy. Not only has no detriment been identified by the EDES, but they actually
2 will be benefitted if the transaction is approved.

3 **Q. WHAT IS THE JUSTIFICATION MR. WILKINS PROVIDES FOR MAKING THIS**
4 **RECOMMENDATION?**

5 A. Mr. Wilkins provides his analysis at pages 4, line 21 through page 8, line 16.
6 Generally, Mr. Wilkins contends that Empire post-merger will be financially
7 weaker and that the parent company, Algonquin, will be subject to a number of
8 financial and business risks that may extend to Empire.

9 **Q. CAN YOU ELABORATE ON MR. WILKINS' SPECIFIC CONCERNS?**

10 A. He identifies a number of concerns. He suggests that the premium to be paid to
11 Empire stockholders presents "a risk of a write-down of a portion of the goodwill,
12 which could result in a charge to earnings." He states a concern that the post-
13 merger retained earnings of Algonquin represent a weaker balance sheet which
14 represents an increased risk to Empire. He states that Algonquin's financial
15 profile is "more complex" than that of Empire and that this "potentially" results in
16 increased risk. He states there is a "potential for arbitrage in tax rates between
17 Canada and the United States" and "currency swings" which "obviously increases
18 risk."

19 **Q. DOES MR. WILKINS ADDRESS ANY OTHER CONCERNS?**

20 A. Yes. He states that "[i]f Algonquin were to go bankrupt, the assets of Empire
21 could be at risk", presumably, of being subject to creditor claims.

22 **Q. HAS MR. WILKINS PERFORMED A QUANTITATIVE RISK ASSESSMENT IN**
23 **SUPPORT OF ANY OF HIS ALLEGATIONS?**

1 A. Mr. Wilkins' workpapers provided in accordance with the Commission's
2 scheduling order did not include a risk assessment performed by him.
3 Nevertheless, Algonquin is a healthy organization with a conservative balance
4 sheet. Mr. Wilkins' assessment outlines a very unlikely scenario.

5 **Q. HAVE YOU ALSO REVIEWED THE REBUTTAL TESTIMONY OF OPC**
6 **WITNESS ARA AZAD?**

7 A. Yes. I have reviewed and will respond to that portion of Ms. Azad's rebuttal
8 testimony entitled "Background of Merger." (Page 4, line 1 - page 13, line 18)

9 **Q. PLEASE SUMMARIZE THIS PORTION OF MS. AZAD'S REBUTTAL**
10 **TESTIMONY.**

11 A. Ms. Azad offers a background of the proposed transaction along with her
12 observations about its financial and business circumstances. She also discusses
13 her conclusions as to risks and potential detriments to Empire.

14 **Q. DO YOU AGREE WITH MS. AZAD'S ASSESSMENTS?**

15 A. No. Ms. Azad's conclusions about the impact of the proposed transaction on
16 Empire post-merger are largely speculative and remote. She does not identify
17 any detriment that actually will occur as a direct consequence of the proposed
18 transaction. I do not believe that general allegations about "added risk" without a
19 quantitative assessment of the specific alleged risk provide grounds for the
20 Commission to conclude there is a public detriment associated with the post-
21 merger corporate structure.

22 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

23 A. Yes, it does.

24


VERIFICATION

PROVINCE ONTRAIO)
CANADA) ss:
)

I, Peter Eichler, being first duly sworn on oath, depose and state that I am the witness identified in the foregoing Surrebuttal Testimony of Peter Eichler; that I have read the testimony and am familiar with its contents; and that the facts set forth therein are true and correct.

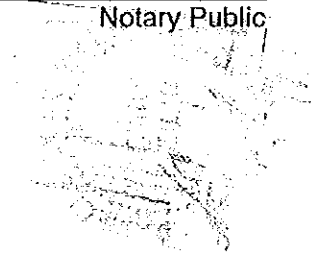


SUBSCRIBED AND SWORN to before me this 2 day of August, 2016.



