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

Public Counsel's Proposed Findings and Conclusions

Following are Public Counsel's proposed findings of fact and conclusions of law that it was able to create with the time and resources available to it. Public Counsel does not represent that these are all of the findings and conclusions that the Commission must make for Public Counsel's issues in this case.

General

1. Empire is an electrical corporation whose rates are subject to determination by this Commission.
2. On August 14, 2019, Empire initiated this general rate case by filing tariff sheets designed to recover an annual revenue requirement of $564.7 million, an overall revenue requirement increase of $26.5 million—a 4.93% increase.[1]
3. When setting general rates the Commission must consider "all relevant factors."[2]
4. Empire's current FAC tariff took effect September 14, 2016.[3]
5. To continue its FAC Empire is required to file a new general electric rate case every four years.[4]

[1] Ex. 4C, Empire witness Sheri Richard, direct testimony, pp. 5, and 10.
[2] § 393.270(4), RSMo., *State ex rel. Missouri Water Co. v. Public Service Com.*, 308 S.W.2d 704 718-19 (Mo. banc 1957), ; *State ex rel. Utility Consumers Council, Inc. v. Public Service Com.*, 585 S.W.2d 41, 49 (Mo. banc 1979).
[3] See Ex. 4C, Empire witness Sheri Richard, direct testimony, p. 4.
[4] See § 386.266.5(3), RSMo.

6. Empire primarily filed this rate case to continue its FAC.
7. Empire serves approximately 155,165 retail electric customers in southwest Missouri, including citizens of the cities of Aurora, Boliver, Branson, Joplin, and Republic, among others.[5]
8. The purpose of a test year is to fix an annual period for which to gather historical information as the starting point for projecting a utility's future annual cost-of-service when the rates based on that cost-of-service will be in effect.[6] The purpose of update and true-up periods is to have historical information as current as practicable for evaluating a utility's future annual cost-of-service, but still allow sufficient time for the parties and Commission to weigh and evaluate that information before the Commission sets new rates.[7]
9. As Empire requested, the Commission established a test year of the twelve months ended March 31, 2019, updated through September 30, 2019, and trued-up through January 31, 2020.
10. While parties typically review the same types of information from the update period as they did for the test year, the data they consider for the true-up period is generally limited the impacts of some significant known and measurable change—a change as a new labor contract, a new tax rate, completion of a new capital asset, or, as in this case, the permanent cessation of the operation of a power plant. Updates and true-ups are employed to reduce regulatory lag—the lapse of time between a change in a utility's revenue requirement and the reflection of that change in its rates.

---

[5] Ex. 4C, Empire witness Sheri Richard, direct testimony, Sch. SDR-9, pp. 2, and 3.
[6] *State ex rel. Missouri Power & Light Co. v. Public Service Com.*, 669 S.W.2d 941, 943-45 (Mo. App. 1984)
[7] See, e.g., *State ex rel. Missouri Public Service Co. v. Fraas, 627 S.W.2d 882*, 888 (Mo. App. 1981) ("However, the Commission in this case did use a modified version of the projected year model by utilizing a test year which was adjusted to take into account known and measurable future changes. That concept was implemented by the holding of what the Commission denominates as 'a true-up hearing.'")

Affiliate Transactions

11. To include the costs of utility's transactions with its affiliates in a utility's cost-of-service used to determine its revenue requirement, the evidence must show that the utility's transactions with its affiliates were prudent, and the burden is on the utility to provide the evidence to make that showing.[8]
12. Empire engages in $100 million of transactions with its affiliates annually.[9]
13. There is no evidence in the record that Empire's $100 million of transactions with its affiliates are prudent.
14. When an electric utility transacts with an affiliate, it is required to book the cost of that transaction at the lower of *its* fully distributed cost to provide the good or service, or the market value of the good or service.[10]
15. Empire booked the cost of its 15-year promissory note with LUCo that it used to refinance its $90 million of first mortgage bonds when they matured in 2018 based on the terms of that note and the $450,000 origination fee that LUCo charged, not at the ***lower*** of Empire's fully distributed cost to refinance those bonds, or the market cost of refinancing the $90 million of first mortgage bonds.
16. Empire violated the Commission's affiliate transactions rule 20 CSR 4240-20.015.

