

**Exhibit No.:** \_\_\_\_\_  
**Issue(s):** Response to Acquisition Impact  
**Witness/Type of Exhibit:** Pfaff/Rebuttal  
**Sponsoring Party:** Public Counsel  
**Case No.:** EM-2016-0213

**REBUTTAL TESTIMONY**

**OF**

**RYAN PFAFF**

Submitted on Behalf of the Office of the Public Counsel

**THE EMPIRE DISTRICT ELECTRIC COMPANY, LIBERTY UTILITIES  
(CENTRAL) CO. AND LIBERTY SUB CORP.**

CASE NO. EM-2016-0213

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**Denotes Highly Confidential Information that has been Redacted**

July 20, 2016

**NP**

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

In the Matter of The Empire District )  
Electric Company, Liberty Utilities )  
(Central) Co. And Liberty Sub Corp. )  
Concerning an Agreement and Plan of )  
Merger and Certain Related Transactions )

**Case No. EM-2016-0213**

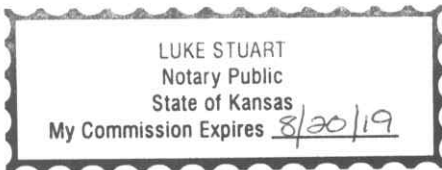
**AFFIDAVIT OF RYAN PFAFF**

STATE OF KANSAS )  
  )  
COUNTY OF JOHNSON )

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Ryan Pfaff, of lawful age and being first duly sworn, deposes and states:

1. My name is Ryan Pfaff. I am a Partner at AzP Consulting, LLC.
2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony.
3. I hereby swear and affirm that my statements contained in the attached affidavit are true and correct to the best of my knowledge and belief.



Ryan Pfaff  
Ryan Pfaff

Subscribed and sworn to me this 20th day of July 2016.

Luke Stuart

## TABLE OF CONTENTS

<b>Testimony</b>	<b>Page</b>
I. Introduction	1
II. Statutory Criteria	4
III. Findings and Overall Conclusion	6
IV. Detriments of the Proposed Acquisition and Proposed Mitigating Conditions	14
V. Conclusion	39

**REBUTTAL TESTIMONY**  
**OF**  
**RYAN J. PFAFF**  
**EMPIRE ELECTRIC COMPANY**  
**CASE NO. EM-2016-0213**

1     **I. INTRODUCTION**

2     **Q. Please state your name, title and business address.**

3     A. Ryan J. Pfaff, Partner, AzP Consulting, LLC (“AzP”), 11614 Tomahawk Creek Parkway,  
4     Suite I, Leawood, Kansas 66211.

5     **Q. Mr. Pfaff, please describe your education and employment background.**

6     A. I received my Bachelor of Science degree in Accounting from Truman State University. I  
7     began my career as a financial statement auditor at the public accounting firm,  
8     PricewaterhouseCoopers. Prior to cofounding AzP, I was Vice President at regulatory  
9     consulting firm, Overland Consulting.

10    **Q. Do you have any professional designations?**

11    A. Yes. I am a Certified Public Accountant licensed in the state of Missouri.

12    **Q. Have you previously served as expert consultant in a proposed utility merger**  
13    **review?**

14    A. Yes. Over the past ten years I have served as an expert consultant in five separate merger  
15    review proceedings. Most recently I served as an expert consultant assisting the Public  
16    Service Commission Technical Staffs of Maryland and Delaware in their review of the  
17    Exelon-PHI merger.

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1 **Q. What party do you represent?**

2 A. I provide this testimony on behalf of the Missouri Office of the Public Counsel (OPC or  
3 Public Counsel).

4 **Q. How is your testimony organized?**

5 A. This testimony is organized into the following sections:

6 I. Introduction

7 II. Statutory Criteria

8 III. Findings and Overall Conclusion

9 IV. Detriments of the Proposed Acquisition and Proposed Mitigating Conditions

10 A. Changes to Empire's Capital Investment Program

11 B. Corporate Governance and Ring-fencing

12 ■ Corporate Governance

13 ■ Legal Structure Conditions

14 ■ Access to Records

15 ■ Financial Matters

16 C. Public Company Cost Savings

17 D. Corporate Social Responsibility

18 E. Bill Credit & Rate Case Moratorium

19 V. Conclusion

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1 **Q. What is the purpose of your rebuttal testimony?**

2 A. The purpose of this rebuttal testimony is to respond to the application and testimony filed  
3 in Case No. 2016-0213 seeking Commission approval of the Liberty Utilities (Central)  
4 Co. (“LU Central”) proposed acquisition of The Empire District Electric Company  
5 (“Empire”) (together, “Joint Applicants”). LU Central acts as an indirect subsidiary of  
6 Algonquin Power Utilities Corporation (“APUC”). Specifically, my testimony contains  
7 the overall review of the merits of this case, including the significant risks that would be  
8 transferred to ratepayers if the proposed merger were approved. I also address corporate  
9 governance and ring-fencing issues, matters related to corporate social responsibility, and  
10 discuss recommendations regarding a proposed bill credit and rate case moratorium.

11 **Q. Please identify other OPC witnesses in this proceeding.**

12 A. In addition to my testimony, Ara Azad is also filing testimony on behalf of the OPC. Ms.  
13 Azad will address concerns regarding: Accounting and Tax Issues; Costs of Empire’s  
14 Customer Information System; Employment in the State of Missouri; Charitable  
15 Contributions and Community Support; Affiliate Transaction and Cost Allocation  
16 Matters. Ms. Azad will also testify on OPC’s proposed Most Favored Nation condition.

17 **Q. What documents did you review in preparing this testimony?**

18 A. In addition to the merger application and direct testimonies filed by the Joint Applicants,  
19 I reviewed data request responses provided in this proceeding; credit rating agency  
20 reports; news reports and press releases; testimonies and orders from other utility merger  
21 reviews; and the relevant Missouri statute.

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1     **II.    STATUTORY CRITERIA**

2     **Q.    What statute applies to this Application?**

3     A.    Missouri Revised Statute, Section §393.190.1 RSMo addresses transfer of property and  
4           stock and its impact on local tax, revenues, and associated statutory requirements.

5     **Q.    Joint Applicants’ Witness Krygier stated in his direct testimony that the**  
6           **“Commission must approve the transaction unless it can be shown to be detrimental**  
7           **to the public interest” [emphasis added].<sup>1</sup> Does Witness Krygier accurately interpret**  
8           **the relevant Missouri statute?**

9     A.    Witness Krygier’s view does not align with prior Commission rulings. In the Final Order  
10          approving the Aquila-Great Plains merger the Commission stated: “In cases brought  
11          under Section 393.190.1 and the Commission's implementing regulations, **the applicant**  
12          **bears the burden of proof.** That burden does not shift. Thus, a failure of proof requires a  
13          finding against the applicant” (emphasis added). I understand that to mean, the  
14          Commission must not approve the transaction unless the Applicants can show that the  
15          transaction is not detrimental to the public interest.

16    **Q.    Has this Commission provided additional guidance regarding its interpretation of**  
17          **Missouri’s public utilities merger standard and the definition of detriment and the**  
18          **public interest?**

19    A.    Yes. In its July 1, 2008 Report and Order, Case No. EM-2007-0374, the MPSC addressed  
20          a number of issues relating to its assessment of the KCP&L-Aquila merger. In that  
21          document the Commission refers to the Missouri Supreme Court’s conclusion that  
22          approval of the merger be contingent on a finding that the Applicants have met their  
23          burden to demonstrate that the transaction is not detrimental to the public interest. When

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<sup>1</sup> Direct Testimony of Christopher D. Krygier, p. 3.

1 defining a detriment, the Order states: “detriment is determined by performing a  
2 balancing test where attendant benefits are weighed against direct or indirect effects of  
3 the transaction that would diminish the provision of safe or adequate of (sic) service or  
4 that would tend to make rates less just or less reasonable.”<sup>2</sup>

5 **Q. In Witness Pasieka’s testimony, there is a short discussion about the different merger**  
6 **standards applied by state commissions. Should the Commission be concerned with**  
7 **these distinctions?**

8 A. I do not believe so. While each state has its own statutory language related to change-in-  
9 control applications for public utilities, public services commissions generally have as a  
10 primary objective to ensure that the subject utility provides safe and reliable service at a  
11 reasonable cost to its customers.

12 In a recent article written by Mark Beyer, Chief Economist of the New Jersey Board of  
13 Public Utilities, Mr. Beyer, notes that, in nearly all cases, the two standards should produce  
14 the same results. As such, practically speaking, there is no significant difference between  
15 these standards:<sup>3</sup>

16 Most jurisdictions require that the transaction must produce positive  
17 benefits, or else produce no harm. However, the difference between these  
18 two ideas – the positive benefits test versus the no-harm standard –  
19 appears to be more form than substance...Under the positive benefits test,  
20 the expected benefits must exceed expected costs for the transaction to be  
21 approved, while under the no-harm standard the expected benefits can be  
22 equal to or exceed the expected costs for the transaction to be approved. In  
23 other words, only in the case where the expected benefits are equal to the

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<sup>2</sup> EM-2007-0374 Report and Order, P. 232

<sup>3</sup> Public Utilities Fortnightly, *A Call for Consolidation*, Beyer, Mark C., July 2014.

<http://mag.fortnightly.com/article/A+Call+for+Consolidation/1751309/215625/article.html>



1 expected costs do the two standards produce different conclusions. **From**  
2 **a practical viewpoint, there is no significant difference between the**  
3 **positive benefits test and the no-harm standard.** (Emphasis Added)

4 Scott Hempling, a regulatory expert and attorney conveyed a similar sentiment in a recent  
5 online article:

6 Whether a utility merger statute prescribes "no harm" or "positive  
7 benefits," the result should be the same: a utility obligation to choose the  
8 merger that produces the maximum benefit, and provides the full benefits,  
9 net of merger costs, to the customers.<sup>4</sup>

### 10 **III. FINDINGS AND OVERALL CONCLUSION**

#### 11 **Q. What is your overall impression of the Joint Applicants' merger application filing.**

12 A. OPC recommends the Commission reject the application as filed. The Joint Applicants'  
13 merger application filing is inadequate and does not provide a sufficient basis for the  
14 Commission to approve this merger. In my opinion, fundamental criteria the  
15 Commission should use to approve this transaction is the validity and reliability of the  
16 Joint Applicants' merger application and direct testimonies. The veracity of these  
17 documents is critical because: (1) the merger filing establishes a record which provides a  
18 basis for the Commission's decision; (2) the merger filing is an indication of how genuine  
19 and forthright the Joint Applicants will be in future interactions with the Commission.

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<sup>4</sup> Hempling, S. (2014) "No Harm" Vs. "Positive Benefits": The wrong conversation about merger standards.  
<http://www.scotthemplinglaw.com/essays/no-harm-vs-positive-benefits>

1 **Q. Why do you believe the MPSC should be especially vigilant in requiring Liberty**  
2 **Utilities to provide an adequate and truthful merger application in this proceeding?**

3 A. Recent interactions between Liberty Utilities and its state regulators, particularly  
4 regarding merger and acquisition issues, are concerning because they indicate a lack of  
5 respect for the state regulatory review process. Specifically, on July 7, 2016, Liberty  
6 Utilities was fined by the Montana Public Service Commission for having evaded  
7 Montana regulatory protocol and conducted an unauthorized sale of a Montana-based  
8 water utility (Mountain Water Company). The fine assessed represented the statutory  
9 maximum. According to a press release from the Montana Public Service Commission,  
10 Commissioner Bob Lake stated:

11 I'm disappointed that Liberty...chose to circumvent the PSC's process put in  
12 place to ensure that consumers aren't harmed when a utility changes hands. . . **It**  
13 **was completely inappropriate for Liberty Utilities to skirt the laws of**  
14 **our state** (emphasis added).<sup>5</sup>

15 This sentiment was shared by Montana Public Service Commission Chairman Brad  
16 Johnson:

17 I believe that Liberty's actions are a direct attack on the Commission's  
18 authority to review this purchase application, and that, frankly, is  
19 unacceptable. **Those really harmed by Liberty's actions are the**  
20 **customers of Mountain Water**, and we are determined to ensure no

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<sup>5</sup> See Attachment RP-R1. Montana Public Service Commission. (2016). *Public Service Commission moves to sue utility companies for unauthorized sale and transfer of Missoula water system* [Press release] <http://www.psc.mt.gov/news/pr/2016pr/News%20Release-%20Legal%20Action%20Against%20Liberty.pdf>

1 further harm comes to these consumers while the water system is under  
2 our jurisdiction to regulate (emphasis added).<sup>6</sup>

3 **Q. Has OPC found any particular areas of concern in its review of the current merger**  
4 **application?**

5 A. Yes. Through review of the responses to data requests and corresponding attachments,  
6 OPC has identified several instances wherein the Joint Applicants have made claims in  
7 their application filing that are unsupported, distorted, or, in some cases, directly  
8 contradicted by underlying data.

9 For ease of reference, and to help illustrate these critical point, I have provided numerous  
10 examples below. Each example includes one or more excerpts regarding an unsupported  
11 assertion made in the Joint Applicants' direct testimonies, as well as corresponding  
12 findings for the Commission to consider when determining whether to approve the  
13 proposed merger.

14 We strongly urge the Commission to review each of the *Relevant Findings for the*  
15 *Commission's Consideration* provided below. We also encourage the Joint Applicants to  
16 respond to each of these findings in their surrebuttal. This will help ensure the  
17 Commission has a robust record on which to make its decision.

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<sup>6</sup> See Attachment RP-R2. Montana Public Service Commission. (2016). *Montana Public Service Commission reaches settlement agreement with Liberty Utilities* [Press release]  
<http://www.psc.mt.gov/news/pr/MT%20Water%20Settlement%20PR.pdf>

1 Impact on Customer Rates

2 *Assertions made by Joint Applicants in Direct Testimony*

- 3       • “Empire’s customers will see no change in their...rates.”<sup>7</sup>
- 4       • “We are confident that...the current operations will continue as they exist today and only
- 5       the ownership of Empire’s shares will change hands.”<sup>8</sup>
- 6       • “The proposed transaction will not result in any change in the rates currently charged to
- 7       Empire’s retail customers.”<sup>9</sup>

8 *Relevant Findings for the Commission’s Consideration*

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15 Impact on Empire’s Employment

16 *Assertions made by Joint Applicants in Direct Testimony*

- 17       • “The Company plans to keep all of Empire’s employees...”<sup>11</sup>
- 18       • “[The Joint Applicants’] commitment to Empire to maintain the employees . . . is
- 19       consistent with our approach to management of our utility businesses.”<sup>12</sup>

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<sup>7</sup> Direct Testimony of Brad Beecher, Page 7, ln 4

<sup>8</sup> Direct Testimony of David Pasioka, Page 14, ln 16 to ln 18

<sup>9</sup> Direct Testimony of Christopher Krygier, Page 9, ln 6 and ln 7

<sup>10</sup> HC Project Red Balloon Due Diligence Report Final Feb5\_Highly Confidential

<sup>11</sup> Direct Testimony of Christopher Krygier, Page 10, ln 6

1 *Relevant Findings for the Commission’s Consideration*

2 The Joint Applicants’ commitment to maintaining Empire’s existing employees is  
3 unclear. In response to OPC DR 5002, the Joint Applicants admitted that this  
4 “commitment” has no time range associated with it, implying that the Joint Applicants  
5 could reduce employment immediately subsequent to the merger or anytime thereafter.<sup>13</sup>  
6 Also the Joint Applicants discovery responses in OPC DR 5124 demonstrate that the  
7 Joint Applicants have not made a commitment that the functions currently performed by  
8 Empire’s employees in Missouri will remain in the state post-merger.<sup>14</sup>

9 Cost Savings Related to Public Company Filings

10 *Assertion made by Joint Applicants in Direct Testimony*

- 11 • “there are approximately \$2.3 million in costs saved by not requiring Empire to comply  
12 with all the requirements of being a public reporting issuer.”<sup>15</sup>

13 *Relevant Findings for Commission to Consider*

14 Witness Eichler overstates these cost savings because he does not take into account the  
15 additional costs Empire will be allocated from Liberty Utilities and APUC if the  
16 proposed merger is approved. When these additional charges are appropriately taken into  
17 account, any purported cost savings are dramatically reduced, if not eliminated.<sup>16</sup>

18 Impact on the Commission’s Ability to Regulate Empire

19 *Assertions made by Joint Applicants in Direct Testimony*

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<sup>12</sup> Direct Testimony of David Pasieka, Page 13, ln 14 and 15

<sup>13</sup> See Attachment RP-R3. OPC – AzP – No. 5002

<sup>14</sup> See Attachment RP-R4 - OPC – AzP – No. 5124

<sup>15</sup> Direct Testimony of Peter Eichler, Page 12, ln 13 and 14

<sup>16</sup> See Attachment RP-R5 - OPC – AzP – No. 5118

- 1       • “This transaction has many benefits that will inure to . . . regulators . . . of both Empire  
2       and Liberty Utilities.”<sup>17</sup>

3       *Relevant Findings for the Commission’s Consideration*

4       No support was provided in discovery regarding how regulators will benefit from the  
5       proposed transaction.<sup>18</sup> In fact, MPSC’s ability to regulate Empire will become much  
6       more difficult, due to the additional risks of APUC’s operations, the additional  
7       organizational complexity of APUC, and the loss of access to key information.

