BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of The Empire District Electric Company's Request for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in its Missouri Service Area	)))	Case No. ER-2019-0374

REPLY BRIEF OF THE EMPIRE DISTRICT ELECTRIC COMPANY

COMES NOW The Empire District Electric Company, a Liberty Utilities company ("Empire" or "Company"), and for its Reply Brief and regarding approval of the Stipulation[1] terms, respectfully states as follows to the Missouri Public Service Commission ("Commission"):

Table of Contents

[1] On April 15, 2020, the Company, the Commission Staff ("Staff"), Midwest Energy Consumers Group ("MECG"), Empire District Electric Company SERP Retirees ("EDESR"), Empire District Retired Members & Spouses Association LLC ("EDRA"), Renew Missouri, Natural Resources Defense Council ("NRDC"), and the National Housing Trust ("NHT") (collectively, the "signatories"), and with a non-objection from the Sierra Club, submitted for the Commission's consideration and approval a Global Stipulation and Agreement (the "Stipulation") representing resolution of all issues in this general rate proceeding. The Office of the Public Counsel ("OPC") filed an objection to the Stipulation. Since OPC objected, the terms of the Stipulation constitute the joint position of the signatories on all issues addressed in the Stipulation. With regard to issues not specifically addressed in the Stipulation, the terms of the Stipulation constitute the joint position of the Signatories on all revenue requirement, WNR/SRLE, and FAC issues to be decided by the Commission. If the Commission does not accept the terms of the Stipulation as the complete resolution of the case, the Commission will need to go through the traditional revenue requirement and rate design determinations and address all issues presented. If the Commission accepts the terms of the Stipulation as the complete resolution of the case, no other items remain to be decided.

Introduction

The filed testimony and other exhibits that were offered for admission in this case, as well as applicable law, support the Commission's issuance of a Report and Order approving the terms of the Stipulation. There is competent and substantial evidence in this case which will allow the Commission to issue a lawful and reasonable report and order, including detailed findings of fact and conclusions of law, approving the terms of the Stipulation as a complete resolution of this case. Approval of the terms of the Stipulation, in total and without modification, will result in just and reasonable rates and will allow Empire to continue providing safe and reliable service.

Based on the test year as updated and trued-up, the Company is experiencing an annual revenue deficiency of $21,916,462 based on a Return on Equity ("ROE") of 9.95 percent. The Company made necessary and prudent investments in its transmission and distribution systems and experienced increased costs for property taxes and depreciation expense stemming from its additional capital investment, as well as normal and inflationary increases in operating costs. Being mindful of the extraordinary and unique financial challenges currently facing Empire's customers, however, the Company worked with the parties to create a global resolution of this case that would prevent Empire's customers from seeing a base rate increase until the effective date of rates resulting from the Company's next rate case.

Customer Protections, Benefits, and Additional Terms of the Stipulation

While the typical rate case resolutions, as well as the pre-filed positions in this case, reflect changes to operating and maintenance ("O&M") expenses, the Stipulation reflects no change to O&M and keeps the Company's O&M expense recovery at 2016 levels, prior to the Company's acquisition. The Stipulation provides for no changes to the Company's retail base rates in this proceeding, no changes to the FAC base factor, no changes to the customer charges, and the continuation of the tax addendum, currently credited as a separate line item on each rate schedule as "tax rate reduction." As such, if the Stipulation terms are approved as a complete resolution of this case, the only necessary tariff changes will be to reflect minor changes in the fuel adjustment clause ("FAC") tariff sheets.[2]

As additional customer protections, the Stipulation provides for the establishment of an accounting authority order ("AAO") regarding the retirement of the Asbury power plant and also includes: increased FAC reporting requirements; the prohibition of any fuel related costs or market related charges or revenues incurred at Asbury or related to Asbury after January 1, 2020 flowing through the FAC; the prohibition of short-term capacity costs flowing through the FAC until June 1, 2021; extensive safeguards regarding estimated meter reads and billings; new reliability benchmarking and reporting; commitments and obligations regarding AMI data, future rate design changes, and the development of determinants suitable for use in the design and development of time of use ("TOU") rates as part of the next rate case; the continuation of low-income and energy efficiency programs; and new reporting to Empire's retirees.

In all rate cases, the Commission has the difficult task of balancing the interests of customers and investors. This balancing exercise becomes increasingly difficult under stressed economic and financial conditions. Customers and investors, however, have the common interest of needing a financially strong utility. As such, in balance with the numerous customer protections outlined above, the Stipulation also provides for the establishment of a lawful and reasonable partial decoupling mechanism pursuant to RSMo. §386.266.3 and a phase-in rate

[2] There will also be the addition of tariff sheets to implement the partial decoupling mechanism pursuant to RSMo. §386.266.3 (the SRLE - Sales Reconciliation to Levelized Expectations).

mechanism pursuant to RSMo. §393.155.1 to capture the return "on and of" related to the net increase in plant in service and other rate base related items between the Company's filed test year balance in this proceeding and the end of the true-up in this proceeding. As is apparent from the joint list of issues originally presented to the Commission, there is no dispute regarding these rate base additions. The rate base additions for the mechanism are $102,575,958, and the depreciation and amortization for plant in service and intangible plant is $4,009,889. This provision of the Stipulation simply acknowledges that the Company made necessary and prudent investments in order to serve its customers.