Asbury, and Fuel Inventory

[8] *Office of the Public Counsel v. Mo.PSC*, 409 S.W.3d 371 (Mo. banc 2013); § 393.150.2, RSMo.
[9] [9] Ex. 229C, Empire's 2019 Affiliate Transactions Report, Ex. 220C, Public Counsel witness Schallenberg, direct testimony, Sch. RES-D-6C.
[10] 20 CSR 4240-20.015.

17. Reasonable rates compensate a public utility for its investment in, and its operation and maintenance expense associated with, investments that actually provide service to its customers, nothing more.[11]

18. Asbury last ran on December 12, 2019.

19. Empire exhausted its fuel inventory at its Asbury site on December 12, 2019.[12]

20. Empire has not had fuel available at Asbury to generate electricity since December 12, 2019.

21. Empire's fuel inventory for Asbury for purposes of Empire's cost-of-service is zero.

22. Empire has not generated electricity at Asbury since December 12, 2019.

23. Since 2017 Empire intended to retire Asbury in 2019.[13]

24. Empire announced in testimony filed August 14, 2019, that it would retire Asbury by June 2020.[14]

25. Empire announced in a pleading filed on December 19, 2019, that it would retire Asbury on March 1, 2020.

26. Empire informed the SPP in September 2019 that it would not be operating Asbury after March 1, 2020.

27. Asbury will not be generating electricity when new rates in this case take effect.

---

[11] *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944); *Bluefield Water Works & Improv. Co. v. PSC of W. Va.*, 262 U.S. 679, 692-93 (1923).

[12] Ex. 275C, Empire response to OPC DR 2099 (Asbury Shift supervisor log for Dec. 2019 through February 2020); Ex. 219C, John Robinett, surrebuttal/true-up direct testimony, p. 2. Ex. 219C, Public Counsel witness John Robinett, surrebuttal/true-up direct testimony, Schs. JAR-S-1C and JAR-S-2C; and Exs. 261C, February 2020 Fuel Report submitted by Empire on 03-31-2020 BEGR-2020-1067, and 262C, Electric Net Fuel and Purchased Power Report submitted by Empire on 03-31-2020 BFMR-2020-1070.

[13] Ex 206HC, Public Counsel witness Geoff Marke, direct testimony, Sch. GM-6 HC; Ex. 272, EO-2018-0092- report and order- final; Ex. 273C, vol 1 empire exec summary_irp_ c 2019, and Ex. 276, EO-2019-0106 Empire notice change in preferred plan;

[14] Ex. 41, Empire witness Tim Wilson, p. 6.

28. Asbury now is neither used nor useful, all of its impacts on fuel costs, including those to Empire's FAC base, operations and maintenance expense, rate base, etc. are not to be included in Empire's cost-of-service used to set rates in this case.

29. Retired, Asbury is to be removed from Empire's plant-in-service and accumulated depreciation reserves for Asbury, which are to be set to zero.

Rate of Return

30. As of September 30, 2019, Empire's and LUCo's per books common equity ratios are 52.48% and 53.00%, respectively.[15]

31. As of January 31, 2020, Empires' per books common equity ratio is 53.07%.[16]

32. Empire primarily relies on LUCo for its financing needs.[17]

33. LUCo has guaranteed $395 million of off-balance sheet debt used to invest in LUCo's regulated utilities.[18]

34. Because of this $395 million of off-balance sheet debt, LUCo's actual common equity ratio is approximately 46%.[19]

35. Empire's and LUCo's FFO/debt ratios are 21%-to-23% and 15%-to-16%, respectively.[20]

36. Generally, lower FFO/debt ratios reflect more debt.

37. APUC's communicates to debt investors that it targets a 45% to 50% equity ratio for LUCo.[21]

---

[15] Ex. 210C, Public Counsel witness David Murray, direct testimony, p. 9.
[16] Ex. 7, Empire witness Sheri Richard, true-up direct testimony, p. 21.
[17] Ex. 210C, Public Counsel witness David Murray, direct testimony, pp. 6-7.
[18] Ex. 210C, Public Counsel witness David Murray, direct testimony, p. 10.
[19] *Id.*
[20] Ex. 210C, Public Counsel witness David Murray, direct testimony, p. 16.
[21] Ex. 210C, Public Counsel witness David Murray, direct testimony, pp. 12-13.

