

Exhibit No. 208

OPC – Exhibit 208
Testimony of Lena M. Mantle
Surrebuttal
File No. ER-2024-0261

Exhibit No.:

Issue(s): Filing Issues/FAC/Resource Planning

Witness/Type of Exhibit: Mantle/Surrebuttal

Sponsoring Party: Public Counsel

Case No.: ER-2024-0261

SURREBUTTAL TESTIMONY

OF

LENA M. MANTLE

Submitted on Behalf of the Office of the Public Counsel

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

FILE NO. ER-2024-0261

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September 17, 2025

PUBLIC

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OF
LENA M. MANTLE
THE EMPIRE DISTRICT ELECTRIC COMPANY, d/b/a LIBERTY
CASE NO. ER-2024-0261

1 **Q. Would you state your name?**

2 A. My name is Lena M. Mantle.

3 **Q. Are you the same Lena M. Mantle that provided revenue requirement**
4 **direct and rebuttal testimonies for the Office of the Public Counsel?**

5 A. Yes.

6 **Q. To what rebuttal testimonies are you responding?**

7 A. With respect to the Empire District Electric Company d/b/a Liberty
8 (“Liberty”) filing and management issues, I respond to Liberty witness
9 Charlotte Emery. With respect to Liberty’s fuel adjustment clause (“FAC”),
10 I respond to the rebuttal testimonies of the Liberty witnesses John J. Reed,
11 Aaron J. Doll, and Brian Berkstresser, and Staff witness Brooke
12 Mastrogiannis.

13 **Response to Rebuttal Testimony of Liberty Witness Charlotte Emery**

14 **Q. Ms. Emery states that Liberty’s rate impact presentation in this case to**
15 **its customers, the Commission, and the public “was designed to offer a**
16 **practical and customer-focused representation of bill impacts.”¹ In**
17 **your opinion, does Liberty’s rate impact presentation accomplish what**
18 **Ms. Emery says it was designed to do?**

19 A. No. While Liberty offered a representation of the rate impact on a
20 residential customer’s bill of its rate request, that representation was not
21 accurate and misled its customers and the Commission. Liberty’s

¹ Liberty witness Emery rebuttal testimony, pp. 55-56.

1 representation was that its typical residential customers' bills would
2 increase by approximately 19.15%. While this accurately portrayed the
3 impact of the rates in its originally proposed tariff sheets filed in November
4 of 2024, as shown by its cost-of-serve analysis, Liberty actually intended to
5 request that its rates increase overall by almost 30%, rather than 15.99%
6 (the higher 19.15% for residential customers is primarily due to allocating
7 more of the increase to residential customers).

8 Even with the workpapers that Liberty provided for its November
9 2024 filing and my 40 years of experience in Missouri utility regulation, I
10 had trouble understanding what Liberty really was seeking. There was no
11 way for a typical Liberty customer to know that what Liberty was presenting
12 was wrong.

13 **Q. Shouldn't Liberty tell customers how its filed proposed tariff sheets**
14 **would impact their bills?**

15 **A.** Yes. It is good for utilities to give information on customer bill impacts. In
16 fact, the Commission requires them to provide the bill impact on a typical
17 residential customer as part of their general rate case filings. However, that
18 impact should be accurate. When calculating the impact on the bills which
19 include a FAC charge, Liberty applied the FAC rider incorrectly. Empire
20 used the high FAC rate that was in effect during the test year when
21 calculating the current (before general rate increase) bill even though those
22 customers would no longer be paying that FAC rate when Liberty filed its
23 general rate case. In fact, when making its comparison, Liberty included no
24 FAC charge in the after general rate increase bill amount. The appropriate
25 FAC rate for Liberty to use in both the before and after bills was the one
26 that its customers were paying at the time the case notice was sent to them.

1 **Q. How did Liberty’s treatment of FAC charges for its typical bill**
2 **calculation skew the result?**

3 A. A high FAC charge in the before general rate increase bill and no FAC
4 charge in the after general rate increase bill, showed a smaller bill change
5 impact than if the correct FAC charge had been used for both the before and
6 after bills.

7 **Q. What is your response to Ms. Emery’s testimony that “[a]s soon as the**
8 **tariff error was identified, the Company acted promptly to correct it”?²**

9 A. As I stated in my direct testimony, through my attorney and Liberty’s
10 attorney, I shared with Liberty my analysis correcting Liberty’s typical
11 Liberty residential customer bill impact in December 2024.³ Liberty did
12 not file new tariff sheets until late February 2025, after Liberty abandoned
13 its attempt to “fix” its error with “substitute” tariff sheets. It took Liberty
14 two months after I provided spreadsheets that correctly calculated the bill
15 impacts to redesign its rates to collect the almost 30% revenue increase it
16 intended to request and to file new proposed tariff sheets.

17 **Q. Did Liberty want to mislead its customers?**

18 A. I do not know that Liberty purposely set out to mislead its customers. Going
19 into this rate case, many of Liberty’s customers were already upset with
20 Liberty over billing and customer service issues. Also, Liberty serves one
21 of the most impoverished parts of Missouri. These customers likely would
22 not be happy with any increase. However, being told that Liberty wanted
23 to increase their bills by 30% would mean that even more customers would
24 be upset with Liberty. No customers want an increase in their electric bills,
25 but a 15.99% increase is much better than a 30% increase. While I do not

² *Id.*, p. 56.

³ OPC witness Mantle direct testimony, p. 20.

1 know if this is why Liberty miscalculated the bill impact, it could be a
2 motivation.

3 **Q. Do you agree with Ms. Emery that the Commission should not be**
4 **concerned with this Liberty error because the bill impacts provided in**
5 **the Local Public Hearing notices resolved these issues?**⁴

6 A. No. This should concern the Commission because it demonstrates Liberty's
7 attitude about its customers. While the local public hearing notice did
8 correctly provide residential customer bill impacts, it left customers
9 distrusting Liberty after initially being told the impact would only be 20%
10 only to find out in the public hearing notice that Liberty was actually
11 requesting a 30% to 40% increase in residential bills.

12 **Q. What is your response to Ms. Emery's testimony that "the Company**
13 **does not believe the differing views [on disclosing customer bill**
14 **impacts] raised by OPC warrant Commission intervention"?**⁵

15 A. I am not asking the Commission to intervene further in how the bill impacts
16 of Liberty's general rate case were presented. However, the Commission
17 should take it into account when making its decisions in this case. Liberty
18 should not be rewarded in this rate case for its misleading presentation of
19 what it is asking from its customers in this case.

20 **Q. Do you agree with Ms. Emery that the reconciliation of fuel costs in a**
21 **utility's cost-of-service and FAC is a complex issue as she alludes in her**
22 **rebuttal testimony?**⁶

23 A. No, it should not be. The fuel model is a complex computer simulation
24 model that estimates the normalized test-year cost of coal given the

⁴ Liberty witness Emery rebuttal testimony, p. 55.

⁵ *Id.*, p. 56.

⁶ *Id.*

1 normalized test-year inputs. This normalized cost of coal should be the cost
2 of coal included in the cost-of-service. The fuel model estimates a
3 normalized cost of natural gas and oil given the normalized energy market
4 inputs. These normalized costs should be the cost of natural gas and oil
5 used in the cost-of-service. Liberty made it complex by summing the costs
6 of all fuel types estimated by the model and then reallocating this total cost
7 from the fuel model to the fuel accounts, not based on the type of fuel, but
8 on the percentage of each type of fuel costs actually used in the test year.

9 **Q. Was Empire’s methodology for its fuel costs in its direct case filing**
10 **transparent?**

11 A. No. As Ms. Emery testifies, Liberty provided transparency only after
12 Liberty received a data request asking for clarification. If Liberty was
13 interested in being “transparent,” it would have provided an explanation in
14 its direct testimony of how it allocated the fuel model results and why it was
15 appropriate to allocate the costs instead of assigning them. It did not even
16 do so in its workpapers. Instead, Liberty waited until it received a data
17 request and then it took the full twenty days to answer that data request.