8       Cost Savings Related to Labor

9       *Assertion made by Joint Applicants in Direct Testimony*

- 10       • “it is anticipated that, through natural attrition, an additional \$2.2 million in labor savings  
11       will emerge. This is supported by Empire’s 2-6% rate of annual attrition through  
12       employee turnover and retirements.”<sup>19</sup>

13       *Relevant Findings for the Commission’s Consideration*

14       Witness Eichler’s \$2.2 million figure is flawed for several reasons. In addition to  
15       containing errors and inconsistencies, it is based on a simplifying, and baseless,  
16       assumption that excludes, in its entirety, attrition related to retirees.<sup>20</sup>

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<sup>17</sup> Direct Testimony of David Pasieka, Page 5, ln 2 and 3

<sup>18</sup> See Attachment RP-R6 - OPC - AzP - 5021\_supplement

<sup>19</sup> Direct Testimony of Peter Eichler, Page 12, ln 16 to ln 19

<sup>20</sup> See Attachment RP-R7 - OPC – AzP – No. 5117

1 Impact on Empire’s Day-to-Day Operations

2 *Assertions made by Joint Applicants in their Direct Testimony*

- 3 • “The day-to-day operations of Empire in Missouri will continue as they have in the  
4 past...”<sup>21</sup>

5 *Relevant Findings for the Commission’s Consideration*

6 This assertion is directly contradicted in the Joint Applicants’ response to discovery:  
7 “The *day-to-day operations will not be reviewed* as part of the transition. *After the close*  
8 of the transaction and during the normal course of the business, LU Central will consider  
9 (sic) whether there will be any changes to such operations.”<sup>22</sup> Stated another way,  
10 information regarding whether, and the extent to which, day-to-day operations will  
11 change is not available and it will not become available to the Commission for purposes  
12 of determining whether the proposed transaction is in the public interest. The Applicants  
13 themselves state they will only assess Empire’s day-to-day operations *after* the  
14 Commission has already approved the merger.

15 Impact on Corporate Governance

16 *Assertions made by Joint Applicants in Direct Testimony*

- 17 • “A regional board of directors will be established to provide guidance and counsel on  
18 local issues and enhanced customer service. All existing board members of Empire will  
19 be offered a position on the board.”<sup>23</sup>

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<sup>21</sup> Direct Testimony of Brad Beecher, Page 7, ln 6 and ln 7

<sup>22</sup> See Attachment RP-R8 - OPC – AzP – No. 5129

<sup>23</sup> Direct Testimony of Christopher Krygier, Page 7, ln X

1 *Relevant Findings for the Commission’s Consideration*

2 Critical details regarding the regional board of directors have yet to be determined,  
3 including how many board members there will be and who will comprise this board.<sup>24</sup>  
4 Additionally, the Joint Applicants’ offer of a position on the regional board of directors to  
5 Empire’s existing board members, seems to have been made for appearance purposes  
6 only.

7 Impact on Charitable Contributions

8 *Assertions made by Joint Applicants in Direct Testimony*

- 9 • “LU Central has committed to the same level of charitable contributions . . . Empire  
10 currently does today.”<sup>25</sup>

11 *Relevant Findings for the Commission’s Consideration*

12 Similar to the employment commitment, the Joint Applicants’ commitment to  
13 maintaining the same level of charitable contributions is hollow. In discovery, the Joint  
14 Applicants confirmed that there is no time period associated with this commitment. As  
15 such, the Joint Applicants could cease or lower these charitable contributions at any time.

16 **Q. Is the merger application in the public interest?**

17 A. No. The proposed acquisition is not in the public interest and should be denied by the  
18 Commission.

19 Throughout the remainder of this testimony I discuss the detriments of the proposed  
20 merger and, when possible, offer conditions that could moderate the potential risks and  
21 harms. I summarize these conditions in the *Conclusion* section of my testimony.

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<sup>24</sup> See Attachment RP-R9 - OPC – AzP - 5102

<sup>25</sup> Direct Testimony of Christopher Krygier, Page 13, ln 18 and ln 19



1 **Q. If the Commission adopts each of OPC’s proposed conditions, do you believe this**  
2 **merger should be approved?**

3 A. No. While adopting OPC’s proposed recommended conditions would generally mitigate  
4 the identifiable merger harms, it is critical the Commission consider those risks that are  
5 unidentifiable due to the Applicants’ lack of supporting evidence.

6 **IV. DETRIMENTS OF THE PROPOSED ACQUISITION AND PROPOSED**  
7 **MITIGATING CONDITIONS**

8 **A. Impact on Empire’s Capital Investment Program**

9 **Q. Do you agree with Mr. Pasieka’s claim that the only change in Empire’s operations**  
10 **will be the ownership of Empire’s shares?**

11 A. No. Currently, The Empire District Electric Company is the ultimate parent company of all  
12 Empire companies. This means that critical decisions of Empire—namely, the strategic  
13 direction of the company, as well as decisions regarding the allocation of capital—are made  
14 at Empire’s headquarters in Joplin by individuals who work for Empire and have a fiduciary  
15 duty only to Empire, and have an intimate knowledge of the unique considerations of  
16 Empire.

17 If the proposed merger is consummated, Empire will fundamentally change. Empire’s  
18 employees will lose their identity as Empire employees. Instead, post-merger all employees  
19 who work for Empire will become employed by Liberty Utilities Service Corporation.<sup>26</sup>  
20 More importantly, the organizational reporting structure will change, as will the decision-  
21 making process, and the ultimate decision-makers, impacting Empire.

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<sup>26</sup> See Attachment RP-R10 - OPC – AzP – No. 5122

1 **Q. If the proposed merger is approved, what are the planned reporting relationships for**  
2 **Empire’s personnel?**

3 A. When asked for this in discovery, the Joint Applicants stated they are “working through”  
4 it.<sup>27</sup> As such, the post-merger organizational reporting structure, such as who at Empire will  
5 ultimately be reporting to the Liberty Utilities’ President, is unclear because the Joint  
6 Applicants have not provided this information.

7 **Q. How will the decision-making process at Empire change if the merger is approved?**

8 A. To use the capital budgeting process as an illustrative example, \*\*

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16 **Q. How will this process change if the merger is approved?**

17 A. The figure below presents an illustration of the budgeting process that Empire will be  
18 subject to if the merger is approved. The blue boxes in this graphic represent tasks that are  
19 completed by Liberty Utilities while green boxes depict activities either developed or  
20 influenced by APUC. \*\*

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<sup>27</sup> See Attachment RP-R11 -Staff – No. 0011

<sup>28</sup> See Attachment RP-R12 -HIGHLY CONFIDENTIAL - OPC - AzP - 5112 Budget Process

Rebuttal Testimony of  
Ryan Pfaff  
Case No. EM-2016-0213



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<sup>30</sup> See Attachment RP-R13 - HIGHLY CONFIDENTIAL - Attachment OPC - AzP - 5114

1 **Q. Your discussion above was focused on the capital decision-making process at Empire**  
2 **and how that will change as a result of the merger. Do you have any reason to believe**  
3 **Liberty Utilities will actually change capital investment decisions at Empire in a**  
4 **manner that is detrimental to the public interest?**

5 A. =

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9 **Q. If the merger is consummated, how does Algonquin intend to \_\_\_\_\_**  
10 **?**

11 A.

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13 **Q. How does Algonquin intend to manage Empire’s capital investment program if the**  
14 **merger is approved?**

15 A. The following excerpt, also from the due diligence report provided to Algonquin’s board  
16 of directors, provides additional details regarding how Algonquin intends to

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<sup>31</sup> HC Project Red Balloon Due Diligence Report Final Feb5\_Highly Confidential

<sup>32</sup> HC Project Red Balloon Due Diligence Report Final Feb5\_Highly Confidential

1 **Q. What is the implication of this as it pertains to the public interest?**

2 A.

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14 **Q. Can you provide a hypothetical example to illustrate this point?**

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<sup>33</sup> Direct Testimony of David Pasieka p.14, 16-17.

Rebuttal Testimony of  
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Rebuttal Testimony of  
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Case No. EM-2016-0213

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1                    **B. Corporate Governance and Ring-fencing**

2   **Q.    How are you defining the term “ring-fencing” for purposes of this testimony?**

3   A.    “Ring-fencing,” as it is traditionally discussed in merger proceedings, is used to describe  
4        measures that insulate a utility from its affiliates. These measures can take many different  
5        forms and include categories such as:

6        • Corporate governance: *e.g.*, requiring independent members on the subject utility’s  
7        board;

8        • Legal structure: *e.g.*, requiring merger applicants to file a non-consolidation opinion to  
9        support an assertion of bankruptcy-remoteness.

10       • Records access: *e.g.*, requiring the utility to provide open access to utility books and  
11       records;

12       • Financial measures: *e.g.*, requiring the subject utility to maintain an equity ratio of a  
13       certain percentage of total capital.

14   **Q.    Does Empire currently have any ring-fencing measures in place?**

15   A.    No. According to responses to discovery, Empire has no ring-fencing measures because “it  
16        is nearly 100% rate regulated.”<sup>34</sup>

17   **Q.    How will this business mix change if the merger is approved?**

18   A.    As discussed in Ms. Azad’s testimony, if the merger is approved, Empire—which is  
19        currently comprised of approximately 100% rate-regulated operations—will be acquired by  
20        a holding company that is comprised of roughly 50% non-regulated operations.

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<sup>34</sup> See Attachment RP-R14 - OPC – AzP - 5067

1 **Q. Do you believe that the risks of the proposed transaction necessitate that this**  
2 **Commission impose ring-fencing conditions?**

3 A. Yes. As described in detail below, ring-fencing measures addressing corporate governance,  
4 legal structure, records access, and financial concerns are all relevant to the current  
5 proceeding.

6 *i. Corporate Governance*

7 **Q. Mr. Beecher states in his direct testimony that, “A regional board of directors will be**  
8 **established to provide guidance and counsel on local issues and enhanced customer**  
9 **service.” Do you consider the creation of this regional board of directors a mitigating**  
10 **factor regarding the potential corporate governance risks?**

11 A. No. In discovery, the Joint Applicants state that the regional board of directors will “provide  
12 guidance and counsel on local issues” but it is unclear what, if any, true authority this  
13 regional board will carry. \*\*

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18 **Q. Mr. Beecher also states in his direct testimony that, “All existing board members of**  
19 **Empire will be offered a position on the board.” Do you consider this offer to**  
20 **Empire’s current board members a mitigating factor for the Commission to consider**  
21 **when assessing the loss of local control and potential corporate governance risks?**

22 A. No. The Joint Applicants’ offer of a position on the regional board of directors to Empire’s  
23 existing board members, seems to have been made for appearance purposes only.  
24 Specifically, the Joint Applicants claim to have offered each of the existing Empire board  
25 members a position on this regional board, even though the Joint Applicants admitted they

1 have not yet determined compensation related to this board participation, and, currently, LU  
2 Central board members are not separately compensated for their participation on the LU  
3 Central board.<sup>35</sup> The Joint Applicants have provided no supporting information regarding  
4 why Empire board members would choose to remain on the regional board of directors,  
5 given the uncertainty regarding whether, and the extent to which, they will be compensated  
6 for their involvement.

7 **Q. What corporate governance ring-fencing measures do you believe the Commission**  
8 **should implement as part of the proposed merger?**

9 A. To help mitigate the detriments described above, I recommend that the Commission order  
10 the following conditions:

- 11 • Empire shall maintain corporate officers who have a fiduciary duty solely to Empire.
- 12 • Empire shall maintain its own board of directors with a majority of non-management,  
13 independent directors.

14 *ii. Corporate Presence in the State of Missouri*

15 **Q. If the merger is consummated, the ultimate parent company of Empire will be APUC,**  
16 **a company based in Canada with headquarters located approximately 1,000 miles**  
17 **from Joplin, Missouri. Do you have any recommended conditions that would help**  
18 **ensure that Empire's service territory is specifically considered by the key**  
19 **management and decision makers of Algonquin?**

20 A. Yes. Algonquin should include Joplin in its rotation of Algonquin's board of directors'  
21 meetings and meet in Joplin at least annually.

22

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<sup>35</sup> See Attachment RP-R15 - For the year ended December 31, 2015, Empire board members earned between \$146 thousand and \$256 thousand. OPC - AzP - 5104 Supp Attachment Proxy, page 37.

1 **Q. Why do you believe this condition is beneficial?**

2 A. The ultimate decision maker of all key decisions for Empire is the ultimate parent  
3 company—Algonquin. Requiring Algonquin’s board to meet in Joplin annually will help  
4 ensure Algonquin’s board members physically see Empire’s service territory and talk to the  
5 individuals running the day-to-day operations at Empire. In addition, this would help  
6 provide local management, this Commission, its Staff, the OPC and other major parties to  
7 this proceeding an opportunity to visit with these key decision-makers without the need to  
8 travel to Canada to do so, at least once per year as a result of this visit.

9 *iii. Legal Structure Conditions*

10 **Q. What is meant for a utility to be bankruptcy-remote from its affiliates?**

11 A. It is my understanding that for a utility to be “bankruptcy-remote,” sufficient structural  
12 protections must be implemented so that the utility will not be consolidated into a  
13 bankruptcy filing of its affiliates.

14 **Q. If the merger is approved, will Empire be bankruptcy-remote from its affiliates?**

15 A. According to the Applicants, “The Applicants believe that the proposed acquisition is  
16 structured in a manner that will make Empire bankruptcy remote from the rest of Liberty  
17 Utilities Co. business.”<sup>36</sup> As the basis for this assertion, the Applicants reference a data  
18 request response wherein the Applicants list measures and assert that they “maintain the  
19 corporate existence of each [Liberty Utilities subsidiary].”<sup>37</sup>

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<sup>36</sup> See Attachment RP-R16 - OPC – AzP – No. 5081

<sup>37</sup> See Attachment RP-R17 - OPC – AzP – No. 5077

1 **Q. Do you agree with the Applicants' assertion that Empire would be bankruptcy-remote**  
2 **from its affiliates?**

3 A. No. I have served as an expert in numerous utility merger reviews wherein the ring-fencing  
4 of a utility from its affiliates for purposes of bankruptcy protection was a significant issue. In  
5 each of these proceedings, several merger conditions were ordered that imposed structural  
6 separations and other safeguards that are not present in the currently proposed structure.<sup>38</sup>  
7 For example, in each of these previous cases, a special purpose entity was established to  
8 hold the equity of the subject utility. Additionally, in each of these cases, the merger utilities  
9 were required to obtain a non-consolidation opinion from a reputable law firm concluding  
10 that the utility would not be substantively consolidated with another entity.

11 **Q. Are the Applicants intending to establish a special purpose entity to hold the shares of**  
12 **Empire and/or obtain a non-consolidation opinion?**

13 A. No.

14 **Q. What ring-fencing conditions do you recommend to establish a bankruptcy-remote**  
15 **post-merger Empire?**

16 A. I recommend that the following ring-fencing measures be implemented to ensure a  
17 bankruptcy-remote Empire:

- 18 • Empire shall establish a bankruptcy remote special purpose entity ("SPE") that is established  
19 solely for the purpose of being the direct owner of Empire. This SPE shall have the  
20 following characteristics: (1) The SPE will be the direct owner of Empire's shares. (2) The  
21 SPE will have no operational purpose except to hold Empire's shares. (3) The SPE shall  
22 have at least one independent (non-management) director. (4) The approval of the entire

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<sup>38</sup> See Attachment RP-R18 - OPC - AzP - No. 5068

1 board of directors, including the independent director, shall be required for the SPE to file a  
2 voluntary bankruptcy petition.

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

6 • The costs of establishing the SPE, as well as the costs of the non-consolidation opinion,  
7 shall be deemed transaction costs and shall not be recovered from ratepayers.

8 • Empire shall not assume liability for the debts issued by APUC, Liberty Utilities, or any of  
9 their subsidiaries or affiliates.

10 As stated previously, these recommendations are based on significant experience serving as  
11 an expert in several proceedings wherein bankruptcy ring-fencing measures have been  
12 applied by regulatory commissions. Based on this experience, these are fundamental  
13 conditions used to make a utility subsidiary bankruptcy-remote from its affiliates. If the  
14 Applicants believe that any of the proposed conditions are unnecessary to make Empire  
15 bankruptcy-remote, I would encourage the Applicants to engage a bankruptcy expert who  
16 can file surrebuttal testimony critiquing the above conditions. This will provide additional  
17 record evidence for the Commission to consider regarding this issue.

