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 Increasing Rates For Electric Service Provided to Customers In its Missouri Service Area	)))))	Case No. ER-2024-0261

PUBLIC COUNSEL'S POSITIONS ON THE AMENDED LIST OF ISSUES

Capital Structure/ROE/Cost of Debt

1. What is the appropriate rate of return?
   a. Return on Common Equity – what return on common equity should be used for determining rate of return?

OPC Position: The Commission should authorize an allowed return on common equity ("ROE") for determining Empire's rate-of-return ("ROR") of no more than the 9.25% that Public Counsel witness David Murray recommends. To estimate Empire's cost of common equity ("COE"), Public Counsel witness David Murray used COE models and assumptions consistent with those investors use. While Mr. Murray's COE analysis shows that the Empire's COE has increased since its 2019 rate case, when the Commission authorized a 9.25% ROE, Mr. Murray's estimate of the electric utility industry's COE in late 2019/early 2020 was in the range of 5.5% to 6.5% or 325 basis points below Empire's Commission-authorized ROE (Mr. Murray's COE estimate at the time was corroborated by internal information he discovered from Empire).[1] In the instant rate case, Mr. Murray estimated Empire's COE to be in the range of 7.8% to 8.5%, which is based on his estimate of the electric utility industry's COE (Mr. Murray's COE in this case is also corroborated by internal information he discovered from Empire).[2] Investors and APUC recognize that although the COE has increased since late 2019/early 2020, because authorized ROEs are still above the COE, they do not expect a drastic change to authorized ROEs. Although the margin over the COE has declined, utility companies can still create wealth for their shareholders, just not as much as during the extremely low cost of capital environment in late 2019/early 2020.[3] Although the increase in the electric utility industry's COE over the last few years caused Mr. Murray to recommend a 9.5% authorized ROE in Ameren Missouri's and Evergy Missouri West's recent rate cases, Case Nos. ER-2024-0319 and ER-2024-0189, respectively, due to Empire's troubled rollout of Customer First, a 9.25% ROE is fair and reasonable.

While Mr. Murray recommends a 9.25% authorized ROE, as Mr. Murray points out in his testimony, the Commission could authorize a ROE as low as the lowest fair and reasonable Empire COE estimate in evidence (even if lower than any other witness's ROE recommendation) and still comply with the principles established in the Hope and Bluefield decisions.

[1] Murray Surrebuttal Testimony, p. 21, ln. 18 – p. 22, ln. 2.
[2] Murray Direct Testimony, p. 50, ln. 5 – p. 52, ln. 21.
[3] Murray Surrebuttal Testimony, p. 27, lns. 13-23.

Murray

b. Capital Structure – what is the appropriate capital structure to use for ratemaking in this proceeding?

OPC Position: The Commission should use the 45% common equity and 55% long-term debt capital structure that Public Counsel witness David Murray recommends for determining Empire's authorized rate-of-return ("ROR"). As Public Counsel witness David Murray testifies, Empire is financed by debt and equity injections by affiliates who ultimately access the financial markets through their ultimate parent, Algonquin Power & Utilities Corp. ("APUC"), and their immediate parent, Liberty Utilities Co. ("LUCo"). Mr. Murray's recommended capital structure is consistent with the low-end of the proportion of leverage APUC had communicated to LUCo debt investors that it intended to target for purposes of financing its low-risk investments in its regulated utilities group, which includes Empire. Before Empire's ultimate parent company, APUC, started to experience financial instability after reporting its third quarter 2022 earnings, APUC and LUCo had fairly stable costs of capital consistent with a stable investment grade credit rating. However, between APUC's poor financial performance and uncertainty related to LUCo's proposed acquisition of Kentucky Power Company, investors in LUCo's debt required a higher coupon rate than that which was consistent with a stable 'BBB'-rated utility. Investors in LUCo's debt required higher coupons, despite LUCo's capital structure consisting of a common equity ratio of approximately 60%. APUC had historically targeted a 45% to 50% common equity ratio for LUCo's capital structure because it recognized that the low risk LUCo's regulated utilities, including Empire, could support the corresponding proportion of debt and still maintain at least a 'BBB' credit rating. In fact, as APUC has transitioned to a pure-play regulated utility holding company, rating agencies have communicated that APUC can carry more debt relative to its cash flows and maintain a 'BBB' credit rating than before APUC divested its non-regulated operations.

Empire's per books capital structure is predominately a function of affiliate financing transactions. APUC first advances funds to Empire via affiliate "money pool" capital infusions. When APUC decides to file a rate case, it attempts to reclassify the capital transferred via "money pool" infusions to common equity and long-term debt to achieve a 53% common equity ratio for purposes of supporting its requested authorized ROR. The mere fact that Empire's capital accounts can be adjusted based on accounting entries that are unrelated to third-party financial transactions is a sufficient basis for rejecting Empire's per books capital structure for ratemaking. However, in this case APUC not only failed to reclassify its capital injections into Empire by the ordered March 31,2025, true-up cut-off date, it resorted to a pro forma adjustment based on a hypothetical June 30, 2025, affiliate note that still has not been executed.

Murray

c. Cost of debt – what cost of debt should be used for determining rate of return?

OPC Position: The Commission should use an embedded cost of debt of 4.30% based on all third-party debt LUCo guarantees and the regulated subsidiary debt it consolidates on its balance sheet. With the exception of LUCo's $850 million of debt issued on January 12, 2024, Public Counsel's cost of debt recommendation is based on the actual cost of this debt.

However, Public Counsel witness David Murray made downward adjustments to the debt LUCo issued on January 12, 2024, because it was priced more consistently with debt assigned 'BBB-' credit ratings rather than 'BBB' credit ratings. LUCo's cost of debt has been higher subsequent to APUC's financial instability and uncertainty related to LUCo's investment and divestment strategies. Empire's credit metrics have been stronger than APUC's and LUCo's credit metrics during this period. Therefore, Empire's ratepayers should not be charged this higher cost, regardless of whether it is through adoption of LUCo's embedded cost of long-term debt or debt costs assigned to Empire through affiliate notes.

Empire's and Staff's cost of long-term debt recommendations of 4.53% based on Empire's book cost of long-term debt should be rejected. Empire's book cost of long-term debt is a function of affiliate financing transactions which are based on inconsistent internal methodologies for assigning coupon rates. Except if they are adopted for ratemaking, these affiliate financing transactions have no real economic consequence. In fact, Empire's recommended cost of long-term debt of 4.53% as of the true-up date is not even based on known and measurable assigned costs, because the hypothetical June 30, 2025, affiliate note upon which it is based was not executed as of the true-up date, and to Public Counsels' knowledge, it still has not been executed.

Murray

d. If the Commission adopts Staff's and Empire's recommended capital structure, is it appropriate to set a ratemaking capital structure and cost of debt based on projections beyond the true-up cut-off date of March 31, 2025?

OPC Position: No. Missouri is an historical test year state where information is required to be known and measurable before being considered when designing utility rates. Empire, and Staff, base their capital structure for Empire on a hypothetical June 30, 2025, promissory note that had not been executed by the March 31, 2025, true-up cut-off date, and to Public Counsel's knowledge, it is still is not executed.

Further, because APUC manages Empire's per books capital structure through affiliate financing transactions, not only should the Commission reject Empire's per books capital structure based on the ordered test year trued-up through March 31, 2025, it also should reject relying on either Empire's per books capital structure post March 31, 2025, or any projections of Empire's per books capital structure post March 31, 2025, premised on affiliate financing transactions.