38. The Commission adopted LUCo's capital structure for Empire's two affiliates, Liberty Utilities (Midstates Natural Gas) and Liberty Utilities (Missouri Water) LLC ("Liberty Water"), in Case Nos. GR-2014-0152 and WR-2018-0170, respectively.[22]

39. Liberty Utilities (Midstates Natural Gas) and Liberty Utilities (Missouri Water) LLC ("Liberty Water") rely on LUCo for their debt financing needs.[23]

40. Because Empire primarily relies on LUCo for its debt financing needs and LUCo's actual common equity ratio is approximately 46%, for purposes of determining Empire's cost-of-service in this case, the Commission use a capital structure of 46% equity/54% long-term debt for setting Empire's rates.

41. When it last explicitly used returns-on-equity for setting the rates of the major electric utilities it rate regulates—around 2015—the Commission used returns-on-equity of 9.5%.[24]

42. Around 2015 utility bond yields were higher and utility stock valuations were lower than they are now.[25]

43. Because both long-term bonds and utility stocks are low risk investments the trend in long-term treasury and utility bond yields is generally indicative of the trend in utility stock price-to-earnings ("P/E") ratios—typically, they are inversely correlated, *i.e.*, as bond yields drop, P/E ratios rise.[26]

44. This relationship is so well known that the investment community uses bond yield regressions to estimate fair utility stock prices, and often refers to utility stocks as "bond-substitutes" or "pseudo-bonds."

[22] Murray Surrebuttal, p. 20.
[23] *Id.*
[24] Ex. 210C, Public Counsel witness David Murray, direct testimony, pp. 17-18, 28-29 and p. 40.
[25] *Id.*
[26] Ex. 210C, Public Counsel witness David Murray, direct testimony, p., pp. 21-24.

45. Both treasury and utility bond yields have trended downward by over 2% over the period 2010 through 2019.[27]

46. Over the period 2010 through 2019 utility stock P/E ratios have have increased.

47. These trends are due to a decline in bond yields, *i.e.*, a decline in utilities' cost of capital—a decline to levels in 2019 and now not seen before in modern times.[28]

48. Investors expect commissions to continue to use returns-on-equity above the actual cost-of-equity, but they also expect that commissions will recognize that the decline in the cost of capital and reduce those ROEs accordingly.[29]

49. Because long-term interest rates (*i.e.* yields) in the United States have been declining, which reduces the cost of capital, investors expect that utility commissions will gradually reduce the returns-on-equity they are using to approximately 9% to 9.25%; and they consider that expectation when they value utility stocks.[30]

50. Utility industry equity investment analysts use the multi-stage discounted cash flow method for estimating equity valuations for investors.[31]

51. Using equity analysts' discrete annual dividend per share estimates for the first stage of the multi-stage discounted cash flow method, and a realistic transitionary annual dividend per share growth rate for each company in a proxy group during the second stage is a superior approach because it is similar to what analysts who investors rely on do.

[27] Ex. 210C, Public Counsel witness David Murray, direct testimony, p., p. 21.
[28] Ex. 210C, Public Counsel witness David Murray, direct testimony, pp. 21-24.
[29] Ex. 210C, Public Counsel witness David Murray, direct testimony, p., pp. 25-26.
[30] Ex. 210C, Public Counsel witness David Murray, direct testimony, p. 32.
[31] Ex. 210C, Public Counsel witness David Murray, direct testimony, pp. 29, l. 23 – 30, l. 9.

52. Empire's rate-of-return expert Mr. Robert Hevert uses standard cost of equity methods to estimate the cost of equity, but his results are not corroborated by tests of reasonableness or the cost of equity actually used by investors, they are at least 400 basis points higher.

53. Mr. Hevert assumes dividends can grow in perpetuity at the same rate as equity analysts' projected 5-year compound annual growth rates ("CAGR") in EPS.

54. Mr. Hevert's dividend growth assumption causes irrational estimates for stock prices when equity analysts' cost of equity estimates are used. For example, Ameren's stock price estimate is $1,500, but it is trading in the range of $82-$83.

