

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 7<sup>th</sup> day of September, 2016.

In the Matter of The Empire District Electric Company, Liberty Utilities (Central) Co. and Liberty Sub Corp. Concerning an Agreement and Plan of Merger and Certain Related Transactions )  
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)

**File No. EM-2016-0213**

**ORDER APPROVING STIPULATIONS AND AGREEMENTS AND  
AUTHORIZING MERGER TRANSACTION**

Issue Date: September 7, 2016

Effective Date: October 7, 2016

On March 16, 2016, The Empire District Electric Company (“Empire”), Liberty Utilities (Central) Co. (“LU Central”) and Liberty Sub Corp. (collectively, “Applicants”) filed a joint application asking the Commission to approve a transaction under an Agreement and Plan of Merger in which Liberty Sub Corp. will be merged with and into Empire with Empire as the surviving corporation. As a consequence of the merger, LU Central would acquire all of the common stock of Empire.

**Stipulations and Agreements**

The Applicants filed separate non-unanimous stipulations and agreements with each of the following parties:

- The City of Joplin, Empire District Retired Members & Spouses Association LLC, Laborer’s International Union of North America, and International Brotherhood of Electrical Workers Locals 1464 and 1474 on July 19, 2016 (collectively, “Intervenor Agreements”);

- The Office of the Public Counsel, filed on August 23, 2016, which also includes as Appendix A the stipulation and agreement with Staff filed on August 4, 2016 (collectively, “OPC Agreement”);
- The Empire District Electric SERP Retirees, filed on August 23, 2016 (“EDESER Agreement”);
- Missouri Department of Economic Development-Division of Energy and Renew Missouri, filed on August 24, 2016 (“DE/Renew Missouri Agreement”), which amends a previously filed stipulation and agreement by those parties; and
- International Brotherhood of Electrical Workers Locals 1464 and 1474, filed on August 26, 2016 (“IBEW Agreement”), which amends the stipulation and agreement between those parties previously filed on July 19, 2016.

The Commission approved the Intervenor Agreements on August 10, 2016. The Commission conducted an on-the-record proceeding regarding the OPC Agreement, EDESER Agreement, DE/Renew Missouri Agreement and IBEW Agreement (collectively, “Pending Agreements”) on August 30, 2016. At that proceeding, the Commission questioned the parties about the terms of the Pending Agreements and gathered additional information about the merger transaction and the conditions set forth in the Pending Agreements. The Pending Agreements constitute a settlement of the respective parties’ issues relevant to the application filed by the Applicants in this matter. The Pending Agreements all describe conditions to the merger transaction proposed in the Applicants’ application, which is subject to Commission approval.

The Pending Agreements are non-unanimous in that they were not signed by all parties. However, Commission Rule 4 CSR 240-2.115(2) provides that other parties have

seven days in which to object to a non-unanimous stipulation and agreement. If no party files a timely objection to a stipulation and agreement, the Commission may treat it as a unanimous stipulation and agreement. More than seven days have passed since the Pending Agreements were filed, and no party has objected. Therefore, the Commission will treat the Pending Agreements as unanimous stipulations and agreements. After reviewing the Pending Agreements, the Commission independently finds and concludes that the Pending Agreements are a reasonable resolution of the issues addressed by the Pending Agreements and that such Pending Agreements should be approved. The Commission will also grant the motion to modify the Commission's order issued on August 10, 2016, which approved the stipulation and agreement between the Applicants and IBEW Locals 1464 and 1474.

### **Merger Transaction**

Empire is an "electrical corporation", a "gas corporation", a "water corporation", and a "public utility," as defined in Sections 386.020(15), (18), (59), and (43), respectively, and is subject to the jurisdiction, supervision, and control of the Commission under Chapters 386 and 393 of the Missouri Revised Statutes. Empire must by law obtain the authorization of the Commission before consummating the transaction in accordance with the Agreement and Plan of Merger.<sup>1</sup> In evaluating the proposed merger transaction, the Commission must determine if the merger is "not detrimental to the public".<sup>2</sup> The Commission has stated in prior cases that it "may not withhold its approval of the proposed transaction unless the Applicants fail in their burden to demonstrate that the transaction is

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<sup>1</sup> Section 393.190.1, RSMo 2000.

