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

The Office of the Public Counsel's Reply Brief

Respectfully submitted,

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December 23, 2025

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COMES NOW the Office of the Public Counsel and for its Reply Brief states:

Introduction

Due to the short six days between when parties filed their initial briefs (December 17, 2025) and the due date of reply briefs (December 23, 2025), Public Counsel has limited the scope of its replies. That Public Counsel does not reply to argument made by another party in its initial brief is not concession by Public Counsel to that argument. Public Counsel is not abandoning any argument it made in its initial brief or any reason it gave for objecting to a settlement agreement.

All other parties but Consumers Council of Missouri urge the Commission to adopt the non-unanimous *Supplemental Stipulation and Agreement* they filed on December 12, 2025, which modifies their prior October 6, 2025, *Non-Unanimous Global Stipulation and Agreement*. They argue that they are a diverse group of interests. They are not. They are the Commission's Staff, which is comprised of Commission employees, Liberty, whose obligations are to its shareholder Liberty Utilities Co., Midwest Energy Consumers Group, which "represent[s] the interests of large commercial and industrial users of electricity, water, and natural gas throughout the State of Missouri",[1] and Renew Missouri Advocates d/b/a Renew Missouri, which "is a non-profit policy group whose mission is to transform Missouri into a leading state in renewable energy and energy efficiency."[2]

In contrast, those who opposed the *Supplemental Stipulation and Agreement* represent a broad swath of interests. They are Public Counsel, who represents and protects the interests of the public,[3] and Consumers Council of Missouri, which is "dedicated to educating and empowering consumers statewide and to advocating for their interests."[4]

[1] *Midwest Energy Consumers Group Application to Intervene*, EFIS Item No. 43.
[2] *Renew Missouri Advocates Application to Intervene*, EFIS Item No. 42.
[3] § 386.710, RSMo.
[4] EFIS Item No. 131.

By the *Supplemental Stipulation and Agreement* the signatories to it are proposing that the Commission leave Liberty's rates unchanged until certain criteria are met in the future and that when those criteria are met then Liberty's rates then would increase to new rates determined now. Public Counsel first addresses its view of the Commission's powers to do that.

Commission Powers

Commission powers must be expressly granted by or clearly necessarily implied from the Commission's enabling statutes. *State ex rel. Mogas Pipeline LLC v. Mo. PSC*, 366 S.W.3d 493 (Mo. 2012); *State ex rel. Fischer v. Pub. Serv. Com.*, 670 S.W.2d 24, 26 (Mo. Ct. App. 1984). Public Counsel has found neither express nor implied statutory authority for the Commission to decide now what Liberty's rates will become at some unknown future point in time. It is logically inconsistent that this Commission could now evaluate all relevant factors and conclude that Liberty's rates should not increase and contemporaneously also conclude how they should increase. Consistent with Commissioner Maida Coleman's statement—"My first thought was I didn't want to give them a dime"—during the Commission's November 5, 2025, open meeting, the Commission should conclude that Liberty's rates should not increase now and wait until a future rate case to evaluate the then all relevant factors for whether and how Liberty's rates should be changed.

While Public Counsel is unaware of any authority for the Commission to approve rates that spring into effect in the future upon satisfaction of one or more customer service criteria, the Commission does have express statutory authority to initiate a rate case at any time to inquire into

the propriety of Liberty's rates. § 393.140(5), RSMo. ("Whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that the rates or charges or the acts or regulations of any such persons or corporations are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law, the commission shall determine and prescribe the just and reasonable rates and charges thereafter to be in force for the service to be furnished, . . ."). The Commission could use the adequacy of Liberty's customer service as a "trigger" for initiating such a case. It already has Case No. OO-2025-0233 open for investigating Liberty's billings and customer service. Further, if it does have the power to allow new rates to "spring" into effect in the future, to inform the public, the Commission should require published notice for at least thirty days in advance of when they "spring" into effect. § 393.140(11), RSMo.

Commission Independent Determinations

To act lawfully and reasonably, the Commission cannot merely adopt the terms of the *Supplemental Stipulation and Agreement* without making traditional cost-of-service ratemaking findings of facts and conclusions of law that support those terms, and which are sufficient for court review.

