

**Exhibit No:**  
**Issue(s):** Retirement Benefits  
Monitoring and  
Documentation  
**Witness:** William L. Gipson  
**Sponsoring Party:** The Empire District  
Electric Retirees and  
Spouses Association,  
LLC  
**Type of Exhibit:** Surrebuttal Testimony  
**File No.:** ER-2021-0312  
**Date Testimony Prepared:** January 20, 2022

**MISSOURI PUBLIC SERVICE COMMISSION**

**FILE NO. ER-2021-0312**

**SURREBUTTAL TESTIMONY OF**

**WILLIAM L. GIPSON**

**ON BEHALF OF**

**THE EMPIRE DISTRICT ELECTRIC RETIREES AND SPOUSES ASSOCIATION, LLC**

**January 20, 2022**

**\*HC\*DENOTES HIGHLY CONFIDENTIAL\*HC\***

**NP**

**TABLE OF CONTENTS**

I. Introduction ..... 3

II. The Issue ..... 4

III. The Problem ..... 6

IV. The Remedy ..... 15

V. Conclusion..... 20

1 **Q. WHAT IS YOUR NAME AND ADDRESS?**

2 A. My name is William L. Gipson. My address is 299 Oak Tree Point Lane, Shell Knob,  
3 Missouri 65747.

4 **Q. ARE YOU THE SAME WILLIAM L. GIPSON WHO PROVIDED DIRECT TESTIMONY IN**  
5 **THIS MATTER ON BEHALF OF THE EMPIRE DISTRICT ELECTRIC RETIREES AND**  
6 **SPOUSES ASSOCIATION, LLC. (“EDRA”) IN THIS MATTER?**

7 A. Yes.

8 **I. INTRODUCTION AND PURPOSE**

9 **Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY IN THIS PROCEEDING**  
10 **BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION (“COMMISSION”)?**

11 A. The purpose of my testimony is to address inconsistencies between the language  
12 contained in the *Stipulation and Agreement As To EDRA* (“Agreement”) approved by  
13 the Commission in Case No. EM-2016-0213 (“Merger Case”), the Rebuttal Testimony  
14 of Charlotte Emery on behalf of The Empire District Electric Company (“Empire” or  
15 “Company”), and the Company’s responses to several EDRA Data Requests.

16 **Q. WHAT PROVISIONS OF THAT AGREEMENT ARE PERTINENT TO YOUR SURREBUTTAL**  
17 **TESTIMONY?**

18 A. The Agreement states:

19 “For ten (10) years following the closing of the Transaction, Empire will not  
20 make any change to any benefit offering (defined as the health benefit  
21 design and cost sharing mechanism) that would be materially adverse to any  
22 person qualifying for such benefit as of that date, so long as (1) there is no  
23 material change of applicable state or federal law, rule or regulation, or the  
24 application of existing law, that would impair the ability of Empire to provide  
25 the benefit or substantially increases the cost to Empire of providing the  
26 benefit; or (2) there is no change to the Commission’s current practice

1 authorizing the tracking and cost recovery of benefit offerings and including  
2 such costs in cost of service for ratemaking purposes. Empire agrees to use  
3 its best efforts to include in cost of service the expense of the benefit  
4 offerings. After ten (10) years following the close of the transaction, retirees  
5 shall be given the same benefit offering as *similarly situated* [emphasis  
6 added] retirees of Liberty Utilities.”  
7

## 8 II. THE ISSUE

### 9 Q. WHAT WAS EDRA’S UNDERSTANDING OF THIS PROVISION IN THE AGREEMENT?

10 A. Based on discussions with the Company at that time, it was EDRA’s understanding  
11 that the benefit offering (defined as the health benefit design and cost sharing  
12 mechanism) in place for Empire retirees at the time of the merger would continue  
13 “as is” for 10 years after the merger, and after that, retirees would receive a benefit  
14 offering that was no worse than similarly situated retirees of Liberty Utilities.