OPC's Opposition to the Stipulation

There is competent and substantial evidence in this case which will allow the Commission to issue a lawful and reasonable report and order, including detailed findings of fact and conclusions of law, approving the terms of the Stipulation as a complete resolution of this case. As OPC is the only party that objected to the Stipulation, this Reply Brief focuses on the allegations and arguments of OPC. Based on OPC's "Objection to Parts of the Global Stipulation and Agreement Filed April 15, 2020," as well as OPC's initial and responsive briefs in this matter, it appears that the contested issues with regard to approval of the Stipulation terms as a complete resolution of the case are (1) rate of return, (4) the SRLE, (5) the FAC, (9) AFUDC, (12) treatment of the Tax Cut and Jobs Act ("TCJA") stub period revenues, (13) the retirement of Asbury, (18) affiliate transactions, (22) customer service, and (46) the Company's compliance with particular merger conditions.

OPC did not present evidence on the large majority of revenue requirement and rate design issues in this case. OPC did not perform or present a total revenue requirement calculation or a Class Cost of Service Study. Instead, OPC lobbed accusatory and conclusory statements at

Empire, with little to no reasoning or factual support behind them. Unfortunately, many statements from our consumer advocate are misleading, at best. OPC urges the Commission to "design new rates for Empire to collect ***about*** $160 million less annually than Empire's current rates are designed to collect." OPC Responsive Brief, p. 52 (emphasis added). There is not competent and substantial evidence to support the adoption of OPC's recommendation, and OPC's recommendation flies in the face of the requirement that rates be designed to permit the Company an opportunity to earn a return on the value of the property employed for the convenience of the public. As such, OPC's arguments against approval of the Stipulation terms as a complete resolution of this case should be disregarded by the Commission.

Discussion of the Individual Issues Challenged by OPC

ISSUE 1 - Rate of Return. As noted, the Stipulation involves a unique construct that is investment driven and not expense driven. As such, it is difficult to compare the filed positions to the Stipulation terms. The Stipulation resolves the rate of return issues by providing for a carrying cost rate of 7.3% on the balance created by the phase-in rate mechanism to be established pursuant to RSMo. §393.155.1. The phase-in mechanism balance will be included in the Company's adjudicated rate base in its next general rate case, and the amortization period for what is captured by the phase-in mechanism will be determined in that case.

The Company's testimony in this case demonstrates that the return on common equity ("ROE") to be used for determining the rate of return should be 9.95 percent, within an overall reasonable range of 9.80 percent to 10.60 percent. The Company's testimony also demonstrates that the capital structure to be used for determining the rate of return should include 53.07 percent common equity and 46.93 percent long-term debt, and that the Company's actual filed cost of debt, which is the same as the cost of debt at the true-up period, should be used. OPC recommends a ROE of 9.25 percent. Staff witness Chari testified for an ROE range of 9.05 to 9.8.

Currently, for AFUDC (allowance for funds used during construction) purposes, the Company utilizes a ROE of 9.7 percent. Although the Stipulation does not specify an authorized ROE, the phase-in mechanism carrying cost can be tied to an ROE range of 9.4 to 9.8, depending on the capital structure to which it is applied. The Commission is not required to use any single formula or combination of formulae in determining rates, and the Commission's ratemaking duty involves the making of "pragmatic adjustments." "Under the statutory standard of 'just and reasonable' it is the result reached, not the method employed which is controlling. It is not theory but the impact of the rate order which counts."[3] The 7.3 carrying cost provided for in the Stipulation is both lawful and reasonable and properly reflects the goals of establishing just and reasonable rates and having a financially strong utility that will be able to continue providing safe and reliable service.

ISSUE 4 - WNR and SRLE Adjustment Mechanisms. The Commission should approve Staff's proposed SRLE mechanism as modified and set forth in the terms of the Stipulation. With regard to the proper partial decoupling mechanism to be approved, OPC asserts as follows:

> In its initial brief Empire argues that Empire should receive either a WNR or a SRLE. In fact, that Empire and Staff are at odds on which mechanism should be adopted should not be lost on the Commission. Despite agreeing to a stipulation supporting the SRLE, Empire is nonetheless undercutting its signatory position by arguing for the WNR in tandem with its support for the stipulation. This is not mere irony or oddity, but troubling.

---

[3] *State ex rel. Associated Natural Gas Co. v. Public Service Commission*, 706 S.W. 2d 870, 873 (Mo. App. W.D. 1985).