Murray

<u>Rate Base Items</u>

Plant & Accumulated Depreciation

2. What is the appropriate amount of plant in service and depreciation reserve to include in rate base?

a. What is the appropriate amount of common plant removal for plant and accumulated depreciation?

OPC Position: The amounts shown in the following table from Public Counsel witness John Robinett's rebuttal testimony, page five.

Account Number	Account Description	Assets Lines to Retire	Dollars to Retire
391	Office Furniture and Equipment	8	$ 15,235.03
393	Stores Equipment	1	$ 8,259.67
394	Tools, Shop and Garage Equipment	0	$ -
395	Laboratory Equipment	4	$ 23,704.08
397	Communication Equipment	11	$ 127,816.62
398	Miscellaneous Equipment	0	$ -

Robinett

b. Should the Commission order Empire to retire general plant assets that will exceed their amortization period before the effective date of new rates?

OPC Position: Yes because doing so will most accurately reflect in the rates going forward the impact of the retirements of those assets which occucr before those rates take effect even though they are retirements that occur after the true-up period.

Robinett

c. Should Empire be allowed to earn a return on retired non-AMI meters that created a negative reserve balance?

OPC Position: No. Empire should not be allowed to earn a return on retired non-AMI meters that created the negative reserve for account 370 meters, and a negative depreciation reserve balance increases rate base which generates a profit.

OPC Witness Robinett rebuttal testimony page 5 line 16 through page 7 line 2

Robinett

d. Should Empire be allowed to earn a return on Empire's investment in non-AMI meters?

OPC position: No. Empire's meters have contributed to Empire's erratic billing issues.

Marke

e. What is the appropriate balance of Iatan and PCB transformer costs to include as an offset to accumulated depreciation?

f. Should the Commission include depreciation reserve accumulated beyond the March 31, 2025 true-up date?

OPC Position: Yes. It is Public Counsel's position that the accumulated depreciation reserves should be taken out to the effective date of new rates in setting rates going forward as they best reflect the status of the accounts when the rates become effective. Public Counsel proposed in its witness John Robinett's direct testimony values from the September 30, 2024, through January 2, 2026. Public Counsel witness John Robinett updated the values in his surrebuttal testimony to reflect March 31, 2025, true-up investments, and carried those numbers forward through the anticipated effective date of new rates—January 2, 2026. Public Counsel witness John Robinett in surrebuttal testimony recommends accrual of $10,673,109.72 on a monthly basis or a total adjustment of $96,759,780.99 which would decrease the revenue requirement by approximately $7.5 million in recognition of reserve accruals through the effective date of new rates.

It is known and measurable that depreciation accrual will continue to happen, it is readily quantifiable based on the plant in service as of March 31, 2025, and with the decreased rate base a reduced return on investment would occur to the benefit of Liberty's rate payers by how this Commission designs general rates. Further, like true-up items, Liberty's depreciation reserve changes over time significantly impacting the calculated revenue requirement, and it warrants being valued as close to the date Liberty's new rates take effect as possible.

John Robinett

g. Should the Company recover reclassified Asbury stranded plant costs?

h. Should Empire recover the cost of repairs to Riverton 10?

OPC Position: No. As both Staff and Public Counsel witnesses testify Empire poorly timed when it repaired Riverton unit 10 and its retail customers should not have to pay for Liberty's increased costs due to its mismanagement of when to retire vs. repair that unit.

John Robinett

i. Should the Commission order OPC's recommended disallowance of 2% of the rate base inclusion of transmission and distribution projects since Empire's last rate case over $1 million?

OPC Position: Yes, without this disallowance the cost to customers for these projects is not worth the benefit they added.

Seaver

j. Should Empire be allowed to earn a return on Empire's investment in new AMI meters?

OPC position: No. Empire's customers have not benefitted from Empire's AMI meters implementation.

Marke

Cash Working Capital

3. What is the appropriate value for the income tax expense lag in the Cash Working Capital schedule?

Prepayments

4. What is the appropriate balance of prepayments?

Materials, Supplies, and Inventory

5. What is the appropriate amount of materials and supplies to include in Empire's rate base?

6. What is the appropriate amount of fuel inventory to include in Empire's rate base?

Customer Deposits

7. What is the appropriate amount of customer deposits to include in Empire's rate base?

Customer Advances

8. What is the appropriate amount of customer advances to include in Empire's rate base?

Regulatory Assets/Liabilities

9. What is the appropriate rate base and amortization expense for Plum Point deferred carrying costs?

10. What is the appropriate rate base and amortization expense for Iatan I deferred carrying costs?

11. What is the appropriate rate base and amortization expense for Iatan II deferred carrying costs?

12. What is the appropriate rate base and amortization expense for the Customer Program Collaborative (DSM) account?

13. What is the appropriate rate base and amortization expense for interruptible service credits incurred after the January 2022 implementation of the Company's MEEIA program? Should they be tracked separately from the Customer Program collaborative (DSM) vintage costs incurred prior to January 2022?

14. What is the appropriate rate base and amortization expense balance for the PeopleSoft Costs?

15. What is the appropriate rate base amount and amortization expense for the Low-Income Pilot Program to include in Empire's cost of service?

16. What is the appropriate rate base balance for the prepaid pension asset, pension tracker, and OPEB tracker?

17. Should the solar initiative include rebates paid for systems that became operational after December 31, 2023?

18. What is the appropriate rate base and amortization expense for the solar initiative and solar rebate regulatory assets?

19. What is the appropriate rate base and amortization expense for the Riverton 12 tracker?

20. Should the Riverton 12 O&M amortizations continue to be tracked through the effective date of rates in this case?

21. What balance for the PISA regulatory assets and associated amortization expense should be included in the revenue requirement?

22. Should Empire's PISA assets be reduced for deferred costs related to Riverton 10 repairs?
OPC Position: While Public Counsel does not have a witness who addresses this issue in testimony, Public Counsel agrees with Staff that position of removing Riverton 10 repair costs from the PISA deferral balances because it mismanaged the timing of when to retire versus repair that unit.

Robinett

23. Should the Riverton Environmental Costs be reflected in rate base and amortization expense?

24. In consideration of all relevant factors, what is the appropriate rate base and amortization expense balance for the tornado AAO?

25. What is the appropriate balance of the PAYGO tracker regulatory asset?

26. How long should the PAYGO tracker regulatory asset be amortized?

27. Should the Company be allowed a return on the PAYGO tracker regulatory asset balance?

28. Should the Company be allowed to recover property tax expense that was tracked since the effective date of the applicable statute? If so, what should be the approved rate base and amortization period?

29. Should the Company be allowed to include the deferred long-term maintenance prepayment costs in rate base? If so, what is the appropriate deferred long-term maintenance prepayment balances as it pertains to Riverton, StateLine, and the Wind SWMA?

30. Is there a lawful SB-EDR regulatory asset? Should rates reflect the SB-EDR regulatory asset and respective amortization, including recovery of all SB-EDR discounts incurred since the Company's last rate case?

31. Should the over-amortization of Empire's unprotected Excess Accumulated Deferred Income Taxes (EADIT) be reflected in rate base and amortization expense?
OPC position: No. The EADIT in question is not protected [Emery direct, page 26, lines 7-8] and does not require a specific, IRS mandated amortization. Empire admits that there is a positive EADIT balance remaining, so it did not overrefund but merely accelerated the refund that was due the ratepayers.