### 15 Q. WHAT WAS EDRA’S UNDERSTANDING OF THE TERM, “SIMILARLY SITUATED 16 RETIREES OF LIBERTY UTILITIES” IN THE AGREEMENT?

17 A In discussions with the Company during the Merger Case, EDRA asked the Company  
18 to provide examples of benefit offerings for similarly situated retirees of Liberty  
19 Utilities. The Company indicated that it had such examples, but did not have the  
20 information at hand. It was suggested that EDRA issue a data request (“DR”) for that  
21 information. So, EDRA issued DR 14 (see attached **Schedule WLG-1**) to the Company:

22 14. For all the Health and Welfare Benefits Plans (i.e. Other Postretirement  
23 Benefits) that Algonquin/Liberty Utilities has for its employees and retirees of  
24 the American holdings, please provide:

- 25 ○ Copies of the latest Federal required reports, including but not limited to  
26 type of plan, participants, balance sheet, income and expense  
27 information, and actuarial determination of funding level.  
28  
29

1                   ○ Also please indicate which Health and Welfare Benefits plans have rate  
2                   recovery and/or general assets as the source of funding.

3  
4                   ○ And, please list which Health and Welfare Benefits plan assets are held in  
5                   the United States versus Canada?  
6

7                   The Company's response to EDRA DR 14 was to provide copies of the Financial  
8                   Reports for the Post Retirement Benefit Plans of the following Liberty companies:

9                   (see attached **Schedule WLG-1**):

- 10                   \*HC\* ● [REDACTED]  
11                   ● [REDACTED]  
12                   ● [REDACTED]  
13                   ● [REDACTED]  
14                   ● [REDACTED] \*HC\*

15  
16                   Based on this response, EDRA was comfortable that the Company was committed to  
17                   provide the retiree benefits for the 10-year period and beyond. As a result of this  
18                   and other factors, EDRA agreed not to oppose the merger.

19                   **Q. DID THE COMPANY ADDRESS THE CONTINUATION OF RETIREE HEALTHCARE**  
20                   **BENEFITS AT THE TIME THE MERGER WAS ANNOUNCED?**

21                   A. Yes. Beginning in early 2016 the Company sought to mollify retirees with assurances  
22                   that their benefits would never be worse than for those similarly situated retirees  
23                   across the new organization.

24                   **Q. WERE THESE ASSURANCES COMMUNICATED TO THE RETIREES?**

25                   A. Yes, on more than one occasion:  
26                   1. A letter (see attached **Schedule WLG-2**) dated February 9, 2016, from Brad  
27                   Beecher (Empire President at the time), printed on Empire internal stationary,  
28                   was mailed to the homes of retirees. The first page of this letter stated "Post-

1 retirement benefits (healthcare) will not be amended in a materially adverse  
2 manner for at least three years. After that period, post-retirement benefits will  
3 no worse than for those similarly situated across the organization.” This letter  
4 also referred the retirees to an upcoming issue of the Empire “Dispatch” for  
5 additional merger information. At the time the “Dispatch” was the official  
6 Empire internal newsletter and, as was printed on the masthead, “A newsletter  
7 for the Empire District Family”. This newsletter was mailed to the homes of  
8 retirees.

- 9 2. The Jan. - Mar. 2016 issue (see attached **Schedule WLG-3**) contained a 3-page  
10 review of the pending merger. The 3rd page of this issue was in Q and A format  
11 for various merger topics with one being "post-retirement benefits". The 3rd  
12 point under that heading stated “After three-year period, post-retirement  
13 benefits will be no worse than those similarly situated across the combined  
14 organization”.

15 Ultimately, the Company and EDRA negotiated a 10-year period (rather than 3-year)  
16 for the current post-retirement benefits plan to remain in effect. After the 10-year  
17 period, the Company and EDRA agreed that post-retirement benefits will be no  
18 worse than those similarly situated across the combined organization.