<sup>2</sup> *State ex rel. City of St. Louis v. Public Service Commission of Missouri*, 335 Mo. 448, 460, 73 S.W.2d 393, 400 (1934).

not detrimental to the public interest, and detriment is determined by performing a balancing test where attendant benefits are weighed against direct or indirect effects of the transaction that would diminish the provision of safe or adequate of service or that would tend to make rates less just or less reasonable.”<sup>3</sup>

After reviewing the Applicants’ joint application, the testimony filed in this case, and the reasonable conditions imposed on the merger transaction by the Intervenor Agreements and Pending Agreements, the Commission independently finds and concludes that the merger transaction contemplated by the Agreement and Plan of Merger is not detrimental to the public and should be authorized.

**THE COMMISSION ORDERS THAT:**

1. The *Stipulation and Agreement* between the Applicants and the Office of the Public Counsel filed on August 23, 2016, including the stipulation and agreement between the Applicants and Staff filed on August 4, 2016 and incorporated therein as Appendix A, is approved as a resolution of the issues addressed in that stipulation and agreement. The signatory parties are ordered to comply with the terms of the stipulation and agreement. A copy of the stipulation and agreement is attached to this order as Attachment A and incorporated herein.

2. The *Stipulation and Agreement as to EDESR* filed on August 23, 2016, is approved as a resolution of the issues addressed in that stipulation and agreement. The

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<sup>3</sup> *In the Matter of the Joint Application of Great Plains Energy Incorporated, Kansas City Power & Light Company, and Aquila, Inc., for Approval of the Merger of Aquila, Inc., with a Subsidiary of Great Plains Energy Incorporated and for Other Related Relief*, Report and Order, Case No. EM-2007-0374, p. 229-232, citing *In the Matter of the Application of Union Electric Company, d/b/a AmerenUE, for an Order Authorizing the Sale, Transfer and Assignment of Certain Assets, Real Estate, Leased Property, Easements and Contractual Agreements to Central Illinois Public Service Company, d/b/a AmerenCIPS, and, in Connection Therewith, Certain Other Related Transactions*, Case No. EO-2004-0108.

signatory parties are ordered to comply with the terms of the stipulation and agreement. A copy of the stipulation and agreement is attached to this order as Attachment B and incorporated herein.

3. The *Amended Stipulation and Agreement as to Division of Energy and Renew Missouri* filed on August 24, 2016, is approved as a resolution of the issues addressed in that stipulation and agreement. The signatory parties are ordered to comply with the terms of the stipulation and agreement. A copy of the stipulation and agreement is attached to this order as Attachment C and incorporated herein.

4. The *Amended Stipulation and Agreement as to IBEW 1464 and IBEW 1474* filed on August 26, 2016, is approved as a resolution of the issues addressed in that stipulation and agreement. The signatory parties are ordered to comply with the terms of the stipulation and agreement. A copy of the stipulation and agreement is attached to this order as Attachment D and incorporated herein.

5. The Applicants and International Brotherhood of Electrical Workers Locals 1464 and 1474's *Motion to Modify Order Approving Stipulations and Agreements* is granted. The Commission's *Order Approving Stipulations and Agreements* issued on August 10, 2016 is modified to replace the *Stipulation and Agreement as to IBEW 1464 and IBEW 1474* filed July 19, 2016 with the *Amended Stipulation and Agreement as to IBEW 1464 and IBEW 1474* approved in Ordered Paragraph 4 above as Attachment D.

6. The Applicants are authorized to consummate the transaction described in their joint application in accordance with the terms and conditions of the Agreement and Plan of Merger and all other transaction-related instruments, and to take any and all other

actions as may be reasonably necessary and incidental to the performance of the transaction.

