

# Exhibit No. 202P

**Exhibit No.:** \_\_\_\_\_  
**Issue(s):** Stranded Asset/Wind Investments/  
Resource Adequacy/Peer Ranking/Billing/  
Community Involvement/Low Income Programs/  
Late Fees/Data Access/PISA  
**Witness/Type of Exhibit:** Marke/Surrebuttal  
**Sponsoring Party:** Public Counsel  
**Case No.:** ER-2021-0312

**SURREBUTTAL 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. ER-2021-0312

\*\*

**Denotes Confidential Information  
that has been redacted**

\*\*

January 20, 2022

**PUBLIC**

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

In the Matter of the Request of The            )  
Empire District Electric Company d/b/a        )  
Liberty for Authority to File Tariffs         ) Case No. ER-2021-0312  
Increasing Rates for Electric Service        )  
Provided to Customers in its Missouri        )  
Service Area                                        )

**AFFIDAVIT OF GEOFF MARKE**

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

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

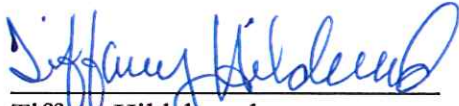
1. My name is Geoff Marke. I am a Chief Economist for the Office of the Public Counsel.
2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Geoff Marke  
Chief Economist

Subscribed and sworn to me this 14<sup>th</sup> 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.

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**SURREBUTTAL TESTIMONY**

**OF**

**GEOFF MARKE**

**EMPIRE DISTRICT ELECTRIC COMPANY**

**CASE NO. ER-2021-0312**

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. Are you the same Dr. Marke that filed direct testimony revenue requirement and  
6 rebuttal testimony in ER-2021-0312?**

7 A. I am.

8 **Q. What is the purpose of your surrebuttal testimony?**

9 A. I am responding to the rebuttal testimony of other parties' witnesses on select topics. The  
10 following is a list of those topics and the witnesses:

- 11 • Stranded Asset: Asbury Power Plant
- 12 ○ Empire witness Frank C. Graves, Aaron J. Doll; and
- 13 ○ Missouri Public Service Commission Staff ("Staff") witness Mark L.  
14 Oligschlaeger
- 15 • Wind Investments and Resource Adequacy
- 16 ○ Empire witnesses Shaen T. Rooney, Aaron J. Doll; and
- 17 ○ Staff witness Jordan Hull
- 18 • Peer Ranking and Community Involvement
- 19 ○ Empire witnesses Timothy N. Wilson and Jon Harrison
- 20 • Low Income Programs
- 21 ○ Empire witness Nathaniel W. Hackney and Jon Harrison
- 22 • Late Fees and Data Access
- 23 ○ Empire witness Jon Harrison

1 My silence regarding any issue should not be construed as an endorsement of, agreement  
2 with, or consent to any party's filed position.

3 **II. STRANDED ASSET: ASBURY POWER PLANT**

4 **Q. What was Staff's response to Empire witness Graves' inclusion of various PSC cases**  
5 **surrounding stranded assets?**

6 A. Mr. Oligschlaeger summarized the findings as follows:

7 At best, Mr. Graves' Appendix A appears to support a conclusion that a wide range  
8 of PUCs in the U.S. have granted a wide variety of accounting and rate treatments  
9 to utilities either planning to retire coal units early or that have already retired those  
10 units. Based upon Staff's review, however, Appendix A does not support a finding  
11 that Empire's specific proposal in this case to receive both a return of and return on  
12 its unrecovered Asbury investment is consistent with "mainstream" treatment of this  
13 category of cost by other PUCs, or that the a consensus of PUCs have followed this  
14 approach.<sup>1</sup>

15 **Q. Do you agree?**

16 A. I do. I would also make the observation that what Empire has done with Asbury is not a  
17 "mainstream" treatment of a retired asset but a manipulation of the prudent investment rule.<sup>2</sup>

18 **Q. How is Empire manipulating it here?**

19 A. By asking ratepayers to back the single largest capital investment (\$167 million) into the  
20 then 44-year-old Asbury to make it cleaner, more efficient (with an extended life of an  
21 additional forty-years) and then strand the asset immediately afterwards expecting  
22 customers to continue paying off both the remaining balance and continue paying a profit  
23 on it.

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<sup>1</sup> ER-2021-0312 Rebuttal Testimony of Mark L. Oligschlaeger p. 14, 9-15.

<sup>2</sup> See *Verizon Communications, Inc. v. F.C.C.* 535 U.S. 467, 486 (2002) ("[T]he prudent-investment rule in practice often being no match for the capacity of utilities having all the relevant information to manipulate the rate base and renegotiate the rate of return every time a rate was set.").

1 **Q. Can you provide examples of early coal plant retirements (defined as not fully**  
2 **depreciated) in which you did not seek disallowance?**

3 A. Yes. Most recently, Ameren Missouri’s Meramec power plant and Evergy’s Montrose and  
4 Lake Road power plants. I filed no testimony challenging the prudence of early retirement  
5 on these assets. In a similar vein, I am not challenging the prudence of remaining  
6 undepreciated balance of Asbury, *only* the remaining balance of the Air Quality Control  
7 System (“AQCS”)

8 **Q. Mr. Graves argues that disallowing costs associated with Asbury’s AQCS investment**  
9 **would violate the regulatory compact. What is your response?**

10 A. The regulatory compact is a metaphor not a “legally binding” contract. In fact, according to  
11 Harvard Law School’s Director of the Electricity Law Initiative at the Harvard Law School  
12 Environmental and Energy Law Program, Ari Peskoe:

13 Framing utility regulation as a “compact” is a rhetorical device that has been invoked  
14 by industry to argue against competition and in favor of rate increases and cost recovery  
15 for investments that did not benefit ratepayers. While several PUCs have used the term  
16 “regulatory compact” as a shorthand description of regulation, no court or PUC has  
17 concluded that a utility is legally entitled to relief, such as cost recovery, under a  
18 “regulatory compact.” On the contrary, PUCs and courts have explicitly rejected such  
19 arguments.<sup>3</sup>

20 **Q. What if the Commission did look at this issue as a contract dispute? How would you**  
21 **respond?**

22 A. Consider a hypothetical scenario involving an airline’s contract with an airplane  
23 manufacturer articulated by writer Scott Alexander.

- 24 • The airline says they’ll buy X planes over the next ten years;
- 25 • The manufacturer says they’ll provide them at such-and-such a price.

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<sup>3</sup> Peskoe, A. (2016) “Utility Regulation Should not be Characterized as a “Regulatory Compact.” Harvard Law School: Environmental Law Program Policy Initiative. <http://eelp.law.harvard.edu/wp-content/uploads/Harvard-Environmental-Policy-Initiative-QER-Comment-There-Is-No-Regulatory-Compact.pdf>

1           At the moment of signing, both parties think it's a good idea. If they both knew it  
2           would stay a good idea, a contract would be unnecessary. But something might  
3           change. The air travel market might crash, and then the airline would regret having  
4           ordered more planes, and want to back out. The price of raw materials might go up,  
5           and then the manufacturer would regret offering such a low price, and want to back  
6           out themselves. But it would be unfair for the airline to make the airline  
7           manufacturer commit to a complicated course of action - building new factories,  
8           hiring lots of workers - and then change their mind, leaving them in a worse position  
9           than when they started. And it would be unfair for the manufacturer to make the  
10          airline commit to a complicated course of action - opening new routes, signing  
11          contracts with more airports - and then pull the rug out from under them and demand  
12          a higher price. So if you're committing to a mutual enterprise where both sides are  
13          going to make big irreversible changes to satisfy the other, you want a contract where  
14          they both agree not to back out, and agree to suffer heavy social and financial  
15          sanctions if they do.<sup>4</sup>

16          Empire's management is the one that backed out of this agreement by reversing course and  
17          finding a way to increase rate base. Shareholders are made more than whole from the wind  
18          investments. It is ratepayers that are in worse position than when they started because they  
19          would be stuck paying the remaining balance of the AQCS that is not being used.

