BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

STAFF'S REPLY BRIEF

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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	)))))	**File No. ER-2024-0261**

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COMES NOW, the Staff of the Missouri Public Service Commission, and for its *Reply Brief* respectfully states as follows:

Non-Unanimous Global Stipulation and Agreement and List of Issues (Global Agreement)

The Commission has the authority to resolve all or part of this contested case on the basis of a stipulation and agreement, provided that it independently determines that the stipulated result is just and reasonable based upon the record.

As stated in Staff's initial brief, the Commission's rules likewise state that when a stipulation and agreement is not unanimous and an objection is filed, the stipulation shifts procedurally from a settlement to the stipulated position of the signatory parties. The Commission retains authority to decide the case after hearing.[1]

LEGAL STANDARD

Each proceeding for fixing of rates of a public utility company must be determined upon its own facts.[2] The rate of return for a public utility is determined by a calculation

[1] 20 CSR 4240-2.115(2)(D) states that a nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it. All issues shall remain for determination after hearing.

[2] *State ex rel. Missouri Water Co. v. Public Service Commission*, 308 S.W.2d 704, 718 (Mo. 1957).

that factors in: (1) the ratio of debt and equity to total capital; and (2) the cost and (3) weighted cost for each of these capital components.[3]

The Commission has authority under Chapters 386 and 393, RSMo, to regulate public utility rates and to ensure rates are just and reasonable after considering all relevant factors.[4] The United States Supreme Court in the *Hope* case established that the rate making process involves a balancing of the investor and consumer interests.[5] It also established in the *Bluefield* case, that a public utility is entitled to rates that allow a return on the value of its property comparable to returns on investments of similar risks, that is sufficient to assure confidence in the utility's financial soundness and to maintain credit.[6] Missouri courts have upheld that principle in their rulings, balancing the interests of the stakeholders with the public interest.[7] The opinion of a qualified expert may amount to substantial and competent evidence for the purposes of arriving at a conclusion in a case.[8]

The parties may file a stipulation and agreement as a proposed resolution to all or part of the contested case. The Commission may resolve all or part of a contested case on the basis of a stipulation and agreement.[9] If a party chooses to object to all or part of a stipulation and agreement, the stipulation shifts procedurally from being a settlement to the signatory parties stipulated position. As a stipulated position, parties are not bound by

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[3] *State ex rel. Missouri Gas Energy v. Public Service Commission*, 186 S.W.3d 376, 383 (Mo. Ct. App. 2005).
[4] *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 49 (Mo. banc. 1979).
[5] *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944).
[6] *Bluefield Waterworks & Imp. Co. v. Pub. Serv. Commission of West Virginia*, 262 U.S. 679, 43 S. Ct. 675, 67 L. Ed. 1176 (1923).
[7] *State ex rel. Union Electric Co. v. Public Service Commission*, 765 S.W.2d 618, 622 (Mo. App. W.D. 1988).
[8] *State ex rel. General Tel. Co. of Midwest v. Public Service Commission*, 537 S.W.2d 655, 663 (Mo. App. W.D. 1976).
[9] *State ex rel. Monsanto Co. v. Public Service Commission of Missouri*, 716 S.W.2d 791 (Mo. banc. 1986).

the stipulation and may provide additional support of its stipulated position in the evidentiary hearing.

Any objecting parties must identify specific provisions within the stipulation it objects to and must provide justification for each objection. Failing to satisfy the regulations' objection requirement within seven (7) days in accordance with the Commission rule constitutes a waiver.[10]

Eric Vandergriff

Objections Must Be Evaluated Under the Commission's Stipulation Standards

The Commission's rules provide the parties with guidance to which Non-Unanimous Stipulation's operate within its applicable regulatory requirements. Parties may enter into a stipulation and agreement, and parties have an opportunity to object.[11] However, objections do not function as a veto within a proceeding as the Commission is still tasked with deciding on unresolved issues.

Objections, in the context of the stipulation, do two things. They tell the Commission which specific provision of the stipulation the objecting party opposes, and they ask the Commission to reject or modify that provision. The rule is relatively straight forward. An objecting party must identify the provision at issue and state the reason for the objection. When objections are filed, the Commission evaluates the stipulation as the

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[10] 20 CSR 4240-2.115(2)(B) states that the objecting party shall identify the specific provision of the stipulation and agreement that is objected to and provide a reason for each objection. Failure to file a timely objection shall constitute a full waiver of that party's right to a hearing.
[11] 20 CSR 4240-2.115(2)(B) states that each party shall have seven (7) days from the filing of a nonunanimous stipulation and agreement to file an objection to the nonunanimous stipulation and agreement. The objecting party shall identify the specific provision of the stipulation and agreement that is objected to and provide a reason for each objection. Failure to file a timely objection shall constitute a full waiver of that party's right to a hearing.

signatories' position and determines, based on the record as a whole, whether adopting it produces a just and reasonable resolution.