19 **III. THE PROBLEM**

- 20 **Q. WHAT GIVES RISE TO YOUR ASSERTION THAT THE COMPANY IS NOW GIVING**  
21 **MIXED SIGNALS ON THE INTERPRETATION OF “SIMILARLY SITUATED RETIREES”?**

1 A. A cause for concern first arose during the pendency of the Company's 2019 rate case  
2 (ER-2019-0374) as what might be constituted as similarly situated retirees and EDRA  
3 submitted two data requests asking for clarification:

4 1. EDRA DR 6 asked for documentation detailing healthcare benefits for "similarly  
5 situated retirees" of Liberty Utilities. The Company's response "There are no  
6 such benefits offered to Liberty Utilities retirees."  
7

8 2. EDRA DR 7 provided a document, used by Liberty during union labor contract  
9 negotiations, which indicates a Liberty retiree medical plan benefit. The  
10 Company's response "This was an error in the May 2019 document, as Liberty  
11 Utilities does not have a retiree benefit plan."  
12

13 **Q. WHAT FURTHER EVIDENCE HAVE YOU GATHERED THAT FURTHER CAUSES**  
14 **CONCERNS?**

15 A. In the instant case (ER-2021-0312) EDRA submitted several data requests in an  
16 attempt to clarify the inconsistencies. The Company's responses to those DRs  
17 provide ample evidence for the assertion that the Company's responses were  
18 inconsistent.

19 1. EDRA DR 3.1 asked: "Please list, in detail, the post-retirement welfare benefits of  
20 similarly situated retirees of: 1) Liberty Central and its affiliates and 2) the Parent  
21 and its Affiliates as of February 9, 2016." The Company responded, "With regard  
22 to post-retirement welfare benefits, Liberty continues to treat the retirees of  
23 Empire no less favorably than similarly situated retirees of Liberty Central and its  
24 affiliates. Post-retirement welfare benefits are not provided to any retirees." This  
25 contradicts the Company's response to EDRA DR 14 in the Merger Case.

26 2. EDRA DR 3.2 asked: "See attached "ORDER APPROVING STIPULATIONS AND  
27 AGREEMENTS, Issue Date: August 10, 2016, Effective Date: August 10, 2016" (the

1 “Merger Order”) and “STIPULATION AND AGREEMENT AS TO EDRA” (the  
2 “Stipulation”). At page 2 of the attached Stipulation, it is stated: “After ten (10)  
3 years following the close of the transaction, retirees shall be given the same  
4 benefit offering as similarly situated retirees of Liberty Utilities.” Please list, in  
5 detail, the same benefit offering as similarly situated retirees of Liberty Utilities  
6 as of August 10, 2016. The Company responded, “None.” Again, this contradicts  
7 the response to EDRA DR 14 in the Merger Case.

8 3. EDRA DR 4.1 (HC) asked: “See attached Company response to EDRA DR 14 in  
9 case no. EM-2016-0213. Please state whether the attached financial disclosure  
10 documents for the post retirement plans of <sup>\*HC</sup> [REDACTED]  
11 <sup>\*HC\*</sup> [REDACTED] are the most recent versions,  
12 and if not, please provide up-to-date versions 2016 to the present.” The  
13 Company responded with current (2020) financial disclosure  
14 documents/actuarial reports for the post retirement plans of <sup>\*HC\*</sup> [REDACTED]  
15 <sup>\*HC\*</sup> [REDACTED] – confirming,  
16 again, retiree healthcare plans for “similarly situated” retirees of Liberty Utilities  
17 are in place.

18 4. EDRA DR 5.1 asked: “Please provide meeting minutes of the Empire Healthcare  
19 Trustee Committee for 2020 and 2021.” In response, the Company provided the  
20 approved minutes of November 19, 2020, which state: “Judy [Baker] asked if  
21 there was a decision made regarding the retiree benefits in 2026. Punam [Maini]  
22 confirmed that a decision was not yet made but history shows that Liberty has



1 never taken away retiree benefits in the past.” This is consistent with the  
2 interpretation that the Agreement acknowledges that retiree benefits will  
3 continue for Empire retirees beyond the 10-year period.