OPC Responsive Brief, p. 21. Unfortunately, this is one of the many times where OPC's statements are, at best, misleading. In its Statement of Positions filed on April 17, 2020, the Company began by stating that "approval of the terms of the Stipulation is the proper response to each question contained within the List of Issues submitted by Staff on behalf of all parties. Nonetheless, in this Statement of Positions, the Company will address each issue based upon its pre-filed testimony and other documentation which the Company seeks to have admitted into evidence in this proceeding." Later in that document, under the specific "Issue 4," the Company stated:

> As with most other questions contained within the list of issues, approval of the terms of the Stipulation is the proper response to this question. Pursuant to the Stipulation, the Commission should not adopt Empire's originally proposed Weather Normalization Rider ("WNR"), and, instead, should approve Staff's proposed SRLE mechanism as modified and set forth in the terms of the Stipulation.

Next, in the Company's Initial Brief filed on May 6, 2020, Empire stated generally that "approval of the terms of the Stipulation is the proper response to each question put before the Commission (as set forth in the Joint List of Issues submitted by Staff on behalf of all parties)." In the Issue 4 section of its Initial Brief, Empire again stated:

> As with most other questions contained within the list of issues, approval of the terms of the Stipulation is the proper response to these questions. Pursuant to the Stipulation, the Commission should not adopt Empire's originally proposed Weather Normalization Rider ("WNR"), and, instead, should approve Staff's proposed SRLE mechanism as modified and set forth in the terms of the Stipulation.

In every place where the Company had the opportunity to do so since the execution of the Stipulation, Empire specifically stated that the Commission "should not adopt" Empire's originally proposed WNR, and, instead, "should approve Staff's proposed SRLE mechanism as modified and set forth in the terms of the Stipulation." Given these facts, it is unclear why OPC would make the argument that “Empire argues that Empire should receive either a WNR or a SRLE,” “that Empire and Staff are at odds on which mechanism should be adopted,” and that “Empire is nonetheless undercutting its signatory position by arguing for the WNR in tandem with its support for the stipulation.” OPC Responsive Brief, p. 21. Perhaps OPC raises these false arguments about the parties’ positions because OPC is unable to refute that it would be lawful for the Commission to authorize the implementation of either Empire’s WNR or Staff’s SRLE mechanism.

Make no mistake, it is Empire’s position that the Commission should approve Staff’s proposed SRLE mechanism as modified and set forth in the terms of the Stipulation. Both of the mechanisms, however, are consistent with §386.266.3, in that they authorize “periodic rate adjustments outside of general rate proceedings to adjust rates of customers in eligible customer classes to account for the impact on utility revenues of increases or decreases in residential and commercial customer usage due to variations in either weather, conservation, or both.” OPC argues against both mechanisms by pointing to Empire’s quarterly FAC surveillance reports, the lack of Commission rules, and the existence of estimated bills.

Ignoring the substantial amount of evidence in this case regarding the revenue deficiency currently being experienced by the Company, OPC points to Empire’s quarterly FAC surveillance reports to purportedly show that Empire has been able to earn a fair return without a weather normalization rider. OPC Initial Brief, p. 27. OPC’s argument in this regard must be rejected, because OPC has not accurately referred to the statutory requirement for the Commission to approve such a mechanism. RSMo. §386.266.5(1) states only that the Commission must find that the adopted mechanism “[i]s reasonably designed to provide the utility with a sufficient opportunity to earn a fair return on equity.” As such, it is the design of the mechanism, not past experience, which the Commission must examine. Following OPC's suggested path would lead to legal error.

Here, the SRLE is designed to address the misalignment of variable rates and fixed costs which is present in Empire's rates. With regard to the revenue impacts Empire has experienced due to weather and/or conservation that would justify the need for the SRLE or WNR, Staff noted its $4,550,884 weather normalization adjustment in this case. Ex. 164 (Staff Responses to Commission Questions), pp. 4-6. Electric utility costs are largely fixed and change very little in the short run as usage levels change. The portion of the Company's rates based on consumption (or kWh sales) is significant. Ex. 26, Lyons Direct Testimony, p. 53. Because this misalignment can result in an under or over-collection of costs, the mechanism would mitigate this misalignment by adjusting customer bills as well as company revenues. Customers would receive a credit under the SRLE mechanism for higher revenues related to weather. Ex. 29, Lyons Sur. and True-Up Dir., p. 7. Surpassing the requirement of §386.266.5(1), the SRLE is well designed "to provide the utility with a sufficient opportunity to earn a fair return on equity" and to make sure that customers do not pay more than is necessary to achieve that goal.