Here, objecting parties fail to show that adopting the Global Agreements is neither just nor reasonable when weighed against the circumstances presented in this proceeding. The objecting parties primary request, through its objections, is rejecting the stipulated global resolution because the Commission should "not even entertain" a rate increase until customer service is "adequate," or because any increase would be a "reward." These objections are not proper substantive objections. Instead, they are bright-line positions. They improperly recommend that the Commission treat service quality as a ratemaking veto, rather than as one factor to be weighed against the other relevant evidence in the record.

Further, the objections fail to meaningfully address the benefits the Commission would be adopting if it adopts the Global Agreement: (1) quantified financial concessions from Empire; (2) phased implementation that mitigates immediate rate shock; (3) direct customer benefits; and (4) performance-conditioned implementation tied to measurable billing and service standards. The objectors' general disagreement with the existence of rate relief, or general dissatisfaction with Empire's performance, fails to provide the Commission with a principled basis to reject a comprehensive stipulated resolution that is designed to address performance failures through enforceable conditions.[12]

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[12] *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 49 (Mo. banc. 1979).

The Global Agreement is the Most Just and Reasonable Resolution in the Public Interest

The Commission's role is not to choose the most punitive or the most lenient outcome mentioned in the record. Its responsibility is to set rates that are just and reasonable after balancing consumer and investor interests.[13] Missouri courts have long recognized that each rate case must be decided upon its own facts, and the Commission must consider all relevant facts reflected in the record.[14]

The record here presents two points that must be addressed in a lawful order. First, customer service and billing failures are serious and require meaningful, enforceable actions. Second, Empire's investments and legal obligations that are reflected with its cost-of-service may not be ignored without elevating one factor above all others as it will deviate from lawful ratemaking requirements.[15]

Staff discussed Empire's significant customer service and billing issues in its filed testimonies. The Global Agreement, as supplemented, sufficiently addresses those issues. The metrics, as stipulated to, are tied to enforceable billing rules and compliance standards, with additional reporting and documentation supplied by Empire, subject to Staff's review that must be met before any rate changes occur.

The Commission may, and should, address customer service failures, but it should do so through record supported remedies and enforceable conditions within its statutory authority, not through unsupported and off-record characterizations from the parties.[16]

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[13] *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944).
[14] *State ex rel. Mo. Water Co. v. Pub. Serv. Comm'n*, 308 S.W.2d 704, 718 (Mo. 1957).
[15] *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) and *Bluefield Waterworks & Imp. Co. v. Pub. Serv. Commission of West Virginia*, 262 U.S. 679, 43 S. Ct. 675, 67 L. Ed. 1176 (1923).
[16] § 386, RSMo., § 393, RSMo., and *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 49 (Mo. banc. 1979).

The Global Agreement is the best proposed resolution that addresses both Empire's customer service and cost-of-service record. Within the framework the Global Agreement provides, the Commission has the tools to administer and enforce measurable improvements, while also protecting customers from rate shock.

With respect to the revenue requirement, the stipulated amount is materially lower than Staff's litigated position, including quantified reductions tied to Customer First. The agreement does not assume the status quo from Empire, on the contrary it demands improvement, enforced through legal means.

Beyond the revenue requirement, the agreement provides direct customer protections, including arrearage forgiveness, increased low-income pilot program support, and a two-year moratorium on filing a new rate case. These protections were negotiated as part of a single package and are not automatically preserved if the agreement is rejected.

Finally, the Supplemental Agreement turns customer concerns into specific, enforceable performance requirements that Empire must meet before the agreed rate increases take effect.

Simply put, the objections provide broad conclusions rather than demonstrating where the Global Agreement fails to address the very complaints the objectors raise. That is because the Global Agreement resolves the revenue requirement through a comprehensive amount, materially lower than Empire's request and includes a quantified reduction tied to Customer First. The Supplemental Agreement then adds performance metrics before rate changes occur. That structure is directly responsive to the customer service and billing concerns in the record. It does not ask the Commission to ignore other

relevant facts. That is why the Global Agreement presents the most just and reasonable end result under the circumstances presented here. The Global Agreement provides the Commission with the tools to monitor Empire's improvements and prohibits Empire from increasing its rates until those improvements are just and reasonable to the Commission's discretion.

The Objections are Inconsistent with Record-Based Ratemaking Requirements

The objections start from the position that existing rates should remain in place because rates approved in the prior case are presumed just and reasonable unless and until the Commission finds otherwise, and that Empire bears the burden disproving that presumption. That is not how utility regulation works. Missouri courts have made clear that each rate case must be decided upon its own facts.[17] A prior rate order may provide context, but it does not control the outcome.[18] If the evidence in the present case supports the same rates as a prior case, that result must arise from the present record, not from a presumption that prior rates govern.