4 5. EDRA DR 5.2 asked: “EDRA finds the Company's response to EDRA DR 3.1  
5 unresponsive. Please reread EDRA DR 3.1 and list, in detail, the post-retirement  
6 welfare benefits of similarly situated retirees of: 1) Liberty Central and its  
7 affiliates and 2) the Parent and its Affiliates as of February 9, 2016.” The  
8 Company responded “As of February 9, 2016, no post-retirement welfare  
9 benefits were provided to “similarly situated retirees.” Liberty did not offer post-  
10 retirement welfare benefits to any retirees as of February 9, 2016, except those  
11 grandfathered through previous acquisitions.” Yet—

12 A. the Company’s response to DR 14 in the Merger Case was to provide (2015,  
13 current at the time) financial disclosure documents/actuarial reports for the  
14 post retirement plans of <sup>\*HC\*</sup> [REDACTED]  
15 <sup>\*HC\*</sup> [REDACTED] – retiree healthcare plans for  
16 “similarly situated” retirees of Liberty Utilities, and

17 B. the Company’s response to DR 4 in this case was to provide 2020 (current)  
18 financial disclosure documents/actuarial reports for the post retirement  
19 plans of <sup>\*HC\*</sup> [REDACTED]  
20 <sup>\*HC\*</sup> [REDACTED] – retiree healthcare plans for “similarly situated” retirees of  
21 Liberty Utilities.

1 The Company's answer clearly demonstrates the continuation of retiree  
2 healthcare benefits to "similarly situated" retirees of Liberty Utilities.

- 3 6. EDRA DR 6.1 (HC) For each of the plans listed in the Company's response to EDRA  
4 DR 4, please provide the summary plan description (SPD) and the full plan  
5 document, including any and all subsequent amendments. The Company  
6 responded and provided the "PLAN DOCUMENT AND SUMMARY PLAN  
7 DESCRIPTION, LIBERTY UTILITIES, HEALTH AND WELFARE BENEFIT PLAN FOR  
8 RETIREES, (Plan No. 502), Amended and Restated January 1, 2018." I simply  
9 searched the U.S. Department of Labor for a 5500 (a 5500 is, from the IRS  
10 website: "Who files. The employer maintaining the plan or the plan  
11 administrator of a Pension or Welfare benefit plan covered by ERISA. File Form  
12 5500 to report information on the qualification of the plan, its financial  
13 condition, investments and the operations of the plan.") for this plan 502 and,  
14 indeed, found a 5500 for plan year 2020 (see attached **Schedule WLG-4**) has  
15 been filed. This 5500 lists the **Name of plan** as "LIBERTY UTILITIES HEALTH AND  
16 WELFARE BENEFIT PLAN FOR RETIREES" and the **Plan sponsor's name** as  
17 "LIBERTY UTILITIES CO." In fact, I found 5500s for this plan 502 have been filed  
18 with the DOL annually since 2012.

19 Again, the Company clearly demonstrates the provision of retiree healthcare  
20 benefits for "similarly situated" retirees of Liberty Utilities.

- 21 7. EDRA DR 6.2 asked that for each of the plans listed in the Company's response to  
22 EDRA DR 4, please provide the name of the plan administrator: For example,

1 Blue Cross/Blue Shield, third party administrator, etc. The Company responded  
2 “The plan administrators are as follows: Excellus BlueCross BlueShield, The  
3 Hartford, Guardian, The Standard.”

4 This is clearly an admission by the Company that there are retiree healthcare  
5 benefit plans for “similarly situated” retirees of Liberty Utilities with private  
6 companies hired or contracted as administrators of those plans.