The *Supplemental Stipulation and Agreement* and *Partial Stipulation and Agreement* are contracts. See *State ex rel. Riverside Pipeline Co., L.P. v. PSC of Mo.*, 215 S.W.3d 76, 84 (Mo. 2007)[5] Regardless of negotiated contracts such as franchise agreements and the settlement

[5] "A stipulation, like any other settlement agreement, must be construed using ordinary rules of contract construction. *Andes v. Albano,* 853 S.W.2d 936, 941 (Mo. banc 1993). A contract must be construed as a whole so as to not render any terms meaningless, and a construction that gives a reasonable meaning to each phrase and clause and harmonizes all provisions is preferred over a construction that leaves some of the provisions without function or sense. *Dunn Indus. Group, Inc. v. City of Sugar Creek*, 112 S.W.3d 421, 428 (Mo. banc 2003)."

contracts here, the Commission is obligated to independently determine just and reasonable rates.[6] It is reversible error for the Commission not to consider a relevant factor a party has raised.[7]

Here, unless it finds the Liberty customer service factor overwhelms all other factors for increasing rates, the Commission must resolve the issues before it which are relevant to determining just and reasonable Liberty rates to become effective now. Public Counsel submits that, except for subpart C of Issue 142 (new Customer First regulatory asset), all of the listed issues are relevant to such just and reasonable Liberty rates.

As Public Counsel argued in its *Motion for Reconsideration or, in the alternative, Application for Rehearing* filed on December 12, 2025, in Case No. EO-2025-0154, the Commission is required to make written findings of fact and conclusions of law supporting its decisions that are sufficient to enable a court to conduct a meaningful review. *State ex rel. Monsanto Co. v. Pub. Serv. Com.*, 716 S.W.2d 791 (Mo. 1986). This means that if it were to order the terms of the *Supplemental Stipulation and Agreement* and *Partial Stipulation and Agreement* then independent of that agreement the Commission must make findings of fact and conclusions of law on each of the contested issues which collectively result in the terms in that agreement. Public Counsel questions whether that is possible on the record in this case.

While Public Counsel opposed both the *Supplemental Stipulation and Agreement* and the *Partial Stipulation and Agreement*, the signatories to the *Partial Stipulation and Agreement*

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[6] See for example, *State ex rel. Wash. Univ. v. Pub. Serv. Com.*, 308 Mo. 328, 272 S.W. 971 (1925) (the police power over rates exercised by the Commission is unaffected by contractual rates) and *Kan. City Power & Light Co. v. Midland Realty Co.*, 338 Mo. 1141, 93 S.W.2d 954 (1936). And when determining just and reasonable rates the Commission must consider "all relevant factors." *State ex rel. Mo. Water Co. v. Pub. Serv. Com.*, 308 S.W.2d 704, 718-19 (Mo. 1957) (rates).

[7] *State ex rel. AG Processing, Inc. v. PSC*, 120 S.W.3d 732 (Mo. 2003) (merger). See also *Osage Util. Operating Co. v. Mo. Pub. Serv. Comm'n*, 637 S.W.3d 78, 93 (Mo. Ct. App. 2021) ("Although no exhaustive list has been announced of the considerations that may influence whether a sale is detrimental to the public, Missouri courts have held that the Commission is to consider all relevant factors in issuing its decisions and orders. *See AG Processing*, 120 S.W.3d at 736 (holding that the Commission erred in failing to consider the reasonableness of an acquisition premium as part of a cost analysis in evaluating whether a proposed merger would be detrimental to the public)").

included the following language in paragraph no. 1: "If this Agreement is objected to by any party and thus cannot be treated as unanimous and approved as such under the Commission's rules, the Signatories will use this Agreement as their joint position for the evidentiary hearing, with all Signatories presenting and supporting this Agreement as the proper resolution of every issue." Despite that language both Liberty and Staff advance arguments in their initial briefs that are based on positions they took before they executed the *Partial Stipulation and Agreement*.

Issues

Supplemental Stipulation and Agreement

Public Counsel hereby incorporates herein the reasons it stated for opposing the *Supplemental Stipulation and Agreement* in its December 16, 2025, *Objection to the Supplemental Stipulation and Agreement filed December 12, 2025*. Further, Public Counsel points out that the *Supplemental Stipulation and Agreement* unreasonably excludes joint and collective accounts from the three consecutive months customer service metric of eliminating instances where bills are issued with a usage period of less than 26 or more than 35 days when Liberty is changing billing dates for such accounts to make them the same.[8] According to Liberty the differences in billing dates for these accounts is a major source of its failure to comply with Commission rule 20 CSR 4240-13.020: "The billing challenges for collective and joint account customers are primarily due to timing variations in meter reads across multiple accounts and/or commodities, which can lead to delays and inconsistencies in consolidated billing."[9] If this three consecutive month metric is used, rather than excepting joint and collective accounts from it when billing dates are

[8] *Supplemental Stipulation and Agreement*, ¶ 3.e.: The Company shall eliminate instances where bills are issued with a usage period of less than 26 or more than 35 days, with the exception of initial bills, final bills, or corrected bills. This metric will exclude only joint and collective accounts that were actively being realigned during the month in question (as per the meter read alignment process detailed in Case No. EE-2026-0065).
[9] Case No. EE-2026-0065, *Application for Temporary Variances, Request for Waiver, and Motion for Expedited Treatment*, Application ¶ 6.

transitioning, the metric should apply after the billing dates are transitioned. To do otherwise presumes that all failures to comply with the 26 to 35 days billing window during the transitional billing month is due to the preexisting differences in the account billings being consolidated. The "cure" should precede evaluation of its effectiveness.