Riley
32. What is the appropriate balance for the rate base recognition and amortization expense of the unprotected EADIT tracker?
OPC position: There should be no rate base recognition for an Empire requested unprotected EADIT tracker. The stipulation and agreement mentioned in Mr. Young's testimony only

addresses a protected EADIT tracker. Case No. ER-2021-0312 [EADIT Tracker: A tracker will be created to capture the differences between protected EADIT returned to customers as part of the revenue requirement in this case, and the actual amortization recorded by the Empire using ARAM for protected EADIT balances and a 3 year amortization period for non-stub period unprotected EADIT balances.] The balance should be zero.

Riley

33. What is the appropriate rate base and amortization expense balance for protected EADIT?

34. How should the deferred Asbury AAO costs be returned to customers?

35. What is the appropriate rate base and amortization expense balance for the Asbury AAO liability?

ADIT

36. What is the appropriate ADIT balance to be included in rate base?

OPC position: The appropriate ADIT (accumulated deferred income tax) balance should be adjusted upward for Empire's proposed unprotected EADIT balance of $19,378,359 [McCuen rebuttal, Schedule MM-1] and the NOL balance of $26,108,003. [McCuen Schedule MM-1] Staff's balance of $371,403,424 should be revised upward to $417,846,041.

Riley

37. Should a net operating loss (NOL), deferred tax asset balance be included in rate base?

OPC position: No. The NOL associated to accelerated depreciation [Riley Surrebuttal, page 3 and footnote 3] has been consumed by two consecutive years of positive taxable income. [Riley Surrebuttal, Confidential Schedule JSR-S-02].

Riley

<u>Income Statement Issues</u>

38. What is the appropriate balance of retail revenues?

39. What level of PAYGO revenue should be included in the revenue requirement?

40. What is the appropriate level of miscellaneous revenues to be included in Empire's revenue requirement?

a) What is the appropriate balance of forfeited discount revenues?
b) What is the appropriate balance of reconnect/misc revenues?
c) What is the appropriate balance of rent revenues?
d) What is the appropriate balance of other electric revenues?
e) What is the appropriate balance of Plum Point Transmission revenues?

41. Renewable Energy Credits ("RECs")

a. What amount of revenues from the sale of RECs should be included in Empire's revenue requirement?

b. What amount of revenues from the sale of RECs should be included in Empire's FAC base factor?

OPC position: The amount of revenues from the sale of RECs that is included in Empire's FAC base factor should be the same amount of revenues that is included in Empire's revenue requirement. (Mantle Direct, p. 6 l. 22 – p. 7 l. 2)

Mantle

42. What level of TCR/ARR revenues should be included in Empire's revenue requirement and for calculating Empire's FAC base factor?

OPC position: The Commission should include a realistic amount of ARR/TCR revenues based on prior year actuals. By normalizing the last five years of Empire's actual ARR/TCR revenues from April 2020 through March 2025, the appropriate level of ARR/TCR revenues to include in this case is $46,391,885. (Schaben surrebuttal, p. 8, Table 1).

Schaben

43. What is the appropriate balance of net fuel and purchased power costs?

OPC Position: Staff's true-up variable fuel and purchased power expense is the appropriate expense to include in Liberty's revenue requirement and FAC. Staff estimated its variable fuel and purchased power expense using actual historical Liberty fuel expense and energy market prices through March 31, 2025 and explicitly included hedged natural gas positions of Liberty. The Commission should not order Liberty's fuel and purchased power expense because it was estimated using projected natural gas and market prices for 2026.(Tarter response to OPC DR 8053) and did not include consideration of its natural gas hedging position.

Mantle

a. Should the Commission set rates based on natural gas fuel costs based on natural gas fuel prices (actual and/or projected) for periods beyond the March 31, 2025 true-up cut-off date?

OPC position: No. Missouri is a historical test year state where information is required to be known and measurable before being considered when designing utility rates.

Mantle

b. Should the Commission set rates based on energy market costs based on energy market prices (actual and/or projected) for periods beyond the March 31, 2025 true-up cut-off date?

OPC position: No. Missouri is a historical test year state where information is required to be known and measurable before being considered when designing utility rates.

Mantle

44. What is the appropriate amount of long-term maintenance costs to include in Empire's cost of service?

45. What is the appropriate amount of non-wind generation operation and maintenance to include in Empire's cost of service?

46. Excluding Riverton 10 and 11, what is the appropriate level of depreciation and amortization expense of plant to include in the cost of service?

OPC Position: Public Counsel supports Staff's and Liberty's use of continued depreciation rates from Case No. ER-2021-0312 for calculating depreciation expense for non-generation assets as of March 31, 2025. Public Counsel recommends different depreciation rates for Liberty's generation assets because it is relatively easier to take into account the effects of plant additions and accumulated depreciation reserve for those assets in the four years since those rates were last designed. Excluding Riverton units 10 and 11, Public Counsel's recommended generation depreciation rates would decrease depreciation expense by $ 5,073,049 for Steam and hydro generation facilities, and would decrease depreciation expense for other generation(solar, wind combustion turbines and combined cycle units) by $3,694,579.

Robinett Surrebuttal page 15 line 15 through page 24 line 8.

Robinett

47. What is the appropriate level of depreciation and amortization expense of plant to include in the cost of service for Riverton 10 and 11?

OPC Position: Public Counsel recommends that depreciation expense for Riverton 10 and 11 be set to zero, and that the remaining net plant for Riverton units 10 and 11 as of March 31, 2025, plus six months of return on the current plant-in-service balance be placed into a regulatory asset which is amortized over a five years because Empire intends to retire both units soon.

Robinett Surrebuttal page 15 line 15 through page 24 line 8

Robinett

48. If Empire is not allowed to earn a return on retired non-AMI meters that created a negative reserve balance, how should the negative reserve balance be treated?

OPC Position: The Commissiosn should authorize Empire to create a non-rate base asset (return of, but no return on) amortized over five years for the Missouri jurisdictional negative $9,450,862 balance as of March 31, 2025, for the non-AMI meters recorded in FERC USOA account 370. If not transferred to a non-ratebase regulatory asset the negative reserve balance will result in allowing return on retired plant.

Robinett Rebuttal Testimony page 5 line 16 through page 7 line 2

Robinett

49. What is the appropriate amount to include for vegetation management expense?

50. What is the appropriate level of bad debt expense to be included in Empire's revenue requirement?

51. What is the appropriate rate case expense for this case?

a. Should the Commission disallow the rate case expense associated with Empire witness John J. Reed?

OPC position: Yes.
Marke

b. What amortization period should be used for the depreciation study and line loss study?

OPC Position: Five years. Empire did not file a new depreciation study in this case, nor did any other party. In this case the appropriate amortization to include would be for the remaining balance of the 2019 depreciation study, which should be minimal. That depreciation study was for data through 2019 and Empire filed it in Case No. ER-2021-0312. The correct amortization period for a new depreciation study would be five years consistent with the Commission's rule requirement to file a new depreciation study every five years.

Robinett

52. What is the appropriate level of insurance expense to be included in Empire's revenue requirement?

53. What is the appropriate level of injuries and damages & worker's compensation expense to be included in Empire's revenue requirement?