18 *iv. Access to Records*

19 **Q. Why do you believe there should be conditions to this merger regarding access to**  
20 **records?**

21 A. \*\*

22  
23 \*\* . Given the impact of APUC's budget on Empire, OPC sought to  
24 understand the budgeting process at APUC. When asked in discovery for a description of

1 the capital and O&M budget currently in place at Algonquin, the Applicants responded that,  
2 “the requested information is not within the possession, custody or control of LU Central or  
3 Liberty Sub Corp.”<sup>39</sup> This type of response, in which LU Central or Liberty claims that  
4 information of its parent company is “not within its possession”, is likely a forebear for  
5 future regulatory requests at Empire. If the merger is approved, it appears the Commission  
6 will lose its ability to effectively have the “full picture” of the operations at Empire. At a  
7 minimum, the capital budgeting decisions and capital budgeting process at Empire’s  
8 ultimate parent company, APUC, will effectively become a “black-box” to the Commission  
9 if the merger is approved.

10 **Q. How do you propose this detriment be mitigated?**

11 A. I recommend that the Commission order the following conditions to ensure it has access to  
12 the books, records, and underlying data that impact Empire’s operations:

- 13 • For all future proceedings, APUC shall be a party to all proceedings involving  
14 Empire. Empire shall also not claim that information and documents in possession of  
15 an affiliate, including its parent company, are “not within the possession or control  
16 of Empire” and will provide such documents as requested by the Commission, its  
17 Staff, OPC, or other requesting party.
- 18 • Empire shall maintain separate books and records, and make them available for  
19 review by Staff and OPC upon request and provided at the Governor Office  
20 Building in Jefferson City.
- 21 • Algonquin, Liberty Utilities, and Empire shall provide Staff and OPC unrestricted  
22 access to all written correspondence with any and all debt and equity analysts.

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<sup>39</sup> See Attachment RP-R19 - OPC – AzP – No. 5113

1           v.    *Financial Matters*

2   **Q.    Why do you believe financial ring-fencing conditions are appropriate in this**  
3   **proceeding?**

4   A.    One of the risks that a public utility faces is the risk that its parent company will exploit its  
5   regulated utility subsidiary’s reliable cash flows for purposes of supporting its other  
6   businesses and/or its dividend to shareholders. As described by the rating agency S&P, “...a  
7   weak parent has both the ability and the incentive to siphon assets out of its financially  
8   healthy subsidiary and to burden it with liabilities during times of financial stress.”<sup>40</sup>

9   **Q.    Has S&P addressed the ring-fencing measures in place to prevent intercompany cash**  
10 **transfers between Liberty Utilities and APUC?**

11 A.    Yes. S&P found there were no ring-fencing measures that would inhibit APUC from  
12 accessing Liberty Utilities’ cash. Specifically, S&P stated the following, “Although Liberty  
13 Utilities and [APUC] operate separately as self-financing subsidiaries, in our view, *there is*  
14 *no ring-fencing or strong regulatory protection* that would prohibit intercompany cash  
15 flow.”<sup>41</sup> (emphasis added)

16 **Q.    Do you believe that APUC will use Empire’s rate-regulated cash flows to fund**  
17 **dividends to APUC’s corporate shareholders?**

18 A.    Yes. Algonquin has made it clear that Empire’s cash flow and earnings will be used by  
19 APUC to support dividends to APUC’s shareholders. As noted by Ian Robertson, Chief  
20 Executive Officer of APUC, “The addition [of Empire] to the Algonquin family will support

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<sup>40</sup> Standard & Poor’s – “Ring-Fencing a Subsidiary” dated October 19, 1999.

<sup>41</sup> *REFILE-TEXT-S&P assigns Liberty Utilities 'BBB-' rating*, Reuters, July 24, 2012.  
<http://www.reuters.com/article/libertyutilities-rating-sandp-idUSWNA185920120724>



1           our 10% annual dividend growth target through significant accretion to shareholder cash  
2           flows and earnings.”<sup>42</sup>

3           APUC is also pursuing what one ratings agency deemed an “[a]ggressive expansion plan”  
4           where there is “no assurance that future acquisitions will have the same business risk profile  
5           as the existing portfolio.”<sup>43</sup>

6   **Q.    What ring-fencing conditions do you believe should be ordered to mitigate these risks?**

7    A.    In order to mitigate these risks, I recommend that the Commission order conditions that  
8           ensure Empire will maintain a minimum level of equity, and that it maintain its own capital  
9           structure and credit rating. Specifically, I recommend the following conditions:

- 10                   • Empire shall not pay a dividend without prior Commission approval if its equity to  
11                   total capitalization ratio, based on a 12-month rolling average, falls below 45%, or if  
12                   payment of dividends would cause Empire’s equity to total capitalization ratio to fall  
13                   below that threshold.
- 14                   • Empire shall not pay a dividend without prior Commission approval if, and during  
15                   such time that, any of the three major credit rating agencies (Moody’s, Standard &  
16                   Poor’s, and Fitch) issue a rating for Empire below investment grade.
- 17                   • Empire shall issue its own debt and maintain its own capital structure, a function of  
18                   its own debt and equity.
- 19                   • Empire shall maintain its own credit rating.

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<sup>42</sup> *Algonquin Power & Utilities Corp. to Acquire The Empire District Electric Company in C\$3.4 Billion (US\$2.4 Billion) Transaction*, Business Wire, February 9, 2016.  
<http://www.businesswire.com/news/home/20160209006719/en/Algonquin-Power-Utilities-Corp.-Acquire-Empire-District>

<sup>43</sup> See Attachment RP-R20 - OPC - AzP - 5065 - algonquin-power-utilities-corp-rating-report

1           vi.    *Public Company Cost Savings*

2   **Q.    On page 12 of the Direct Testimony of Peter Eichler, Mr. Eichler states that there “are**  
3   **several reasons why the costs borne by Empire will be lower” if the proposed merger is**  
4   **approved. Mr. Eichler further states that Algonquin anticipates that “there are**  
5   **approximately \$2.3 million in costs saved by not requiring Empire to comply with all**  
6   **the requirements of being a public reporting issuer.” How did Mr. Eichler calculate**  
7   **this \$2.3 million figure?**

8   A.    Mr. Eichler summed the different items associated with Empire’s costs related to being a  
9   public company. These include costs related to Empire’s Board of Directors, audits, SEC  
10   filing charges, as well as a category Mr. Eichler labeled as “Miscellaneous.” The full chart  
11   and calculation was produced in discovery and is shown in the table below.

12   Figure 6 – Purported Empire Public Company and Other Cost Savings

<b>Empire Public Company &amp; Other Cost Savings</b>	
<b>CATEGORY</b>	<b>AMOUNT</b>
Board of Director Savings	\$ 1,089,000
Audit costs	355,000
Investor Relations	432,000
SEC filing charges	76,000
Miscellaneous	333,000
<b>TOTAL</b>	<b>\$ 2,285,000</b>

Source: Response to Discovery, OPC - AzP - 5072 - Workpaper

13  
14   **Q.    Do you agree with Mr. Eichler’s characterization of these cost savings related to**  
15   **Empire no longer being a publicly traded company if the merger is approved?**

16   A.    No. Mr. Eichler mischaracterizes the “benefits” of Empire no longer being a publicly traded  
17   company in two ways.

1 Mr. Eichler appears to place no value on maintaining an active, qualified board of directors  
2 that is focused exclusively on Empire. He also does not seem to believe there is value in a  
3 utility issuing its own debt and maintaining its own credit rating.

4 There is significant value to maintaining a separate board of directors for Empire, which is  
5 why I recommend this as a ring-fencing condition. A board of directors focused on, and  
6 intimately familiar with, the issues pertinent to Empire will be better able to ensure the  
7 interests of Empire's ratepayers are protected. It will also be able to be more responsive to  
8 directives from Empire's regulators.

9 Secondly, as described in additional detail below, Mr. Eichler mischaracterizes the true  
10 value of these foregone costs because he does not net them against the allocated charges  
11 APUC will charge Empire.

12 **Q. Based on your review of the Applicants' testimony and related discovery responses, do**  
13 **you believe asserting that there will be \$2.3 million of cost savings related to Empire no**  
14 **longer being a public company is an accurate depiction of the true impacts of the**  
15 **merger?**

16 A. No. What the Applicants, and Mr. Eichler in particular, failed to explain is that, if the merger  
17 is approved, Empire will be allocated a large portion of Algonquin's compliance costs.  
18 These costs will offset much of the cost savings. Stated another way, Empire will be paying  
19 a large portion of the fees to support Algonquin's Board of Directors fees rather than its  
20 own.

21 **Q. Is it your understanding that the actual cost savings for Empire will be less than \$2.3**  
22 **million?**

23 A. Mr. Eichler calculated the \$2.3 million figure as a gross figure without netting it against the  
24 virtually identical categories of costs that Empire will be allocated by Algonquin if the  
25 merger is approved. Clearly, yes, actual costs savings will be less than \$2.3 million.

1 **Q. Is there any commitment that there will be any net cost savings related to Empire not**  
2 **being a public company?**

3 A. No. In response to a data request, the Applicants provided hypothetical examples of cost  
4 allocation calculations, but qualified their response by stating that “the exact allocation  
5 amount is to be determined based on the Cost Allocation Manual the Joint Applicants  
6 propose to submit after the conclusion of the merger” [emphasis added].<sup>44</sup>

7 **C. Bill Credit, Corporate Social Responsibility, and Rate Case Moratorium**

8 *i. Bill Credit*

9 **Q. Is the funding of bill credits regularly ordered by public service commissions in the**  
10 **context of a utility merger review?**

11 A. Yes. Bill credits, and, oftentimes, other types of financial protections are routinely ordered  
12 by public service commissions as part of utility merger reviews. I have served as an expert  
13 witness on behalf of public service commission technical staffs on a number of public utility  
14 merger reviews in Maryland and Delaware. In each proceeding a rate credit was ordered by  
15 the Commission. The financial protections, including the bill credits, ranged from \$29 to  
16 \$220 per customer.

17 **Q. What is the reasoning generally cited by the commissions when ordering these rate**  
18 **credits as part of merger approvals?**

19 A. Rate credits, and other types of financial protections, are intended to offset the detriments of  
20 the transaction and provide a level of financial protection for ratepayers in light of the  
21 financial risks posed to customers.

22

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<sup>44</sup> See Attachment RP-R5 - OPC – AzP – No. 5118

1 **Q. Do you recommend that the Applicants fund a bill credit in this proceeding?**

2 A. Yes. If the Commission were to approve the Applicants' request for approval, I recommend  
3 that the approval be conditioned on immediate funding of a \$100 rate credit to each of  
4 Empire's customers by the Joint Applicants.

5 **Q. Aside from the rate credit, do you recommend that the Commission order any**  
6 **additional financial ratepayer protections?**

7 A. Yes. If the Commission approves the proposed merger, I recommend that it do so on the  
8 condition that the Applicants commit to funding an annual amount of \$200 thousand for  
9 each of the eight Community Action Agencies in its territory for the next ten years. I also  
10 recommend that these funds be below-the-line and not recovered in rates. These funds will  
11 be prioritized towards the creation of additional position(s) within the Community Action  
12 Agency.

13 **Q. What will occur if the agency is unable to expend the funds on the creation of**  
14 **additional positions?**

15 A. If the agency is unable to expend the funds for creation of additional positions, it will place  
16 remaining funds in one of the following categories:

- 17 • Weatherization training and certification of agency personnel;
- 18 • Discretionary funds for health and hazard for on-site units (that may or may not  
19 otherwise be passed over)
- 20 • Outreach efforts
- 21 • Utility weatherization account
- 22 • Hardship fund for on-bill payments

1 **Q. The agencies you listed previously are all focused on low-income customers. Why**  
2 **should low-income customers be afforded added protection in this merger?**

3 As stated throughout this testimony, as well as the testimonies of Dr. Marke and Ms. Azad,  
4 the potential detriments of the proposed merger are substantial. This condition acts as a  
5 mitigating factor against these risks. and helps protect the financial interests of Empire's  
6 customers who have the fewest resources in which to absorb higher rates—low income  
7 customers. Furthermore, since the proposal directs the allocated funds to job creation, it will  
8 have the added benefit of helping to spur the local economy.

9 **Q. Previously you noted that ordering ratepayer financial protections as part of the**  
10 **approval of a utility merger occurs frequently. Is there an established protocol or**  
11 **framework that public service commissions utilize when determining whether, and the**  
12 **extent to which, to issue a rate credit?**

13 A. No, there is not.

14 **Q. What information have commissions utilized to gauge the general reasonableness of**  
15 **proposed ratepayer financial protections?**

16 A. Commissions often review merger synergies and shareholder premium to provide  
17 appropriate context for a rate credit. To provide additional context for the Commission, in  
18 the following discussion I describe each of these areas with respect to consideration of an  
19 appropriate level of rate credit in the current proceeding.

20

21

22

1 **Q. Synergy savings simply flow through to customers as a normal consequence of the**  
2 **ratemaking process, correct?**

3 A. No. In recent years, commissions have found that synergies are speculative and not  
4 guaranteed to translate to lower rates.<sup>45</sup> Even Empire’s own investment bankers assumed  
5 only \*\*\* \*\*46

6 **Q. What are the Applicants’ proposed level of synergy savings?**

7 A. According to page 13 of Company Witness Eichler’s Direct Testimony, Administration  
8 costs to serve Empire customers are estimated to be reduced by approximately \$700  
9 thousand annually.

10 **Q. Do you believe Witness Eichler’s synergy savings analysis should be relied upon by**  
11 **this Commission for purposes of assessing the level of rate credit to provide to**  
12 **Empire’s customers?**

13 A. No. The synergies analysis prepared by the Applicants is largely driven by arbitrary  
14 assumptions. The clearest example of the arbitrary nature of the Applicants’ synergy savings  
15 analysis can be found in Witness Eichler’s discussion of potential labor savings. As noted on  
16 page 12 of his testimony, Witness Eichler states that, “While there will be no involuntary  
17 job losses within the Empire group, it is anticipated that, through natural attrition, an  
18 additional \$2.2 million in labor savings will emerge. This is supported by Empire’s 2-6%  
19 rate of annual attrition through employee turnover and retirements.” To perform his  
20 calculation of potential labor synergies, Witness Eichler did not perform an analysis to  
21 assess what types of labor synergies may be available at Empire. Instead, Witness Eichler  
22 made a simplifying, and baseless assumption in which he utilized only the attrition  
23 associated with non-retirees. Witness Eichler excluded, in its entirety, the attrition associated

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<sup>45</sup> In the Matter of the Application of the Merger of FirstEnergy Corp. and Allegheny Energy, Inc., Maryland Public Service Commission, Case No. 9233, Order No. 83788, Issued January 18, 2011, pp. 42-43.

<sup>46</sup> Afternoon February 4, 2016 Book 1 Prelim-R.pdf

1 with retirees. If the attrition related to retirees were included in Witness Eichler's analysis,  
2 the value of these labor synergies would triple, from approximately \$2 million to \$6 million  
3 annually.

4 **Q. Given the arbitrary nature of Witness Eichler's assumptions, how should the**  
5 **Commission consider this analysis?**

6 A. Unfortunately, Witness Eichler's analysis is faulty and unsupported. The Commission  
7 should ignore this analysis when considering the appropriate level of rate credit to order in  
8 this proceeding.

9 **Q. How have Commissions taken the level of shareholder premium into consideration**  
10 **when determining the appropriate level of customer rate credit?**

11 A. In the 2014/2015 Exelon-PHI merger review proceeding, the Maryland Public Service  
12 Commission, in its order approving the merger, stated the following: "We have also  
13 conditioned approval of this transaction on a 0.07 ratio of [rate credits or equivalent  
14 customer benefits] to shareholder premium, which is in the range of ratios on which we have  
15 conditioned other mergers in this State."<sup>47</sup>

16 **Q. In your previous response, you noted that the Maryland Public Service Commission**  
17 **conditioned approval of the Exelon-PHI merger based on a bill credit to shareholder**  
18 **premium ratio of .07 and that the Maryland Commission noted that this ratio was**  
19 **within the reasonable range for bill credits it has ordered in past proceedings. What is**  
20 **the equivalent ratio for your recommended rate credit in this proceeding?**

21 A. The bill credit, in conjunction with the funds associated with the proposed here represent  
22 approximately \$36 million. The shareholder premium for this transaction is roughly \$380

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<sup>47</sup> Maryland Public Service Commission, Order Number 86990



1 million. Therefore, the ratio of financial protection to shareholder premium is approximately  
2 0.11.

3 **Q. How did you calculate this ratio?**

4 A. This ratio is based on the midpoint of the ratio using the shareholder premium calculated  
5 using two different share prices: the unaffected share price (*i.e.*, Empire’s stock price prior  
6 to the stock price increase attributable to merger reports) and the pre-announcement share  
7 price (*i.e.*, the closing share price as of February 8, 2016).

8 **Q. Why do you believe this level of financial protection is appropriate?**

9 A. To reiterate, my overall recommendation is that the Application be denied. However, if the  
10 Commission decides to approve the merger, I believe this is an appropriate level of financial  
11 ratepayer protection to help mitigate the risks discussed throughout this testimony, as well as  
12 those discussed in the testimony of Dr. Marke and Ms. Azad.