The *Supplemental Stipulation and Agreement* says, "No later than the 15th of a month, the Company shall file a status report for the prior month in this docket indicating the number of instances of noncompliance with the provisions provided below, and at least a summary explanation of the causes or reasons for those instances of noncompliance." It does not say what happens if Liberty fails to file a status report by the 15th of a month. At a minimum, if Liberty fails to timely file a status report, then the requirement of satisfying the customer service metrics for three consecutive months should reset.

With the exception of instances of noncompliance, the *Supplemental Stipulation and Agreement* does not require Liberty to file even summary information regarding the metrics in the report. If the Commission employs customer service metrics as a trigger for new rates, then the Commission should require Liberty to file reports that include detailed, not summary, information for each metric which documents and supports Liberty's compliance or noncompliance. Those reports should be verified by persons with actual personal knowledge of the information in the reports,

The *Supplemental Stipulation and Agreement* appears to contemplate that Liberty needs only to comply with each customer service metric for three consecutive months, not that it must comply with all of the customer service metrics during three consecutive months. If the Commission employs customer service metrics as a trigger to new rates, then it should require Liberty to comply with each and every metric during a consecutive three-month period.

The *Supplemental Stipulation and Agreement* is silent as to who determines when Liberty has complied with a customer service metric and includes no process for anyone to challenge that determination. It should. At a bare minimum, if the Commission employs customer service metrics as a trigger to new rates, then every party to this case should have access to Liberty's monthly reports and a full and fair opportunity to challenge whether Liberty has satisfied each metric, including the right to discovery and an evidentiary hearing.

With regard to deviations from customer service metrics, the *Supplemental Stipulation and Agreement* provides, "Limited deviations may be permitted with documented justification for Staff review. Any deviations must be thoroughly documented and such documentation provided to Staff for its review." The agreement is devoid of any criteria for permitting deviations or who it is that may permit them. Aside from this vagueness in the agreement, if the Commission orders customer service metrics that must be complied with only for three consecutive months, then Public Counsel opposes allowing Liberty to deviate from those metrics.

While Public Counsel has identified the foregoing customer service metric issues with the *Supplemental Stipulation and Agreement*, filed December 12, 1015, Public Counsel believes there are others.

Rate of Return

In its initial brief Staff incorrectly states that it is recommending a rate-of-return ("ROR") of 7.02% for purposes of deriving Empire's revenue requirement. Staff proposed that ROR until it filed its true-up rebuttal case. Staff's 7.02% ROR was based on its witness Christopher C. Walters' return on equity analysis and Empire's *pro forma* projection of its capital structure and cost of debt as of September 30, 2024, although both Empire and Staff filed their direct cases

several months after September 30, 2024. They filed their direct cases on February 26, 2025, and July 2, 2025, respectively.

Staff changed its ROR recommendation after Empire updated its capital structure and cost of long-term debt in its true-up direct case based on a "budgeted" June 30, 2025, promissory note with an affiliate. The September 17, 2025, true-up direct filing date is when Staff should have filed its recommendations for Empire's capital structure and cost of long-term debt based on the true-up cutoff date of March 31, 2025. When the Commission ordered a March 31, 2025, true-up cutoff date for selected items including capital structure and cost of debt on April 23, 2025, it also ordered, "Parties may propose the incorporation of discrete adjustments beyond the true-up period, provided they are known and measurable."

Despite the Commission-ordered true-up cutoff date of March 31, 2025, for which Empire and Staff advocated and the fact that when it filed its true-up rebuttal case on September 22, 2025, Empire still had not executed the "budgeted" June 30, 2025, promissory note, Staff adopted Empire's updated capital structure and cost of long-term debt, and changed its ROR recommendation to 7.16%.[10] Even now Empire still has not executed this promissory note.[11] Neither Empire nor Staff changed their return on equity recommendations during this case. That Staff witness Christopher C. Walters performed no independent analysis of Empire's capital structure or cost of debt is confirmed by his following testimony during the evidentiary hearing: "Staff engaged me to assess the Company's overall cost of equity and make a recommendation

[10] Ex. 178, Staff witness Christopher C. Walters True-Up Rebuttal testimony, p. 2.