55. Assuming that dividends will grow at a 5.8% CAGR indefinitely, Mr. Hevert's mean DCF method results are 8.93%, 9.01% and 9.15%.[32]

56. Mr. Hevert acknowledges that higher utility P/E ratios are a result of lower interest rates and bond yields.[33]

57. Mr. Hevert asserts that higher utility valuation levels have a limit,[34] as he did in 2015 in Case No. ER-2014-0258, where he expressed caution about relying too heavily on using the constant growth DCF model.[35]

58. Until 2018 Mr. Hevert used the multi-stage DCF method for ROE modeling in cases before the Commission, but he has abandoned that method.

59. Mr. Hevert's ROE recommendations rely less on DCF methods as higher utility stock valuation levels cause lower COE estimates.[36]

---

[32] Hevert Direct, p. 21.
[33] Hevert Direct, pp. 37-38.
[34] Hevert Direct, p. 9.
[35] Murray Rebuttal, pp. 28-29.
[36] Murray Rebuttal, pp. 28-219.

60. With the exception Mr. Hevert's CAPM using average Bloomberg beta coefficients, his other CAPM results indicate a COE of 9.63% to 11.05%[37]

61. Mr. Hevert's CAPM estimates imply a market risk premium of 12.15% to 12.25%,[38] approximately twice the market risk premium equity analysts use to estimate a fair price to pay for utility stock.[39]

62. Mr. Hevert's ECAPM results magnify the impact of his excessive market risk premium estimates.[40]

63. Mr. Hevert's bond-yield-plus risk premium method assumes allowed ROEs are equal to the COE, but investment research does not corroborate his assumption.

64. Staff and Public Counsel compare their recommended ROE to the Commission's allowed ROEs of 9.5% for its major electric utilities, but Mr. Hevert does not.

65. Based on third-party debt issued by LUCo's regulated subsidiaries or third-party that LUCo directly guarantees, LUCo's cost of long-term debt is 4.65%.[41]

66. Because Empire relies wholly upon LUCo for its financing needs, for ratemaking purposes Empire's long-term cost of debt is 4.65%.

67. Mr. Hevert did not compare his ROE recommendation to the Commission's 9.5% level.

68. Mr. Murray's recommended ROE recognizes that utility shareholder wealth has increased significantly over the last five years due to a lower cost of capital.

---

[37] Hevert Direct, p. 22
[38] Hevert Surrebuttal, p. 41.
[39] Murray Rebuttal, p. 19.
[40] Murray Rebuttal, p. 20
[41] Ex. 210C, Public Counsel witness David Murray, direct testimony, p. 14, ll. 17-25.

69. Mr. Murray's recommended 9.25% ROE is supported by a reduced cost of capital, a need to maintain shareholder and ratepayer balance, and is corroborated by information communicated by market participants such as equity analysts.
70. Mr. Hevert's COE analysis is not supported by corroborating information or tests of reasonableness.
71. To adopt Mr. Hevert's ROE recommendation would further exacerbate the tilt toward increasing shareholder wealth.

FAC

72. An electric utility without a FAC bears all of the risk of increasing fuel and purchased power costs until it returns to the Commission for a rate case. Conversely, an electric utility without a FAC also enjoys retaining 100% of the achieved savings (deferential between the fuel costs used to set rates and actual fuel and purchased power costs) when those costs drop below the level set in the last rate case.
73. An electric utility with a FAC greatly reduces both the risk and potential windfall of regulatory lag, and may be appropriate in some instances to ensure a utility is provided an opportunity to earn its authorized return for its service.[42]
74. Empire is earning its authorized return.[43]
75. Some type of efficiency incentive, such as a sharing mechanism, is necessary for the operation of a FAC because after-the-fact prudence reviews are insufficient to assure the public that electric utilities are continually taking action to keep fuel and purchased power costs low.[44]

---

[42] *Report and Order*, ER-2008-0318 p. 59 (Jan. 27, 2009).
[43] EXNP 203, Public Counsel witness Lena Mantle, Direct Testimony, pp. 5-6
[44] *Report and Order*, ER-2007-004 p. 54 (May 17, 2007).

76. Backward looking "regulatory reviews are only a partial substitute for the direct incentives that can result from a utility's quest for profit."[45]

77. The Commission determined 95/5 sharing is appropriate based on political compromise, and not based on any particular valuation of whether 5% was a sufficient incentive.