18 **Q. Did Liberty’s response to your data requests regarding the inputs to**
19 **the fuel model it used “clearly outline the purpose and calculation**
20 **methodology for each cited figure”?⁷**

21 A. No. As I described in my rebuttal testimony,⁸ Liberty’s response to my fuel
22 model input data request did not include information on any of the inputs to
23 the fuel models but instead components of the FAC base cost.

⁷ Liberty witness Emery rebuttal testimony, p. 56.

⁸ OPC witness Mantle rebuttal testimony, p. 12.

1 **Q. Do you agree with Ms. Emery that as to Liberty’s fuel costs “the record**
2 **is complete and clear and, therefore does not warrant intervention by**
3 **the Commission”?**⁹

4 A. No. I do not agree that the record is complete and clear as to Liberty’s fuel
5 modeling and inputs. Liberty’s direct testimony provided little explanation
6 of its methods and rationale. We received workpapers in response to data
7 requests instead of being provided complete work papers when the case was
8 filed.

9 With respect to Commission intervention, again I am not asking for
10 any Commission intervention. I am instead asking the Commission to take
11 into account the struggles of the parties in obtaining information from
12 Liberty when making its decisions in this case. OPC is asking that Liberty
13 not be rewarded for its incomplete testimony and lack of workpapers.

14 **Q. What is your response to Ms. Emery’s statement that Liberty “remains**
15 **committed to accuracy” in her rebuttal discussion of what she describes**
16 **as Liberty’s “filing error” and “tariff error”?**¹⁰

17 A. I appreciate Ms. Emery acknowledging that Liberty made a “filing error”
18 and a “tariff error.” I agree that errors occur in filing complex rate cases.
19 However, this was no ordinary rate case error, it was a fundamental error
20 which impacted every one of Liberty’s customers. A utility that is
21 committed to accuracy should, before it files for an increase in customer
22 rates, check and double check its request. This was a misleading and
23 confusing error. It was a fundamental, easily discoverable error that should
24 have been discovered by Liberty before it filed its case with the
25 Commission.

⁹ Liberty witness Emery rebuttal testimony, p. 56.

¹⁰ *Id.*

1 **Q. Would you respond to Ms. Emery’s testimony that Liberty’s “rate**
2 **request is based on thorough and transparent analysis of known and**
3 **measurable costs, consistent with Missouri regulatory practices.”?**¹¹

4 A. I disagree with her. Liberty’s initial filing shows either a disregard for or
5 ignorance of Missouri regulatory practices. Liberty’s calculation of the
6 impact of its rate request on its customer bills was wrong and misleading.
7 Liberty misapplied its FAC in its bill impact analysis and Liberty
8 incorrectly treated FAC revenues in its determination of its normalized
9 actual revenues.

10 **Q. Are you aware of anything which indicates that before it made its initial**
11 **filing in November of 2024 Liberty knew of Missouri regulatory**
12 **practices for treating FAC revenues when determining normalized**
13 **actual revenues?**

14 A. Yes. When determining its revenue requirement in its last general rate case,
15 Case No. ER-2021-0312, Liberty correctly adjusted its revenues to account
16 for its FAC revenues. In fact, it was Ms. Emery herself who explained in
17 her direct testimony in that case that the first adjustment she made to
18 normalize test year revenues was to remove the FAC revenues. Her
19 testimony on that point follows:

20 **Q. Please explain REV ADJ 1 to Remove FAC Related**
21 **Revenues.**

22 A. REV ADJ 1 is to remove FAC related revenues from the
23 revenue requirement. These revenues represent the
24 amount recovered/refunded to customers as a result of
25 the FAC tariff. As FAC rider revenue simply collects the
26 under/over collection of fuel costs, there is no need to
27 seek recovery of these revenues through base rates. This

¹¹ *Id.*, p. 57.

1 results in a pro forma adjustment to decrease revenues
2 by \$69,190.¹²

3 This is the correct way to deal with FAC related revenues. This is consistent
4 with Missouri regulatory practices.

5 **Q. Did Liberty make a similar adjustment to normalize revenues in its**
6 **initial filing?**

7 A. As I just testified, Liberty did not include this adjustment in its original
8 November 6, 2024 filing. However, OPC found this error and pointed it out
9 to Liberty.

10 **Q. Did Liberty make a similar adjustment to normalize revenues in its**
11 **February 26, 2025 filing?**

12 A. Yes. In her direct testimony filed in this case on February 26, 2025, Ms.
13 Emery describes the following adjustment for FAC revenues collected in
14 the yest year that she made to normalize revenues in this case:

15 **Q. Please explain REV ADJ 1 to remove FAC and EECR**
16 **related revenues.**

17 A. REV ADJ 1 is being made to remove FAC and EECR
18 related test year revenues from the revenue requirement.
19 These test year revenues represent the amount recovered
20 from/refunded to customers via the FAC tariff as well as
21 revenues received from customers via the EECR section
22 of the base rate tariffs. Both of these revenues are being
23 rebased within the revenue requirement calculation. This
24 results in a pro forma adjustment to decrease revenues
25 by \$61,240,674.¹³

26 In Case No. ER-2021-0312 the adjustment to normalize revenues was
27 small; just \$69,190. In this case the adjustment was almost 900 times

¹² P. 29.

¹³ P. 33.

1 greater at \$61,240,674. By leaving this amount in the initial filing, Liberty's
2 "error" resulted in proposed filed tariffs that would recover \$61 million less
3 than its proposed total revenue requirement.

4 Liberty followed Missouri regulatory practices in its previous rate
5 case. In this case it did not until OPC pointed out that it had not.

6 **Q. In light of the foregoing, what do you conclude about Ms. Emery's**
7 **rebuttal testimony that Liberty's request was based on a thorough**
8 **analysis?**¹⁴

9 A. If Liberty did a thorough analysis, then its incorrect treatment of FAC
10 revenues in normalizing its revenues for determining its revenue
11 requirement deficiency was not an error but a deliberate decision. A
12 thorough analysis would have discovered this error before it was filed.

13 **Q. Are you aware of anything else that leads you to believe that Liberty**
14 **did not follow Missouri regulatory practices when it prepared its direct**
15 **case?**

16 A. Yes. First of all, it is Missouri regulatory practice for the costs in the direct
17 case to be normalized, annualized actual test-year costs. In my review of
18 the FAC costs and revenues in Liberty's case, specifically the FAC base
19 costs, I found that some were based on actual test year costs, some were
20 based on costs for an updated period, some I have no idea what they are
21 based on, and two of the most important inputs into the fuel model, natural
22 gas price and energy market prices, were based, not on historical costs, but
23 on forecasted natural gas prices through calendar year 2025. Liberty
24 provided no explanation for why the normalization methodology it used for
25 each cost was appropriate. Liberty's response to my data request asking for

¹⁴ Liberty witness Emery rebuttal testimony, p. 57.

1 the explanation was that what Liberty did was consistent with what it did in
2 its last rate case.¹⁵

3 This is not Missouri regulatory practice. Good Missouri regulatory
4 practice is to describe and support your position in the record—here it
5 should have been done in Liberty’s direct filing—before the Commission,
6 *i.e.*, testimony; not to hide the support and then maybe provide it in response
7 to a data request.

8 **Q. Is this an exhaustive list of how Liberty has not followed good Missouri**
9 **regulatory practice in this case?**

10 A. No. This list is limited to instances that I have learned about as I have
11 conducted research for my testimony. It is neither an exhaustive nor
12 comprehensive list.

13 **Q. Has Liberty shown disregard for the regulatory process and to its**
14 **customers in its filings in this case in other ways?**

15 A. Yes. Multiple Liberty witnesses minimize the impacts on its customers of
16 different Liberty generation resource planning decisions, while Liberty
17 repeatedly asks those same customers to pay for the poor results of those
18 decisions using the fact that the Commission has not labeled them to be
19 imprudent as a shield from a cost disallowance. They throw out words like
20 “hindsight” and “prudence” to distract the Commission without even
21 acknowledging the impact that these decisions have had on Liberty’s
22 customers.

