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	)	

INITIAL BRIEF OF THE EMPIRE DISTRICT ELECTRIC COMPANY

COMES NOW The Empire District Electric Company, a Liberty Utilities company ("Empire" or the "Company"), and for its Initial Brief, respectfully states as follows to the Missouri Public Service Commission ("Commission"):

The Initial Rate Case Filing and Empire's True-Up Position

On August 14, 2019, Empire submitted revised rate schedules designed to increase Empire's gross annual electric revenues by approximately $26.5 million, direct testimony in support of its rate increase request, and additional information required by the Commission's minimum filing requirements. This general rate case proceeding was required by RSMo. 386.266.4(3), and the dominant factors driving the amount of the requested rate increase were investments in Empire's transmission and distribution systems since April 1, 2016, increased costs for property taxes and depreciation expense stemming from additional capital investment, and normal and inflationary increases in operating costs.

Based on the test year as updated and trued-up, the Company is experiencing an annual revenue deficiency of $21,916,462. Implementation of the Company's requested rate increase, as set forth in and supported by its filed testimony, would result in just and reasonable rates and allow Empire to continue providing safe and reliable service. The Company made necessary and prudent investments in its transmission and distribution systems and has experienced increased costs for property taxes and depreciation expense stemming from its additional capital investment, as well as normal and inflationary increases in operating costs.

The Non-Unanimous Global Stipulation

Following eight months of extensive discovery and other rate case processing, on April 15, 2020, the Company, the Staff of the Missouri Public Service Commission ("Staff"), Midwest Energy Consumers Group ("MECG"), Empire District Electric Company SERP Retirees ("EDESR"), the Empire District Retired Members & Spouses Association LLC ("EDRA"), Renew Missouri, Natural Resources Defense Council ("NRDC"), and the National Housing Trust ("NHT") (collectively, the "Signatories"), and with a non-objection from the Sierra Club, submitted for the Commission's consideration and approval a Global Stipulation and Agreement (the "Stipulation") representing resolution of all issues in this general rate case proceeding. The Office of the Public Counsel ("OPC") filed an objection to the Stipulation.

Being mindful of the concerns facing the Commissioners, the ALJ, and all parties regarding conducting a hearing with the COVID-19 restrictions in place, and being ever mindful of the financial challenges facing Empire's customers and the Company's obligation to provide safe and reliable service at just and reasonable rates, the parties thought outside the box and put together a settlement construct that balances all interests. It is a unique settlement construct that is investment driven and not expense driven. As such, it is difficult to compare the filed positions – which include recommendations regarding changes to operating and maintenance ("O&M") expenses – to the Stipulation, which reflects no changes to O&M and keeps the Company's O&M expense recovery at 2016 levels.

The Stipulation resolves all revenue requirement issues by providing that there will be no changes to the Company's Retail Base Rates in this proceeding, no changes to the FAC base factor, and that the tax addendum, currently credited as a separate line item on each rate schedule as "tax rate reduction," will remain in place. The Stipulation also provides, however, that a

phase-in rate mechanism will be established pursuant to §393.155.1, with regard to plant in service and other rate base related items.

The phase-in mechanism will capture the return "on and of" related to the net increase in plant in service and other rate base items between the Company's filed test year balance in this proceeding and the end of the true-up in this proceeding. In addition to plant in service, it will capture the change in the rate base components for CWC, Prepayments, Materials, Supplies, Fuel Inventories, Customer Deposits, Customer Advances, Regulatory Assets, Regulatory Liabilities and ADIT. The Rate Base increase is $102,575,958, and the depreciation and amortization for Plant in Service and Intangible Plant is $4,009,889. A carrying cost rate of 7.3 percent will be applied to the phase-in mechanism balances, and the rate base and phase-in mechanism balances will be included in the Company's adjudicated rate base in its next general rate case. The amortization period for what is captured by the phase-in mechanism will be determined in that case.

The filed testimony and other documentation that is being offered in this case will allow the Commission to issue a lawful and reasonable report and order, including detailed findings of fact and conclusions of law, approving the terms of the Stipulation as a complete resolution of this rate case proceeding. Approval of the terms of the Stipulation, in total and without modification, will result in just and reasonable rates and will allow Empire to continue providing safe and reliable service. As such, approval of the terms of the Stipulation is the proper response to each question put before the Commission (as set forth in the Joint List of Issues submitted by Staff on behalf of all parties).

As noted, based on the test year as updated and trued-up, the Company is experiencing an annual revenue deficiency of approximately $22 million, and implementation of the Company's

requested rate increase, as set forth in and supported by its filed testimony, would result in just and reasonable rates and allow Empire to continue providing safe and reliable service. The Company, however, recognizes that things are not "business as usual." As such, the Company urges the Commission to approve the terms of the Stipulation as a complete resolution of this rate case.

The Individual Issues

Issue 1 – Rate of Return.......5
Issue 2 – Rate Design.......9
Issue 3 – Jurisdictional Allocation Factors.......10
Issue 4 – WNR and SRLE Adjustment Mechanisms.......11
Issue 5 – FAC.......17
Issue 6 – Credit Card Fees.......23
Issue 7 – Rate Case Expense.......25
Issue 8 – Management Expense.......26
Issue 9 – Allowance for Funds Used During Construction.......27
Issue 10 – Cash Working Capital.......27
Issue 11 – Accumulated Deferred Income Tax.......31
Issue 12 – Tax Cuts and Jobs Act (stub period).......33
Issue 13 – Asbury.......34
Issue 14 – Fuel Inventories.......37
Issue 15 – Energy Efficiency.......37
Issue 16 – Operation and Maintenance Normalization.......39
Issue 17 – Pension and OPEB.......40
Issue 18 – Affiliate Transactions.......44
Issue 19 – Riverton 12 O&M Tracker.......45
Issue 20 – Software Maintenance Expense.......47
Issue 21 – Advertising Expense.......48
Issue 22 – Customer Service.......48
Issue 23 – Estimated Bills.......48
Issue 24 – Materials and Supplies.......51
Issue 25 – Asset Retirement Obligations.......51
Issue 26 – LED Replacement Tracker.......53
Issue 27 – May 2011 Tornado Unamortized AAO Balance.......56
Issue 28 – Depreciation and Amortization Expense.......57
Issue 29 – Iatan/Plum Point Carrying Costs.......58
Issue 30 – Incentive Compensation.......59
Issue 31 – Customer Demand Program (DSM).......61
Issue 32 – Bad Debt Expense.......62
Issue 33 – Retail Revenue.......62
Issue 34 – Other Revenue.......63

Issue 35 – Tax Cut and Jobs Act Revenue......64
Issue 36 – Property Insurance......65
Issue 37 – Injuries and Damages......65
Issue 38 – Payroll and Overtime......66
Issue 39 – Retention Bonuses (Linemen)......67
Issue 40 – Employee Benefits......68
Issue 41 – Property Taxes......68
Issue 42 – Dues and Donations......69
Issue 43 – Outside Services......70
Issue 44 – Common Property Removed From Plant and Accumulated Depreciation......71
Issue 45 – Retirement......71
Issue 46 – Merger Conditions......73

ISSUE 1 - Rate of Return - Return on Equity, Capital Structure, and Cost of Debt: (a) What return on common equity should be used for determining rate of return? (b) What capital structure should be used for determining rate of return? (c) What cost of debt should be used for determining rate of return?

As noted, the Stipulation involves a unique construct that is investment driven and not expense driven. As such, it is difficult to compare the filed positions to the Stipulation terms. The Stipulation carefully balances all interests, in light of the COVID-19 pandemic, and allows for the Company to be able to continue providing safe and reliable service, while also allowing Empire's retail customers in Missouri to not experience a base rate increase until the effective date of rates resulting from the Company's next rate case.

The Stipulation resolves the rate of return issues by providing for a carrying cost rate of 7.3% on the balance created by the phase-in rate mechanism to be established pursuant to RSMo. §393.155.1, with regard to plant in service and other rate base related items. The amortization period for what is captured by the phase-in mechanism will be determined in the next general base rate proceeding.

If the terms of the Stipulation are not approved, in total and without modification, as a complete resolution of this case, the pre-filed testimony also supports the following decisions on these issues: The return on common equity to be used for determining the rate of return should

be 9.95 percent, within an overall reasonable range of 9.80 percent to 10.60 percent. The capital structure to be used for determining the rate of return should include 53.07 percent common equity and 46.93 percent long-term debt; updated from 52.93 percent common equity, 47.07 percent long-term debt; updated from 51.91 percent common equity, 48.09 percent long-term debt. The Company's actual filed cost of debt, which is the same as the cost of debt at the true-up period, should be used. The cost of debt is a contractual obligation and was used in the revenue requirement calculation.

As set forth in his Rebuttal Testimony, Empire witness Robert Hevert properly determined the Company's Cost of Equity to be 9.95 percent, within a range of 9.80 percent to 10.60 percent. Ex. 38 (Hevert Surrebuttal), p. 2. For the reasons discussed throughout Mr. Hevert's Surrebuttal Testimony, none of the arguments raised by Staff witness Chari's or OPC witness Murray's rebuttal testimonies caused Mr. Hevert to revise his recommendation. Ex. 38, p. 2. Mr. Hevert, noted, however, that the capital markets continue to be extraordinarily volatile. "(F)rom mid-February through March 20, the utility sector lost about 31.00 percent of its value. During that time, utility dividend yields increased over 100 basis points, and the correlation between utility stocks and the overall market approached 100.00 percent." *Id.* Mr. Hevert explained that utilities have not escaped the severe market volatility and that investors have increased the returns they require because of that risk. *Id.*

Mr. Hevert noted that although financial models may not be able to fully capture the now-elevated risk to utility stocks, "there can be no question the risk is higher than it was even two months ago. Giving any weight to that heightened risk indicates an ROE toward the very upper end of my recommended range." *Id.* at 3. Nonetheless, Mr. Hevert maintained his 9.95

percent ROE recommendation "which, under current conditions, is a conservative estimate of the Company's Cost of Equity." *Id.*

When individual authorized returns are considered, there appears to be no obvious trend in authorized returns since 2015. *Id.* at 17. In looking at 2018 and 2019, however, authorized returns for vertically integrated electric utilities were 9.68 percent and 9.73 percent, respectively. Further, since the beginning of 2019 (through February 28, 2020), the average authorized return for vertically integrated electric utilities was 9.74 percent. *Id.* This is only six basis points below Mr. Hevert's recommended ROE range (.21 from his recommendation), but is well above the recommendations of Staff and OPC.

Mr. Hevert explained that the ROE recommendations of the Staff and OPC witnesses, both 9.25 percent, are unduly low under even more "normal" market conditions.

> With the ongoing uncertainty in capital markets, now is not the time to add the financial risk created by lower cash flows, and regulatory risk associated with a return that is far removed from those available to investors in other electric utilities. Putting aside the continuing flaws in their approaches, Messrs. Chari's and Murray's recommendations would have the counterproductive effect of increasing risks to investors, and increasing the returns required by them, as well as potentially restricting access to capital.

Id. at 3. "When markets become this uncertain, and this disrupted, we know investors increase their return requirements." *Id.* at 8. Staff witness Chari relies only on the Discounted Cash Flow ("DCF") model and the Capital Asset Pricing Model ("CAPM") approach. While no individual model is more reliable than all others under all market conditions, as markets become increasingly volatile, it is important to look well beyond two methods to understand how investors view the risks now facing them and the returns they will now require. *Id.* at 8-9.

> The practical issue is plain: when utility investors are faced with such extraordinary market uncertainty, regulatory consistency and supportiveness become critically important. If the Commission were to adopt the [Staff and OPC] recommendations, it would convey the opposite; it would suggest a lack of

> support and an increase in regulatory risk just as that support is most critical. The inevitable result will be diminished access to higher-cost capital, ultimately to the detriment of customers. In my view, the [Staff and OPC] recommendations are inadequate under “normal” market conditions. They are even more so now.

Id. at 9.

Mr. Hevert acknowledges the Commission’s difficult task of balancing the interests of customers and investors and notes his appreciation that doing so becomes increasingly difficult under stressed economic and financial conditions. As he observes, however, the Commission must not lose sight of the common interest customers and investors have in a financially strong utility. “On balance, it remains my opinion that the Company’s Cost of Equity falls in the range of 9.80 percent to 10.60 percent. Current conditions indicate, however, that the investor-required ROE now falls toward the top of that range.” *Id.*

With regard to the Company’s proposed capital structure, nothing in OPC witness Murray’s testimony changed Mr. Hevert’s position that the proper frame of reference is Empire’s capital structure relative to industry practice. As will be addressed in more detail below, OPC witness Murray’s testimony also did not change Mr. Hevert’s view that conditions four and five established in Case No. EM-2016-0213 (capital structure merger conditions) are properly assessed by reference to industry practice. Mr. Murray’s allegations and assertions in this regard have no bearing on whether Empire is properly, or “economically,” capitalized. Ex. 38 (Hevert Surrebuttal), pp. 3-4.

As explained by Mr. Hevert, what is relevant is that OPC witness Murray’s capital structure recommendation would force the Company to take on unnecessary levels of debt just as the capital markets require stronger, not weaker balance sheets. “It would compound extraordinarily high levels of market risk with inefficient levels of financing risk. Regardless of

its derivation, Mr. Murray's proposed 46.00 percent equity ratio cannot be seen as the 'most economical.'" *Id.* at 4.

ISSUE 2 - Rate Design, **Other Tariff and Data Issues:** How should any revenue requirement increase or decrease be allocated to each rate class?

Issue 2 in the filed Joint List of Issues contains 29 subparts – questions (a) through (cc). The Stipulation resolves all of these issues and its terms should be approved. Notably, due to the unique construct of the Stipulation, if those terms are implemented, there will be no changes to the customer charges. Also, the Company will incorporate into its direct filing for its next rate case, expected to be filed at the end of this summer: (i) allocation of interruptible credits for SC-P rate schedule consistent with MECG's recommendation in this case; (ii) allocation of the cost of the economic development rider discount on revenues pursuant to §393.1640.2; and (iii) interruptible revenues to match with cost allocation of production plant.

Additionally, the Stipulation requires the Company to identify and provide the data required to determine: primary distribution costs by voltage; secondary distribution costs by voltage; primary voltage service drops; line extension by rate schedule and voltage; and, meter costs by voltage and rate schedule. The Stipulation also contains the commitment of the Company regarding the deployment of AMI and retention of data, including individual hourly data for use in providing bill comparison tools for customers to compare rate alternatives.

The rate design section of the Stipulation also requires the Company to submit in its next rate case a rate impact analysis for the alignment of GP/TEB rates, the alignment of CB/SH rates, and the elimination of the Feed & Grain rate. Pursuant to the Stipulation, the Company will also work with parties to explore modification of the rate structures of all rate schedules to subdivide the current "Winter" billing season into a "Peak Winter" and two "Shoulder Month" seasons, to reflect at a minimum the difference in the cost of market energy among current "Winter" months

to the extent it is consistent with reasonable rate design principles, to include testimony in its next rate case regarding whether changes should be made to allow mastermetered apartments to be served under CB/SH, and to develop determinants suitable for use in the design and development of time of use ("TOU") rates as part of the next rate case.

If the terms of the Stipulation are not approved, in total and without modification, as a complete resolution of this case, any revenue requirement increase or decrease should be guided by three principles: (1) rates should recover the overall cost of providing service; (2) rates should be fair, minimizing inter- and intra-class inequities to the extent possible; and (3) rate changes should be tempered by rate continuity concerns.

ISSUE 3 - Jurisdictional Allocation Factors: What are the appropriate jurisdictional allocation factors to be used in the cost of service?