20          **Q.    If the Commission disallows the remaining balance of the AQCS do you believe it would**  
21          **be fair to characterize that shareholders "got the rug pulled out from under them."**

22          A.    No. Shareholders have made out better than they could have imagined even if the AQCS is  
23          disallowed. Because unlike securitization which replaces an undepreciated coal plants balance  
24          dollar for dollar for reinvestment, shareholders got to replace a \$150 million dollar coal plant  
25          with \$1.2 billion dollars in wind investments. Rate base will be five times greater these first  
26          ten years and then more thereafter (the remaining undepreciated balance from buying out the

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<sup>4</sup> Alexander, S. (2021) There's A Time For Everyone. <https://astralcodexten.substack.com/p/theres-a-time-for-everyone>



1 tax equity partner) for shareholders to profit from where no such opportunity existed before—  
2 regardless of how the wind farms actually perform. Leaving the remaining balance of the  
3 AQCS in rates to earn a return on would be categorically one-sided.

4 **Q. If the Commission allows the remaining balance of the AQCS do you believe it would be**  
5 **fair to characterize that ratepayers “got the rug pulled out from under them.”**

6 A. Yes. Ratepayers would effectively be experiencing a perfect storm of awful outcomes. First,  
7 they would be paying the remaining balance and associated profit on an asset that is no longer  
8 used and useful. Second, they would be paying many times over for its effective “replacement”  
9 generation (the three wind farms). This is to say nothing for the Storm Uri costs, the remaining  
10 balance of the stranded meters, AMI meters without TOU rates, and other questionable costs.

11 **Q. What do you recommend?**

12 A. As detailed in the surrebuttal testimony of John S. Riley that remaining balance (after adjusting  
13 for ADIT, cash working capital, extending the computations to the operational law date, etc...) has  
14 been recalculated to be \$10,234,348.89. In effect, Mr. Riley has calculated that ratepayers  
15 have paid off most of the remaining balance of Asbury. As such, I am modifying my  
16 recommendation amount in that there should be an \$112,178,482.11 cost disallowance from  
17 the revenue requirement to reflect the AQCS asset to the remaining balance:

$$(\$122,412,831) - \$10,234,348.89 = (\$112,178,482.11)$$

### 19 **III. WIND INVESTMENTS & RESOURCE ADEQUACY**

#### 20 **Future Curtailment Due to Endangered and Protected Species**

21 **Q. Has your concern related to the uncertainty of the SPP interconnection requirements**  
22 **costs for the wind projects been alleviated?**

23 A. Yes. Empire witness Rooney’s rebuttal testimony and Empire’s subsequent discovery  
24 responses have eased my concern surrounding the uncertainty of those costs. It is my  
25 understanding that those costs have been limited to \$6,649 for North Fork Ridge  
26 respectively. I am not anticipating a large amount for Neosho Ridge.

1 **Q. Have your concerns of future curtailments due to impacts of the wind projects on**  
2 **endangered and protected species been alleviated?**

3 A. No. I still have serious concerns surrounding forced curtailments due to excessive take rates  
4 (i.e., deaths) of protected and endangered species. Empire has not secured a long-or short-  
5 term incidental take permit (“ITP”) for either of its wind projects in Missouri, which operate  
6 within miles of known habitat caves for grey bats. The uncertainty surrounding potential  
7 excessive “takes” of this protected species raise considerable risk to ratepayers if output  
8 from these wind projects must be curtailed from their designed and projected operation.

9 **Q. Would excessive takes of protected or endangered species at the wind projects have**  
10 **broader ramifications?**

11 A. It could impact future wind farm development. My understanding is that there are only so  
12 many endangered species that US Fish & Wildlife will let be “taken” before no more, at any  
13 location can be “taken.” If Kings Point exceeds its gray bat take limit then effectively all  
14 future wind farms have met their gray bat take limit.

15 **Q. Mr. Rooney suggests that your concerns are based on imperfect comparisons to Ameren**  
16 **Missouri’s High Prairie Wind Farm. What is your response?**

17 A. I agree that I am much more concerned about High Prairie than I am Empire’s wind farms  
18 (Kings Point in particular). High Prairie has already taken more Indiana Bats in a year than  
19 any wind farm in the country and that is operating under self-imposed curtailment 25% of  
20 the year. To my knowledge, Empire is approaching no such challenge and I hope it remains  
21 so.

22 **Q. What do you recommend the Commission do to address the potential that generation at**  
23 **the wind projects may be curtailed to protect federally protected and endangered**  
24 **species?**

25 A. I continue to recommend that any costs associated with future curtailments or excess costs  
26 associated with “smart curtailment” should not be borne by ratepayers as the Company  
27 elected to move forward with operation of these wind farms despite full knowledge that they

1 would operate adjacent to habitats of a protected species. Again, the concerns stemming  
2 from cost and operational uncertainty were raised by OPC and by the Missouri Department  
3 of Conservation in previous cases. It would be inappropriate for future costs and adverse  
4 impacts due to grey bats to be borne by ratepayers for projects that do not operate as intended  
5 because of poor managerial planning and implementation decisions.

6 This recommendation may very well have no impact on rates in this case; however, I again  
7 put it forward here to give public notice that OPC may pursue future cost disallowances  
8 based on this evolving issue.

9 **Emergency Energy Conservation Plan**

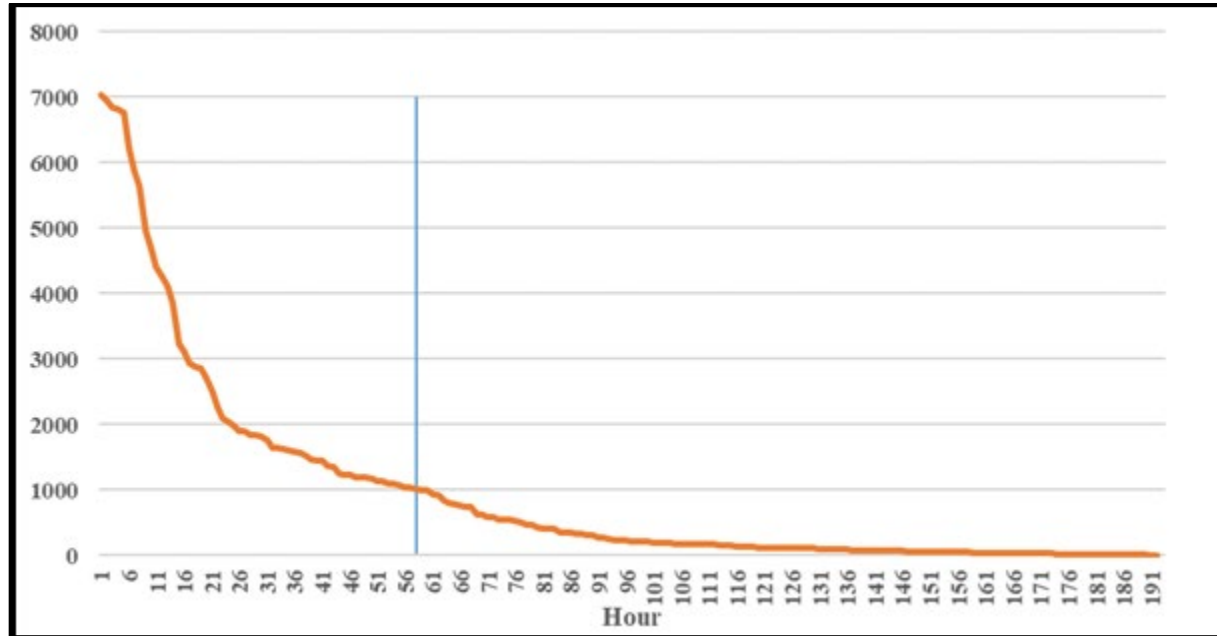
10 **Q. Both Staff and Empire take the position that Empire meeting the 12% SPP reserve**  
11 **margin means that Empire can meet its customers' needs at all hours with its own**  
12 **resources. Do you agree?**