In its Responsive Brief, OPC also argues a "public policy rationale for why this Commission should not authorize Empire to have a WNR or a SRLE. If a customer's bill will not fluctuate, then what incentive does a customer have to engage in personal energy use reduction measures? What incentive does Empire have to pursue true energy efficiency if bills do not fluctuate? Public Counsel submits that the answers to both hypotheticals are 'none,' and that this Commission should avoid such a result by disapproving both the proposed WNR and the proposed SRLE." OPC Responsive Brief, pp. 22-23. In other words, although the Legislature specifically authorized the Commission to approve these types of mechanisms for utilities such as Empire, OPC urges the Commission to not approve any such mechanism because it may do exactly as the law provides.

With regard to OPC's argument pertaining to Commission rules, OPC fails to cite §386.266.10:

> Prior to August 28, 2005, for subsections 1 to 3 of this section, and upon August 28, 2018, for subsection 4 of this section, the commission shall have the authority to promulgate rules under the provisions of chapter 536 as it deems necessary, to govern the structure, content and operation of such rate adjustments, and the procedure for the submission, frequency, examination, hearing and approval of such rate adjustments. Any electrical, gas, or water corporation may apply for any adjustment mechanism under this section whether or not the commission has promulgated any such rules.

RSMo. §386.266.10 (emphasis added). Additionally, §386.266.3 states that this subsection "shall apply to electrical corporations beginning January 1, 2019, and shall expire for electrical corporations on January 1, 2029." There is no contingency in that provision that relies upon promulgation of Commission rules. Regarding OPC's estimated bills argument, the Company further notes that while individual customer bills might have had some import in regard to the WNR proposed by Empire, as that mechanism was based on individual customer usage, individual customer bills have no such import in regard to the SRLE mechanism detailed in the Stipulation, as the SRLE measures the impact of weather on an aggregate basis.

ISSUE 5 – FAC. As with all issues in this case, adoption of the terms of the Stipulation is the lawful and reasonable resolution of the FAC issues. Pursuant to the Stipulation, there should be no changes to the retail base rates, no change to the FAC base, and limited FAC tariff language changes.

(a) Sharing Mechanism. Pursuant to the Stipulation, the FAC sharing mechanism should remain at 95/5 percent. Staff and the Company are in agreement in this regard. OPC, however, argues for a sharing percentage of 85/15.

In its discussion of this issue in its Responsive Brief, OPC points to the Commission's Report and Order in Case No. ER-2008-0318. OPC's reliance on this decision is odd, because, in that case, the Commission found that OPC's argument regarding the sharing mechanism "would largely negate the effect of the fuel adjustment clause."[4] The Commission also found that an 80 percent pass-through provision with a 50 basis point cap on the amount of cost changes that would be absorbed by the utility's shareholders would "still impose more costs on AmerenUE than is necessary to provide an appropriate incentive." *Id.* at 73. Ultimately, in that case, like in every other case where the Commission has addressed the issue of the proper sharing mechanism, the Commission found 95/5 to be the appropriate sharing percentage. In AmerenUE's 2008 rate case, the Commission also found as follows:

> There is one additional consideration that supports the implementation of a 95 percent pass through provision in AmerenUE's fuel adjustment clause. That is the likely impact the pass through provision will have on AmerenUE credit worthiness in the eyes of Wall Street. The Commission has recently allowed two other Missouri electric utilities, Aquila and Empire, to implement a fuel adjustment clause including a 95 percent pass through provision. To now impose a less favorable pass through provision on AmerenUE would signal investors that AmerenUE was less well regarded by this regulatory agency.

---

[4] Report and Order issued January 27, 2009, effective February 6, 2009, Commission Case No. ER-2008-0318, p. 72.

Id. at 74. In AmerenUE's 2019-2020 rate case, the Commission acknowledged its prior findings and decisions regarding the sharing mechanism and authorized the continuation of the 95/5 percent sharing mechanism for AmerenUE.[5]

In its Responsive Brief, OPC implies that Empire does not know how its FAC works, stating that "customers do not 'pay' when fuel prices are below [the] FAC base factor." OPC goes on to state that "(r)ather, Empire's FAC returns savings when its FAC base factor within the commodities charge is higher than Empire's actual fuel and purchased power prices." OPC Responsive Brief, p. 25. For this argument, OPC cites to this statement in Empire's Initial Brief: "[If] FAC eligible costs were below the FAC base factor for an extended period of time, customers would over pay for energy costs during that period. Currently, customers would over pay 5% of the difference between actual energy costs and the FAC base. With the OPC recommendation, this percentage would increase to 15%." Empire Initial Brief, pp. 21-22. This statement by Empire is completely accurate. Once again, Empire is unsure of the reasoning behind OPC's false argument. It should be undisputed that, as stated by Empire, "unless the actual prudently incurred FAC eligible costs are exactly equal to the FAC base factor on a per unit basis, then customers will either under pay or over pay for those costs in that period." *Id.* at 22.; Ex. 1011, Tarter Supplemental Testimony, p. 8. "The sharing mechanism determines how much the Company and its customers will retain or absorb." Empire Initial Brief, p. 22.