The objections also repeatedly recommend the denial of any rate relief based on customer service failures and billing problems and characterize any increase as a "reward." That framing would treat service quality as a ratemaking veto. Missouri law does not permit single-issue ratemaking. Service quality is relevant. It may justify disallowances tied to specific costs, and it may support conditions and performance requirements. It cannot, standing alone, replace the Commission's duty to determine just and reasonable rates by weighing all relevant factors and judging the record as a whole.

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[17] *State ex rel. Missouri Water Co. v. Public Service Commission*, 308 S.W.2d 704, 718 (Mo. 1957).
[18] *Id*.

Staff does not seek to minimize the customer service evidence presented in this proceeding. However, service quality, by itself, is not a lawful substitute for evaluating the revenue requirement components the Commission is required to consider, those include Empire's rate base, prudent capital investments, operating expenses, depreciation, taxes, cost of debt, and return on equity.

The objectors' recommendation to deny any increase primarily due to service deficiencies, without weighing uncontested investments and other cost-of-service components, effectively treats service quality as controlling. Missouri law does not permit that approach. Even when the approach is described as consumer protection, elevating one factor above all other rather than weighing the full record exposes the Commission's order to avoidable appellate risks.

The objecting parties' requested zero-dollar increase is often framed in punitive terms. The Commission's lawful tools for addressing poor service, however, are not limited to punishment. The Commission may adopt disallowances tied to specific costs, impose conditions on rate recovery, and order measurable, enforceable performance standards. The Supplemental Agreement is designed to supply such an enforceable performance-based structure that must be satisfied before rate changes occur. Recommendations to deny rate relief outright as a penalty is not the same as a record-supported disallowance or an enforceable condition, and it creates avoidable legal risks.

Relatedly, the Objectors sometimes characterize Empire's records as unreliable and use that premise to argue for denying any relief. Missouri appellate precedent does not support that approach. Where evidence is imperfect or uncertain, the Commission

must rely on competent and substantial evidence and avoid speculative conclusions.[19] The objecting parties' recommendations to deny any rate relief, irrespective of the evidence presented in this proceeding, requires speculation that no portion of Empire's costs or investments are recoverable.

This is precisely why the Global Agreement represents the most reasonable resolution of this proceeding under the circumstances. The agreement represents the lowest reasonable revenue requirement,[20] limits recovery through explicit reductions and concessions, provides phasing implementation of rates, and conditions recovery prospectively on verifiable performance standards rather than relying on disputed, historical representations.[21]

Concerns Regarding Record Support for Quantified Revenue Positions

Throughout this case, the objecting parties have consistently recommended against providing Empire with any increase. Despite that position, the OPC seemingly failed to provide parties with its quantified revenue requirement through testimony. No OPC witness identified a proposed revenue requirement, nor explained how it was calculated, or provided supporting workpapers subject to cross-examination prior to the conclusion of the evidentiary hearing.

The OPC stated that its position is that the Commission should deny Empire a rate increase. The first time the OPC, appears to quantify its position is in its legal brief, where

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[19] *State ex rel. GS Technologies Operating Co. v. Public Service Commission*, 116 S.W.3d 680, 693 (Mo. App., W.D. 2003).

[20] The $97 million stipulated revenue requirement is reasonable because Empire agreed to accept it. Staff's recommended revenue requirement is approximately $128 million; this represents Empire's reasonable revenue requirement based on the record.

[21] *State ex rel. GS Technologies Operating Co. v. Public Service Commission*, 116 S.W.3d 680, 693 (Mo. App., W.D. 2003).

it references a $53 million figure. That number does not appear to originate from sworn testimony, as no witness identifies or defends that calculation in the record.

As a result, no party has had an opportunity to cross-examine, depose, or otherwise test the basis for the OPC's proposed revenue requirement. Introducing a quantified revenue proposal for the first time after the hearing, without record support, or citing to its testimony, is improper and cannot supply a basis for commission findings. The OPC's position invites the Commission to rely on a post-hearing numerical construct rather than on record-supporting ratemaking components.

Return and Capital-Structure Issues Should be Resolved on Empire's Evidentiary Record

The objectors ask the Commission to deny any rate increase until customer service improves. The OPC states that the Commission "should not even entertain increasing Liberty's rates," and the Consumers Council asks the Commission to dismiss the case with no increase. That is an all-or-nothing unlawful request when taken in context of this proceeding.

The OPC argues that Empire is financed through "debt and equity injections made by affiliates" through its ultimate parent, Algonquin Power & Utilities Corp., and its immediate parent, Liberty Utilities Co. The Consumers Council adopts the same position. But that doesn't mean parent and affiliate financing should drive the outcome in this case.