13 *ii. Rate Case Moratorium*

14 **Q. Please define “rate case moratorium” and describe how a rate case moratorium**  
15 **could protect the public interest in this proceeding.**

16 A. A rate case moratorium, colloquially referred to as a “rate freeze,” is an arrangement  
17 wherein a utility is prohibited from filing a rate case for a specified period of time.  
18 Generally speaking, the advantages of such an arrangement are obvious—they provide  
19 consumers with reliability regarding their utility bills, at least for a period of time. In this  
20 particular case, a rate case moratorium would also serve to protect ratepayers by helping  
21 ensure that adequate information is available in which to assess changes resulting from  
22 the proposed merger.

23

1 **Q. For what time period do you believe the Commission should order a rate case**  
2 **moratorium?**

3 A. If the Commission approves this merger, I recommend that the Commission order a rate  
4 case moratorium that would prohibit Empire from filing a rate case until at least one full  
5 year of financial and operational information is available following the close of the  
6 merger.

7 **V. CONCLUSION**

8 **Q. Please provide a listing of your proposed conditions.**

9 A. Attachment RP-R22 contains a listing of my recommended merger conditions. In addition,  
10 the table below summarizes the potential detriments of the proposed transactions and their  
11 relative levels of impact with and without the recommended conditions proposed in this  
12 testimony.

13 **Q. Why do you believe adoption of these conditions is critical to protecting the public**  
14 **interest?**

15 A. As I noted previously, I do not believe the Applicants have met their burden and this  
16 merger should be denied as a result. However, if the Commission deems it appropriate to  
17 approve this merger, OPC's recommended conditions should be viewed as the minimum  
18 level of merger conditions required to protect the public interest.

19 **Q. Do you have any additional comments regarding these conditions?**

20 A. Yes. Several of these conditions are essentially the same commitments the Applicants  
21 have already claimed in their merger application. However, as I clearly demonstrated in  
22 the charitable contributions example, the "commitments" the Applicants reference in  
23 their direct testimonies and merger applications are effectively unenforceable by the  
24 Commission because the Applicants' commitment language is too vague and imprecise.

1           The value of adopting the precisely worded condition language I have proffered is  
2           twofold. First, all parties in this proceeding, including the Commission, will have a clear  
3           understanding of the full extent of customer protections being addressed in this merger.  
4           For example, in regards to the charitable contributions, the Applicants have committed to  
5           neither a specific dollar figure nor a specific time period for which the Commission can  
6           enforce this commitment. This will allow the Commission to assess the value of the  
7           commitment and make an accurate determination of whether the proposed list of  
8           conditions is sufficient to protect the public interest. Furthermore, utilizing my proposed  
9           language will help ensure compliance of these conditions is both effective and efficient.  
10          This will reduce the time and effort that Commission Staff, OPC and the Applicants  
11          would spend assessing compliance of these conditions.

12       **Q.    Why is it important to memorialize the Applicants' statements into specific merger**  
13       **conditions?**

14       A.    Witness Eichler responded to AzP's inquiries regarding employment and the company's  
15       labor synergy assumptions that "...the Joint Applicants and Empire evaluate the need to  
16       replace every position as it becomes vacant (this is true even absent the merger) and thus  
17       *no conclusion can be drawn about the intent of the applicants beyond the commitments*  
18       *made in the testimony.*" (emphasis added)<sup>48</sup> Without specific commitments, the  
19       commission has no recourse with which to enforce a commitment. The "intent" of the  
20       applicants is meaningless beyond explicit commitments.

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<sup>48</sup> See Attachment RP-R7 - Response to Discovery, OPC-AzP-No. 5117.

1 **Q. Would adoption of these conditions satisfy the statutory criteria of no net**  
2 **detriment?**

3 A. In my opinion, no. As such, my primary recommendation is that the merger be denied.  
4 However, if it is approved, my proposed conditions should be considered the minimum  
5 threshold to approve the merger.

6 **Q. Have there been any recent merger applications that have been denied due to the**  
7 **merger applicants failing to meet their burden of proof?**

8 A. Yes, several. Just over the past year the following proposed mergers have been denied by  
9 the relevant state regulatory bodies:

- 10 • Iberdrola-UI<sup>49</sup>
  - 11 ○ Denied by Connecticut Public Utilities Regulatory Authority (“PURA”) on June
  - 12 30, 2015
- 13 • PHI-Exelon<sup>50</sup>
  - 14 ○ Denied by Washington DC Public Service Commission on August 27, 2015
- 15 • Cleco-Macquarie<sup>51</sup>
  - 16 ○ Denied by Louisiana Public Service Commission on February 24, 2016
- 17 • Hawaiian Electric-NextEra<sup>52</sup>
  - 18 ○ Denied by Hawaiian Public Utilities Commission on July 15, 2016

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<sup>49</sup> Connecticut Public Utilities Regulatory Authority, Final Decision in Docket Number 15-03-45

<sup>50</sup> Public Service Commission of the District of Columbia, Order Number 18148

<sup>51</sup> Louisiana Public Service Commission, Order Number U-33434

<sup>52</sup> NextEra Ends \$2.63 Billion Hawaii Deal as Regulator Says No, <http://www.bloomberg.com/news/articles/2016-07-16/nextera-purchase-of-hawaiian-electric-denied-by-state-regulator-iqog17qq>

1 **Q. How might the outcomes in these other proceedings provide insight to this**  
2 **Commission?**

3 A. The proposed mergers noted here all share similarities to the issues under review by the  
4 Commission in this proposed merger. Perhaps the most relevant of these cases is the  
5 Iberdrola-UI merger. The Connecticut Public Utilities Regulatory Authority’s statement  
6 below, excerpted from the order denying the proposed merger, demonstrates the  
7 similarities between the Iberdrola-UI transaction and the current proceeding.<sup>53</sup>

8 Connecticut now has a competent, responsible, well-managed utility with an  
9 established track record in electric and gas operations and an established  
10 commitment to positive community relations. . . The change of control request is in  
11 effect one asking for a leap of faith into an unknown situation. . . insight into what  
12 Connecticut could reasonably foresee in future years could convince the PURA to  
13 approve a change of control transaction. Lacking such clarity and given the  
14 importance of United Illuminating to Connecticut’s future, together with the  
15 Applicants’ unwillingness to provide more definitive benefits to the public and to  
16 UI’s affiliated Connecticut utility companies, the PURA declines approval.<sup>54</sup>

17 The fundamental principles discussed by the PURA above apply closely to the current  
18 proceeding before the Missouri Commission. Similar to UI, Empire is a well-run utility  
19 with a long history of providing safe and reliable utility service in Missouri. This  
20 Commission is effectively being asked by the Applicants to take a “leap of faith” by

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<sup>53</sup> Iberdrola, utility holding company headquartered in Spain, attempted to acquire a Connecticut-based utility, UIL Holdings Corporation.

<sup>54</sup> State of Connecticut Public Utilities Regulatory Authority, Docket No. 15-03-45, Joint Application of Iberdrola, S.A., Et Al., and UIL Holdings, Corporation for Approval of a Change of Control, Proposed Final Decision, issued June 30, 2015.

1 approving a merger that is unsupported, unnecessary, and detrimental to the public  
2 interest.<sup>55</sup>

3 **Q. Do you have any other comments related to the failed merger applications that you**  
4 **cited?**

5 A. Yes. With the exception of the Hawaiian Electric-NextEra merger application, which was  
6 only recently denied, the other three mergers were eventually approved—but only after  
7 the merger applicants strengthened their merger application as requested by the  
8 Commission.

9 **Q. You stated in a previous answer that the proposed merger is “unnecessary.” What is**  
10 **your basis for this statement?**

11 A. In discovery, Empire’s CEO, Brad Beecher, stated that the proposed merger was  
12 unnecessary for Empire to continue to provide safe and reliable service to its customers.  
13 The Commission, therefore, should not feel compelled to approve this merger. It should  
14 only approve this merger when, and if, the application is strengthened in a manner that  
15 provides the Commission with sufficient comfort that potential detriments have been  
16 effectively mitigated.

17 **Q. What is your overall conclusion of the proposed merger?**

18 A. Based on our review of the issues, it is our opinion that the merger application be denied.

19 **Q. Does this conclude your testimony?**

20 A. Yes.

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<sup>55</sup> See Attachment RP-R21 - When asked in discovery if the proposed merger was necessary for Empire to continue to provide safe and reliable service to its customers, Empire’s CEO, Brad Beecher, replied that it was not necessary. Response to Discovery, OPC – AzP – No. 5071



FOR IMMEDIATE RELEASE

MONTANA PUBLIC SERVICE COMMISSION  
Contact: Eric Sell- Communications Director  
[esell@mt.gov](mailto:esell@mt.gov)  
W: 406.444.5772  
C: 406.202.5326

January 29, 2016

## **Public Service Commission moves to sue utility companies for unauthorized sale and transfer of Missoula water system**

**HELENA, Mont. – January 29, 2016** – The Montana Public Service Commission moved Friday to file a complaint in Montana District Court to levy fines against Mountain Water Co., and their new parent company Liberty Utilities, for the unauthorized sale and transfer of the Missoula water system.

Following a work session Friday afternoon that included discussion of comments submitted by parties involved in the sale proceeding before the PSC, the Commission voted 5-0 to take legal action against Mountain Water and Liberty Utilities. The Commission cited its authority under Montana law, and a previous PSC order as justification for the legal action.

Additionally, the Commission opened a proceeding to consider changes to Mountain Water's rates based on changes in ownership, which could likely lead to a rate reduction for Mountain Water customers.

Commissioner Bob Lake, R-Hamilton, whose district includes the city of Missoula, said,

**"I'm disappointed that Liberty and Carlyle chose to circumvent the PSC's process put in place to ensure that consumers aren't harmed when a utility changes hands. It's very unfortunate that the PSC was unable to review the purchase application through the proper procedure, but the Commission's actions today aim to**

ensure that the customers of Mountain Water are not harmed while the utility remains under private ownership.”

“We want to make it clear that the Montana Public Service Commission will not allow companies to move forward with sales and transfers of this nature without our approval, avoiding the appropriate scrutiny intended to protect consumers,” said PSC Chairman Brad Johnson, R-East Helena. “I believe that Liberty’s actions are a direct attack on the Commission’s authority to review this purchase application, and that, frankly, is unacceptable. Those really harmed by Liberty’s actions are the customers of Mountain Water, and we are determined to ensure no further harm comes to these consumers while the water system is under our jurisdiction to regulate.”

The Commission directed PSC staff to consult with the Montana Attorney General’s office to explore other remedies to address the unauthorized sale and transfer of Mountain Water, as well as pursue fines against the companies in Montana District Court.

Pursuant to Montana law, if a public utility commits a violation, it is subject to penalties not less than \$100 or more than \$1000 per violation. Such fines shall be recovered in a civil action initiated by the Commission.

###

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FOR IMMEDIATE RELEASE

MONTANA PUBLIC SERVICE COMMISSION

Contact: Eric Sell- Communications Director

[esell@mt.gov](mailto:esell@mt.gov)

W: 406.444.5772

C: 406.202.5326

July 7, 2016

## **Montana Public Service Commission reaches settlement agreement with Liberty Utilities**

*\$150,000 in fines will be donated to Missoula Human Resource Council*

**HELENA, Mont. – July 7, 2016** – The Montana Public Service Commission approved a settlement agreement Thursday with Liberty Utilities Co. for the unauthorized sale and transfer of Missoula’s water system, Mountain Water Co., last January.

Liberty Utilities and Mountain Water approached the Commission with an offer to enter into settlement discussions after the PSC voted to seek the statutory maximum penalty against Liberty Utilities in Montana district court for the unauthorized transaction.

“It was completely inappropriate for Liberty Utilities to skirt the laws of our state, and I am very pleased that we could come together and reach a settlement that benefits Mountain Water’s customers,” said Commissioner Bob Lake, R-Hamilton. “The \$1.1 million annual rate reduction that we approved for ratepayers last month is now protected from being challenged in court, and a quality, local organization will gain much needed resources to help those less fortunate in the Missoula community. This settlement is as good as any outcome that we could have hoped for from a lawsuit, and with the added benefit of avoiding more litigation.”

The terms and conditions of the settlement include,

- (1) Mountain Water will pay \$150,000 to the Human Resource Council designated for use in its low income and renters repair and replacement program, which assists qualifying individuals with the cost of replacing service lines or meter installation costs normally borne by customers within Mountain Water’s service area. This figure represents the statutory maximum in fines Liberty Utilities would pay had the PSC’s complaint gone forward in court. The money will come out of Mountain Water’s profits and not from rates charged to customers.
- (2) Mountain Water will not challenge the \$1.1 million annual rate reduction approved by the PSC in May.

- (3) Mountain Water, Liberty Utilities, and its corporate affiliates agree no sale or transfer of Mountain Water shall take place without prior approval by the Commission.
- (4) Mountain Water will not attempt to seek recovery of any costs related to the Liberty Utility acquisition, including acquisition premium, transaction, and transition costs.
- (5) In its next general rate case, Mountain Water will provide the Commission information about it and its upstream corporate ownership to ensure Mountain Water will provide reasonably adequate service and facilities at just and reasonable rates. Mountain Water also will consent to the Commission including a review of ring-fencing provisions within the rate docket.

Speaking to the settlement, PSC Chairman Brad Johnson, R- East Helena, said,

“This settlement not only reaffirms the Commission’s authority to review sales and transfers of utilities, it also demonstrates to all other utilities operating in Montana that ignoring the Commission’s oversight authority is unacceptable, and doing so has consequences.”

Due to the outdated statutorily prescribed level of allowable fines for an unauthorized sale of a utility, the Commission recently voted to introduce a bill during the 2017 legislative session to increase the maximum penalty from the current ceiling of \$1,000 a day, to \$10,000 a day.

To view the full settlement, visit: <http://bit.ly/29xtjZb>

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**Liberty Utilities (Central) Co.  
Liberty Sub Corp.  
The Empire District Electric Company  
Docket No. EM-2016-0213  
Response to Office of the Public Counsel**

Response provided by: David Pasieka  
Title: President  
Liberty Utilities (Canada) Corp.  
Company: Joint Applicants  
Address: 2751 North High Street  
Jackson, MO 63755  
Company Response Number: OPC – AzP – No. 5002  
Date of Response May 23, 2016

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Question:

Company Witness Beecher testified (page 6 at 9:11) that “Liberty utilities ... has committed to retain all of Empire’s management team, its workforce following closing of the transaction and will continue to operate Empire’s business under the Empire brand for at least 5 years.” The 5-year duration appears to apply to the “brand” commitment only, not the “employment” commitment (which is discussed in section 6.10 of the Agreement and Plan of Merger). Please confirm that the “at least 5 years” language is in reference to Empire’s operation under the brand and not in reference to any employment-related commitment, or indicate otherwise.

Response:

Confirmed. The five year reference is to the Empire brand.

**Liberty Utilities (Central) Co.  
Liberty Sub Corp.  
The Empire District Electric Company  
Docket No. EM-2016-0213  
Response to Office of the Public Counsel**

Response provided by: David Pasieka  
Title: President  
Liberty Utilities (Canada) Corp.  
Company: Joint Applicants  
Address: 2751 North High Street  
Jackson, MO 63755  
Company Response Number: OPC – AzP – No. 5124  
Date of Response July 8, 2016

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**Question:**

Regarding the response to OPC – AzP – No. 5010, specifically the following statement: “The company does not plan to relocate any positions. The only positions expected to be eliminated are on account of duplicated functions (i.e. investor relations) or positions that may not be refilled with natural attrition.” (A) Are the Applicants formally committing that, if the merger is consummated, they will not relocate, neither in whole nor in part, functions currently performed by Empire employees in Missouri for a period of time if the merger is consummated? (B) If the answer to subpart ‘A’ is ‘yes’, please list the functions or portions of functions that the Applicants are committing to maintain in Missouri. (C) If the answer to subpart ‘A’ is ‘yes’, please state the period (i.e., number of years) of commitment that the Applicants are committing to maintain these functions in Missouri.

**Response:**

- A. As stated in OPC – AzP – 5010, the Joint Applicants do not anticipate relocating any positions, furthermore, these topics are currently being discussed as part of settlement negotiations.
- B. N/A
- C. N/A

**Liberty Utilities (Central) Co.  
Liberty Sub Corp.  
The Empire District Electric Company  
Docket No. EM-2016-0213  
Response to Office of the Public Counsel**

Response provided by: Peter Eichler

Title: VP, Strategic Initiatives  
Liberty Utilities (Canada) Corp.

Company: Joint Applicants

Address: 2751 North High Street  
Jackson, MO 63755

Company Response Number: OPC – AzP – No. 5118

Date of Response June 17, 2016

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**Question:**

Regarding the statement on page 12 of Witness Eichler’s direct testimony that, “We anticipate there are approximately \$2.3 million in costs saved by not requiring Empire to comply with all the requirements of being a public reporting issuer.” Please: (A) Provide the basis for this assertion. This should include the calculations and any related source documents substantiating the \$2.3 million figure. (B) State whether the \$2.3 million is gross or net of the compliance costs that Empire will be allocated from its affiliates and/or parents if the merger is consummated. (C) If the answer to subpart ‘B’ is that the \$2.3 million figure is a gross figure, please provide an estimate of the annual compliance/public reporting costs that Empire will be allocated if the merger is consummated.