54. What is the appropriate level of payroll expense and payroll taxes to be included in Empire's revenue requirement?

55. What is the appropriate level of payroll related benefits to be included in Empire's revenue requirement?

56. What is the appropriate level of incentive compensation expense to be included in Empire's revenue requirement?

57. Should severance be included in the revenue requirement? If not, what is the appropriate rate base and expense reduction for severance costs?

58. What is the appropriate level of PSC assessment expense to be included in Empire's revenue requirement?

59. What is the appropriate level of Department 115 wind O&M expense to include in the revenue requirement?

60. What is the appropriate level of non-FAC wind revenue and expense to include in the revenue requirement?

61. What is the appropriate level of rating agency fees to be included in Empire's revenue requirement?

62. What expense amount should be included in the revenue requirement for FAS 87 costs?

63. What expense amount should be included in the revenue requirement for FAS 88 costs?

64. What expense amount should be included in the revenue requirement for FAS 106 costs?

65. What expense amount should be reflected in the revenue requirement for SERP?

66. What level of dues and donations expense should the Commission recognize in Empire's revenue requirement?

67. What is the appropriate amount of Advertising Expense to include in Empire's revenue requirement?

68. What is the appropriate amount of customer payment fees to include in Empire's revenue requirement?

69. What is the appropriate amount of lease expense to include in Empire's revenue requirement?

70. What is the appropriate amount of expense to be included in cost of service associated with water used at State Line facility?

71. Should new MAWC water rates that took effect on May 28, 2025 be included in the calculation of expense associated with water usage at State Line?

72. What level of cyber-security expense should the Commission recognize in Empire's revenue requirement?
No more than $611,270 ($3.72 per customer).

OPC position: As part of Empire's true-up rebuttal revenue requirement model, Empire indicated a cybersecurity test year ending September 30, 2023, balance of $263,762, which equates to $1.41 per customer.4 Empire witness Shawn Eck estimated "$1.53 million for calendar year 2024 with additional ongoing costs expected through 2027"5, which equates to $9.31 per customer, an increase of $7.90 per Empire customer. As of the test year within Ameren Missouri's most recent rate case of ER-2024-0319, Ameren's non-labor cybersecurity O&M costs averaged out to approximately $3.96 per Ameren Missouri customer. Evergy Missouri West requested $3.72 in base level non-labor cybersecurity O&M expense in ER-2024-0189. Ameren and Evergy both operate nuclear power plants, which should require more rigorous security standards, while Liberty does not. Yet Empire is requesting considerably more for non-labor cybersecurity O&M expense per customer than both Ameren Missouri and Evergy Missouri West. Empire has operated a cybersecurity program for several years. Even if some parts of the program called for improvement, a baseline should have already existed from which to build upon. Increasing cybersecurity expense from $1.41 per customer to $9.31 per customer for "improving" the cybersecurity program does not seem reasonable. Cybersecurity expense is a cost allocated to Empire based on the CAM. It's difficult to determine the accuracy and reliability of data

[4] 164,320 Missouri customers
[5] Direct testimony of Shawn Eck, page 14.

related to the true cost of cybersecurity service given the fact that the data provided by the Company has not been consistent.

Schaben

73. Should the January 2025 CAM allocators be used for this case?

OPC position: No. The Commission should use the same April 2024 CAM allocators that Staff used. The sale of non-regulated assets occurred in January 2025. The test year in this case is the twelve-month period ending September 30, 2023, updated through September 30, 2024, with a true-up period ending March 31, 2025. Using updated January 2025 allocators for expenses that occurred between September 30, 2023 through the non-reg asset sale date in January 2025, would shift historical allocation expense, previously allocated to Liberty Power, to Empire – essentially subsidizing non-regulated past affiliate operations.

Schaben

74. What is the appropriate level of A&G expense?

OPC position: Staff's value of $41,643,800 for Empire's A&G expense ($253.43 per customer) reduced by $17,159,938 ($104.43 per customer), which equals $24,483,862 ($149 per customer).

Empire's 2024 A&G (administrative and general cost) was $402 per customer, according to its FERC form 1 filing, while Empire's Missouri electric investor owned utility ("IOU") peers averaged A&G expenses of $149 per customer in 2024, a difference of $253. Empire should be held to the same standard of operating efficiency as its Missouri electric IOU peers. The fact that Empire operates in partially rural areas is not an adequate justification for higher A&G expenses. Evergy West also operates in partially rural areas and has managed to keep A&G expense per customer reasonable, and considerably lower than Empire's A&G expense per customer. Empire has invested heavily in capital investment. Thoughtfully planned capital investment should reduce O&M expense, yet Empire's O&M expense continues to increase. Not only is Empire expecting customers to pay for increased capital investment, Empire is also asking customers to pay for increased O&M expenses that should see a reduction through effective capital improvements. Empire should be held to the standards of its Missouri IOU peers and therefore the A&G expenses from its case should be reduced by $36,430,385[6].

Schaben

75. What is the appropriate interest rate to calculate interest expense on customer deposits to include in Empire's rate base?

76. What is the proposed amortization expense balance of Ice Storm costs?

77. What is the appropriate amortization expense balance for the stub period EADIT?

78. What amount of intangible plant amortization expense should be included in the revenue requirement?

79. What is the appropriate level of depreciation clearing expense to be included in Empire's revenue requirement?

[6] $41,572,960 multiplied by the Missouri jurisdictional factor 87.63% Empire utilized in true-up rebuttal.

80. What are the appropriate depreciation rates to be ordered by the Commission?

OPC Position: Public Counsel does not oppose the use of a 20-year life for the Customer first software and Public Counsel supports the 5% depreciation rate recommended by Staff Witness Mr. Malachi Bowman for account 370.1 AMI-Meters. Additionally, Public Counsel does not recommend changes to the transmission, distribution, or general plant account rates that the Commission ordered in Case No. ER-2021-0312—the same recommendation Staff and Empire make. For the generation depreciation accounts Public Counsel recommends changing the remaining life rates based on updated plant-in-service and accumulated depreciation reserve balances as of March 31, 2025. Those balances were provided as updates from the direct testimony rates that were based on plant in service and accumulated depreciation reserves as of September 30, 2024. Public Counsel witness John Robinett utilized the same net salvage percentages that the Commission ordered in Case No. ER-2021-0312, which were criticized by both Staff and Liberty witnesses for using data was old; however, both Staff and Empire recommend that the Commission continue to use the currently ordered depreciation rates that do not account for current values of plant-in-service and accumulated depreciation reserves—values that would directly affect appropriate current depreciation rates.

Robinett Direct page 5 line 6 through page 9 line 3; Robinett surrebuttal page 15 line 15 through page 24 line 8.

Robinett

81. What level of property tax should be included in the revenue requirement calculation for non-wind property and wind property?

82. Should federal income tax credits be recognized in the revenue requirement, and if so, what is the appropriate balance to be included in the revenue requirement?

83. Should disposition losses offset current income tax expense?

84. What are the appropriate jurisdictional allocations to use for this case?

85. What is the value of the variable fuel and purchase power expense?

OPC Position: Staff's true-up variable fuel and purchased power expense is the appropriate expense to include in Liberty's revenue requirement and FAC. Staff estimated its variable fuel and purchased power expense using actual historical Liberty fuel expense and energy market prices through March 31, 2025 and explicitly included hedged natural gas positions of Liberty. The Commission should not order Liberty's fuel and purchased power expense because it was estimated using projected natural gas and market prices for 2026.(Tarter response to OPC DR 8053) and did not include consideration of its natural gas hedging position.