Staff witness Christopher Walters provides the Commission with the appropriate recommendation should the Commission refrain from adopting the Global Agreement. Staff witness Walters explains that using multiple methods allows the results to be "cross-checked and validated."[22] He determines a reasonable return on equity range

[22] Ex. 121, Christopher Walters, Direct Testimony, Page 28, lines 5-20.

of 9.00 percent to 10.00 percent and recommends 9.50 percent.[23] Walters also recognizes that Empire's equity ratio of 53.10 percent is materially higher than the proxy group and explains that, for that reason, the lower half of the range is more appropriate.[24]

Walters then provides the Commission with a single, updated bottom-line figure it can adopt. In his True-Up Rebuttal, Walters testifies that Staff's final recommended overall rate of return is 7.16 percent, based on Empire's true-up capital structure, cost of debt, and Staff's recommended 9.50 percent return on equity.[25] Empire's records are independent enough to be judged on its own merits.

Conclusion in Support of Adopting the Supplemented Global Agreement

Missouri Supreme Court precedent recognizes that when the Commission adopts a nonunanimous stipulation, the Commission may treat it as the position of the signatory parties, and may make use of it to the extent reasonable, and may make findings on disputed matters as necessary.

Accordingly, the relevant question is whether the Commission has sufficient competent and substantial evidence to find that the stipulated revenue requirement, rate implementation, and enforceable conditions produce an end result that is just and reasonable, and whether the Commission finds the public interest is best served by adopting the agreement as a complete package given the tangible customer protections and performance-based conditions it contains.[26]

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[23] Ex. 121, Christopher Walters, Direct Testimony, Page 60, line 1-12.
[24] Ex. 121, Christopher Walters, Direct Testimony, Page 60, line 11-17.
[25] Ex. 178, Christopher Walters, True-up Rebuttal Testimony, Page 2, line 7-8.
[26] *State ex rel. Union Electric Co. v. Public Service Commission*, 765 S.W.2d 618, 622 (Mo. App., W.D. 1988), and *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944).

STAFF'S REPLY TO PRE-STIPULATED POSITIONS

Staff reiterates that it adopted the Global Agreement because it represents the most just and reasonable outcome for Empire and its stakeholders. The Commission, however, has full authority to review the entire record and reach the conclusion it believes best represents just and reasonable rates.

Although Staff no longer supports its pre-stipulated positions, if the Commission does not adopt the Global Agreement, Staff submits that the next best outcome would be the adoption of Staff's original position. The parties have raised issues in their initial briefs. Staff does not respond to every argument. To the extent Staff does not address a particular issue, Staff stands on its original positions. Staff responds below to the following issues to clarify its position in light of the other parties' briefing.

Eric Vandergriff

Rate Design – Allocation of the Revenue Requirement Increase Among the Classes

Consumers Council of Missouri ("Consumers Council" or "CCM"), Midwest Energy Consumers Group ("MECG"), Renew Missouri,[27] and Empire address aspects of rate design in their Initial Briefs. Consumers Council states in part that it "supports Company's methodology for interclass allocations, as updated by Consumers Council witness Caroline Palmer's cost of service study ('COSS') recommendations to use the Basic Customer Method for distribution cost classification, and to use customer, energy, and demand allocators for AMI meters."[28]

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[27] Renew Missouri "supports the residential rate design as outlined in the Stipulation" and "supports the Stipulation's terms for rate design". Renew Missouri Initial Brief at page 3 and page 7.

[28] Consumers Council Initial Brief at page 7.

MECG states in part that "[i]n its pre-filed testimony, MECG supported a gradual approach to revenue allocation for this case" and that "[n]ow, as a signatory to the stipulation and agreement, MECG supports the allocation of the increase on an equal percentage to the classes."[29] MECG encourages the Commission to "adopt this allocation in conjunction with the other interdependent terms of the stipulation and agreement and its supplement."[30]

Empire states in its Initial Brief on the topic of Billing Determinants and Rate Design (Issues 100-110) that "[t]he Global Settlement provides for utilization of Staff's billing determinants attached to the Global Settlement agreement as Exhibit C, with an amount of current rate revenue subject to adjustment in this case of $511,391,047 after application of current EDR discounts."[31] Empire further identifies how the Stipulation and Agreement "calculates rates as set out in Exhibit C" using certain agreed-upon rate design points.[32] Additionally, Empire states that "[n]either OPC nor CCM objected to paragraph 18 in the Base Stipulation's resolution of the Billing Determinants and Rate Design issues (Issues 100-110)."[33]

Staff is in general agreement with Empire, MECG, and Renew Missouri on Rate Design issues, as shown by the parties' support of the Stipulation and Agreement. To the extent that the Office of the Public Counsel's Initial Brief shows strikethrough of certain issues – including Issue Nos. 100 to 106[34] – and to the extent that no objection has been made regarding the issues, Staff reasserts that the Stipulation and Agreement

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[29] MECG Initial Brief at page 3.
[30] *Id.*
[31] Empire Initial Brief at page 100.
[32] *Id.*
[33] *Id.* at page 101.
[34] Office of Public Council Initial Brief at page 7.

position is a reasonable compromise of the positions advanced by the parties in this case and joins with other parties in encouraging the Commission to adopt the Stipulation and Agreement, as supplemented. Furthermore, the Stipulation and Agreement position on rate design is a reasonable compromise of the positions advanced by the parties in this case which the Commission could determine on its own based on the evidence and even in the absence of the Stipulation and Agreement. Moreover, if there is this resolution of the rate design issue, then issues related to Class Cost of Service[35] are moot and need not be determined by the Commission in its order resolving this case.