[11] Kansas Corporation Commission Docket No. 26-EPDE-131-SEC, *In the Matter of the Application of The Empire District Electric Company for Authorization to Issue up to $400 Million of Long-Term Debt to Liberty Utilities Co. to Repay Short-Term Intercompany Borrowings and for Other Corporate Purposes*, opened and application filed October 29, 2025

based on my analysis.[12]" Staff did not independently analyze appropriate capital structures and cost of debt for setting Empire's rates, it merely adopted what Empire did.

Empire's affiliate-based capital structure before it applied its "budgeted" June 30, 2025, affiliate promissory note lacked a sound market basis, but Algonquin's manipulation of Empire's capital structure to match Algonquin's constant ratemaking target of 53% for Empire further magnifies that capital structure's lack of basis in economic reality.

In its initial brief Liberty/Empire makes a number of misleading and erroneous statements regarding Public Counsel's evidence and arguments. The following are with regard to Public Counsel's evidence and arguments regarding ROR

On page 11 of its initial brief Liberty states, "Interestingly, the 7.01% overall rate of return included in the Global Settlement is close to the 6.98% overall rate of return shown by OPC witness Mr. Murray in his surrebuttal/true-up testimony where he used what he considered to be the currently most economical capital structure. Ex. 211, Murray Surreb./True-Up, p. 13, lines 1-10." What Mr. Murray says in that testimony follows:

> **Q. Based on your analysis of Empire's, LUCo's, and APUC's capital structures for this case, which one is currently the most economical?**
>
> A. APUC's capital structure is currently the most economical based on my estimate of an implied common equity ratio of 50.46%. Applying APUC's embedded cost of long-term debt (excluding the 60-year subordinated notes and Empire's securitization debt) of 4.67% to the remaining 49.54% of the capital structure and a 9.25% ROE to the 50.46% common equity ratio, the pre-tax ROR is 8.44% (*see* Schedule DM-S-3). This compares to a pretax ROR of 8.75% using LUCo's actual capital structure and adjusted cost of long-term debt at March 31, 2025 (*see* Schedule DM-S-4), and a pre-tax ROR of 8.78% using Empire's March 31, 2025, capital structure (*see* Schedule DM-S-2).

[12] Tr. 12:20.

As that testimony makes clear Mr. Murray's analysis resulting in Algonquin currently having the most economical capital structure is predicated on using his estimate of an imputed common equity ratio of 50.46% as shown in his schedule DM-S-3. Mr. Murray presented the impacts of using his imputed common ratio at March 31, 2025, to compare it to using Empire's and LUCo's actual capital structures at March 31, 2025, instead. If Algonquin's actual capital structure is used instead of Mr. Murray's imputed Algonquin capital structure then the most economical ROR is 6.81%.[13] This 6.81% ROR is insightful because it is based on Algonquin's actual higher cost of debt and Algonquin's actual capital structure of 42.95% common equity, which is much lower than the common equity ratio of 53% Algonquin internally assigned to Empire.[14]

Third parties no longer purchase Empire debt; however, in its initial brief on page 18 Liberty asserts that "Empire's cost of debt is directly observable and reflects the risk profile of the issuer, ..." One easily could infer that the "issuer" is Liberty/Empire, but because Liberty/Empire does not issue debt that inference would be mistaken. While Empire obtains its capital from Algonquin and LUCo who, in turn obtain their capital from third-party security issuances, Liberty/Empire only executes financing agreements with its affiliates, and the costs assigned to them are based on LUCo's risk profile.[15] Until LUCo's January 2024 debt issuances, the cost of its debt was based on LUCo's more leveraged capital structure, which APUC expressly communicated to investors was possible due to LUCo being the holding company for APUC's North American regulated utility companies. Except for LUCo's debt issuance in January 2024,

[13] Ex. 209, Public Counsel witness David Murray direct testimony, pp. 20-21 and Schedule DM-D-4.
[14] *Id.*
[15] Ex. 209, Public Counsel witness David Murray direct testimony, pp. 15-16; Ex. 210, Public Counsel witness David Murray rebuttal testimony, pp. 18-21.