7. LU Central and Liberty Sub Corp. are authorized to acquire all of the stock of Empire pursuant to the terms of the Agreement and Plan of Merger.

8. Empire is authorized to merge with Liberty Sub Corp. with Empire being the surviving corporation, as more particularly described in the Agreement and Plan of Merger.

9. This order shall become effective on October 7, 2016.



**BY THE COMMISSION**

A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Hall, Chm., Stoll, Kenney,  
Rupp, and Coleman, CC., concur.

Bushmann, Senior Regulatory Law Judge

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

In the Matter of The Empire District Electric Company, )  
Liberty Utilities (Central) Co. and Liberty Sub Corp. ) Case No. EM-2016-0213  
Concerning an Agreement and Plan of Merger and )  
Certain Related Transactions. )

**STIPULATION AND AGREEMENT**

**COME NOW** The Empire District Electric Company (“Empire”), Liberty Utilities (Central) Co. (“LU Central”), and Liberty Sub Corp. (sometimes collectively hereinafter “Joint Applicants”), and Algonquin Power & Utilities Corp., and the Office of the Public Counsel (“OPC”), by and through their undersigned counsel and, pursuant to Missouri Public Service Commission (“Commission”) Rule 4 CSR 240-2.115, request that the Commission approve this agreement as a comprehensive settlement of all issues relevant to the Joint Application filed by Empire, LU Central and Liberty Sub Corp. In support thereof, the signatories hereto agree as follows:

**BACKGROUND**

On March 16, 2016, Joint Applicants filed a Joint Application with the Commission under §393.190 RSMo., 2000, requesting an order from the Commission authorizing them to perform in accordance with the terms of an Agreement and Plan of Merger dated February 9, 2016 (the “Agreement”) pursuant to which LU Central and Liberty Sub Corp. will acquire all of the stock of Empire (the “Transaction”).

The Signatories have met to discuss resolution of this matter on a number of occasions. As a result, the Signatories have now reached a Stipulation and Agreement (“Stipulation”) set forth below which they recommend to the Commission, subject to the conditions and representations contained in the Stipulation.

The Signatories hereto recommend that the Commission approve the proposed Transaction subject to the following conditions (and subject to any other unopposed and approved stipulations in this case):

**STAFF STIPULATION AND AGREEMENT**

1. The Stipulation and Agreement between the Joint Applicants and the Staff of the Commission filed on August 4, 2016, and attached hereto as Appendix A, is hereby incorporated by reference as if more fully set forth herein.

**RATEPAYER PROTECTIONS**

2. In the first rate case after Empire implements a new customer information system and/or billing system, Empire will support the costs of the new system by submitting a “business case,” with its application. The business case will, among other things, (1) demonstrate Empire’s need for a new system and the impact of the merger on this need, (2) demonstrate Empire’s analysis resulting in the selection of the new system implemented, (3) describe and quantify the costs associated with the selected system, and (4) describe the impact on rates of the cost of the new and the retiring systems, including the treatment of any remaining undepreciated balances and changes to the useful lives of the systems.

3. The Joint Applicants will ensure that the merger will be rate-neutral for Empire’s customers. In ensuring that the transaction is rate-neutral, the Joint Applicants commit that there will be no establishment of regulatory assets as part of the merger, unless approved by the Public Service Commission.