The terms of the Stipulation represent a complete resolution of this rate case, whether or not an issue is specifically addressed, and implementation of the Stipulation terms will result in just and reasonable rates and will allow Empire to continue providing safe and reliable service. The Stipulation provides for Empire's monthly FAC submissions to include a detailed listing of all the costs incurred due to the Missouri Joint Municipal Electric Utility Commission ("MJMEUC") contracts and the revenues that Empire receives from MJMEUC including but not limited to revenue for energy generated, revenue for capacity, and reimbursement of fuel, variable O&M, and start-up costs. The Stipulation also provides that (i) the level of revenues will represent an offset to lost revenues from the current municipal customer contracts and thus will be retained by the Company until the allocations are reexamined in the next general rate case and (ii) Staff's recommendation for Empire to file additional reporting requirements with its FAC monthly reports and Fuel Adjustment Rate filing workpapers will be adopted. These additional reporting requirements will demonstrate that the energy purchased from Empire related to MJMEUC's

agreement will be billed to the cities (Monett and Mt. Vernon, Missouri) via MJMEUC and will thereby reduce a portion of the fuel expense that is allocated and billed to Empire's retail customers. This reduced portion of fuel expense will clearly illustrate that the energy purchased for these specific cities via MJMEUC is not flowing through the FAC. The Stipulation does not provide for any changes to the jurisdictional allocation factors.

If the terms of the Stipulation are not approved, in total and without modification, as a complete resolution of this case, the Commission should approve the jurisdictional allocation factors used in the Company's cost of service. Staff used inconsistent methodologies for creating their allocation factors, which can over or understate the balances allocated to the Missouri jurisdictional retail customers. Ex. 5 (Richard Rebuttal), pp. 38-39; Ex. 20 (Doll Rebuttal), pp. 7-8; Ex. 57 (Richard Workpaper).

ISSUE 4 - WNR and SRLE Adjustment Mechanisms: (a) Should the Commission approve, reject, or approve with modifications Empire's proposed Weather Normalization Rider? (b) Is it lawful for the Commission to authorize Empire to implement a Sales Reconciliation to Levelized Expectations ("SRLE") mechanism, such as those Staff and Empire are proposing in this case? (c) Should the Commission adopt Staff's SRLE or approve the SRLE with modification as suggested by the Company?

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

Empire proposed in this case a weather normalization mechanism identified as the WNR. This mechanism, as well as the SRLE proposed by the Staff, are lawful and reasonable mechanisms to address the variability of revenues that are beyond the control of Empire as the

result of weather. The Commission's authority to approve such a mechanism is found in RSMo. §386.266.3, which states as follows:

> Subject to the requirements of this section, any . . . electrical corporation may make an application to the commission to approve rate schedules authorizing periodic rate adjustments outside of general rate proceedings to adjust rates of customers in eligible customer classes to account for the impact on utility revenues of increases or decreases in residential and commercial customer usage due to variations in either weather, conservation, or both. No electrical corporation shall make an application to the commission under this subsection if such corporation has provided notice to the commission under subsection 5 of section 393.1400. For purposes of this section: for electrical corporations, "eligible customer classes" means the residential class and classes that are not demand metered . . . . As used in this subsection, "revenues" means the revenues recovered through base rates, and does not include revenues collected through a rate adjustment mechanism authorized by this section or any other provisions of law. This subsection shall apply to electrical corporations beginning January 1, 2019, and shall expire for electrical corporations on January 1, 2029.

(emphasis added)

RSMo. §386.266.3 recognizes that electric utility revenues are subject to increases and decreases due to variations in weather and conservation and authorizes the Commission to approve rate adjustments to correct for the impact of weather and conservation variations outside of a general rate proceeding. Ex. 29 (Surrebuttal and True-Up Direct Testimony of Timothy S. Lyons), pp. 6-7.

Electric utility costs are largely fixed and change very little in the short run as usage levels change. However, electric utility rates have a significant variable or consumption-based component that produces revenue changes as kWh consumption changes. Ex. 26 (Direct Testimony of Timothy S. Lyons), p. 52. Electric utilities incur three types of costs in providing electric service to customers: (i) fixed costs – including meter, billing and a portion of distribution costs that generally vary by the number of customers; (ii) demand-related costs – including transmission and distribution costs that generally vary by demand; and (iii) energy-

related costs – including variable O&M expenses that generally vary by kWh sales or energy consumed.

Utility rates are designed to recover all of these costs. However, especially for residential and small commercial customers, a significant portion of the costs are recovered on the basis of kWh consumption charges reflecting usage (based on normal weather) at the time rates are established (*i.e.*, rates are based upon the level of usage embodied in a historical test year). Thus, to the extent that actual usage is significantly lower than the level assumed in rates, then utility rates no longer recover the cost of service. Conversely, to the extent that actual usage is significantly higher than the amount assumed in rates, then utility rates may recover revenues in excess of the cost of service. Ex. 26, pp. 52-53.

Empire's current rates exhibit this misalignment between rates and costs. The portion of the Company's rates based on consumption (or kWh sales is significant (92% for Small Heating (SH), 89% for Commercial (CB), and 90.9% for Residential (RG)). Ex. 26, p. 53. To address this issue, Empire[1] requested in this case a mechanism providing for "periodic rate adjustments outside of general rate proceedings to adjust rates of customers in eligible customer classes to account for the impact on utility revenues of increases or decreases in residential and commercial customer usage due to variations in either weather, conservation, or both." RSMo. §386.266.3.

The WNR (as well as the SRLE) will help to mitigate the basic misalignment between the structure of utility rates and the structure of utility costs by adjusting customer bills, and thereby the Company's revenues, for the impact of revenue changes due to weather. The proposed WNR

---

[1] Empire is an electrical corporation within the meaning of §386.002(15). Empire did not provide notice to the Commission under §393.1400 (Deferral of Depreciation to Regulatory Asset).

is similar to the Weather Normalization Adjustment Rider approved by the Commission for the Company's Liberty-Midstates Natural Gas division in Missouri. Ex. 26 (Lyons Dir.), pp. 51-52.

The Weather Normalization Rider is a partial solution to the misalignment between utility rates and costs because it separates or "decouples" the weather portion of the relationship between the amount of electricity delivered by a utility and the revenues it receives from such delivery. Thus, changes in the Company's kWh sales due to weather do not lead to an under-or over-collection of costs. Ex. 26, p. 54. Again, because this misalignment can result in an under or over-collection of costs, the mechanisms would mitigate customer bills as well as Company revenues. Customers would receive a credit (under either the WNR or SRLE mechanism) for higher revenues related to weather. Ex. 29, p. 7.

The WNR proposed by the Company operates by adjusting customer bills for variations from "normal weather," since the Company's rates are designed based on customer consumption under normal weather conditions. "Normal weather" is measured based on Heating Degree Days ("HDD") during the heating season, and Cooling Degree Days ("CDD") during the cooling season. Ex. 26, p. 55. The WNR would calculate for each customer in each month and in each billing cycle the difference between: (a) base rate revenues that were based on actual sales ("Actual Base Rate Revenues") and (b) base rate revenues that would have been billed based on weather normalized sales ("Weather-Normalized Normal Base Rate Revenues"). Customers would receive a credit when Actual Revenues exceed Normal Revenues, and a surcharge when Actual Revenues are less than Normal Revenues. Weather normalized sales reflect actual sales, adjusted for the relative difference between actual and normal HDDs in the heating season and actual and normal CDDs in the cooling season. Ex. 26, pp. 57-58.

The WNR or SRLE would stabilize customer bills and revenues over time resulting in benefits to both the Company and its customers by correcting for the mismatch between utility rates and costs. The primary benefits of the WNR are that it stabilizes customer bills on a real-time basis, provides the Company with a more stable stream of revenues on a real-time basis, and improves the Company's ability to recover its cost of service. Ex. 26, p. 59.

It is lawful for the Commission to authorize the implementation of either Empire's WNR or Staff's SRLE mechanism. Both of these mechanisms are consistent with §386.266.3, in that they authorize "periodic rate adjustments outside of general rate proceedings to adjust rates of customers in eligible customer classes to account for the impact on utility revenues of increases or decreases in residential and commercial customer usage due to variations in either weather, conservation, or both."

If the terms of the Stipulation are not accepted as a resolution of this case, the Commission should approve Staff's SRLE with four modifications: (1) adjust for the partial loss of new customer and sales revenues; (2) adjust for customer migration from Commercial (CB) or Space Heating (SH) to General Power (GP) class; (3) implement the SRLE on a temporary basis; and (4) implement the SRLE on a calendar basis beginning January 1, 2020.

Adjustment to address the partial loss of new customer and sales revenues. Under Staff's proposal, the Company would not retain between rate cases a portion of the incremental revenues associated with customer and sales growth. The incremental revenues are used to offset plant investments and expenses related to serving customer and sales growth. Under Staff's proposal, the Company would refund to all customers the incremental revenues associated with customer and sales growth above the proposed 400 kWh threshold. To correct for this, the Company proposes to remove from the reconciliation process the incremental revenues associated with

customer and sales growth above the 400 kWh threshold. The Company proposes to calculate such incremental revenues based on the number of new premises (i.e., new service locations) applied to the incremental revenues associated with customer and sales growth above the 400 kWh threshold based on average residential and commercial customer kWh usage. For example, if the average residential kWh usage is 1,000 kWh per month, then the Company proposed to remove from the reconciliation process the incremental revenues associated with customer and sales growth between 400 kWh and 1,000 kWh times the number of new premises. Ex. 29 (Lyons Sur. and True-Up Dir.), p. 5.

Remove any customer migration from the Commercial (CB) or Space Heating (SH) classes to the General Power (GP) class. The Company proposes to engage Staff and the other parties regarding the mechanics to achieve this modification given the technical nature of the change. Ex. 29, pp. 5-6. The Commission should direct the parties to address this issue in whatever tariffs would be filed to comply with the Commission's ultimate order in this case.

Implement the SRLE mechanism on a temporary basis. Implementing the mechanism on a temporary basis will provide the Company, Staff, OPC and the other parties an opportunity to review and evaluate the SRLE mechanism's ability to achieve its objective of stabilizing revenues and customer bills and providing the Company with a better opportunity to earn its authorized rate of return. Ex. 29, p. 6.

Implement the SRLE mechanism on a calendar basis effective with the Commission's order. Since the operation of law for this case is July 11, 2020, this would result in a reconciliation of sales and revenues beginning January 1, 2020. The Company believes this approach is consistent with the goal of the SRLE mechanism: to stabilize the Company's revenues and customer bills. Absent a calendar year implementation, the Company could be

faced with a lose-lose situation: incur the impact of lower than normal revenues in the first half of the year (due to warmer weather) but possibly credit to customer higher than normal revenues in the second half of the year. This possibility would be inconsistent with the goal of the SRLE mechanism. Instead, the Company proposes to implement on a calendar year basis with the reconciliation process beginning January 1, 2020. Ex. 29, p. 6.

ISSUE 5 - FAC: (a) What is the appropriate incentive mechanism in Empire's FAC for sharing between Empire and its retail customers the difference between its actual and base net fuel costs? (b) What FAC-related reporting requirements should the Commission impose? (c) What is the appropriate base factor? (d) What costs and revenues should flow through Empire's FAC, including, but not necessarily limited to, the following? (i) What is the appropriate percentage of transmission costs for the FAC? (ii) What, if any, portion of the MJMEUC contract should be included or excluded from the FAC? Should the Company provide any additional reporting requirements within its FAC monthly reporting in regards to MJMEUC? (iii) Should any wind project costs or revenues flow through the FAC before the wind projects revenue requirements are included in base rates? (iv) Should any short-term capacity costs flow through the FAC from the effective date of this rate case? (e) When should Empire be required to provide its quarterly FAC surveillance reports?

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

Pursuant to the Stipulation, the FAC base factor should remain at the current \$24.15/MWh with no change to the FAC eligible components as described within the Stipulation. The current FAC base factor of \$24.15 was established in the Company's last general rate case, upon consideration of all factors. The Stipulation provides for no changes to base rates and no change to the FAC base factor. There is no substantial evidence which would require the FAC base factor to be changed at this time, so long as the other components remain constant and base rates are not changed. "The FAC base factor and the amount of FAC eligible costs in base rates work in concert with each other. Since a portion of fuel recovery occurs in the base rates and any over or under recovery is contingent on the FAC base factor, which is

calculated in the FAC rider, it is very important that the base factor correctly matches the base energy costs and revenues in the revenue requirement so the correct amount of prudently incurred FAC eligible costs are collected in total." Ex. 1011 (Supplement Testimony of Todd W. Tarter), p. 2.

If the Stipulation terms are not implemented as a complete resolution of this case, the FAC positions set forth in the Company's pre-filed testimony (Tarter Direct, Rebuttal and Surrebuttal and Doll Direct, Supplemental Direct, Rebuttal and Surrebuttal) should be adopted. Pursuant to the Company's filed positions, the appropriate FAC base factor is $24.16/MWh. This is close to the existing FAC base factor, but is based on a different set of FAC eligible components. Ex. 1011, pp. 2-4.

To arrive at this FAC base factor proposal, Empire considered all eligible FAC cost components and updated all annualized and normalized model assumptions on a total company basis and utilized its production cost model to simulate the Southwest Power Pool Integrated Marketplace ("SPP IM") to calculate a net fuel and purchased power ("F&PP") cost level. Multiple sets of hourly market prices were utilized, and the market prices were correlated to the natural gas price within the model. This level of F&PP expense was developed by running the hourly production cost computer model using normalized sales levels, normalized outage data, and projected fuel and purchased power prices. Other F&PP cost/revenue components that are eligible for the FAC were normalized and added outside the model. The cost and revenue components of the FAC base factor calculation are summarized in Schedule TWT-3 of Todd W. Tarter's Direct Testimony. Ex. 1011 (Supplemental Testimony of Todd W. Tarter), p. 3.

In summary, the Company's proposed FAC, as set forth in its pre-filed testimony, consists of net F&PP energy costs (without purchased demand or natural gas firm transportation

charges). This includes F&PP costs and revenues associated with selling energy from the Company's resources into the SPP IM, including ancillary and other charges, the cost of purchasing Liberty-Empire's native load energy from the market, RTO transmission expense and the net ARR/TCR offset. Additionally, costs and revenues that should flow through Liberty-Empire's FAC include fuel related costs such as unit train costs, undistributed and other costs, variable natural gas transportation expenses, Plum Point PPA O&M costs, the cost of the AQCS consumables, net emissions cost and the net sales of RECs. The FAC base is then calculated on a per unit basis utilizing net system input expressed in kilowatt hours or megawatt hours. The appropriate amount of transmission costs that should be included in the FAC is 100% of all retail-based charges which also includes SPP Schedule 1A Tariff Administration and Schedule 12 FERC Assessment. Furthermore, this should also include any and all charges from the Midcontinent Independent System Operator ("MISO") for the pseudo-tie of Plum Point into the SPP market. Ex. 1011, pp. 3-4.

If these other proposed changes are not implemented, the FAC base factor should remain at the current $24.15/MWh with no change to the FAC eligible components as described within the Stipulation.

Unless an accounting authority order ("AAO") is established to account for jurisdictional allocator changes, the FAC should not be revised to allow revenue received from the MJMEUC contract to flow through the FAC. Currently, all such revenue would be excluded from fuel due to the contract representing a requirement sales contract. The Company's current FAC tariff specifically excludes revenue from "full or partial requirement sales to municipalities" from passing through to customers through the Off-System Sales Revenue ("OSSR") component. Since the allocation to Missouri for non-fuel production plant reflects wholesale load, any

treatment different from excluding revenue from inclusion in the FAC would not be just nor reasonable. Ex. 20 (Rebuttal Testimony of Aaron J. Doll), pp.7-8.