LUCo's actual common equity ratios when it issued debt to third-party investors was typically at the lower-end or even below its targeted common equity ratio of 45% to 50%.[16]

The foregoing explains the lower common equity ratios the Commission adopted for purposes of setting Liberty/Empire's ROR in its 2019 rate case and those of its Missouri affiliates, Liberty Utilities (Midstates Natural Gas) Corp. ("Liberty Midstates") and Liberty Utilities (Missouri Water) Water ("Liberty Water"), in their preceding rate cases.[17] If Liberty/Empire meant the vague "issuer" to be LUCo, then Public Counsel agrees that the cost of debt assigned to Empire reflected LUCo's stable 'BBB' investment grade credit rating and more leveraged capital structure which existed before APUC and LUCo experienced increased business and financial risk associated with its non-regulated operations and uncertainty related to its anticipated acquisition of Kentucky Power Company and AEP Kentucky Transmission Company, Inc. (together the "KY Assets") after APUC reported its third quarter 2022 earnings. APUC's anticipated acquisition of the KY Assets prompted it to contribute a higher proportion of common equity into LUCo's capital structure in anticipation of assuming a large amount of debt held by KY Assets.

Due to termination of the anticipated acquisition of KY Assets, LUCo had a capital structure which consisted of a much higher proportion of common equity than it had typically targeted to finance its regulated utility companies, including Liberty/Empire.[18] Despite LUCo's higher common equity ratio, the cost of the debt it issued in January 2024 was more consistent with a 'BBB-' rated utility.[19] Although this higher cost of debt was due to financial uncertainties unrelated to Empire's operations, APUC still assigned the cost of this debt to Empire's current and projected affiliate notes issued to LUCo. APUC assigned Empire LUCo's higher cost of debt

[16] *Id.,* pp. 15-16; *Id.,* pp. 16-17
[17] Case Nos. ER-2019-0374, GR-2014-0152 and WR-2018-0170, respectively.
[18] Ex. 210, Public Counsel witness David Murray rebuttal testimony.
[19] Ex. 209, Public Counsel witness David Murray direct testimony, pp. 21-22 and Schedule DM-D-5.

despite Empire still assigning Empire a 53% common equity ratio for ratemaking purposes. Before APUC acquired Empire, Empire recommended a ratemaking common equity ratio of approximately 49%, which allowed for a 'BBB' credit rating. Using this higher common equity ratio of 53% together with a 'BBB-' cost of debt for Liberty/Empire for making rates would result in Empire's ratepayers paying a higher ROR due to Empire being affiliated with APUC.[20] If Liberty/Empire's cost of debt and capital structure are not properly adjusted as Public Counsel witness Mr. Murray recommends, then its customers will realize a detriment caused by APUC's acquisition of Empire. Before that acquisition Empire directly accessed the debt and capital markets. After that acquisition APUC has limited Empire's access to capital to financial arrangements with its affiliates APUC and LUCo who, in turn directly access the capital and financial markets.

In its initial brief on page 18 Liberty states, "Mr. Murray tested the reasonableness of his cost of debt assumptions by comparing them to the cost of debt of Evergy Missouri West (4.34%) and Evergy Metro (4.45%)." What Liberty does not acknowledge is that Mr. Murray also compared his recommended embedded cost of long-term debt to his estimates of Ameren Missouri's (4.3%) and Spire Missouri's (4.29%) embedded costs of long-term debt as of March 31, 2025. Both are consistent with Mr. Murray's recommended embedded cost of long-term debt of 4.3% for Empire.[21] Further, Mr. Murray identified the widely disparate costs of debt Algonquin assigned to Empire's affiliates, Liberty Midstates (5.58%) and Liberty Water (4.97%) in their recent Missouri general rate cases.[22] Given that Algonquin assigns LUCo's Missouri utilities debt costs based on LUCo's corporate cost of debt for ratemaking purposes, these disparate costs of

[20] Ex. 209, Public Counsel witness David Murray direct testimony, p. 19 and Ex. 210, Public Counsel witness David Murray rebuttal testimony, p. 15.
[21] Ex. 209, Public Counsel witness David Murray direct testimony, pp. 22-23.
[22] Ex. 210, Public Counsel witness David Murray rebuttal testimony, pp. 18-25.

long-term debt illustrate the arbitrary and inconsistent nature of Algonquin's internal cost of debt assignment process.

In its initial brief Empire charges, "Mr. Murray failed to consider that interest rates on government and utility bonds have increased substantially since 2020" when developing his recommended ROE. As Public Counsel pointed out in its initial brief, Mr. Murray was aware that Empire, and the utility industry in general, experienced all-time lows in the cost of capital in 2020, and considered that when analyzing what return on equity to recommend to the Commission for setting Empire's rates in this case. He was also aware that Algonquin was aware of these circumstances when conducting its own internal cost of capital analyses. Those conditions resulted in an extraordinary margin between Empire's authorized ROE to its COE in Liberty/Empire's 2019 Missouri general rate case. While the cost of capital certainly has increased since 2020, the cost of equity is still below Mr. Murray's recommended ROE of 9.25%, which is also corroborated by APUC's own internal cost of capital analyses.

