

Exhibit No.:  
 Issues: Charitable Contributions  
 Rate Case Moratorium  
 Access to Records  
 Corporate Social  
 Responsibility  
 Most Favored Nation  
 Provision  
 General Response to OPC  
 Conditions  
 Witness: Christopher D. Krygier  
 Exhibit Type: Surrebuttal  
 Sponsoring Party: Liberty Utilities  
 Case No.: EM-2016-0213  
 Date: August 5, 2016

**MISSOURI PUBLIC SERVICE COMMISSION**

**CASE NO. EM-2016-0213**

**FILED**

SEP 6 2016

Missouri Public  
Service Commission

**SURREBUTTAL TESTIMONY**

**OF**

**CHRISTOPHER D. KRYGIER**

**ON BEHALF OF**

**LIBERTY UTILITIES (CENTRAL) CO.**

*Empire/  
Liberty* Exhibit No. 6MP  
 Date 8-20-16 Reporter KF  
 File No. EM-2016-0213

\*\* \_\_\_\_\_ \*\*  
 Denotes Highly Confidential

**SURREBUTTAL TESTIMONY  
CHRISTOPHER D. KRYGIER  
LIBERTY UTILITIES (CENTRAL) CO.  
CASE NO. EM-2016-0213**

**TABLE OF CONTENTS**

I. Witness Introduction ..... 1

II. Purpose ..... 1

III. Charitable Contributions.....2

IV. Rate Case Moratorium.....7

V. Access to Records.....8

VI. Corporate Social Responsibility.....10

VII. Most Favored Nation Provision.....13

VIII. General Response to OPC Conditions.....15



- General Response to OPC Conditions

**Q. WOULD YOU PLEASE SUMMARIZE THE JOINT APPLICANTS' POSITION ON EACH OF THESE ISSUES ADDRESSED BY YOUR TESTIMONY?**

**A.** Yes, I prepared a summary table that lists each issue, the proposed condition number, and the Joint Applicants' response to each issue.

<b>Issue</b>	<b>OPC Proposed Condition Number<sup>1</sup></b>	<b>Joint Applicants' Response to Proposed Condition</b>
Charitable Contributions	26	Accept Proposed Condition with minor modifications
Rate Case Moratorium	37	Accepted Proposed Condition
Access to Records	6, 15, 17	The Commission should reject the Proposed Conditions
Corporate Social Responsibility	38	The Commission should reject the Proposed Condition
Most Favored Nation Provision	35	The Commission should reject the Proposed Condition
Various Conditions	27, 39, 40, 41, 42	The Commission should reject the Proposed Condition

### **CHARITABLE CONTRIBUTIONS**

**Q. WHAT IS OPC WITNESS PFAFF'S RECOMMENDATION REGARDING CHARITABLE CONTRIBUTIONS?**

<sup>1</sup> Reconciles to Attachment RP-R22 of Mr. Pfaff's Rebuttal Testimony

1 A. On page 13, lines 12-15 of Mr. Pfaff's Rebuttal Testimony, he suggests that the  
2 Joint Applicants' commitment to charitable contributions is "hollow" because the  
3 contributions could "cease or lower these contributions" at any time.

4 **Q. DOES MR. PFAFF EVER SAY THAT THE CHARITABLE CONTRIBUTIONS**  
5 **COMMITMENT BY THE JOINT APPLICANTS IS A DETRIMENT TO THE**  
6 **PUBLIC INTEREST?**

7 A. No.

8 **Q. IS THE JOINT APPLICANTS' COMMITMENT TO CHARITABLE**  
9 **CONTRIBUTIONS "HOLLOW" BECAUSE THE JOINT APPLICANTS COULD**  
10 **"CEASE OR LOWER THESE CHARITABLE CONTRIBUTIONS AT ANY**  
11 **TIME"?**

12 A. Not at all. It is disingenuous for Mr. Pfaff to call the commitment hollow. The  
13 Joint Applicants provided two areas that added clarity surrounding the charitable  
14 contributions commitment. First, the Agreement and Plan of Merger provided  
15 with the Application, Section 6.06(f), speaks directly to the issue: "...Company  
16 Subsidiaries to maintain historic levels of community involved and charitable  
17 contributions and support in the existing service territories of the Company and  
18 Company Subsidiaries, including as set forth on Section 6.06(f) of the Company  
19 Disclosure Letter". Second, the Joint Applicants provided a data request  
20 response that detailed significant commitments around charitable contributions.  
21 In the response to data request OPC – Mayfield – 0007, the Joint Applicants  
22 provided a copy of the Company Disclosure Letter. In this letter, Section 6.06

