

Exhibit No.: _____
Issue(s): SRLE and WNR Decoupling Mechanisms/
Estimated Bills/AMI Deployment/COVID-19
And Planned Capital Expenditures/Rationale for
Staff's Decision to be a Signatory to the Stipulation
Witness/Type of Exhibit: Marke/Reply to
Answers to Commission Questions
Sponsoring Party: Public Counsel
Case No.: ER-2019-0374

**REPLY TO TESTIMONY RESPONDING
TO COMMISSION QUESTIONS**

OF

GEOFF MARKE

Submitted on Behalf of the Office of the Public Counsel

EMPIRE DISTRICT ELECTRIC COMPANY

CASE NO. ER-2019-0374

May 12, 2020

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

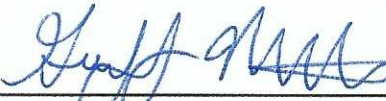
In the Matter of The Empire District)
Electric Company's Request for Authority)
to File Tariffs Increasing Rates for Electric) Case No. ER-2019-0374
Service Provided to Customers in its)
Missouri Service Area)

VERIFICATION OF GEOFF MARKE

Geoff Marke, under penalty of perjury, states:

1. Attached hereto and made a part hereof for all purposes is my responsive testimony to answers to Commission questions in the above-captioned case.

3. My answer to each question in the attached responsive testimony to answers to Commission questions is true and correct to the best of my knowledge, information, and belief.



Geoff Marke
Chief Economist
Office of the Public Counsel

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REPLY TO TESTIMONY RESPONDING TO COMMISSIONER QUESTIONS

OF

GEOFF MARKE

THE EMPIRE DISTRICT ELECTRIC COMPANY

CASE NO. ER-2019-0374

I. INTRODUCTION

Q. What is your name, title and business address?

A. Geoff Marke, PhD, Chief Economist, Office of the Public Counsel (“OPC” or “Public Counsel”), P.O. Box 2230, Jefferson City, Missouri 65102.

Q. Are you the same Geoff Marke that filed direct, rebuttal revenue requirement, rebuttal rate design, surrebuttal and supplemental testimony?

A. Yes.

Q. What is the purpose of your reply to testimony responding to Commissioner questions?

A. My testimony is in response to the testimony of other parties in response to Commission questions on the following topics:

- Sales Reconciliation to Levelized Expectations (“SLRE”) and the Weather Normalization Rider (“WNR”) Decoupling Mechanisms
 - Empire witness Sheri Richard; and
 - Staff witness Robin Kliethermes
- Estimated Bills
 - Empire witness Sheri Richard; and
 - Staff witnesses Robin Kliethermes and Gary Bangert
- AMI Deployment and Planned Capital Expenditures
 - Sheri Richard
- Rationale for Staff’s Decision to be a Signatory to the Stipulation
 - Staff witness Mark L. Oligschlaeger

My silence regarding any issue should not be construed as an endorsement of, agreement with, or consent to any other party’s filed position.

1 **II. SLRE AND WNR DECOUPLING MECHANISMS**

2 **Q. What was Ms. Richard's response to the Commission questions regarding the SLRE**
3 **and/or the WNR?**

4 A. Ms. Richard indicates that weather influenced usage during the test year and that the
5 Company is planning to file a MEEIA application in the third quarter of 2020. Later Ms.
6 Richard dismisses Empire's estimated bills as an issue of concern in regards to approving
7 the decoupling mechanism.

8 **Q. What was Ms. Kliethermes response to the Commission questions regarding the SLRE**
9 **and/or the WNR?**

10 A. Ms. Kliethermes lists 10 bulleted reasons why the SLRE is superior to the WNR and
11 explains why the SLRE is superior to the previous MEEIA approved mechanisms (e.g., net
12 sharing mechanism or the throughput distinctive).

13 **Q. Has your position changed in response to their supplemental testimony?**

14 A. No. I agree with Ms. Kliethermes that the WNR is unworkable. I also agree that the SLRE
15 mechanism Staff has designed is an improvement over mechanisms the Commission has
16 approved for gas utilities.

17 However, I continue to maintain that a SLRE is not appropriate given Empire's flawed
18 billing data and the uncertainty surrounding COVID-19. Empire is planning to file a rate
19 case immediately after this one. It would seem more appropriate and prudent to revisit this
20 issue in that future case where there will presumably be agreed-to data to draw from.