23 Despite investing hundreds of millions of dollars in capital that it
24 expects to recover from customers plus a profit, OPC witness Jordan Seaver
25 and Staff witness Claire Eubanks have provided testimony that Liberty’s
26 reliability indices do not show that Liberty’s customer service reliability has

¹⁵ See Liberty response to DR 8009.3 attached to my rebuttal testimony as Schedule LMM-R-2.

1 improved. In fact, some of the reliability indices show Liberty's customer
2 service has degraded despite these expenditures.

3 In his direct testimony Mr. Seaver described how Liberty, in 2024,
4 did not complete 82,121 of its planned 91,620 distribution system
5 inspections and did not complete 5,513 of its 21,066 planned transmission
6 inspections.¹⁶ The lack of attention to infrastructure inspections to support
7 reliable service shows a disregard to Liberty's customers.

8 Another way that Liberty is showing disregard for its customers is
9 by attempting to manipulate the Market Price Protection Mechanism
10 ("MPPM") part of its Customer Protection Plan. The MPPM was proposed
11 to guarantee that the \$500 million wind projects would bring more benefits
12 than costs to customers. Liberty is skewing this mechanism to the favor of
13 its shareholders at the eventual detriment to the customers that the Customer
14 Protection Plan was supposed to protect.

15 Lastly, Liberty is requesting that the little five percent "skin in the
16 game" that it has through the sharing mechanism in its FAC be removed,
17 thus putting even more risk and more costs on its customers leaving
18 Commission staff after-the-fact prudence audits as the only incentive for
19 Liberty to increase the efficiency and cost-effectiveness of its fuel and
20 purchased power costs. Not only is Liberty asking for a decision that would
21 remove most of its FAC cost recovery risk, it is also asking for an increase
22 in its return on equity despite its risk reduction request.

23 These are just instances of which I am aware that demonstrate
24 Liberty's emphasis is not on its customers, but on reducing its risk and
25 increasing its earnings. This list is not intended to be either comprehensive
26 or exhaustive.

¹⁶ OPC witness Seaver direct testimony, p. 11.

Response to Rebuttal Testimony of Liberty Witness John J. Reed

Q. To what topic in Mr. Reed’s rebuttal testimony are you first responding?

A. In his rebuttal Mr. Reed testifies “that the continuation of the FAC sharing provision is inconsistent with good regulatory policy and practice.”¹⁷ He uses the terms “good regulatory policy and practice” and “sound regulatory policy” in his rebuttal testimony without ever defining what policy and practice it is to which he is referring.

There are many “regulatory practices and policies” such as the matching principle of using the same time period for all the costs and revenues which are to be normalized and annualized, incentivizing efficiencies with regulatory lag, among a number of other regulatory policies and practices. Because his testimony was replete with the phrase “good regulatory policy and practice,” and “sound regulatory policy” without specifying the practice or policy to which he is referring, I asked data requests to ascertain what regulatory policy and practice he was referring in each instance where he used these terms in his rebuttal testimony

Q. How did Mr. Reed respond?

A. He states that in every instance where he uses these phrases in his rebuttal testimony the regulatory principle or practice that he is referring to is:

Sound regulatory policy and principle in electric utility regulation is grounded in the idea that utilities must be regulated in a way that balances public interest, economic efficiency, and fairness. At the heart of sound regulation is the regulatory compact: the idea that utilities are entitled to the opportunity to earn a fair return on their investments in

¹⁷ Liberty witness Reed rebuttal testimony, p. 1.

exchange for the obligation to serve all customers reliably
and at reasonable rates.¹⁸

Q. Does he explain how an incentive mechanism is inconsistent with good regulatory policy?

A. No. He leaves it up to the reader to deduce.

Q. Is an incentive mechanism inconsistent with good regulatory policy?

A. No, and by expressly authorizing the Commission to use them in rate adjustment mechanisms such as FACs, the Legislature agrees. As I stated above, there are many good regulatory policy and practices, not just the one provided by Mr. Reed. One good regulatory practice is to use the regulatory tools provided. In Missouri, incentive mechanisms are among those tools.

The Michigan State University Institute of Public Utilities book, *Risk Principles for Public Utility Regulators*, states:

Three essential risk-based incentive tools are applied in economic regulation to ensure that utility performance is consistent with the public interest. Each is explored further in subsequent principles. Regulatory lag (Principle 24) is a passive incentive, inherent to the regulatory process that primarily encourages cost control by the utility between rate cases. Prudence reviews (Principle 25) are reactive means of encouraging efficiency, providing essential checks on utility investments and expenditures. Finally, regulators can take a more active approach by providing incentive returns (Principle 26) that aim to encourage innovation.

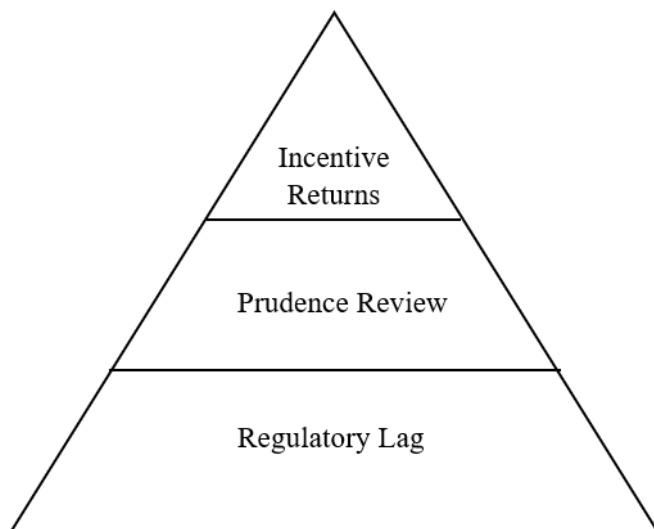
(Cite omitted)

The authors of this book¹⁹ illustrate these three different types of incentive tools as a pyramid that I have replicated, in part, below.

¹⁸ Liberty response to DR 8035 attached as Schedule LMM-S-1. Responses to data requests 8036 through 8040 requesting a definition for the other instances he uses the phrase all refer back to this response.

¹⁹ Janice A, Beecher and Steven G. Kihm.

Figure 1
Regulatory Tools for Motivating Utility Performance.



The base of this pyramid is regulatory lag. Regulatory lag offers both upside and downside potential for the utility. If the utility can take measures to increase efficiency and reduce costs below what is included in its revenue requirement, there is an upside to regulatory lag. The downside to regulatory lag is when a utility cannot control costs and costs rise above what is in the revenue requirement. Regulatory lag as an incentive tool is automatic and immediate. It requires no filings or actions by the Commission.

The next level in this pyramid is Commission prudence reviews. Prudence reviews are reactive and limited in scope as I explain in my rebuttal testimony.²⁰ Prudence reviews are subjective and rife with accusations of hindsight and Monday morning quarterbacking. Prudence reviews are after the fact and can take years to complete.

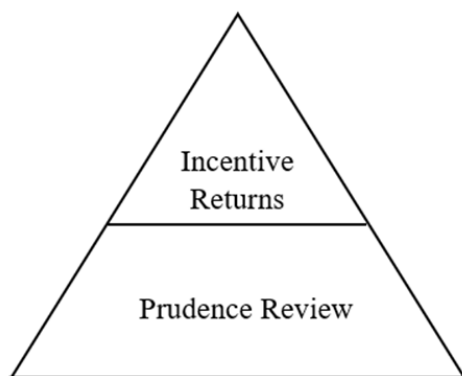
²⁰ OPC witness Mantle rebuttal testimony, pp. 22 – 24.

The top layer of this pyramid is incentive returns. These constitute returns exceeding “fair returns” as set in the revenue requirement. The symmetric nature of the Missouri FAC sharing mechanism lies firmly in this category. Incentives, like the consequences of regulatory lag, can be immediate for the utility.

Q. How does this pyramid apply to Liberty’s FAC?

A. Allowing Liberty a FAC has removed the tool of regulatory lag from the toolbox of incentives for controlling fuel and purchased power costs. The regulatory tools currently used by this Commission are shown in Figure 2 below.