7 8. EDRA 9.1 A. asked about a company called New York American Water, which is  
8 being acquired by Liberty. Specifically, DR 9.1 A. asked: “Given that Empire was  
9 acquired by Liberty in the same manner that New York American Water is being  
10 acquired by Liberty, does Liberty consider the 135 employees described above  
11 that will join the Liberty family to be similarly situated employees with the  
12 Empire employees that transferred to Liberty when the merger was approved in  
13 EM-2016-0213? If not, why not? The Company responded, in part: “No. ‘Similarly  
14 situated’ in the Empire merger stipulation refers to traditional Liberty  
15 employees/retirees without special circumstances . . .”

16 So, now the Company has obfuscated the term “similarly situated” even further by  
17 introducing the modifiers “traditional” and “without special circumstances.”

18 **Q. IS THERE ADDITIONAL SUPPORT FOR THE ASSERTION THAT EMPIRE RETIREES ARE**  
19 **ENTITLED TO CONTINUED BENEFITS?**

20 A. Yes. In Case No. ER-94-174, the Commission’s Report and Order established a trust  
21 to fund the retirement benefits for Empire retirees:

1 The Stipulation and Agreement provides that the rates resulting from the  
2 Stipulation and Agreement reflect the adoption by Empire of Financial  
3 Accounting Standards Board Statements (FAS) 87 and 106, and that Empire is  
4 hereby authorized to adopt FAS 87 and FAS 106 for ratemaking purposes.  
5 Therefore, Empire would book, for financial purposes, pensions and Other Post-  
6 Retirement Employee Benefits (OPEBs) expense levels according to FAS 87 and  
7 106, respectively. Calculations of these expense levels will reflect the elimination  
8 of the "corridor approach" and the institution of the amortization of all  
9 unrecognized and current gains and losses over a ten (10) year period to the  
10 extent permitted by FAS 87 and 106.

11 Empire proposes to fund its obligations for OPEBs in accord with the provisions  
12 of Sections 386.315 as contained in the Truly Agreed To and Finally Passed  
13 version of the House Committee Substitute for House Bill No. 1405 of the 87th  
14 General Assembly ("HB 1405") and signed by the Governor on July 12, 1994.  
15 When HB 1405 becomes effective, Empire would, pursuant to the Stipulation  
16 and Agreement, forego the opportunity presented by Subsection 3 of Section  
17 386.315 to file a set of tariffs to modify its electric rates to reflect the revenue  
18 requirement associated with its expenses for OPEBs and associated matters. The  
19 Stipulation and Agreement contains other ancillary provisions for the adoption of  
20 the FAS 87 and 106 accounting standards by Empire. The parties have reserved  
21 the right to propose ratemaking adjustments relating to the actuarial  
22 assumptions or external funding mechanisms used or proposed to be used by

1 Empire with respect to FAS 87 and FAS 106 in any future general rate increase  
2 case involving Empire's electric rates. Such a right is expressly conditioned upon  
3 the agreement of the parties that no such adjustment will be retrospective in  
4 nature.

5 Report and Order at 6-7 (see attached **Schedule WLG-5**). When Empire adopted FAS  
6 106, it was required to set up a trust for retiree benefits pursuant to Section 386.315.2,  
7 which states:

8 A public utility which uses Financial Accounting Standard 106 shall be required to  
9 use an independent external funding mechanism that restricts disbursements  
10 only for qualified retiree benefits. In no event shall any funds remaining in such  
11 funding mechanism revert to the utility after all qualified benefits have been  
12 paid; rather, the funding mechanism shall include terms which require all funds  
13 to be used for employee or retiree benefits. This section shall not in any manner  
14 be construed to limit the authority of the commission to set rates for any service  
15 rendered or to be rendered that are just and reasonable pursuant to sections  
16 392.240, 393.140 and 393.150.

17 **Q. DOES EDRA STAY INFORMED ABOUT THE ASSETS IN THE EMPIRE RETIREE TRUST?**

18 A. Yes. Annually, as required by the Employee Retirement Security Act of 1974 (ERISA),  
19 the company mails a Summary Annual Report (see attached **Schedule WLG-6**) for  
20 the healthcare plan to the homes of retirees. The report for 2020 states there is over  
21 \$128 million in assets available for the retiree healthcare plan.

