

Exhibit No. 154

Staff – Exhibit 154
Testimony of James A. Busch
Surrebuttal
File No. ER-2024-0261

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MISSOURI PUBLIC SERVICE COMMISSION

INDUSTRY ANALYSIS DIVISION

SURREBUTTAL TESTIMONY

OF

JAMES A. BUSCH

**THE EMPIRE DISTRICT ELECTRIC COMPANY,
d/b/a Liberty**

CASE NO. ER-2024-0261

Jefferson City, Missouri
September 2025

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1 will change revenue requirement. And depending on how an analyst wants to look at the overall
2 revenue requirement, a lower allowed expense, such as payroll, that reduces the awarded
3 revenue requirement could be alternatively construed as a reduction in ROE instead.
4 The overall result to the utility would be the same. Looking at it another way, assume two
5 parties have the same ROE, but a different capital structure. The overall revenue requirement
6 will be different as the party with a higher debt/equity ratio will have a lower overall revenue
7 requirement due to the lower overall Rate of Return because of the greater weight given to the
8 cost of debt rather than ROE.

9 Q. Why would a witness for a utility characterize Staff's proposal as a reduction
10 to ROE?

11 A. The utility understands that the Commission has to consider the impact of its
12 decisions on not only the public interest, but the investment community as well. The utility has
13 an interest to contend a Staff position, or any other party's position, will cause a negative
14 reaction from the investment community, in an effort to receive a more favorable ruling from
15 the Commission.

16 Q. On page 11, Mr. Reed includes a chart that he claims shows an overall
17 three-year reduction to Empire's revenue requirement of approximately \$89.4 million based on
18 Staff's overall recommendations in this case. Is this a reasonable way to present Staff's
19 proposed disallowances?

20 A. No. Mr. Reed's premise is calculated on an assumption that Empire would not
21 come back for another rate case for three years.

22 Q. Does that make sense?

23 A. Not at all.

1 Q. Why doesn't it make sense?

2 A. Staff's recommendation would apply until Empire comes in for a subsequent
3 rate case. In my opinion, it makes no sense for Empire stay out for three years if Staff's
4 proposed disallowances are accepted by the Commission, if Empire is able to remediate Staff's
5 concerns with its billing system in the meantime. Doing so would appear to be imprudent
6 course of action for Empire's management to pursue. Also, throughout various rebuttal
7 testimonies from Empire witnesses in this proceeding, the theme seems to be that Empire
8 recognizes that Customer First has not gone to plan, but that Empire is going to fix it ASAP.
9 In fact, Empire has hired Ms. Amy Walt and Mr. Noel Black to help "right the ship."
10 Therefore, it would appear that Liberty's goal is to clean up its billing issues as soon as possible.
11 Once the Customer First problems are solved, I would expect that Empire would be in for a rate
12 case immediately to have those disallowances rectified. By stating that Staff's disallowances
13 would cause approximately \$89.4 million in harm to the utility, Mr. Reed, in his rebuttal
14 testimony, implies that the issues with Customer First will actually take three years for Empire
15 to fix. Staff hopes that is not the case, as Empire has already had, since the Customer First
16 system was implemented, approximately a year and a half to address the issues that should not
17 have occurred in the first place.

18 Q. On page 12 of his rebuttal testimony, Mr. Reed states that the proposed
19 disallowances "may reflect the level of frustration felt by Staff and intervenor witnesses, but do
20 not match the level of financial impacts experienced by customers." Do you have a response?

21 A. Yes, I do. While Mr. Reed is correct to state that Staff is frustrated by this
22 situation, in no way are Staff's disallowances a reflection of that frustration. The disallowances
23 are based on the frustration, anger, confusion, etc., that Empire's customers have dealt with

1 over the past year or so. While true that Mr. Timothy Wilson from Empire and members of his
2 team were at the local public hearings and townhalls where Empire customers discussed their
3 anger and confusion, Staff was also present at those meetings. However, Mr. Reed was not
4 there. For Mr. Reed to downplay the impact of Empire's unacceptable customer service to its
5 customers and inflate Staff's reasoning for its proposals is uninformed at best.