78. The 5% efficiency incentive is measured relative to the difference in net base energy costs versus actual fuel and purchased power costs. Comparing the 5% figure to an electric utility's full fuel and purchased power costs shows that the 5% incentive amounts to less than one percent of all fuel costs.[46]

79. Empire has utilized an FAC since July of 2008.[47]

80. While electric utilities do not have complete control over fuel costs, there are certain measures that are within their control. One such measure was Empire's previous gas hedging program. Empire engaged in a hedging practice for its natural gas procurement, where a certain portion of its natural gas purchases did not fluctuate with market prices. Empire started hedging its gas purchases in 2002, and did not stop even as the price of gas markedly dropped after 2009. Empire's hedging policy resulted in losses of over $95 million for customers.[48]

81. Empire's gas hedging was challenged for prudency in EO-2017-0065, and since abandoning its gas hedging practices Empire has realized far lower losses.[49]

82. The net base energy cost value agreed to by the parties to the global stipulation and agreement presumes that Empire's Asbury station is still consuming fuel and producing revenues.

---

[45] *Report and Order*, ER-2007-0002 p. 19 (May 22, 2007).
[46] EXNP 203, Public Counsel witness Lena Mantle, Direct Testimony, pp. 10-12.
[47] Ex. 203NP, Public Counsel witness Lena Mantle, direct testimony, Sch. LMM-D-2, p. 6.
[48] EX205NP, Public Counsel witness Lena Mantle, Surrebuttal Testimony, p. 3.
[49] Ex. 205HC, Public Counsel witness Lena Mantle, surrebuttal testimony, p. 5.

83. The FAC statute addresses the increases or decreases in fuel costs that would traditionally not be accounted for until rates are reset in a rate case. The FAC is thus a rate mechanism designed to address "regulatory lag." The FAC statute was passed in 2005, effectively overturning a prior Missouri Supreme Court decision holding an FAC to be contrary to Missouri ratemaking law.[50]

84. The FAC statute's language indicates the Missouri General Assembly intended for the Commission to have the discretion to institute incentive mechanisms in conjunction with FAC approvals to ensure that utilities will continue to seek reduced costs and efficiencies even as the FAC secures increasing fuel and operation costs.[51]

85. The FAC statute is a wholly permissive one. It only applies to electric utilities that apply for an FAC, and the Commission retains discretion to approve, modify, or reject any application.[52]

86. Plant-in-service accounting (PISA) treatment is similarly permissive in that it only applies to electric utilities that elect into such treatment.[53] Also, similar to the FAC, PISA is a ratemaking mechanism addressing the delayed recovery of regulatory lag. Utilities electing PISA defer 85% of depreciation expense and return associated with qualifying infrastructure investments in between rate cases.[54]

87. The Missouri General Assembly intends PISA to incentivize capital asset spending. Nonetheless, the 85% limitation on a utility's ability to defer costs represents a legislative

---

[50] *See State ex rel. Utility Consumers Council of Mo., Inc. v. Pub. Serv. Comm'n*, 585 S.W.2d 41 (Mo. banc 1979).
[51] Mo. Rev. Stat. § 386.266.1.
[52] Mo. Rev. Stat. § 386.266.
[53] Mo. Rev. Stat. § 393.1400 (2019).
[54] *Id.*

compromise intended to adequately secure some regulatory lag as a consumer protection, while still incentivizing capital investments through PISA deferrals.[55]

WNR & SRLE

88. Empire has requested a weather normalization rider (WNR) per subsection 3 of Section 386.266. Both Public Counsel and the signatories to the global stipulation recommend rejecting the WNR. The stipulation signatories recommend that the Commission approve a modified WNR: the Sales Reconciliation to Levelized Expectations (SRLE).
89. The SRLE reconciles energy revenues due to changes caused by weather and conservation. Any reconciliation is determined by Empire's annualized and normalized billing determinants. However, Staff recommends that the Commission appropriately weigh class cost-of-service study and weather normalization models due to their inherent unreliability.[56]
90. Electric utilities are empowered to apply for recovery mechanisms to account for the changes in energy revenue due to weather, conservation, or both, provided that they have not also applied for PISA treatment.[57] The Commission is empowered to approve, modify, or reject such a mechanism based on considerations of necessity, reasonableness, and legality.