21 I also do not believe Empire's pending MEEIA application offsets the serious concerns
22 associated with faulty data in the middle of an economic recession. Approving a decoupling
23 mechanism without robust DSM programs and identified supply-side deferrals would
24 effectively be placing the cart before the horse. Moreover, assuming Empire actually files a
25 MEEIA application in the 3rd quarter, experience has shown that MEEIA filings have not
26 been "quick" processes. Given the uncertainty surrounding COVID-19 there will no doubt
27 be further complexity involved with any filing. Reasonable minds can differ on this, but I

1 find it highly unlikely that a MEEIA would be approved before Empire's next rate case.
2 Stated differently, parties can wait until the Empire's next rate case to address the SLRE
3 and it could still have a positive impact on a MEEIA application if it is appropriate.

4 **Q. Is there anything else the Commission should be aware?**

5 A. The Commission should be cognizant of comments Ian Robertson made during APUC's Q1
6 earnings call on May 7th on Empire's decoupling mechanism in this case. The following
7 exchange is between National Bank Financial Managing Director Rupert M. Merer and
8 APUC CEO Ian Robertson:

9 Rupert Merer

10 Thank you, good morning everyone morning. So you have - looks like a positive
11 outcome for the rate case at Empire District, can you talk us through what's included
12 in that rate case, as far as ROE, and give a little more color on the decoupling
13 provisions and when they may start?

14 Ian Robertson

15 Yes. Well, I'll start by saying it's sort of a black box settlement, if you want to think
16 of it that way, but we were pleased that the outcome is generally in accordance with
17 our expectations from a long-term model. I think more relevantly, given the
18 circumstances, is the first-time inclusion of decoupling mechanisms, as you
19 mentioned, prior to implementation of Senate bill 564 a couple of years back, a
20 decoupling was just not part of the regulatory landscape in Missouri.

21 And it now is, and so this is going to be our first decoupling. And it's an important
22 one, you know, candidly it takes that 50% decoupling up to close to 80%, when you
23 add in the smaller Granite State. One of the, I'll just say, uniqueness of the
24 decoupling in Missouri is that it's broad-based volumetric decoupling for all of our
25 residential and small commercial customers.

1 The larger commercial customers and industrial customers, who historically have
2 been, I'll say, weather insulated because just the nature of their usage are not
3 decoupled. And that's kind of - that's one of the reasons why, if you assume that
4 those customers are decoupled weather-wise it actually would take that 80% up to
5 94%. **So, huge win, from our perspective, in changing the - I'll say the risk**
6 **profile of the business.** Rupert, I don't know if that's kind of the color that you're
7 looking for, in terms of the Empire rate case? (Emphasis added).¹

8 To be clear, any decoupling mechanism is “a huge win . . . in changing the risk profile” of
9 Empire. As such, proper economic regulation should recognize and balance risk-reward that
10 shareholders and captive ratepayers experience. The Commission recognized this fact with
11 Liberty Gas’s decoupling mechanism when it approved the unanimous stipulation and
12 agreement that explicitly said:

13 “The revenue requirement recommended herein is based on a 9.8% ROE **which is**
14 **20 basis points lower than the 10% ROE recommended by the Staff in**
15 **recognition of a number of factors, including the adoption of a WNAR [weather**
16 **normalization adjustment rider] in this proceeding.”² (Emphasis added).**

17 I maintain my recommendation that the Commission not approve the proposed SLRE in this
18 case. All parties would be better served by encouraging Empire to refile its request under
19 Staff’s mechanism in the next rate case. Empire’s flawed data (more on this later in my
20 testimony) and the uncertainty surrounding COVID-19 and Empire’s MEEIA application
21 should be, hopefully, alleviated by then.

22 If the Commission elects to move forward with the SLRE, the Commission should adjust
23 Empire’s reward (ROE) downward to reflect the reduced risk as Ian Robertson recognizes

¹ Seeking Alpha (2020) Algonquin Power & Utilities Corp. (AQN) CEO Ian Robertson on Q1 2020 Results - Earnings Call Transcript <https://seekingalpha.com/article/4345019-algonquin-power-utilities-corp-aqn-ceo-ian-robertson-on-q1-2020-results-earnings-call?part=single>

² GR-2018-0013, Liberty Utilities (Midstates Natural Gas) Corp. Unanimous Stipulation and Agreement, p. 2-3.

1 in the earning call and as the Commission has done for other utilities including Liberty's
2 last gas rate case.

3 **III. ESTIMATED BILLS**

4 **Q. What was Empire witness Ms. Richard's response to the Commission questions posed to**
5 **Empire witness Brent Baker regarding Empire's estimated bills?**³

6 A. Ms. Richard's response to the estimated bill questions is almost entirely in regards to the
7 impact of estimated bills on approving the SLRE mechanism. Ms. Richard states:

8 Using data provided in the Company's response to DR 0246, the number of
9 residential customer bills that were estimated over Staff's test period of August 2018
10 through July 2019, was 39,622 out of 1,566,231 bills or about 2.5%. This number of
11 estimated bills, while concerning from the customer experience perspective, is far
12 less alarming than the 15% presented in Ms. Mantle's testimony.⁴

13 **Q. Are those the same numbers Empire provided to you?**

14 A. No. Ms. Richard claims that there were 39,622 estimated bills during Staff's weather
15 normalized billing test year period (August 2018 – July 2019), but the numbers I obtained
16 added up to 64,746. I am including the table I submitted in the last round of testimony that
17 includes estimated bills by month for 2017, 2018, and 2019 for reference. Importantly, I
18 have bolded Staff's weather normalization billing months in Table 1.