13 A. No. The retirement of Asbury and the introduction of Empire's wind investments means  
14 that Empire's customers are more exposed to SPP market volatility. Look no further than  
15 the \$243 million in Storm Uri costs for one week of energy as a "worst case example" of  
16 market volatility and how inadequate resources exposed customers to large fuel charges.<sup>5</sup>  
17 Figure 1 shows the range of the hourly prices at the Empire load node calculated as the  
18 average of the 5-minute prices for that hour during February 12-19, 2021.

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<sup>5</sup> Normalized costs for the same period would have been \$12 million.

1 Figure 1: Hourly Market Prices at Empire Load Node, February 12-19, 2021, Ranked High-Low<sup>6</sup>



2

3 **Q. Other than adding more resources to its generation portfolio is there anything Empire**  
4 **could do to ameliorate the energy costs impacts of another event like Storm Uri?**

5 A. Yes. The Commission could order the Company to revise its Emergency Energy  
6 Conservation Plan to allow Empire to reduce customer demand during times of extreme  
7 costs and conduct a Value of Lost Load (“VOLL”) study to accurately determine the price  
8 levels at which customers would prefer Empire take action to reduce load instead of paying  
9 extreme prices.<sup>7</sup>

10 **Q. What is Empire’s Emergency Energy Conservation Plan?**

11 A. It is specifically sheet 22 and 23 in the Rules and Regulations section of Empire’s current  
12 tariff. Per the tariff:

<sup>6</sup> To get a comparison to what the SPP market prices were prior to Storm Uri, the average day-ahead market price for 2020 was \$17.69/MWh or \$0.01769/kWh. Empire’s average price for these eight days was \$949 per MWh or almost a dollar per kWh.

<sup>7</sup> There are additional actions the Company could make to deal with market fluctuations, like various demand-side management strategies.

1           The purpose of the plan is to define actions that will be taken when an imminent fuel  
2 shortage threatens the ability of the Company to continue services which are  
3 essential to the health and well being of the Company's Customers.

4           The plan will be a two phase plan, with the second phase being implemented in the  
5 event Phase I fails to provide adequate reduction in energy consumption. The Plan  
6 will be implemented as necessary and in the order shown. Should conditions  
7 deteriorate rapidly, Phase II may be implemented before any or all steps in Phase I  
8 have been completed.<sup>8</sup>

9           Phase I of Empire's plan is generally confined to voluntary load and phase II ramps up to 5%  
10 voltage reduction for all customers and additional load reduction actions.

11 **Q. Is Empire's Emergency Energy Conservation Plan sufficient?**

12 A. Today, Empire operates as if the customer should be supplied with power at all times.  
13 Typically this is true, but as Storm Uri shows costs could be increased so unnecessarily high  
14 that if customers were given the option they would likely agree to curtail their load rather  
15 than pay inflated prices. Presently there is no price threshold for phase I or II. As I read the  
16 tariff, the emergency energy conservation plan is left to the Company's discretion when  
17 there is a shortage of fuel.

18           In 2020 the average day-ahead market price was \$17.69/MWh (\$.01769/kWh, less than two  
19 cents a kilowatt hour). At the height of Storm Uri costs exceeded \$7,000/MWh an hour  
20 (\$7.00/kWh). At what point does Empire say enough is enough? I would recommend  
21 modifying the tariff to spell out a specific price threshold for Company action.

22 **Q. What tariff modifications do you recommend?**

23 A. That phase I be automatically triggered at \$500/MWh (\$0.50/kWh) and phase II be triggered  
24 at \$1,000/MWh (\$1.00/kWh). These thresholds provide placeholder amounts until the

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<sup>8</sup> The Empire District Electric Company d.b.a Liberty Original Sheet No. 22

1 Company can conduct a VOLL study to better reflect the actual costs customers are willing  
2 to pay.

3 **Q. Is the tariff change necessary for Empire to reduce customer load?**

4 A. No, I don't believe so. Empire does not necessarily need tariff language to take actions that  
5 would result in lowering of the customers' load. It is charged with providing safe and  
6 reliable service at just and reasonable rates. If such actions are necessary for safe and reliable  
7 service at just and reasonable rates, then Empire should take such actions.

8 **Q. Then why implement the change?**

9 A. To provide parameters from which to act and Commission guidance moving forward to  
10 mitigate a Storm Uri -like situation from happening again.

11 **Value of Lost Load**

12 **Q. What is a VOLL study?**

13 A. In order to operate a system where a supply-outage to customers is used as an acceptable,  
14 albeit expensive operative decision, it is essential to know the cost of this shedding or the  
15 customer's willingness to pay for energy. The value of lost load study helps determine the  
16 average amount consumers are willing to pay to avoid an additional period without power.

17 **Q. What methodology informs a VOLL?**

18 A. There are many variations depending on the scale, scope and degree of accuracy one tries  
19 to achieve. According to an oft-cited Electric Reliability Council of Texas, Inc. ("ERCOT")  
20 literature review and macroeconomic analysis report conducted by London Economics  
21 International LLC:

22 VOLL is a useful and important measure in electricity markets. It represents  
23 customers' willingness to pay for electricity service (or avoid curtailment). In  
24 electricity markets, VOLL is usually measured in dollars per MWh. VOLL  
25 valuations can be marginal – the marginal value of the next unit of unserved power–  
26 or average – the average value of the unserved power. Marginal values of VOLL are

1 often calculated for peak periods (or “worst case”) when customers will place the  
2 highest value on electricity. Average VOLLs are averaged over a certain period (e.g.,  
3 one year) and are not differentiated over time. Average VOLLs tend to be lower than  
4 marginal VOLLs at peak times, as they average out the value customers place on  
5 electricity over, say a year, and therefore include periods during which customers  
6 place a low value on electricity (i.e., when customers are not at home or when  
7 businesses are closed) . . . VOLL can be used in a variety of ways, both on the  
8 planning side of the market and on the operations side. In planning, VOLL can be  
9 used to study the cost benefit of investment in generation and transmission and  
10 distribution relative to customers’ maximum willingness to pay, as briefly discussed  
11 above.<sup>9</sup>

12 There are four VOLL estimation methodologies cited by the ERCOT study, each with  
13 various strengths and weaknesses. A summary of those methodologies is included in  
14 Figure 2 below.

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<sup>9</sup> London Economics (2013) Estimating the Value of Lost Load.  
[http://www.ercot.com/content/gridinfo/resource/2014/mktanalysis/ERCOT\\_ValueofLostLoad\\_LiteratureReviewandMacroeconomic.pdf](http://www.ercot.com/content/gridinfo/resource/2014/mktanalysis/ERCOT_ValueofLostLoad_LiteratureReviewandMacroeconomic.pdf) p. 6.