1 (e)<sup>2</sup> is referenced which includes the following three specific charitable  
2 contribution commitments:

3 \*\*  
\_\_\_\_\_  
4 \_\_\_\_\_  
5 \_\_\_\_\_  
6 \_\_\_\_\_  
7 \_\_\_\_\_  
8 \_\_\_\_\_  
9 \_\_\_\_\_  
10 \_\_\_\_\_  
11 \_\_\_\_\_ \*\*

12 These three commitments are very specific in nature, as they detail amounts to  
13 be donated and organizations to receive donations among other items, far from  
14 hollow as Mr. Pfaff claims.

15  
16 Finally, The Empire District Electric Company ("Empire") has a demonstrated  
17 history of providing financial and other support to the communities in which it  
18 serves and it is the Joint Applicants' intention to continue a normalized level of  
19 charitable contributions on a going forward basis.

20 **Q. DO YOU FIND IT INTERESTING THAT CHARITABLE CONTRIBUTIONS ARE**  
21 **AN ISSUE IN THIS MATTER?**

---

<sup>2</sup> It appears that the Agreement and Plan of Merger and Company Disclosure Letter had a typographical error with one referencing section "f", the other section "e".

1 A. Yes. Historically, charitable contributions are not treated as reasonable  
2 expenditures for purposes of setting rates in Missouri and, currently, Empire  
3 could, in Mr. Pfaff's words, "cease or lower these contributions at any time."  
4 Thus, any commitment, including what is included in the Agreement and Plan of  
5 Merger and the Company Disclosure Letter, would be another benefit associated  
6 with the proposed transaction, a benefit OPC completely ignores.

7 **Q. DID OPC PROVIDE ANY OTHER TESTIMONY ON CHARITABLE**  
8 **CONTRIBUTIONS?**

9 A. Yes. OPC Witness Azad's Rebuttal Testimony (Page 33, Lines 14 – Page 35,  
10 Line 3)<sup>3</sup>, outlines what she believes to be a more substantial charitable  
11 contribution commitment.

12 **Q. DOES MS. AZAD EVER SAY THAT THE LACK OF CHARITABLE**  
13 **CONTRIBUTIONS COMMITMENT BY THE JOINT APPLICANTS IS A**  
14 **DETRIMENT TO THE PUBLIC INTEREST?**

15 A. No, similar to Mr. Pfaff, she did not identify this as a reason the Missouri Public  
16 Service Commission ("Commission") should reject the transaction.

17 **Q. OPC WITNESS AZAD OUTLINES WHAT SHE BELIEVES TO BE A MORE**  
18 **SUBSTANTIAL COMMITMENT, IDENTIFYING AN AMOUNT AND A PERIOD**  
19 **OF TIME TO WHICH EMPIRE WOULD COMMIT. WHAT IS YOUR REACTION**  
20 **TO THAT PROPOSAL?**

21 A. As discussed in my response to Mr. Pfaff's testimony, Ms. Azad does not identify  
22 any detriments; however, the Joint Applicants are generally agreeable to the

---

<sup>3</sup> Reconciles to Proposed Condition 26 of Attachment RP-R22 of Mr. Pfaff's Rebuttal Testimony.

1 proposed condition, creating another benefit to the transaction, with minor  
2 modifications to the five-year average calculation and the condition wording.

3 **Q. WHY DO THE JOINT APPLICANTS WANT TO CHANGE THE FIVE-YEAR**  
4 **AVERAGE CALCULATED BY MS. AZAD?**

5 A. The average calculated by OPC Witness Azad is not appropriate because it  
6 includes a one-time special payment that should be excluded. As described in  
7 the Surrebuttal Testimony of Joint Applicant Witness Kelly Walters, I understand  
8 that in 2015, EDE made an extraordinary, one-time special payment of  
9 \*\* \_\_\_\_\_ \*\*. Inclusion of this amount significantly distorts the five year  
10 average calculated by OPC Witness Azad. Removal of that one-time payment  
11 arrives at a new average of \*\* \_\_\_\_\_ \*\*, nearly identical to the \*\* \_\_\_\_\_ \*\*  
12 included in the Company Disclosure Letter referenced above.