Lastly, with its Responsive Brief, OPC again points to Empire's hedging costs as cause to change from 95/5 to 85/15 (OPC Responsive Brief, p. 26). As fully addressed in the Company's Responsive Brief, Empire's hedging activities were found to be prudent. With its Responsive

---

[5] Report and Order issued April 29, 2020, to be effective May 29, 2020, Commission Case No. ER-2019-0335.

Brief, the Company also fully addressed the fact that the 2019 reduction in hedging costs pointed to by OPC is largely attributed to market prices and market price convergence between hedging, which took place under Empire's legacy hedging program, and is not due to any change in hedging policy. Ex. 1010, Doll Supplemental, pp. 4-5.

(c) Base Factor. Pursuant to the Stipulation, the FAC base factor should remain at the current $24.15/MWh with no change to the FAC eligible components as described within the Stipulation. The current FAC base factor of $24.15 was established in the Company's last general rate case, upon consideration of all factors. The Stipulation provides for no changes to base rates and no change to the FAC base factor. There is no substantial evidence which would require the FAC base factor to be changed at this time, so long as the other components remain constant and base rates are not changed.

Like it did in its Initial Brief, OPC notes in its Responsive Brief that OPC "cannot independently determine the NBEC or base factor," but OPC continues to assert, without evidentiary support, that OPC "is positive that what the signatories to the stipulation offer the Commission does not accurately reflect Empire's fuel and purchased power costs." OPC Initial Brief, p. 35; OPC Responsive Brief, p. 27. These statements by OPC are inherently contradictory, and OPC's arguments regarding the FAC should be disregarded.

(d)(ii) MJMEUC Contract. The Company's current FAC tariff specifically excludes revenue from "full or partial requirement sales to municipalities" from passing through to customers through the Off-System Sales Revenue ("OSSR") component of the FAC. Ex. 20, Doll Rebuttal, pp.7-8. As such, paragraph 6(e) of the Stipulation provides as follows: "Regarding the MJMEUC issue, (i) the level of revenues will represent an offset to lost revenues from the current municipal customer contracts and thus will be retained by the Company until the allocations are reexamined in the next general rate case and (ii) Staff's recommendation for Empire to file additional reporting requirements with its FAC monthly reports and Fuel Adjustment Rate filing workpapers will be adopted. These additional reporting requirements will demonstrate that the energy purchased from Liberty-Empire related to MJMEUC's agreement will be billed to the cities (Staff understands these cities to be Monett and Mt. Vernon, Missouri) via MJMEUC and will thereby reduce a portion of the fuel expense that is allocated and billed to Liberty-Empire's retail customers. This reduced portion of fuel expense will clearly illustrate that the energy purchased for these specific cities via MJMEUC is not flowing through the FAC in order to be collected from all Liberty-Empire's retail customers."

The MJMEUC contract is clear that the capacity purchased is from the "Seller's System" – known as a slice of system. The "Seller's System" is defined in the MJMEUC contract as meaning Empire's "fleet of owned generators, contracts for the purchase of Capacity, Energy, or both, and all other acquisitions by Seller of Capacity, Energy, or both on which Seller relies to serve its retail load and the loads of its wholesale customers." Ex. 203, Sch. LMM-D-3. This is confirming that the capacity sold is the exact same resource fleet that served the cities prior to their aggregation and creation of the Southwest Missouri Power Electric Pool ("SWMPEP"). Ex. 1010, Doll Supplemental, pp. 1-2. Contrary to OPC witness Mantle's assertion, financial arrangements regarding specific energy resources do not and cannot change the agreed capacity.

ISSUE 9 - Allowance for Funds Used During Construction. The appropriate metric for Empire to use for funds used during construction that is capitalized is the metric prescribed by the FERC Uniform System of Accounts ("USOA") Electric Plant Instructions. The FERC instructions state the formula and elements for the computation of the allowance for funds used during construction shall be as prescribed in the Electronic Code of Federal Regulations: Title

18, Chapter 1, Subchapter C, Part 101. Ex. 60 (Electric Plant Instruction); Ex. 61 (Company's Response to OPC DR 3045).

OPC's desire for punitive action to be taken against Empire does not change the fact that the USOA states the rates utilized in the AFUDC formula shall be determined annually and the balances for long-term debt, preferred stock and common equity ***shall be the actual book balances as of the end of the prior year*** (emphasis added). Altering from the USOA prescribed formula for calculating AFUDC would not reflect the true cost of funds Empire incurs when investing in capital projects and, of course, would be contrary to the requirement that the Company follow FERC accounting.

Under Issue 9, OPC has inserted a subpart (b) regarding an affiliate financing transaction. The proper resolution of this issue is addressed under Issue 18, Affiliate Transactions, and Issue 46, Merger Conditions.