Despite other parties' claims to the contrary, of the parties in this case who looked at cost of capital, Mr. Murray provided the most in depth and thoughtful analysis of the impact APUC's ownership and financing arrangements have had on the cost of capital APUC has assigned to Empire. Mr. Murray was well positioned to provide his perspective because he participated and made recommendations related to APUC's proposed acquisition of Empire in 2016, and has followed Empire through every Missouri general rate and financing case it has filed since then. Mr. Murray also performed analyses and sponsored testimony in Empire's rate cases prior to APUC acquiring it on January 1, 2017. Mr. Murray understood the intent of the conditions indirectly imposed on APUC when the Commission approved APUC indirectly acquiring Empire through LUCo. Because Mr. Murray understood that Empire would likely no longer be financed

on a stand-alone basis, it was crucial to attempt to protect Empire's ratepayers from manipulation of an internally-assigned capital structure and cost of debt. Unfortunately, despite the conditions imposed in the acquisition case, many of Empire's vulnerabilities to these manipulations have materialized. Mr. Murray's recommended ROR reflects his best efforts to eliminate the realization of detriments to Empire's ratepayers. For these reasons, the Commission should adopt Mr. Murray's recommended ROR to set Empire's revenue requirement.

In various other areas of Empire's brief in which it addresses Public Counsel's position that Empire should not be authorized any rate increase in this case (*see* Empire's brief at Issue Nos. 142 and 163) Empire claims that doing so would cause its access to reasonably priced capital to be impaired. Empire's position is purely hypothetical because Empire no longer directly accesses the capital markets. As Mr. Murray demonstrated, Empire's affiliations with APUC and LUCo have already caused APUC to assign Empire an unreasonably high cost of capital. Although the cost of Empire's capital is no longer a function of its stand-alone risk profile, this begs the question of what it would be if it were still a stand-alone company. Of course, it is impossible to "put the genie back in the bottle," but as Mr. Murray testified, Empire's recent stand-alone credit metrics have been more consistent with S&P's benchmarks for an 'A'/'A-' credit rating. This is in part due to APUC's assignment of a higher common equity ratio to Empire to justify a higher revenue requirement, but it is also due to healthy and consistent cash flows Empire generates from its regulated utility investments. Therefore, the Commission should dismiss Empire's hypothetical arguments.

Administrative and General Expenses

On pages 73-74 of its initial brief Liberty charges, "Ms. Schaben did not submit any detailed supporting documentation, workpapers or analysis demonstrating that the A&G costs

incurred by Empire were inappropriate, unreasonable, or inaccurately recorded. Her proposed disallowance was based solely on general comparisons and subjective opinion rather than substantive evaluation of Empire's actual cost drivers or regulatory obligations." Liberty seems to misunderstand that it has the burden of proof, *i.e.*, both the burden of producing evidence and the burden of persuading the Commission.[23] Regardless, Liberty focuses on its claim that the analyses Ms. Schaben relies on to support her choice to use the 2024 FERC Form 1 A&G costs of Liberty, Ameren Missouri, Evergy Missouri Metro, and Evergy Missouri West to calculate the per customer A&G cost of each and then impute the average of Ameren Missouri's, Evergy Missouri Metro's, and Evergy Missouri West's per customer A&G cost to Liberty to arrive at her recommendation that Liberty's A&G costs included in the revenue requirement used for setting its rates should be $24,483,862.

Liberty claims that Ms. Schaben's comparison of Liberty's, Ameren Missouri's, Evergy Missouri Metro's, and Evergy Missouri West's A&G costs per customer over the years 2013 to 2024 is flawed because she did not normalize the annual data. It claims her reliance on Empire's actual A&G costs in 2013 and 2014 to support her recommendation is worthless because that data is too old. Both claims are without merit.

Liberty correctly states that "the accounting term 'normalized' referred to 'adjusting a company's financial statements to remove or account for non-reoccurring, or unusual or discretionary items.'" In the ratemaking context what the court said in *State ex rel. GTE N., Inc. v. Mo. Pub. Serv. Com.*, 835 S.W.2d 356 (Mo. Ct. App. 1992), at page 368 of its opinion more accurately describes the use of normalization in its description of the test year process for setting rates that follows:

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[23] §393.10.2, RSMo.; *PUC v. Office of Pub. Counsel (In re Emerald Pointe Util. Co.)*, 438 S.W.3d 482, 490 (Mo. Ct. App. 2014).