13 **Q. DO THE JOINT APPLICANTS HAVE ANY OTHER CHANGES TO THE**  
14 **PROPOSED CONDITION?**

15 A. Yes, some changes to the wording as follows make the condition clearer:  
16 Original Proposed Condition language:  
17 "During the five-year period following the Merger, Empire shall maintain, at a  
18 minimum, an annual level of charitable contributions and traditional local  
19 community support in the State of Missouri at or above the five-year average of  
20 \*\* \_\_\_\_\_ \*\*.

21 The Joint Applicants propose that the condition instead read:



1 "During the five-year period following the closing of the Merger, Empire shall  
2 maintain, on a total company basis, an annual level of charitable contributions  
3 and traditional local community support of approximately                     ."

4  
5 **RATE CASE MORATORIUM**

6 **Q. OPC WITNESS PFAFF PROPOSES THAT THE COMMISSION CONDITION**  
7 **ANY APPROVAL ON A "RATE CASE MORATORIUM." (PAGE 38, LINE 13 –**  
8 **PAGE 39, LINE 6). PLEASE DESCRIBE THAT RATE CASE MORATORIUM.**

9 A. Mr. Pfaff proposes that Empire be prohibited from filing a rate case until at least  
10 one full year of data is available following the close of the transaction.

11 **Q. DOES MR. PFAFF IDENTIFY A DETRIMENT HE IS ATTEMPTING TO**  
12 **MITIGATE WITH THIS CONDITION?**

13 A. Mr. Pfaff indicates that ensuring "adequate information is available"<sup>4</sup> as the  
14 potential detriment.

15 **Q. IS A RATE CASE MORATORIUM SOMETHING THAT IS NECESSARY IN ANY**  
16 **SITUATION TO PROTECT THE PUBLIC INTEREST?**

17 A. No. The Commission always has the duty, and is presumed, to only authorize  
18 those rates that are just and reasonable and, therefore, in the public interest.

19 **Q. HAVING SAID THIS, IS THERE A MORATORIUM WITH WHICH THE JOINT**  
20 **APPLICANTS COULD AGREE?**

21 A. Yes, the Joint Applicants agree to OPC's proposed condition that was attached  
22 as Proposed Condition 37 in Attachment RP-R22 to Mr. Pfaff's testimony:

23 Proposed Condition language:

---

<sup>4</sup> Pfaff Reb., Page 33, Line 21

1 The Joint Applicants agree to refrain from filing a rate case until at least one full  
2 year of financial and operational information is available following the close of the  
3 merger.

4  
5 The Joint Applicants note that this rate case moratorium commitment and the  
6 previously mentioned charitable contributions commitment are two additional  
7 benefits to customers of the proposed transaction.

8  
9 **ACCESS TO RECORDS**

10 **Q. WHAT IS OPC WITNESS PFAFF'S RECOMMENDATION ON ACCESS TO**  
11 **RECORDS?**

12 A. On page 27, line 19 – page 28, line 22, Mr. Pfaff recommends three proposed  
13 conditions concerning potential access to records.

14 **Q. WHAT IS THE BASIS FOR MR. PFAFF'S RECOMMENDATION?**

15 A. Mr. Pfaff cites one data request response as support for recommending three  
16 separate proposed conditions.

17 **Q. DOES MR. PFAFF MISCONSTRUE THE DATA REQUEST RESPONSE CITED**  
18 **IN HIS TESTIMONY AT PAGE 28, LINES 2-3?**

19 A. Yes. Mr. Pfaff only cites one sentence in the data request response, completely  
20 ignoring the second half of the response which reads in part: "...utilities indirectly  
21 owned by Algonquin Power & Utilities Corp. follow the general process set forth  
22 in response to OPC – AzP – 5114."

1 **Q. WHAT WAS PROVIDED BY THE JOINT APPLICANTS IN RESPONSE TO**  
2 **DATA REQUEST OPC – AZP - 5114?**

3 A. A Highly Confidential attachment entitled \*\*  
4 \_\_\_\_\_\*\*, a document that was, at least  
5 in part, directly responsive to OPC's data request.