Based on the foregoing, Staff recommends that the Commission approve the Stipulation and Agreement as supplemented.

Alexandra Klaus

Issue 2h: Should Empire recover the cost of repairs to Riverton 10?

The Company argues that recovery of the Riverton Unit 10 repair costs is appropriate because those costs were prudently incurred and are not excluded by the Global Settlement. According to Company witness Brian Berkstresser, the decision to repair Riverton Unit 10 was driven by legitimate safety, reliability, and cost considerations that arose after Riverton Unit 11 exhibited significant blade migration during two borescope inspections in April and August 2023.[36] Those inspections revealed

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[35] As stated in Staff's Initial Brief, "[b]ased on limitations in Empire's data, no CCOS study fully recognizes the demand carrying capability of the customer-allocated distribution components or the customer-specific infrastructure required by customers served at voltages above secondary, or refines allocations of distribution costs and components to the extent necessary to review the reasonableness of intraclass revenue responsibility as reflected in rate design." Staff Initial Brief at page 69-70. Additionally, CCOS "results should not be the only factor in applying a rate increase to a utility's charges for service" and the Stipulation and Agreement "can be adopted by the Commission regardless of any class cost of service study results presented in the case." *Id.* at page 69. "Policy considerations, such as rate continuity, rate stability, revenue stability, minimization of rate shock to any one-customer class, and meeting of incremental costs, are also relevant factors in revenue responsibility allocation, rate structure, and rate design." *Id.*

[36] See generally Exhibit 3, Surrebuttal Testimony of Brian Berkstresser.

serious operational risks associated with continued operation of Unit 11. To determine the most cost-effective and reliable course of action, the Company also conducted a borescope of Unit 10 and determined that repairing Unit 10 would be significantly less expensive than repairing Unit 11. Based on the information available at the time, the Company reasonably concluded that repairing Unit 10 best balanced safety, reliability, and cost.

The Company further contends that claims of imprudence raised by OPC witness John Robinett lack merit and evidentiary support. As explained by Company witness Aaron Doll, Mr. Robinett's arguments are largely recycled from the prior CCN proceeding and rest on a misunderstanding of both the relevant timelines and the requirements of the SPP Generator Facility Replacement process.[37] Although Mr. Robinett notes that Unit 10 went out of service in February 2021, the Company explains that it would have been impossible to complete the required IRP, conduct the necessary technical reviews, and submit a compliant replacement application within the one-year SPP filing window. Accepting Mr. Robinett's position would require the Company to bypass established planning and review processes, an approach the Company characterizes as reckless and contrary to customer interests.

Staff responds that the Commission should recenter the prudence inquiry on the point in time when Empire's critical planning and compliance decisions should have been made, rather than on whether the eventual repair of Riverton Unit 10 appeared reasonable once Empire's options had narrowed. The relevant question is not whether repairing Riverton 10 in September 2023 was a defensible response to an emergent

[37] See generally Exhibits 8-11, Direct, Rebuttal, Surrebuttal and True-Up Testimony of Aaron J. Doll.

reliability problem, but whether the sequence of decisions and inaction that rendered that repair necessary was itself prudent. Missouri prudence doctrine evaluates utility conduct based on whether management acted reasonably when material facts were known or should have been known, not on whether later remedial actions were rational responses to self-created constraints.[38]

This is not a case about Empire's subjective motives, but about causation and responsibility. Regardless of Empire's intent, the record demonstrates that its failure to timely comply with Southwest Power Pool's Generator Facility Replacement provisions directly caused the need to undertake the Riverton 10 repair. Costs that arise as the foreseeable consequence of non-compliance with tariff requirements cannot be characterized as prudently incurred. The SPP one-year replacement window is not a discretionary guideline; it is an integral part of the tariff's risk-allocation structure. Where a utility is unable or unwilling to meet that requirement, the resulting financial consequences are properly borne by shareholders, not shifted to customers.

Empire's assertion that compliance was "impossible" does not excuse recovery. Prudence does not require perfect foresight, but it does require timely decision-making once material facts are known, including the post-fire condition of Riverton 10 and the regulatory deadlines governing replacement. Empire's delay ultimately compounded reliability risks, leaving customers without either Riverton 10 or Riverton 11 in service for

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[38] See *Atmos Energy Corp. v. Office of Public Counsel*, 389 S.w.3d 224 (Mo. App. W.D. 2012). The test for whether utility's expenditures are prudent should not be based upon hindsight, but upon reasonableness. 228. See also *State ex rel. Associated Natural Gas Co. v. Public Service Com'n of State of Mo.*, 954 S.W.2d 520 (Mo. App. W.D. 1997). See *State ex rel. Public Counsel v. Public Service Com'n.*, 274 S.w.3d 569 (Mo. App. W.D. 2009): The party alleging imprudence has the burden of creating a serious doubt as to the prudence of an expenditure. Only then does the company have the burden of proving the expenditure was in fact prudent.

several months. That outage gap underscores why the Riverton 10 repair costs cannot be characterized as unavoidable or the product of reasonable utility management.