**Response:**

- A. Please see the workpaper provided in response to AzP 5028.
- B. The costs referenced in A assume that Algonquin Power and Utilities Corp. already incurs costs for these similar services and that going forward Empire will receive an allocated portion.
- C. While the exact allocation amount is to be determined based on the Cost Allocation Manual the Joint Applicants propose to submit after the conclusion of the merger, in 2016, the approximate estimate of these costs for Algonquin is approximately \$4.1 million dollars. For illustrative purposes, if 70% of these costs were allocated to Liberty Utilities (as it will comprise 70% of the overall business) then Liberty

Utilities would be allocated approximately \$2.85 million. Of the \$2.85 million, Empire's allocation would depend on the allocation factor (or combination of factors) ultimately utilized. For illustrative purposes, Empire's allocation based on the following factors would be:

Customer Count – 28% of the total (216,787/772,459) or \$800k

Total Plant – 54% of the total (\$1,967,000,000/3,586,798,000) or \$1.56 million

**Liberty Utilities (Central) Co.  
Liberty Sub Corp.  
The Empire District Electric Company  
Docket No. EM-2016-0213  
Response to Office of the Public Counsel**

Response provided by: Peter Eichler

Title: VP, Strategic Initiatives  
Liberty Utilities (Canada) Corp.

Company: Joint Applicants

Address: 2751 North High Street  
Jackson, MO 63755

Company Response Number: OPC – AzP – No. 5021

Date of Response May 26, 2016  
Supplemental Response June 10, 2016

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Question:

Throughout the merger application and company-provided testimonies, the Applicants have discussed various items they believe are “benefits” of the proposed merger. Please provide a comprehensive list of all the anticipated benefits of the merger in a table, and indicate whether each benefit is quantifiable, if so, provide the amount ***and the underlying analysis***, and whether the benefit is in the form of a commitment that is enforceable and/or measurable. If the benefit is “measurable,” state how the Applicants intend to measure the benefit related to the merger. For purposes of this request, “enforceable” is intended to mean legally binding.

Please utilize the template below for purposes of responding to this request.

Merger Benefit	Quantifiable? Yes/No	If Yes, the Amount of Benefit in US Dollars	If Yes, the Date at Which Quantified Benefits Will be Realized	Enforceable/Measurable? Yes/No	Method of Measurement
1					
2					

Response:

Please see attached.

Follow up Request from AzP:

This request asked for the following: “Please provide a comprehensive list of all the anticipated benefits of the merger in a table, and indicate whether each benefit is quantifiable, if so, provide the amount and the underlying analysis, and whether the benefit is in the form of a commitment that is *enforceable and/or measurable*.” (emphasis added) In the responses provided, there was an Excel column marked as “Enforceable or Measurable”, but it did not distinguish between the two. Stated another way, it is not possible based on the response to determine whether the Applicants are stating that the proposed benefit is enforceable, measurable or enforceable *and* measurable.

- o ACTION ITEM: Please provide a revised table that states whether the Applicants are asserting that the proposed benefits are (a) Enforceable; (b) Measurable; or (c) Enforceable and Measurable.
- o ACTION ITEM: Cell ‘C17’ appears to be a typo. Specifically, it appears the ‘yes’ should be changed to ‘no’. Please confirm.

Supplemental Response:

In their prior response, the Joint Applicants could not distinguish between “enforceable” and “measurable” and thus answered in an effort to indicate that the benefit would in fact exist and be tangible. The Joint Applicants are not able to respond to the request that seeks a distinction between the two terms as the term “enforceable” seeks a legal opinion for which I am not qualified to render. As to Cell C17, the answer is no.



## OPC - AzP - 5021

## Supplement

	<b>Merger Benefit</b>	<b>Quantifiable</b>	<b>If Yes Amount</b>	<b>Date of Realization</b>	<b>Enforceable and/or Measurable</b>	<b>Method of Measurement</b>	<b>Analysis</b>
1	Maintain Empire Brand for 5 years	No	N/A	Day 1	Both	Verify Empire logo still used	Merger Agreement Section 6.06E
2	Net Customer Savings \$704k	Yes	\$704,000	Year 1	Measurable	During rate case post acquisition, confirm net savings.	Schedule PE-2
3	Retain Empire Management Team	No	N/A	Day 1	Both	Verify Mgmt Team retained	Merger Agreement Section 6.06C/1.06
4	Retain Empire Employees	No	N/A	Day 1	Both	Verify employees retained	Bid Letter and Pasieka Testimony
5	Maintain Joplin Headquarters	No	N/A	Day 1	Both	Verify offices still open	Merger Agreement Section 6.06A
6	Forgo recovery of acquisition premium	No	N/A	Day 1	Both	During first rate case post acquisition, confirm premium not requested in rates	Krygier Testimony
7	Forgo recovery of transaction costs	No	N/A	Day 1	Both	During first rate case post acquisition, confirm transaction costs not requested in rates	Krygier Testimony
8	Maintain charitable contributions	Yes	\$400,000	Future	Both	Verify general ledger transaction detail consistent with Disclosure Letter	Merger Agreement Section 6.06F
9	Future Health care costs	No	N/A	Future	Measurable	Provide analysis that AQN / EDE together provides lower costs than EDE stand alone	Future utility scale
10	LU Central Board of Directors	No	N/A	Day 1	Both	Verify that Board exists with members in place	Merger Agreement Section 6.06C/1.06 Pasieka Testimony
11	Future IT costs	No	N/A	Future	Measurable	Provide analysis that AQN / EDE together provides lower costs than EDE stand alone	Future utility scale
12	Access to renewable energy expertise	Yes	N/A	Future	Measurable	In future capital investment decisions, demonstrate financial benefits of AQN renewable experience.	Future utility scale
13	Consolidated bill printing	No	N/A	Future	Measurable	During rate case post acquisition, confirm lower bill print costs before and after for combined organization.	Future utility scale

**Liberty Utilities (Central) Co.  
Liberty Sub Corp.  
The Empire District Electric Company  
Docket No. EM-2016-0213  
Response to Office of the Public Counsel**

Response provided by: Peter Eichler  
Title: VP, Strategic Initiatives  
Liberty Utilities (Canada) Corp.  
Company: Joint Applicants  
Address: 2751 North High Street  
Jackson, MO 63755  
Company Response Number: OPC – AzP – No. 5117  
Date of Response June 7, 2016  
Date of Supplemental Response June 21, 2016

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Question:

In reference to the Excel attachment provided in response to Staff DR No. 0092, please:

- (A) State why cell B15 uses ‘760’ as the denominator to calculate “Average Cost of An Employee” instead of the line listed as ‘Total Number of employees’ listed in cell B11 as ‘749’
- (B) State the basis for using ‘Average Turnover excluding retirees’ instead of the average turnover with retirees. For example, are the Applicants committing to hire new employees for all retirees?
- (C) Provide source documents for all hard-coded amounts in the spreadsheet.
- (D) State the basis used to determine the 2.2% ‘Average turnover excluding retirees’ in cell B17 and provide source documents for this figure.
- (E) State what the Average Turnover *Including* Retirees would be and provide source documents for this figure.

Response:

- A. This was an error, the total should be 749.
- B. The basis was to underscore that the attrition could be achieved based on the natural attrition not including retirees. As previously stated, both the Joint Applicants and Empire evaluate the need to replace every position as it becomes vacant (this is true

even absent the merger) and thus no conclusion can be drawn about the intent of the applicants beyond the commitments made in the testimony.

C. This was provided by Empire in the course of diligence.

D. See "C".

E. Please see the response to OPC – AzP – 5004 which reflects a rate of 5.70% for the 2011-2015 time frame.

Supplemental Request:

Please provide the source documents described in subpart "c".

Supplemental Response:

Please see attached Highly Confidential documents.

**Liberty Utilities (Central) Co.  
Liberty Sub Corp.  
The Empire District Electric Company  
Docket No. EM-2016-0213  
Response to Office of the Public Counsel**

Response provided by: Christopher D. Krygier  
Title: Director, Regulatory and Government Affairs  
Liberty Utilities Services Corp.  
Company: Joint Applicants  
Address: 2751 North High Street  
Jackson, MO 63755  
Company Response Number: OPC – AzP – No. 5129  
Date of Response June 20, 2016

---

**Question:**

Regarding the presentation from the May 16, 2016 Missouri Technical Meeting, there is a discussion regarding a two-phase transition process to take place leading to the close of the transaction. It is stated here that the focus is on support functions, “not focused on operational activities – that will occur post-close”. (A) Please clarify what is meant by this statement. Stated another way, what are the functions that will be reviewed after the merger? (B) Will the time and expenses related to this review be considered “transaction costs”. (C) Will the time and expenses related to this review be segregated and exempt from recovery in rates?

**Response:**

- A. The day-to-day operations will not be reviewed as part of the transition. After the close of the transaction and during the normal course of the business, LU Central will consider whether there will be any changes to such operations.
- B. To the extent that there are any changes to such operations, they will not be “transaction costs” as they occur during the ordinary course of operating Empire.
- C. No.

**Liberty Utilities (Central) Co.  
Liberty Sub Corp.  
The Empire District Electric Company  
Docket No. EM-2016-0213  
Response to Office of the Public Counsel**

Response provided by: Christopher D. Krygier  
Title: Director, Regulatory and Government Affairs  
Liberty Utilities Services Corp.  
Company: Joint Applicants  
Address: 2751 N. High Street  
Jackson, MO 63755  
Company Response Number: OPC – AzP - 5102  
Date of Response May 31, 2016

---

Question:

On page 9 of the Direct Testimony of Christopher Krygier, there is the following statement: “LU Central board of directors will oversee each entity within the division.” (A) Please state the number of individuals who will comprise this board after the merger. If the number of individuals who will comprise the board has not been determined, please so state. (B) Please list all individuals who will comprise this board of directors. Please provide the names, titles, company affiliations and a short bio and/or curriculum vitae for each individual. If individuals who will comprise this board have not been determined, please so state.

Response:

- (a) The number of board members of LU Central post-acquisition has not yet been determined.
- (b) All of the members of Empire’s current board of directors have been offered positions on the LU Central board. Copies of their bios are attached.

**Liberty Utilities (Central) Co.  
Liberty Sub Corp.  
The Empire District Electric Company  
Docket No. EM-2016-0213  
Response to Office of the Public Counsel**

Response provided by: David Pasieka  
Title: President  
Liberty Utilities (Canada) Corp.  
Company: Joint Applicants  
Address: 2751 North High Street  
Jackson, MO 63755  
Company Response Number: OPC – AzP – No. 5122  
Date of Response June 20, 2016

---

**Question:**

As discussed in the Missouri Technical Session conducted May 16, 2016 in Jefferson City, MO, please: (A) Confirm that all US Algonquin employees are classified as Liberty Utilities Service Company employees or state otherwise. (B) State whether Empire employees will be classified as Liberty Utilities Service Company employees after the merger. Or, if a decision regarding the classification of Empire employees has not yet been made, state the considerations for why Empire employees would not be classified as Liberty Utilities Service Company employees. In other words, since all current US-based Algonquin employees are classified as service company employees, why would the Applicants consider not classifying Empire employees as service company employees post-merger?

**Response:**

- A. All employees in the United States that provide services to Liberty Utilities Co. distribution company affiliates are employed by Liberty Utilities Service Corp.
- B. Empire employees will become employed by Liberty Utilities Service Corp. post-merger.

**Liberty Utilities (Central) Co.  
Liberty Sub Corp.  
The Empire District Electric Company  
Docket No. EM-2016-0213  
Response to Missouri PSC Staff**

Response provided by: David Pasieka  
Title: President  
Liberty Utilities (Canada) Corp.  
Company: Joint Applicants  
Address: 2751 North High Street  
Jackson, MO 63755  
Company Response Number: Staff – No. 0011  
Date of Response May 10, 2016

---

**Question:**

Please provide a detailed description of the Company's planned organization for the Empire District Electric Company properties post-merger including personnel and reporting relationships to the President of Liberty Utilities. Please include a detailed organization chart for the Missouri properties with titles and names of personnel if known as well as currently vacant but anticipated to be filled positions.

**Response:**

The Joint Applicants are working through the detailed organization chart.

EM-2016-0213  
Rebuttal Testimony of  
Ryan Pfaff

Attachment RP-R12  
has been deemed  
“Highly Confidential”  
in its Entirety.



EM-2016-0213  
Rebuttal Testimony of  
Ryan Pfaff

Attachment RP-R13  
has been deemed  
“Highly Confidential”  
in its Entirety.

**Liberty Utilities (Central) Co.  
Liberty Sub Corp.  
The Empire District Electric Company  
Docket No. EM-2016-0213  
Response to Office of the Public Counsel**

Response provided by: Rob Sager  
Title: Controller, Asst. Secretary and Asst. Treasurer  
Company: Joint Applicants  
Address: 602 S Joplin Avenue  
Joplin, MO 64802  
Company Response Number: OPC – AzP - 5067  
Date of Response May 23, 2016

---

Question:  
Please provide a listing of all ring-fencing measures currently in place at Empire.

Response:  
Empire has no ring-fencing measures as it is nearly 100% rate regulated with the exception being its fiber business that transacts with the regulated utility and is subject to the Commission's affiliate transaction rules.

**EDE DEF+14A 4/28/2016****Section 1: DEF 14A (DEF 14A)**

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[Table of contents](#)

[Table of Contents](#)

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

**SCHEDULE 14A**

Proxy Statement Pursuant to Section 14(a) of  
the Securities Exchange Act of 1934 (Amendment No.     )

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material under §240.14a-12

**The Empire District Electric Company**

\_\_\_\_\_  
(Name of Registrant as Specified In Its Charter)

\_\_\_\_\_  
(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
- (1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

\_\_\_\_\_

\_\_\_\_\_

[Table of Contents](#)

An analysis of the fees and retainers earned by the non-employee Directors in 2015 is provided in the following table:

Name (a)	Annual Retainer (\$)(b)	Chairman and Committee Chair Fees (\$)(c)	Director Training Fees (\$)(d)	Annual Award of Stock Units (\$)(e)	All Other Compensation (\$)(f)	Total (\$)(g)
K.R. Allen	65,000	8,667	0	70,000	19,839	163,506
W.L. Gipson(1)	32,500	0	0	70,000	4,102	106,602
R.C. Hartley	65,000	7,500	0	70,000	35,537	173,037
D.R. Laney	65,000	107,500	0	70,000	13,721	256,221
B.C. Lind	65,000	7,500	0	70,000	19,384	161,884
B.T. Mueller	65,000	3,333	4,000	70,000	33,017	175,350
T.M. Ohlmacher	65,000	7,500	0	70,000	12,816	155,316
P.R. Portney	65,000	2,500	0	70,000	8,296	145,796
H.J. Schmidt	65,000	5,000	0	70,000	8,296	148,296
C.J. Sullivan	65,000	5,000	0	70,000	8,678	148,678

(1) Mr. Gipson retired from the Board of Directors effective July 1, 2015.

### *Narrative to Director Compensation Table*

For 2015, each Director who was not an officer or full-time employee of Empire was paid a monthly retainer for his or her services as a Director at a rate of \$65,000 per annum. The Chairman of each Committee received an additional annual retainer of \$7,500 (\$10,000 for the Chairman of the Audit Committee). The Chairman of the Board received an additional annual retainer of \$100,000. One-twelfth of the annual retainers for the Directors, the Committee Chairman, and the Chairman of the Board are paid each month that the Director serves in that position. In addition, each non-employee Director is paid a \$1,000 per day fee in the event an individual Committee or the Board meets more than 10 times per year and a \$1,000 per day stipend for outside training.

Our 2015 Stock Incentive Plan permits our Directors to receive shares of common stock in lieu of all or a portion of any cash payment for services rendered as a Director. In addition, a Director may defer all or part of any compensation payable for his or her services under the terms of our Deferred Compensation Plan for Directors. Amounts so deferred are credited to an account for the benefit of the Director and accrue an interest equivalent at a rate equal to the prime rate. A Director is entitled to receive all amounts deferred in a number of annual installments following retirement, as elected by him or her.