Figure 2
FAC Regulatory Tools for Motivating Utility Performance



The wide base of regulatory lag has been removed when the Commission authorized Liberty to have a FAC. Liberty is no longer impacted by volatile changes in costs. However, removing the regulatory lag also removes the incentive provided through efficiency gains and cost savings actions.

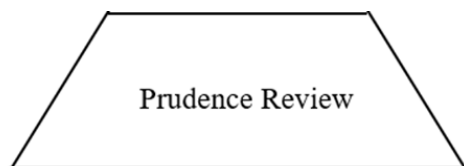
The Missouri Legislature realized that a FAC would take away one of the incentive tools and so it gave the Commission another – the ability to include in Liberty’s FAC mechanism an incentive to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement

activities. Therefore, the Commission is currently following good regulatory practice by using all the incentive tools provided it when it removes the incentive of regulatory lag for fuel and purchased power costs.

Q. How would removing the incentive mechanism as Mr. Reed is proposing affect Liberty's incentives?

A. Even though the base of the incentive pyramid is significantly smaller, Mr. Reed opines that the tip of the pyramid is inconsistent with "good regulatory policy and practice" and should be removed. Mr. Reed is proposing the pyramid of essential risk-based tools be reduced as shown in Figure 3.

Figure 3:
Regulatory Tools for Motivating Utility Performance
With FAC and No Incentive Mechanism



Mr. Reed is asking the Commission to do away with all but one of the tools for incentivizing efficiency and cost-effectiveness of FAC cost – prudence reviews.

Mr. Reed wants the Commission to believe that prudence audits alone, conducted by the Commission's overworked Staff of a utility that is less than transparent with its information, are sufficient to incentivize Liberty to search for efficiencies in its fuel and purchased power acquisition costs.

1 **Q. Why should the Commission not trust that prudence audits alone will**
2 **be enough incentive for Liberty to look for efficiencies and increase**
3 **cost-effectiveness in its FAC costs?**

4 A. I detailed in my rebuttal testimony the difficulties with prudence audits – I
5 will not go into that detail here again.²¹ In addition, the Commission should
6 take into account how Liberty has shown that it has very little respect for its
7 customers in the past few years; how it has responded to huge errors in
8 filings with by saying “it’s just human error;” and how it has demonstrated
9 that it only provides transparency when asked a data request, and then not
10 always.

11 At least for these reasons the Commission should not rely only on
12 prudence reviews to incentivize Liberty to do the right things for its
13 customers and not remove the FAC sharing incentive mechanism but
14 instead increase Liberty’s “skin in the game” by increasing Liberty’s share.

15 **Q. What next in Mr. Reed’s rebuttal testimony would you like to address?**

16 A. Mr. Reed’s misrepresentations about my direct testimony. In his first
17 question responding to my direct testimony, Mr. Reed states that my
18 recommendation to the Commission was to either eliminate Liberty’s FAC
19 or increase the sharing ratio to 50/50.²² While this is a part of my
20 recommendation, is not my full recommendation.

21 **Q. What is your full recommendation?**

22 A. In my direct testimony, I stated:

23 If the Commission believes a 50/50 sharing is too much Liberty
24 “skin in the game,” **any increase in Liberty’s share still would**
25 **send a signal to Liberty** that it needs to be more aware of how its

²¹ OPC witness Mantle rebuttal testimony, pp. 22 – 24.

²² P 2.

1 decisions on fuel and purchased power costs impact its customers.
2 (Emphasis added)²³

3 I repeated this point in my rebuttal testimony

4 Any increase in the percentage shared by Liberty would increase the
5 opportunity for Liberty to increase its earnings by improving the
6 cost-effectiveness and efficiency of its fuel and purchased power
7 procurement practices. The greater the share to Liberty, the greater
8 the opportunity to increase earnings. A 50/50 sharing would provide
9 greater opportunity than a 90/10 sharing. **If the Commission does**
10 **not adopt my recommendation to reject Liberty's request to**
11 **continue its FAC, then it should modify the current sharing**
12 **mechanism with a 90/10 sharing providing the least reward for**
13 **efficiency and 50/50 sharing the most. It should not be limited to**
14 **these two sharing mechanisms but instead set the sharing at a**
15 **percentage that best incentivizes Liberty to be cost-effective.**²⁴
16

17 Emphasis added.

18 **Q. Why are you alternatively recommending a range of different sharing**
19 **in Liberty's sharing mechanism?**

20 A. In its December 4, 2024, Agenda, the Commission discussed changing the
21 FAC sharing mechanism for Evergy Missouri West in case no. ER-2024-
22 0189. In that Agenda, Commissioner Coleman stated that the Commission
23 knew that the 95/5 sharing mechanism in Evergy Missouri West's FAC was
24 not guaranteed and the Commission could change the sharing mechanism
25 in any general rate case and that there was an argument for a 90/10 sharing
26 mechanism. However, the only choice other than the 72/25 that I had
27 recommended in that case was the 95/5 that was currently in effect. The
28 Commission felt that 75/25 sharing was too dramatic and felt that its only
29 other choice was 95/5.

²³ OPC witness Mantle direct testimony, p. 26.

²⁴ OPC witness Mantle rebuttal testimony, p. 7.

1 While I believe that the Commission had more discretion when
2 setting the sharing than the Commission apparently believed that it had, I
3 realize that the Commission is unlikely to agree that the privilege of a FAC
4 for Liberty should be rescinded and that it likely will view changing to a
5 50/50 sharing is too drastic. Therefore, I provide the Commission with a
6 range of sharing mechanisms from 90/10 to 50/50. It is my opinion that the
7 optimal incentive for Liberty to increase the efficiency and cost-
8 effectiveness of its fuel and purchased power costs would be to end
9 Liberty's FAC and go back to just the incentive tools of regulatory lag and
10 prudence audits. This would reward Liberty the full amount of all savings
11 due to its efficiency efforts and put the full consequences of its decisions
12 with Liberty instead of with its customers. It is my opinion that less optimal
13 to ending Liberty's FAC is a 50/50 sharing mechanism. This mechanism
14 would still reward Liberty with 50% of the difference between FAC costs
15 included in rates and actual costs but also make it responsible for 50% of
16 the costs greater than what is in rates. The incentive would be that if there
17 are efficiencies and cost-savings Liberty would get to keep 50% of the
18 savings it achieved through its efforts.

19 However, the sharing proportion should be commensurate with what
20 the Commission believes will best incentivize Liberty to make decisions
21 that include considering all of the potential impacts on its customers.

22 **Q. What has Staff recommended regarding Liberty's FAC sharing**
23 **mechanism?**

24 **A.** It is Staff's position that "if the Commission wants to see if this leads
25 Empire to making better decisions, the Commission could order a new
26 sharing mechanism to see if there is any different outcome."²⁵ Staff witness

²⁵ Staff witness Mastrogiannis rebuttal testimony, p. 14.

1 Brooke Mastrogiannis believes that a 90/10 sharing mechanism would
2 prompt Liberty to take a more proactive approach in controlling its fuel
3 costs and therefore is recommending a 90/10 sharing mechanism as an
4 alternative to the current 95/5 sharing mechanism.²⁶

5 **Q. Do you agree with Mr. Reed's²⁷ view that your recommendation is**
6 **punitive?**

7 A. No, and it is not intended to be punitive. I believe Liberty has shown that
8 the current sharing is inadequate, and I am giving the Commission a range
9 of choices in an effort to increase Liberty's incentive to do better. While it
10 is my primary position that the Commission should reject Liberty's request
11 to continue its FAC, I realize that this is a conclusion that the Commission
12 may not reach.

13 My recommendation is based on how Liberty's recent decisions
14 have impacted FAC costs and the impact of those decisions on customers'
15 total bills. Liberty has shown contempt for its customers not just through
16 its disastrous roll out of its new billing systems but through numerous
17 decisions, some directly impacting the fuel and purchased power costs and
18 some just impacting the bills of the customers.

19 Perhaps my recommendation seems punitive to Liberty. But I assure
20 you that it does not seem punitive to the thousands of Liberty customers
21 who will be faced with choosing between paying for groceries or paying for
22 electricity.