19
20
21
22
23

³ It is my understanding that Brent Baker, the Vice President of National Customer Experience for Liberty Utilities has left the Company to take a position with Springfield Municipal. As such, it appears that Ms. Richard is now the point person for customer-experience related questions.

⁴ ER-2019-0374 Supplemental Testimony of Sheri Richard, p. 11, 17-22.

1 Table 1: Empire estimated bills by month 2017-2019 (Staff weather normalization months bolded)

	2017 Estimated Bills	2018 Estimated Bills	2019 Estimated Bills
January	742	5,594	1,730
February	362	10,639	663
March	232	19,393	1,114
April	521	14,469	682
May	545	20,874	1,011
June	354	17,894	997
July	1,866	17,982	2,864
August	637	14,388	5,557
September	1,001	6,309	9,681
October	509	15,534	19,306
November	2,769	9,810	15,593
December	11,517	9,644	25,578

2 Dividing 64,746 bills by 12 equals a monthly average of 5,396. It is important to note that
3 the monthly average of the seven months preceding August 2018 was 15,264 and the five
4 months following the July 2019 test year was 15,143. That is, estimated bills were
5 approximately three times higher pre- and post- the dates Staff used for its billing period
6 data. Table 2 restates this information in a more visual format.

1 Table 2: Empire average monthly estimated bills pre, during and post Staff’s billing period for
 2 weather-normalization billing analysis

	Estimated Bills	
January 2018	5,594	}
February 2018	10,639	
March 2018	19,393	
April 2018	14,469	
May 2018	20,874	
June 2018	17,894	
July 2018	17,982	
August 2018	14,388	}
September 2018	6,309	
October 2018	15,534	
November 2018	9,810	
December 2018	9,644	
January 2019	1,730	
February 2019	663	
March 2019	1,114	
April 2019	682	
May 2019	1,011	
June 2019	997	
July 2019	2,864	
August 2019	5,557	
September 2019	9,681	}
October 2019	19,306	
November 2019	15,593	
December 2019	25,578	

Monthly
Average: 15,264

Staff Weather
Normalization
Monthly Average:
5,396
Total: 64,746

Monthly
Average:
15,143

3
 4 **Q. What were Staff witnesses Ms. Kliethermes and Mr. Bangert’s response to the**
 5 **Commission questions regarding Empire’s estimated bills?**

6 **A.** Both Staff witnesses testified that the numbers were too high; however, both witnesses’
 7 highlighted points for which I will provide further context.
 8
 9

1 **Q. What did Ms. Kliethermes highlight for which you want to provide further context?**

2 A. Ms. Kliethermes stated:

3 For the months of January through June of 2019, the Company reported less than
4 1% of customer bills were estimated. Generally, in any given month there should be
5 few if any bills being estimated. Since Empire can achieve estimating less than 1%
6 of customer bill's for an extended period of time, any percentage greater than 1% is
7 of concern.⁵

8 I agree that there is no reason for Empire to ever exceed a 1% in monthly estimated bills, let
9 alone show excessive amounts of estimated bills for extended months. Ms. Kliethermes
10 identifies a 6-month period where Empire estimated a low monthly average of 1,033 bills a
11 month to illustrate that the Company is capable of providing reasonable billing service. It
12 should not be lost on the Commission that for the other 18 months discussed the monthly
13 average of estimated bills was 13,395. Moreover, the last month included, December 2019
14 totaled a high of 25,578 estimated bills. So, yes, I agree that Empire is capable of performing
15 reasonable customer service for the high cost charged, it just elected not to make accurately
16 billing its services a priority.⁶

17 **Q. What did Staff witness Mr. Bangert say in regards to estimated bills for which you will
18 provide context?**

19 A. Mr. Bangert provides a line chart of estimated monthly bills comparing Empire, Evergy
20 West and Missouri American Water Company. Mr. Bangert concludes:

21 In Staff's opinion, it is important to recognize that meter reading technology varies
22 among companies and, consequently, the number of estimated meter readings.
23 However, the chart clearly shows that the percentage of estimated bills at Empire
24 were significantly more than at Evergy West and Missouri-American Water

⁵ ER-2019-0374 Supplemental Testimony of Robin Kliethermes p. 10, 12-15.