ISSUE 12 - Tax Cut and Jobs Act of 2017 ("TCJA") federal income tax rate reduction from 35% to 21% impact for the period January 1 to August 30, 2018. Since the Company will be filing its next rate case shortly after the conclusion of this case, the Company encourages the Commission to delay its determination regarding the refund of any stub revenues until that time. Paragraph 3(b) of the Stipulation provides as follows: "An amortization of the balance of the stub period amortization of $11,728,453, in the amount of $5,000 monthly, is included in the revenue requirement for this case. The amortization balance, and the appropriate amortization period, will be reevaluated in the next general rate case." The Company urges the Commission to approve the terms of the Stipulation, in total and without modification, as a complete resolution of this case, as this will result in just and reasonable rates and will allow Empire to continue providing safe and reliable service. The filed testimony and other documentation that is being offered in this case will allow the Commission to issue a lawful and reasonable report and order, including detailed findings of fact and conclusions of law, approving the terms of the Stipulation as a complete resolution of this rate case proceeding.

Although the Stipulation includes a phase-in mechanism related to new plant-in-service investments and provides for no stub period revenues to be refunded to customers at this time, the Stipulation also provides for no increase in customer charges and no changes to the Company's retail base rates until the effective date of rates in the Company's next rate case and the continuation of the tax addendum, currently credited as a separate line item on each rate schedule as "tax rate reduction." Ex. 1017, Richard Supplemental, p. 18.

With its Responsive Brief, OPC points to the Commissioners' questions on this issue. Empire would note its answers to those questions. An order in this case directing Empire to refund the stub period revenue would be detrimental to the Company. This is because an order in this case directing the Company to refund all or even part of the $11.7 million of stub period revenue would significantly impact the Company's cash flow, which is already compromised as a result of the COVID-19 pandemic and the Company's revised policies regarding no disconnects and the deferral of late fees. In addition, the Company is experiencing a significant reduction in revenue due to businesses being closed as a result of the COVID-19 pandemic and from loss of load related to abnormal weather. Ex. 1017, Richard Supplemental, p. 19. If an order is issued in this case for the Company to begin refunding the collected stub period revenue, no matter the time period for the return, cash flow problems will be created for the Company. *Id.*

Although the Company was directed to establish a regulatory liability regarding the stub period revenues, no ratemaking determination was made in Case No. ER-2018-0366. Only Empire has presented credible evidence in this case regarding the proper ratemaking treatment for the deferred amounts. If the Commission does not approve the Stipulation terms as a resolution of this case, the Commission must acknowledge that the amounts collected by the Company during the stub period were collected pursuant to lawfully approved tariffs. The Company reviewed its financial performance from January 1 to August 30, 2018, and determined it earned less than its allowed return during that period. As a result, it would be inequitable to credit the retained sums to customers, creating significant under-earnings during this period. Also, requiring the return of these sums would constitute retroactive ratemaking, as those revenues were lawfully collected pursuant to Empire's filed and approved tariffs. Ex. 4, Richard Corrected Direct, pp. 12-14; Ex. 5, Richard Rebuttal, pp. 35-36.

Staff argues that its "proposed treatment of the TCJA 'stub period' revenues is fair and should be adopted. OPC's proposal, by contrast, is frankly punitive and not likely to be sustained on appeal." Staff Responsive Brief, p. 34. Staff notes that the stub period revenue was collected by Empire in good faith, pursuant to lawful, approved tariffs. Staff also acknowledges that the Court's "disapproval of retroactive ratemaking was founded on the Constitution and not upon the Missouri statutes. Therefore, enactment of §393.137, RSMo., passed during the 2018 session as part of Senate Bill 564, is and was not sufficient to authorize the involuntary deprivation of the 'stub period' revenues from Empire." Staff Responsive Brief, pp. 34-35 (internal citations omitted).

ISSUE 13 – Asbury. It is both lawful and reasonable for costs related to the Asbury power plant to remain in rates, and no amount should be removed from Empire's cost of service at this time to reflect the closure of the Asbury power plant in March of 2020.

OPC argues that Empire and all of the other parties to this case are urging the Commission to ignore the retirement of Asbury when setting rates in this case. OPC Responsive

Brief, p. 4. Empire and the other signatories, however, urge approval of the Stipulation as a complete resolution of this case. Consistent with the Commission's directive, the Stipulation calls for the issuance of an Asbury AAO. More specifically, the signatories to the Stipulation request that the Asbury AAO direct the Company to establish a regulatory asset/liability, beginning January 1, 2020, to reflect the impact of the closure of Asbury and require the Company to separately track and quantify the changes from the base amounts of categories of rate base and expense, including rate of return.