²⁶ *Id.*, p. 11.

²⁷ Liberty witness Reed rebuttal testimony, p.3.

1 **Q. Do you believe that Mr. Reed has misrepresented your direct testimony**
2 **in any other way?**

3 A. Mr. Reed states that I claim that Liberty's FAC allows it to shift all risk to
4 its customers.

5 **Q. Does Mr. Reed support his claim with any cite to your direct testimony?**

6 A. No.

7 **Q. Is he correct?**

8 A. No. With respect to Liberty's FAC and risk, in my direct testimony I state:

- 9 • A FAC moves fuel and purchase power cost risk away from the
10 utility and to its retail customers;²⁸
11 • As Liberty made each of these decisions, because Liberty had a
12 FAC, almost 98% of the cost increase risk was placed on its retail
13 customers;²⁹
14 • Liberty was exposed to almost no fuel and purchased power cost
15 risk;³⁰ and
16 • At the very least, the Commission should change the sharing
17 mechanism to a 50/50 sharing mechanism to relieve some of the risk
18 that Liberty is requesting be placed on its customers.³¹

19 It has not been, nor will it ever be, my position that the FAC shifts all risk
20 to customers.

21 **Q. Does Mr. Reed point to a risk that he says you did not consider?**

22 A. Mr. Reed says that I have not considered the risk from periodic FAC
23 prudence reviews conducted by the Commission.³²

²⁸ OPC witness Mantle direct testimony, p. 22.

²⁹ *Id.*, p. 33.

³⁰ *Id.*

³¹ *Id.*

³² Liberty witness Reed rebuttal testimony, p. 3.

1 **Q. Are you aware of this risk to Liberty?**

2 A. Yes. Prudence reviews are an incentive for Liberty. Therefore, they are
3 also a risk for Liberty. My experience is that this risk is very low for
4 Missouri utilities, despite how demonstratively uneconomic their purchased
5 power agreements may be or how large the utility's fuel hedging losses may
6 be.

7 However, Liberty is compensated for the risks it assumes from
8 Commission oversight through the return it earns on its capital investments.
9 In this case, Liberty has asked for an increase in its return and a reduction
10 in risk.

11 **Q. Who provides that return?**

12 A. The return for regulatory risk is included in the rates that customers pay. So
13 although prudence audit risk is not placed on the customers, the customers
14 rates are higher to compensate Liberty for the risk of Commission oversight.

15 **Q. What is your response to Mr. Reed's testimony that resource planning
16 should not be a factor considered when looking at the efficiency and
17 cost effectiveness of an electric utility's fuel and purchased power
18 activities?³³**

19 A. Long-term resource planning decisions are the decisions that have the
20 greatest impact on fuel and purchased power costs, and the volatility of
21 those costs. Liberty makes these long-term decisions, not its customers or
22 this Commission. The quality of those decisions and the impacts of those
23 decisions can greatly be affected by whether or not a utility has a FAC.
24 With a FAC the volatility of its fuel costs is no longer a risk that the utility
25 needs to carefully consider when resource planning.

³³ Liberty witness Reed rebuttal testimony, p. 2.

1 Resource planning decisions also affect fuel and purchased power
2 costs for decades. Even if a generation plant is retired early because it no
3 longer is cost effective on the energy market, unless the Commission
4 decides otherwise, customers continue to pay for that plant for decades. If
5 Liberty enters into a 20-year purchased power agreement (“PPA”),
6 customers are stuck with the prices in that contract for the duration of the
7 contract.

8 Good resource planning will hedge both fuel and purchased power
9 costs with appropriate generation resources. Poor resource planning can
10 expose customers to volatile markets even if the Commission determines
11 that the resource planning decision was prudent. Missouri electric
12 customers pay the lower of a utility’s cost to generate electricity or the
13 market cost of energy. The utility owning sufficient and appropriate
14 generation to supply their needs acts to hedge against high market prices.
15 Storm Uri is a great example of the risk to customers if that generation is
16 insufficient. Customers were exposed to market prices greatly exceeding
17 what the cost would have been if Liberty had properly hedged against those
18 market prices by having sufficient generating resources during that storm to
19 satisfy their load. If Liberty knows that it will be held responsible for these
20 decisions through its FAC, it will likely take more seriously the variable
21 cost of generation resources in its resource planning process.

22 The quality of resource planning decisions should affect the
23 incentive mechanism. Resource planning decisions that have consistently
24 turned out poorly for customers should result in more skin in the game for
25 Liberty in its FAC to better incentivize Liberty to make better decisions.

1 **Q. What is your response to Mr. Reed’s view that your recommended**
2 **change to Liberty’s sharing mechanism is to penalize Liberty for**
3 **“incorrect resource planning decisions”?³⁴**

4 A. He is wrong. I presented a list of management decisions that have impacted
5 customers in my direct testimony to demonstrate that Liberty needs more
6 incentive to do better by its customers. Despite its rhetoric Liberty’s focus
7 is on its shareholders, not its customers. Increasing Liberty’s skin in the
8 game and providing for a way to increase earnings to shareholders through
9 an incentive mechanism in Liberty’s FAC can benefit both Liberty’s
10 shareholders and its customers.

11 Mr. Reed states that sharing mechanisms are counter to the goals of
12 regulatory efficiency, again without defining regulatory efficiency or
13 explaining how a sharing mechanism counters efficiency. Since he did not
14 provide clear and transparent testimony, I asked Mr. Reed for his definition
15 of regulatory efficiency so that I could provide it in this testimony. Mr.
16 Reed’s response to my data request³⁵ follows:

17 The goals of regulatory efficiency focus on achieving
18 optimal outcomes for customers and investors (i.e., no one
19 stakeholder receives undue advantage or disadvantage),
20 while minimizing unnecessary costs and administrative
21 burdens.

22 **Q. Do you agree with Mr. Reed that the Missouri FAC sharing mechanism**
23 **is contrary to this definition of regulatory efficiency?**

24 A. No. I believe that a sharing mechanism fits this definition perfectly. A FAC
25 sharing mechanism should be, and is, designed to achieve efficient and cost-
26 effective outcomes for both customers and investors with neither
27 stakeholder nor customers receiving an advantage or disadvantage. Without

³⁴ Liberty witness Reed rebuttal testimony, p. 3.

³⁵ OPC Data Request 8041 attached as Schedule LMM-S-2.

1 the incentive mechanism, customers are at a great disadvantage for they
2 have no control over fuel and purchased power costs while Liberty, who has
3 some control, gets to recover all its cost and also earn a return from its
4 customers.

5 **Q. What is your response to Mr. Reed's testimony that a sharing**
6 **mechanism at least partially divorces rates from costs?**³⁶

7 A. Mr. Reed seems to be assuming that with a correct FAC, the utility is
8 entitled to recover all of its costs - except what an after-the-fact prudence
9 audit may require it to return to customers. He seems to be overlooking that
10 this type of cost recovery already is divorced from traditional rate making
11 where the decisionmakers bear the risks of their decisions.

12 The Commission should not buy into this description. In Missouri
13 a FAC is a privilege, and not a right. In addition, the same statutory
14 language that provides for a FAC expressly allows the Commission to
15 include a sharing mechanism.

16 **Q. Did Mr. Reed provide any support for his testimony that a sharing**
17 **mechanism can materially affect a utility's opportunity to earn a fair**
18 **return on equity?**³⁷

19 A. No. He provides no such evidence for Liberty, or even a hypothetical
20 example. On the other hand, I provided evidence in my rebuttal testimony
21 that Liberty's sharing mechanism did not prevent Liberty from earning
22 more than a fair return on equity.³⁸

³⁶ Liberty witness Reed rebuttal testimony, p. 4.

³⁷ *Id.*

³⁸ OPC witness Mantle rebuttal testimony, p. 5.