⁶ See Berg, B. (2018) Liberty Utilities-Empire District has been estimating on some customer's bills. KY3
<https://www.ky3.com/content/news/Liberty-Utilities---Empire-District-has-been-estimating-on-some-customers-bills488678541.html>.

1 Company (“MAWC”) a majority of the time during the period covered. The only
2 exception to this being the January 2019 to July 2019 time period.⁷

3 Finally, Mr. Bangert testifies that the stipulation’s reporting requirements satisfies Staff’s
4 concerns going forward.

5 **Q. What is the context you are supplying?**

6 A. I agree that comparing estimated bills across utilities is a challenging exercise as there are
7 many variables that can prevent an apples-to-apples comparison of service. For example,
8 estimated billing data is not traditionally reported, and utility service areas, cost of service,
9 meter technology, and billing schedules all vary. However, a few points should be
10 highlighted:

- 11 • Compared with the limited estimated data available (Evergy West and MAWC)
12 Empire scores poorly;⁸
- 13 • The Commission and Public Counsel routinely field customer complaints, and
14 concerns about service and cost for all utilities; however, this rate case has been
15 unique for the sheer volume of public comments and testimony related to estimated
16 billing (in EFIS, at the public hearings, in the Change.org petition);
- 17 • Empire knew this was an issue and did not notify Staff or Public Counsel;⁹
- 18 • Empire knew this was an issue and did not take action to reduce the number of
19 estimated bills in 2019;¹⁰
- 20 • Empire is requesting a risk-reducing modified decoupling mechanism that is
21 dependent on accurate billing of services rendered. Arguably, this the most

⁷ ER-2019-0374 Supplemental Testimony of Gary Bangert p. 3, 15-19.

⁸ Staff and Public Counsel have had the opportunity to collect estimated bill data from each utility for the past two months as a result of the weekly COVID-19 collaborative calls. Although a small sample size, no utility approaches the numbers seen at Empire’s historical scale.

⁹ See Berg, B. (2018) Liberty Utilities-Empire District has been estimating on some customer’s bills. KY3 <https://www.ky3.com/content/news/Liberty-Utilities---Empire-District-has-been-estimating-on-some-customers-bills488678541.html>.

¹⁰ Monthly average of 15,143 for the final five months of 2019.

1 important time to make sure Empire’s billing data is correct, but, instead, Empire
2 failed to provide the expected level of service to its customers; and

- 3 • Empire scored 116 out of 138 possible utilities in overall customer satisfaction
4 despite its customers experiencing, on average, the fourth highest electric bills in the
5 United States in 2018.

6 **Q. Do you agree with Mr. Bangert that by Empire providing reporting metrics in the future**
7 **that it is doing its job is enough to satisfy the customer service concerns raised in this**
8 **case?**

9 A. No. Empire is providing poor quality service and its earnings should be reduced to reflect
10 that fact. Empire’s customers pay in the upper quartile to receive bottom quartile service
11 when benchmarked against other utilities. I continue to recommend that the Commission
12 make an explicit reduction of 60 basis points on top of the Company’s allowed return on
13 equity (“ROE”). To the extent that the Commission feels the need to have periodic empirical
14 support verifying that Empire is doing its job, Public Counsel does not oppose this term of
15 the global stipulation.

16 **IV. AMI DEPLOYMENT**

17 **Q. What was Empire witness Ms. Richard’s response to the Commission’s questions**
18 **regarding AMI deployment in light of COVID-19?**

19 A. Ms. Richard’s states:

20 “The installation of components related to the mesh network which is the
21 communication backbone for the AMI project has already begun. The Company is
22 in the process of initiating several customer communications which will occur in
23 phases prior to deployment of the installation of the new meters in June of 2020.
24 Finally, the meter deployment will occur in sectors. The meter deployment for the
25 Missouri jurisdiction, the associated plant and software support are estimated to be
26 complete by the second quarter of 2021. However, a significant portion of the assets

1 will be fully operational and providing benefits during the pendency of the
2 Company's next expected general rate case."¹¹

3 **Q. Do Ms. Richard's later comments alleviate your concerns?**

4 A. In part. Ms. Richard states that customer communication will begin next month. But it is
5 unclear what "customer communication" means. Her statement is also silent in regards to
6 the Empire planned timeline for implementing its billing Customer Information Software
7 ("CIS"). Finally, if "customer communication" does not include "customer education" on
8 modern rate designs enabled by AMI then I anticipate there will be problems. As stated in
9 my direct testimony, proper AMI deployment is not just replacing the physical meters.

10 To unlock the espoused benefits of AMI there also needs to be accompanying software
11 investment in the form of CIS interface and, perhaps most importantly, a plan to educate
12 and compel customers to change their usage habits through modern rates.