The Stipulation does not ignore the retirement of Asbury. Instead, the issuance of the Asbury AAO will allow the Commission to defer a final decision on the cost impact of the retirement of Asbury until the next rate case, when there will be significantly more facts known with regard to changing costs and expenses as a result of the retirement of Asbury. This ratemaking decision will not be unnecessarily delayed, as the Company will be filing its next rate case, to address its wind investments, shortly after this current rate case concludes. There is no reason for the Commission to make this determination now, with incomplete information, when it can make the decision one year from now with all the facts at hand.

In its Responsive Brief, OPC points to a Commission decision in a set of consolidated 2009 cases when, at the request of the subject utilities, the Commission extended the end of the rate case true-up period. According to OPC's Responsive Brief, in those 2009 cases, the Commission issued an order in March extending the true-up period through April for an August operation of law date. OPC Responsive Brief, p. 40. That decision, of course, has no relevance to this case at this time, since the Commission denied OPC's request to extend the true-up period in this case and has repeatedly held that it will address the impacts of Asbury's retirement in Empire's next rate case proceeding.[6] In reliance on the Commission's *Order Denying Public Counsel's Motion to Modify the Test Year* and *Order Denying Motion for Reconsideration*, the Company has not presented the evidence that would be necessary in order for the Commission to lawfully and reasonably reflect the closure of the Asbury plant in the Company's cost of service in this proceeding. It would be patently unjust and unreasonable to attempt to make select adjustments in this case due to the retirement of Asbury.

ISSUE 18 - Affiliate Transactions. Empire's transactions with its affiliates are reasonable and prudent, and Empire's transactions with its affiliates comply with Commission Rule 20 CSR 4240-20.015. As noted, the Stipulation involves a unique construct, and, as such, it is difficult to compare the filed positions to the Stipulation terms. The Stipulation does not specifically address affiliate transactions. Instead, the Stipulation resolves all revenue requirement issues by providing that there will be no changes to the Company's retail base rates in this proceeding, no changes to the FAC base factor, and that a phase-in rate mechanism will be established pursuant to §393.155.1, with regard to plant in service and other rate base related items. It is difficult to compare the filed positions to the Stipulation, because the filed positions include recommendations regarding changes to O&M expenses, while the Stipulation reflects no changes to O&M and keeps the Company's O&M expense recovery at 2016 levels. "If the settlement is approved in its entirety, the O&M expenses being recovered from customers would

[6] On January 28, 2020, the Commission issued its *Order Denying Public Counsel's Motion to Modify the Test Year* ("Asbury's retirement is best addressed in Empire's next rate proceeding"). On February 19, 2020, the Commission issued its *Order Denying Motion for Reconsideration*, stating: "The Commission will not modify the test year, nor allow isolated adjustments for Asbury's retirement to be addressed in this general rate proceeding. The Commission will address the impacts of Asbury's retirement in Empire's next rate proceeding, which Empire states it will file upon the conclusion of this proceeding."

contain zero O&M costs associated with affiliate transactions from APUC as these costs will remain at the authorized levels prior to the acquisition." Ex. 1017, Richard Supplemental, p. 22.

For this section of its Responsive Brief, OPC states that it has not changed its positions from those argued in OPC's Initial Brief, and OPC presents no new arguments. OPC Responsive Brief, pp. 42-43. As such, Empire's arguments regarding the prudence of its affiliate transactions need not be addressed further at this time. Empire's Initial and Responsive Briefs, as well as Empire's testimony, fully demonstrate that Empire's transactions with its affiliates are reasonable and prudent and that Empire's transactions with its affiliates comply with Commission Rule 20 CSR 4240-20.015.

ISSUE 22 - Customer Service. For this section of its Responsive Brief, OPC simply states that its position has not changed from that argued in its Initial Brief. OPC Responsive Brief, p. 43. Empire's and Staff's Initial and Responsive Briefs, as well as Empire's and Staff's testimony, fully demonstrate that the terms of the Stipulation should be approved in total and specifically as to the customer service issues raised in this case. OPC does not object to the Stipulation's resolution of Issue 23 (Estimated Bills), but OPC included this separate "Customer Service" issue to argue for a punitive ROE reduction.

Empire takes customer complaints very seriously, and, as demonstrated by the Company's and Staff's testimonies in this case, Empire has made significant strides in addressing these issues. To the extent concerns were raised in this proceeding regarding customer service, implementation of the terms of the Stipulation is a just and proper resolution. With regard to reliability concerns, the Stipulation provides that the Company will benchmark across utilities for reliability and present this information in its direct testimony in its next rate case and in subsequent reliability reports (annual basis) for the years 2021 and 2022.