Credit Card Fees

91. Many credit card users are eligible for cashback, rewards and other financial benefits from or through their credit card issue which reduce and may more than completely offset the convenience fees these customers are incurring to pay Empire for using their credit cards.[58]

---

[55] *Report and Order*, EA-2018-0202 p. 6 (Dec. 12, 2018).
[56] Ex. 205NP, Public Counsel witness Lena Mantle, surrebuttal testimony, p. 24.
[57] Mo. Rev. Stat. § 386.266.3.
[58] Ex. 200, Public Counsel witness Amanda Conner, direct testimony, p. 10

92. Empire's customers have available to them the option of making direct payments from their financial institutions without incurring any fee—by using automated clearing house ("ACH") payments.

93. It is unduly discriminatory to require customers who cannot get credit cards, and those who do not wish or have no way to pay their bills online, to pay in their rates for customer credit card convenience fees of a subset of customers, convenience fees that the credit card companies otherwise would require merchants such as Empire to pay for accepting payment by credit card.

Rate Case Expense

94. Empire's expense for using a chartered plane for four individuals to travel between the cities of Joplin and Jefferson in Missouri exceeds the cost of renting a car, hotel rooms, and three meals a day for them.[59]

95. To the extent the costs of using a chartered plane for four individuals to travel between the cities of Joplin and Jefferson in Missouri exceeds the cost of renting a car, hotel rooms, and three meals a day for them, they are excluded from Empire's rate case expense included in Empire's revenue requirement.

96. Since Empire files rate cases every three years, and no more than four to continue its Fuel Adjustment Clause, its rate case expenses will be normalized over three years since this is the normalized time period over which Empire comes in for rate cases.[60]

---

[59] Ex. 101, Staff's Cost of Service Report, Staff Witness Angela Niemeier, p. 73, ll. 11-15.
[60] Ex. 200, Public Counsel witness Amanda Conner, direct testimony, p. 6, ll. 1-2.

97. Both the utilities and their customers benefit by matching prospective rates with what it takes for the utility to provide prospective service—investment, costs, etc.—the purpose of general rate cases.

98. In recognition, as it did in Case No. ER-2014-0370 for Kansas City Power & Light Company's rate case expenses, Empire's rate case expenses shall be shared between it and its customers based on a ratio of the amount of increase requested and the amount this Commission orders.[61]

Management expense

99. Empire's management expense includes meal costs for what Empire claims without support are business meetings in the amount of $686,087. The disallowance of all other charges Public Counsel has deemed unreasonable or unjustifiable due to lack of justification of how these charges benefit Empire's retail customers is $3,021,797. The total test year disallowance of $3,707,884 recorded in account 923 for the test year.62 Public Counsel also has a disallowance of $3,006,363 in account 923 for the true-up. Since Staff's account 923 number is based only on the test year, the amount that should be removed from account 923 is $3,707,884.

Allowance for Funds Used During Construction

100. Empire does not manage its dividend payments, capital structure, liquidity and long-term debt as if it were a stand-alone entity.

101. Empire did not pay a dividend to LUCo at all in two quarters of 2019, thereby reducing the amount of short-term debt Empire would have needed to issue as a stand-alone entity to fund its capital expenditures.[63]

---

[61] Ex. 200, Public Counsel witness Amanda Conner, direct testimony, p. 4, ll. 1-10.
[62] Ex. 202, Public Counsel witness Amanda Conner, surrebuttal & true-up direct testimony, Sch. ACC-S-1.
[63] Ex. 210C, Public Counsel witness David Murray, direct testimony, p. 15, ll. 17-19.

102. Empire's AFUDC rate shall be based only on Empire's short-term debt costs, including those from its refinancing of its $90 million of first mortgage bonds in June of 2018.

103. Empire's AFUDC charges included in its, and Staff's, determination of its rate base are overstated because they have not properly treated how Empire refinanced its $90 million of first mortgage bonds in June of 2018.

104. Empire's AFUDC charges included in determining its rate base shall be based on Empire's short-term debt costs, including those by treating it as having refinanced its $90 million of first mortgage bonds in June of 2018, with commercial paper that Empire issued.