6 Q. On page 13, lines 14 – 23, Mr. Reed discusses the status of "improvements" that
7 Empire has undertaken and states on lines 22 – 23, stating that "[t]hese efforts reflect a serious
8 and appropriate response to the challenges." What is your response?

9 A. My first response is that I know that Empire personnel have been working hard
10 to try to fix the problem. Staff, Public Counsel, and Empire have met regularly and continually
11 over the past year to get updates on Empire's efforts and to see where those efforts are headed.
12 However, to say that those efforts are simply the "appropriate" response is short-sighted.
13 A years-long problem that is still not fixed needs a more effective response than the company
14 taking it seriously. Mr. Reed's continual willingness to downplay the seriousness of the
15 problem that Empire has inflicted on itself and the customers is jarring.

16 Q. Mr. Reed continues this approach with his statement on page 14, lines 1 and 2,
17 that Empire's "willingness to engage constructively with Staff and intervenors on these
18 issues.... Support the approach for a measured regulatory response." What are your thoughts
19 on a "measured regulatory response?"

20 A. As Mr. Reed is not the regulator of Empire, my thoughts are the Commission
21 should take his opinions for what they are worth. Basically, Mr. Reed, on behalf of Empire,
22 is suggesting that the Commission should do very little to recognize the damage that Empire
23 has done to its ratepayers and allow Empire to determine any redress.

1 Q. Is that truly what Mr. Reed is recommending to the Commission?

2 A. Yes. He states that in the response to his question on page 14 of his rebuttal
3 testimony. He claims that in his professional experience the reasonable disallowances proposed
4 by Staff and Public Counsel are unwarranted, and proposes some other, more moderate
5 “solutions” that the Commission should entertain. The Commission should see right through
6 this not-so-veiled attempt to convince it that the utility should be determining its own
7 consequences for its substandard service.

8 Q. On page 15 of his rebuttal testimony, Mr. Reed writes that “[m]any of the issues,
9 while serious, have been mitigated through Company actions....” Do you agree with
10 that statement?

11 A. No. While it is true that Empire has absorbed some underbilled amounts and
12 waived late fees, etc., those actions do not mitigate the seriousness and the depth of the anger
13 and confusion that Empire has caused its customers. No customer at the townhall meetings
14 indicated to the utility that waiving late fees mitigated the confusion of no bills for five months.
15 In Staff’s view, Empire “absorbing” underbilled amounts is not sufficient mitigation of
16 Empire’s poor service, as it was Empire and the Customer First system that caused the
17 underbilling, and various other issues, in the first place. No customer caused their bill to be
18 underbilled. That is an Empire problem. And offering payment plans is only the right course
19 of action, and the required one,¹ for a company to offer if they don’t bill or underbill for months
20 and then provide a customer on social security a bill for thousands of dollars. Offering payment
21 plans is just common sense, but not a mitigation of the issues.

¹ See Commission Rule 20 CSR 4240-13.025.

1 Q. On page 16, Mr. Reed writes that Empire has estimated approximately 10% of
2 its customers experienced billing errors. Does he offer any proof?

3 A. No.

4 Q. Does Staff agree that only 10% of the customers experienced billing errors?

5 A. No. Based upon the depth of the issues that Staff has learned about over these
6 past several months, Staff does not have any faith that anyone can determine how many
7 customers experienced billing errors.² The errors were widespread, over many months, and are
8 ongoing. Many customers experienced multiple errors. Many customers may not have even
9 bothered to report a billing error. So, Staff would be skeptical of any attempt to determine
10 what percentage of the customer base actually experienced a billing error. And even without
11 billing errors actually experienced, customers who may not have actually incurred a billing
12 error still experienced the stress and anxiety of the potential for a billing error because of
13 Empire's actions.

14 Q. Are billing errors the only issue with Empire's Customer First system failure?

15 A. No. As has been documented by Staff experts J Luebbert, Kim Cox,
16 and Sarah Lange, amongst others, the billing determinants collected by Empire and used not
17 only in this case, but in previous Liberty water and gas rate cases, have been unreliable as well.