Additionally, no wind revenues should flow through the FAC mechanism prior to the investment being reflected in base rates. No party opposes this position. Additionally, failure to exclude revenue generated from the wind projects to flow back to customers would violate RSMo. §386.266 which requires a utility's FAC to be "reasonably designed to provide the utility with a sufficient opportunity to earn a fair return on equity." The Company proposed changes in its FAC tariff in an abundance of caution to make certain that all parties understood that the flow of revenues would be retained by the Company in order to partially offset the costs that will be carried from the wind investment until the adjudication of the next case. However, the Company believes the current tariff allows for this treatment of revenues and that only after the regulatory treatment that is sought in the next case would that restriction be lifted for distribution of subsequent revenues. Ex. 21 (Surrebuttal Testimony of Aaron J. Doll), p. 5.

Pursuant to the Stipulation, the FAC sharing mechanism should remain at 95/5 percent, and this should be the case whether or not the Stipulation terms are approved as a complete resolution of this case. OPC witness Lena Mantle states in her surrebuttal testimony that "Empire has recovered over 99.9% of its FAC costs placing almost all of the risk associated with its FAC costs on the customers and very little on Empire (0.1%). OPC's modest proposal would shift 0.2% more risk to Empire still leaving 99.7% of the risk on the customers." Building upon this statement from Ms. Mantle, the Commission asked as follows: "Under the current sharing percentage Empire has absorbed an average of $150,000 a year in FAC costs for the past 11 years, so what is the real harm of requiring Empire to be exposed to an additional 0.2% of FAC risk?"

There is the potential for significant harm to result from the implementation of OPC's recommendation for the FAC sharing mechanism. First, this issue should not be framed around shifting from 99.9% recovery to 99.7% recovery, as those percentages would not be fixed recovery amounts. Ex. 1011, p. 5. Instead, it is a question about moving from the 95/5 percent sharing mechanism in the current FAC to the 85/15 percent sharing mechanism advocated by OPC. "The 0.2% differential mentioned within the question is based on historical recovery percentages over a long period of time, and this could be different moving forward based on how actual FAC eligible costs compare to a given FAC base factor. The average of $150,000 per year, mentioned in the question is also a long-term historical average over the past eleven years. There have been times over the past eleven years when FAC eligible costs have been higher than the FAC base factor and the Company has absorbed costs, and times when FAC eligible costs have been lower than the FAC base factor and the Company has retained costs." Ex. 1011, p. 5. Mr. Tarter provides the following illustration:

> (O)ver the recent three-year period 2017-2019, Liberty-Empire collected about 99.62% of the actual FAC costs with the 95%/5% sharing mechanism, and had to absorb about $1.3 million in that period. If the sharing mechanism would have been 85%/15% during that period, Liberty-Empire would have collected about 98.85% of the actual FAC costs and would have had to absorb nearly $4 million in prudently incurred fuel costs in that three year period. The differential during this period is about 0.77% and not 0.2%. On average, Liberty-Empire absorbed nearly $444,000 per year during this period, and not $150,000. Had the sharing mechanism been 85%/15%, which is the OPC recommendation, Liberty-Empire would have been required to absorb about $1.3 million per year on average during this period, not $150,000.

Id. That would constitute real harm to the Company. Similarly, if the circumstances were reversed, and FAC eligible costs were below the FAC base factor for an extended period of time, customers would over pay for energy costs during that period. Currently, customers would over

pay 5% of the difference between actual energy costs and the FAC base. With the OPC recommendation, this percentage would increase to 15%.

Changing the FAC sharing mechanism to 85/15 percent (the OPC recommendation) would place more risk on the FAC over/under balance and lead to harm for either the Company or its customers. The sharing mechanism is sometimes referred to as an incentive mechanism. This implies that the FAC base factor "is some kind of perfect target that the Company can manage future F&PP costs around. However, this is not necessarily the case." *Id.* at 7. A significant portion of Empire's Missouri electric retail customers' FAC eligible costs are recovered through base rates. If prudently incurred FAC eligible costs are either higher or lower than the level included for the setting of base rates on a per unit basis, then a percentage of that difference is either recovered from or returned to customers through the FAC rider. "This means that unless the actual prudently incurred FAC eligible costs are exactly equal to the FAC base factor on a per unit basis, then customers will either under pay or over pay for those costs in that period." *Id.* Currently, that percentage is 5% of the difference, but OPC is proposing this should be 15% of the difference. The sharing mechanism determines how much the Company and its customers will retain or absorb.

The FAC base factor set in a general rate case is an estimate which will be in place without adjustments until conclusion of the next general rate case. As such, OPC's proposal to put more of the over/under FAC balance at risk is viewed by the Company as less of an incentive, and more of an added risk associated with it being impossible to precisely forecast future energy costs during a general rate case. "Even if fuel analysts use production cost models to help calculate an FAC base factor, there are still many assumptions that have to be made, and it is difficult to model the marketplace due to the complex interactions of many factors including

resource costs, unit outages and market prices. Moreover, the fact that future FAC eligible costs cannot be forecast with certainty is one of the primary reasons for having an FAC in the first place." *Id.* at 8.

ISSUE 6 - Credit Card Fees: (a) Should Empire's credit card fees be included in Empire's revenue requirement? (b) If so, what level of fees should be included?

The Stipulation does not address credit card fees, but the Stipulation represents a complete resolution of all issues in this case. As noted, the Stipulation was carefully designed to balance all interests. If the terms of the Stipulation are adopted by the Commission as a complete resolution of this case, credit card fees will continue to be paid by individual customers, and the costs will not be included in the Company's cost of service.

If the terms of the Stipulation are not adopted as a complete resolution of the case, the appropriate level of fees that should be included in Empire's revenue requirement for purposes of this case would consist of the number of credit card payments received in the last 12 months ending January 2020, multiplied by the transaction fees of $2.25 and $13.00, for residential and commercial customers, respectively. This equates to a total of $1,297,266 to be included in the cost of service. Ex. 7 (Richard True-Up Dir.), p. 18; Ex. 5 (Rebuttal Testimony of Sheri Richard) p. 20.

Currently, fees associated with credit card payments are borne by the person making the payment. Residential customers pay an additional $2.25 fee per payment, which is imposed by the third party that processes the card payments. Ex. 1, p. 9. Commercial customers pay $13.00 per transaction, also to the third party. Ex. 7 (True-Up Direct Testimony of Sheri Richard), p. 18, lines 17-24. With its pre-filed testimony, Empire proposed that on a going-forward basis, credit card fees should be included in the Company's revenue requirement so that individual fees are no longer required. Customers have consistently reported that ease of bill payment is a priority

for them, including having no fees for card payments. Ex. 1 (Direct Testimony of Brent Baker), p. 9. Empire has experienced an increased desire on the part of its customers to pay electronically by card. Ex. 1, p. 9. Payments made by card have increased 36% in the last two years from 379,329 in 2016 to 511,195 in 2018. *Id.*

Online transactions are a normal part of daily life for many Liberty-Empire customers. Ex. 1, p. 10. It is not only important from a customer service perspective to provide the Company's customers the choice to pay online, but doing so also reduces the amount of customer service representative hours needed to receive and process in person payments from our customers in our many local offices. *Id.* For example, reducing the number of interactions for payments will allow more opportunity for the same personnel to solve other issues for our customers. *Id.*

The Company proposes recovering these fees the same as other bank fees that are already in its cost of service. Inclusion of these fees represents a very small part (less than a half percent) of the Company's cost to serve its customers and provides the opportunity to meet customers' needs and to potentially improve the percentage of the customers who pay their bills in a timely fashion. Ex. 1, p. 10.

If credit card fees are included in the revenue requirement, Empire agrees to perform the following tasks, as recommended by Staff: (1) track performance and savings to the Company and its customers from this initiative; (2) monitor the level of customers using the credit card option, whether the number of payments by credit card increases, and whether eliminating a fee to pay by credit card results in savings to the customer and/or to the Company; and (3) state how the Company will inform customers that there is no fee to pay their bill by credit card. Ex. 2 (Rebuttal Testimony of Brent Baker), p. 4.

ISSUE 7 - Rate Case Expense: (a) How much of Empire's rate case expenses should be included in Empire's revenue requirement? (b) Should Empire's prudent rate case expenses be normalized or amortized, and over what period of time? (c) Should Empire's prudent rate case expenses be shared between Empire's shareholder and Empire's retail customers? If so, how?

The Stipulation does not address rate case expense. As noted, the Stipulation was carefully designed to balance all interests while constituting a complete resolution of all issues in this case. It is a unique settlement construct that is investment driven and not expense driven. As such, it is difficult to compare the filed positions to the Stipulation terms. The Stipulation resolves all revenue requirement issues by providing that there will be no changes to the Company's Retail Base Rates in this proceeding, no changes to the FAC base factor, and that the tax addendum, currently credited as a separate line item on each rate schedule as "tax rate reduction," will remain in place. The Stipulation also provides, however, that a phase-in rate mechanism will be established pursuant to §393.155.1, with regard to plant in service and other rate base items.

If the terms of the Stipulation are not adopted as a complete resolution of the case, an annualized amount of $222,736 for rate case expense should be included in Empire's revenue requirement. Ex. 7 (True-Up Direct Testimony of Sheri Richard), pp. 13, 16-17; Ex. 59 (Rate Case Expense Workpaper of Sheri Richard). The total amount of prudent rate case expense is $445,472. Ex. 59 (Rate Case Expense Workpaper of Sheri Richard). This amount should be amortized over a period of two years. Two years is reasonable, considering the Company intends to file its next rate case shortly after the conclusion of the current case. Ex. 5 (Rebuttal Testimony of Sheri Richard), p 35.

There should not be a sharing mechanism in place between Empire's retail customers and shareholders, because this rate case was a required filing and the related costs are a necessary and prudent cost of doing business. The Company was required to make this rate case filing as

indicated in its Notice of Intended Case Filing submitted on May 29, 2019, and again in its rate case filing letter. Ex. 5 (Richard Reb.), pp. 33-34. Pursuant to RSMo. §386.266.4(3), Empire was required to file a general rate case with the effective date of new rates to be no later than four years after September 9, 2016. Ex. 5, p. 34, fn. 8.

Moreover, applying a sharing mechanism to all of the consultant costs harms Empire inappropriately, as the Company does not have in-house rate design or cost of service departments and must contract out for these services. Other larger utilities have these personnel in-house and are allowed to recover those costs through rates. The Company must contract for expertise when it does not have that expertise in house. Ex. 5, p, 34. Rate case expense is a cost of supplying service to the Company's customers and therefore should be included in the revenue requirement as a reasonable cost of service. *Id*.

ISSUE 8 - Management Expense: Should any of Empire's management expenses not be included in Empire's revenue requirement?

The Stipulation does not specifically address management expense, but the Stipulation represents a complete resolution of all issues in this case. The Stipulation resolves all revenue requirement issues, including management expense, by providing that there will be no base rate changes, no changes to the FAC base factor, and that a phase-in rate mechanism pursuant to §393.155.1 will be established.

If the terms of the Stipulation are not adopted as a complete resolution of the case, a specific finding by the Commission should be made that all of Empire's management expenses are prudent and, therefore, should not be excluded from the revenue requirement.

> In the context of a rate case, *the parties challenging the conduct, decision, transaction, or expenditures of a utility have the initial burden of showing inefficiency or improvidence, thereby defeating the presumption of prudence accorded the utility*. The utility then has the burden of showing that the challenged items were indeed prudent. Prudence is measured by the standard of

> reasonable care requiring due diligence, based on the circumstances that existed at the time the challenged item occurred, including what the utility's management knew or should have known. In making this analysis, the Commission is mindful that "[t]he company has a lawful right to manage its own affairs and conduct its business in any way it may choose, provided that in so doing it does not injuriously affect the public."

State ex rel. City of St. Joseph v. Public Service Commission, 30 S.W.2d 8, 14 (Mo. banc 1930). *In the Matter of Missouri-American Water Company's Tariff Sheets,* Report and Order, Case No. WR-2000-281 (August 31, 2000) (emphasis added).

There is not sufficient evidence challenging the subject expenditures to defeat the presumption of prudence as to management expenses.

ISSUE 9 - Allowance for Funds Used During Construction: What metric should be used for Empire's carrying cost rate for funds it uses during construction that are capitalized?

The appropriate metric for Empire to use for funds used during construction that is capitalized is the metric prescribed by the FERC Uniform System of Accounts Electric Plant Instructions. The FERC instructions state the formula and elements for the computation of the allowance for funds used during construction shall be as prescribed in the Electronic Code of Federal Regulations: Title 18, Chapter 1, Subchapter C, Part 101. Ex. 60 (Richard Electric Plant Instruction AFUDC); Ex. 61 (Company's Response to OPC DR 3045).

ISSUE 10 - Cash Working Capital: (a) What is the appropriate expense lag days for measuring Empire's income tax lag for purposes of cash working capital? (b) What is the appropriate expense lag days for cash vouchers? (c) Should bad debt expense be a component of cash working capital? If so, what is the appropriate lag days? (d) What is the appropriate expense lag days for employee vacation?

The Stipulation does not address these cash working capital issues. As noted, the Stipulation was carefully designed to balance all interests while constituting a complete resolution of all issues in this case. The Stipulation resolves all revenue requirement issues, including these cash working capital issues, by providing that there will be no changes to the

Company's Retail Base Rates in this proceeding, no changes to the FAC base factor, and that a phase-in rate mechanism will be established pursuant to §393.155.1, with regard to plant in service and other rate base items.

Cash Working Capital ("CWC") is the amount of funding necessary for a utility to pay day-to-day expenses incurred in providing utility services to its customers. Cash inflows from payments received by the Company and cash outflows for expenses incurred by the Company are analyzed using a lead/lag study. The lead/lag study involves analysis of the timing of when funds are paid to suppliers and when the utility receives the good or service compared to when the utility receives revenues from customer bills for the utility services it provides. Analysis is also performed for pass-through expenses where funds are collected and remitted such as sales taxes and employee payroll withholdings. Ex. 101 (Staff Report Cost of Service), pp. 19-20.

The CWC requirement can be negative or positive. If the requirement is negative, it demonstrates that the utility's customers are providing the working capital for the test year, which indicates customers paid for the utility's expenses before the Company incurred them. Under this circumstance, CWC would represent a reduction to rate base. A positive CWC requirement indicates that the utility pays its expenses before receiving payment from the customers, which means that the shareholders are providing the funds. In this instance, CWC would represent a rate base addition. Ex. 101, p. 20.

The CWC requirement proposed by Empire was based on the results of a lead-lag study performed by the Company, which compares the net difference between the revenue lag and expense lead. The revenue lag represents the number of days from the time customers receive their electric service to the time customers pay for electric service, *i.e.,* when the funds are available to the Company. The longer the revenue lag, the more cash the Company needs to

finance its day-to-day operations. The expense lead represents the number of days from the time the Company receives goods and services used to provide electric service to the time payments are made for those goods and services, *i.e.,* when the funds are no longer available to the Company. The longer the expense lead, the less cash the Company needs to fund its day-to-day operations. Together, the revenue lag and expense leads are used to measure the lead-lag days. Ex. 26 (Direct Testimony of Timothy S. Lyons), p. 44.

The lead-lag study in this Company filing is based on financial data for all of the Company's four jurisdictions (i.e., Arkansas, Kansas, Missouri and Oklahoma) and represents an accurate assessment of the actual CWC needs during the test year for the Company's Missouri jurisdiction. Ex. 26, p. 45.

Staff's lead/lag study, in addition to the revenue lag, reviewed the following expenses: cash vouchers, power plant fuel expenses, purchased power, payroll, employer payroll taxes, employee vacation time, 401k, life/Accidental Death & Dismemberment (AD&D) insurance, pension and OPEB expense, incentive compensation, interest expense, property taxes, Federal and State income taxes, Public Service Commission (PSC) assessment expense, employee payroll withholdings, federal and state unemployment taxes, sales taxes, use taxes, and municipal gross receipts taxes. Ex. 101, p. 20. Of these items, only income tax lag, cash vouchers, and employee vacation remain at issue. Additionally, there is a dispute as to the impact of bad debt expense. If the terms of the Stipulation are not adopted as a complete resolution of this case, the Company's positions on the CWC issues, as set forth in pre-filed testimony, should be adopted.