Staff continues to recommend that the Commission adopt the Global Agreement. In the alternative, should the Commission decline to adopt the agreement, Staff recommends that the Commission disallow recovery of the Riverton 10 repair costs. The record establishes that these costs were the foreseeable and avoidable result of Empire's failure to timely plan and execute the retirement and replacement of Riverton Unit 10 in compliance with applicable SPP tariff requirements. While the repair may have been a reasonable last resort after Empire exhausted its options, prudence doctrine does not permit recovery of costs caused by earlier mismanagement and delay, and customers should not bear the financial consequences of that failure.

Paul Graham

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

Staff reiterates its recommendation to the Commission to adopt both the Global Agreement and the Supplemental Agreement. As a matter of clarification: all four recommendations offered by Staff on page 16 of its initial brief are covered in the Global Agreement. Implementation of these four recommendations, as opposed to implementation of the 2% disallowance proposed by the Office of Public Counsel, would mitigate the reliability issues discussed by the Office of Public Counsel without unduly penalizing Empire.

Andrea Hansen

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

As a clarification: Staff recommends that the Commission adopt the Agreement. In the alternative, Staff recommends that the Commission adopt Staff's position regarding this issue. Namely, no adjustment is necessary at this point in time.[39]

Andrea Hansen

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

The Company maintains that the appropriate level of property taxes to be included in the revenue requirement is $29,173,041 for non-wind property and $4,060,955 for wind property, as supported by the testimony and schedules of Company witness Emery across direct, rebuttal, surrebuttal/true-up, and true-up rebuttal filings.[40] However, the Company further states that, if the Commission adopts the terms of the Global Settlement, it will support the parties' agreed-upon base property tax amounts of $25,850,330 for non-wind property and $4,261,941 for wind property, effective as of the rate effective date in this case.

Staff recommends that the Commission include total property tax expense of $30,112,271, consisting of $25,850,330 for non-wind property and $4,261,941 for wind property, based on the most recent known and actual 2024 property tax amounts paid. Staff's recommendation reflects actual, verifiable tax obligations and is therefore the most reasonable measure of ongoing expense for ratemaking purposes.

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[39] Commission File No. ER-2024-0261, Exhibit No. 100, Nathan Bailey Direct Testimony, pg. 6, lines 11-15.

[40] See generally Exhibits 17-20, Direct, Rebuttal Surrebuttal and Tru-Up Direct and True-Up Rebuttal Testimony of Charlotte T. Emery.

While the Company proposes a higher non-wind property tax amount in its litigated position, the Company also acknowledges that, if the Commission orders the Global Settlement, the appropriate base amounts are $25,850,330 for non-wind property and $4,261,941 for wind property, which align precisely with Staff's recommendation. Accordingly, Staff notes that there is no material dispute between Staff and the Company as to the appropriate property tax levels under the Global Settlement.

To the extent the Commission elects to resolve this issue on a litigated basis rather than through the Global Settlement, however, Staff continues to support use of the most recent known and actual property tax payments as the best evidence of ongoing expense. Staff's recommendation avoids reliance on projections and ensures that customers pay no more and no less than the utility's actual tax obligations.

Paul Graham

FAC Transmission Revenues (Issue 90)

The OPC argues in its initial brief that transmission revenue subaccounts should be included in Liberty's Fuel Adjustment Clause ("FAC").[41] In support of this argument, the OPC highlights that Liberty proposed to flow SPP transmission revenues in its direct case. The OPC also provides the rebuttal testimony of OPC witness Angela Schaben, which simply states:

> I agree with Liberty that revenues associated with its transmission fuel and purchased power should flow through the FAC.[42]

On October 21, 2025, Liberty and Staff entered a *Partial Stipulation and Agreement* ("Partial Agreement") that specified the subaccounts to be included and excluded in the

[41] Initial Brief of the Office of the Public Counsel, pgs. 69 and 72-74.
[42] Exhibit 219, Rebuttal Testimony of Angela Schaben, pg. 9, ln. 4-5.

FAC; the exact accounts agreed to were attached as Exhibit A to the Partial Agreement. Exhibit A was modeled after Staff Schedule BM-d2, which was attached to the Direct Testimony of Staff witness Brooke Mastrogiannis.[43] The Partial Agreement reached between Staff and Liberty does not contemplate the inclusion of any transmission revenue subaccounts in the FAC. Further, no objections were raised regarding the Partial Agreement.

The Commission should reject the OPC's argument on this issue. The Commission should approve the Agreement and Partial Agreement as the proper resolution of this issue.