18 Q. How do unreliable billing determinants impact customers?

19 A. After an appropriate revenue requirement is established, the rate design process
20 has to take that amount and turn it into rates for customers. Billing determinants are used to
21 calculate rates sufficient to collect from ratepayers the appropriate revenue, holding all other
22 factors constant. It is essential that the billing determinants are accurate. Without accurate

² Please see the Direct and Surrebuttal testimony of Staff Expert Charles "Tyrone" Thomason.

1 billing determinants, the rates developed to collect the authorized revenue requirement may
2 actually allow the utility to collect more, or less, than the authorized amount, all else equal.
3 For example, if billing determinants are artificially low or non-existent, a lower overall usage
4 would be assumed and thus the actual energy rate to be charged to ratepayers for usage during
5 a month would be calculated to be higher than it should be. A higher energy charge would
6 cause customers' bills to be higher and the utility's revenues to be higher than authorized, all
7 else equal. In other words, the harm done to Empire's ratepayers would be borne by all
8 ratepayers, not just those directly affected.

9 Q. On page 17, lines 1 – 14, Mr. Reed writes about implications on capital markets
10 of disallowances. In particular, he writes, "Regulatory decisions that impose large,
11 retrospective disallowances can have unintended consequences on capital markets.
12 Investors rely on predictable regulatory frameworks when evaluating utility risk." Do you have
13 a response?

14 A. Yes. First, all disallowances have to be retrospective in nature to some extent.
15 A disallowance could occur if a utility made imprudent decisions when incurring a cost or
16 investing in its system. That is generally determined in a rate case in which some investment
17 is trying to be included in rates by the utility. Further, adjustments to expense items in rate
18 cases are commonly made relying on historical data. However, the goal is to always set just
19 and reasonable rates on a forward-looking basis.

20 Second, while investors rely on predictable regulatory frameworks, ratepayers rely on
21 utilities to provide safe and adequate service. Ratepayers expect to be charged fairly for the
22 usage that they consume. Ratepayers expect to receive a bill monthly. Ratepayers expect to

1 receive one bill a month. Ratepayers expect the calculation of the total bill to be accurate.
2 Ratepayers expect to have their usage appropriately recorded.

3 Third, when evaluating risk among utilities, investors look at companies that are well
4 run such that they can earn a fair return on investment. Companies that are not well run do not
5 receive an equivalent return. Companies that cannot properly charge its customers for its goods
6 and services are not well run. Investors know that. It is not the Commission's role to reward a
7 utility that is not well run.

8 Q. Is the concept of a lower revenue requirement as calculated by Staff,
9 a new concept?

10 A. No. As mentioned in the treatise, Principles of Public Utility Rates, by
11 James Bonbright, commonly referred to simply as Bonbright, it is discussed that when
12 considering the Management-efficiency Criterion on a standard fair return for a public utility,
13 the question is posed as follows:

14 In these situations, should commissions be especially lenient in their
15 application of principles of rate control, including allowances of a
16 "fair return?" Or should they be rigorous in the enforcement of the general
17 principles, **possibly concluding that a fair rate of return for a poorly**
18 **managed company is a very low return** or even one expressed in red
19 letters? Questions of this nature present serious dilemmas of ratemaking
20 policy. (emphasis added)³
21

22 While Staff is not advocating for a "very low return," Staff is recommending that the
23 Commission consider Empire's actions, or lack thereof, and make a decision on the overall size
24 of the revenue requirement to be authorized for Empire in this proceeding. As the Commission
25 can see, the theory that supports Staff's recommendation is a concept that has been considered
26 for decades and is firmly in the Commission's toolbox.

³ Bonbright, James, Principles of Public Utility Rates, Columbia University Press, 1961, page 153.

1 Q. On page 17, lines 17 – 18, of his rebuttal testimony Mr. Reed writes,
2 “The recommendations from Staff and OPC conflate dissatisfaction with customer service
3 outcomes with the legal and economic standards that underpin return on capital committed to
4 public utility service.” Please respond.