The Company's lead-lag study reflects lead days consistent with payment due dates in Internal Revenue Service ("IRS") Publication 502. Payments are due on the 15th day of the 4th, 6th, 9th and 12th months of the corporation's year. Based on the Company's fiscal year ending

December 31, the estimated payments are due on April 15, June 15, September 15 and December 15. Ex. 27 (Rebuttal Testimony of Timothy S. Lyons), pp. 4. If the Commission determines in this rate case proceeding that the Company has income tax expenses, then the Company's lead days for income tax expenses would be applied to the approved level, consistent with the IRS's payment schedule. The appropriate expense lag days for measuring Liberty-Empire's income tax lag for purposes of cash working capital is 39.38 days. Ex. 29 (Surrebuttal and True-Up Direct Testimony of Timothy S. Lyons), Sched. TSL-SR1.

The Company's calculation of lead days associated with cash vouchers is based on a stratified sample of invoices paid. The Company first calculates the lead days associated with each stratum and then weights the lead days in each stratum by proportion of total transactions in each stratum. Staff's calculation does not include the last step: a weighting of the lead days in each stratum by the proportion of the total transactions. Ex. 27 (Rebuttal Testimony of Timothy S. Lyons), pp. 5-6.

The appropriate expense lag days for cash vouchers is 29.21 days. Ex. 29, TSL-SR1. Bad debt expense should be a component of cash working capital. The appropriate revenue lag days for bad debt expense is 42.13 days. Ex. 29, TSL-SR1.

The Company uses a traditional approach to lead days associated with vacation pay in that it assumes that employees take vacation uniformly throughout the year. That is, employees receive their vacation allotment on January 1st and take their vacation by December 31st. This approach assumes vacation is taken at the midpoint of the year rather than at the end of the year. Ex. 27 (Lyons Reb.), p. 7. Use of this traditional approach produces a result of 182.50 expense lag days for employee vacation. *Id*; Ex. 29, TSL-SR1.

ISSUE 11 - Accumulated Deferred Income Tax: (a) Should Empire's booked accumulated federal income tax include a reduction for net operating loss? (b) Should FAS 123 deferred tax asset for stock-based compensation be included in ADIT balances for rate base?

As noted, the Stipulation resolves all revenue requirement issues, whether or not specifically mentioned in the Stipulation, by providing that there will be no changes to the Company's Retail Base Rates in this proceeding, no changes to the FAC base factor, and that a phase-in rate mechanism will be established pursuant to §393.155.1, with regard to plant in service and other rate base items.

If the terms of the Stipulation are not adopted as a complete resolution of this case, the Company's positions on the Accelerated Deferred Income Tax ("ADIT") issues, as set forth in pre-filed testimony, should be adopted. The Company incurred a net operating loss ("NOL") due to the use of accelerated tax depreciation, which in effect reduces current income tax expense to a negative number. The NOL in question resulted from the Company's use of accelerated tax depreciation, specifically from 50% first-year bonus depreciation afforded utilities before enactment of the Tax Cuts & Jobs Act. Ex. 5 (Rebuttal Testimony of Sheri Richard), p. 8.

In ratemaking, the main component of ADIT arises from differences in how a utility's assets are depreciated for ratemaking purposes (straight-line) versus how they are depreciated for federal income tax purposes (accelerated). For example, tax law sometimes allows a company to claim accelerated depreciation in calculating its taxes, which is greater than the straight-line depreciation used in setting rates. The same amount of taxes eventually must be paid using either accelerated or straight-line depreciation, as long as the tax rate is unchanged. However, the early period tax reductions provide companies that use accelerated depreciation with what amounts to an interest-free loan equal to the amount of their deferred taxes. To keep utility customers from paying a rate of return on an interest-free loan, the utility's rate base is reduced by an amount

equal to the utility's ADIT. *See In the Matter of Union Electric Company d/b/a Ameren Missouri's Tariff*, 2015 Mo. PSC Lexis 380, 22-23, 320 P.U.R.4th 330, ER-2014-0258 (April 29, 2015).

However, when bonus depreciation and other tax deductions push the company's taxable income into the negative, the available tax deduction cannot offset any tax liability and no "free" cash (or interest-free loan) is generated. In that circumstance, the company must record an offsetting NOL. The NOL offsets the ADIT liabilities and, therefore, the NOL has the effect of increasing the rate base. *Id*. In accordance with numerous IRS private letter rulings, an NOL deferred tax asset resulting from accelerated tax depreciation should be offset against a Plant deferred tax liability also resulting from accelerated tax depreciation, resulting in a reduction to the overall ADIT. This is an appropriate treatment, since the ADIT created by bonus depreciation did not reduce current income tax payments and did not provide the company with a no-cost source of capital. Ex. 5, pp. 8-9.

General ledger account 190.125 is the FAS 123 deferred tax asset for stock-based compensation. Ex. 131 (Surrebuttal/True-Up Direct Testimony of Keith D. Foster), p. 2. The FAS 123 deferred tax asset should be included in rate base. FAS 123 is an accounting pronouncement related to accounting for stock-based compensation, and the related deferred tax represents a book deduction for which there has not yet been a tax deduction; a tax benefit has not yet been received. Staff removed account from the ADIT balances in included in its rate base recommendation because it was not including any stock-based compensation in normalized payroll levels. *Id*. If the underlying stock-based compensation is included by the Commission in normalized payroll levels, the FAS 123 deferred tax asset should also be included in the ADIT balances.

ISSUE 12 - Tax Cut and Jobs Act of 2017 ("TCJA") federal income tax rate reduction from 35% to 21% impact for the period January 1 to August 30, 2018: (a) How should the Commission treat the 2017 TCJA regulatory liability the Commission established in Case No. ER-2018-0366 when setting rates for Empire in this case?

The Company urges the Commission to approve of the terms of the Stipulation, in total and without modification, as a complete resolution of this case, as this will result in just and reasonable rates and will allow Empire to continue providing safe and reliable service. The filed testimony and other documentation that is being offered in this case will allow the Commission to issue a lawful and reasonable report and order, including detailed findings of fact and conclusions of law, approving the terms of the Stipulation as a complete resolution of this rate case proceeding.

Being mindful of the financial challenges facing Empire's customers due to the COVID-19 pandemic, as well as the Company's obligation to provide safe and reliable service at just and reasonable rates, Empire worked with the parties to put together a settlement construct that balances all interests. It is a unique settlement construct that is investment driven and not expense driven. Although the settlement includes a phase-in mechanism related to new plant-in-service investments and provides for no stub period revenues to be refunded to customers at this time, the settlement also provides for no increase in the customer charges and no changes to the Company's retail base rates until the effective date of rates in the Company's next rate case and the continuation of the tax addendum, currently credited as a separate line item on each rate schedule as "tax rate reduction." Ex. 1017 (Richard Supplemental Testimony), p. 18.

An order in this case directing Empire to refund the stub period revenue would be detrimental to the Company. This is because an order in this case directing the Company to refund all or even part of the $11.7 million of stub period revenue would significantly impact the Company's cash flow, which is already compromised as a result of the COVID-19 pandemic and

the Company's revised policies regarding no disconnects and the deferral of late fees. In addition, the Company is experiencing a significant reduction in revenue due to businesses being closed as a result of the COVID-19 pandemic and from loss of load related to abnormal weather. *Id.* at 19. If an order is issued in this case for the Company to begin refunding the collected stub period revenue, no matter the time period for the return, cash flow problems will be created for the Company. *Id.* Since the Company will be filing its next rate case shortly after the conclusion of this case, the Company encourages the Commission to delay its determination regarding the refund of any stub revenues until that time.

Additionally, and as set forth in the Company's pre-filed testimony, the amounts collected by the Company during the "stub period" were collected pursuant to lawfully approved tariffs and should remain the Company's property. The Company reviewed its financial performance from January 1 to August 30, 2018 and determined it earned less than its allowed return during that period. As a result, it would be inequitable to credit the retained sums to customers, creating significant under-earnings during this period. Also, requiring the return of these sums would constitute retroactive ratemaking, as those revenues were lawfully collected pursuant to Liberty-Empire's filed and approved tariffs. Ex. 4 (Richard Corrected Direct), pp. 12-14; Ex. 5 (Richard Rebuttal), pp. 35-36.

ISSUE 13 - Asbury: (a) Is it lawful to require Empire's customers to pay for Asbury costs through new rates? (b) Is it reasonable to require Empire's customers to pay for Asbury costs through new rates? (c) If it is unlawful and/or unreasonable to include the costs of the retired Asbury plant in rates, what amount should be removed from Empire's cost of service?

It is both lawful and reasonable for costs related to the Asbury power plant to remain in rates, and no amount should be removed from Empire's cost of service at this time to reflect the closure of the Asbury power plant in March of 2020. This is not a proper issue, however, for

inclusion in statements of positions and briefing, as the Commission has repeatedly held that it will address the impacts of Asbury's retirement in Empire's next rate case proceeding.

On December 9, 2019, OPC filed its Motion to Modify Test Year. Empire opposed the Motion, noting that the issue of the impact of Asbury's retirement on the Company's revenue requirement was not yet ripe for a ratemaking determination. On January 28, 2020, the Commission issued its *Order Denying Public Counsel's Motion to Modify the Test Year*. The order provides "Asbury's retirement is best addressed in Empire's next rate proceeding" and directs the parties to submit a list of items to be included in an AAO to address the impacts resulting from Asbury's retirement. On January 30, 2020, Public Counsel submitted its Motion for the Commission to Reconsider Its Order Denying Public Counsel's Motion to Modify Test Year. On February 19, 2020, the Commission issued its *Order Denying Motion for Reconsideration*, stating:

> The Commission will not modify the test year, nor allow isolated adjustments for Asbury's retirement to be addressed in this general rate proceeding. The Commission will address the impacts of Asbury's retirement in Empire's next rate proceeding, which Empire states it will file upon the conclusion of this proceeding.

From its first consideration of retiring the Asbury plant, the Company has worked hard to be transparent with the Commission and all stakeholders regarding its intentions for the plant, including with IRP filings, filings of Informational Notices in this rate case on August 9 and November 13, 2019, and a coal level submission on October 22, 2019. In reliance on the Commission's *Order Denying Public Counsel's Motion to Modify the Test Year* and *Order Denying Motion for Reconsideration*, however, the Company has not presented the evidence that would be necessary in order for the Commission to lawfully and reasonably reflect the closure of the Asbury plant in the Company's cost of service in this proceeding. In fact, the Company

continues to explore opportunities related to the closure of the Asbury plant. Additionally, and quite significantly, costs of dismantlement are still being determined by an outside expert who is conducting a dismantlement study. It would be patently unjust and unreasonable to attempt to make isolated adjustments to the revenue requirement in this case due to the retirement of Asbury, as many of the components are not known and measurable at this time.

Consistent with the orders of the Commission, the Stipulation calls for the issuance of an Asbury AAO. More specifically, the signatories to the Stipulation request that the Asbury AAO direct the Company to establish a regulatory asset/liability, beginning January 1, 2020, to reflect the impact of the closure of Asbury and require the Company to separately track and quantify the changes from the base amounts of categories of rate base and expense, including rate of return. As is appropriate for an AAO, there is no agreement at this time on ratemaking or the treatment to be given to any deferred amounts in a future rate case. There also is not agreement with the Company's stated retirement date. In future proceedings, Empire retains the right to request recovery of both a return of and on its investment in Asbury, as well as present arguments on all other issues related to the impact of the closure of the Asbury power plant on the Company's cost of service, while the other parties retain their respective rights to oppose the Company's positions.

The signatories to the Stipulation acknowledge that the purpose of an AAO is to defer a final decision on current costs until a future rate case and that, in that future rate case, the signatories and the Commission are not bound by the terms of the AAO in setting new rates. The issuance of the Asbury AAO will allow the Commission to defer a final decision on the cost impact of the retirement of Asbury until the next rate case, when there will be significantly more facts known with regard to changing costs and expenses as a result of the retirement of Asbury.

This ratemaking decision will not be unnecessarily delayed, as the Company will be filing its next rate case, to address its wind investments, shortly after this current rate case concludes.

ISSUE 14 - Fuel Inventories: What is the appropriate number of burn days to use for Asbury fuel inventory?

If the terms of the Stipulation are not accepted as a complete resolution of this case, and the Commission instead establishes a more traditional revenue requirement for the setting of new rates, the appropriate number of burn days to use for Asbury fuel inventory is 60 days. Ex. 15 (Rebuttal Testimony of Todd W. Tarter), pp. 15-16. The 60 days used by the Company is consistent with what Staff used to establish Empire's rate base investment in the coal inventory maintained both at KCPL's Iatan Generating Stations (Empire is a 12% owner of Iatan 1 and 2) and Plum Point Energy Associates, LLC's Plum Point Energy Station (Empire is a 7.52% owner of Plum Point). Ex. 15, p. 15. The lower level of operation for Asbury is already reflected in the average daily burn (in MMBtu) that Staff used in the calculation. Ex. 15, p. 16.

The total fuel inventory cost should be $16,993,556, which is Staff's calculation amended to use 60 days of fuel inventory for Asbury and the entire amount of fuel burn for the Plum Point ownership share. *Id.*; Ex. 15, Sched. TWT-1.

ISSUE 15 - Energy Efficiency: (a) Should Empire's cost of service include an amount for promoting energy efficiency and demand-side management? (b) If an amount remains in Empire's cost of service for energy efficiency, should EM&V be performed as was agreed to in Empire's last general rate case?

As with most other questions contained within the list of issues, approval of the terms of the Stipulation is the proper response to these energy efficiency questions. Pursuant to the terms of the Stipulation, the Commission would make no changes to energy efficiency funding levels in this case. If the terms of the Stipulation are not accepted as a resolution of this case, the Commission should address these issues as set forth below.

Empire's cost of service should include an amount for energy efficiency and demand-side management. Empire began offering energy efficiency programs in Missouri in 2007. Empire's current energy efficiency tariffs were approved on May 31, 2017, in Case No. ER-2016-0023. Ex. 30 (Direct Testimony of Nathaniel W. Hackney), p. 3. In Case No. ER-2014-0351, Empire agreed to continue its energy efficiency programs, at established funding levels and with the established recovery mechanism, until Empire has an approved Missouri Energy Efficiency Investment Act ("MEEIA") or until the effective date of rates in Empire's next general rate case. Ex. 4 (Correct Direct Testimony of Sheri Richard), p. 22.

Empire's current programs have an established record of performance. The Company's two most successful current Energy Efficiency ("EE") programs – the Custom Commercial and Industrial rebate program, and the Residential Heating, Ventilation, and Air Conditioner ("HVAC") program – have been offered in a fairly similar format for nine and thirteen years, respectively. Ex. 32 (Surrebuttal Testimony of Nathaniel W. Hackney), p. 4. The Company intends to file a MEEIA portfolio in 2020, which would supersede and replace the current EE programs. Ex. 32, p. 4.

With its MEEIA filing, Empire intends to consider a full array of program delivery options, paying particular attention to the results of the PAYS Feasibility Study and the DSM Potential Study. Empire also intends to encourage and facilitate stakeholder input throughout the process as a means to maximize the potential for success of the MEEIA filing. Ex. 30 (Hackney Dir.), p. 3. Until the MEEIA process has run its course, Empire's cost of service should continue to include an amount for promoting energy efficiency and demand-side management.