22 **Q. DO YOU KNOW HOW THESE FUNDS ARE HELD?**

1 A. Yes. These funds are held in trust established for this purpose pursuant to Missouri  
2 statute section 386.315 and order of this Commission in order 94-174.

3 **Q. IN YOUR OPINION, DOES THE COMMUNICATION OF SUCH A LARGE SUM PROVIDE**  
4 **A LEVEL OF COMFORT TO THE EMPIRE RETIREE COMMUNITY THAT, GIVEN ALL**  
5 **OTHER WORRIES, HEALTHCARE COVERAGE IS SECURE?**

6 A. Yes, along with an expectation of continued benefits.

7 **Q. EARLIER YOU STATED THE SUMMARY PLAN DESCRIPTION MAILED TO THE HOMES**  
8 **OF THE PARTICIPANTS INDICATED THERE IS OVER \$128 MILLION IN ASSETS HELD IN**  
9 **THE VEBA TRUSTS FOR THE BENEFIT OF THE PLAN PARTICIPANTS. ARE YOU**  
10 **AWARE OF THE AMOUNT OF PROJECTED BENEFIT OBLIGATIONS TO BE MEASURED**  
11 **AGAINST THESE ASSETS?**

12 A. Yes. The IRS Form 5500 for the plan year 2020, described earlier, which includes the  
13 Financial Statements and Independent Auditors Report for the Retiree Healthcare  
14 Plan, reports in Note 3 total benefit obligations of \$176 million.

15 **Q. CAN YOU BRIEFLY EXPLAIN HOW THE BENEFIT OBLIGATION IS CALCULATED?**

16 A. As explained more fully in the Independent Auditors report, the post-retirement  
17 benefits obligation is the actuarially determined present value, as of the valuation  
18 date, of the estimated future benefits expected to be paid to eligible retirees and  
19 their beneficiaries and dependents reduced by the actuarial present value of  
20 contributions expected to be received from these participants. Prior to an active  
21 employees full eligibility date their postretirement benefit obligation is the portion  
22 attributed to that employees service rendered to the valuation date.

1           **IV. THE REMEDY**

2           **Q.     IN YOUR DIRECT TESTIMONY YOU PROPOSE A REMEDY TO EDRA’S CONCERNS.**  
3           **PLEASE EXPLAIN.**

4           A.     Yes. In light of the evidence presented above and to avoid any future obfuscation,  
5           EDRA proposes the Company continue to provide retiree healthcare benefits under  
6           the existing plan beyond the 10-year limitation found in the Agreement; to  
7           essentially remove that limitation.

8           **Q.     WHAT DOES THE COMPANY WITNESS SUGGEST ON THE TOPIC OF THIS 10-YEAR**  
9           **LIMITATION?**

10          A.     Witness Emery states: “While I can appreciate the concern that is expressed by Mr.  
11          Gibson [Gipson], I am not aware of any basis for the concern, nor of any reason why  
12          the Company would not continue to provide the benefits earned by the retirees.”  
13          The funds held in the trust are the earned benefits of the Empire retirees and  
14          coverage should continue.

15          **Q.     THE CASUAL OBSERVER MIGHT FIND MS. EMERY’S STATEMENT AS THE SOLUTION**  
16          **TO EDRA’S CONCERNS. IS THAT THE CASE? IF NOT, WHY?**

17          A.     No. During case EM-2016-0213 EDRA understood the retiree healthcare plans  
18          detailed in response to DR 14 in that case constituted “similarly situated” retirees.  
19          The evidence presented here demonstrates a serious departure from that  
20          understanding.

