

Exhibit No.:
Issue(s):
Witness/Type of Exhibit:
Sponsoring Party:
Case No.:

AAO
Marke/Rebuttal
Public Counsel
EU-2021-0274

REBUTTAL TESTIMONY

OF

GEOFF MARKE

Submitted on Behalf of the Office of the Public Counsel

**THE EMPIRE DISTRICT ELECTRIC COMPANY
D/B/A LIBERTY**

FILE NO. EU-2021-0274

January 7, 2022

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


In the Matter of The Empire District)
Electric Company's d/b/a Liberty)
(Empire) Fuel Costs Related to the) Case No. EU-2021-0274
Extraordinary Weather Event of)
February 2021)

AFFIDAVIT OF GEOFF MARKE

STATE OF MISSOURI)
) **ss**
COUNTY OF COLE)

Geoff Marke, of lawful age and being first duly sworn, deposes and states:

1. My name is Geoff Marke. I am a Chief Economist for the Office of the Public Counsel.
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 testimony are true and correct to the best of my knowledge and belief.



Geoff Marke
Chief Economist

Subscribed and sworn to me this 7th day of January 2022.



TIFFANY HILDEBRAND
My Commission Expires
August 8, 2023
Cole County
Commission #15637121



Tiffany Hildebrand
Notary Public

My Commission expires August 8, 2023.

TABLE OF CONTENTS

| Testimony | Page |
|----------------------------|-------------|
| Introduction | 1 |
| Accounting Authority Order | 2 |

REBUTTAL TESTIMONY

OF

GEOFF MARKE

THE EMPIRE DISTRICT ELECTRIC COMPANY

CASE NO. EU-2021-0274

1 **I. INTRODUCTION**

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

3 A. Geoff Marke, PhD, Chief Economist, Office of the Public Counsel (OPC or Public Counsel),
4 P.O. Box 2230, Jefferson City, Missouri 65102.

5 **Q. Have you testified previously before the Missouri Public Service Commission?**

6 A. Yes. A listing of the cases in which I have previously filed testimony and/or comments
7 before the Commission is attached in Schedule GM-1.

8 **Q. What are your qualifications and experience?**

9 A. I have been in my present position with OPC since 2014 where I am responsible for economic
10 analysis and policy research in electric, gas, and water utility operations.

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

12 A. I am responding to the application filed by The Empire District Electric Company (“Empire”)
13 requesting an Accounting Authority Order (“AAO”) to track and defer, beginning February of
14 2021, certain costs in a regulatory asset:

- 15 1. Five percent of its fuel and purchased power costs that it did not flow through its Fuel
16 Adjustment Clause (“FAC”) from February 2021, that it attributes to Storm Uri;
17 2. Carrying costs of the total February 2021 fuel and purchase power expenditures at
18 Empire’s weighted average cost of capital (“WACC”) of 6.77%; and
19 3. Other costs specifically related to Winter Storm Uri, including legal fees.

20 I am also responding to the Missouri Public Service Commission Staff’s (“Staff”)
21 Memorandum filed on October 8, 2021 that recommended the Commission approve Empire’s
22 request for an AAO to track and defer \$9,266,670 (or 5% of what Empire asserted is the Total
23 Extraordinary MO Jurisdictional Fuel and Purchased Power costs), but recommended that any

1 ratemaking decisions, including the amount of recovery from customers and application of
2 carrying costs—which Staff opposes—be determined in a future general rate or securitization
3 proceeding. No direct testimony in question and answer format was filed in this case.

4 Finally, my silence regarding any issue should not be construed as an endorsement of,
5 agreement with, or consent to any party’s filed position.

6 **II. ACCOUNTING AUTHORITY ORDER**

7 **Q. How has Empire requested to deal with Storm Uri fuel and purchase power costs?**

8 A. Empire has opened up five cases to “potentially” deal with Storm Uri costs. Those cases and
9 the actions taken to date are as follows:

10 Case No. ER-2021-0332 (Empire’s first Fuel Adjustment Clause (“FAC”) rate change case
11 including Storm Uri costs)

- 12 • Empire sought to recover from its customers through its FAC \$7,344,747 of its
13 \$176,066,737 in fuel and purchased power costs from February 2021, deferring
14 \$168,720,211 as labelled extraordinary. The Commission approved tariff sheets that
15 set Empire’s FAC charges to zero.

16 Case No. ER-2022-0095 (Empire’s most recent FAC rate change case)

- 17 • Empire sought to recover from its customers through its FAC \$15,912,063 of its
18 \$39,556,868 of fuel and purchased power costs from March 2021 through August
19 2021, and to defer the balance of \$23,644,805 as costs incurred in February but not
20 recorded until this recovery period. The Commission approved tariff sheets to flow the
21 \$15,912,063 through Empire’s FAC.