Empire agrees with OPC that the Evaluation, Measurement and Verification ("EM&V") budget could better serve customers if it were reallocated. Ex. 32 (Surrebuttal Testimony of

Nathaniel W. Hackney), p. 4. The two most valuable products created by a comprehensive EM&V are the calculation of net savings (Impact Evaluation), and recommendations for the improvement of program delivery (Process Evaluation). While net savings can still be useful as a Key Performance Indicator ("KPI"), the precision that is to be achieved by hiring a consultant to calculate net savings is not, in this case, worth the opportunity cost. Ex. 32, p. 4.

ISSUE 16 - Operation and Maintenance Normalization: (a) What is the appropriate level of operation and maintenance expense to be included in the cost of service? (b) Should inflation factors be used to calculate operation and maintenance expense? (c) What is the appropriate normalized average of years to be used for the Riverton, State Line Combined Cycle Unit, the Common Unit and State Line 1 Unit?

Although this item is not set forth in the Stipulation as being specifically addressed, the Stipulation terms represent a full and complete resolution of this rate case. As such, like with all other issues, the Company submits that approval of the Stipulation terms would be a lawful and reasonable resolution of this issue. The Company's filed positions, however, are set forth below and should be accepted if the Stipulation terms are not approved as a complete resolution of the case.

The "Operation and Maintenance" expense referred to in this issue concerns non-labor operation and maintenance ("O&M") costs for each of the Company's generating units. Ex. 5 (Rebuttal Testimony of Sheri Richard), p. 18. This is a challenge as those expenses tend to fluctuate from year to year, since unscheduled outages occur at irregular and unpredictable times, and major planned outages do not occur annually. Ex. 101 (Staff Report Cost of Service), p. 70.

The amounts included in the Company's cost of service reflect an appropriate level of operation and maintenance expense. Those amounts are described by unit on Ex. 62 (Generation O&M Expense Workpaper of Sheri Richard) and total $32,124,367. The Company's filed cost of

service represents the test year actual amounts, in addition to an adjustment to normalize the maintenance related to the boiler plant. Ex. 7 (Richard True-Up Direct), p. 15.

Staff's proposed O&M level is not reasonable as they averaged each of the plant's O&M costs based on incorrect maintenance schedules. In addition, they did not include all the chemical costs related to MATS when doing their adjustment for Iatan 1. Ex. 5 (Rebuttal Testimony of Sheri Richard), p. 18. If the Commission were to accept the methodology to average the O&M expenses, an inflation factor should be applied in order to show true costs in today's dollars. Ex. 5, p. 18.

As stated previously, the Company does not believe an historical averaging of years approach should be used and rather proposes the test year level of expense be included in the cost of service. If the historical averaging is used, it should at a minimum be adjusted for inflation.

ISSUE 17 - Pension and OPEB (FAS 87 and FAS 106): (a) Should "regulatory accounting" or "acquisition accounting" be used in setting rates for pensions and OPEBs? (b) Should FERC account 426 be included in test year pensions and OPEBs expense? What is the appropriate amount of Prepaid Pension that should be included in Empire's cost of service? (c) Should the "payment basis" or the "expense basis" be used to calculate SERP? In addition, what allocation percentage is appropriate. (d) What should the appropriate rate base and tracker amortization balances be for accounts 182353 and 254101? (e) What is the appropriate balance of prepaid pension?

As part of its unique construct balancing all interests, the Stipulation provides for all currently authorized Regulatory Assets/Trackers and Regulatory Liabilities/Trackers to remain in place under the currently authorized terms and at their current authorized amortization periods. The Company again urges the Commission to approve the terms of the Stipulation as a complete resolution of this case, including the Pension and OPEB issues. The Company's filed positions, however, are set forth below and should be accepted if the Stipulation terms are not approved as a complete resolution of the case.

When Empire was acquired by Liberty Utilities, the accounting rules required that certain pension and OPEB balances be eliminated as part of the acquisition accounting. Ex. 12 (Rebuttal Testimony of James A. Fallert), p. 2. However, these balances should remain in place for regulatory purposes. As a result, the Company is provided two actuarial valuations. One valuation is based on acquisition accounting and is used for external financial reporting purposes. The second valuation is done as if the acquisition did not occur and is used for regulatory purposes. The Company's direct filing, September 2019 update, and January 2020 true up are all based on the valuation for regulatory purposes. Ex. 13 (True-Up Direct Testimony of James A. Fallert), p. 2.

The balances of these items are amortized and this amortization expense is included in the pension and OPEB expense used in setting rates. Eliminating these balances from the pension calculation would therefore change the amount of pension and OPEB expense included in rates due to the acquisition. This result would be contrary to the Stipulation and Agreement in the acquisition case (Case No. EM-2016-0213), which was approved by the Commission's *Order Approving Stipulations and Agreements and Authorizing Merger Transaction*, issued September 7, 2016 (Attachment A). Paragraph 3 of the Stipulation and Agreement in that case stated in part: "The Joint Applicants will ensure that the merger will be rate-neutral for Empire's customers." It is necessary to utilize the regulatory valuation (expense) approach to determine cost of service as it relates to ongoing Pension and OPEB balances and provide the "rate-neutral" treatment called for by the Order. For these reasons, the Commission should utilize a calculation of pension expense on a regulatory basis.

A recent change to the accounting rules requires that non-service pension and OPEB costs that were previously charged to FERC account 926 must now be booked separate from

service cost. The Company is charging these non-service costs to FERC account 426. Staff's methodology does not recognize this change. The FERC 426 accounts should be included in the calculations. Ex. 12 (Rebuttal Testimony of James A. Fallert), p. 3. The appropriate amount of Prepaid Pension that should be included in Liberty-Empire's cost of service is $26,269,345.

Certain management employees receive benefits under Empire's Supplemental Employee Retirement Program ("SERP"). Ex. 101 (Staff Report Cost of Service), p. 69. The ongoing expense amount for SERP included in the Company's filing was based on the actuarial calculations of expense. These calculations were done in a manner consistent with the calculation of ongoing FAS 87 pension and OPEB expense. Ex. 12 (Rebuttal Testimony of James A. Fallert), p. 3. Staff instead looked to SERP payments to determine a reasonable on-going level for SERP. *Id*. Ultimately, due to an upward trend, it used the 12 months of actual payments to determine annual costs for inclusion in rates. Ex. 101, p. 69.

Basing SERP recovery on expense rather than payments is a preferable approach because: (1) the expense amount is independently determined by the company's actuary; (2) it is consistent with the calculation of similar items (qualified pensions and OPEBs); and, (3) the recognition of SERP on an expense basis, rather than a payment basis, more closely matches the benefits provided to customers. Ex. 12, p. 5. The Commission should order that the cost of service utilize the expense, rather than payment, calculations.

However, if the Commission should still use the payments method, there should be changes to the method used by Staff. The allocation percentage used in Staff's direct case was based on FAS 87 pension expense. This methodology is problematic because it applies an allocation percentage developed for one category of expense (qualified FAS 87 pension expense) to a completely different category (non-qualified SERP expense). Staff acknowledged this in its

true up calculations and used an allocation percentage that is directly applicable to SERP. Ex. 12, p. 5. The proposed methodology using SERP-specific activity increases the allocation percentage from 33.03% included in Staff's adjustment to 82.5724%. Ex. 13, p. 4.

Staff's true up calculations included two errors to the balance of account 182353. Regarding the first error, Staff included entries to remove FAS 88 settlements on an acquisition accounting basis from the tracker balance and replace it with FAS 88 settlements on a regulatory accounting basis. Staff included an entry specifically removing the acquisition basis amount from the tracker balance. However, Staff also included a "FAS 88 Settlement Adjustment", the net effect of which was to add FAS 88 on a regulatory accounting basis and subtract FAS 88 on an acquisition basis. Thus, the FAS 88 amount of $1,569,840 on an acquisition basis was removed twice. Ex. 13, p. 5.

With regard to the second error, there was a reclassification entry in December 2018, which reclassified $639,992 from account 182353 to account 254101. Staff's true up calculation included the impact of this entry on account 254101 but did not include the impact on account 182353. Ex. 11 (Direct Testimony of James A. Fallert), Sched. JAF-2. As a result, both the tracker balance and rate base were understated by $639,992. The appropriate rate base and tracker amortization balances for accounts 182353, 182359 and 254101, should be $12,260,836. Ex. 13, p. 5.

As to the last question in this section, paragraph 10 of the Stipulation and Agreement in the Company's previous general rate case (Case No. ER-2016-0023) states, in part: "The prepaid pension asset balance as of March 31, 2016 is $23,314,960, Missouri jurisdictional." The Company's calculation of prepaid pension asset in this case starts with that balance and rolls

forward with activity from that point. Thus, the appropriate balance of prepaid pension is $26,269,345.

ISSUE 18 - Affiliate Transactions: (a) Are Empire's transactions with its affiliates imprudent? (b) Do Empire's transactions with its affiliates comply with Commission Rule 20 CSR 4240-20.015 (Affiliate Transactions)? (c) What amount should be included in Empire's revenue requirement for its transactions with its affiliates?

As noted, the Stipulation involves a unique construct, and, as such, it is difficult to compare the filed positions to the Stipulation terms. The Stipulation does not specifically address affiliate transactions. Instead, the Stipulation resolves all revenue requirement issues by providing that there will be no changes to the Company's Retail Base Rates in this proceeding, no changes to the FAC base factor, and that a phase-in rate mechanism will be established pursuant to §393.155.1, with regard to plant in service and other rate base related items. It is difficult to compare the filed positions to the Stipulation, because the filed positions include recommendations regarding changes to O&M expenses, while the Stipulation reflects no changes to O&M and keeps the Company's O&M expense recovery at 2016 levels. "If the settlement is approved in its entirety, the O&M expenses being recovered from customers would contain zero O&M costs associated with affiliate transactions from APUC as these costs will remain at the authorized levels prior to the acquisition." Ex. 1017 (Richard Supplemental Testimony), p. 22.

If the Stipulation is not approved as a complete resolution of this case, the Commission should make findings in line with the Company's pre-filed testimony.

During the test year, Empire received approximately $32.9 million in direct and indirect allocations through cost allocations. There should be no disallowances related to affiliate transactions. The Company's transactions with its affiliates are prudent and reasonable. The Company follows its Cost Allocation Manual ("CAM"), which includes the Missouri-specific Appendix and satisfies the Commission's affiliate transaction rules. The Missouri Appendix

satisfies the requirements of Commission Rules 20 CSR 4240-20.015 and 20 CSR 4240-40.015 by providing the criteria, guidelines, and procedures the affiliated regulated utilities in Missouri will follow when engaging in affiliate transactions. This provision ensures that costs are appropriately allocated between Empire and its affiliates.

In addition, the CAM was filed for approval on August 23, 2011 in Case No. AO-2012-0062. On October 20, 2016, the Commission granted a request to suspend the procedural schedule in Case No. AO-2012-0062 on the condition that the utilities file a new CAM application within six months of the closing of the Algonquin merger. In compliance with the Commission's condition, on June 30, 2017, the Missouri utilities, including Empire, filed an application seeking approval of their then-current CAM (Case No. AO-2017-0360). The Company's application remains pending before the Commission, while the case is currently stayed. Ex. 22 (Schwartz Direct); Ex. 23 (Schwartz Rebuttal); Ex. 42 (Timpe Rebuttal); Ex. 44 (Cochrane Surrebuttal).

OPC asserts that all of Empire's affiliate allocations are imprudent, including all salaries. OPC, however, fails to provide any details that would allow the Company to address these concerns. As noted above, in the context of a rate case, the parties challenging the conduct, decision, transaction, or expenditures of a utility have the initial burden of showing inefficiency or improvidence, thereby defeating the presumption of prudence accorded the utility. OPC has failed in this regard.

ISSUE 19 - Riverton 12 O&M Tracker: (a) Should the Riverton 12 O&M Tracker continue? (b) What is the updated balance of the Riverton 12 O&M tracker regulatory asset and the related amortization that should be included in Empire's cost of service? (c) What level of O&M expense should be included in the cost of service for Riverton 12?

As noted, as part of its unique construct balancing all interests, the Stipulation provides for all currently authorized Regulatory Assets/Trackers and Regulatory Liabilities/Trackers to

remain in place under the currently authorized terms and at their current authorized amortization periods. The Company again urges the Commission to approve the terms of the Stipulation as a complete resolution of this case, including the Riverton 12 issues. The Company's filed positions, however, are set forth below and should be accepted if the Stipulation terms are not approved as a complete resolution of the case.

The Riverton 12 O&M Tracker should continue, because the hours of operations have continued to vary significantly from year to year. In addition, the unit starts and trips are inconsistent from year to year. The tracker continues to protect customers from these fluctuations.

The Riverton 12 O&M Tracker was established in Commission Case ER-2014-0351. Ex. 4 (Corrected Direct Testimony of Sheri Richard), p. 22. The Riverton 12 Tracker was intended to normalize, or smooth, costs of the Riverton 12 long term maintenance agreement ("LTSA"). The annual cost includes three parts: equivalent operating hours ("EOH"), the annual fixed fee, and the amortized initial fee. Ex. 5 (Rebuttal Testimony of Sheri Richard), p. 4.

An EOH can be derived in three ways. First, each hour the unit operates is one (1) EOH. Second, each time the unit is started, the unit will incur ten (10) EOH. Third, if the unit trips unexpectedly during operation, the unit will incur a number of EOH dependent upon the load the unit was operating at when it tripped. As part of the LTSA, Liberty-Empire is charged a dollar amount for each EOH the unit operates. This is a variable fee based on operating characteristics of the unit. Ex. 5, pp. 4-5.

Since the implementation of the Southwest Power Pool Integrated Market, the hours of unit operation have continued to vary significantly from year to year. In addition, the unit starts and trips are also inconsistent from year to year. It is evident, based on the tracker balance, the

tracker has served to protect customers from fluctuations and smooth costs. Ex. 5, p. 5. Due to the continued uncertainty of operations and the potential for significant variations in the EOH charges, the extension of the tracker should be granted in order to continue to protect customers by smoothing the LTSA costs. In addition, the tracker should be rebased to reflect the Company's pro forma level of costs included in the calculation of base rates. Ex. 5, p. 5.

The balance of the Riverton 12 regulatory asset as of January 31, 2020, is $13,717,733, which is the amount that should be included in rate base. Ex. 63 (Riverton 12 Reg. Asset & Amort Workpaper of Sheri Richard). The annual amount of amortization associated with this regulatory asset is $2,743,547, which represents a five-year amortization period. Ex. 7 (True-Up Direct Testimony of Sheri Richard), pp. 13 (IS ADJ 26), 17-18.

The amount of expenses that should be included in the cost of service related to Riverton 12 is $8,349,230. Ex. 7 (True-Up Direct Testimony of Sheri Richard), pp. 13 (IS ADJ 26 and 36), 17-19; Ex. 64, Riverton Expense True-Up Workpaper of Sheri Richard). This amount represents the balance of these expense accounts as of January 31, 2020. *Id*.

ISSUE 20 - Software Maintenance Expense: (a) What is the appropriate normalized level for software maintenance expense?

As with most revenue requirement issues, this issue is not specifically addressed in the Stipulation. As noted, however, the Stipulation represents the complete resolution of all issues in this case, whether or not specifically mentioned. If the terms of the Stipulation are not accepted as a complete resolution of this case, the appropriate level of normalized software maintenance expense, as normalized through the true-up period, is $924,820 (total company). Ex. 65 (Software Maintenance Norm. Expense Workpaper of Sheri Richard).

Staff's proposed level of expense is unreasonable, as it does not reflect a normalized amount of software expense for the pro forma period. Staff normalized the level of expense to

the update period, rather than for the true-up period. This distinction is of import as there was a vendor that started the provision of services in October of 2019. Ex. 5 (Rebuttal Testimony of Sheri Richard), pp. 36-37.