1 **Q. Is there anything else Mr. Reed testifies to in rebuttal to which you wish**
2 **to respond?**

3 A. Yes. For some reason Mr. Reed thinks that I may be “unhappy” with
4 Liberty’s membership in the Southwest Power Pool (“SPP”).³⁹

5 **Q. Did Mr. Reed explain what in your testimony led him to the conclusion**
6 **that you may be “unhappy” with Liberty’s membership in the SPP?**

7 A. No. Like the rest of his rebuttal testimony, he only generally cites my direct
8 testimony.

9 **Q. Are you unhappy with Liberty’s membership in the SPP?**

10 A. I am neither happy nor unhappy regarding Liberty’s membership in the SPP.
11 It is what it is.

12 **Q. Are you trying to force a change in Liberty’s SPP membership in this**
13 **case as Mr. Reed implies or asserts?**⁴⁰

14 A. No. If I was, I agree with Mr. Reed that this is not the proper case to make
15 that change even if I wanted it.

16 **Q. For your concluding responses to Mr. Reed’s rebuttal testimony, would**
17 **you respond to his response to your data request 8035?**

18 A. Yes. In data request 8035 I asked the following:

19 What is the regulatory principle Mr. Reed refers to in his
20 rebuttal testimony on page 3? Provide all documentation that
21 Mr. Reed relied on to form his definition.
22

23 His response follows:

24 Sound regulatory policy and principle in electric utility
25 regulation is grounded in the idea that utilities must be
26 regulated in a way that balances public interest, economic

³⁹ Liberty witness Reed rebuttal testimony, p. 3.

⁴⁰ *Id.*

1 efficiency, and fairness. At the heart of sound regulation is
2 the regulatory compact: the idea that utilities are entitled to
3 the opportunity to earn a fair return on their investments in
4 exchange for the obligation to serve all customers reliably
5 and at reasonable rates.

6 This policy is subjective and is interpreted differently by each of the parties
7 in the case. Mr. Reed is a consultant that works for regulated utilities, in
8 this case for Liberty. His interpretation is skewed to the utility that is paying
9 for his testimony as expected. Unlike Liberty's customers, he has not
10 received numerous bills in one week, each with a different amount to be
11 paid; he is able to afford his electric bill and his health care; he has not
12 missed meals so that he can pay his electric bill. In short, his worldview is
13 different from the worldviews of Liberty's customers. His opinion of what
14 are reasonable rates differs greatly from Liberty's customers opinions of
15 reasonable rates.

16 Therefore, I ask the Commission to carefully consider Mr. Reed's
17 statements about good and sound regulatory policy and practices, and take
18 into account the viewpoint from which he makes these statements on behalf
19 of Liberty.

20 **Response to the Rebuttal Testimony of Liberty Witness Aaron J. Doll**

21 **Q. What is your response to Mr. Doll's rebuttal testimony that "OPC has**
22 **a pattern of using resource-planning allegations in an attempt to**
23 **advance broader policy objectives"?⁴¹**

24 **A.** Mr. Doll does not identify what "broader policy objectives" he views that
25 OPC is pursuing, but without doubt Liberty has made numerous resource
26 planning decisions in the last ten years that have substantially increased its
27 customers' rates and bills, and reduced the reliability and ability of Liberty's

⁴¹ Liberty witness Doll rebuttal testimony, p. 7.

1 generation resources to respond to changes in load. Some decisions have
2 been costly to customers, such as the early retirement of the Asbury coal
3 plant and the building of three wind projects that supply energy but not
4 much capacity. Some decisions have resulted in the need for additional
5 costly expenditures, such as the need for Liberty to build additional capacity
6 today to meet the SPP resource adequacy requirements. As it should, OPC
7 has called Liberty out on many of these decisions. Public Counsel's
8 "broader policy objective" in doing so is simply to "protect the interests of
9 the public" for which the Office of Public Counsel was created by the
10 Legislature. See Section 386.710(2), RSMo.⁴²

11 **Q. What is your response to Mr. Doll's assertion that "OPC's claims are**
12 **less about identifying genuine imprudence in utility planning and more**
13 **about constructing a narrative to support pre-determined policy**
14 **outcomes"?⁴³**

15 **A.** OPC does not lightly make claims of imprudence, nor do we rely on
16 speculative, retrospective, or inaccurate assessments, or revise history as
17 Mr. Doll alleges.⁴⁴ Our findings are often labeled hindsight by Liberty
18 because they are presented after a decision is made. We have no other
19 choice because we do not know about most decisions before they are made.
20 Further, since the adverse impacts of a decision typically are unknown and
21 unknowable until after the decision is made, raising concerns about
22 decisions before their impacts come to fruition subject OPC's concerns to a
23 response that they are "speculative." OPC has made a concerted effort to

⁴² (2) He may represent and protect the interests of the public in any proceeding before or appeal from the public service commission;

<https://revisor.mo.gov/main/OneSection.aspx?section=386.710&bid=21754>

⁴³ Liberty witness Doll rebuttal testimony, p. 13.

⁴⁴ *Id.*

1 continually speak when it becomes aware of a situation that it believes will
2 harm customers due to past accusations of hindsight.

3 OPC represents the public, including Liberty's customers and it is
4 our responsibility, when we see an instance that we feel is unreasonable, or
5 imprudent, to present facts to the Commission. It not only is good
6 regulatory practice for OPC to allege unreasonableness, or imprudence, if it
7 believes a decision was in fact unreasonable, or imprudent, it is part of
8 OPC's statutory purpose.

9 As for predetermined outcomes, the only outcome that we strive for
10 is that utilities be regulated in a way that appropriately balances public
11 interest, economic efficiency, and fairness.

12 **Q. Is it your position as Mr. Doll alleges that Liberty's failures in resource**
13 **planning justifies discontinuing Liberty's FAC?⁴⁵**

14 **A.** No. My litany of all the failures of Liberty's resource planning decisions is
15 intended to demonstrate to the Commission that Liberty's recent practices
16 have tilted the regulatory field greatly toward Liberty and have resulted in
17 harm to Liberty's customers. The Commission is allowed by statute to
18 modify, extend, or discontinue Liberty's FAC. It is my position that change
19 is needed and this is demonstrated by all these decisions that even Mr. Doll
20 labels as "failures."

21 In addition, the pages of my direct testimony that Mr. Doll cites, I
22 also recommend that if the Commission believes that discontinuing
23 Liberty's FAC is too dramatic, then at a minimum, the sharing mechanism
24 should be changed increasing Liberty's share of the FAC costs.

⁴⁵ Liberty witness Doll rebuttal testimony, p. 7.

1 **Q. Is your testimony from other cases which Mr. Doll provides as being**
2 **inconsistent as Mr. Doll claims?**

3 A. No. While Mr. Doll accuses OPC of selective facts, speculative
4 assumptions, and hindsight evaluation, Mr. Doll is doing that very thing by
5 his choices of snippets of my testimonies from other cases by taking them
6 out of their historical contexts.

7 **Q. Would you elaborate?**

8 A. Yes. The first quote that he brought up is from my rebuttal testimony⁴⁶ in
9 Case No. EO-2022-0040. Mr. Doll correctly quotes a portion of one
10 sentence from page 8 of my testimony where I stated that Liberty's resource
11 planning "had shifted from providing energy that safely and reliably serves
12 its customers' energy needs at just and reasonable rates to maximizing its
13 revenue from the SPP energy markets and relying on other members of the
14 SPP to meet Empire's customers' energy requirements."

15 In that Case No. EO-2022-0040, Liberty asked the Commission to
16 allow it to securitize \$222 million of costs Liberty incurred due to Storm
17 Uri. Case No. EO-2022-0040 was consolidated with Case No.
18 EO-2022-0193—the case where Liberty asked the Commission for \$140
19 million through securitization for costs associated with the early retirement
20 of Liberty's Asbury coal plant. Combined, Liberty was asking to recover
21 \$362 million from its customers.

22 Mr. Doll did not mention that when I wrote that testimony, Liberty
23 had recently retired its Asbury coal plant that provided reliable energy and
24 capacity. Mr. Doll did not mention that the wind projects that Liberty was
25 building were not in rate base when Storm Uri hit leaving a huge gap in
26 Liberty's ability to generate energy and forcing it to rely on the SPP energy

⁴⁶ A copy of my testimony in Case No. EO-2022-0040, without schedules, is attached as Schedule LMM-S-3.