In addition to the cash retainer and fees for non-employee Directors, we maintain a Stock Unit Plan for such non-employee Directors to provide them the opportunity to accumulate compensation in the form of common stock units. When implemented in 1998, the Stock Unit Plan provided Directors the opportunity to convert cash retirement benefits earned under our prior cash retirement plan for Directors into common stock units. All eligible Directors who had benefits under the prior cash retirement plan converted their cash retirement benefits to common stock units. Each common stock unit earns dividends in the form of common stock units and can be redeemed for one share of common stock upon retirement or death of the Director, or on a date elected in advance by the Director with respect to awards made on or after January 1, 2006. The number of units granted annually is calculated by dividing the annual contribution rate, which is either the annual retainer fee or such other amount as is established by the Compensation Committee of the Board of Directors, by the fair-market value of our common stock on January 1 of the year the units are granted. Beginning in 2015, the Compensation Committee elected to increase the annual contribution rate to \$70,000 from \$55,000 in 2014. Common stock unit dividends are computed based on the fair market value of our common stock on the dividend's record date. During 2015, 37,008 units were converted to common stock by retired and current Directors, 23,537 units were granted for services provided in 2015 (based on an annual contribution rate of \$70,000), and 7,058 units were granted pursuant to the provisions of the plan providing for the reinvestment of dividends on stock units in the form of additional stock units. In connection with the pending acquisition of Empire by Liberty Utilities (Central) Co., a subsidiary of Algonquin Power & Utilities Corp., we amended the Stock Unit Plan to provide that, effective upon and subject to the consummation of the acquisition, each stock unit outstanding immediately prior to the effective time of the acquisition will be converted into the right to receive in cash the merger consideration under the merger agreement, with interest at the prime rate from the effective time of the acquisition until the payment date under the Stock Unit Plan.

**Liberty Utilities (Central) Co.  
Liberty Sub Corp.  
The Empire District Electric Company  
Docket No. EM-2016-0213  
Response to Office of the Public Counsel**

Response provided by: Peter Eichler  
Title: VP, Strategic Initiatives  
Liberty Utilities (Canada) Corp.  
Company: Joint Applicants  
Address: 2751 North High Street  
Jackson, MO 63755  
Company Response Number: OPC – AzP – No. 5081  
Date of Response May 31, 2016

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Question:

Do the Joint Applicants believe that the currently proposed acquisition is structured in a manner that makes Empire bankruptcy-remote from the rest of Liberty Utilities and Algonquin? If so, please provide a basis for this assertion. If not, please so state.

Response:

The Applicants believe that the proposed acquisition is structured in a manner that will make Empire bankruptcy remote from the rest of Liberty Utilities Co. business. The basis for this assertion is that there will be sufficient ring-fencing provisions in place as described in the response to OPC-AzP- No. 5077.

**Liberty Utilities (Central) Co.  
Liberty Sub Corp.  
The Empire District Electric Company  
Docket No. EM-2016-0213  
Response to Office of the Public Counsel**

Response provided by: Peter Eichler  
Title: VP, Strategic Initiatives  
Liberty Utilities (Canada) Corp.  
Company: Joint Applicants  
Address: 2751 North High Street  
Jackson, MO 63755  
Company Response Number: OPC – AzP – No. 5077  
Date of Response May 31, 2016

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**Question:**

As stated on page 14 of Mr. Peter Eichler’s Direct Testimony: “Liberty Utilities are ‘ring-fenced’ separately and each operating entity is solely and only responsible for that portion of Liberty Utilities debt specifically related to such business.” Please: (A) List all ring-fencing measures currently in place at the subsidiaries of Liberty Utilities. (B) State the ring-fencing measures currently in place at the subsidiaries of Liberty Utilities that will be applied to Empire if the transaction is consummated.

**Response:**

Each subsidiary of Liberty Utilities Co. has the following ring-fencing measures in place which recognize and maintain the separate corporate existence of each entity: (1) each subsidiary is a separate legal entity which is legally separate from all other businesses of APUC and its other direct and indirect subsidiaries; (2) many of the subsidiaries maintain their own President or General Manager based in the service territory that has full time responsibility for the day-to-day operations of the utility, along with operational personnel that perform daily functions for each subsidiary; (3) each subsidiary maintains separate books and records; (4) goods and services are generally procured through contracts in the name of the particular subsidiary; (4) each subsidiary is adequately capitalized, and; (5) each subsidiary owns the necessary assets to conduct its business. All of these measures will be applied to Empire upon consummation of the transaction.

**Liberty Utilities (Central) Co.  
Liberty Sub Corp.  
The Empire District Electric Company  
Docket No. EM-2016-0213  
Response to Office of the Public Counsel**

Response provided by: Peter Eichler  
Title: VP, Strategic Initiatives  
Liberty Utilities (Canada) Corp.  
Company: Joint Applicants  
Address: 2751 North High Street  
Jackson, MO 63755  
Company Response Number: OPC – AzP – No. 5068  
Date of Response May 23, 2016

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Question:  
Please provide a listing of all additional ring-fencing measures the Applicants have proposed as part of this merger. If the Applicants have not proposed any additional ring-fencing measures as part of this merger, please so state.

Response:  
No additional measures were proposed by the Joint Applicants.

**Liberty Utilities (Central) Co.  
Liberty Sub Corp.  
The Empire District Electric Company  
Docket No. EM-2016-0213  
Response to Office of the Public Counsel**

Response provided by: David Pasieka  
Title: President  
Liberty Utilities (Canada) Corp.  
Company: Joint Applicants  
Address: 2751 North High Street  
Jackson, MO 63755  
Company Response Number: OPC – AzP – No. 5113  
Date of Response June 7, 2016

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**Question:**

Please provide a detailed description of the capital and O&M budget currently in place at Algonquin. As part of this description, please provide, at a minimum: (A) The names and job positions of the individuals who are responsible for developing the capital and O&M budgets; (B) The names and job positions of the individuals who are responsible for reviewing and approving the capital and O&M budgets. To the extent that certain individuals/groups have authority to approve expenditures up to a certain dollar threshold, please so state and provide the related dollar thresholds; (C) The timeframe over which the capital and O&M budgets are developed over the course of the year; (D) A copy of the most recently approved capital and O&M budgets; (E) A copy of the board of directors and/or senior management meeting minutes wherein the document was approved.

**Response:**

The requested information is not within the possession, custody or control of LU Central or Liberty Sub Corp. However, it is the companies' understanding that distribution utilities indirectly owned by Algonquin Power & Utilities Corp. follow the general process set forth in response to OPC- AzP – No. 5114.



**Liberty Utilities (Central) Co.  
Liberty Sub Corp.  
The Empire District Electric Company  
Docket No. EM-2016-0213  
Response to Office of the Public Counsel**

Response provided by: Christopher D. Krygier  
Title: Director, Regulatory and Government Affairs  
Liberty Utilities Services Corp.  
Company: Joint Applicants  
Address: 2751 North High Street  
Jackson, MO 63755  
Company Response Number: OPC – AzP – No. 5065  
Date of Response May 23, 2016

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Question:  
Please provide any ratings agency reports regarding Algonquin since January 1, 2013.

Response:  
Please see attached.

# Algonquin Power & Utilities Corp.



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*Insight beyond the rating.*

## Rating(s)

Debt	Rating	Rating Action	Trend
Issuer Rating	BBB (low)	Confirmed	Stable
Preferred Shares	Pfd-3 (low)	Confirmed	Stable

## Rating Update

On July 27, 2015, DBRS Limited (DBRS) has confirmed the ratings of Algonquin Power & Utilities Corp. (APUC or Holdco) as listed above, all with Stable trends. The rating reflects the following factors:

(1) Structural subordination between APUC and the debt issued by its two primary operating subsidiaries, Algonquin Power Co. (APCo; rated BBB (low)) and Liberty Utilities Finance GPI (LUF) (rated BBB (high)). The debt issued by LUF is guaranteed by Liberty Utilities Co. (LUC).

(2) APUC is a holding company with a well-diversified portfolio of regulated assets (largely owned by LUC) and non-regulated assets (largely owned by APCo). These assets have a reasonable business risk profile and a relatively stable cash flow profile that has provided solid cash distributions to Holdco. The business risk profile reflects the cost-of-service nature of the regulated distribution business (the Distribution Group) and the presence of long-term contracts in the non-regulated generation business (the Generation Group). Stable cash flows from regulated assets are supported by generally reasonable regulatory frameworks within its ten jurisdictions, which allow the Distribution Group to earn good returns on equity (ROE) with no commodity price

risk. Cash flows from non-regulated generation assets reflect long-term contracts with good-credit counterparties that significantly reduce the Generation Group's exposure to commodity price risk. DBRS notes that the Distribution Group faces regulatory risk, while the Generation Group faces re-contracting risk.

(3) There is either no or very minimal debt issued by APUC at the holding company level, and APUC does not intend to issue any material amount in the future. APUC does have a credit facility that is occasionally used (size of \$65 million, with \$53.2 million available as of March 31, 2015) and has approximately \$214 million in preferred shares. In 2014 and Q1 2015, APUC's non-consolidated credit metrics remained very strong for the current rating.

The Stable trend reflects DBRS's expectation that: (a) there will be no material change in terms of the mix of regulated assets and non-regulated assets from the current level of approximately 50/50, and a significant increase in non-regulated assets could negatively affect the credit quality of APUC; (b) there will be no material increase in non-consolidated debt levels that will significantly weaken the non-consolidated credit metrics; and (c) there will be no change in the current ratings of APCo or LUF.

## Financial Information

(CAD millions)	3 mos. Mar. 31		12 mos. Mar. 31		For the year ended December 31			
	2015	2014	2015	2014	2013	2012	2011	2010
Total consolidated debt	1,483	1,409	1,483	1,280	1,256	772	442	430
Cash flow-to-debt	24.4%	20.8%	14.2%	15.1%	11.7%	8.7%	9.4%	10.3%
EBITDA-to-interest	5.67	4.89	3.69	3.48	3.48	2.38	2.68	2.61
EBIT-to-interest	3.48	3.14	1.85	1.75	1.71	1.04	0.81	0.79
Debt-to-capital	44.3%	49.8%	44.3%	41.4%	45.6%	33.9%	50.1%	48.9%

## Issuer Description

Algonquin Power & Utilities Corp. is a holding company which owns: (1) Liberty Utilities Co, which owns and operates a diversified portfolio of regulated natural gas-, electric-, water and wastewater-distribution utilities in ten states in the U.S. (the Distribution Group). (2) Algonquin Power Co., which owns and operates a portfolio of non-regulated renewable power generation and clean energy power generation assets across North America (the Generation Group). APUC created a Transmission Group in 2014.

## Rating Considerations

### Strengths

**1. Holding company of diversified, reasonable business risk assets.** APUC, through APCo and LUC, owns portfolio of assets which are well-diversified as follows: (a) diversification in terms of geography for the regulated assets, which operate in ten states; (b) diversification in terms of regulated assets (43% of consolidated last 12 months (LTM) Q1 2015 EBITDA) and non-regulated assets (57% of consolidated LTM Q1 2015 EBITDA); and (c) diversification within the regulated assets in terms of commodities (natural gas distribution, electric distribution, and water/wastewater distribution). The reasonable business risk profile is supported by: (a) overall regulatory frameworks for the Distribution Group that allow good returns on equity, reasonable capital and operating cost recovery, and full commodity cost recovery (but subject to some volume risk and regulatory risk in certain jurisdictions); and (b) the long-term contracted nature of the Generation Group (weighted average contract life of approximately 14 years for renewable generation and seven years for thermal generation) that significantly mitigates its exposure to commodity price risk.

**2. Relatively stable cash flows and solid dividends from regulated and contracted businesses.** The Company's consolidated cash flow is generated from the Distribution Group and the Generation Group. The stability of cash flow from the Distribution Group is supported by regulated utilities that have no commodity price risk but some volume risk. The stability of cash flow from the Generation Group benefits from long-term contracts with credit-worthy counterparties. Dividends from these two business groups have been strong and more than sufficient to service any financial obligations at the Holdco level. This is expected to continue over the near to medium term.

**3. No corporate debt at Holdco.** APUC does not have any long-term debt outstanding and does not intend to issue any long-term debt going forward. APUC has credit facilities of \$65.0 million, that are used very occasionally and which had \$53.2 available as at March 31, 2015. As of March 31, 2015, APUC had \$214 million in preferred shares outstanding; however, dividends have been well covered by cash flow to APUC from its subsidiaries. The fixed-charge coverage at the holding company level remained very strong in 2014 and Q1 2015.

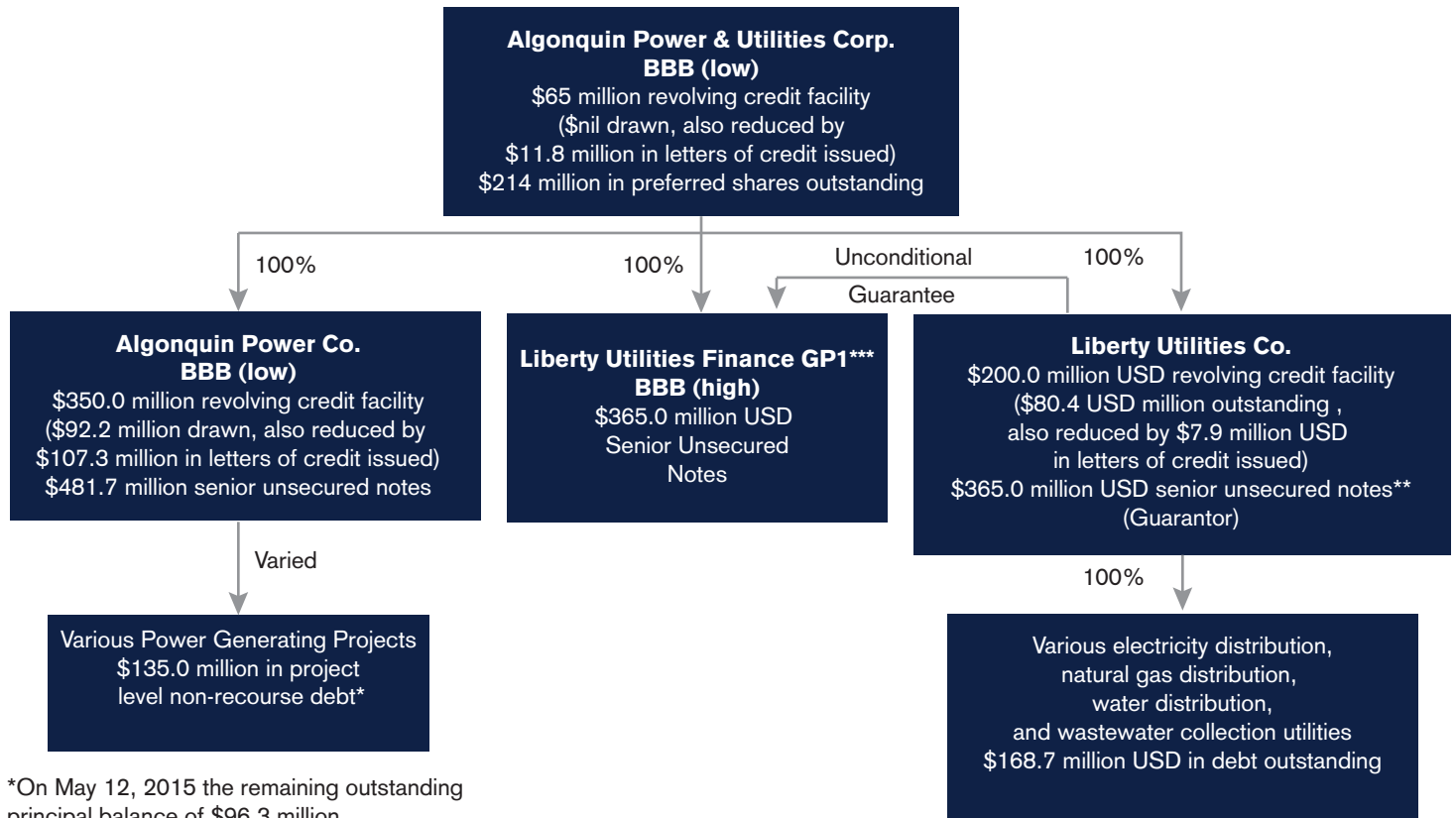
### Challenges

**1. Structural subordination.** Since APUC is a holding company, any debt to be issued by APUC (which is viewed as unlikely and not expected) would be structurally subordinated to the debt obligations of its operating subsidiaries. In assessing the structural subordination, DBRS does consider the benefit of the Holding company owning a portfolio of diversified assets.

**2. Regulatory risk, re-contracting risk and operational risk at subsidiaries.** APUC's Distribution Group is subject to regulatory risk which (actually or potentially) includes: distribution rate freezes, regulatory lag, volume risk and incomplete recovery of certain operating or capital costs that are spent between test years. The Generation Group faces the challenge of re-contracting risk. In addition, a prolonged unforced outage at the Generation Group could significantly affect cash flows of the group and subsequently dividends paid to the Holdco.

**3. Aggressive expansion plan.** APUC has been expanding aggressively through significant capital expenditures (capex) programs (see Major Projects section), as well as acquisitions through both APCo and LUC. There is no assurance that future acquisitions will have the same business risk profile as the existing portfolio. In addition, should the proportion of earnings and cash flow contributions from the non-regulated generation business increase significantly relative to the current mix, the credit quality of APUC could be negatively affected.

## Organizational Chart (as at March 31, 2015)



\*On May 12, 2015 the remaining outstanding principal balance of \$96.3 million on the Shady Oaks Wind Facility Senior debt was fully repaid.

