BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Request of The Empire	)	
District Electric Company d/b/a Liberty for	)	
Authority to File Tariffs Increasing Rates	)	Case No. ER-2021-0312
for Electric Service Provided to Customers	)	
in its Missouri Service Area	)	

The Office of the Public Counsel's Initial Brief

Respectfully submitted,

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February 25, 2022

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COMES NOW the Office of the Public Counsel and for its Initial Brief states:

Introduction

If the Commission approves and adopts the resolution of the issues by the four settlement agreements filed in this case, then the only issue remaining before the Commission for decision is amended issues list issue no. 23 (Original issues list issue no. 27(b)):

> **Class Cost-of-Service and Rate Design**: How should [Liberty]'s revenue requirement be allocated amongst [Liberty]'s customer rate classes (class revenues responsibilities)?

Public Counsel recommends that when designing Liberty's new rates the Commission not make any revenue neutral inter-class revenue requirement responsibility changes in this case, *i.e.*, that the Commission not change the present relative rate class revenue requirement responsibilities and allocate Liberty's revenue requirement increase—based on the fourth settlement agreement $35,515,913 per year—as an equal percent increase/decrease across classes.

Argument

The Commission exercises broad discretion when designing rates. It uses class cost-of-service study ("CCOS") results as a guide, but also considers other factors such as public acceptance, rate stability, and revenue stability.[1] As a recent example, in its February 2, 2022, *Report and Order* regarding Ameren Missouri's electric rates the Commission stated, "Rather the Commission is exercising its discretion to look beyond the numbers contained in those [class cost-of-service] cost studies to reach a deeper conclusion that the people who are members of the

[1] *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariffs to Adjust its Revenues for Electric Service*, Case No. ER-2021-0240, *Report and Order* issued February 22, 2022, p.16, ¶22; *In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service*, Case No. ER-2014-0370, *Report and Order* issued September 2, 2015, ¶203; 25 MO. P.S.C. 3d 368, 456; and *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase Its Annual Revenues for Electric Service,* Case No. ER-2010-0036, *Report and Order* issued May 28, 2020, ¶21; 19 MO. P.S.C. 3d 376, 444.

residential rate class have already faced enough challenges in recent years, including an 8.81 percent electric rate increase that will result from this case, and should not, at this time, have to endure an even larger rate increase to address the imbalance described in Ameren Missouri's class cost of service study."[2]

As Liberty witness Tim S. Lyons testified, "The purpose of a CCOS is to allocate a utility's overall cost of service to each rate class in a manner that reflects its underlying cost of service."[3] Here that purpose is to divide Liberty's total revenue requirement—with the fourth settlement agreement $541,685,550[4]—among its customer rate classes on a rational basis. As explained below, the only class cost-of-service study in this case does not do so. It does not rationally divide Liberty's total revenue requirement among Liberty's customer rate classes because that study is premised on Liberty managing its generating portfolio for sufficient capacity to supply its customers' peak demands for energy when, instead, Liberty manages that portfolio to generate energy at a cost below Southwest Power Pool ("SPP") market prices. Further, the Midwest Energy Consumer Group's ("MECG") proposed modifications to Liberty's study do not cure that flawed premise.

Additionally, other factors weigh against changing the relative customer rate class revenue responsibilities in this case. Liberty's residential customers include some of Missouri's most vulnerable households and businesses who already struggle economically in an area of Missouri with lower overall mean and median household incomes, and higher poverty rates relative to the United States and Missouri averages.[5] All of the following factors also militate against increasing

[2] Case No. ER-2021-0240, p. 23.
[3] Ex. 36, Liberty witness Lyons direct testimony, p. 8.
[4] $551,395,860-$45,226,193+$35,515,913=$541,685,550.
[5] Ex. 200, Public Counsel witness Geoff Marke direct testimony, pp. 9-10.

the economic burden of the rate increase in this case on residential customers by anything more than the system average:

- The shift in this case to residential time-of-use opt-out rates;[6]
- The economic toll of the public health crisis;
- The sudden onset of high inflation;[7]
- The impending rate increase from this case;
- The impending higher Liberty FAC charges; and
- The impending bill impacts of Liberty's upcoming securitization charge(s).[8]

The Commission should reject Liberty's and MECG's efforts to allocate greater than an equal percentage share of Liberty's 600 MW of wind project investments to Liberty's residential customers.

In this case Liberty witness Tim S. Lyons presented the sole class cost-of-service study.[9] Midwest Energy Consumers Group ("MECG") expert Kavita Maini takes issue with only two aspects of that study, but otherwise endorses it. Most pertinent here, she takes issue with allocating production costs to customer classes by an average and excess twelve non-coincident peak method; instead, she argues for using an average and excess five non-coincident peak method.[10]

Staff witness Sarah L.K. Lange correctly identifies that both methods assume Liberty builds its generation to serve its customers' peak capacity needs, when it does not, particularly for

[6] Non-Unanimous Partial Stipulation and Agreement filed January 28, 2022.
[7] Ex. 200, Public Counsel witness Geoff Marke direct testimony, pp. 10-11.
[8] Case No. EO-2022-0040 (Storm Uri securitization); EO-2022-0193 (Asbury securitization).
[9] Ex. 36, Liberty witness Lyons direct testimony.
[10] Ex. 352, MECG witness Maini direct testimony, p. 19.