Figure 2: VOLL Estimation Methodologies<sup>10</sup>

Approach	Description	Strength	Weakness
<b>Revealed preference (market behavior)</b>	Use of surveys to determine expenditures customers incur to ensure reliable generation (i.e., back-up generators and interruptible contracts) to estimate VOLL.	<ul style="list-style-type: none"> <li>Uses actual customer data that is generally reliable</li> </ul>	<ul style="list-style-type: none"> <li>Only relevant if customers actually invest in back-up generation</li> <li>Limited consideration of duration and/or timing of outages</li> <li>Difficult for residential customers to quantify expenses</li> </ul>
<b>Stated choice (contingent valuation and conjoint analysis)</b>	Use of surveys and interviews to infer a customer's willingness-to-pay, willingness-to-accept and trade-off preferences	<ul style="list-style-type: none"> <li>More directly incorporates customer preferences</li> <li>Includes some indirect costs</li> <li>Considers duration and/or timing of outages</li> </ul>	<ul style="list-style-type: none"> <li>Experiment and survey design is time-consuming and effort intensive</li> <li>Need to manage for potential biases</li> <li>Residential customers may give unreliable answers due to lack of experience</li> </ul>
<b>Macroeconomic (production function)</b>	Uses macroeconomic data and other observable expenditures to estimate VOLL (e.g. GDP/ electric consumption)	<ul style="list-style-type: none"> <li>Few variables</li> <li>Easy to obtain data</li> <li>GDP reasonable proxy for business VOLL.</li> </ul>	<ul style="list-style-type: none"> <li>Does not consider linkages between sectors, productive activities</li> <li>Proxies for cost of residential outages may be arbitrary or bias</li> </ul>
<b>Case Study</b>	Examines actual outages to determine VOLL.	<ul style="list-style-type: none"> <li>Uses actual, generally reliable data</li> </ul>	<ul style="list-style-type: none"> <li>Costly to gather data</li> <li>Available case studies may not be representative of other outages/jurisdictions</li> </ul>

**Q. In light of the foregoing, what do you recommend for an Empire VOLL study?**

**A.** I recommend that the Commission order Empire to conduct an independent third-party VOLL study to be filed with recommended changes to Empire's Emergency Energy Conservation Plan Tariff sheet before the start of the Cold Weather Season in calendar year 2022. I believe the VOLL study should look at all customer classes and any survey should include inquiries into customers' willingness to load shed for both emergency *and* as a general demand response measure. I also recommend that the Commission order the

<sup>10</sup> Ibid. p. 9



1 Company to meet with interested stakeholders at least twice for input regarding the scope,  
2 methodology, questions, and goals of the study.

3 **Q. Does a VOLL study provide any additional benefits?**

4 A. Yes. As utilities seek to improve resilience, they often find it challenging to assess the costs  
5 and benefits of resilience investments. Costs are fairly well understood and measured, but  
6 benefits less so. Knowledge of the value of lost load provides an opportunity to reduce the  
7 lifecycle cost of energy through adjusted investments or operational decisions. More to the  
8 point, a VOLL study would certainly help inform the appetite of customers for the costs  
9 they will bear for PISA reliability investments.

10 **IV. PEER RANKING, BILLING & COMMUNITY INVOLVEMENT**

11 **JD Power Scores**

12 **Q. How did Mr. Wilson respond to your testimony that Empire has scored badly in J.D.**  
13 **Power customer satisfaction surveys, including scoring the second worst in the United**  
14 **States in a 2020 survey?**

15 A. Mr. Wilson stated:

16 “It is something of which Empire must be aware.”<sup>11</sup>

17 Mr. Wilson then cites several general variables that should be considered within the  
18 “context” of Empire’s poor performance including: customer demographics, technology  
19 platforms, cost of service, short and long-term organizational goals and initiatives.

20 **Q. Do you agree that Empire’s unique customer demographics, technology platforms and**  
21 **the other variables Mr. Wilson cited are important to its poor scores?**

22 A. No. I do not understand how any of these variables are singularly unique to Empire or should  
23 otherwise provide contextual cover for the Company consistently scoring as one of the worst  
24 utilities in customer satisfaction across the United States.

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<sup>11</sup> Case No. ER-2021-0312 Rebuttal Testimony of Tim N. Wilson p. 5, 7.

1 **Q. Did Mr. Wilson respond to your testimony regarding assertions Empire’s holding**  
2 **Company made about Empire’s JD Power Scores?**

3 A. No. Mr. Wilson did not respond to the fact that Algonquin Power & Utilities Corp.  
4 (“APUC”) specifically claimed that its utilities consistently rank in the top quartile of their  
5 peer groups despite evidence put forward in my testimony that Empire is one of the worst  
6 scoring utilities in the United States.

7 **Q. Did Mr. Wilson respond to your testimony regarding assertions that Empire’s holding**  
8 **Company made about Empire treating stranded costs in a fair and responsible manner**  
9 **for its customers?**

10 A. No. To be clear, apparently Empire’s fair and responsible manner of treating stranded costs  
11 is to have ratepayers continue to pay both for assets and profit for those assets that are no  
12 longer used and useful.

13 **Q. Did any other Empire witnesses respond to your claims that Empire is the second**  
14 **worst utility in the United States for customer satisfaction according to J.D. Power?**

15 A. Yes. Empire witness Jon Harrison responded that J.D. Power is a “somewhat” reliable  
16 source for gauging customer experience. He then proceeded to show an upward sloping  
17 trend curve of seven-year J.D. Power scores which he attributes to various advancements  
18 made in billing and software upgrades.

19 **Q. What is your response?**

20 A. I hoped for a better overall response from the Company. An expression of remorse. An  
21 acknowledgment of responsibility. An explanation for the poor scores. Most of all, a  
22 commitment to change. Unfortunately, that was not the case.

23 As it stands, my response to Mr. Harrison’s argument centers on answering the question of  
24 whether the absolute score year-over-year or the rank of the utility relative to its peers and

1 the industry should matter more.<sup>12</sup> In a competitive market, it is clearly the latter and I argue  
2 the competitive market is the proxy that Empire and the Commission should strive to  
3 emulate. For example, the now defunct *Chi-Chi's* Tex-Mex restaurant may have offered  
4 serviceable food and shown small incremental improvements year-over-year, but it did not  
5 operate as well as *Chipotle* and is now out-of-business. In the free market, customers can  
6 exercise their displeasure by choosing a competitor. Not so, for a regulated utility with a  
7 captive customer base. Stated differently, Empire should be held to a standard. Customer  
8 satisfaction provides one reasonable standard to hold the Company accountable to, and  
9 Empire clearly is not meeting that standard.

10 Empire should be very concerned with these results. The Company consistently has one of  
11 the worst scoring JD Power Residential Customer Satisfaction Survey results in the entire  
12 nation. Not just in Missouri, but in the entire United States. Moving forward, Empire's  
13 customers face the potential for further cost-prohibitive rates, in part, from Empire's  
14 insistence to make a profit off of Storm Uri and its self-imposed stranded assets (both  
15 Asbury and its undepreciated meters).