21          **Q.     THE AGREEMENT INCLUDES SOME PROTECTION FEATURES, SPECIFICALLY: “(1)**  
22          **THERE IS NO MATERIAL CHANGE OF APPLICABLE STATE OR FEDERAL LAW, RULE OR**

1           **REGULATION, OR THE APPLICATION OF EXISTING LAW, THAT WOULD IMPAIR THE**  
2           **ABILITY OF EMPIRE TO PROVIDE THE BENEFIT OR SUBSTANTIALLY INCREASES THE**  
3           **COST TO EMPIRE OF PROVIDING THE BENEFIT; OR (2) THERE IS NO CHANGE TO THE**  
4           **COMMISSION’S CURRENT PRACTICE AUTHORIZING THE TRACKING AND COST**  
5           **RECOVERY OF BENEFIT OFFERINGS AND INCLUDING SUCH COSTS IN COST OF**  
6           **SERVICE FOR RATEMAKING PURPOSES.” IS EDRA AGREEABLE TO THESE**  
7           **PROVISIONS?**

8           A.    Yes, as long as other protections from the Agreement are included as well,  
9           specifically: (1) “Empire will not make any change to any benefit offering (defined as  
10           the health benefit design and cost sharing mechanism) that would be materially  
11           adverse to any person qualifying for such benefit,” (2) “Empire agrees to use its best  
12           efforts to include in cost of service the expense of the benefit offerings” and the  
13           “arbitration” clause described on pages 2 and 3 of the Agreement.

14           **Q.    DO YOU HAVE ANY CONCLUDING REMARKS?**

15           A.    Yes. EDRA requests that the Commission’s Report and Order in this case require the  
16           Company to continue to provide the existing healthcare benefits to Empire retirees  
17           beyond the 10-year period. In addition, we ask the Commission to specify that the  
18           VEBA trust assets not be comingled with any other trusts or plans for the benefit of  
19           other than Empire retirees.

20           **Q.    DO YOU HAVE ANY SUGGESTED LANGUAGE THAT WOULD ACCOMPLISH THIS?**

21           A.    Yes. Following are the suggested revisions to the Agreement:



1 The STIPULATION AND AGREEMENT AS TO EDRA, Case EM-2016-0213, Retirees  
2 Plan, section (2) shall be modified as follows:

3 Strike the phrases "For ten (10) years following the closing of the Transaction,"  
4 and "After ten (10) years following the close of the transaction, retirees shall be  
5 given the same benefit offering as similarly situated retirees of Liberty Utilities.;"  
6 and add two paragraphs to the end of section (2), as follows":

7 Paragraph (2) now reads (deleted portions in strikethrough, additional language  
8 in red):

9 ~~For ten (10) years following the closing of the Transaction,~~ Empire will not make  
10 any change to any benefit offering (defined as the health benefit design and cost  
11 sharing mechanism) that would be materially adverse to any person qualifying  
12 for such benefit as of that date, so long as (1) there is no material change of  
13 applicable state or federal law, rule or regulation, or the application of existing  
14 law, that would impair the ability of Empire to provide the benefit or  
15 substantially increases the cost to Empire of providing the benefit; or (2) there is  
16 no change to the Commission's current practice authorizing the tracking and cost  
17 recovery of benefit offerings and including such costs in cost of service for  
18 ratemaking purposes. Empire agrees to use its best efforts to include in cost of  
19 service the expense of the benefit offerings. ~~After ten (10) years following the~~  
20 ~~close of the transaction, retirees shall be given the same benefit offering~~  
21 ~~as similarly situated retirees of Liberty Utilities.~~

1 Notice of any disputes or controversy concerning the continued availability of a  
2 benefit offering shall be provided to the opposing party in writing not less than  
3 thirty (30) days prior to the initiation of any adjudicative action or proceeding to  
4 enforce this commitment, including arbitration.

5 Arbitration will only be used to resolve any dispute by the mutual agreement of  
6 the parties. If arbitration is agreed to by the parties, then the American  
7 Arbitration Association (AAA) rules shall govern such proceeding, with a petition  
8 to be filed with the AAA unless the parties mutually agree to waive such  
9 requirement. Each party shall select one (1) AAA approved arbitrator, and the  
10 two (2) party selected AAA arbitrators shall then select a neutral third AAA  
11 approved arbitrator, with such third neutral AAA approved arbitrator costs to be  
12 shared by the parties. All arbitrators shall be experts in the field of the dispute.  
13 Each party shall bear the costs associated with the arbitration, including, but not  
14 limited to, legal fees and arbitrator costs for the arbitrator that party selects. All  
15 arbitrations shall be held in Joplin, Missouri or in such other location as the  
16 parties may agree. All procedural schedules shall be set by the arbitration panel,  
17 with the final order issued no later than one-hundred fifty (150) days from the  
18 date of the written notice of dispute. All arbitration awards are binding on the  
19 parties.