5 A. Staff is not conflating anything. Staff has reviewed and experienced a company
6 that has not met its obligation to provide safe and adequate service to its customers and is
7 proposing a solution to that problem.

8 Q. In that vein, Mr. Reed further states, “Staff’s opinion that Liberty has not
9 provided safe and reliable service at just and reasonable rates is premised on definitions of those
10 terms that I have never seen in my 49 years of experience in the utility industry. The fact that
11 numerous billing errors have occurred for a subset of Liberty’s customers does not equate to
12 Liberty having violated its fundamental obligation as a public utility.” Please respond.

13 A. In my 28 years of experience in working as a regulator or consumer advocate,
14 the ability to provide a fair bill for services rendered is definitely included in the provision of
15 adequate service. How could it not be? Would Mr. Reed be happy to go to the grocery store
16 and have no idea what the charges for his groceries would be? Would he be happy to receive a
17 bill after going to the same grocery store every week for four months for thousands of dollars
18 because it was determined that the store had undercharged him during that time frame?
19 Safe and adequate service means the entire package of utility service. Generating electricity,
20 delivering that electricity through the transmission and distribution system to customers’
21 homes, providing a fair and accurate bill at the end of the billing cycle requesting payment for
22 that electricity, and receiving and processing that payment is all part of the equation. Any break
23 in that chain is a break in adequate service, regardless of what Mr. Reed opines.

1 Q. Continuing on page 17 through 18 of his rebuttal testimony, Mr. Reed further
2 states that Empire is fixing the issues, has been forthright in admitting the errors are not
3 consistent with the expected levels of customer service, has made changes, and that its
4 performance issues do not warrant a “harsh reaction.” Do you have a response?

5 A. Yes. Empire has made some changes and is attempting to solve the problem.
6 I know that this has impacted many of Empire’s personnel on a personal level. However, just
7 because the issues have been recognized, acknowledged, and are being worked on does not
8 mean that the Commission should ignore them. Real damage was done, and continues to be
9 done, to real customers. There has to be consequences when a utility fails to provide its
10 customers adequate service.

11 Staff understands that billing errors happen. Staff understands that when a utility
12 transitions its billing system, etc. that there will be hiccups. But what has transpired over these
13 many months, as outlined in Staff expert Charles Tyrone Thomason’s direct testimony,
14 is beyond a few, isolated errors. This was a systemic problem that has been known for months
15 and is still ongoing. Mr. Reed’s attempt to downplay the seriousness of this situation should
16 be ignored by the Commission.

17 Q. Starting on page 18 of his rebuttal testimony, Mr. Reed provides his take on
18 prudence and “used and useful.” Do you find this section of his testimony useful in helping the
19 Commission make a decision in this proceeding?

20 A. No. The Commission is well aware of the prudence standard in which it needs
21 to rely upon in order to make a determination. In this situation, Empire has made recurring bad
22 decisions by not solving the problem with its customer billing system and allowing the continual
23 provision of inadequate service. While some of the issue of these poor decisions can be

1 addressed in the form of the disallowance of the investment of the Customer First investment
2 as described by Staff expert Matt Young, the other form of the disallowance can go to the
3 shareholders who allowed the provision of inadequate service to continue. The shareholders
4 are the owners who establish the management of the utility; in this case, Empire's parent
5 company, Algonquin. The continual provision of inadequate service by Empire, as
6 described in Staff expert Thomason's direct testimony, must be met with a disallowance
7 because of those actions. Staff's proposed disallowance as sponsored in my direct testimony,
8 based on its continued provision of inadequate service, fits the bill. Just because it does not fit
9 neatly into the narrow view of prudence Mr. Reed writes about does not mean it is not real.
10 Customers were harmed, continue to be harmed, and may well be harmed in the future due to
11 those decisions.

12 With regard to the usefulness of Customer First, how can a system that has
13 created havoc for the past many months be considered useful? If what has been shown by
14 Customer First in Missouri since its roll out meets "the basic regulatory standard of being 'used
15 and useful,..." then we should just eliminate use of that standard in Missouri. If what Empire
16 has done in this instance is all that is required, then there is no level of uselessness that would
17 be subject to disallowance by the Commission.