\*\*The \$365 million USD senior unsecured notes are related party notes issued to Liberty Utilities Finance GP1 (LUF), with similar terms and conditions as the \$365 million USD senior unsecured notes issued to the public by LUF (the rated issuer) and guaranteed by Liberty Utilities Co.

\*\*\*In May 2015, LUF issued \$160 million USD in senior unsecured notes, Series D (the Series D Notes).

## Description of Operations

APUC's operations are primarily comprised of the ownership of APCo, which owns a portfolio of non-regulated generation assets in Canada and the United States and LUC, which owns a portfolio of regulated utilities in the United States.

### APCo

APCo owns or has interest in net operating capacity of approximately 1030.2 megawatts (MW), comprised of 66.0% wind generation, 18.8% thermal generation, 12.2% hydro generation, and 2.9% solar generation.

- APCo's electric generation facilities are well-diversified geographically and operationally.

- Solar generation increased to 2.9% of net capacity from 1.0% in 2013 following the completion of the Bakersfield I Solar project (commercial operation achieved in Q2 2015).
- Given APCo's development pipeline, wind generation is expected to remain as the largest contributor to the Company's total net capacity.

### LUC

LUC owns and operates a portfolio of regulated North American electricity, natural gas and water utilities segmented as follows:

- The Electric Distribution Systems serve approximately 93,000 connections in the states of California and New Hampshire.

## Description of Operations (CONTINUED)

- The Natural Gas Distribution Systems serve approximately 292,000 connections in the states of New Hampshire, Illinois, Iowa, Missouri, Georgia and Massachusetts.
- The Water and Wastewater Distribution Systems serve approximately 103,000 connections in the states of Arkansas, Arizona, Texas, Illinois and Missouri.

## APCo: Major Projects (Potential and Under Construction)

	Location	Size (MW)	Estimated Capital Cost (CAD millions)	Commercial Operation	PPA Term	Production (GW-hrs)
<b>Projects Recently Completed</b>						
Cornwall Solar Facility	Ontario	10	47.6	Q1 2014	20	14.4
St. Damase Wind Facility	Quebec	24	69.7	Q4 2014	20	76.9
Bakersfield I Solar	California	20	67.9	Q2 2015	20	53.3
Morse Wind Project	Saskatchewan	23	81.9	Q2 2015	20	104.0
<b>Total Projects Recently Completed</b>		<b>77</b>	<b>267.1</b>			<b>248.6</b>
<b>Projects in Construction</b>						
Odell Wind Project	Minnesota	200	408.9	2016	20	814.7
Val Eo Wind - Phase 1	Quebec	24	70.0	2016	20	66.0
Bakersfield II Solar	California	10	34.2	2016	20	24.2
<b>Projects in Development</b>						
Amherst Island	Ontario	75	272.5	2016 - 2017	20	235.0
Chaplin Wind	Saskatchewan	177	340.0	2017 - 2018	25	720.0
<b>Total Projects in Const. and Dev.</b>		<b>486</b>	<b>1,125.6</b>			<b>1,859.9</b>

- Odell Wind Project: The 200 MW wind project is located in Minnesota, and will have a 20-year PPA with Northern States Power Company, a subsidiary of Xcel Energy Inc. Construction is expected to begin in Q2 2015, with total costs estimated at \$408.9 million. APCo's participation in the project will be via a 50% interest in a new joint venture with a third party developer. Commercial operations are targeted to commence in late 2015 or early 2016.
- Val-Éo - Phase 1: The 24 MW wind project is located in Saint-Gédéon-de-Grandmont, Québec and has a 20-year PPA with Hydro-Québec. Construction of this project is expected to begin in 2015 with an estimated capital cost of \$70 million and a target commercial operations date (COD) in 2016.
- Bakersfield II Solar Project: The 10 MW project is adjacent to the 20 MW Bakersfield I Solar Project in California. Energy will be sold to a large investment grade electric utility pursuant to a 20 (year?) agreement. The total cost is expected to be \$34.2 million, with construction expected to commence in mid-2015. Commercial operation is targeted to occur in the first half of 2016.
- Amherst Island: The 75 MW wind project located on Amherst Island, Ontario, has a 20-year PPA with the Ontario Power Authority (rated A (high), with a Stable trend). The project has an estimated capital cost of \$272.5 million and a target COD of 2016-2017.
- Chaplin Wind: The 177 MW wind project located in Chaplin, Saskatchewan, has a 25-year PPA with SaskPower. The project has an estimated capital cost of \$340 million and a target COD of 2017-2018

## Material Acquisitions

### Acquisitions in 2015

- In September 2015, LUC entered into an agreement to acquire Park Water Company (PWC) (the Acquisition). PWC owns and operates three regulated water utilities in Southern California and Western Montana, with a total of 74,000 connections. Total consideration for the Acquisition is expected to be approximately USD 327 million, which includes the assumption of USD 77 million of existing long-term debt. LUC issued USD 160 million of debt in May 2015 for the purpose of debt financing the Acquisition. The remainder is expected to be financed with common equity. The Acquisition is subject to certain conditions including state and federal regulatory approval, with the closing expected to occur in late 2015 or early 2016. DBRS has reviewed LUC's financing plan and the regulatory framework within which PWC operates and believes that it is in line with LUC's existing portfolio of regulated assets. DBRS does not expect any material change to the overall business risk or financial risk profile of LUC following the completion of the Acquisition.

### Acquisitions in 2014

- In March 2014, APCo acquired the remaining 40% interest in the Minonk, Senate and Sandy Ridge wind portfolio for approximately USD 115 million. The acquisition was financed with a portion of APCo's \$200 million senior unsecured debentures issued on January 17, 2014.

### Acquisitions in 2013

- In January 2013, APCo acquired the 109.5 MW Shady Oaks wind facility from Goldwind International SO Limited for approximately USD 149 million. The facility has a 20-year PPA to sell approximately 85% of its output to Commonwealth Edison. The acquisition was largely financed with a non-recourse loan that can be repaid at any time without penalty.

- In April 2013, LUC acquired the Peach State Gas System for approximately USD 153 million. The acquisition was financed with a mix of equity injections from APUC and a portion of LUC's USD 125 million private placement debt financing.
- In Q4 2013, LUC completed the acquisition of the New England Gas Company from Southern Union Company for approximately USD 59 million. The acquisition was financed with a targeted debt-to-capital structure of 48%, including the assumption of USD 19.5 million of existing debt.

### Acquisitions in 2012

- In 2012, APCo completed a 60% equity investment in a portfolio of three wind-powered generating stations: Minonk Wind (200 MW, located in Illinois), Senate Wind (150 MW, located in Texas) and Sandy Ridge (50 MW, located in Pennsylvania) for approximately \$272 million. These wind facilities have PPA with a weighted-average life of 11.8 years for approximately 73% of its output.
- In 2012, LUC completed the acquisition of the New Hampshire Utilities (Granite State Electric Co. and Energy North Natural Gas Inc.), both from National Grid, for approximately USD 296 million.
- In 2012, LUC completed the acquisition of regulated natural gas distribution utilities located in Missouri, Illinois and Iowa from Atmos Energy Corporation for approximately USD 128 million.
- In 2012, LUC acquired the remaining 49.999% ownership in the CalPeco Electric Utility assets, located in California, from Emera) for approximately \$41 million.

## Earnings and Outlook

APUC (Consolidated)	3 mos. Mar. 31		12 mos. Mar. 31	For the year ended December 31				
	2015	2014	2015	2014	2013	2012	2011	2010
(CAD millions)								
Net revenue	176	145	532	501	392	225	151	180
EBITDA	94	79	245	230	188	87	67	67
EBIT	58	51	123	116	92	38	20	20
Gross interest expense	17	16	66	66	54	37	25	26
Earning before taxes	54	45	92	84	55	11	(4)	(5)
Net income before non-recurring items	43	38	94	89	56	16	15	15
Reported net income	43	36	83	76	20	15	18	20

### Summary

- APUC's EBITDA in 2014 increased significantly due to full-year contributions from the 2013 acquisitions, combined with partial contributions from the 2014 acquisitions.
- Most of the increase came from regulated utilities assets reflecting major acquisitions made in 2013 and 2012, partial year contributions from smaller acquisitions made in 2014, and also successful rate case outcomes in 2014.
- Reported net income in 2013 was significantly lower than net income before non-recurring items as a result of write-off to the Energy From Waste Thermal Facility and Brampton Co-generation plants. In 2014, the difference was due largely to the writedown of long-lived assets.

### Outlook

- Earnings outlook for the near to medium term are expected to increase notably reflecting full year contribution from acquisitions incurred in 2014 and the proposed PWC acquisition.
- APUC's EBITDA in 2015 is expected to continue increasing, reflecting (1) a full year of earnings for the 2013 acquisitions, (2) contribution from the acquisition of the remaining 40% interest in the Minonk, Senate and Sandy Ridge wind portfolio.
- Beyond 2015, an earnings increase is expected to be contributed by the proposed PWC Acquisition, expected to be completed in late 2015 or early 2016.

## Segment EBITDA

APUC (Consolidated)	3 mos. Mar. 31		12 mos. Mar. 31	For the year ended December 31				
	2015	2014	2015	2014	2013	2012	2011	2010
(CAD millions)								
APCo	30.7	24.5	116.8	110.6	101.7	52.9	67.1	62.6
	30%	29%	43%	44%	50%	56%	65%	82%
Liberty Utilities	71.5	59.5	154.7	142.8	100.1	41.2	36.0	13.9
	70%	71%	57%	56%	50%	44%	35%	18%

- EBITDA contributions from LUC as a percentage of consolidated EBITDA has increased over the past several years, largely reflecting new acquisitions.
- As a result, the consolidated business risk for APUC has improved since all acquisitions by LUC are regulated utilities,

which are viewed by DBRS to have lower business risk and relatively more stable earnings than non-regulated generation assets.

- Over the long term, APUC intends to have an approximate 50% EBITDA contribution from each group.

## Financial Profile

APUC (Consolidated)	3 mos. Mar. 31		12 mos. Mar. 31		For the year ended December 31			
	2015	2014	2015	2014	2013	2012	2011	2010
(CAD millions)								
Net income before non-recurring items	43	38	94	89	56	16	15	15
Depreciation & amortization	36	28	123	115	99	52	49	49
Deferred income taxes and other	12	7	(6)	(11)	(8)	(1)	(23)	(20)
<b>Cash flow from operations</b>	<b>91</b>	<b>73</b>	<b>211</b>	<b>193</b>	<b>147</b>	<b>67</b>	<b>41</b>	<b>44</b>
Dividends	(21)	(18)	(75)	(72)	(65)	(48)	(19)	(19)
Capital expenditures	(45)	(77)	(401)	(432)	(156)	(75)	(16)	(21)
<b>Free cash flow before working capital</b>	<b>25</b>	<b>(22)</b>	<b>(265)</b>	<b>(311)</b>	<b>(74)</b>	<b>(55)</b>	<b>6</b>	<b>4</b>
Changes in non-cash work. cap. items	(97)	(58)	(39)	(1)	(48)	(4)	(0)	1
<b>Net free cash flow</b>	<b>(73)</b>	<b>(80)</b>	<b>(304)</b>	<b>(312)</b>	<b>(122)</b>	<b>(59)</b>	<b>6</b>	<b>5</b>
Acquisitions & long-term investments	(65)	(129)	(99)	(164)	(242)	(711)	(59)	(63)
Short-term investments	0	0	0	0	0	0	36	36
Proceeds on asset sales	0	0	27	27	28	0	0	0
<b>Amount to be financed</b>	<b>(137)</b>	<b>(210)</b>	<b>(377)</b>	<b>(449)</b>	<b>(336)</b>	<b>(770)</b>	<b>(17)</b>	<b>(22)</b>
Net equity change	(0)	97	371	468	30	327	0	0
Net debt change	137	122	(35)	(50)	265	430	19	19
Other	14	9	32	27	2	(6)	0	5
<b>Change in cash</b>	<b>13</b>	<b>18</b>	<b>(9)</b>	<b>(5)</b>	<b>(39)</b>	<b>(20)</b>	<b>2</b>	<b>2</b>
Total debt	1,483	1,409	1,483	1,280	1,256	772	442	430
Debt-to-capital	44.3%	49.8%	44.3%	41.4%	45.6%	33.9%	50.1%	48.9%
Cash flow-to-debt	24.4%	20.8%	14.2%	15.1%	11.7%	8.7%	9.4%	10.3%
EBITDA-to-interest	5.67	4.89	3.69	3.48	3.48	2.38	2.68	2.61
EBIT-to-interest	3.48	3.14	1.85	1.75	1.71	1.04	0.81	0.79
Dividend payout ratio	47.9%	47.7%	79.3%	81.0%	115.9%	295.8%	125.8%	129.1%

### Summary

- APUC's consolidated financial profile remains relatively stable since 2013. All the financial ratios reflect the financing strategy at the operating company level, while APUC, as a Holdco, had no or very minimal debt at any given point in time. The only major obligation at the Holdco level is to pay dividends on preferred shares (approximately \$9.5 million in 2014 and \$5.4 million in 2013).
- Based on cash distributions from LUC and APCo and as a result of no debt and modest preferred dividends at the Holdco level, the Holdco's non-nonconsolidated credit metrics remained very strong for the current rating.
- Consolidated cash follow deficits in the past few years were largely due to capital investment requirements at its non-

regulated generation operations or regulated utilities, both of which are essentially self-financed.

- APUC's dividend policy is viewed as very reasonable in LTM 2015 as the Holdco paid out just under 80% of net income and approximately 36% of cash flow (excluding dividend reinvestments).

### Outlook

- Based on APUC's target for its consolidated capital structure at or below 50%, DBRS does not expect any material change to the Holdco's consolidated financial metrics. In addition, since the debt levels at the Holdco are expected to remain either minimal or null, its non-consolidated metrics should remain very strong over the near to medium term.



## Long-Term Debt Maturities and Liquidity

### Liquidity Profile - As at March 31, 2015

(CAD millions)	Committed	Drawn	Letters of credit	Available	Maturity Date
Cash and cash equivalents	22.6	-	-	22.6	-
APUC	65.0	0.0	11.8	53.2	Nov. 19, 2016
APCo	350.0	93.6	107.3	149.1	Jul. 31, 2018
Liberty Utilities	253.3	102.6	10.0	140.7	Sept. 30, 2018
<b>Total</b>	<b>690.9</b>	<b>196.2</b>	<b>129.1</b>	<b>365.6</b>	

- Liquidity at the Holdco level remained very strong as it has minimal financial obligations and its facility is mainly used for letter of credit purposes.

## Consolidated Balance Sheet and Financial Ratios

### Balance Sheet

	Mar. 31	Dec. 31	Dec. 31		Mar. 31	Dec. 31	Dec. 31
	<u>2015</u>	<u>2014</u>	<u>2013</u>		<u>2015</u>	<u>2014</u>	<u>2013</u>
<b>Assets</b>				<b>Liabilities &amp; Equity</b>			
Cash & equivalents	23	9	14	S.T. borrowings	194	47	210
Accounts receivable	244	189	161	Accounts payable	189	268	161
Inventories	22	43	34	Current portion L.T.D.	10	9	8
Prepaid expenses & other	89	94	91	Other current liab.	119	109	79
<b>Total Current Assets</b>	<b>378</b>	<b>335</b>	<b>299</b>	<b>Total Current Liab.</b>	<b>511</b>	<b>434</b>	<b>458</b>
Net fixed assets	3,544	3,278	2,709	Long-term debt (L.T.D.)	1,279	1,224	1,037
Goodwill & intangibles	173	146	139	Deferred income taxes	176	131	137
Future income tax assets	56	57	87	Other L.T. liabilities	546	478	378
Non-current reg. assets	195	188	164	Minority interest	361	329	511
Investments & others	186	110	79	Preferred shares	214	214	117
<b>Total Assets</b>	<b>4,531</b>	<b>4,114</b>	<b>3,476</b>	Shareholders' equity	1,444	1,306	839
				<b>Total Liab. &amp; SE</b>	<b>4,531</b>	<b>4,114</b>	<b>3,476</b>

### APUC (Consolidated)

	3 mos. Mar. 31		12 mos. Mar. 31		For the year ended December 31			
(CAD millions)	<u>2015</u>	<u>2014</u>	<u>2015</u>	<u>2014</u>	<u>2013</u>	<u>2012</u>	<u>2011</u>	<u>2010</u>
Current ratio	0.74	0.83	0.74	0.77	0.65	1.01	0.28	0.29
Debt-to-capital	44.3%	49.8%	44.3%	41.4%	45.6%	33.9%	50.1%	48.9%
Cash flow-to-debt	24.4%	20.8%	14.2%	15.1%	11.7%	8.7%	9.4%	10.3%
(Cash flow-dividends)/Capex (times)	1.54	0.72	0.34	0.28	0.52	0.26	1.39	1.21
Dividend payout ratio	47.9%	47.7%	79.3%	81.0%	115.9%	295.8%	125.8%	129.1%
<b>Coverage Ratios (times)</b>								
EBIT-to-interest	3.48	3.14	1.85	1.75	1.71	1.04	0.81	0.79
EBITDA-to-interest	5.67	4.89	3.69	3.48	3.48	2.38	2.68	2.61
Fixed-charges coverage	2.87	2.82	1.51	1.47	1.50	1.01	0.81	0.79
<b>Profitability Ratios</b>								
EBITDA margin	53.6%	54.7%	46.1%	45.9%	48.0%	38.8%	44.1%	37.2%
EBIT margin	32.9%	35.2%	23.1%	23.1%	23.5%	16.9%	13.3%	11.3%
Profit margin	24.5%	26.3%	17.7%	17.8%	14.3%	7.2%	10.2%	8.3%
Return on equity	9.4%	10.4%	5.7%	5.4%	3.7%	1.5%	3.5%	3.4%
Return on capital	6.8%	7.7%	4.5%	4.6%	3.7%	2.5%	3.7%	3.8%

## Application of Multiple Methodologies

The applicable methodologies used were Rating Companies in the Independent Power Producer Industry (August 2014) and Rating Companies in the Regulated Electric, Natural Gas and Water Utilities Industry (October 2014). Equal consideration was given to each methodology, as the company's primary subsidiaries consist of (1) APCo (approximately 43% of 2014 EBITDA), which owns and operates a portfolio of non-regulated power generation assets, subject to the Independent Power Producer methodology, (2) and LUC (approximately 57% of 2014 EBITDA), which owns and operates a diversified portfolio of regulated natural gas, electric, and water/wastewater distribution utilities, subject to the Regulated Electric, Natural Gas and Water Utilities methodology.