16 **Q. Do you have any specific recommendations as it pertains to Empire's customer service**  
17 **as measured by its J.D. Power performance?**

18 A. The Commission should enforce some ongoing standard of accountability. I recommend  
19 that the Commission order Empire to submit its annual company-specific J.D. Power Report  
20 (not just the scores) in this docket along with a memorandum detailing how the Company  
21 is exactly improving its relationship with its customers based on the results of the J.D. Power

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<sup>12</sup> As to whether or not the upward trend in Empire JD Power scores are germane, it is important to understand whether or not the scoring methodology remained the same year-over-year and also whether or not all utilities' scores trended upwards. Discovery to Empire on this matter resulted in no copies of past reports to cross-check from.

In short, J.D. Power scores are useful *because* they show comparisons between peers and all electric utilities. Looking at the scores in a vacuum or against oneself largely loses the insight into whether or not customers *are* reasonably satisfied with the service they pay. Despite an upward trend, Empire is still consistently one of the worst scoring utilities in the United States and this is despite any significant rate increase since the acquisition.

According to J.D. Power: "At J.D. Power, we are proud of the unbiased data and findings we provide. As individuals, each and every member of our team is dedicated to living this same objectivity and embodying the highest ethical and professional standards – the only 'favorite' we have is the truth." <https://www.jdpower.com/business/about-us>

1 scores relative to its peers, as well as its relative rank across the United States—specifically  
2 as it pertains to its cost of service. That is, Empire’s answer should not merely be a  
3 resounding “we will spend more money on building out rate base,” but “here are the tangible  
4 benefits we are producing for customers.” This recommendation is also consistent with my  
5 rebuttal testimony recommendation where I called for both cost-effective results and  
6 benchmarking analysis for Empire’s future PISA investments. Finally, I recommend that  
7 the Commission take the aforementioned scores and Empire’s downplayed response into  
8 consideration in setting the Company’s return on equity.

9 **Billing**

10 **Q. What about Mr. Harrison’s argument that billing options and software investments**  
11 **will drive customer satisfaction moving forward?**

12 A. As to Mr. Harrison relying on billing and software investments as the lynchpin for  
13 improvement trends I point out four obvious retorts.

- 14 1) Customers have not been required to pay for these improvements yet;
- 15 2) Empire actively opposes offering all customers the benefit of time-of-use (“TOU”)  
16 rates;
- 17 3) The Company is not requesting the customer benefit of lower disconnection and  
18 reconnection charges despite the cost savings the software is supposed to provide;  
19 and
- 20 4) Finally, the Company is hoping to offer different payment options in the future. The  
21 actual bills sent to customers, in the mail, remain the same as shown in Figures 3  
22 and 4.

1 Figure 3: Example of the front of Empire's residential bill

Date Mailed: 07/26/2021  
 Account Number: [REDACTED]



<b>TOTAL AMOUNT</b>	<b>\$68.44</b>
Due 8/16/21, after add late fee of	\$0.34
After 8/16/21, Pay	\$68.78
<b>TOTAL AMOUNT ENCLOSED</b>	<b>\$ _____</b>

\*\*\*\*\*AUTO\*\*5-DIGIT 64870



Remit to:  
 LIBERTY UTILITIES  
 PO BOX 650689  
 Dallas, TX 75265-0689

650689 1914770466 0000006844 0000006878 3

To speak to a Liberty Customer Service Representative or to pay your bill by phone, please dial 1-800-206-2300

Liberty Utilities (www.libertyutilities.com)  
 602 S Joplin Avenue  
 Joplin, MO 64801-2337

Account Number: [REDACTED]

**Summary as of 07/23/2021:**

Previous Bill	06/23/2021		\$58.44
Payment Received	07/02/2021	Check	(\$58.44) Thank You
Balance Forward			\$0.00
Electric		914770-79-971	\$68.44***
<b>TOTAL AMOUNT DUE</b>			<b>\$68.44</b>

If you have a question or problem with billing or service or need help managing your charges with a delayed payment agreement, we welcome your call.

To use Liberty's automated account information by phone, use the 11-digit location number on the back of your statement.

Pay your bill with a credit or debit card by phone by simply calling 800-206-2300. Pay your bill online at www.libertyutilities.com. Choose the Pay Your Bill option and select Make Payment.

When making a payment, use the nine-digit account number on the front of your statement.

To report an electric outage, use the 11-digit location number on the back of your statement.

Project Help - - - Neighbors Helping Neighbors

Attention Missouri renters: Rent and utility financial assistance is available through the State Assistance For Housing Relief (SAFHR). Visit libertyutilities.com for more information and how to apply.

You may qualify for financial assistance with your Liberty bill. Visit www.libertyutilities.com and select Financial Help for options that may be right for you.

\*\*\* see Account Detail following message(s).

2  
 3 Figure 4: Example of the back of Empire's residential bill

**Account Detail**

Location# 914770-79-971	For Electric Service at [REDACTED]	Rate: RG-Residential
Read for: F07149715 From 06/19/21 to 07/19/21 (30 Days), Curr Read - 1448 Prev Read - 1038, Totaling 410 Kwh		
7/23/21	Customer Charge	1 x 13.00 \$13.00
7/23/21	Usage Charge	410kwh x .12535 \$51.39
7/23/21	Energy Efficiency Program Cost	410kwh x .00045 \$0.18
7/23/21	Fuel Charge	410kwh x .00 \$0.00
7/23/21	Franchise Fee	\$64.57 x .05 \$3.23
7/23/21	[REDACTED] City Tax	\$64.57 x .01 \$0.64
<b>Current Months Charges:</b>		<b>\$68.44</b>
<b>Billed Charges:</b>		<b>\$68.44</b>

1 **Q. What should the Commission note from this example residential bill?**

2 A. That the bill is not particularly informative or user friendly.

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

4 A. Customers are given both a 9 digit account number to make payments and a separate 11  
5 digit account number to report electric outages. There is no explanation for how to  
6 participate, donate to, or explanation of, what Project Help *is* other than “Neighbors Helping  
7 Neighbors.” The notice for assistance for State Assistance For Housing Relief (“SAFHR”)  
8 directs customers to the Company’s website. However, a word search on the Company’s  
9 website for SAFHR did not produce any results, but I was able to locate the SAFHR  
10 reference by searching under “Other Assistance” which consisted of a single link to the  
11 SAFHR website. Finally, the back of the bill simply includes the mathematical calculation  
12 for the bill components.

13 Far from a “modern customer experience” the current bill represents a bare bones billing  
14 explanation littered with incomplete customer messages. Not that I am advocating for  
15 spending a lot of money on color schemes and “insights.” I am merely asking for a coherent  
16 bill with accurate information.

17 **Q. Do you have any specific recommendations as it pertains to Empire’s bill?**

18 A. I recommend the Commission order the Company to update its bill and website within one  
19 month (or sooner) of rates going into effect with the following items:

- 20 1. Provide a link to the SAFHR website <https://www.mohousingresources.com/safhr>  
21 and not the Company’s website;
- 22 2. Include some supporting messaging containing relevant information (i.e., what it is,  
23 how one can participate, etc...) regarding Project Help;
- 24 3. Include language containing contact information regarding Low-Income  
25 Weatherization Assistance Program (“LIWAP”) enrollment;

- 1           4. Add language that directs further billing questions to a hyperlink to the Company’s  
2           website which provides an FAQ of greater billing detail (e.g., this is what a MEEIA  
3           surcharge is, this is what the FAC is, what do TOU rates mean..., etc...); and  
4           5. Finally, I recommend that the Company meet with Staff and OPC at least twice  
5           before the Company’s next rate case regarding input on the feasibility of future bill  
6           revisions with the intent to update the bill’s contents in a cost-effective but more  
7           customer informative manner moving forward.