Mantle

86. Should Liberty be authorized to utilize the Reverse South Georgia Method to return protected excess ADIT to customers? If so, what is the appropriate annual amortization and weighted average remaining plant life to use?

OPC Position: This authorization should be predicated on IRS acceptance of the Company's request to change amortization methods from ARAM to RSGM.
Riley

87. Should the Commission set rates based on amortization of unprotected Excess Accumulated Deferred Income Taxes ("EADIT") beyond the true-up cut-off date of March 31, 2025?
OPC Position: No. The balance at the true-up cutoff should be amount used to establish the EADIT balance for the next cost of service.
Riley

88. Riverton 10 Repairs
a. Were the Riverton 10 repair costs prudently incurred?
OPC Position: No. As both Staff and Public Counsel witnesses testify Empire poorly timed when it repaired Riverton unit 10 and its retail customers should not have to pay for Liberty's increased costs due to its mismanagement of when to retire vs. repair that unit.
Robinett
b. What amount of the Riverton 10 repairs capital cost should be included in rate base?
OPC Position: None.
Robinett
c. Has Empire violated the Commission-ordered Stipulation and Agreement Paragraph 4(j) in Case No. EA-2023-0131?[7]
OPC Position: Yes. In his direct testimony Public Counsel witness Mr. Robinett pointed out that Public Counsel received an confidential response to OPC data request number 8507 directed to Empire that repair costs were capitalized in account 343. Empire did not provide any direct testimony showing compliance. In his rebuttal testimony at page 6, lines 17-23 Empire witness Brian Berkstesser testifies as follows: "The Company acknowledges that testimony 'on the decision process followed during the repair/replacement of Riverton Units 10 and 11 as well as any changes in policy resulting from that process' was not included in the initial filing of this rate case. The Company intends to include that testimony in the rate case where it first seeks cost recovery related to the replacement units. [Empire] apologies for the misunderstanding if the intent of the stipulation provision was for the testimony to be included in this case." In the surrebuttal testimony of its witness Mr. Brodrick Niemeier Staff acknowledges at page 1, line 18 through page 4 line 2 of that testimony that Staff agrees that Empire violated that provision of the Commission's order.

89. Ozark Beach Crane Extension
a. Were the costs of the crane extension project at Ozark Beach prudently incurred?
OPC position: No. This project exemplifies that Empire is not putting its customers first when deciding what projects to undertake and when to undertake them. Empire has shown neither that it should have undertake the project—that it was cost-effective form its customers' standpoint—or that, when considering customer rate impacts, it should have undertaken the project when it did.
Marke

[7] Paragraph 4(j) of the Stipulation and Agreement in EA-2023-0131 states, among other things: "Liberty shall provide testimony on the decision process followed during the repair/replacement of Riverton Units 10 and 11 as well as any changes in policy resulting from that process."

b. Does the crane extension project at Ozark Beach qualify for PISA?
OPC position: Not in issue.

FAC

90. Which FERC subaccounts should be included in Empire's FAC tariff sheets?

91. What should be the FAC base factor for this case?
OPC Position: Staff's true-up FAC base factor of $0.01111/kWh should be used in this case. Staff's FAC base factor components are annualized and normalized based on historical test year data with certain components updated through March 31, 2025. Liberty's FAC base factor includes some components from 2023, some from 2024, and some projected through 2026.

Mantle

92. What are the appropriate FAC Voltage Adjustment Factors for Empire?

93. What is the percentage of SPP and MISO transmission expense that should be recovered through the FAC?
OPC position: The percentage adopted by the Commission should be 21.33% for SPP and 50% of MISO costs consistent with Staff's fuel model results and base factor.

Prior Commission decisions adhere to the the Missouri FAC statute, Section 386.266.1, RSMo. One particular example is In its Report and Order in File No. ER-2014-0258, the Commission stated the following with 16 regard to the transmission expense to include in Ameren Missouri's FAC:

> The evidence demonstrated that for purposes of operation of the MISO tariff, Ameren Missouri sells all the power it generates into the MISO market and buys back whatever power its needs to serve its native load. From that fact, Ameren Missouri leaps to its conclusion that since it sells all its power to MISO and buys all that power back, all such transactions are off-system sales and purchased power within the meaning of the FAC statute. The Commission does not accept this point of view. The drafters of the FAC statute likely did not envision a situation where a utility would consider all its generation purchased power or off-system sales. In fact, the policy underlying the FAC statute is clear on its face. The statute is meant to insulate the utility from unexpected and uncontrollable fluctuations in transportation costs of purchased power. At the time the statute was drafted, and even in our more complex present-day system, the costs of transporting energy in addition to the energy generated by the utility or energy in excess of what the utility needs to serve it load are the costs that are unexpected and out of the utility's control to such an extent that a deviation from traditional rate making is justified. Therefore, of the three reasons Ameren Missouri incurs transmission costs cited earlier, the costs that should be included in the FAC are 1) costs to transmit electric power it did

not generate to its own load (true purchased power) and 2) costs to transmit excess electric power it is selling to third parties to locations outside of MISO (off-system sales). Any other interpretation would expand the reach of the FAC beyond its intent. (emphasis added)8

Schaben

94. Should SPP Schedules 1A and 12 for administrative costs be included in the FAC?

OPC position: No. Schedule 1-A and 12 fees should not be included in Empire's FAC because they are not directly linked to fuel and purchased power costs. These fees are appropriately recovered through base rates.

Normalized Schedule 1-A and 12 expenses are administrative expenses, not considered volatile, and are included in Liberty's revenue requirement. The Commission has decided the recovery treatment of Schedule 1-A and 12 expenses in prior rate cases and consistently requires all Missouri electric IOUs follow the same recovery method. In Case No. ER-2014-0370, In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electrical Service, the Commission stated the following in its Report and Order:

> KCPL has requested that SPP Schedule 1-A and 12 fees be included in its FAC. The Commission finds that these fees are administrative in nature and not directly linked to fuel and purchased power costs. These fees support the operation of SPP and are not needed for KCPL to buy and sell energy to meet the needs of its customers. These fees are neither fuel and purchased power expenses nor transportation expenses incurred to deliver fuel or purchased power. The Commission concludes that including such fees would be unlawful under Section 10 386.266.1, RSMo, and, therefore, Schedule 1-A and 12 fees should not be included in the FAC. These fees are appropriate for recovery in base rates.

Schaben

95. What percentage of the SPP transmission revenues should be included in the FAC and its base factor calculation?

OPC position: Only the SPP transmission revenues related to true purchased power costs[9] should be allowed for recovery through the FAC.

Schaben

96. What additional FAC reporting requirements, if any, should the Commission require of Empire?

OPC Position: The Commission should order the additional FAC reporting requirements detailed in the direct testimony of Staff witness Brooke Mastrogiannis, pages 2 - 3.

Schaben

a. Should Empire's FAC reporting include providing its FAC reports to Public Counsel?

OPC position: Yes. Empire should provide the OPC the same reports requested in the direct testimony of Brooke Mastrogiannis.

Schaben

97. How should the FAC tariff sheets be revised?

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[8] Schaben Rebuttal page 4 line 15 through page 5 line 14.

[9] True purchased power costs as found in Direct testimony of James R. Dauphinais; File No. ER-2014-0258, page 4 and The Commission's decision and Report and Order issued in ER-2014-0258 which refers to Mr. Dauphinais testimony.