Travis Pringle

Issue 89a: Were the costs of the crane extension project at Ozark Beach prudently incurred?

OPC argues that the crane extension project exemplifies Liberty's broader pattern of undertaking large capital projects without adequately prioritizing customer interests. OPC points to testimony from Liberty witness Brian Berkstresser describing safety and environmental concerns associated with transporting equipment across the lake, which OPC characterizes as reflecting management discomfort rather than a demonstrated customer-driven need. OPC contends that Liberty has failed to show that the approximately $3 million crane extension project was cost-effective from customers' perspective or that the timing of the project appropriately considered rate impacts. According to OPC, the project appears to be a capital expenditure undertaken as a "solution in search of a problem."

[43] Exhibit 113, Direct Testimony of Brooke Mastrogiannis, Schedule BM-d2.

OPC further argues that these same concerns extend to Liberty's significantly larger capital investments—totaling approximately $500 million or more—in substations and transmission lines. OPC maintains that these projects reflect a broader pattern of excessive capital spending. In support, OPC cites testimony from former Empire employee Rick Hendricks and from a retired lineman, David Johnson, who expressed concerns at a local public hearing that Liberty is overspending on capital projects.[44]

Staff disagrees with Public Counsel's assertion that the Ozark Beach crane extension was imprudently incurred. The prudence standard does not require a utility to demonstrate that a capital project responds to a prior accident or that the absence of the project has already resulted in environmental harm. Rather, Staff contends that prudence is assessed based on whether the utility acted reasonably, in good faith, and with due regard for safety, reliability, efficiency, and risk mitigation at the time the decision was made.[45]

The record establishes that the original crane configuration at the Powersite Dam required repeated transport of heavy equipment and hazardous materials—such as 55-gallon drums of hydraulic oil—across open water and over the dam multiple times each year, consuming significant labor time and creating non-trivial safety and environmental risks. Mr. Berkstresser's testimony regarding concern over potential spills does not reflect a "solution in search of a problem," but rather a reasonable managerial

[44] OPC brief, pp 69, citing Exhibit 202, GM-7.

[45] See *Atmos Energy Corp. v. Office of Public Counsel*, 389 S.w.3d 224 (Mo. App. W.D. 2012). The test for whether utility's expenditures are prudent should not be based upon hindsight, but upon reasonableness. 228. See also *State ex rel. Associated Natural Gas Co. v. Public Service Com'n of State of Mo*., 954 S.W.2d 520 (Mo. App. W.D. 1997). See *State ex rel. Public Counsel v. Public Service Com'n*., 274 S.w.3d 569 (Mo. App. W.D. 2009): The party alleging imprudence has the burden of creating a serious doubt as to the prudence of an expenditure. Only then does the company have the burden of proving the expenditure was in fact prudent.

assessment of operational risk.[46] Avoidance of foreseeable environmental harm is itself a legitimate and well-recognized justification for capital investment, particularly at hydroelectric facilities located near sensitive waterways.

OPC's characterization of the project as unjustified from a customer standpoint is not supported by the record. The crane extension materially reduced the time required to transport equipment—from at least half a day with multiple employees to approximately thirty minutes—and eliminated the need to move hazardous materials by barge. These improvements translate directly into enhanced safety, improved operational efficiency, and reduced risk exposure. Moreover, the project was completed for approximately $2.9 million, significantly below the Company's original $3.5 million budget, which further supports a finding of prudence.

Staff also notes that OPC's attempt to link this project to broader concerns about Liberty's overall capital spending is misplaced. Prudence determinations must be made on a project-specific basis and grounded in the evidentiary record for the item at issue. Generalized allegations of overinvestment in other facilities or unrelated testimony from former employees and members of the public do not rebut the specific and uncontroverted evidence supporting the reasonableness of the Ozark Beach crane extension.

Staff continues to recommend that the Commission adopt the Global Agreement. In the alternative, should the Commission decline to adopt the agreement, Staff recommends that the Commission find the costs of the Ozark Beach crane extension project were prudently incurred and include them in the revenue requirement.

Paul Graham

[46] See generally Exhibits 1-3, Direct, Rebuttal and Surrebuttal Testimony of Brian Berkstresser.

FAC Base Factor (Issue 91)

The OPC argues that the Commission should order the FAC base factor proposed by Staff in its direct case, which is $0.01111/kWh.[47] As a signatory to the Agreement, Staff agreed to a base factor of $13.97/MWh, or $0.01397/kWh. Staff argues that the proper resolution of this issue is to approve the Agreement's base factor; however, if the Commission were to reject the Agreement, then Staff's proposed base factor of $0.01111/kWh is the proper alternative.