> "The accepted way in which to establish future rates is to select a test year upon the basis of which past costs and revenues can be ascertained as a starting point for future projection." *State ex rel. Southwestern Bell Tel. Co. v. Public Serv. Comm'n*, 645 S.W.2d 44, 53 (Mo. App. 1982). A test year is a tool used to find the relationship between investment, revenues, and expenses. Certain adjustments are made to the test year figures; "normalization" adjustments used to eliminate non-recurring items of expenses or revenues and "annualization" adjustments used to reflect the end-of-period level of investment, expenses and revenues. Adjustments are also made for events occurring outside the test year. The criteria used to determine whether a post-year event should be included in the analysis of the test year is whether the proposed adjustment is (1) "known and measurable," (2) promotes the proper relationship of investment, revenues and expenses, and (3) is representative of the conditions anticipated during the time the rates will be in effect.

Ms. Schaben used multiple years of FERC Form 1 annual A&G costs for multiple utilities for comparison to Liberty's annual A&G costs.[24] Liberty's annual A&G costs consistently were materially higher after 2019 on a per customer basis. During the pendency of this case, as she testified, she updated her analysis to eliminate some double counting of each utilities' A&G costs in 2018 in her original analysis.[25] Her corrections can be found in her rebuttal workpapers. Because the comparison of each utility's per customer A&G costs showed that they changed relatively consistently she used the most recent year—2024—data as the basis for calculating a proposed A&G cost to use in Liberty's revenue requirement in this case. In short, Ms. Schaben's analysis is not deficient because she did not normalize each year of FERC Form 1 annual data. The results show clear trends in that data over the years 2013 to 2024 which do not indicate the data requires normalization. Further, Liberty does not identify any factor that it asserts requires that any of the FERC Form 1 data be normalized.

Liberty's assertion that the Commission should ignore Ms. Schaben's alternative analysis based on Empire's A&G costs before Algonquin acquired it also is without merit. While Ms.

[24] Ex. 218, Public Counsel witness Angela Schaben direct testimony, pp. 7-8, Tables 3&4; Ex. 219, Public Counsel witness Angela Schaben rebuttal testimony, p. 68, Tables 1&2.

[25] Ex. 219, Public Counsel witness Angela Schaben rebuttal testimony, pp. 67-68.

Schaben did not rely on that analysis to quantify her recommendation for the A&G cost to include in Liberty ‘s annual revenue requirement, like her comparison analysis, that analysis is valuable as a check on the reasonableness of her recommendation. It should not be summarily dismissed.

Budget Billing a/k/a Average Payment Plan

Liberty's argument for Issue No. 144 is exemplar of Liberty's failure to understand its obligations as a regulated utility. There Liberty admits that its current budget billing calculations differ from the calculations its tariff requires.[26] In its brief Liberty confuses its autopay plan with its average payment plan (budget billing) plan. While they do not override common law, it is Liberty's Commission-approved tariff that governs the relationship between Liberty and its retail customers.[27] As such, all of Liberty's budget billing amount calculations should comply with its tariff in effect. Only after how budget billing amounts are calculated according to its tariff are changed should Liberty change how it performs those calculations to conform to the changed tariff.

Customer Service

Incredibly, despite its poor customer service history, and after agreeing that it meet certain customer service metrics before it can realize any rate increase[28] and that amounts for its investment in Customer First would not accrue in a regulatory asset until after unspecified metrics are met,[29] Liberty argues in its initial brief that it should not be ordered to take specific actions directed at customer service, including to comply with Commission rules and its own tariff arguing that such orders are unnecessary because of what Liberty has done or plans to do. See Liberty's argument that "this is unnecessary" for Issue Nos. 146, 147, 150, 151, 152, 153, 154, 155, and 157.

[26] See Ex. 123, Staff witness Charles Tyrone Thomason, direct testimony, pp. 33-35; Ex. 172, Staff witness Charles Tyrone Thomason, surrebuttal testimony, p. 6.
[27] *State ex rel. St. Louis Cty. Gas Co. v. Pub. Serv. Comm'n*, 315 Mo. 312, 286 S.W. 84 (Mo. 1926) (tariff is binding); *State PSC v. Mo. Gas Energy*, 395 S.W.3d 540 (Mo. Ct. App. 2013) (Cannot abrogate common law).
[28] *Supplemental Stipulation and Agreement*.
[29] *Partial Stipulation and Agreement*, ¶ 7, Customer First Regulatory Asset.