ISSUE 21 - Advertising Expense: What is the appropriate amount of advertising expense to include?

If the terms of the Stipulation are not accepted as a complete resolution of this case, the appropriate amount of advertising expense to include in the cost of service is $155,552 (Missouri jurisdictional). Ex. 66 (Advertising Expense Workpaper of Sheri Richard).

As noted, in the context of a rate case, the parties challenging the conduct, decision, transaction, or expenditures of a utility have the initial burden of showing inefficiency or improvidence, thereby defeating the presumption of prudence accorded the utility. Staff does not fully support the disallowance for the costs included in their proposed adjustment. Ex. 5 (Rebuttal Testimony of Sheri Richard), p. 23. Therefore, Staff cannot be said to have defeated the presumption of prudence associated with the Company's case and expenditures.

ISSUE 22 - Customer Service: (a) Is Empire providing satisfactory customer service? (i) If not, what should the Commission order to ensure better customer service? (b) Is Empire providing reliable service? (i) If not, what should the Commission do?

ISSUE 23 - Estimated Bills: (a) Should Empire be ordered to incorporate data into its monthly reports to Commission Staff regarding the number of estimated meter readings, the number of estimated meter readings exceeding three consecutive estimates, the number of bills with a billing period outside of 26 to 35 days, and the Company and contract meter reader staffing levels? (b) Should Empire be ordered to evaluate the authorized meter reader staffing level and take action to maintain adequate meter reader staffing levels in order to minimize the number of estimated bills? (c) Should Empire be ordered to initiate action to more clearly communicate on customer's bills when they are based on estimated usage? (d) Should Empire be ordered to ensure that all customers who receive estimated bills for three consecutive months receive the required communication regarding estimated bills and their option to report usage? (e) Should Empire be ordered to ensure that all customers who receive an adjusted bill due to underestimated usage are offered the required amount of time to pay the amount due on past actual usage? (f) Should Empire be ordered to evaluate meter reading practices and take action to ensure that billing periods stay within the required 26 to 35 days, unless permitted by exceptions listed in the Commission's rule 20 CSR 4240-13.015.1(C)? (g) Should Empire be ordered to file

notice within this case by September 1, 2020, containing an explanation of the actions it has taken to implement the above recommendations?

To the extent concerns were raised in this proceeding regarding customer service and reliability, implementation of the terms of the Stipulation is a just and proper resolution of Issues 22 and 23. The Company provides safe and reliable electric service to its customers and has always prided itself on its customer service. Exhibits 1-3 (Baker Direct, Rebuttal, and Surrebuttal).

In an effort to be transparent and fair to Union employees, in late 2017, the Company announced its plans to move to AMI. During most of 2018, the Company experienced an increase in estimated meter reads, as it struggled maintaining the appropriate meter reader staffing levels and was unable to utilize contractors. However, in late 2018, the Company was successful with Union contract negotiations, which allowed for the use of contractors for meter reading, this allowed for a reduction in estimated meter reads. Unfortunately, beginning in August 2019, the Meter Reading department had four readers on medical leave at the same time for several months. This, coupled with other factors, led to the Company again experiencing an increase in estimated bills.

It is the Company's goal to read every meter every month. In an effort to meet this goal, the Company has reallocated meter readers to cover service areas that had vacant positions. Additionally, the Company allowed for employees to work additional overtime. The Company has worked with its meter reading contractor. The contractor hired an extra person to help keep their routes on schedule, and the contractor will continue to work with the Company to provide additional solutions as needed. While the estimated meter reads in the first two months of 2020 continue to be higher than early 2017, they have drastically improved from late 2019.

When an account is estimated, "__ KwH Estimated" is printed in bold font on the statement following the meter number and read date information. The Company is unaware of any system or other issue which would cause customers to receive estimated bills without estimate reflected on the bill. Ex. 3 (Baker Surrebuttal), pp. 8-10.

With the Stipulation, the Company commits to the following for the years 2020, 2021, and 2022:

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

Additionally, with regard to reliability concerns, the Stipulation provides that the Company will benchmark across utilities for reliability and present this information in its direct

testimony in its next rate case and in subsequent reliability reports (annual basis) for the years 2021 and 2022.

ISSUE 24 - Material and Supplies: (a) What is the appropriate balance for material and supplies to be included in the cost of service? (b) What is the appropriate balance to remove from inventory as it relates to Non-Electric items?

The terms of the Stipulation should be accepted as a complete resolution of this case, including all revenue requirement issues. The Company's filed positions regarding material and supplies, however, are set forth below and should be accepted if the Stipulation terms are not approved as a complete resolution of the case.

The appropriate amount of materials and supplies to be included in rate base is $33,031,612, which represents a 13-month average as of January 31, 2020, for electric inventory only. Ex. 10 (True-Up Direct Testimony of Leigha Palumbo), p. 2; Ex. 67 (Materials and Supplies Workpaper of Leigha Palumbo).

The appropriate amount to be removed from inventory as it relates to Non-Electric items is $67,179, which also represents a 13-month average as of January 31, 2020. Exh. 10, p. 2; Ex. 7, (True-Up Direct Testimony of Sheri Richard), p. 5; Ex. 68 (Removal of Non-Electric Inventory Workpaper of Leigha Palumbo).

ISSUE 25 - Asset Retirement Obligations: Should Asset Retirement Obligations be included in rate base as a regulatory asset and amortized?

The terms of the Stipulation should be accepted as a complete resolution of this case, including the Asset Retirement Obligation ("ARO") issue. The Company's filed position on this issue, however, is set forth below and should be accepted if the Stipulation terms are not approved as a complete resolution of the case.

AROs should be included in rate base as a regulatory asset and amortized. An ARO is a legal obligation associated with a tangible long-lived asset that results from the acquisition, construction, development, or normal operation of a long-lived asset, in which the timing or method of settlement is conditional on a future event. Ex. 4 (Correct Direct Testimony of Sheri Richard), 14; Ex. 6 (Surrebuttal Testimony of Sheri Richard), p. 4. An ARO exists when the obligation to perform the asset retirement activity is *unconditional* even though there may be uncertainty about whether and, if so, how and when the obligation will ultimately be settled. Ex. 4, pp. 14-15.

The Company included ARO balances in rate base for costs paid to remove asbestos at the Asbury and Riverton generating units, as well as costs paid to settle obligations related to the coal ash ponds at Asbury, Iatan, 1 and Riverton. Ex. 6, pp. 3-4. Thus, while AROs can be accrued liabilities, in this case, they represent actual recent cash expenditures for various environmental activities at several of Empire's power plants. Ex. 154 (Sur-Surrebuttal Testimony of Mark L. Oligschlaeger), p. 2. Staff therefore took the position that the costs were both prudent and necessary and should be eligible for rate recovery by the Company. *Id*.

If the Stipulation terms are accepted by the Commission as a complete resolution of this case, the amounts previously denoted as AROs would be booked as regulatory assets until the Company's next general rate proceeding. Ex. 154, p. 3. At that time, under the terms of the Stipulation, the environmental cost regulatory assets will be eligible for inclusion in rates either through an amortization to expense, or by inclusion in Empire's accumulated depreciation reserve. *Id*.

However, if the Stipulation terms are not accepted, the amount that should be included in rate base is $9,180,956, which represents settlements as of January 31, 2020. The annual

amortization related to this regulatory asset is $2,530,466. Ex. 69 (Asset Retirement Obligations Reg Asset & Amortization Workpaper of Sheri Richard).

ISSUE 26 - LED Replacement Tracker: (a) Should a tracker be established for the costs associated with replacement of mercury vapor light fixtures with LED light fixtures for private lighting customers? (b) Should a tracker be established for the costs associated with replacement of mercury vapor light fixtures with LED light fixtures for Municipal customers?

Although this item is not set forth in the Stipulation as being specifically addressed, the Stipulation terms represent a full and complete resolution of this rate case. As such, like with all other issues, the Company submits that approval of the Stipulation terms would be a lawful and reasonable resolution of this issue. In the event the terms of the Stipulation are not approved as a complete resolution of the case, the Company's filed positions should be accepted and are set forth below.

With regard to Empire's (1) Municipal Street Lighting Tariff, Schedule SPL, PSC Mo. No. 5, Sec. 3, 17th Revised Sheet No. 1 and 7th Revised Sheet No. 1a, and (2) Private Lighting Service, Schedule PL, PSC Mo. No. 5, Sec. 3, Revised Sheet No. 2, Empire proposes to replace all Company-owned, mercury vapor ("MV") light fixtures with LED light fixtures (or High Pressure Sodium ("HPS") fixtures if specified by a lighting customer). "LED lighting is a low maintenance lighting that produces a white light that provides directional illumination and is designed to match natural daytime light. LED lighting is more aesthetically pleasing and is known to be more efficient over other lighting options, including both MV and HPS." Ex. 35 (McGarrah Surrebuttal), p. 2.

While MV light bulbs are still available, the MV fixtures are not available in the market. LED lights are more energy efficient than MV lights, have reduced maintenance costs and a longer life, and are more energy efficient and environmentally friendly. During Empire's prior LED pilot program, the LED streetlights demonstrated much lower energy usage in comparison

to HPS lights of similar lumens. "In fact, Liberty-Empire found that the LED lights used less than half of the kWh used by HPS lights over the course of a year. Not only are the LED lights more efficient and use less energy, the LED lights last longer, are more durable, have the ability to operate at lower temperatures, and provide a higher quality light output." Ex. 35, pp. 2-3.

As explained by Company witness McGarrah, changing a MV light to LED will save 422 KWH per year. "Over 20 years, changing the light will save 8,400 KWH. Changing 8500 MV lights to LED, as proposed by the Company, will save 3,500 MWH per year, or almost 72,000 MWH over 20 years." Ex. 35, p. 4. Further, most of the MV lights on the Company's system are 30 to 40 years old. "Although they have not failed, as that term is generally used, they are not serving their intended purpose. The MV lights glow, but they fail to produce light on the street. For safety reasons, they should be replaced at this time." *Id.* Mr. McGarrah also explained that costs will increase if the MV lights are replaced piecemeal, due to additional costs for testing and truck rolls.

Empire requests approval from the Commission for regulatory treatment to capture the costs associated with the MV light fixture replacement programs. For its Municipal Lighting Service, Empire requests that a regulatory asset or liability be established to account for the difference between the actual cost incurred and the actual revenues collected from customers as they move to the LED light fixtures. The difference would be recovered or returned as determined in a subsequent rate case. For its Private Lighting Service, Empire is requesting that the Commission approve regulatory treatment to (i) capture the costs associated with the MV light fixture replacement program and (ii) track the difference between estimated and actual revenues and costs of the LED light fixtures. Empire requests that a regulatory asset or liability be established to account for the difference between the actual cost incurred and the actual

revenues collected from customers that choose to move to the LED light fixtures. The difference would be recovered or returned as determined in a subsequent rate case. Ex. 35, p. 3.

The Company estimates that it will cost approximately $4.5 million to replace the 8,500 municipal MV lights. During the development of the LED tariff, the cost for installing the minimum size light was $372.88. As such, the cost to install 8,500 LED lights may be over $3.1 million. There will also be additional costs for locations with series circuits that will require the installation of a new conductor. There are over 13,500 MV private lights, and the cost for installation is approximately $240 per light, with the cost varying depending on size. As such, the installation cost at a minimum is $3.25 million, not accounting for the cost to remove and dispose of the old fixtures. The LED "charge per lamp" proposed in this proceeding is based on the proposed HPS municipal street light rate adjusted for lower energy usage and maintenance costs derived from the prior Missouri LED pilot study. The amounts are estimates, and actual costs need to be determined and will not be known until the Company is granted permission to perform the conversion. For both programs, the Company considers both the costs and the benefits of the proposed LED replacement to be material to the Company and its customers. Ex. 35, pp. 4-5.

If the Stipulation terms are not approved as a complete resolution of this case, pursuant to the Company's pre-filed testimony, Exhibits 33-35 (McGarrah Direct, Rebuttal, and Surrebuttal), a tracker should be established for the costs associated with replacement of MV light fixtures for private lighting customers. Additionally, a tracker should be established for the costs associated with replacement of MV light fixtures for municipal customers.

ISSUE 27 - May 2011 Tornado Unamortized AAO Balance: Should the unamortized AAO Balance for the May 2011 Joplin Tornado be included in rate base?

The Commission issued an order on November 30, 2011, that approved and incorporated a Stipulation and Agreement in Case No. EU-2011-0387. In that Stipulation and Agreement, the parties agreed to allow Empire to defer to Account 182.3 Other Regulatory Assets the following items: incremental operations and maintenance expenses associated with the repair, restoration and rebuild activities associated with the May 22, 2011 tornado; and depreciation and carrying charges equal to its ongoing Allowance for Funds Used During Construction rates associated with tornado-related capital expenses. The Company agreed that if it filed a general rate case in Missouri by June 1, 2013 (which it did), then Empire would begin to amortize the deferral balance over a ten- year period. Ex. 101 (Staff Direct Report), p. 53.

As of January 31, 2020, Empire had an unamortized balance of $1,274,630 in Account 182.3 for tornado related expenses. Ex. 70 (Tornado Regulatory Asset Workpaper of Sheri Richard). The Staff did not include the unamortized balance in rate base arguing that the financial impact of extraordinary events, such as tornado expenses, should be “shared” through exclusion of the unamortized balance from rate base. Ex. 101, p. 53. However, to the extent one believes that there should be sharing, Empire shared considerably, through lost revenues and reduced rates for the purpose of helping restore the Joplin area.

If the terms of the Stipulation are not approved as a complete resolution of this case, the unamortized AAO balance resulting from the 2011 Joplin tornado should be specifically included in rate base. The exclusion of this balance would deny the Company a return on the investment it made in the system to restore electric services to its Missouri retail customers in an expedition manner. Ex. 5 (Rebuttal Testimony of Sheri Richard), pp. 6-7.

ISSUE 28 - Depreciation and Amortization Expense: (a) What is the appropriate level of depreciation and amortization expense of plant to include in the cost of service? (b) Should depreciation expense for transportation equipment that was charged through a clearing account be removed from depreciation expense? (i) What are the authorized depreciation rates for accounts 371 & 373 to be used in the cost of service?

The terms of the Stipulation should be accepted as a complete resolution of this case, including these expense issues. The Company's filed positions on these issues, however, are set forth below and should be accepted if the Stipulation terms are not approved as a complete resolution of the case.

The appropriate levels of depreciation and amortization expense at January 2020, are $71,515,922 and $3,821,588, respectively. Ex. 7 (True-Up Direct Testimony of Sheri Richard), p. 15, lines 8-11; Ex. 71 (Annualized Depreciation Expense Workpaper of Sheri Richard); Ex. 72 (Annualized Amortization Expense Workpaper of Sheri Richard).

Depreciation costs for transportation equipment charged through a clearing account should be removed from depreciation expense. Ex. 5 (Rebuttal Testimony of Sheri Richard), pp. 31-32.

Staff used a rate of 2.5% for FERC accounts 371 and 373, which does not agree to the last approved depreciation rates from Case ER-2016-0023. The depreciation rates that should be used in this case for accounts 371 and 373 are 4.67% and 3.33%, respectively, as those are the last approved depreciation rates from Case No. ER-2016-0023. Ex. 5 (Rebuttal Testimony of Sheri Richard), p. 32; *Order Approving Stipulation and Agreement*, Att. A, Sch. A, File No. 2016-0023 (issued August 10, 2016); Ex. 73 (Approved Depreciation Rates Workpaper of Sheri Richard).

ISSUE 29 - Iatan/Plum Point Carrying Costs: (a) What is the appropriate level of unamortized Iatan/Plum Point Carrying Costs to include in rate base? (b) What is the appropriate level of Iatan/Plum Point Carrying amortization to include in amortization expense?