Travis Pringle

FAC Sharing Ratio (Issue 98)

In determining this contested issue, the Commission should be mindful that the "burden of proof in its strict sense [is]…that of establishing the affirmative of the ultimate issue, which never shifts throughout the trail but remains upon the party asserting it[.]"[48] The Consumers Council of Missouri ("Consumers Council") and the OPC argue that Liberty's FAC should be discontinued because it does not properly incentivize Liberty to manage its fuel costs[49] and because of Liberty's poor resource planning decisions, and decisions that led to "poor outcomes."[50]

However, as pointed out in the initial brief of Liberty, fuel prices are volatile and driven by global markets; penalizing utilities for fuel cost increases would be a disruptive signal that would undermine the regulatory compact, introduce uncertainty that is fundamentally incompatible with sound regulatory policy, and potentially increase Liberty's cost of capital and reduce its financial flexibility.[51] Though Consumers Council

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[47] Initial Brief of the Office of the Public Counsel, pg. 71.
[48] *Been v. Jolly*, 247 S.W.2d 840, 854 (Mo. 1952).
[49] Initial Brief of Consumers Council of Missouri, pg. 5.
[50] Initial Brief of the Office of the Public Counsel, pg. 75.
[51] Liberty's Initial Post-Hearing Brief, pg. 62.

argues that Liberty should simply better manage its fuel costs,[52] as concisely put forward by Liberty in its initial briefs, there are factors beyond a utility's control when it comes to managing fuel prices.

In addition, neither the OPC nor Consumers Council have presented sufficient evidence that the current sharing ratio of 95/5 has not incentivized Liberty to manage its fuel costs or was the impetus for Liberty's poor resource planning and outcomes. Though the OPC argues that Liberty's retirement of its Asbury unit and failure to prepare its Riverton 10 and 11 units for extreme weather prior to Winter Storm Uri is proof that the 95/5 sharing ratio is not working,[53] it is not clear why those events would tie back to the FAC and is proof of Liberty ignoring its customers when resource planning.

While Staff indicated that it would be open to a change from 95/5 to 90/10,[54] Staff also indicated its preference for keeping the ratio at 95/5,[55] which was ultimately agreed to amongst the signatories to the Agreement. Simply put, a change to the FAC sharing ratio at this time is not necessary. Staff recommends the Commission approve the Agreement as the proper resolution of this issue; if the Commission does not approve the Agreement, then maintaining the FAC sharing ratio at 95/5 remains the proper resolution.

Travis Pringle

Conclusion

As stated in its initial brief, Staff adopted the Global Agreement as its position because, in this record, it is the most just and reasonable outcome for Empire and its stakeholders. The Global Stipulation is not unanimous. However, all parties contributed to it, and all stakeholders are represented. Staff, Empire, MECG, and Renew Missouri

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[52] Initial Brief of Consumers Council of Missouri, pg. 6.
[53] Initial Brief of the Office of the Public Counsel, pg. 75.
[54] Exhibit 144, Rebuttal Testimony of Brooke Mastrogiannis, pg. 11, ln. 8-9.
[55] *Id*, pg. 10, ln. 11 and pg. 11, ln. 3-4.

supplemented the Global Agreement with customer service metrics that Empire is required to meet for three consecutive months, starting on January 1, 2026, before current rates are changed.

The Global Agreement includes multiple provisions that benefit ratepayers that we could not have reached short of an agreement with Empire. The Global Agreement holds Empire accountable for improving service quality while allowing it a reasonable opportunity to earn a fair return on its prudent investments based upon its future performance.

The Commission retains full authority to review the entire record and reach whatever conclusion it believes best satisfies those standards. Staff no longer advocates for its original position, however, if the Commission chooses not to adopt the Global Agreement, then Staff submits that the next-best result is its original position.

That said, If the Commission were to reject the Global Agreement, Empire's customers could lose several tangible benefits the Global Agreement provides, such as:

- No new rate case for at least 24 months after the effective date of these rates.
- Three-year phase-in of the rate increase:
    - Year 1 - recovering approximately $32.3 million increase over agreed upon revenues in this proceeding;
    - Year 2 - recovering approximately $64.6 million increase over agreed upon revenues in this proceeding; and
    - Year 3 - recovering $97 million increase over agreed upon revenues in this proceeding.

- Internal ethics and capitalization audits to be completed within one year of new rates taking effect.
- $8.5 million in arrearage forgiveness through a targeted relief initiative.
- Low-Income Pilot Program: continuation of the 50/50 customer-company match with an increased annual cap of $900,000.

- Critical Medical Needs Program: continued annual funding of $50,000 from customers and $50,000 from shareholders.
- Customer First Name Change: replacement with a neutral title to reflect service improvement efforts.

As stated in Staff's Initial Brief, Staff's pre-stipulated position supported a $128 million revenue requirement and did not include most of these benefits. Empire's original request was $168 million. The Global Agreement balances the reality of rate shock, poor customer service, and Empire's entitlement to opportunity to a fair return on its prudent investments. The Global Agreement secures customer protections and certainty for at least two years.

WHEREFORE, Staff respectfully submits its Post Hearing Brief for the Commission's consideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

/s/ Eric Vandergriff