Notary Public

Commission/Appointment Expires: Does not expire



SUR. SCHEDULE PE-1 PROPRIETARY
HAS BEEN IDENTIFIED AS PROPRIETARY
IN ITS ENTIRETY

SUR. SCHEDULE PE-2 HC (LIBERTY ONLY)

HAS BEEN IDENTIFIED AS HIGHLY CONFIDENTIAL

IN ITS ENTIRETY

EICHLER SUR. SCHEDULE PE-3

The Empire District Electric Company
 CIS Investment
 Estimated Merger Savings

Assumptions

Empire Stand-Alone CIS Investment Cost of \$35 Million
 Empire Estimated Savings on CIS Investment Post-Merger of 20%
 Depreciable Life of Seven Years
 Marginal Income Tax Rate of 38%
 Empire Capital Structure of 50% Equity and 50% Debt
 Empire Cost of Debt of 4.5%
 Empire Cost of Equity of 9.75%

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>	<u>G</u>	<u>H</u>	<u>I</u>
	<u>Year 0</u>	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>	<u>Year 6</u>	<u>Year 7</u>	<u>Total</u>
<u>L</u>	<u>(Millions)</u>	<u>(Millions)</u>	<u>(Millions)</u>	<u>(Millions)</u>	<u>(Millions)</u>	<u>(Millions)</u>	<u>(Millions)</u>	<u>(Millions)</u>	<u>(Millions)</u>
1 Stand Alone Investment	\$ 35.00	\$ 35.00	\$ 35.00	\$ 35.00	\$ 35.00	\$ 35.00	\$ 35.00	\$ 35.00	\$ 35.00
2 Consolidation Discount	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20
3 Post-Merger Investment Savings	\$ 7.00	\$ 7.00	\$ 7.00	\$ 7.00	\$ 7.00	\$ 7.00	\$ 7.00	\$ 7.00	
4 Straight-line Depreciation Rate		0.14	0.14	0.14	0.14	0.14	0.14	0.14	
5 Straight-line Depreciation Expense		\$ 1.00	\$ 1.00	\$ 1.00	\$ 1.00	\$ 1.00	\$ 1.00	\$ 1.00	\$ 7.00
6 Accumulated Depreciation Expense		\$ 1.00	\$ 2.00	\$ 3.00	\$ 4.00	\$ 5.00	\$ 6.00	\$ 7.00	
7 Tax Depreciation Rate (MACRS Table A-1)		0.20	0.32	0.19	0.12	0.12	0.06	-	
8 Tax Depreciation Expense		\$ 1.40	\$ 2.24	\$ 1.34	\$ 0.81	\$ 0.81	\$ 0.40	\$ -	
9 Excess Tax Depreciation		\$ 0.40	\$ 1.24	\$ 0.34	\$ (0.19)	\$ (0.19)	\$ (0.60)	\$ (1.00)	
10 Marginal Income Tax Rate		0.38	0.38	0.38	0.38	0.38	0.38	0.38	
11 Deferred Income Tax Expense		\$ 0.15	\$ 0.47	\$ 0.13	\$ (0.07)	\$ (0.07)	\$ (0.23)	\$ (0.38)	
12 Accumulated DIT		\$ 0.15	\$ 0.62	\$ 0.75	\$ 0.68	\$ 0.61	\$ 0.38	\$ -	
13 Rate Base Savings (Previous Y/E)		\$ 7.00	\$ 5.85	\$ 4.38	\$ 3.25	\$ 2.32	\$ 1.39	\$ 0.62	
14 Pre-tax Weighted Cost of Debt		0.02	0.02	0.02	0.02	0.02	0.02	0.02	
15 Interest Expense Savings		\$ 0.16	\$ 0.13	\$ 0.10	\$ 0.07	\$ 0.05	\$ 0.03	\$ 0.01	\$ 0.56
16 Pre-tax Weighted Cost Of Equity		0.08	0.08	0.08	0.08	0.08	0.08	0.08	
17 Return on Equity Savings		\$ 0.55	\$ 0.46	\$ 0.34	\$ 0.26	\$ 0.18	\$ 0.11	\$ 0.05	\$ 1.95
18 Revenue Requirement Savings		\$ 1.71	\$ 1.59	\$ 1.44	\$ 1.33	\$ 1.23	\$ 1.14	\$ 1.06	\$ 9.51