The Stipulation terms should be accepted as a complete resolution of this case. The Company's filed positions on this issue, however, are set forth below and should be accepted if the Stipulation terms are not approved as a complete resolution of the case.

Pursuant to Empire's regulatory plan approved by the Commission in Case No. EO-2005-0263, Empire deferred certain "carrying costs" associated with the Iatan I AQCS investment past its in-service date into Account 182308, Iatan Deferred Carrying Costs, and certain "carrying costs" associated with the Iatan 2 generation unit investment past its in-service date into Account 182332, MO Iatan II Df Chr ER-2010-0130. (The deferral of carrying costs after a projects' in-service date is also known as "construction accounting"). Ex. 101 (Staff Direct Report), pp. 25-26. Pursuant to Commission approval of the *Non-Unanimous Stipulation and Agreement and Joint Proposal Regarding Certain Procedural Matters* dated February 25, 2010, in Case No. ER-2010-0130, Empire deferred certain "carrying costs" associated with the Plum Point generating unit investment past its in-service date into Account 182331, MO PlumPT Df Chgs ER-2010-0130. Ex. 101, pp. 26-27.

Empire agreed with Staff's adjustments to update the Iatan and Plum Point O&M Regulatory Assets, as long as such update was extended though the true-up date (January 31, 2020). Ex. 5 (Rebuttal testimony of Sheri Richard), pp. 9-10. Staff updated those amounts through January 31, 2020. Ex. 129 (Surrebuttal Testimony of Kimberly K. Bolin), p. 12.

The appropriate level of unamortized Iatan/Plum Point Carrying Costs at January 2020 is $6,514,585. Ex. 74 (Iatan & Plum Point Carrying Costs Workpaper of Sheri Richard). The

appropriate level of amortization for the Iatan/Plum Point Carrying Costs is $217,451. Ex. 74 (Iatan & Plum Point Carrying Costs Workpaper of Sheri Richard).

ISSUE 30 - Incentive Compensation: What is the appropriate level of incentive compensation to be included in the cost of service?

As noted, the Stipulation resolves all revenue requirement issues, whether or not specifically mentioned in the Stipulation, by providing that there will be no changes to the Company's Retail Base Rates in this proceeding, no changes to the FAC base factor, and that a phase-in rate mechanism will be established pursuant to §393.155.1. The Stipulation terms should be accepted as a complete resolution of this case. The Company's filed position on this issue, however, is set forth below and should be accepted if the Stipulation terms are not approved as a complete resolution of the case.

Empire has a portfolio of incentive compensation plans offered to its employees. There is one Long Term Incentive Plan ("LTIP"), and three different short-term incentive plans: the "Empire Legacy Bonus/Incentive Plan", the Shared Bonus Plan ("SBP"), and the Short-Term Incentive Plan ("STIP"). Ex. 101 (Staff Report Cost of Service), p. 66. The incentive compensation plans offered by Empire are a routine and widely-accepted mechanism for motivating employees to strive for excellence in whatever service, function, task or activity they are undertaking on behalf of the business and the customers it serves. As a result, incentive compensation has become an essential part of the Company's overall compensation package necessary to attract and retain employees. Ex. 5 (Rebuttal Testimony of Sheri Richard), p. 27.

Because these plans are such an integral part of a competitive compensation package today, such amounts of compensation should only be disallowed where there is evidence that the total level of salaries (base compensation plus incentive compensation) is too high or imprudent. *Id.* at p. 26. No such evidence exists in this case. Certainly, Staff did not assess if the overall cost

for acquiring and retaining an employee is prudent, rather they looked at the calculation of the components of compensation without analysis or evidence of prudence of total compensation. For example, the Company could pay an engineer a market-based salary of $130,000 a year and few would question that expenditure. However, if the combination of the base compensation and incentive compensation for that engineer totals to the same market-based salary, some would challenge the appropriateness of the compensation related to incentive pay. This is illogical. The question should be whether the $130,000 is an appropriate level of pay or not. Ex. 5, p. 27-28. As far back as in the March 2012 *Public Utilities Fortnightly*, it was recognized that:

> Some U.S. regulatory commissions have explicitly acknowledged that utilities' employee compensation strategies are developed to attract, retain, and motivate employees, and that the proper concern of regulators is whether a utility can demonstrate that the overall level of employee compensation expenses is reasonable.

Examples from Indiana, Nevada and Florida were identified in the article. Somewhat similarly, this Commission has stated:

> Staff should not be in the business of trying to design a compensation plan for AmerenUE. Staff is not qualified to do so and its attempts to manage the affairs of AmerenUE are inappropriate. That does not mean that anything goes for the company. Staff certainly must evaluate AmerenUE's incentive compensation plans. However, it must do so at a higher level and not get bogged down in the details. AmerenUE's incentive programs must stand or fall as a program. If the overall program is appropriate, AmerenUE should be able to recover the costs of that program through rates. If the overall program is unacceptable, then the entire program will be excluded from rates. The Commission will not attempt to manage the details of those programs.
>
> Looking at the short-term compensation programs as a whole, the Commission finds them to be appropriate for recovery through rates. Incentive compensation programs are very common in business in general and in the utility industry in particular. Among AmerenUE's peer utility companies, 36 out of 37 offer short-term incentive plans for their executives. Thus, AmerenUE needs to offer similar plans to compete for employees with other utilities.
>
> For example, if AmerenUE's research determines that the market rate for a certain position is $60,000 per year, it will evaluate the appropriate base-level of

> compensation and determine an appropriate amount that should be offered through incentive compensation. It is clear that if AmerenUE simply abandoned its incentive plan and offered market rates as base pay, it would have no difficulty in recovering all those costs through rates. However, AmerenUE has chosen to implement an incentive compensation plan so that it has the ability to reward its employees for achieving the performance goals set by the company. So long as the overall program does not contain incentives that could be harmful to ratepayers, such as the purely financial incentives that caused the Commission to disallow recovery of AmerenUE's long-term compensation plan, AmerenUE should be able to recover the costs of incentive compensation through rates.

In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs, Case No. ER-2008-0318, 2009 Mo. PSC Lexis 71, 150-152 (February 6, 2009).

The total compensation package provided to the Company's employees is market-based and necessary to attract and retain employees so that the Company may properly serve its Missouri retail customers. Incentive compensation should be included in the Company's cost of service in the amount of $4,078,229 (total company). Ex. 75 (Company's Response to Staff DR 0033.1 (Richard)).

ISSUE 31 - Customer Demand Program (DSM): (a) What is the appropriate rate base amount for the customer demand program? (b) What is the appropriate amortization amount for the customer demand program?

Empire's Account 182318 contains costs of the Company's demand-side management ("DSM") programs that are in various stages of development and implementation. Staff participated in the previously authorized (and now expired) Customer Programs Collaborative ("CPC") and participates in the current authorized DSM advisory group established to assist Empire in the development of DSM programs. Based upon Staff's participation in these groups, as well as Staff's review of the costs in Account 182318, Staff has amortized the amounts incurred by Empire prior to the end of its Regulatory Plan (June 15, 2011) over ten years. Any amounts incurred after the end of the Regulatory Plan to date are amortized over a period of six

years, consistent with the terms of the Commission's *Report and Order* in Case No. ER-2014-0351. Ex. 101 (Staff Direct Report), p. 52.

If the terms of the Stipulation are not approved as a complete resolution of this case, the appropriate rate base amount for the customer demand program at January 31, 2020 is $4,269,460. Ex. 76 (DSM Regulatory Asset and Amortization Workpaper of Sheri Richard). The appropriate level of amortization expense related to the customer demand program is $1,422,715. Ex. 76 (DSM Regulatory Asset and Amortization Workpaper of Sheri Richard).

ISSUE 32 - Bad Debt Expense: (a) What is the appropriate level of bad debt expense to be included in the cost of service?

If the terms of the Stipulation are not approved as a complete resolution of this case, the appropriate amount of bad debt (or uncollectible) expense that should be included is ($143,419). Ex. 7 (True-Up Direct Testimony of Sheri Richard), pp. 13-14. This amount represents a normalized uncollectible expense as of January 31, 2020, using a five-year average historical uncollectible percentage. Ex. 7, p. 14. The uncollectible percentage was also applied to the revenue deficiency as of January 2020. *Id*.

ISSUE 33 - Retail Revenue: (a) What is the appropriate amount to remove from retail revenue for unbilled revenue, franchise tax revenue, and FAC revenue? (b) What is the level of billing determinants per rate schedule that should be used to calculate retail rate revenue in this case? (c) Should the billing adjustment and the retail revenues be trued up to January 31, 2020 in the cost of service?

The recording of unbilled revenue on the books of the Company recognizes sales of electricity that have occurred but have not yet been billed to the customer. Therefore, it is necessary to remove unbilled revenue in order to reach an accurate revenue requirement based upon electricity sales billed to and revenues collected from Missouri customers. Ex. 101 (Staff Report Cost of Service), pp. 49-50. Franchise taxes are removed because city franchise tax is not a revenue source for Empire. It is a municipal tax Empire is obligated to collect and remit to the

various municipalities where the Company provides electric service. Generally, there is no impact on Empire's earnings related to the collection of city franchise taxes, because revenues are offset by an equal amount of expense. Ex. 8 (Direct Testimony of Leigha Palumbo), pp. 3-4; Ex. 101, p. 50.

Revenues from the Fuel Adjustment Clause ("FAC") represent collections or refunds of prior period fuel costs and are excluded in determining the annualized level of ongoing rate revenues. Ex. 101, p. 35. If the Stipulation terms are not approved as a complete resolution of this case, the appropriate amount to be removed from retail revenues for unbilled revenues is $5,497,448, franchise tax revenues is $9,319,510, and FAC revenues is $5,203,205. These balances are as of January 31, 2020. Exhibits 78-80.

If the Stipulation terms are not accepted, the level of billing determinants to be used in the calculation of retail rate revenue for the test year are included in Schedule TSL-10 of the Direct Testimony of Timothy S. Lyons (Ex. 26). These should be adjusted to reflect the true-up period of January 31, 2020, per Exhibits 97-1001.

With regard to the third question under this issue, if the Stipulation terms are not approved, the billing adjustment and retail revenues should be updated to the true-up period of January 31, 2020. Doing so is necessary to maintain a proper matching of the rate components.

ISSUE 34 - Other Revenue: What is the appropriate normalized level of revenue for rent revenue, other electric revenue, and fly ash revenues?

The Stipulation resolves all revenue requirement issues, whether or not specifically mentioned in the Stipulation, and the Stipulation terms should be accepted as a complete resolution of this case. The Company's filed positions on this issue, however, are set forth below and should be accepted if the Stipulation terms are not approved as a complete resolution of the case.

Other operating revenue includes revenues from such items as forfeited discounts, reconnect charges, rent from electric property, and other miscellaneous charges. Ex. 101 (Staff Report Cost of Service), p. 35. “Coal fly ash” is a byproduct created as a result of the burning of coal in generating stations to produce electricity. Fly ash has a number of possible industrial uses, primarily as an ingredient in concrete products. Over the past several years, Empire has been selling its fly ash to several different industrial companies to be used in concrete. By recycling fly ash, Empire not only receives a profit, but also provides positive environmental benefits. Ex. 101 (Staff Report Cost of Service), pp. 50-51.

The appropriate normalized amount of rent revenues is $1,026,462, and other electric revenues is $354,638. Ex. 81 (Rent Revenues Workpaper of Sheri Richard); Ex. 82 (Other Revenues Workpaper of Sheri Richard). The rent revenues balance was updated to September 30, 2019, as recommended by Staff. The other electric revenues were normalized to a three-year average as of September 30, 2019. Ex. 7 (True-Up Direct of Sheri Richard), p. 11. The normalized level of fly ash revenues that should be included in the cost of service at January 2020 is $36,107. Ex. 83 (Fly Ash Revenues Workpaper of Sheri Richard).

ISSUE 35 - Tax Cut and Job Acts Revenue: (a) What is the appropriate amount of tax cut and job act revenue to remove from test year revenues? (b) Should revenues associated with the tax cut and job act stub period be removed from revenue?

If the Stipulation terms are not approved as a complete resolution of all revenue requirement issues in this case, the adjustment to calculate the appropriate amount of tax cut and job act (TCJA) revenues as of January 31, 2020, that should be included in the cost of service shows an increase to revenues by $12,024,852. This is because the adjustment trues up the revenues to reflect the annual amount ordered by the Commission in Case No. ER-2018-0092 of the deferred revenues related to the change in federal income tax rate as a result of TCJA. This

adjustment encompasses the stub period as part of the annual amount ordered. Ex. 4 (Richard Corrected Direct), p. 24, lines 9-12; Ex. 5 (Richard Rebuttal), pp. 11, 17; Ex. 7 (Richard True-Up Direct) p. 11, lines 6-9; Ex. 84 (Richard Workpaper, TCJA Revenue Adjustment).

ISSUE 36 - Property Insurance: What is the appropriate test year amounts before comparing to the current premium amounts?

Insurance expense is the cost of protection obtained from third parties by utilities against the risk of financial loss associated with unanticipated events or occurrences. Utilities, like non-regulated entities, routinely incur insurance expense in order to minimize their liability (and, potentially that of their customers) associated with unanticipated losses. Ex. 101 (Staff Direct Report), pp. 77-78.

If the Stipulation terms are not approved as a complete resolution of all revenue requirement issues in this case, the appropriate level of annualized property insurance to use in the revenue requirement is $2,027,854 (total company). Ex. 85 (Property Insurance Test Year Expense Workpaper of Sheri Richard).

ISSUE 37 - Injuries and Damages: What is appropriate amount of injuries and damages expense to include in the cost of service?

From time to time, claimants sue Empire seeking payment of damages. If Empire loses the lawsuit, Empire will likely make a payout to the aggrieved party. Alternatively, it may choose to enter into an out-of-court settlement, also resulting in a payout. Ex. 101 (Staff Direct Report), p. 81. Based upon generally accepted accounting principles, Empire is required to charge to current expense an estimate of its future payouts for injuries and damages claims. To determine a normalized level of this expense, Staff used a five-year average of actual injuries and damages, instead of relying upon accounting estimates. Staff applied an allocation of 50.00 percent to the five-year average of actual payments made for injuries and damages. The

allocation of 50.00 percent represents the electric expense portion of the payments. The remaining amounts of the payments 50.00% are allocated to the Company's construction, water operations and below-the-line activities. Below the line refers to line items in the income statement that do not directly impact a company's reported profits. A five-year average of actual payments was used to normalize this expense because there is fluctuation in the annual amount of payments from one year to the next. Ex. 101, p. 81.

If the Stipulation terms are not approved as a complete resolution of all revenue requirement issues in this case, the appropriate amount of injuries and damages expense to include in the cost of service is $312,562 (total company). Ex. 86 (Injuries and Damages to include in Cost of Service Workpaper of Sheri Richard).

ISSUE 38 - Payroll and Overtime: (a) What is the appropriate test year amount of payroll expense? (b) What is the appropriate test year amount for overtime expense?

The amounts provided below exclude all incentive related compensation in order to compare a true test year level of regular and overtime payroll to the pro forma amounts. If the Stipulation terms are not approved as a complete resolution of all revenue requirement issues in this case, the appropriate amount of test year level regular payroll (excluding Iatan, overtime and incentive compensation) is $33,190,797 (total company). Ex. 87 (Test Year Payroll and Overtime Workpaper of Sheri Richard). Liberty-Empire believes that this regular payroll number matches that used by Staff (before its consideration of overtime and incentive compensation). The appropriate amount of test year level overtime payroll is $4,502,541 (total company). Ex. 87 (Test Year Payroll and Overtime Workpaper of Sheri Richard).

ISSUE 39 - Retention Bonuses: Should proposed retention bonuses for lineman be included in the cost of service?