### 8 **Charitable Contributions and Community Support**

9 **Q. Did Mr. Wilson respond to your characterization that Empire is not a reasonable**  
10 **corporate steward of its Missouri service territory?**

11 A. Yes. Mr. Wilson responded in the negative to my assertion, stating:

12           Absolutely not. We value and embrace our role in the communities that we serve. .  
13           . . At Empire, we focus on helping people live better lives today so they can prosper  
14           tomorrow.<sup>13</sup>

15           Mr. Wilson then devoted the rest of his testimony citing to examples where Empire made  
16           “sizable donations” and encouraged volunteerism.

17 **Q. Did Mr. Wilson provide any dollar amount figures to support the “sizable donations”**  
18 **assertion he made?**

19 A. No.

20 **Q. Did Mr. Wilson provide any examples of Empire volunteer events?**

21 A. Yes, two of them. Empire’s *Christmas Elves* program which resulted in 200 customers  
22           receiving gift cards and the *Liberty Days* program that allows employees up to three days  
23           off to support local organizations.

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<sup>13</sup> Ibid. p. 5, lines 18, 21-22.

1 **Q. What is your response to Mr. Wilson’s rebuttal?**

2 A. I disagree. Furthermore, I believe the Company may be in violation of charitable  
3 commitments it made to the Commission in its acquisition case. In the Liberty acquisition  
4 of Empire case, Case No. EM-2016-0213, OPC and the Company entered into a stipulation  
5 and agreement that included, in part, the following provision:

6 CHARITABLE CONTRIBUTIONS AND COMMUNITY SUPPORT

7 11. During the five-year period following the closing of the Transaction, Empire  
8 shall maintain, at a minimum, on a total company basis, an annual level of charitable  
9 contributions and traditional local community support of approximately \*\*\_\_\_\_

10 \_\_\_\_\_ \*\*14

11 I issued discovery to the Company to inquire whether Empire was adhering to the minimum  
12 level of charitable contributions to which it agreed and the Commission ordered. OPC DR-  
13 2041 request stated:

14 For each of the past five year—2016 to 2020, what has Liberty given to charity in  
15 its Missouri, Arkansas, Oklahoma and Kansas service area, and for each year,  
16 identify the recipients and the amount donated to each.<sup>15</sup>

17 Table 1 includes a consolidation of Empire’s response by year. 2016 representing the pre-  
18 Liberty acquisition and each subsequent year representing post-acquisition.

<sup>14</sup> Case No. EM-2016-0213 OPC Stipulation and Agreement p. 4.

<sup>15</sup> See GM-1.



1 Table 1: Empire’s 5-year charitable donations against what was required

		Charitable Amount given	\$ amount above/below stipulation requirement of **_____**
2016	Empire	\$433,523.44	**_____**
2017	Empire (Liberty)	\$264,813.35	**_____**
2018	Empire (Liberty)	\$243,642.08	**_____**
2019	Empire (Liberty)	\$244,738.36	**_____**
2020	Empire (Liberty)	\$378,241.17	**_____**
2021 <sup>16</sup>	Empire (Liberty)	\$185,467.57	**_____**
2017- 2021	Empire (Liberty)	\$1,316,902.53	**_____**

2  
 3 Based on the responses given, Empire appears to be in violation of its 2016 acquisition  
 4 stipulation and agreement to maintain for five years, at least the same amount of charitable  
 5 funding \*\*\_\_\_\_\_\*\* that was in place prior to the acquisition. The five-year cumulative  
 6 deficit of required minimal charitable funding is \*\*\_\_\_\_\_\*\*

7 **Q. Did any other Empire witnesses respond to your assertions about Empire and its**  
 8 **charitable community and charitable involvement?**

9 A. Yes. Empire witness Jon Harrison provided specific response in terms of monetary  
 10 donations made by the Company as a response to my assertion that Empire has provided  
 11 little support for its Missouri customers under COVID-19.

12 Mr. Harrison is silent on my central observation that Empire electric customers have the  
 13 second worst average arrearage amount in the state.

<sup>16</sup> See GM-2, response to OPC DR-2063

1 **Q. Mr. Harrison claims that Liberty Utilities gave \$500K to support its customers during**  
2 **COVID-19 as well as an additional \$78,559 for select agencies and an additional**  
3 **customer bill relief of \$13,391.21. What is your response?**

4 A. Mr. Harrison’s testimony appears to be at odds with his response in discovery. To provide  
5 appropriate context, Empire’s website currently has the following information listed under  
6 its COVID-19 section:

7 **Supporting our Communities**

8 On April 8, 2020, Liberty Utilities announced a \$500,000 donation to support  
9 communities within its service territories during the COVID-19 pandemic. We are  
10 pleased to share the following organizations have been chosen as local donation  
11 recipients for Liberty Utilities Central Region serving Arkansas, Illinois, Iowa,  
12 Kansas, Missouri, and Oklahoma with electric, gas, water, and wastewater  
13 services:<sup>17</sup>

14 ***Agencies that provide utility bill assistance:***

Organization Name	State
Community Action Agency of Southeast Iowa	Iowa
Delta Area Economic Opportunity Corporation	Missouri
Department of Human Services	Oklahoma
Green Hills	Missouri
Missouri Valley	Missouri
Neighbors to Neighbors	Arkansas
Our Healthy Communities Inc.	Arkansas
St Vincent DePaul	Missouri
Salvation Army	Arkansas
United Way	Kansas
United Way - Joplin & Springfield	Missouri
Wabash Area Development Inc.	Illinois
West Central	Missouri

15  
<sup>17</sup> [https://central.libertyutilities.com/uploads/Central%20Region%20donation%20recipients\\_5-6-20.pdf](https://central.libertyutilities.com/uploads/Central%20Region%20donation%20recipients_5-6-20.pdf)

**Organizations and charities that support customers and communities:**

Organization Name	State
4C's Food Bank	Illinois
Children's Haven	Missouri
Crosslines	Kansas
Neighbor to Neighbor	Arkansas
Ozarks Food Harvest	Missouri
Salvation Army	Missouri
Southeast Missouri Food Bank	Missouri
Watered Gardens	Missouri

I issued discovery on the funding allocation of that money in OPC DR-2055 and received the following breakdown as shown in Table 2.

Table 2: Liberty Central donation breakdown by organization<sup>18</sup>

Community Organization Donation List				
Central Region				
Organization Name	State	Organization Contact	Amount Donated	Date of Donation
DAEOC - gas	MO	Joel Evans	\$ 9,000	5/13/2020
WADI - gas	IL	Marsha Knight	\$ 2,616	5/13/2020
CASEIA - gas	IA	Paula Morgan	\$ 1,000	5/13/2020
Neighbors to Neighbors - water	AR	Pat Tate (870) 550-2996	\$ 2,050	
Salvation Army - water	AR	Donna Oliver (870) 534-0504	\$ 2,050	
Our Healthy Communities Inc	AR	Susan Moore (479) 636-7301	\$ 2,193	5/13/2020
United Way	KS	Duane Dreiling (417) 624-0153	\$ 4,836	5/13/2020
United Way - Joplin	MO	Duane Dreiling (417) 624-0153	\$ 20,000	5/13/2020
United Way - Springfield	MO	Greg Burriss (417) 863-7700	\$ 20,000	5/13/2020
St Vincent DePaul	MO	Carl Kinler (417) 529-3403	\$ 2,000	5/13/2020
Missouri Valley - gas	MO	660-886-7476	\$ 3,000	5/13/2020
Green Hills - gas	MO	660-359-3907	\$ 3,000	5/13/2020
West Central - gas	MO	660-885-5508	\$ 3,000	5/13/2020
DHS	OK	Casey Letran (405) 521-4390	\$ 2,000	5/13/2020
		<b>Total Amount Donated</b>	<b>\$ 76,745</b>	

I also received a breakdown of how the \$500K was allocated across Liberty's affiliates as shown in Table 3.