Further, on other customer service issues it states that it does not oppose being ordered to take certain actions although it already has taken actions. See Liberty's argument for Issue Nos. 158. The foregoing shows why the Commission should order Liberty to undertake the actions that are the subjects of the foregoing listed issues. Further, it should order Liberty to demonstrate its compliance with the Commission's orders.

Fuel Adjustment Clause

Liberty's argument for the issues under Fuel Adjustment Clause (Issues 41-43, 85, 90-99) that it used forward projecting natural gas prices in an effort to best estimate "what fuel and market prices are expected during the initial period the FAC base factor is to be in effect"[30] is undercut by its positions on the appropriate test year, update period and true-up period. Although Liberty did not file the tariff sheets that underlie this case until February 26, 2025, it proposed and vigorously argued successfully for a test year of the twelve months ended September 30, 2023, updated through September 30, 2024, and trued-up through March 31, 2025. This Commission uses historical test years as the basis for projecting the future. Generally, historical circumstances closer in time to when new rates will take effect should better reflect the future circumstances when those rates are in effect. As Public Counsel related in its initial brief, pp. 48-52, Liberty used projected gas prices well beyond even the ordered March 31, 2025, true-up cutoff for determining the fuel and market prices it used to develop the FAC base factor it recommends. In *State ex rel. Nixon v. PSC (State ex rel. Pub. Counsel)*, 274 S.W.3d 569, 585-586 (Mo. Ct. App. 2009), the Court quoted the Commission:

> The second problem with using the 2007 budgeted amount to set a level for off-system sales is more fundamental. In Missouri, rates are set using a historical test year. The Commission examines the utility's revenues and expenses for that test year and uses that information to set rates to be charged in the future. The Commission does not use a forward-looking test year based on budgets

[30] Liberty's initial brief, p. 53.

> and projections to set those rates. If it did, [UE] would no doubt appreciate an opportunity to base its rates on what it believes will be higher fuel costs in the coming years. Since the Commission uses historical expenses and revenues to set rates, it would be fundamentally unfair to reach forward to grab a single budget item to reduce [UE]'s cost of service, while ignoring other anticipated costs that might increase that cost of service.

The Court then held:

> The commission has much discretion in determining the theory or method it uses to determine rates. *Id*. Hence, even if Public Counsel presented a valid method for calculating off-systems sales, the commission was free to choose its staff's method over Public Counsel's method. We do not discern that the commission abused its discretion.
>
> As the commission noted, it typically sets a historical test year and uses a utility's revenue and expenses from that year to set rates for the future. *State ex rel. Southwestern Bell Telephone Co. v. Public Service Commission*, 645 S.W.2d 44, 53 (Mo. App. 1982). The commission finding that its staff's production cost models were consistent with its overall test year methodology was reasonable. Also reasonable was the commission's finding that using budget projections for one figure would be fundamentally unfair to UE. The commission did not err in using only historical figures; hence, it was correct that Public Counsel's budget method was flawed.

For the same reasons, to use Liberty's projected natural gas prices, whether through 2025 or 2026 for determining fuel and market prices used to derive a Liberty FAC base factor would be unfair to customers, particularly where, as Public Counsel also related in its initial brief, p. 48, Liberty did not disclose that it was using forecasted natural gas prices.

CONCLUSION

As Public Counsel stated in the conclusion to its initial brief, because of the lengths of time, the number, and how they affect customers, Liberty's customer service issues, including billing issues are so severe that the Commission should (1) determine that Liberty's customer service unacceptably falls far below what its customers deserve; (2) conclude that Liberty is not providing adequate service; and (3) decline to increase Liberty's general electric rates in this or any other case until after Liberty demonstrates that its customer service has become adequate. Further, the

Commission should end Liberty's privilege of having a FAC, but if it does allow Liberty to continue its FAC, then the Commission should exclude from Liberty's FAC Liberty's costs to serve large load customers and change the sharing mechanism to 50/50 (or somewhere in the range of 50/50 to 90/10), but otherwise not make any changes to Liberty's FAC in this or any other case until after Liberty demonstrates that its customer service has become adequate.

Further, should the Commission disagree that Liberty's customer service issues warrant the Commission declining to entertain increasing Liberty's general electric rates, then Public Counsel requests the Commission to adopt Public Counsel's positions, and Staff's where Public Counsel has not taken a position, on each of the contested issues for the reasons set forth in Public Counsel's initial brief and above, and adjust Liberty's rates accordingly.

Respectfully,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 23rd day of December 2025.

/s/ Nathan Williams