13 All three of these parts: 1.) AMI hardware; 2) CIS software; and 3) Educational buy-in of
14 modern rate design should be happening simultaneously. Evergy Metro/West only did parts
15 1 & 2, and neglected part 3. As a result, ratepayers in the greater Kansas City area are
16 paying a premium for a really expensive meter that makes it easier to disconnect for non-
17 payment and very little else. These very concerns were echoed by utility commissioners
18 who rejected utility AMI deployment in New Mexico, Massachusetts, Virginia and
19 Kentucky in 2019.¹²

20 To be clear, I am not sure AMI is a prudent investment by itself. I also cannot confidently
21 say that even if all three parts are executed simultaneously it will prove to be a successful
22 investment. However, I am confident that if the three parts are not executed simultaneously,
23 customers will be overpaying for their cost of service and be made worse off. I am strongly

¹¹ ER-2019-0374 Supplemental Testimony of Sheri Richard, p. 15, 10-18.

¹² Walton R. (2020) Most utilities aren't getting full value from smart meters, report warns. *UtilityDive*.
<https://www.utilitydive.com/news/most-utilities-arent-getting-full-value-from-smart-meters-report-warns/570249/>.

1 recommending that the Company not plan on asking for cost recovery of staggered
2 investments when customer benefits cannot be realized.

3 **Q. What about the assumed positive impact AMI would have on Empire’s estimated bill**
4 **problem?**

5 A. Hire more meter readers.

6 That would be infinitely more cost effective until the Company can produce a reasonable
7 plan with realized benefits for this expensive investment.

8 **V. COVID-19 AND PLANNED CAPITAL EXPENDITURES**

9 **Q. What was Empire witness Ms. Richard’s response to the Commission questions**
10 **regarding planned capital expenditures in light of COVID-19?**

11 A. Ms. Richard states:

12 **“The COVID-19 section of the stipulation was added at the request of OPC,** and
13 the Company is not aware of its relationship to any particular projects. Please refer
14 to Supplemental Schedule SR-4 for a listing of the 2020 budgeted capital
15 expenditures by operational category.”¹³ (Emphasis added)

16 **Q. What was Public Counsel’s rationale for requesting this section?**

17 A. A non-exhaustive list of headlines from various news outlets highlights Public Counsel’s
18 concern about Empire approaching its next year of capital investments as a business-as-
19 usual endeavor:

- 20 • 44% of Americans fear they won’t be able to afford food, poll finds;¹⁴
- 21 • Jobless claims, now as 33 million, likely undercount people who aren’t working due
22 to COVID-19;¹⁵

¹³ ER-2019-0374 Supplemental Testimony of Sheri Richard, p. 22, 6-9.

¹⁴ Fields, S. (2020) 44% of Americans fear they won’t be able to afford food, poll finds. *Marketplace*.
<https://www.marketplace.org/2020/05/07/44-of-americans-fear-they-wont-be-able-to-afford-food-poll-finds/>

¹⁵ Hartman, M. (2020) Jobless claims, now as 33 million, likely undercount people who aren’t working due to
COVID-19. *Marketplace* <https://www.marketplace.org/2020/05/07/covid-19-jobless-claims-unemployment-numbers/>

- 1 • U.S. food banks run short on staples as hunger soars;¹⁶
- 2 • U.S. deaths soared in early weeks of pandemic, far exceeding number attributed to
- 3 COVID-19;¹⁷
- 4 • The terrible job report gets worse the more you read it;¹⁸
- 5 • Electricity demand facing deepest plunge in 70 years;¹⁹
- 6 • The Americans who suffered when the economy shut down are also in more danger
- 7 as it reopens;²⁰
- 8 • Goldman Sachs says advanced economies will shrink by 35% in the 2nd quarter—
- 9 quadruple its financial-crisis record;²¹
- 10 • Morgan Stanley forecasts 38% drop in second-quarter U.S. GDP;²²
- 11 • San Francisco Fed Chief casts doubt on V-shaped recovery;²³
- 12 • One-third of American renters impacted by COVID-19 did not pay rent in April;²⁴

¹⁶ Conlin, M., et al. (2020). U.S. food banks run short on staples as hunger soars. *Reuters*.