OPC position: Empire's FAC tariff sheets should be updated with the sharing mechanism the Commission orders, Staff's other revisions and Staff's transmission percentages generated based on Staff's fuel model in this case, but otherwise remain unchanged.

Schaben

98. What ratio of the difference between Empire's actual and base net fuel costs should the Commission order be shared between Empire and its customers as an incentive mechanism in Empire's FAC, should the Commission authorize continuation of an FAC for Empire?

OPC Position: The Commission should reject Liberty's request to continue its FAC, i.e, the appropriate sharing ratio of the difference is 0/100 meaning that Liberty should absorb any costs above the FAC base and retain all savings below the FAC base. If the Commission does not adopt Public Counsel's recommendation to reject Liberty's request to continue its FAC, then the Commission should modify the current sharing mechanism with a 90/10 sharing providing the least reward for efficiency and 50/50 sharing the most. It should not be limited to these two sharing mechanisms but instead set the sharing at a percentage that the Commission views best incentivizes Liberty to be cost-effective. (Mantle rebuttal testimony, p. 7.)

Mantle

99. Should Empire's FAC tariff sheets be revised in this docket to address the fuel and purchased power impacts of large load customers with 25 MW or more of demand?

OPC Position: Empire's costs incurred to serve large load customers should be excluded from Empire's FAC. At this point in time, where we do not know all the impacts and all the costs, a simple line in the FAC tariff sheet that states that the energy, capacity, and transmission costs incurred due to each large load customer are excluded from the costs that flow through Empire's FAC would be sufficient. (Mantle rebuttal, p. 29).

Mantle

Billing Determinants and Rate Design

100. What level of billing units and normalized revenues should be used in calculating rates?

a. What update period adjustment should be used in calculating normalized billing units, revenues, and rates?

b. What adjustment to December 19, 2024 data and manual adjustments should be used in calculating normalized billing units, revenues, and rates?

c. What rate switcher and Large Power customer annualization adjustment should be used in calculating normalized billing units, revenues, and rates?

d. What weather normalization and 365 days adjustment should be applied when determining normalized billing units, revenues, and rates? (no witnesses)

e. What block weather normalization adjustment should be used in calculating normalized billing units, revenues, and rates? (no witnesses)

f. What Missouri Energy Efficiency Investment Act ("MEEIA") adjustment should be used in calculating normalized billing units, revenues, and rates?

g. What growth adjustment should be used in calculating normalized billing units, revenues, and rates?

h. What community solar facility and grid charge adjustment should be used in calculating normalized billing units, revenues, and rates?
i. What non-Missouri kilowatt hour ("kWh") adjustment should be used in calculating normalized billing units?
j. What Energy Efficiency Cost Recovery ("EECR") adjustment should be used in calculating normalized billing units, revenues, and rates?

101. What is the appropriate interclass allocation of revenue responsibility for setting rates in this case?
OPC position: Any increase in revenue responsibility should be implemented as an equal percentage increase across classes with no revenue-neutral shifts.
Marke

102. Which party's Class Cost of Service Study should be used in this case?
a. How should production costs be allocated within the Class Cost of Service study in this case?
b. How should distribution costs be allocated within the Class Cost of Service study in this case?

103. What is the appropriate design of residential rates in this case?
OPC position: No increase in customer charge and any increase implemented as an equal percentage increase to all other base rate elements.
Marke
104. What are appropriate designs of non-residential rates in this case?
OPC position: Any increase in revenue responsibility should be implemented as an equal percentage increase across classes with no revenue-neutral shifts, and any increase implemented as an equal percentage increase to all base rate elements.
Marke
105. What actions should the Commission order in this case with regard to creation of a Coincident Peak Demand Charge for non-residential customers and other Rate Modernization?

106. What actions should the Commission order in this case with regard to the Residential Smart Charger Pilot program?
OPC position: The Commission should freeze or terminate Empire's Residential Smart Charge Pilot Prgram after the affective date of rates in this case because it has become impracticable and, additionally, change the tariff language as addressed in Staff Witness Sarah LK Lange's direct testimony.
Payne
107. What Economic Development Rider ("EDR") revenue adjustment should be used in calculating normalized revenues and rates?

108. What amount of Excess Facilities Charge ("XC") revenues should be included in the revenue requirement and rate design?

109. Should the Transmission Service ("TS") Interruptible Credit be increased?

110. Should the Commission order Empire to provide each rate code customer charge count at the fraction level for each month of the test year, update period, and through true-up (if applicable) in the next general rate increase?

Various Tariff Issues

111. Should the compliance tariff sheets in this case:

a. remove Rider SR?
b. remove the DSIM bill line-item, with any remaining balances associated with Cycle 1 and Schedule DSIM to be addressed in a future rate case?

112. Should there be any changes to TEPP?
OPC position: Yes. The Commission should order the TEPP be terminated. Empire's TEPP has had very little adoption by customers at this point, as addressed in Empire witness Dmitry Balashov's direct testimony, later adopted by Empire witness Chris Kerr. The Residential Smart Charge Pilot Program had 39 participants out of 500 spots. The Ready Charge Pilot Program only had 3 site hosts. The School bus Pilot Program only had 1 school enrolled. The Commercial Electrification Pilot Program had no participants. And the Non-Road Electrification Pilot Rebate Program had no expenditures. The participation in the five programs is minimal, and it signals that customer demand for the programs is not there. Continuing or expanding the programs without clear demand by ratepayers risks wasting funds and resources that could otherwise be focused elsewhere. With little participation, it is better to stop the TEPP now and reevaluate the pilots in order to minimize the future costs to Empire's ratepayers. Additionally, the Commission should order Empire to schedule an additional Mid-term Check-In to go over the TEPP's results and to reassess the TEPP.
Payne
113. Should the Miscellaneous Tariff Issues, identified by Staff as being titled or filed incorrectly, be changed as recommended by Staff?

Green Button Connect

114. Should the Commission order Empire to implement Green Button Connect My Data ("GBC") in this rate case?

a. In the event that the Commission orders Empire to implement GBC in this rate case, should the Commission order the tariff proposed by Renew Missouri related to GBC?
b. In the event that the Commission orders Empire to implement GBC in this rate case, should the Commission adopt Renew Missouri's revenue requirement recommendation?
c. In the event that the Commission orders Empire to implement GBC in this rate case, should $100,000 be included in Empire's ordered revenue requirement to study its participation in a regional data hub?

Customer Programs

115. Should the Low Income Pilot Program (LIPP) continue? If so, what, if any modifications made and what funding level should be ordered?

OPC position: Public Counsel supports the positions of CCM witness Jim Thomas on these issues.