6 **Q. BASED ON THE FULL PICTURE OF THE DATA RESPONSE, SHOULD THE**  
7 **COMMISSION REJECT OPC'S PROPOSED CONDITIONS?**

8 A. Yes. OPC's testimony on this issue gives no other reasons why the proposed  
9 conditions are in the public interest.

10 **Q. DOES THE COMMISSION HAVE PREVIOUS EXPERIENCE WITH**  
11 **ACCESSING BOOKS AND RECORDS OF LIBERTY UTILITIES CO.**  
12 **(“LIBERTY UTILITIES”) AND ITS AFFILIATES?**

13 A. Yes, I would say this Commission has significant experience accessing books  
14 and records of Liberty Utilities and affiliates.

15 **Q. PLEASE EXPLAIN.**

16 A. Liberty Utilities has operated utilities in Missouri since approximately 2005.  
17 During this time, it has acquired four separate utilities, one natural gas and three  
18 water/wastewater utilities, and completed two rate cases. These examples  
19 demonstrate Liberty Utilities' history of working with parties in Missouri to provide  
20 access to books and records.

21 **Q. DOES THE UTILITY HAVE BUILT-IN INCENTIVES TO PROVIDE THE**  
22 **COMMISSION'S STAFF (“STAFF”) AND OPC ITS BOOKS AND RECORDS?**

1 A. Yes, the utility generally has the burden of proof in its filings before the  
2 Commission. Not providing access to documents puts the utility at risk for  
3 recovering its costs; therefore, the utility is incented to provide the information to  
4 support its request.

5 **Q. DO THE JOINT APPLICANTS HAVE ANY OTHER WAYS TO ADDRESS THIS**  
6 **OPC CONCERN?**

7 A. Yes, as reflected in the Stipulation and Agreement executed with Staff,  
8 conditions were agreed to, providing access for Staff and OPC to Empire's books  
9 and records. These five conditions, in conjunction with the track record and  
10 incentives mentioned above, are more than sufficient to address any concerns  
11 OPC has.

12 **Q. CAN YOU PLEASE SUMMARIZE YOUR RECOMMENDATION?**

13 A. Yes. The Commission should reject OPC's proposed conditions because there  
14 is no detriment to mitigate, the Commission has significant history dealing with  
15 books and records of Liberty Utilities and its affiliates, and because these alleged  
16 concerns by OPC are more than adequately addressed by the Stipulation and  
17 Agreement entered into by the Joint Applicants and Staff.

18

19 **CORPORATE SOCIAL RESPONSIBILITY**

20 **Q. WHAT IS OPC WITNESS PFAFF'S RECOMMENDATION REGARDING**  
21 **CORPORATE SOCIAL RESPONSIBILITY?**

22 A. On page 34, line 5 – page 35, line 8 of Rebuttal Testimony, Mr. Pfaff proposes a  
23 condition requiring a non-recoverable annual community action agency ("CAA")

1 contribution in the amount of \$1.6 million for a ten year period, totaling \$16  
2 million<sup>5</sup> of non-recoverable expenses.

3 **Q. DOES MR. PFAFF IDENTIFY ANY SPECIFIC DETRIMENT HE IS**  
4 **ATTEMPTING TO ADDRESS WITH THIS CONDITION?**

5 A. No. OPC Witness Pfaff simply makes a generic claim that “This condition acts as  
6 a mitigating factor against these risks and helps protect the financial interests of  
7 Empire’s customers...”. For this reason alone the proposed condition should be  
8 rejected.

9 **Q. DOES MR. PFAFF IDENTIFY ANY REASON WHY THE NEW**  
10 **SHAREHOLDERS SHOULD ABSORB A \$16 MILLION COST?**

11 A. No.

12 **Q. DOES MISSOURI HAVE ANY HISTORY WITH SUCH ACQUISITION**  
13 **CONDITIONS TO YOUR KNOWLEDGE?**

14 A. None that I am aware of, especially of this magnitude. I reviewed the recent  
15 acquisitions by Spire Energy (then Laclede Group, Inc.) in Docket GM-2013-  
16 0254, and Liberty Utilities’ acquisition of the Atmos Energy Corp’s natural gas  
17 properties in Docket GM-2012-0037, and found nothing similar to Mr. Pfaff’s  
18 arbitrary proposal.