## Rating History

	Current	2014	2013	2012	2011	2010
Issuer Rating	BBB (low)	BBB (low)	BBB (low)	BBB (low)	NR	NR
Preferred Shares	Pfd-3 (low)	Pfd-3 (low)	Pfd-3 (low)	Pfd-3 (low)	NR	NR

## Previous Report

- Algonquin Power & Utilities Corp., Rating Report, July 25, 2014.

### Notes:

All figures are in Canadian dollars unless otherwise noted.

For the definition of Issuer Rating, please refer to Rating Definitions under Rating Policy on [www.dbrs.com](http://www.dbrs.com).

Generally, Issuer Ratings apply to all senior unsecured obligations of an applicable issuer, except when an issuer has a significant or unique level of secured debt.

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**Liberty Utilities (Central) Co.  
Liberty Sub Corp.  
The Empire District Electric Company  
Docket No. EM-2016-0213  
Response to Office of the Public Counsel**

Response provided by: Brad Beecher  
Title: President & CEO  
Company: Joint Applicants  
Address: 602 S Joplin Avenue  
Joplin, MO 64802  
Company Response Number: OPC – AzP – No. 5071  
Date of Response May xx, 2016

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Question:

Does Empire believe that a merger is necessary for purposes of maintaining safe and reliable service for its customers? If the answer is “no”, please so state. If the answer is “yes”, please provide copies of any and all studies and analyses supporting this assertion.

Response:

No. However, this transaction represents a meaningful opportunity to merge two organizations with similar values, cultures and customer bases that ultimately will benefit regulators, customers and the companies.

**Missouri Office of the Public Counsel Proposed Conditions**

**RATEPAYER PROTECTIONS**

1. The Joint Applicants shall ensure that merger accounting is rate-neutral for Empire customers. This includes but is not limited to the Joint Applicants establishing on the books of Empire no new regulatory assets related to merger accounting.
2. The billing and customer information system platform at Empire will be in use for their expected useful life, which will be at least as long as their scheduled depreciation period. If, for any reason, the use of these system platforms is terminated before the end of their scheduled depreciation period, ratepayers shall not be responsible for any un-depreciated costs or lease payment obligations remaining after the date upon which use is terminated.
3. The Joint Applicant's agree for any rate cases wherein Empire seeks recovery of merger transition costs, Empire must provide documentation that demonstrates whether, and the extent to which, these transition costs resulted in cost savings for Empire customers. Empire commits to seek no recovery of merger transition costs except for those which are fully documented, justified, and supported by quantifiable cost savings.
4. Transaction Costs are not to be recovered in rates. Transaction and Transition Costs in total shall define and encompass all costs resulting from the merger, which would not have been incurred but for the merger. Transaction costs shall include, in addition to costs associated with closing the transaction—legal and consulting fees associated with merger approvals, investment banking fees, HSR filings fees, and CFIUS filing fees—all one-time, merger-related temporary costs that do not create long-term or future benefits to ratepayers. This includes severance costs related to termination of employees as a direct result of this transaction, termination fees incurred in conjunction with the transaction, and the cost of compliance with applicable merger conditions, such as establishment of appropriate ring-fencing measures. Both Transaction and Transition costs shall be fully segregated from one another and from non-merger related expenses in a manner that enables the Commission, Staff, and the OPC to review these costs, and if they deem appropriate, in Empire's next rate case proceeding, advocate that the costs be excluded from rates to the extent necessary.
5. The Applicants will ensure that the merger will be rate-neutral for Empire's customers. In ensuring that the transaction is rate-neutral, the Applicants commit that the merger will not affect the ratemaking treatments of ADIT and ADITC balances, and commit that there will be no establishment of regulatory assets as part of the merger.

**CONSENT TO JURISDICTION & IMPACT ON REGULATION**

6. For all future proceedings, Empire shall not claim that information and documents in possession of an affiliate, including its parent company, are “not within the possession or control of Empire” and will provide such documents as requested by the Commission, its Staff, OPC, or other requesting party.

**CORPORATE PRESENCE IN THE STATE OF MISSOURI**

7. Algonquin will include Joplin, Missouri among the locations of Algonquin’s Board of Directors meetings and meet in Joplin at least annually.

**CORPORATE GOVERNANCE AND RING-FENCING**

8. Empire shall establish a bankruptcy remote special purpose entity (SPE) that is established solely for the purpose of being the direct owner of Empire. This SPE shall have the following characteristics: (1) The SPE will be the direct owner of Empire’s shares. (2) The SPE will have no operational purpose except to hold Empire’s shares. (3) The SPE shall have at least one independent (non-management) director. (4) The approval of the entire board of directors, including the independent director, shall be required for the SPE to file a voluntary bankruptcy petition.
9. Within sixty (60) days after the close of the transaction, Empire shall obtain a non-consolidation opinion from an unrelated reputable law firm that supports the efficacy of the SPE structure.
10. The costs of establishing the SPE, as well as the costs of the non-consolidation opinion, shall be deemed transaction costs and shall not be recovered from ratepayers.
11. Empire shall issue its own debt and maintain its own capital structure, a function of its own debt and equity.
12. Empire shall maintain its own credit rating.
13. Empire shall not assume liability for the debts issued by APUC, Liberty Utilities, or any of their subsidiaries or affiliates.
14. Empire shall maintain corporate officers who have a fiduciary duty solely to Empire.
15. Empire shall maintain separate books and records, and make them available for review by Staff and OPC upon request and provided at the Governor Office Building in Jefferson City.

16. Empire shall maintain its own board of directors with a majority of non-management, independent directors.
17. Algonquin, Liberty Utilities, and Empire shall be signatories on this and all future proceedings involving Empire, and shall provide Staff and OPC unrestricted access to all written correspondence with any and all debt and equity analysts.
18. Empire shall not pay a dividend without prior Commission approval if its equity to total capitalization ratio, based on a 12-month rolling average, falls below 45%, or if payment of dividends would cause Empire's equity to total capitalization ratio to fall below that threshold.
19. Empire shall not pay a dividend without prior Commission approval if, and during such time, any of the three major credit rating agencies (Moody's, Standard & Poor's, and Fitch) issues a rating for Empire below investment grade.
20. Empire will maintain its corporate headquarters in Joplin, Missouri and must seek approval from the Public Service Commission of any intention to move its corporate headquarters from Joplin, Missouri with a requirement that such a move is in the best interest of ratepayers.

#### **EMPLOYMENT IN THE STATE OF MISSOURI**

21. Empire will continue to provide each Company Employee (each individual who is employed by the Empire or its subsidiary immediately prior to the merger and who remains employed thereafter by the surviving corporation, parent or any of their affiliates):
  - (i) a base salary or wage rate that is no less favorable than that provided to the company employee immediately prior to the merger,
  - (ii) aggregate incentive compensation opportunities that are substantially comparable, in the aggregate, to those provided to the company employee immediately prior to the merger, and
  - (iii) employee benefits that are substantially comparable, in the aggregate, to those provided to the company employee immediately prior to the merger.

In addition, for the three-year period that follows (years three through five) the merged company will:

Treat employees with respect to the payment of base salary or wage rate, incentive compensation opportunities, employee benefits and severance benefits no less favorably

in the aggregate than similarly situated employees of the Parent and its Affiliates. Prior to the third anniversary of the merger, the parent shall not, and shall cause the surviving corporation to not, terminate or amend in any manner that is materially adverse to the participants therein.

22. For a period of five years following the merger, there shall be no net reduction in employment levels of Missouri-based employees (Empire employees who reside and/or work in the State of Missouri) at Empire resulting from involuntary attrition. “Involuntary attrition,” for purposes of this commitment, includes but is not limited to transfer-or-quit offers where an employee is given the option to quit rather than be transferred to a work location outside of the State of Missouri or to accept a position that is not substantially similar to the employee’s current position.
23. Empire will file annual reports with the Commission that detail all job losses and job gains at Empire for a period of ten years following the merger. This report will include descriptions for all job losses, including title, department, reason, and a statement regarding whether the job loss was involuntary or voluntary, as well as the Company’s definition of “voluntary attrition” and “involuntary attrition” (to include, but not be limited to transfer-or-quit offers where an employee is given the option to quit rather than be transferred to a work location outside of the State of Missouri or to accept a position that is not substantially similar to the employee’s current position). In the event that a “substantially similar” position is offered to an employee who elects to resign rather than accept the position, Empire will provide a description of the job offered, including details of the major characteristics of the position, including but not limited to salary and benefits, title, office location, and reporting and supervision duties.
24. In this report, the Applicants will also provide a detailed analysis of all costs associated with any new positions resulting from the merger for which costs are directly charged and/or indirectly allocated to utility customers in Missouri.
  - a
25. In this report, the Applicants will provide an analysis of the changes to the positions of current Empire Missouri employees, in sufficient detail to ascertain whether and the extent to which duties of employees expanded as a result of making Empire’s headquarters a regional headquarter (Liberty Central). The intention of this analysis and resulting information is to address whether employees are anticipated to significantly increase their duties to an extent that may jeopardize the quality of their services in a manner that is detrimental to the public interest.

#### **CHARITABLE CONTRIBUTIONS AND COMMUNITY SUPPORT**

26. During the five-year period following the Merger, Empire shall maintain, at a minimum, an annual level of charitable contributions and traditional local community support in the State of Missouri at or above the five-year average of \*\*\$576,896 \*\*



27. The Joint Applicants agree to extend the Liberty Gas Energy Educators Workshops to the Empire Electric and Gas service areas for an annual amount of \$25,000 for the next five years. The costs of these community support programs shall not be recovered in rates.

#### **ENERGY EFFICIENCY & LOAD RESEARCH**

28. Empire shall introduce an on-bill financing tariff for energy efficient upgrades for residential ratepayers in its next subsequent rate case.
29. The Joint Applicants agree that Empire's load research will be updated to take into account both the summer and winter usage of the customers in each customer class before Empire's next subsequent rate case.

#### **AFFILIATE TRANSACTION AND COST ALLOCATION MATTERS**

30. Shared services costs shall be directly charged. In its next base rate proceeding in Missouri, Empire shall file testimony addressing shared services charges and the bases for such charges. Empire's testimony shall also explain any changes in allocation procedures since its last base rate proceeding.
31. Empire shall provide copies to Staff and OPC of the portions of any external audit reports performed for Algonquin and Liberty's shared services pertaining directly or indirectly to determinations of direct billings and cost allocations to Empire. Such material shall be provided no later than thirty (30) days after the final report is completed.
32. Empire shall notify the Commission, Staff, and the OPC in writing if/when it receives a notice that Liberty Utilities cost allocation practices are under audit in any jurisdiction. Empire shall make any such audit reports available to the Commission, its Staff, and the OPC upon request.
33. With its next base rate application following the closing of the Merger, Empire will provide an audit report of Corporate Cost Allocations performed by an independent, third-party auditor agreed-upon by the OPC and Staff and approved by the Commission. The cost of the audit shall be deemed a transaction cost and not recovered in rates. The scope of said audit will be agreed-upon by the OPC and Staff and approved by the Commission.

**TAX INDEMNITY**

34. Empire's parent company will indemnify Empire for any federal or local income tax liability in excess of Empire's standalone liability for any period in which Empire is included in a consolidated income tax filing.

**MOST FAVORED NATION PROVISION**

35. Missouri will be provided protections and benefits at a level at least as beneficial as any other jurisdiction in which Empire operates. This provision will not, under any circumstance, cause the benefits or conditions committed to be provided in the state of Missouri to be reduced or diminished.

**BILL CREDIT & RATE CASE MORATORIUM**

36. The Joint Applicants will provide ratepayer financial protections to the State of Missouri with a value totaling \$100 per customer. Empire will not seek recovery of any portion of this amount in utility rates. These funds will be allocated as set forth in the paragraphs below.
- a. The Joint Applicants will provide a direct bill credit of \$100 per customer to be distributed within sixty (60) days of the Merger closing. The bill credit will be distributed to customer accounts open as of the billing cycle on the date on which the Merger is consummated.
37. The Joint Applicants agree to refrain from filing a rate case until at least one full year of financial and operational information is available following the close of the merger.

**CORPORATE SOCIAL RESPONSIBILITY**

38. Beginning January 1st of the year following the Company's approved acquisition, Empire commits to funding an annual amount of \$200,000 to each of the eight Community Action Agencies in its service territory for the next ten years which include:
- a. Ozarks Area Community Action Corporation (OACAC)
  - b. Economic Security Corporation of the Southwest Area (ESC)
  - c. West Central Missouri Community Action Agency (WCMCAA)
  - d. Community Action Partnership of Greater St. Joseph (CAPSTJOE)
  - e. Community Services, Inc. (CSI)
  - f. Community Action Partnership of North Central Missouri (CAPNCM)
  - g. Missouri Valley Community Action Agency (MVCAA)
  - h. Central Missouri Community Action (CMCA)

Overall ask: \$200,000 per year for ten years over eight agencies = \$16 million dollar (over ten-year) commitment:

- Said funds will be below the line and not recovered in rates. The funds will be prioritized towards the creation of an additional position(s) within the Community Action Agency to better enable the utilization of weatherization dollars. To the extent that agencies are unable to expend annual funds for the creation of an additional position(s), the agency will place the remaining funds in any one of the following categories at said agencies discretion:
    - Weatherization training and certification of agency personnel
    - Discretionary funds for health and hazard for on-site units (that may or may not otherwise be passed over)
    - Outreach efforts
    - Utility weatherization account
    - Hardship fund for on-bill payments
  - If any Community Action Agency ceases to exist during this period, funds will be distributed to the Community Action Agency absorbing said territory. If no Community Action Agency is operating in the territory, the funds will be distributed evenly amongst the remaining agencies.
  - Empire will distribute funds on an annual basis to each agency on the 1st of January each year.
    - Each agency is required to provide documentation to the Company to verify how expenditures were occurred.
  - Community action agencies are required to file annual report with the Company on how funds were expended. Empire will file a condensed report of each of the eight agencies annual reports with the Commission Staff, OPC and the Division of Energy as to how annual funds were expended.
    - Any additional information is left to the Agencies discretion (e.g., estimated additional homes weatherized as a result of the expenditures).
39. Bill payment extension for residential and small commercial accounts will be prolonged from twenty-one days to thirty-one days before the 0.5% penalty begins effective immediately following the approval of the acquisition and be in place at least until the next the rate case.
40. Existing (as of the date of the approved acquisition) bad debt and arrearage will be matched by the Company (below the line) dollar (customer) for two-dollar (Company) at least until the next rate case.
- The Company will record any and all action taken on the customer-side to pay the amount towards the reduction of said bad debt/arrearages and file a comprehensive report of actions to date in future rate cases.

41. Empire will commit to having a link on their front homepage signaling clearly for ratepayers with a “Troubling Paying Your Bill” signage. Said link will contain information on the Company’s delinquency policy, including fees, timelines, cut-off practices, Community Action Agency other 3rd party contacts (e.g., Salvation Army, United Way, etc...), LIHEAP, LIWAP, and additional Company specific programs (e.g., EASE, etc...). Said link will also contain contact information for prospective at-risk ratepayers.
  
42. Empire commits to an annual meeting with each local Community Action Agencies in-person for the next five years in Joplin, Missouri at Empire’s headquarters with extended invitations to (at least) the Commission Staff, OPC, and the Division of Energy to discuss progress to date Strengths, Weaknesses, Opportunities, and Threats to Empire’s low-income population.