Marke

116. Should the Low Income Weatherization Assistance Program ("LIWAP") be continued? If so, what, if any, modification should be made and what funding level should be ordered?
OPC position: Yes LIWAP should be continued without modification at the current funding level.
Marke

117. Should the Company resume administrative control of the LIWAP?
OPC position: Yes.
Marke

118. Should the customer charge be waived for income-eligible residential customers as proposed by OPC witness Dr. Marke?
OPC position: Yes.
Marke

119. Should the Critical Medical Needs program continue? If so, should any modifications be made and what funding level should be ordered?
OPC position: Yes. Unexpended low-income customer program funding should be directed to the Critical Medical Needs program.
Marke

120. Should the Commission order the structure and meeting requirements for the Low Income Programs Collaborative, as recommended by CCM witness Jim Thomas?
OPC position: Yes.
Marke

121. Should the Company adopt low income marketing strategies as recommended by CCM witness Jim Thomas?
OPC position: Public Counsel supports the positions of CCM witness Jim Thomas.
Marke

122. Should the Company adopt the best practices for identifying the needs of high energy burden and low-income communities, targeting resources to those communities, and setting customer targets for achievement, as recommended by CCM witness Jim Thomas?
OPC position: Public Counsel supports the positions of CCM witness Jim Thomas.
Marke

<u>Miscellaneous Issues</u>

123. Should the Commission take any action in this case related to Empire's 2024 infrastructure inspections?

124. Should Empire direct its internal audit department to examine its capitalization practices and ethical controls?

125. Has Liberty fulfilled its requirements pertaining to the cost/benefit anslysis of PISA projects greater than $1 million?
OPC position: No.
Marke

126. Is the use of the Value of Lost Load study results as an input to the emergency conservation plan tariff appropriate? What is the appropriate methodology for developing electricity market prices?
OPC position: Yes.
Marke

127. Should Empire be ordered to refile its emergency conservation tariff within 90 days following the conclusion of its Value of Lost Load Study?
OPC position: Empire should file tariff sheets revising it Emergency Curtailment Plan in the first quarter of 2026 following the 6 results of the Value of Lost Load study are presented.
Marke

128. What is the appropriate valuation of the Purchase Power Agreement ("PPA") replacement value as it pertains to the Market Price Protection Mechanism ("MPPM")?
OPC position: The MPPM PPA Replacement Value the Commission ordered was contemplated to be zero until the then contemplated contractual end date of December 2025 for the Elk River PPA.
Payne

a. When does the value associated with replacing the existing wind PPAs during the period of the guarantee become nonzero?
OPC position: Because Empire has extended the Elk River PPA the MPPM PPA Replacement Value is contemplated to be zero at least until the Meridian Way PPA ends.
Payne

i. If not zero, how should the nonzero PPA replacement value be calculated?
OPC position: It should be based on the need for the wind projects to meet the Missouri RES when the RECs available after RECs from what resources were already in Liberty's rates – Ozark Dam, customer solar, Elk River wind PPA and Meridian Way PPA—create insufficient RECs to meet the Missouri RES. And then, if any additional renewable generation is needed, it should be from one of the Missouri wind projects since the RES gives 1.25 RECs for each MWh generated from Missouri renewable sources. Those RECs should be valued at the then Missouri wind REC value.
Payne & Mantle

b. Does the Annual Wind Value include TCR/ARR revenues?
OPC position: No. The Commission did not expressly order that the MPPM include TCR/ARR revenues when calculating Annual Wind Values.
Payne

c. Does the Annual Wind Value include insurance proceeds?

OPC position: No. The Commission did not expressly order that the MPPM include insurance proceeds when calculating Annual Wind Values.

Payne

d. What is the Wind Revenue Requirement for the MPPM?

OPC position: The Commission should order the Staff's trued-up Wind Revenue Requirement for the MPPM.

Payne

129. Should Empire's EADIT tracker continue?

130. Should Empire continue its pension and OPEB tracker?

131. Upon receipt of GRIP awards, how should Empire account for the proceeds?

OPC position: Future costs associated with the GRIP grant project should be borne by Empire.

Seaver

132. What system energy loss factor should be ordered in this case?

133. What jurisdictional allocation factors for demand and energy should the Commission order in this case?

134. What is the appropriate way of determining gas transportation costs?

135. Should annual gas transportation costs be calculated using the new rates established by the contract that took effect in June 2025?

136. Should the PAYGO tracker be continued after the effective date of rates in this case?

137. Should the existing PAYGO tracker continue through the effective date of rates in this case?

138. In consideration of all relevant factors, should Staff's proposed ongoing Amortization Tracker be adopted?

139. Should Empire retain the authority to continue to defer the retirement cost of Asbury?

140. Did Empire provide the generating unit heat rate efficiency testing procedures and results as required by 20 CSR 4240-20.090(2)(A)15?

OPC Position: No. While Empire provided a table attached to Ms. Leigha Palumbo's direct testimony as Schedule LP-8-Final HC where Empire reports by generating unit, the date the test was performed and a single net heat rate, Empire did not provide any of the underlying data or reports generated that were used to arrive at the final reported numbers. Those unprovided reports and heat rate curves allow for more analysis and conclusions to be drawn by the reviewing parties. The single number heat rate result filed by Liberty is inadequate and, further, not all the heat rate test results in Schedule LP-8-Final HC meet the timing requirements of the Commission's rule. Further, when Public Counsel witness John Robinett searched Empire's workpapers and responses to data requests, including to Staff's requests, he was unable to find the comprehensive set of supporting materials, including testing procedures and data sheets for each unit tested which Empire witness Mr. Berkstresser testifies Liberty provided.

Robinett Direct page 15 line1 through page 18 line13; Robinett Surrebuttal page 9 line 7 through page 11 line 3

Robinett

a. If not, when should it provide these procedures and results?

OPC Position: This information should have been provided concurrent with, or prior to, when Empire filed this case. Given that Empire should already have provided this information, Public Counsel recommends that the Commission order Empire either to produce it to Public Counsel by December 31, 2025, or tell Public Counsel where it can find the information in the Commission's electronic filing and information system (EFIS).

Robinett

141. What is the base level of property tax to be established for the property tax tracker?

Customer Experience

142. How should the Company's investment in Customer First be treated for ratemaking purposes in this case?

OPC position: It should be excluded from Empire's revenue requirement upon which the Commission designs Empire's rates because it is not used and useful, and Empire's effortts to implement it have degraded Empire's customer service.

Marke

A. What is the appropriate amount of Customer First Operations and Maintenance (O&M) expense to include in rates?

OPC position: None, because Customer First is not used and useful, and Empire's efforts to implement it have degraded Empire's customer service.

Marke

i. How should the true-up cut-off date of March 31, 2025 impact the Commission's determination of Customer First Operations & Maintenance ("O&M") costs for ratemaking purposes?

OPC position: The Commission should not consider events post March 31, 2025, when evaluating whether Customer First is used and useful, and, should the Commission determine that Customer First is used and useful it still should not consider Empire's Customer First Operations & Maintenance costs after March 31, 2025, for Empire's revenue requirement if it designs new Emlire base rates in this case.

Marke

B. Should the Commission reduce the Company's revenue requirement based on Empire's service related to its investment in Customer First?

OPC position: Yes. Because Customer First is not used and useful—in fact it has been detrimental to Empire's customer service—the Commission should exclude Empire's investment and costs related to Customer First from Empire's revenue requirement if the Commission designs new Empire base rates in this case.

Marke

C. If the Company's revenue requirement is reduced by the Customer First investment, should it be authorized to establish a regulatory asset to record monthly its earning when respective metrics have been met as proposed by Company witnesses Reed and Walt?

OPC position: No. If Customer First becomes used and useful Empire may seek to include its investment in and costs to operate and maintain Customer First in its next general rate case as with any other capital investment.

Marke

i. What are the billing and customer service metrics to be used to determine if the Company records a monthly entry in its regulatory asset as it relates to earnings for the Customer First investment?

OPC position: Public Counsel is unaware that any party has proposed any such metrics.

Marke

D. Should the Commission make a further disallowance of revenue requirement based on Empire's provision of inadequate service due to its investment in Customer First?