<https://www.reuters.com/article/us-health-coronavirus-foodbanks-insight/us-food-banks-run-short-on-staples-as-hunger-soars-idUSKCN2261AY>

¹⁷ Brown, E., et al (2020) U.S. deaths soared in early weeks of pandemic, far exceeding number attributed to COVID-19. *The Washington Post*. <https://www.washingtonpost.com/investigations/2020/04/27/covid-19-death-toll-undercounted/?arc404=true>

¹⁸ Thomson-DeVeaux, A. & J. Wolfe. (2020) The terrible job report gets worse the more you read it. *FiveThirtyEight*. <https://fivethirtyeight.com/features/the-terrible-jobs-report-gets-worse-the-more-you-read-it/>

¹⁹ Anchondo, C. (2020) Electricity demand facing deepest plunge in 70 years. *E&E News* <https://www.eenews.net/energywire/stories/1063006619>

²⁰ Thomson-DeVeaux, A. & J. Wolfe. (2020) The Americans who suffered when the economy shut down are also in more danger as it reopens. *FiveThirtyEight*. <https://fivethirtyeight.com/features/the-americans-who-suffered-when-the-economy-shut-down-are-also-in-more-danger-as-it-reopens/>

²¹ Nagarajan, S. (2020) Goldman Sachs says advanced economies will shrink by 35% in the 2nd quarter—quadruple its financial-crisis record. *Business Insider*. <https://www.businessinsider.com/goldman-sachs-says-advanced-economies-will-shrink-by-35-in-the-second-quarter-2020-4>

²² Goldstein, S. (2020). Morgan Stanley forecasts 38% drop in second-quarter U.S. GDP *MarketWatch*. <https://www.marketwatch.com/story/morgan-stanley-forecasts-38-drop-in-second-quarter-us-gdp-2020-04-03>

²³ Derby, M.S. (2020) San Francisco Fed Chief casts doubt on V-shaped recovery. *The Wall Street Journal*. <https://www.wsj.com/articles/san-francisco-fed-chief-casts-doubt-on-v-shaped-recovery-11586943003>

²⁴ Kim, S. (2020). One-third of American renters impacted by COVID-19 did not pay rent in April. *Newsweek*. <https://www.newsweek.com/one-third-american-renters-impacted-covid-19-did-not-pay-rent-april-report-1497461>

- 1 • About half of lower-income Americans report household job or wage loss due to
2 COVID-19;²⁵
- 3 • CDC director warns second wave of coronavirus is likely to be even more
4 devastating;²⁶
- 5 • 2019 Survey: Nearly 4 in 10 Americans would borrow money to cover a \$1k
6 emergency;²⁷
- 7 • Why the unemployed in America could face a lost decade;²⁸
- 8 • Actual unemployment could be at peak Great Depression levels, say White House
9 advisers;²⁹

10 **Q. Has Public Counsel informed Empire of its concerns about planned investments in this**
11 **docket prior before COVID-19 became a national emergency?**

12 A. Yes. In my direct testimony I had a section specifically titled “Planned Investment.”³⁰ In
13 that section, I expressed my concern over the lack of dialogue with stakeholders, non-
14 existent deployment plans and missing cost-benefit studies related to AMI hardware, billing
15 software and customer education. My “Planned Investment” section of my direct testimony
16 had forty plus pages where I expressed “other” concerns related to Empire’s cost and quality
17 of service. I then made the following recommendations:

²⁵ Parker, K. et al (2020) About half of lower-income Americans report household job or wage loss due to COVID-19. *Pew Research Center: Social & Demographic Trends*. <https://www.pewsocialtrends.org/2020/04/21/about-half-of-lower-income-americans-report-household-job-or-wage-loss-due-to-covid-19/>

²⁶ Sun, L.H. (2020) CDC director warns second wave of coronavirus is likely to be even more. *The Washington Post* <https://www.washingtonpost.com/health/2020/04/21/coronavirus-secondwave-cdcdirector/>

²⁷ Survey: Nearly 4 in 10 Americans would borrow money to cover a \$1k emergency. *Bankrate*. <https://www.bankrate.com/banking/savings/financial-security-january-2020/>

²⁸ Free Exchange (2020) Why the unemployed in America could face a lost decade. *The Economist*. <https://www.economist.com/finance-and-economics/2020/05/02/why-the-unemployed-in-america-could-face-a-lost-decade>

²⁹ Beggin, R. (2020) Actual unemployment could be at peak Great Depression levels, say White House advisers. *Vox*. <https://www.vox.com/covid-19-coronavirus-economy-recession-stock-market/2020/5/10/21253784/actual-unemployment-numbers-great-depression-covid-19-white-house-advisers>

³⁰ See ER-2019-0374 Direct Testimony of Geoff Marke p, 43 thru 47.