<sup>18</sup> See GM-3

1 Table 3: \$500K charitable donation to support Liberty communities' breakdown by region<sup>19</sup>

Community Organization Donation List	
All Region Summary	
Region	Amount Donated
East	\$ 68,961
Central	\$ 76,745
West	\$ 32,328
Liberty Power	\$ 21,966
<b>Total Amount Donated</b>	<b>\$ 200,000</b>

2  
3 **Q. What should the Commission observe from the information above?**

4 A. First, the Empire webpage is misleading in that it implies \$500,000 was donated to Empire  
5 customers specifically and not allocated to all of its affiliates in the United States. It sounds  
6 a lot less impressive to say that Empire donated \$76,745 (or \$60,000 to Missouri customers)  
7 than half a million dollars.

8 Second, it appears as only \$200,000 was actually donated by Liberty to all of its affiliates.  
9 Not \$500,000 as was claimed 21 months ago and still on the Company's webpage.

10 Third, by extension, Mr. Harrison's testimony appears misleading as well, in that he implies  
11 Empire customers and/or supporting agencies were given \$591,950.21 (\$500,000 + \$78,559  
12 + \$13,391.21) for COVID-19 relief, when in fact that number for Missouri customers is  
13 actually \$73,391.21 (\$60,000 + \$13,391.21).

14 **Q. Do you have any specific recommendations as it pertains to Empire's lack of charitable  
15 donations and community involvement?**

16 A. What a utility does with its profits are generally not my concern. It only becomes a concern  
17 if:

- 18 a) The Company committed to funding a program with its profits as part of a stipulation  
19 and agreement approved by the Commission; and/or

<sup>19</sup> Ibid.

1           b) The Company is falsely advertising or exaggerating how much support it is actually  
2           providing the community with its own profits.

3           Both exceptions are germane to this proceeding. I recommend that the Commission disallow  
4           an equivalent amount of money\*\*\_\_\_\_\_\*\*from the Company's revenue  
5           requirement in response to the Company's failure to meet the minimum charitable donations  
6           the Company was ordered to maintain for the past five years.

7           I also recommend that the Commission order Empire to remove incorrect and misleading  
8           assertions on the Company's website about the level of funding Empire customers received  
9           from Liberty for COVID-19 relief from \$500,000 to \$76,745.

## 10   **V.    LOW INCOME PROGRAMS**

### 11   **Low Income Weatherization Assistance Program ("LIWAP")**

12   **Q.    What was Empire's response to your assertion that Empire is the only electric and gas**  
13   **investor-owned utility in Missouri that does not match ratepayer funding for LIWAP?**

14   A.    Mr. Hackney stated the following:

15           In accordance with the Stipulation and Agreement in Case No. EM-2016-0213,  
16           Empire shareholders agreed to fund \$1,500,000 to each of its three CAAs to address  
17           the issues specifically outlined by Dr. Marke. Empire shareholders also agreed to a  
18           minimum annual level of charitable contributions and traditional local community  
19           support.<sup>20</sup>

20   **Q.    What is your response?**

21   A.    Mr. Hackney is correct insofar as Empire agreed to fund its three Community Action  
22           Agencies ("CAAs") at \$50,000 a year for ten years below-the-line per the aforementioned  
23           stipulation and agreement that was entered into with OPC in Case No. EM-2016-0213.

---

<sup>20</sup> Case No. ER-2021-0312 Rebuttal Testimony of Nathaniel W. Hackney p. 2, 16-20.

1 Evergy Metro and Evergy West entered into a similar agreement with their merger with  
2 Westar. Unlike Empire, Evergy Metro and Evergy West have also been matching  
3 ratepayer's funding of LIWAP for years. The shareholders matching ratepayer funding for  
4 LIWAP is also true for Ameren Missouri. It is only with Empire where electric ratepayers  
5 have been funding LIWAP entirely by themselves to date.

6 As to Mr. Hackney's assertion that Empire shareholders also agreed to a minimum annual  
7 level of charitable contributions and traditional local community support, I concur that is  
8 what the Company agreed to. However, my discovery on that topic (as discussed above)  
9 suggests the Company has not upheld their requirement.

10 **Q. What reason did the Company give for not supporting the recommendation?**

11 A. Mr. Hackney believes the CAAs will have difficulty spending down the funds.

12 **Q. Do you agree?**

13 A. Perhaps with the potential for increased federal funding. But that is why I recommended the  
14 tariff be drafted in such a manner as to allow greater discretion in how utility funds are utilized  
15 (e.g., additional hiring of personnel). Empire's electric bills are not getting cheaper and  
16 inflation is reaching thirty-year highs. If you also factor in Empire's service demographics and  
17 a greater CAA discretion in LIWAP spending I am confident that if it is an immediate problem,  
18 it won't be a problem for long.

19 **Q. What is your recommendation as it pertains to LIWAP funding?**

20 A. I continue to recommend that Empire shareholders contribute \$500K in weatherization to  
21 recognize the Company's failure to fund LIWAP programs in the past and to be consistent  
22 with every other utility in the state. The total amount of LIWAP funding would be set at  
23 \$750K annually but would not result in a revenue requirement increase (\$250K ratepayers  
24 and \$500K shareholders). The mismatch in funding recognizes Empire's failure to match  
25 funding to date like its Missouri peers and can be revisited in a future rate case.

26 Furthermore, as a result of the uncertainty surrounding COVID-19, federal funding, and  
27 securing appropriate labor for completing LIWAP projects I recommend that Empire's

1 three CAAs: the Economic Security Corporation, The Ozark Area Community Action  
2 Corporation, and the West Central Missouri Community Action Agency be given further  
3 discretion in how utility funds are utilized. That is, the CAAs should be allowed to utilize  
4 the annual utility funding to incentivize and retain employees through bonuses, be able to  
5 direct funding towards marketing and be able to utilize funds on reasonable “pass-over”  
6 measures related to health and safety to ensure projects are completed. Again, this  
7 loosening of the tariff requirements can be revisited in a future rate case.

8 Finally, I continue to recommend that the Empire Annual Low-Income meetings occur in  
9 which said CAAs can report their use of the funding.

#### 10 **Additional Low Income Programs**

11 **Q. Did Empire respond to your recommendation regarding the Critical Needs Program?**

12 A. No, Empire was silent on this recommendation but Staff supported the proposal.

13 **Q. Did Empire respond to your recommendation regarding changing the current Low  
14 Income Pilot Program into a Keep Current & Keeping Cool-like bill assistance program?**

15 A. Briefly. Mr. Harrison objected to the suggestion on the grounds that additional staff may need  
16 to be retained to execute the program.

17 **Q. What is your response?**

18 A. Hire an additional staff member. This is a major utility that is planning on investing billions  
19 of dollars in the next couple of years on distribution and transmission alone. I struggle to see  
20 why Empire is drawing the line here but is seemingly fine with no cost-benefit analysis to  
21 support its PISA investments.