22 Case No. ER-2021-0312 (Empire Rate Case)

- 23 • Empire seeks 100% recovery of the costs it attributes to Storm Uri. Its filed case
24 requests rate base recovery of the \$176,066,737 of costs recorded in February including
25 carrying costs. Empire is requesting recovery of these costs it attributes to Storm Uri
26 over 13 years (approximately \$14 million a year), grossed up for income taxes *and*

1 included in Empire's rate base on which its shareholders would then receive a \$14.6
2 million a year in profit. (It did not provide testimony in the rate case requesting the
3 \$23,644,805 of fuel and purchased power costs that Empire deferred from March 2021
4 through June 2021. However, it stated its intention to include this amount in testimony
5 in Case No. ER-2022-0095)

6 Case No. EU-2021-0274 (Empire AAO Case)

- 7 • Empire seeks an AAO to track and defer \$10,511,134 (or 5% of what it has designated
8 as Total Extraordinary MO Jurisdictional Fuel and Purchased Power) with carrying
9 costs (at a WACC of 6.77%) plus legal expenses associated with litigation that attempts
10 to reduce the cost of the Storm. ¹

11 Case No. EO-2022-0040 (Empire Securitization Case)

- 12 • 132 days ago, on August 28, 2021, Empire filed a notice of intent to securitize to file
13 a petition pursuant to RSMo. §393.1700.2(2) to obtain a financing order that
14 authorizes the issuance of securitized utility tariff bonds regarding the extraordinary
15 costs incurred during the anomalous weather event of February 2021.
16 • Empire has taken no further action in this docket.

17 **Q. Were all five filings necessary?**

18 A. No. Certainly not this case. From a policy and ratemaking perspective, it makes no sense for a
19 utility to file an AAO case for costs incurred during the update period of its general rate case,
20 or why it would do so for an amount that is not material to its holding company. If Empire
21 wants rate certainty it can obtain it in its pending rate case where the Commission has broad
22 discretion in the ratemaking treatment it employs for these expenses.

23 **Q. What is your recommendation in this case?**

24 A. I recommend the Commission reject Empire's request for an AAO to track and defer
25 \$9,266,670, or the 5% of what it describes as the total extraordinary MO jurisdictional fuel and

¹ \$9,266,670 from Case No. ER-2021-0332 and \$1,244,463 from Case No. ER-2022-0095.

1 purchased power costs it incurred for February of 2021 due to Storm Uri. My arguments can
2 be broken down as follows:

- 3 1. The amount requested is not material and an AAO is inappropriate given the pending
4 rate case;
- 5 2. The 5% accounting deferral is a deliberate attempt to anchor extraordinary costs within
6 the 95/5 framework but reassign cost responsibility solely to ratepayers; and
- 7 3. The Company is attempting to shift 100% of costs on to customers, earn a generous
8 profit from a horrible situation, and spin its actions as a goodwill gesture for its
9 customers.

10 Ratepayers should not be responsible for all of Empire's Storm Uri costs and Empire should
11 not be allowed to profit from Empire's failure to mitigate the impacts of Southwest Power Pool
12 (SPP) market design defects. The AAO request for 5% of the "extraordinary" Storm Uri costs
13 should be rejected in its entirety as should recovery of the 5% from customers.

14 The proper venue to address Storm Uri ratemaking conditions is in Empire's pending rate case
15 where Empire put them in issue with its direct filing on May 28, 2021. The request made here
16 is a waste of time, resources, and, in my mind, only made to deliberately distort the Storm Uri
17 costs at issue before this Commission.

18 My testimony will provide greater perspective for each of the aforementioned objections and
19 greater context for both Empire and OPC's position as it pertains to Storm Uri costs.

20 **Q. How should Empire recover its extraordinary fuel costs?**

21 A. In a rate case, and since August 28, 2021, through securitization.

22 **Q. Does Empire currently have a general electric rate case pending where the Commission
23 is obligated to consider all relevant factors?**

24 A. Yes. Case No. ER-2021-0312.

25 **Q. Who is the OPC witness for Storm Uri costs in that rate case?**

26 A. OPC witness Lena Mantle.

1 **Q. Why is this Empire AAO request inappropriate?**

2 A. For each of the following reasons:

- 3 1. Because the Company has a rate case currently taking place in which the ordered
- 4 updated test year includes costs incurred for Storm Uri;
- 5 2. An approved AAO would allow Liberty to record on its regulatory books and
- 6 records as if they were in the nature of a capital investment—a regulatory asset—
- 7 carried on its balance sheet and accruing carrying costs, instead of being recorded
- 8 as expenses on its income and expense statement;
- 9 3. Unlike plant repair costs, fuel and purchased power costs should not be treated as
- 10 if they are a capital investment;
- 11 4. \$10,511,134 does not meet the AAO materiality threshold the Commission has
- 12 traditionally used;
- 13 5. An AAO for 5% of Empire’s fuel and purchased power costs effectively is a
- 14 determination that the other 95% of the fuel and power purchased costs should be
- 15 treated the same way;
- 16 6. Not all of the fuel and purchased power costs that Empire did not flow through its
- 17 FAC are extraordinary; therefore, neither are 5% of them; and
- 18 7. While not legally binding, rarely has a Commission disallowed recovery of costs in an
- 19 AAO.