- 1 • Empire should not continue to receive a “return on” its investment in Asbury after
2 Empire retires Asbury on March 1, 2020;³¹
- 3 • Empire should not receive a “return of” the remaining balance of its 2015 capital
4 investments of \$124 million in Asbury that extended the useful life of the plant to
5 2035;
- 6 • Empire should not move forward with staggered deployment of Advanced Metering
7 Infrastructure (“AMI”) investment that needlessly increases its rate base without
8 concurrently producing benefits to Empire’s customers. Rather, Empire should have
9 a coherent and actionable plan that synchronizes AMI hardware, software and
10 customer education of Time-of-Use rates to ensure that its customers can actually
11 realize benefits; and
- 12 • Empire needs to prioritize realizing in Missouri APUC’s representations to the City
13 of Jacksonville, Florida, with its failed bid to acquire JEA, by focusing on reducing
14 costs and improving its quality of service, as opposed to merely increasing its rate
15 base and retail rates.³²

16 I concluded my testimony on January 15th 2020 with the following concern:

17 The Company seeks a significant rate increase in this case and plans to file another
18 case immediately after this one. I am genuinely concerned about the pending impacts
19 these cases will have on Empire’s customers and the Southwest Missouri economy
20 in the near future. Empire is about 1/10th the size of Ameren Missouri. Simply put,
21 if rates continue to increase as I expect with the planned investments, customers that
22 can, will seek an exit. If wholesale customers continue to exit and residential
23 customers continue to invest in rooftop solar a negative feedback loop will occur
24 that will only exaggerate the financial impact of customers not fortunate enough to
25 be able to leave as well as the long-term sustainability of the utility.³³

³¹ It was only discovered before surrebuttal testimony was filed that Asbury ceased operations on December 12, 2019.

³² Ibid, p. 46, 4-17.

³³ Ibid, p. 46, 25-27 & p. 47, 1-6.

1 Since January 15th the world has gotten more difficult for everyone.³⁴

2 Consequently, my concerns about the impact of Empire’s planned capital investments in
3 2020 and the ability of Empire’s customers to weather a large rate increase in light of the
4 current economic climate has been heightened. As senior vice president Paul Tartaglia of the
5 New York Port Authority stated in a recent *UtilityDive* article in response to investments in
6 light of the COVID-19 economic downturn: “We went down from the 'nice to have' stuff to
7 the 'have to do' stuff.”³⁵ I agree with that sentiment. At this point, given the present and
8 expected operating conditions, Empire needs to keep its captive customers’ well-being in
9 mind.

10 **Q. Since Public Counsel was not a signatory to the non-unanimous global stipulation, should**
11 **the Commission still order the COVID-19 terms of that agreement to resolve this case?**

12 A. Yes. Evidently, other parties believed this was a reasonable and appropriate ask even
13 without Public Counsel joining on to the stipulation. The Commission should approve the
14 requirement that Empire will engage in at least two discussions with Staff and Public
15 Counsel regarding its planned capital investments before it files its next rate case.

³⁴ Well, some have had more challenges with the global recession and record levels of unemployment than others. APUC shareholders for example appear to have weathered the economic recession quite well so far as is evident by APUC CEO Ian Robertson comments during APUC’s Q1 Earnings Call on May 7, 2020. Mr. Robertson said:

“You’ll also note it that our Board has approved to 10% increase in the dividend beginning with the Q2 dividend payable on July 15th of this year. This increase marked the 10th year of consistency increasing our dividends as well as demonstrates our collective confidence and the resiliency of our business model.”

Algonquin Power & Utilities Corp. (AQN) CEO Ian Robertson on Q1 2020 Results - Earnings Call Transcript. *Seeking Alpha*. <https://seekingalpha.com/article/4345019-algonquin-power-utilities-corp-aqn-ceo-ian-robertson-on-q1-2020-results-earnings-call?part=single>

³⁵ Bandyk, M. (2020) 'No existing playbook': COVID-19 forcing NV Energy, NYPA and other utilities to get creative. *UtilityDive*. <https://www.utilitydive.com/news/no-existing-playbook-covid-19-forcing-nv-energy-nypa-and-other-utility/575881/>

1 **VI. RATIONALE FOR STAFF'S DECISION TO BE A SIGNATORY TO THE**
2 **STIPULATION**

3 **Q. What is Staff's stated reasons for agreeing to a stipulation for a delayed rate increase**
4 **after Staff's revenue requirement recommendation called for a rate reduction of \$6.1**
5 **million?**

6 A. Staff does not believe the Commission would agree with their recommendations. Despite
7 arriving at a rate reduction of \$6.1 million in overall revenue requirement, Staff witness
8 Oligschlaeger concludes that:

9 Staff's expectations were that the most likely result of the major issues in this case
10 going to hearing would be a rate increase for Empire, not a decrease. For that reason,
11 and in conjunction with the reality of the Covid-19 economic impact on Empire and
12 its customers, Staff's view was that no change in base rates was a favorable and
13 appropriate outcome for this case.