OPC position: Because Customer First is not used and useful—in fact it has been detrimental to Empire's customer service—the Commission should exclude Empire's investment and costs related to Customer First from Empire's revenue requirement if the Commission designs new Empire base rates in this case, and the Commission should authorize a lower ROE than it otherwise would due to Empire's inadequate customer service caused by its efforts to implement Customer First.

Marke

143. Should the Commission order the incorporation of The Empire District Electric Company into the monthly Customer First meetings currently occurring between Staff and Liberty Water as ordered in the Order Approving Stipulation and Agreement in Case No. WR-2024-0104?

OPC position: Yes, with Public Counsel as well.

Marke

A. Should these meetings be further modified?

OPC position:

Marke

144. Should the Commission order Empire's tariff to be revised to reflect SAP's new calculation method for budget billing?

145. Have bills been issued outside of the 26-35 day billing period required by Commission rule? Should the Commission order Empire to take specific action to comply with Commission rules?

146. Should the Commission order Empire to align its estimation calculation with its tariff description?

147. Should the Commission order Empire to work to reduce the number of estimated bills and rebills to pre-Customer First transition levels with a timeframe of completion 60 days after new rates take effect in this case?

148. Should the Commission order Empire to permanently cease estimating on-peak and off-peak interval reads for TOU billing purposes in favor of using actual reads when available?
OPC position: Yes. Empire should always be using the best data available.
Marke

149. Should the Commission order Empire to review its processes for the storage, retrieval, and presentation of customer account information to ensure Customer Service Representatives are automatically presented with past, present and scheduled account activity and information relayed to customers in prior communications, in order to provide Customer Service Representatives with such account activity or communications? This would include the incorporation of service tickets into customer account notes.

A. If so ordered, should Empire be required to inform Staff of its plan to comply with the order within 60 days of the effective dates of rates, and file notice in this docket upon successful implementation?

150. Should the Commission order Empire to develop consistent messaging for Customer Service Representatives to convey to customers experiencing common billing issues, and to train Customer Service Representatives to use that messaging and document all information relayed to customers in customer account notes?
OPC position: Yes.
Marke

A. If so ordered, should Empire be required to provide Staff with training materials and scripts used to comply with this order within 60 days of the effective date of rates in this case, along with any updates for a period of one year after the effective date of rates?

OPC position: Yes, and the Commission should order Empire to provide them to Public Counsel too.
Marke

151. Should the Commission order Empire to put in place a process to ascertain that Customer Service Representatives are advising customers of their right to file an informal complaint as prescribed by Commission Rule 20 CSR 4240-13.045(9)?
OPC position: Yes, of course.
Marke

A. If so ordered, should Empire be required to inform Staff of its plan to comply with the order within 60 days of the effective dates of rates, and file notice in this docket upon successful implementation?

OPC position: Yes, and also to inform Public Counsel contemporaneously.
Marke

152. Should the Commission order Empire to put a process in place to ensure that each CSR is trained to note account activities comprehensively, including the development of a quality assurance process to verify that CSRs are adhering to account notation guidelines?
OPC position: Yes.
Marke

A. If so ordered, should Empire be required to inform Staff of its plan to comply with the order within 60 days of the effective dates of rates, and file notice in this docket upon successful implementation?

OPC position: Yes, and also to inform Public Counsel contemporaneously
Marke
153. Should the Commission order Empire to establish a process for customer callbacks that effectively records the need for a callback, tracks the status of that callback, and verifies the execution of the callback within a reasonable period of time following the request?
OPC position: Yes.
Marke

A. If so ordered, should Empire be required to inform Staff of its plan to comply with the order within 60 days of the effective dates of rates, and file notice in this docket upon successful implementation?

OPC position: Yes, and also to inform Public Counsel contemporaneously.
Marke
154. Should the Commission order Empire to provide an additional phone call notification for Autopay customers who have their accounts locked because of delayed billing notifying them of the situation and the need to speak with Empire's call center to remove the lock?
OPC position: Yes.
Marke

155. Should the Commission order Empire to investigate customer claims that My Account is not accurately displaying balances owed? Should Empire be required to report the results of its investigation to Staff, along with next steps as necessary?
OPC position: Yes, and Yes, and to make the required reporting to Public Counsel contemporaneously
Marke

156. Should the Commission order Empire to make the tariff revisions detailed in pages 40-41 of Charles Tyrone Thomason's Rebuttal Testimony in this case?
OPC position: Yes.
Marke

157. Should the Commission suspend imposition and collection of customer late payment fees until after Empire demonstrates that its customer usage collection and billing systems are working correctly?
OPC position: Yes.
Marke

158. Should the Commission order Empire to notify customers that it will not be disconnecting customers for nonpayment until after the Company can demonstrate that its customer usage collection and billing systems are working correctly?
OPC position: Yes.
Marke

159. Should Empire be required to file an affordability plan with the Commission that provides a clear roadmap with deliverable actions with the expressed goal of lowering rates to be aligned with other electric utilities in Missouri? If yes, what parameters should be ordered?
OPC position: Yes, and the order should include at least the parameters Dr. Marke offers.
Marke

160. Should Empire's ROE be reduced 25 basis points for poor customer service reflected by its bottom 5% position across U.S. utilities per J.D. Power?
OPC position: Yes.
Marke

161. Should the Commission exclude from Empire's revenue requirement all of Empire's costs for contractual call center representatives Empire utilized due to issues with Empire's implementation of Customer First, including the costs of its ContactPoint360 ("CP360") contract?
OPC position: Yes, because Empire should not have incurred them and because the service provided pursuant to that contact were subpar contributing to Empire's customer service issues.
Marke

162. Should the Commission exclude from Empire's revenue requirement all of Empire's excessive postage and billing costs related to its continued roll-out of Customer First?
OPC position: Yes, because Empire incurred them for erroneous billings that exacerbated Empire's customer service issues.
Marke

163. Should the Commission leave Empire's current rates in place until the Company can demonstrate that it is timely and accurately billing its customers for service?
OPC position: Yes, absolutely.
Marke

164. Should the Commission order Empire to change the name of its billing platform?
OPC position: Yes.
Marke

165. Should the Commission order Empire to utilize an agreed-to, independent 3rd party auditor of its Customer First program and practices? If yes, what parameters should be followed?
OPC position: Yes. Public Counsel should have input into how the auditor is solicited and selected.
Marke

Pension Plan Issues

166. Should Empire, or any of its parents, consider a pension risk transfer scheme as it pertains to the Liberty Utilities defined benefit pension plan?

167. Should Empire continue to be bound by its prior agreements established in Case Nos. EM-2016-0213 21 and ER-2021-0312 to continue to fund its pension plan and to not consider a pension risk transfer arrangement?

Cash Distributions

168. Should the Commission order Empire to file in this docket their proposal for any potential request for ratemaking recovery of distributable cash including their process for sweeping Empire's portion of year 1-5 distributable cash from the wind farm holding company prior to the commencement of distributable cash to the tax equity partners that will begin in 2026?

Additional Issues

169. Should Empire's tariffs be modified to allow a self-read option for customers who opt out of AMI meters as a result of this case?
OPC position: Yes.
Marke

170. What, if any, changes should be made to Empire's Emergency Energy Conservation Plan tariff as a result of this case?
OPC position: Changes to that plan should be based on the multi-utility value of lost load study that is currently ongoing.
Marke

Respectfully,

/s/ Nathan Williams

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 30th day of September 2025.

/s/ Nathan Williams