Cash Working Capital

105. Empire does not actually pay any federal income taxes.

106. Cash working capital is about cash flows.

107. The hypothetical income tax expense included in Empire's cost of service for setting its prospective rates shall be excluded in the calculation of Empire's cash working capital for purposes of setting Empire's rates.

108. No more than the part of Liberty Utilities (America) Co & Subs actual federal income tax liability attributable to Empire shall be included in the calculation of Empire's cash working capital for purposes of setting Empire's rates.

109. The Commission assigns an expense lag of 365 days as the appropriate metric for measuring Empire's income tax lag for purposes of cash working capital.

Accumulated Deferred Income Tax

110. When Empire became a member of the consolidated group in Liberty's consolidated income tax returns, it no longer had the use of specific NOL tax deductions.

111. NOLs are tax return items.

112. Empire's proposed accumulated deferred income tax ("ADIT") reduction of $2,621,928 by an accounting entry labeled, Net Operating Loss ("NOL"), is not allowed.

Tax Cut and Jobs Act of 2017 federal income tax rate reduction from 35% to 21% impact for the period January 1 to August 30, 2018

113. Empire has had the use of interest free money as a result of the Tax Cuts and Jobs Act stub period.

114. Because Empire has had the use of that money interest-free, it shall be used to reduce Empire's rate base.

115. Section 393.137.3, RSMo, requires the stub period amount to be included in this general rate case, and amortized over a period the Commission establishes.

116. The stub period tax overearning of $11,728,453 should be returned to Empire's Missouri retail customers as quickly as possible and, so long as Empire continues to have the free use of the funds, then the funds balance should be applied as an offset to Empire's rate base.

Customer Service

117. Compared to other utilities Empire's customers' bills rank in the upper quartile, but the service they receive is in the bottom quartile.

118. Customer's testified at the local public hearings to their dissatisfaction with the cost of Empire's electric service and how often it estimated bills.

119. The Commission explicitly will reduce Empire's return-on-equity by 60 basis points because of the poor quality of its electric service.

Case No. EM-2016-0213 Commission-ordered conditions

120. By not complying with the Commission's affiliate transactions rule 20 CSR 4240-20.015 after the Commission's order in Case No. EM-2016-0213, Empire has violated ordered condition A. 6.

121. While by the per books capital structures of Empire and LUCo, Empire may have literally complied with condition A. 5, Empire has not complied with the spirit of that condition.

122. For not complying with all of the conditions to its approval for Algonquin Power & Utilities Corp to acquire Empire, the Commission will reduce Empire's return-on-equity to 8.5%, the low end of Public Counsel's reasonable return on equity range.

Rate Design, **Other Tariff and Data Issues**

123. The unprecedented COVID-19 national emergency is impacting residential customers in ways they cannot evade and from which it will be difficult if not impossible for them to recover.

124. Residential customers, who are without choice, will be more adversely impacted with relatively higher utility bills than other customer classes.

125. The State of Missouri has had a stay-at-home order in place until recently, and is still requiring physical distancing.

126. Empire has had unacceptable levels of estimated billings since Algonquin acquired it in 2017.

127. The class cost-of-service studies performed in this case are unreliable because inadequate data used as inputs to them.

128. The resulting rate reduction from the Commission's decisions in this case will be allocated primarily to residential customer class rates, but the residential customer charge will remain at

$13 per month. After it knows the revenue requirement impact of its other decisions, the Commission will determine how to allocate the resulting revenue requirement reduction.

Respectfully,

/s/ Nathan Williams

Nathan Williams
Chief Deputy Public Counsel
Missouri Bar No. 35512

Office of the Public Counsel
Post Office Box 2230
Jefferson City, MO 65102
(573) 526-4975 (Voice)
(573) 751-5562 (FAX)
Nathan.Williams@opc.mo.gov

/s/ Caleb Hall

Caleb Hall
Senior Public Counsel
Missouri Bar No. 68112

Office of the Public Counsel
Post Office Box 2230
Jefferson City, MO 65102
(573) 526-1445 (Voice)
(573) 751-5562 (FAX)
Caleb.Hall@opc.mo.gov

Attorneys for the Office
of the Public Counsel

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 18th day of May 2020.

/s/ Nathan Williams