Additionally, with the Stipulation, the Company commits to the following with regard to estimated bills for the years 2020, 2021, and 2022:

a. Incorporate data into its monthly reports to Commission Staff;
b. Initiate quarterly reports to the Commission Staff and OPC regarding the number of estimated meter readings;
c. Initiate quarterly reports to the Commission Staff and OPC regarding the number of estimated meter readings exceeding three consecutive estimates;
d. Initiate quarterly reports to the Commission Staff and OPC regarding the number of bills with a billing period outside of 26 to 35 days; and
e. Initiate quarterly reports to the Commission Staff and OPC regarding the Company and contract meter reader staffing levels;
f. Evaluate the authorized meter reader staffing level and take action to maintain adequate meter reader staffing levels in order to minimize the number of estimated bills.
g. Company will meet with Staff and OPC to discuss bill redesign possibilities for the future.
h. Ensure that all customers who receive estimated bills for three consecutive months receive the appropriate communication regarding estimated bills and their option to report usage as required by Service and Billing Practices, Rule 20 CSR 4240-13.020(3).
i. Ensure that all customers who receive an adjusted bill due to underestimated usage are offered the appropriate amount of time to pay the amount due on past actual usage as required by Service and Billing Practices, Rule 20 CSR 4240-13.025(1)(C).
j. Evaluate meter reading practices and take action to ensure that billing periods stay within the required 26 to 35 days, unless permitted by those exceptions listed in the Commission's rules.
k. File notice within this case by September 1, 2020, containing an explanation of the actions the Company has taken to implement the above recommendations related to billing and bill estimates.

ISSUE 46 - Case No. EM-2016-0213 Commission-Ordered Conditions. These issues are not specifically addressed in the Stipulation, but, as noted, approval of the Stipulation terms is the proper resolution of this entire case. Additionally, there is no credible evidence before the Commission that would support a finding that the Company has violated the referenced merger conditions or a conclusion that any "relief" should be granted accordingly. The Company has fully complied with the merger conditions from Case No. EM-2016-0213, and, as such, no action on the part of the Commission is required and none would be appropriate.

OPC asserts that Empire has utterly disregarded the Commission-approved merger conditions. OPC Responsive Brief, p. 47. The Company's and OPC's witnesses may disagree on the various rate of return issues and the specific handling of the refinancing of Empire's $90 million first mortgage bonds that matured on June 1, 2018 and what constitutes the applicable fully distributed cost for that transaction (outside of the Stipulation, the Company and Staff disagree on these points as well), but claiming that the Company has demonstrated an "utter disregard of the Commission's conditions" is another matter entirely. The Company has shown all due deference to these conditions, with the merger conditions being addressed at length in the Company's pre-filed direct testimony. Once the specific concerns were raised by OPC and Staff regarding the June 1 refinancing, Empire devoted an additional and substantial amount of attention to the issues, as evidenced by the testimonies of Empire witnesses Bob Hevert, Mark Timpe, and John Cochrane, which demonstrate the appropriateness of the Company's actions.

OPC then goes a step further and claims that "(n)ot only have APUC and Empire disregarded their obligation to satisfy this condition, LUCo's books have been manipulated to make it appear as if LUCo has more equity than it actually has." OPC Responsive Brief, p. 47. Notably, OPC's allegation in this regard contains no cite to testimony or other evidence. That is because there is no evidence to support this hyperbole. Empire's witnesses in this proceeding have presented all testimony to the best of their knowledge, information, and belief, under oath and subject to penalties of perjury, and the Company has complied with all laws, rules, and orders with regard to the discovery process. There can be no credible evidence presented to the contrary.

Conclusion

OPC's assertion that new rates should be designed for Empire "to collect about $160 million less annually than Empire's current rates are designed to collect" (OPC Initial Brief, p. 82; OPC Responsive Brief, p. 52) is wholly without merit and is not supported by competent and substantial evidence. Implementation of the Company's requested rate increase, however, based on an annual revenue requirement deficiency of $21,916,462, as set forth in and supported by the Company's direct, rebuttal, surrebuttal, true-up, and supplemental testimony, would be lawful and reasonable. Being mindful of the extraordinary and unique financial challenges currently facing Empire's customers, however, the Company worked with the parties to create a global resolution of this case that involves a unique settlement construct and balances all interests. Approval of the terms of the Stipulation as a complete resolution of this rate case will allow the Company to continue providing safe and reliable service and will allow Empire's retail customers in Missouri to not experience a base rate increase until the effective date of rates resulting from the Company's next rate case.

WHEREFORE, The Empire District Electric Company submits its Reply Brief for the Commission's consideration and urges the Commission to approve the terms of the Stipulation, in total and without substantive modification, as a complete resolution of this rate case

Respectfully submitted,

/s/ Diana C. Carter
Diana C. Carter MBE #50527
428 E. Capitol Ave., Suite 303
Jefferson City, Missouri 65101
Joplin Office Phone: (417) 626-5976
Cell Phone: (573) 289-1961
E-Mail: Diana.Carter@LibertyUtilities.com

Certificate of Service

I hereby certify that the above document was filed in EFIS on this 18th day of May, 2020, with notification of the same being sent to all counsel of record.

/s/ Diana C. Carter