19 **Q. DOES MR. PFAFF PROVIDE ANY ANALYSIS DEMONSTRATING HOW THE**  
20 **PROPOSED CONDITION IS DESIGNED TO ADDRESS ANY SPECIFIC**  
21 **NEED?**

22 A. No.

---

<sup>5</sup> No reference is made to the \$16 million in testimony, only a one line reference on page 6 of Attachment RP-R22 and one workpaper listed the amounts.

1 **Q. DID YOU IDENTIFY ANY OTHER PROBLEMS?**

2 A. Yes, Mr. Pfaff's proposed gift may not directly benefit Empire customers.

3 **Q. CAN YOU PLEASE ELABORATE ON THE POSSIBILITY THAT THESE**  
4 **FUNDS MAY NOT DIRECTLY BENEFIT EMPIRE CUSTOMERS?**

5 A. Yes. Another problem is that the funding isn't designed or described to  
6 specifically benefit Empire's customers. Within Joplin and the surrounding areas  
7 are electric cooperatives and municipal utilities. Due to the lack of design and  
8 function of OPC's proposal, it is possible that these agencies could provide funds  
9 to electric coop customers and not Empire customers, creating a detriment to the  
10 proposal because funds were diverted from Empire customers to other utility  
11 customers. Additionally, I understand that the CAA's within Empire's service  
12 territory have not always have not been able to disburse their allotted funds.  
13 Joint Applicant Witness Kelly Walters will address this point in her Surrebuttal  
14 Testimony. As detailed above, this possibility is especially problematic since no  
15 structure exists to hold the agencies accountable for the funds disbursed.

16 **Q. SHOULD THE COMMISSION REJECT THIS PROPOSED CONDITION IN ITS**  
17 **ENTIRETY?**

18 A. Yes. A \$16 million cost to shareholders with no associated detriment is not  
19 appropriate. Mr. Pfaff claims no detriment to be mitigated, cannot demonstrate  
20 why the new shareholders should fund such a program, and may itself create a  
21 detriment to Missouri customers.

22

23

**MOST FAVORED NATION PROVISION**

1

2 **Q. ON PAGE 42, LINE 15 – PAGE 43, LINE 5 OF HER REBUTTAL TESTIMONY,**  
3 **OPC WITNESS AZAD PROPOSES THAT THE COMMISSION CONDITION**  
4 **ANY APPROVAL ON WHAT SHE DESCRIBES AS A “MOST FAVORED**  
5 **NATION” PROVISION. WHAT IS YOUR UNDERSTANDING OF THAT**  
6 **PROVISION?**

7 A. My understanding is that somehow Missouri would compare its conditions to  
8 those that may be imposed by other states concerning this transaction after the  
9 hearing record is closed and the Commission has issued an Order, and,  
10 thereafter try to mimic additional conditions that might be imposed by those  
11 states.

12 **Q. IS THIS PROPOSAL DESIGNED TO ADDRESS ANY SPECIFIC DETRIMENT**  
13 **THOUGHT TO BE ASSOCIATED WITH THE PROPOSED TRANSACTION?**

14 A. No. Consistent with most of OPC’s other proposed conditions, no specific  
15 detriment to be resolved is identified.

16 **Q. DOES THE MISSOURI STANDARD OF REVIEW FOR MERGERS OR**  
17 **ACQUISITIONS REQUIRE THAT MISSOURI “RECEIVE AN EQUITABLE**  
18 **LEVEL OF MERGER BENEFITS WHEN COMPARED TO OTHER**  
19 **JURISDICTIONS”?**

20 A. I am not familiar with any such requirement.

21 **Q. IS THIS PROPOSED CONDITION NECESSARY FOR THE COMMISSION TO**  
22 **RULE THAT THE MERGER IS NOT DETRIMENTAL TO THE PUBLIC**  
23 **INTEREST?**

1 A. No. The merger provides many other benefits as described in the Direct  
2 Testimony of Joint Applicants' witnesses, along with the agreed-to Stipulations<sup>6</sup>  
3 and additional commitments made by the Joint Applicants in Surrebuttal  
4 Testimony that support approving the transaction.