20 The parties agree that section 386.315, RSMo., ("A public utility which uses  
21 Financial Accounting Standard 106 shall be required to use an independent  
22 external funding mechanism that restricts disbursements only for qualified

1 retiree benefits”) and the Empire VEBA Trust Agreements, specifically the fourth  
2 "whereas" paragraph (“WHEREAS, the funds held by the Trustee pursuant to this  
3 Agreement will be held for the exclusive benefit of existing and future  
4 beneficiaries in accordance with the terms of the Company’s health and welfare  
5 plan documents;”) prohibit the commingling of trust fund assets. EDRA shall be  
6 notified anytime of the intent to modify or amend the Empire VEBA Trust  
7 Agreements.

8 Quarterly the Company shall provide to EDRA a spreadsheet listing the name and  
9 mailing address of all retirees of the Company.

10 The deleted language ensures that retiree benefits will continue beyond the current  
11 10-year period, while providing flexibility for the Company to move the retirees to  
12 another plan, so long as Empire retiree benefits remain materially the same.

13 The first new paragraph ensures that if the Company decides to move the Empire  
14 retiree benefits to another plan, or creates an umbrella plan for all retirees of  
15 companies acquired by Liberty that have existing benefits (such as the 5 companies  
16 listed in the Company’s response to DR 14 in the merger case), the funds in the  
17 Empire VEBA trusts must be used exclusively for Empire retirees and cannot be  
18 commingled with funds or used for any other retirees.

19 Finally, the language in the last new paragraph regarding a spreadsheet of names  
20 and mailing addresses for all retirees is due to the Liberty letter dated December 2,  
21 2021, informing EDRA that Liberty would no longer be organizing the coordination of

1 bi-monthly retiree luncheons, and that EDRA would have to take over that  
2 responsibility.

3 I think that this takes care of all of EDRA's concerns in this case.

4 **V. CONCLUSION**

5 **Q. DO YOU HAVE ANYTHING ELSE YOU WOULD LIKE TO ADD?**

6 A. Finally, I would like to highlight the importance of these benefits to the hundreds of  
7 retirees of the Company, their dependents and survivors. Many have been retired  
8 for a longer period than they were employed by the Company. The last increase in  
9 their pension benefit was in 1998 – nearly a quarter of a century ago. These benefits  
10 were earned and are expected. EDRA has proposed a solution – with the same  
11 protections as were agreed to by the parties and approved by the Commission in the  
12 Merger Case.

13 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

14 A. Yes, it does.

**AFFIDAVIT OF WILLIAM L. GIPSON**

STATE OF MISSOURI     )  
                                  )  
COUNTY OF HICKORY )

ss.

On the 20<sup>th</sup> day of January, 2022, before me appeared William L. Gipson, to me personally known, who, being by me first duly sworn, states that he is the Chair of the Benefits Committee of the Empire District Retirees and Spouses Association and acknowledges that he has read the above and foregoing document and believes that the statements therein are true and correct to the best of his knowledge, information and belief.

William L. Gipson  
William L. Gipson

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned Notary Public, on this the 20<sup>th</sup> day of January, 2022.

Betty J. Hampton  
Notary Public

My Commission Expires: 9/1/2022

BETTY J. HAMPTON  
NOTARY PUBLIC - NOTARY SEAL  
STATE OF MISSOURI  
MY COMMISSION EXPIRES SEPTEMBER 1, 2022  
HICKORY COUNTY  
COMMISSION #14629803