1 market to fill that gap. A complete reading of my testimony, provided as
2 Schedule LMM-S-3 provides all this information and also provides context
3 to the one sentence that in his rebuttal testimony Mr. Doll selectively quotes
4 from my testimony in those cases.

5 **Q. What about the context for the other quote that Mr. Doll pulled from**
6 **your testimony in Case No. ER-2024-0189?**

7 A. In Case No. ER-2024-0189, *In the Matter of Evergy Missouri West, Inc.*
8 *d/b/a Evergy Missouri West's Request for Authority to Implement a General*
9 *Rate Increase for Electric Service*, I filed testimony requesting the
10 Commission modify Evergy Missouri West, Inc.'s ("Evergy West") FAC
11 by changing Evergy Missouri West's FAC sharing mechanism. In my
12 surrebuttal testimony in that case, which, without the schedules to it, I have
13 attached to this testimony as Schedule LMM-S-4, I responded to both Staff
14 and Evergy West's testimony that the sharing mechanism which I was
15 proposing was outside of the industry norms. The portion of my surrebuttal
16 testimony that Mr. Doll quoted was written to demonstrate to the
17 Commission that Evergy West was not a normal utility because of the great
18 extent of its reliance on the SPP energy market.

19 Table 3 in my surrebuttal testimony⁴⁷ shows market margins for the
20 previous four prudence periods for each of the four investor-owned electric
21 utilities in Missouri, including Liberty. Liberty's market margins in three
22 of those prudence periods were positive, meaning that market revenues
23 were greater than market costs. From this I concluded that Liberty provided
24 more energy to the market than it takes from the market. It also indicates
25 that Liberty, over the time period displayed in the table, had not relied on
26 the market for energy to the extent that Evergy West had.

⁴⁷ Case No. ER-2024-0189, Mantle Surrebuttal testimony, p. 13.

1 **Q. Does the fact that Liberty’s market margins in three of the prudence**
2 **periods were positive mean that Liberty does not rely on the SPP**
3 **market for energy to meet its customers’ energy requirements on an**
4 **hourly basis?**

5 A. No. Having a positive market margin over a period of time does not mean
6 that Liberty is meeting its customers’ load at all times during that time
7 period. What it means is that, summed over the time period, Liberty was
8 able to generate more revenue from energy provided from its resources than
9 the cost of the energy its customers used. It does not mean that Liberty’s
10 generation provided enough energy at all instances during that time period
11 to meet the energy requirements of its customers. Liberty chose to build
12 wind generation that provides energy when the wind blows and which is not
13 available when the wind is not blowing, regardless of the energy
14 requirements of Liberty’s customers.

15 In addition, customer load includes both energy and demand.
16 Capacity requirements are based on demand. The retirement of Liberty’s
17 Asbury plant significantly reduced Liberty’s reliably available capacity.
18 Because the wind projects only provide energy when the wind is blowing,
19 their capacity accreditation is limited. Liberty recently filed a 60-day notice
20 on April 29, 2025, that it will be filing an application for a Certificate of
21 Convenience and Necessity to add “natural gas generation to its portfolio to
22 support resource adequacy in response to changes in the planning reserve
23 margin and resource accreditation within the Southwest Power Pool
24 (“SPP”).”⁴⁸ This generation is not being added because Liberty needs
25 energy, but because it needs capacity. In addition, Liberty recently extended

⁴⁸ Case No. EA-2025-0299, *In the Matter of the Application of The Empire District Electric Company d/b/a Liberty for a Certificate of Convenience and Necessity to Support Resource Adequacy*, Notice of Intended Case Filing, p. 2.

1 its Elk River PPA, **_____

2 _____ **

3 It is still my testimony that Liberty's wind projects were not built to
4 meet Liberty's customers' needs, but, instead, to beat the SPP market.
5 Liberty now generates more energy than its customers need; just not
6 necessarily in the right quantity and at the right time to satisfy its customers'
7 energy needs.

8 **Q. Do you agree with Mr. Doll that the differences in your representations**
9 **of Liberty in these two testimonies demonstrates how OPC leverages**
10 **generalized allegations of imprudent planning, unsupported by the**
11 **evidentiary record justification for dismantling a Commission-**
12 **approved fuel adjustment clause?**

13 A. No. I think it demonstrates how Mr. Doll is apt to pull out snippets of
14 testimony to suit his own purposes just as he is alleging OPC does.

15 In actuality, the supply of energy and how it meets demand is
16 complex. This is what makes resource planning a challenge. A utility can
17 have a positive market margin and still rely on the market to fill in when its
18 intermittent generation cannot provide energy.

19 **Q. Are there other ways in which you view that Liberty has been selective**
20 **in its rebuttal in this case?**

21 A. Yes. Mr. Doll insists that Liberty's resource planning decisions are made
22 through rigorous, transparent resource planning processes which justify the
23 addition of two small combustion turbines at Riverton not larger
24 combustion turbines because the decision to add these turbines was based
25 on analytic resource plan modelling. However, Liberty witness Todd W.
26 Tarter, testifies in rebuttal that "[g]iven the magnitude of [changes in SPP's
27 resource accreditation], adjustments to preferred resource plan between IRP

1 cycles are not only reasonable – they are necessary.” Mr. Doll provides
2 testimony that Liberty follows the results of its resource planning process
3 because it is robust and rigorous. Mr. Tarter provides testimony that Liberty
4 modifies its decisions based on industry direction.

5 **Q. Are you aware of any resource decisions made by Liberty that were not**
6 **a result of the resource planning process?**

7 A. Yes. In case no. EO-2018-0092, Liberty said it was seeking approval of its
8 plan to add 800 MW of wind project generation with the following
9 justification:

10 Empire has recently undertaken an analysis of whether it can
11 bring savings to its customers by taking advantage of the
12 historically low cost of acquiring new wind generation using
13 tax equity financing to maximize the use of federal tax
14 incentives such as the PTCs and accelerated depreciation.
15 This analysis, referred to as the “Generation Fleet Savings
16 Analysis,” is premised on Empire’s 2016 Integrated
17 Resource Plan with an update to a few key factors. The
18 Generation Fleet Savings Analysis demonstrates that
19 customers can save up to \$325 million if Empire acts quickly
20 to acquire up to 800 MW of wind generation strategically
21 located in or near its service territory, simultaneously retires
22 its Asbury coal plant and establishes a regulatory asset to
23 recover a return on and of the remaining net plant balances.
24 Empire’s Customer Savings Plan presents a unique
25 opportunity to bring savings to Empire’s customers over the
26 next several decades.⁴⁹

27 Liberty was not asking for these projects to be approved because they were
28 needed to meet customers’ load requirements. The wind projects were not
29 identified as the best way to meet customers’ energy and demand
30 requirements. Instead of a rigorous resource planning process to identify
31 what was needed, the wind projects were input into the most recent resource

⁴⁹ P.4.

1 planning model to see if they would reduce the net present value revenue
2 requirement (“NPVRR”). Other resources were not modeled to see if they
3 would lower the NPVRR more. For example, there was no comparison of
4 the impact on NPVRR and system reliability of using the funds instead to
5 add a combined cycle unit.

6 The decision to add wind projects was not borne out of rigorous
7 resource planning to find what would be best for Liberty’s customers but
8 out of the desire of Algonquin to pursue a net-zero emissions goal.⁵⁰

9 **Q. Are you aware of any other instance where Liberty added generation**
10 **resources that were not in its preferred resource plan before it made**
11 **the decision to add that generation resource?**

12 A. Yes. OPC recently found out that, after telling the Commission in Case No.
13 EA-2019-0010 to help justify the addition of the wind projects that it would
14 not extend its PPA with the Elk River wind project, Liberty recently has
15 extended its contract with the Elk River Wind Project for an additional five
16 years.

17 **Q. Are you alleging that Liberty extending this PPA is imprudent because**
18 **doing so was not in Liberty’s preferred resource plan?**

19 A. While being part of a preferred resource plan can support the prudence of
20 adding a resource, it does not follow that not being in a preferred resource
21 plan means that adding the resource is imprudent.