20 **Q. Is 5% percent of fuel and purchased power costs an appropriate percentage of cost to**
21 **request be included in an AAO?**

22 A. It is an arbitrary percentage. In Missouri we treat “ordinary” fuel and purchase power
23 costs under a 95/5 framework. I am aware of no cost sharing framework for how we treat
24 “extraordinary” fuel and purchase power costs. By requesting that 5% of the
25 extraordinary fuel and purchased costs be allowed deferral accounting the Company is
26 simultaneously anchoring the extraordinary cost allocation in the same manner as the

1 historical ordinary fuel cost recovery and nullifying the “incentive” previous Commissions
2 have put in place for electric utilities to manage their “ordinary” FAC costs.

3 **Q. What do you mean by anchoring?**

4 A. Anchoring can induce a cognitive bias in individuals (or stakeholders). In this case, the
5 deferral request for the 5% the Commission has set as an incentive to manage ordinary
6 fuel and purchased power costs is an anchor that frames all extraordinary Storm Uri costs
7 in the 95/5 framework. By requesting accounting deferral of the 5% incentive,
8 stakeholders will likely reference the 5% under “normal” conditions. This has three
9 obvious benefits for Empire. First, it implies that 95% of extraordinary Storm Uri fuel
10 costs should be recovered just like ordinary FAC cost recovery. Second, by requesting
11 deferral accounting in conjunction with its rate case, the Company flips the narrative of an
12 even greater cost prohibitive rate increase into a ratepayer “benefit” by not including said
13 costs in the current rate case but deferring it (with the associated carrying costs) for a
14 future rate case. Third, by requesting a regulatory asset for the 5% incentive, the Company
15 is recording on its books that there is probable recovery (highly likely) of these costs as
16 well as the profit by treating these costs like a capital investment as opposed to an
17 expense; thus nullifying the 5% “incentive” that has historically been in place for ordinary
18 cost recovery.

19 Not only is there no good reason for granting Empire’s requested AAO, there is not good
20 reason for that AAO to include 5% of Empire’s fuel and purchased power costs it did not flow
21 through its FAC, because the Commission set this amount as an incentive for Empire to act
22 efficiently?

23 **Q. Should Empire profit from its failure to mitigate the impacts of SPP market SPP market
24 design defects?**

25 A. No. Consider for a moment what message the Commission would be sending as economic
26 regulators: that in Missouri we reward poor utility management planning with profit.

1 That is, there is no risk...only reward.²

2 Worse still, if the incentive amount the utility is to absorb is large (yet only a small amount of
3 the total costs), then the Commission will allow the utility to recover the incentive amount
4 negating any incentive to act efficiently.

5 The Commission should refrain from falling into this trap, and instead reject this application
6 and deal with the Storm Uri costs in the current rate case or a future securitization case.

7 **Q. What is your response to Empire and Staff's acknowledgment that there is no**
8 **ratemaking treatment by this AAO?**

9 A. That's true (as practiced in Missouri), but it also underscores the absurdity and timing of the
10 request.

11 To be clear, the Company is requesting an AAO on an arbitrary, immaterial amount of money
12 incurred during the update period in a rate case where it is seeking to recover its Storm Uri
13 costs through its general rates. Both Staff and Empire acknowledge that an AAO does not
14 constitute ratemaking treatment, but the creation of a regulatory asset by the Commission
15 effectively is a ratemaking determination. Specifically, it requires the Commission to
16 determine that the expenses at issue are highly likely of rate recovery in a future case. The
17 GAAP definition of "probable" as it relates to regulatory assets is that which is "likely to
18 occur." When the Commission allows ratemaking treatment for costs to be amortized to future
19 years, the Commission is stating that these costs are highly likely for future ratemaking
20 treatment. This issue should be addressed in a rate case (or securitization) so that the
21 Commission is consistent with GAAP guidance; otherwise, the Commission runs the risk of
22 binding future Commissions with the pressure of "probable" recovery.

23 It would be one thing if there were extraordinary circumstances preventing Empire from
24 seeking Commission guidance in a rate case, such as a statutory prohibition from seeking a
25 rate increase, but that is not the case here. Moreover, the Company now has a second

² This of course raises questions about what the appropriate risk premium Empire should be rewarded in setting rates if it can profit off its misfortunes and be exposed to no risks, but that is an issue beyond the scope of this case.

1 mechanism, securitization, which permits recovery of extraordinary weather related costs—a
2 mechanism that it has elected not to exercise. Whether or not Empire moves forward with
3 securitization is up to it. As it stands, the Company’s rate case includes all of the outstanding
4 unrecovered fuel and purchase power costs as well as the proposed profit the Company wants
5 to make from this misfortune.

6 **Q. Why should the Commission not grant AAOs in separate proceedings during pending**
7 **general rate cases?**

8 A. Such a practice would effectively silo costs and distort the proper price signal for customers
9 (akin to single-issue ratemaking). It would also arguably bind future Commission or at least
10 place an enormous burden on future Commissions to approve the “probable” recovery of the
11 deferred costs. That is, it would place future Commission’s “between a rock and hard place”
12 in setting just and reasonable rates.

13 Fortunately, all of this can be avoided because the Company is literally in for a rate case right
14 now where Storm Uri costs are a live issue.

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

16 A. Yes.