18 Q. On page 21, lines 11 – 12, Mr. Reed says that, "the SAP system installed by
19 Liberty is a state-of-the-art enterprise solution used by the top tier utilities across the country."
20 Please respond.

21 A. If what Mr. Reed says is true, then that goes to Staff's argument that
22 management has failed, as a state-of-the-art system used by top tier utilities is not the problem,

1 it is management. And since management is hired by the shareholders, the shareholders should
2 shoulder the burden of this inferior service caused by management.

3 Q. Further in his answer on page 21, Mr. Reed opines that there are no indicators
4 that the issues faced by Empire due to its roll out of Customer First will expand or persist for
5 years. What is your comment?

6 A. The issues experienced by customers and regulators have gone on for far too
7 long already. Unfortunately, as we sit here today, I cannot share the optimism that Mr. Reed
8 has. When these issues first started to reach Staff's attention, we thought there is no way this
9 will persist for long, but here we are, many, many months later. Also, as described by various
10 Empire witnesses, Empire has hired new management and is proposing a third-party review,
11 etc. Is Empire planning on including those costs in future rates? Is the suggestion that
12 shareholders should be made whole today, and then receive even more revenues in the future
13 to cover the costs of trying to fix their self-inflicted harm? I hope not.

14 Q. On page 22, starting on line 7, Mr. Reed brings up a case in Maine where a
15 regulated utility faced consequences from its inexcusable customer service and billing issues.
16 Does Staff have a comment?

17 A. Yes. While I am not familiar with the specifics of the actual situation that
18 impacted the ratepayers of the Central Maine Power Company, I find it encouraging that the
19 Maine Public Utilities Commission took action to address substandard customer service. It is
20 good to see that PUCs can recognize when a utility fails to provide adequate service to its
21 customers and that there are consequences to its actions. I would encourage the Commission
22 to closely read the testimony of Staff's and Public Counsel's experts regarding Customer First,
23 billing, data provision, etc., as well as the pages and pages of customer comments through the

1 Local Public Hearings, townhalls, and general public comments and then support the
2 appropriate and reasonable decision to approve the disallowances as proposed by Staff.

3 Q. In that Maine case, Mr. Reed indicates that the reduction in ROE is for a set
4 period of time and required the utility to meet certain metrics. Is that a reasonable outcome in
5 this case?

6 A. In my opinion, that is what Staff is proposing. If Empire is able to fix its
7 problems and does meet basic level customer service metrics, I would encourage Empire to file
8 another rate case to have those disallowances actually put back into rates. Staff does not believe
9 its disallowances are permanent. Staff assumes that once the system is working properly and
10 that the customers are finally receiving safe and adequate service, then Empire will not be
11 subject to disallowances based on these issues. It is Staff's position that the best way to remedy
12 the proposed disallowances is through a rate case process so that all of the costs and the entirety
13 of the utility's operations can be reviewed at the same time before the disallowances are
14 remedied. While the Maine decision might work for Maine, Missouri should require a more
15 thorough review.

16 Q. On page 24, lines 5 and 6, Mr. Reed states that in his opinion, a long-term
17 permanent disallowance in base rates is inappropriate. Is Staff's proposal a long-term
18 permanent disallowance?

19 A. No. The length of Staff's proposed disallowance is up to Empire. The quicker
20 Empire solves its problems and comes in for a rate case, the quicker it would not be subject to
21 disallowances for its disastrous roll out and response of Customer First.

22 Q. Does this conclude your surrebuttal testimony?

23 A. Yes it does.

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

AFFIDAVIT OF JAMES A. BUSCH

STATE OF MISSOURI)
)
COUNTY OF COLE) ss.

COMES NOW JAMES A. BUSCH and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Surrebuttal / True-Up Direct Testimony of James A. Busch*; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.

JAMES A. BUSCH

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 12th day of September 2025.



Notary Public