22 **Q. What are your recommendations as it pertains to bill assistance programs?**

23 A. I continue to recommend the following:

- 24 • Discontinue Empire’s LIPP program;

- 1           • Implement a Keeping Current & Keeping Cool-like bill assistance program with  
2           ratepayer funding from the discontinued LIPP program and an additional \$500K in  
3           shareholder funds. Total annual funding = \$750,000
- 4           • Create a Critical Needs Program consist with the terms agreed and approved in Case  
5           No: GR-2021-0108. Funding split 50/50 between ratepayers and shareholders. Total  
6           annual funding = \$200,000
  - 7           ○ Unspent funding to be allocated to Empire’s bill assistance program; and
- 8           • Fund a one-time independent 3rd party needs assessment study that should not  
9           exceed \$100,000 in funding from Empire’s bill assistance program

## 10 **VII. LATE FEES, DATA ACCESS & PISA**

### 11 **Late Fees**

12 **Q. What was the Company’s response to your recommendation to lower the customer late**  
13 **payment fee from 0.5% to 0.25% of the billed amount?**

14 A. The Company opposed it. Mr. Harrison states:

15           “While late fees may have a small impact on low income customers, late fee  
16           avoidance also prompts higher wage earners to pay on time—which has an important  
17           impact on working capital and bad debt expense.”<sup>21</sup>

18 **Q. What is your response?**

19 A. As I understand Mr. Harrison’s argument, Empire should continue over-charging customers  
20 more than the actual cost of service for late fees because it’s not a lot of money for low  
21 income customers and the fee nudges high wage earners to pay on time. Moreover, if the  
22 fees are reduced to the actual cost of service then all customers will have to pay more, not  
23 just those who don’t pay their bills on time.

24 I disagree with this logic. We should not be over-charging customers for any of Empire’s  
25 services—including late fees. In fact, many services are moving away from late fees entirely

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<sup>21</sup> ER-2021-0312 Rebuttal Testimony of Jon Harrison p. 12, 24 & p. 13, 1-3.



1 (a policy that I am not advocating for in this case). For example, the New York Public  
2 Library System announced the elimination of all late fines going forward and all prior late  
3 fines and replacement fees have been cleared. According to Anthony W. Marx the President  
4 of the New York Public Library:

5 Research shows that fines are not effective in ensuring book returns—New Yorkers  
6 are quite reliable and responsible, clearly respecting our collections and the need for  
7 them to be available for others to borrow. But, unfortunately, fines are quite effective  
8 at preventing our most vulnerable communities from using our branches, services,  
9 and books. That is the antithesis of our mission to make knowledge and opportunity  
10 accessible to all, and needed to change. As New York grapples with the inequities  
11 laid bare by the pandemic, it is all the more urgent that we ensure the public library  
12 is open and freely available to all.<sup>22</sup>

13 I continue to see zero evidence to support that late payment fees are an appropriate deterrent  
14 to non-payment, and I believe that any additional fee added to an already financially  
15 struggling customer will increase the likelihood of disconnection.

16 I believe the threat of disconnection is the primary deterrent to incentivize timely payments,  
17 and that Empire should be doing everything in its power to provide an affordable service,  
18 which should include minimizing punitive charges that make it more likely for already  
19 struggling customers to fall off.

20 **Q. What is your recommendation?**

21 A. I continue to recommend that late fees should be reduced from 0.5% to 0.25% to reflect the  
22 actual cost of service and unfairly penalize households that already struggling to make ends  
23 meet.

24  
25  

---

<sup>22</sup> Marx, Tony (2021) New York Public Library. <https://www.nypl.org/spotlight/fines>

1 **Green Button**

2 **Q. How did Empire respond to your recommendation to include the Green Button option**  
3 **for customers who want to access their historical usage data?**

4 A. The Company did not respond specifically to my recommendation. Instead, Empire witness  
5 Tillman responded to MECG that they were generally supportive of providing a solution for  
6 customers to access their data, but suggested that the Commission should open up a working  
7 docket where all parties could opine on the topic.

8 **Q. What is your response to Mr. Tillman's suggestion?**

9 A. I disagree with Mr. Tillman. A workshop docket is not necessary. Both Ameren Missouri  
10 and Evergy West/Metro have agreed to utilize the Green Button platform moving forward.  
11 Empire is literally the last remaining electric utility. Mr. Tillman states the Company's  
12 software platform is limited in its ability but he is silent as to why the Green Button  
13 application would not be an appropriate answer to this problem.

14 **Q. What do you recommend?**

15 A. The Commission should order Empire to adopt the Green Button platform.

16 **PISA**

17 **Q. In rebuttal you recommended that the Commission order Empire to conform to**  
18 **similar reporting standards that were agreed to in the Ameren rate case over PISA**  
19 **investments. Do you maintain that same recommendation?**

20 A. In part. When I prepared my rebuttal testimony, I had not received Empire's responses to  
21 OPC DR-2052 and OPC DR-2053.<sup>23</sup> Empire has since responded to my discovery. Those  
22 requests and responses were as follows:

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<sup>23</sup> Both requests were objected to as vague, unduly burdensome, and overly broad and seeks information which is not relevant and/or is not reasonably calculated to lead to the discovery of admissible evidence in this proceeding

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**OPC DR-2052**

Request:

Please provide each and every cost-benefit study and analysis related to Liberty’s planned PISA investments. If there is no such study or analysis, why, explained in detail, is there not one?

Response:

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**OPC DR-2053**

Request:

Please provide each and every baseline and targeted metric related to Liberty’s PISA investments. If there is no such analysis, why, explained in detail, is there not one?

1            Response:

2            Subject to and without waiving the objection, Empire states as follows:

3            Please see the Company's response to Data Request 2052.

4            Schedule GM-4 includes a copy of the October 23, 2018 Liberty Policy & Procedures  
5            Capital Expenditures Planning and Management document.

6            **Q. Did these responses mitigate your concerns?**

7            A. No. A 2018 policy document on how capital investments over \$100,000 are made provides  
8            little insight into whether or not Empire conducted any cost benefit analysis on its PISA  
9            investments, or whether Empire has any benchmark metrics to gauge the success and  
10           prudency of its PISA investments.

11           **Q. Has your recommendation changed from when you prepared your rebuttal testimony?**

12           A. In part. Although no greater insight was gained into the rationale or problems being solved  
13           through Empire's expected billions in PISA's investment I believe my recommendation in  
14           rebuttal were effectively too Ameren Missouri-specific. That is, my recommendation  
15           consisted of language consistent with the Ameren Missouri stipulation and agreement  
16           regarding PISA investments. With that in mind, I would now recommend that the  
17           Commission order Empire to:

- 18           • File both cost-benefit analysis for investments greater than \$1 million and outcome  
19           based objective metrics (benchmarks) that include both baseline and target metrics  
20           in EO-2019-0046 by the end of the calendar year 2022;
- 21           • Meet with interested parties to discuss the parameters and assumptions surrounding  
22           the filing at least twice leading up to the filing; and
- 23           • Update the studies and metrics on an annual basis as long as PISA is in place.

24           These three bulleted point recommendations are a more succinct way of expressing my  
25           intended outcome—that Empire provide a cost justification for its PISA expenditures and  
26           be held to an outcome based performance benchmark to show said investments achieved  
27           their intended outcome.

1 **Corrections**

2 **Q. Do you have any corrections to make from your rebuttal testimony?**

3 A. Yes. It came to my attention that schedule GM-1 to my rebuttal testimony did not contain  
4 the Edison Electric Institute's ("EEI") Missouri Average rate comparison as I stated. This  
5 was unintentional and I would like to rectify the record now. Schedule GM-5 to my  
6 surrebuttal testimony contains that information.

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

8 A. Yes.