14 **Q. What is your response?**

15 A. I am equal parts surprised by the candidness of Mr. Oligschlaeger's testimony, and
16 disappointed in what conclusions might be drawn from such a position. Staff's math arrived at
17 a rate decrease, but because of "litigation risk" Staff presumably fears that the Commission
18 will not follow its recommendation.

19 **Q. Does Staff have litigation risk?**

20 A. I do not see how it does. Staff is an independent arm of the Commission charged with providing
21 the Commission with accurate facts and evidence. If Staff's calculations show that Empire's
22 ratepayers deserve a rate decrease, then I do not understand why it would instead agree to a
23 delayed rate increase.

24 **Q. What is your understanding of Staff's support for the delayed rate increase?**

25 A. Staff's position appears to be as follows:

- 1 • All things being equal, COVID-19 is harming both customers and shareholders;³⁶
- 2 • The Company agreed to delay raising its requested rate increase until the next case;
- 3 • In return, Staff, despite nine months of work, and a case-in-chief that recommends an
- 4 overall rate reduction is willing to instead settle for a delayed rate increase to be added
- 5 on to Empire’s next pending rate case; additionally
- 6 • Staff is willing to delay customer benefits associated with the 2017 Tax Cuts and Jobs
- 7 Act because Staff believes that the Commission would likely agree with the
- 8 Company’s position to such a degree that any financial savings entitled to customers
- 9 from those tax reductions would pale in comparison to the rate increase the
- 10 Commission would order for the Company.³⁷

11 If I understand Mr. Oligschlaeger correctly, this is a “win-win” from Staff’s perspective.

- 12 • Customers are “better off”:
 - 13 ○ by having no immediate increase to their rates during a global recession (at
 - 14 least for the near-term);
- 15 • And, although not explicitly stated, The Company is also “arguably” much better off
- 16 despite waiting a little longer to collect a much larger increase in the next rate case
- 17 because if the stipulation is approved as filed, Empire:

³⁶ See footnote #34 above.

³⁷ 393.137. 3. If the rates of any electrical corporation to which this section applies have not already been adjusted to reflect the effects of the federal 2017 Tax Cut and Jobs Act, Pub. L. No. 115-97, 94 Stat. 2390, the commission shall have one time authority that shall be exercised within ninety days of June 1, 2018, to adjust such electrical corporation's rates prospectively so that the income tax component of the revenue requirement used to set such an electrical corporation's rates is based upon the provisions of such federal act without considering any other factor as otherwise required by section 393.270. The commission shall also require electrical corporations to which this section applies, as provided for under subsection 1 of this section, to defer to a regulatory asset the financial impact of such federal act on the electrical corporation for the period of January 1, 2018, through the date the electrical corporation's rates are adjusted on a one-time basis as provided for in the immediately preceding sentence. **The amounts deferred under this subsection shall be included in the revenue requirement used to set the electrical corporation's rates in its subsequent general rate proceeding through an amortization over a period determined by the commission.** (Emphasis added).

- 1 ○ Obtains “a huge win by changing the risk profile of the Company” despite
2 flawed data through a decoupling mechanism;
- 3 ○ Avoids questions about its poor service quality, numerous estimated bill
4 complaints and high annual bills across all classes relative to all other utilities
5 in the United States based on data from not one but three sources: SNL, EEI
6 and EIA;
- 7 ○ Does not have to address the lack of details and plans surrounding the cost-
8 benefit analysis of its planned AMI investment, the lack of plans around
9 deployment or the absence of customer education for modern rates;
- 10 ○ Evades discussion about the appropriate capital structure or risk a reduced ROE
11 to more accurately reflect the market and the quality of service the Company
12 has provided;
- 13 ○ Skips having to argue why an 85/15 FAC sharing mechanism is appropriate for
14 a Company that has lost over a hundred million dollars in poor hedging;
- 15 ○ Delays having to explain why it did not disclose to regulators that the self-
16 imposed stranded asset, the Asbury Power Plant, ceased operations during the
17 test year on December 12 and is included in rates earning a profit; and
- 18 ○ Defers affiliate transaction violation accusations, questionable management
19 expenses and many other issues to the next case (or is ignored entirely).

20 From my perspective, these results are not justified especially with the present and future
21 impact of COVID-19 looming ahead. It is also no secret that Empire’s next pending rate case
22 should include its three new wind farms as well as AMI investments. If the stipulation is
23 adopted, the next rate case will also include the increase in rates from this case. That upcoming
24 case has the potential to induce rate shock in a healthy economic setting. I struggle to see how
25 much better off customers are by having to pay even more in the near future in exchange for
26 forgoing the right to take all of these relevant issues in front of the Commission.

1 OPC is not adverse to reasonable settlements. This is not a reasonable settlement.

2 **Q. Does this conclude your testimony?**

3 A. Yes.