5 **Q. AS A PRACTICAL MATTER, WHAT WOULD APPROVAL OF THIS TYPE OF**  
6 **CLAUSE MEAN?**

7 A. In reality, nothing. The Joint Applicants have already received approval from the  
8 Oklahoma Corporation Commission and the Federal Energy Regulatory  
9 Commission; and have submitted a joint stipulation with Staff and the Attorney  
10 General in Arkansas. This proposed condition really only concerns the state of  
11 Kansas, which has not yet approved the merger.

12 **Q. IS EMPIRE'S SERVICE IN KANSAS AND MISSOURI SIMILARLY SITUATED?**

13 A. No, Missouri's service area is significantly different from its Kansas service area.  
14 First, customer counts are significantly different. Empire's electric, natural gas,  
15 and water operations in Missouri serve approximately 198,000<sup>7</sup> customers,  
16 whereas it serves approximately 9,700 customers in Kansas. Thus, the Kansas  
17 customer base is approximately one-twentieth of the Missouri customer base.  
18 Besides customer counts, the states' economic interests are also different given  
19 the location of Empire's headquarters and majority of employees in Missouri.

20 **Q. DO YOU SEE ANY PRACTICAL PROBLEMS WITH IMPLEMENTATION OF**  
21 **THIS CONDITION?**

---

<sup>6</sup> On July 19, 2016, the Joint Applicants executed Stipulations and Agreements with the City of Joplin, the Empire District Retiree Association, IBEW Local No. 1464 and 1474 and LIUNA. None of these Stipulations and Agreements were objected to by the other parties. On August 4, 2016, the Joint Applicants also executed a Stipulation and Agreement with Staff

<sup>7</sup> Direct Testimony of Brad Beecher, Page 3, Lines 10-18



1 A. Yes. First, what constitutes a benefit in Missouri may not be a benefit in another  
2 state and vice-versa. Second, these benefits are extremely difficult to measure.  
3 As a hypothetical, if the Joint Applicants agree to open a new service center in  
4 another state as a result of the transaction, does that mean it has to open one  
5 service center in Missouri, or does it mean Missouri should open more service  
6 centers since it proportionally has more customers than its other three state  
7 service territories.

8 **Q. WHAT IS THE JOINT APPLICANTS' POSITION AS TO THE MOST FAVORED**  
9 **NATION CONDITION?**

10 A. The Joint Applicants oppose this condition because there is no detriment to be  
11 mitigated, is impractical to implement, and may not bring any benefits to Missouri  
12 customers.

13

14 **GENERAL RESPONSE TO OPC CONDITIONS**

15 **Q. DO YOU HAVE ANY OTHER RESPONSE TO THE CONDITIONS**  
16 **PROPOSED BY THE OPC?**

17 A. Yes. I note that there are five OPC proposed conditions listed on Mr. Pfaff's  
18 Attachment RP-R22 to his Rebuttal Testimony that are not otherwise  
19 explained in OPC's Testimony in any fashion – Proposed Conditions 27, 39,  
20 40, 41, and 42.

21 **Q. WHAT IS YOUR RESPONSE TO THOSE PROPOSED CONDITIONS?**

22 A. I recommend that the Commission reject these Proposed Conditions, as no  
23 OPC witnesses provided testimony as to what detriments these provisions

1           are attempting to mitigate or how these conditions might be designed to  
2           mitigate any potential detriment.

3

4   **Q.    DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

5   **A.    Yes, it does.**

6

AFFIDAVIT

STATE OF MISSOURI     )  
  )     ss  
COUNTY OF CAPE GIRARDEAU )

I, Christopher D. Krygier, state that I am employed by Liberty Utilities Services Corp. as its Director of Regulatory and Government Affairs for its natural gas, water and wastewater utilities in Missouri, Iowa and Illinois; that the Surrebuttal Testimony attached hereto has been prepared by me or under my direction and supervision; and, that the answers to the questions posed therein are true to the best of my knowledge, information and belief.

Christopher D. Krygier 8/3/16

Subscribed and sworn to before me this 3<sup>rd</sup> day of August, 2016.

Gene G. Welker  
Notary Public

My Commission Expires:

May 2, 2020