22 Even so, there are a few things about this PPA that I find concerning.
23 It is my understanding that the contract has a requirement **_____

24 _____
25 _____
26 _____

⁵⁰ OPC witness Seaver, direct testimony, pp. 2 – 3.

1 _____
2 _____ **

3 **Q.** ** _____
4 _____
5 _____ **?

6 **A.** Mr. Doll explains in his rebuttal testimony why the Commission should be
7 okay with continued losses due to Liberty’s current contracts with the Elk
8 River and Meridan Way wind project with the following justification:

9 A PPA price reflects an “all-in” cost of generation, unlike
10 utility-owned generation where only fuel costs are reflected
11 in the marginal cost comparison to market revenues. By
12 design, market revenues will not necessarily cover the all-in
13 PPA cost in any given period.

14 While Mr. Doll was writing about Liberty’s current contracts with the Elk
15 River and Meridian Way wind project PPAs, ** _____
16 _____ **

17 **Q.** Was Mr. Doll justifying Liberty paying more for the wind energy from
18 these PPAs because there is no capacity payment in contract?

19 **A.** That is his justification. The only payments detailed in these contracts are
20 for energy.

21 **Q.** Do the capacity costs of long-term contracts flow through Liberty’s
22 FAC?

23 **A.** No. Capacity is considered a fixed cost. The cost of fuel does not change
24 with respect to the amount of capacity. The cost of fuel varies according to
25 energy. Therefore, only the cost of energy provided through PPAs is
26 supposed to be included in Liberty’s FAC.

27 By agreeing to pay for the capacity through the energy cost, Liberty
28 has avoided the exclusion of capacity costs from the FAC.

1 **Q. Has Liberty drawn to the Commission's attention what it is doing, i.e.,**
2 **that it is paying more for the wind energy from PPAs because there is**
3 **no capacity payment in them and that this effectively will allow it to**
4 **flow capacity costs through its FAC?**

5 A. No.

6 **Q. To your knowledge is this an issue of first impression before this**
7 **Commission?**

8 A. Yes. This is the first time that Liberty has revealed that it was paying for
9 capacity through its energy price. OPC will be evaluating whether or not
10 it will bring this up in the next Liberty FAC prudence audit and in future
11 changes to the FAC rate.

12 **Q. Do you have any other concerns with Liberty extending its Elk River**
13 **PPA?**

14 A. Yes. Mr. Doll has told the OPC ** _____

15 _____
16 ** I am concerned that the capacity value for this site will
17 decrease since the SPP will be changing how it accredits wind resources in
18 2026.⁵¹

19 **Q. Why are you expressing these concerns about this resource now?**

20 A. While it is after the point in time that Liberty signed the contract extension,
21 it is as close to that time as OPC can get to first express concerns. If we,
22 after getting more information regarding this contract, decide that it was
23 imprudent for Liberty to enter into the contract, OPC will have this
24 testimony to show that we had and raised these concerns as close to the time

⁵¹ Liberty witness Tarter rebuttal testimony, p. 13.

1 Liberty executed the contract extension and after it learned of the extension
2 as it could.

3 **Q. Does this not lead credence to Mr. Dolls assertion that OPC is quick to**
4 **claim imprudence?**

5 A. It does. However, it also explains why. We have heard the cries of
6 “hindsight” and the Commission’s history of relying on those cries, and we
7 are doing our best to avoid these in the future. But that means the
8 Commission will hear more sooner regarding our concerns about utility’s
9 resource planning decisions.

10 **Q. Is it your testimony that Liberty should just stick to its preferred**
11 **resource plan?**

12 A. No. Opportunities arise and changes happen. As Mr. Tarter testifies,
13 changes between triennial resource plans are not only reasonable, but they
14 are also sometimes necessary. The goal of the current resource planning
15 rules⁵² are not to get a prescriptive result that must be followed but to require
16 the electric utilities to look at a wide range of alternatives given different
17 uncertain factors. The Commission’s rule 20 CSR 4240-22.080 Filing
18 Schedule, Filing Requirements, Section (12) recognizes that there will be
19 changes to the electric utility’s resource plans and requires electric utilities
20 to notify the Commission within 60 days of any change to its preferred
21 resource plan. More than one utility has filed a changed preferred plan
22 outside of its triennial and update integrated resource plan filings.

⁵² 24 CSR 4240-22 Electric Utility Resource Planning.

1 **Q. Are you aware of any other instances where these two witness have**
2 **been selective in the testimony they rely on for portraying their or other**
3 **parties' positions on an issue before the Commission?**

4 A. Yes. Mr. Doll extols the provision of transmission congestion
5 revenue/auction revenue rights ("TCR/ARR") revenues as making
6 unprofitable wind PPAs, profitable.⁵³ However, Mr. Tarter tells the
7 Commission that it should not accept OPC witness Angela Schaben's
8 normalized TCR/ARR revenues of \$47 million that are based on the past
9 five years of revenues and should instead use his recommendation of \$24
10 million because of changes at the SPP.⁵⁴ While he does not come out and
11 directly say it, it seems as if it is Mr. Tarter's belief that TCR/ARR revenues
12 are going to be reduced. On the other hand, Mr. Doll is touting the
13 TCR/ARR revenues as making unprofitable PPAs profitable with no
14 mention of the likelihood of these revenues being diminished.

15 **Q. What is your view of Mr. Doll's rebuttal to your direct testimony?**

16 A. I would summarize Mr. Doll's rebuttal testimony as a lot of fluff,
17 accusations, and very little substance. He makes numerous claims without
18 providing any support for them.

19 **Response to the Rebuttal Testimony of Liberty Witness Brian Berkstresser**

20 **Q. What is Liberty witness Brian Berkstresser's response to your direct**
21 **testimony on Liberty's lack of maintaining Riverton units 10 and 11**
22 **before and during Storm Uri?**

23 A. Mr. Berkstresser responded that, because the Commission found no
24 evidence that would support a finding of imprudence regarding

⁵³ Liberty witness Doll rebuttal testimony, p. 10.

⁵⁴ Liberty witness Tarter rebuttal testimony, p. 11.

1 maintenance at these plants, there is no basis for my position that lack of
2 maintenance caused the plants to be unavailable.

3 **Q. Does finding no evidence of imprudence mean that Liberty properly**
4 **prepared Riverton units 10 and 11 so that they would be ready to run**
5 **during Storm Uri?**

6 A. No. As I described in my rebuttal testimony, a wide range of actions can be
7 considered prudent. Some of these actions correspond with good results
8 and some with bad results.

9 The facts are that Liberty could not utilize Riverton 10 or Riverton
10 11 units during Storm Uri.⁵⁵ While there was limited natural gas available,
11 these units were dual fuel units having the ability to burn fuel oil in addition
12 to natural gas. According to Utilicast Report provided in Case No.
13 EO-2022-0040, Riverton 10 and 11 had not been tuned and prepared to run
14 in the winter months.⁵⁶

15 Regardless of whether or not there was a finding of evidence of
16 imprudence that does not mean that proper maintenance was conducted to
17 prepare the plants for Storm Uri. Again, this is not about prudence or
18 imprudence. It is about whether or not actions were taken to prepare these
19 units for this winter storm.

20 **Q. Does this conclude your surrebuttal testimony?**

21 A. Yes, it does.

⁵⁵ Case No. EO-2022-0040, Rebuttal testimony of Staff witness Jordan Hull, p. 3.

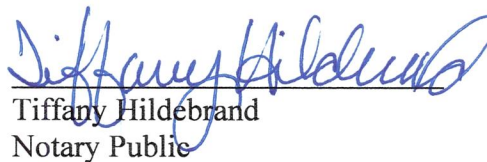
⁵⁶ *Id.*, p. 3.

In the Matter of the Request of The)
 Empire District Electric Company d/b/a)
 Liberty for Authority to File Tariffs) Case No. ER-2024-0261
 Increasing Rates for Electric Service)
 Provided to Customers in Its Missouri)
 Service Area)

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

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

Subscribed and sworn to me this 15th day of September 2025.



My Commission expires August 8, 2027.