Liberty's new wind projects (Neosho Ridge, North Fork Ridge, and Kings Point), projects that are over 30% of its production plant rate base and its depreciation expense.[11] As Public Counsel witness Lena Mantle testified, "With the advent of the SPP integrated market and Algonquin's purchase of Empire, the planning priority for Empire's generation resource portfolio moved from having resources necessary to generate electricity to meet the needs of its customers 8,760 hours of the year to making money on the SPP [(Southwest Power Pool)] market and relying on the availability in that market for electricity to meet the reliability requirements of its customers."[12] Todd Mooney is the Vice President, Finance & Administration at Liberty Utilities (Canada) Corp., a Liberty affiliate. He reaffirms that Liberty built and owns its wind projects on the premise that, based on their levelized cost of energy and Liberty's SPP energy market price predictions, over their lives they will generate more revenues than they cost.[13]

The premise for A&E cost allocation methods is that electric utilities manage their generating portfolios for sufficient capacity to supply their customers' peak demands for energy. That premise no longer holds for Liberty. Based on SPP requirements Liberty had sufficient generating capacity to supply its customers' peak demands for energy, but added what is now over thirty percent of its generating portfolio rate base and depreciation expense to generate energy at a cost that is below the SPP market price of that energy. The premise for using A&E methods is no longer valid for Liberty. Worse, using an A&E method for allocating generating portfolio return on rate base and depreciation expense to customer classes, but using customer class energy

[11] Ex. 118, Staff witness Lange rebuttal testimony, p. 19; From Ex. 140 Staff surrebuttal EMS run, Accting. Sch. 3 and 4th settlement agreement: ($2,669,654(Prosperity Solar)+$239,015,417(Neosho Ridge)+$114,425,852(North Fork)+$118,150,552(Kings Point)-$20,000,000(4th settlement agreement))/$1,473,271,716(Ex. 140 & 4th settlement agreement)=0.30834, or 30.8%.
[12] Ex. 203, Public Counsel witness Mantle rebuttal testimony, p. 18.
[13] Ex. 5HC, Liberty witness Mooney direct testimony, pp. 4-10.

usages as the basis for allocating energy revenues, mismatches those costs and revenues to the classes.

As Staff witness Lange explains, "It is fundamentally unfair to charge one group of customers for the costs of building and maintaining a power plant, but to provide the sales revenue from that power plant to another group of customers. This is acutely true where generation with little to no marginal costs such as fuel are concerned."[14] She is also correct that "it [is not] a simple matter to realign net revenues to align the revenue requirement benefits of capacity with the cost responsibility for that capacity." This is "[b]ecause hourly loads are not available to assign market energy expenses to the classes by the hour in which those expenses are experienced, there is no reliable way in this case to allocate the value for energy that was obtained" and "there is no way to disaggregate fuel costs for the hours in which [Liberty]'s load used energy from the fuel costs from the hours in which [Liberty]'s generation exceeded its load."[15]

In addition to the forgoing, which is sufficient to reject both Mr. Lyons' class cost-of-service study as he presented it and as Ms. Maini modified it as a basis for making any revenue neutral inter-class revenue requirement responsibility changes, there are other sufficient reasons not to do so. One of the settled issues is to start time-of-use rates as the default for Liberty's residential customers.[16] Those time-of-use rates incent Liberty's residential customers to change their energy usage patterns beyond those changes already spurred by the COVID-19 pandemic and inflation. They will be further incented by the bill impacts from the rate increase in this case, future increased FAC charges, and new securitization charges for Storm Uri (Liberty estimates the

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[14] Ex. 118, Staff witness Lange rebuttal testimony, p. 20.
[15] Ex. 118, Staff witness Lange rebuttal testimony, pp. 20-21.
[16] Non-Unanimous Partial Stipulation and Agreement filed January 28, 2022.

charge will be about $5.00 per month for 13 years for a residential customer using 1,000 kWh per month.[17]) and for Asbury (unfiled, but noticed[18]).

CONCLUSION

Not only should the Commission not rely on the flawed class cost-of-service study and the proposed modification of it because they rely on the untrue premise that Liberty manages its generating portfolio for its customers' capacity needs, the following factors militate against increasing the relative rate class revenue requirement responsibility of residential customers who include some of Missouri's most vulnerable households and businesses already struggling with poverty and the impacts of the public health crisis and inflation: implementation of opt-out time-of-use rates in this case, the rate increase from this case, higher FAC charges, and impending significant new securitization charges.

Respectfully,

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[17] Case No. EO-2022-0040, application filed January 19, 2022, ¶¶ 30 & 36.
[18] Case No. EO-2022-0193, 60-days' notice filed January 20, 2022.

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 25th day of February 2022.

/s/ Nathan Williams