It is very important that Empire have an adequate number of trained employees in order for the Company to provide reliable service. Ex. 39 (Direct Testimony of Jeffrey Westfall), p. 12. Today, there is a very high demand for employees that have the unique skillset of journeyman lineman. Utilities, cooperatives, and contractors across the nation are competing for a highly skilled workforce to support their efforts of increased reliability, infrastructure upgrades, and increased responsiveness to customer requests. This has caused this high demand for this skillset. This has been more prevalent within the utility contractor industry. With this high demand, utility contract companies are now willing to offer high premium pay and other benefits including daily per diems in an effort to meet their workforce needs. In most cases, employees have been able to double and even triple their compensation. This increased competition for skilled journeymen has taken a toll on several utilities and cooperatives across the country, and Liberty-Empire is no exception. Ex. 39, p. 12-13.

Utilities and cooperatives today are trying many different ways to combat this including sign on bonuses to help attract this skillset, retention bonuses to help retain existing employees, increased wages and more lucrative work practices (increased callout minimums and more overtime availability etc.). Ex. 39, p. 13. This problem grew considerably worse for Empire leading up to the filing of this rate case. As such, the Company established a program to offer monthly retention bonuses until the increased competitive job market for journeymen subsides. Ex. 40 (True-Up Direct Testimony of Jeffrey Westfall), p. 3.

The program has helped the Company attract and retain individuals with the unique skillset of journeyman lineman and has assisted the Company in providing safe and reliable service. Specifically, since this program was initiated, Liberty-Empire has only lost two

journeymen linemen. Prior to the implementation of this retention program, the Company lost 16 journeymen linemen between March and August of 2019. This program has also helped with the recruitment efforts to replace 20 employees that had previously left the Company. Ex. 40, p. 3.

If the Stipulation terms are not approved as a complete resolution of all revenue requirement issues in this case, a total of $1,021,080 should be included in the cost of service related to lineman retention bonuses. Ex. 7 (True-Up Direct Testimony of Sheri Richard), pp. 20-21; Ex. 88 (Retention Bonus Calculations Workpaper of Sheri Richard).

ISSUE 40 - Employee Benefits: What is the appropriate level of employee benefits to include in the cost of service?

If the Stipulation terms are not approved as a complete resolution of all revenue requirement issues in this case, the appropriate amount of employee benefits, including dental, vision and healthcare, that should be included in the Company's cost of service is $6,682,463. This amount represents Missouri jurisdictional balances updated as of January 30, 2020. Ex. 89 (Employee Benefits to include in Cost of Service of Sheri Richard).

ISSUE 41 - Property Taxes: (a) What is the appropriate amount of property taxes to include in the cost of service? (b) What is the proper method to be used for calculating the property tax amount to be included in the cost of service?

Property taxes are computed using the assessed property values. The taxing authority, either state or local, uses the utility plant balances assessed as of January 1st of each year. Ex. 258 (Surrebuttal and True-Up Direct Testimony of Courtney Barron), p. 2. If the Stipulation terms are not approved as a complete resolution of all revenue requirement issues in this case, the appropriate Missouri jurisdictional amount of property taxes to be included in the cost of service is $25,985,842. Ex. 90 (Property Tax Calculation Workpaper of Sheri Richard).

The State of Missouri assesses property tax for Electric Utilities using the Income Approach in its evaluation of property tax assessments in addition to the property value. Taking

into consideration the Company's income, as well as the value of its property, more accurately reflects the amount of property tax expense the Company will incur. Ex. 5 (Rebuttal Testimony of Sheri Richard), p. 36. Staff erred by using the value of property at December 31, 2019 and an annualized property tax rate of .972%.

ISSUE 42 - Dues and Donations: (a) What is the appropriate amount of dues and donations that should be included in the cost of service? (b) Should Edison Electric Institute dues be included in the cost of service?

Dues and donations may be included in the cost of service where they have benefit to the customers or are necessary for the provision of safe and adequate service. Ex. 101 (Staff Direct Report), p. 76. If the Stipulation terms are not approved as a complete resolution of all revenue requirement issues in this case, the appropriate amount of dues and donations that should be included in the cost of service is $309,778 (total company). Ex. 91 (Dues and Donations Workpaper of Sheri Richard), p. 5. The categories of dues and donations included in this list have benefit to Empire's customers.

The Edison Electric Institute ("EEI") dues that are not related to lobbying should be included in the cost of service, as Empire has already recorded below the line that portion of the dues associated with lobbying. Ex. 5 (Rebuttal Testimony of Sheri Richard), p. 21. EEI, much like NARUC, conducts research, and seeks to educate its members or other users of its published information, and also communicates to its members to keep them apprised of current developments. EEI has a Restoration, Operations, and Crisis Management Program which is aimed at improving industry-wide responses to major outages, continuity of industry and business operations, and support and coordination of the industry during times of crisis. EEI also focuses on advancing the application of new technologies that will strengthen and transform the power grid. The EEI membership is committed to an affordable, reliable, secure, and clean

energy future and it promotes the sharing of information, ideas, and experiences among the electric power industry. Ex. 5, p. 22.

The Commission also uses EEI information to the benefit of customers. As shown in Staff's Direct Report on pages 8, 9, and 10 (Ex. 101), Staff utilized information from EEI's Q2 Financial Update to assess the economic climate. In addition, on page 13 of Staff's Direct Report, Staff utilized EEI's regulated utility index in the development of its proxy group for determining the cost of equity. Ex. 5, p. 22.

The Company, as well as Staff, utilize information from EEI to conduct business. This information is invaluable to the Company with regard to its provision of safe and reliable service. As such, the payment of this amount benefits customers and should be included in the Company's cost of service. If the Stipulation terms are not approved as a complete resolution of all revenue requirement issues in this case, $179,693 should be added to the cost of service. Ex. 91 (Dues and Donations Workpaper of Sheri Richard), p. 5.

ISSUE 43 - Outside Services: What is the appropriate amount of outside services to include in the cost of service?

Various outside (independent) contractors and vendors provide legal, auditing, and other services to Empire to carry out its operational activities as needed. Empire's outside services expenses are booked to Accounts 923045 and 923047. The amounts have been normalized by calculating a five-year average of incurred costs for these accounts. Ex. 101 (Staff Direct Report), p. 82. If the Stipulation terms are not approved as a complete resolution of all revenue requirement issues in this case, the appropriate amount of outside services to be included in the cost of service is $2,326,254. Ex. 92 (Workpaper – Outside Services to include in Cost of Service). This amount represents the total Company's five-year average of the two outside service expense accounts. Ex. 7 (True-Up Direct Testimony of Sheri Richard), p. 19.

ISSUE 44 - Common Property Removed from Plant and Accumulated Depreciation: What is the appropriate method and amount for removal of common property from plant in service and accumulated depreciation?

A portion of certain common plant assets on Empire's books are related to non-electric service and should be removed. Ex. 4 (Corrected Direct Testimony of Sheri Richard), p. 11. FERC Accounts 389-398 not only include electric only plant, but also include plant that serves other regulated and unregulated business. Ex. 5 (Rebuttal Testimony of Sheri Richard), p. 3. In order to calculate the appropriate amount of plant and accumulated depreciation that should be removed from the cost of service, the "mass rate" allocation factor should be applied to only the specific asset balances that are being shared with Empire's non-electric businesses ("common plant"). This includes certain buildings such as the Joplin Corporate Office, the Joplin Kodiak Operations office, and the Ozark Call Center. Next, a jurisdictional allocation factor should be applied to all remaining general plant to allocate to Empire's Missouri electric retail jurisdiction. Ex. 5, p. 3.

Staff erred by applying its allocation factor to the entire balances in FERC accounts 389 through 398, as the entire balances in those accounts are not all considered common plant. Ex. 5, p. 3. When the balances are updated to January 2020 and this method is applied, this results in a total company adjustment to reduce plant and accumulated depreciation by $4,882,321 and $2,839,974, respectively. Ex. 7 (True-Up Direct Testimony of Sheri Richard), p. 6; Ex. 93 (Common Property Adjustment Workpaper of Sheri Richard). These amounts should be used if the Stipulation terms are not approved as a complete resolution of all revenue requirement issues in this case.

ISSUE 45 - Retirement: (a) Should Empire be required to externally fund, through a Rabbi Trust, its SERP benefits obligation? (b) Should Empire be required to provide, to a designated EDRA contact, the following documents of The Empire District Electric Company in the years 2020-2026: (i) IRS filings (specifically Form 5500 for each plan), (ii) Actuarial

valuation reports, (iii) Financial disclosures, (iv) Annual funding notice to pension plan participants (v) Annual health care premium and coverage letter to retirees, (vi) FERC Form 1 and summary and full annual reports. (c) In addition, should the company be required to designate a contact person for EDRA to contact regarding these matters?

The Stipulation carefully balances all interests and allows for the Company to be able to continue providing safe and reliable service, while also allowing Empire's retail customers in Missouri to not experience a base rate increase until the effective date of rates resulting from the Company's next rate case. As such, the Stipulation terms should be approved as a complete resolution of this case. With regard to the retirement issues, the Stipulation requires Empire to provide, to a designated EDRA contact, the following Empire documents in the years 2020-2026: IRS filings (specifically Form 5500 for each plan), actuarial valuation reports, financial disclosures, annual funding notice to pension plan participants, annual health care premium and coverage letter to retirees, and FERC Form 1 and summary and full annual reports. In addition, the company will designate a contact for these matters.

With regard to EDESR's issues in this case, the Stipulation provides that the Company shall discuss with Staff and OPC, in or prior to July of 2020, the possibility of external funding (Rabbi Trust) of SERP benefits. If an agreement is reached between EDESR, the Company, Staff, and OPC in which: (1) EDESR, Staff, and OPC agree that, using reasonable assumptions, the annual costs and expenses of funds contributed by Empire using a Rabbi trust (including contributions to the trust) to provide benefits are essentially the same or less than the costs and expenses to customers of providing the alternate of SERP benefits from Empire's general funds and (2) none of these parties (EDESR, Staff, OPC) oppose the rate recovery of the Rabbi trust consistent with the Willis Towers Watson SERP funding analysis dated July 17, 2019 (but with currently approved weighted average cost of capital) in place of the SERP funded from general

funds and will support said rate recovery in future cases, Empire will fund SERP benefits via a Rabbi trust within 30 days of execution of the written agreement.

ISSUE 46 - Case No. EM-2016-0213 Commission-ordered conditions: (a) Has Empire complied with Condition A.4 the Commission imposed in Case No. EM-2016-0213? (i) If not, what relief should the Commission grant? (b) Has Empire complied with Condition A.5 the Commission imposed in Case No. EM-2016-0213? (i) If not, what relief should the Commission grant? (c) Has Empire complied with Condition A.6 the Commission imposed in Case No. EM-2016-0213? (i) If not, what relief should the Commission grant? (d) Has Empire complied with Condition G.3 the Commission imposed in Case No. EM-2016-0213? (i) If not, what relief should the Commission grant?

These issues are not specifically addressed in the Stipulation, but, as noted, approval of the Stipulation terms is the proper resolution of this entire case. Additionally, there is no credible evidence before the Commission that would support a finding that the Company has violated the referenced merger conditions or a conclusion that any "relief" should be granted accordingly.

Conditions A.4, A.5, and A.6. Pursuant to Ex. 4 (Richard Corrected Direct), p. 10, Ex. 36 (Hevert Direct), pp. 11, 12, and 13-67, and Ex. 44 (Cochrane Surrebuttal), the Company has fully complied with the merger conditions related to cost of capital, capital structure, and affiliate financings, as ordered in EM-2016-0213, and, as such, no action on the part of the Commission is required and none would be appropriate.

In his rebuttal testimony, OPC witness Murray observes that no Empire witness compared any of Empire's previous capital structure requests to its current request, and he states that he expected "a more detailed comparison of LUCo's capital structure to that of Empire." Ex. 38 (Hevert Surrebuttal), pp. 47-48. As noted by Mr. Hevert, the Company was not obligated to undertake this task. The plain reading of the merger condition is straightforward: if Empire's "book capital structure" differs from LUCo's, the Company must demonstrate its capital structure is "the most economical." The difference in book capital structures between the two is minimal; 53.00 percent common equity at LUCo relative to 52.90 percent equity at Empire. "I do

not see a need to reconcile that modest difference, as Mr. Murray appears to have expected." *Id.* at 49. Mr. Hevert goes on to explain, "(a)ssuming the ten-basis point difference between the two rises to the threshold of a difference for the purpose of Merger Condition 5, the central issue is whether Liberty-Empire's capital structure is the most economical. As discussed in my Rebuttal Testimony, and as I explain below (in response to Mr. Chari's rebuttal testimony), determining whether a given capital structure is "economical" is a complicated assessment." *Id.* at 49-50.

With regard to the question of what constitutes an "economical" capital structure, Mr. Hevert explains that this is properly viewed in the context of capital structure optimization. An "economical" capital structure is one that looks to optimize the proportions of equity and debt, based on multiple factors. "Because utilities have similar financing objectives and face common constraints, the practice of capital structure optimization is best viewed in the capital structures in place among utility operating companies. Doing so fully supports the Company's proposed capital structure as the "most economical," to the extent such a showing is required." *Id.* at 54-55.

With regard to the financing merger condition, OPC takes issue with the refinancing of Empire's $90 million first mortgage bonds that matured on June 1, 2018. Contrary to OPC's allegations, this refinancing was conducted in compliance with the Commission's affiliate transactions rule, and, as such, was in compliance with the financing merger condition. As explained by Company witness Cochrane, the affiliate transactions rule does not apply to a specific point in time for refinancing maturing long-term bonds. Ex. 44 (Cochrane Surrebuttal), p. 6. The rule does, however, apply specifically to the goods or services required by the Company, and supplied by an affiliate. In this situation, the good or service required by the Company was long term debt. *Id.*

With this refinancing, the floating short-term rates do not represent the promissory note's fully distributed cost ("FDC"), as LUCo has not permanently financed the 4.53% 15-year long-term promissory note, issued by Empire, with floating rate short-term debt for the next 15 years. *Id.* at 7. The FDC for this transaction, which is to replace $90 million of maturing long-term debt with new long-term debt, should be the fair market terms obtained through LUCo's most recent $750 million competitively bid issuance of long-term notes through a private placement on March 24, 2017, which was used as the basis for pricing the promissory note. The FDC should be based on the actual goods or service required by the Company, which is long-term debt. "I believe this is the optimal pricing mechanism for this transaction." *Id.* at 8.

Condition G.3. In objecting and responding to data requests in this case, the Company has fully complied with the merger stipulation and the Commission's rules, contrary to OPC's allegations in this regard. The merger stipulation specifically contemplated objections for lack of relevance. Ex. 6 (Richard Surrebuttal), pp. 8-9. Also, this issue is not properly before the Commission, as OPC did not challenge the Company's objections pursuant to the Commission's rules and the orders in this case. As such, no action on the part of the Commission is required on this issue and none would be appropriate.

Conclusion

Implementation of the Company's requested rate increase, based on an annual revenue requirement deficiency of $21,916,462, as set forth in and supported by the Company's direct, rebuttal, surrebuttal, true-up, and supplemental testimony, would be lawful and reasonable. The Company, however, being mindful of the financial challenges facing Empire's customers and the Company's obligations, urges the Commission to approve the terms of the Stipulation, in total and without modification, as a complete resolution of this rate case. This will allow the Company

to continue providing safe and reliable service and will allow Empire's retail customers in Missouri to not experience a base rate increase until the effective date of rates resulting from the Company's next rate case.

WHEREFORE, The Empire District Electric Company submits its Initial Brief for the Commission's consideration.

Respectfully submitted,

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

Certificate of Service

I hereby certify that the above document was filed in EFIS on this 6th day of May, 2020, with notification of the same being sent to all counsel of record.

/s/ Diana C. Carter