**CORPORATE GOVERNANCE AND RING-FENCING**

4. Empire shall not assume liability for the debts issued by Algonquin, Liberty Utilities, or any of their subsidiaries or affiliates.
5. Empire shall maintain corporate officers who have a fiduciary duty to Empire.
6. Empire shall maintain separate books and records, and make them available for review by Staff and OPC.
7. Should it be deemed necessary for Staff or OPC employees to travel to locations outside of the State of Missouri to examine any records deemed relevant to the subject matter at hand Empire shall bear all reasonable expense incurred by the employees, provided, however, that before any such expense shall be incurred by Staff or OPC, Empire shall be given reasonable notice to produce the records requested for inspection and examination at the office of the Commission at Jefferson City, Missouri, the offices of its local counsel, Empire's offices in Joplin, Missouri, or at such other point in Missouri, as may be mutually agreed, in which case Empire shall make available at that place, at that time, a person(s) who is acquainted with the records.
8. Empire shall maintain its own board of directors with a majority of non-management, independent directors.
9. Empire shall not pay a dividend if its equity to total capitalization ratio, based on a 12-month rolling average, falls below 40%, or if payment of dividends would cause Empire's equity to total capitalization ratio to fall below that threshold.

**EMPLOYMENT IN THE STATE OF MISSOURI**

10. In its first general rate case after the close of the Transaction, Empire shall provide testimony discussing the employment metrics related to the number of full time

employees and the average turnover rate along with any material changes to those metrics since the close of the Transaction.

### **CHARITABLE CONTRIBUTIONS AND COMMUNITY SUPPORT**

11. During the five-year period following the closing of the Transaction, Empire shall maintain, at a minimum, on a total company basis, an annual level of charitable contributions and traditional local community support of approximately \*\* \_\_\_\_\_  
\_\_\_\_\_\*\*.

### **AFFILIATE TRANSACTION AND COST ALLOCATION MATTERS**

12. Shared services costs shall be directly charged to the extent practicable. In its next base rate proceeding in Missouri, Empire shall file testimony addressing shared services charges and the bases for such charges. Empire's testimony shall also explain any changes in allocation procedures since its last base rate proceeding.

13. Empire shall provide copies to Staff and OPC of the portions of any external audit reports performed for Algonquin and Liberty Utilities Co.'s shared services pertaining directly or indirectly to determinations of direct billings and cost allocations to Empire. Such material shall be provided no later than thirty (30) days after the final report is completed.

14. Within Empire's next general electric rate case, Empire will provide upon request a list of proceedings, if any, where Liberty Utilities Co.'s cost allocation practices have been audited in any other jurisdictions. Empire shall further make any such audit reports available to the Commission, its Staff, and the OPC upon request.

15. Applicants will notify the Commission Staff and the OPC within thirty days anytime there 1.) is an addition or deletion of an affiliated entity that provides services to, or receives services from, Empire; 2.) an addition or deletion of an unregulated service provided by

Empire ; or 3.) an addition or deletion of a regulated service by Empire for which a tariff has not been approved.

16. Either the Staff or the OPC can request an independent attestation engagement of the CAM related to non-regulated affiliates and activities. If approved by the Commission, the costs of any independent attestation engagement related to the CAM shall be shared by the regulated and non-regulated operations consistent with the allocation of similar costs.

### **TAX INDEMNITY**

17. Empire's parent company will indemnify Empire for any federal or local income tax liability in excess of Empire's standalone liability for any period in which Empire is included in a consolidated income tax filing.

### **RATE CASE MORATORIUM**

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

### **CORPORATE SOCIAL RESPONSIBILITY**

19. No later than thirty days after the closing of the Transaction, Empire will fund an account in the amount of \$1,500,000 to be available to the following Community Action

Agencies:

Ozarks Area Community Action Corporation (OACAC)  
Economic Security Corporation of the Southwest Area (ESC)  
West Central Missouri Community Action Agency (WCMCAA)

It is expressly acknowledged that said funds are not operating costs of the utility but will be appropriately recorded as a transaction cost, and not recovered in rates. The funds will be prioritized towards the creation of an additional position(s) within the Community Action

Agency structure to better enable the utilization of weatherization dollars or such other appropriate use as deemed effective by the agencies.

\$500,000 will be allocated to each agency with the express purpose of the creation of an additional position(s) to enable further low-income weatherization deployment at a recommended spend level of \$50,000 per year over a ten-year period. Any excess funds can be allocated in the following categories at the agencies' discretion:

- Weatherization training and certification of agency personnel
- Discretionary funds for health and hazard for on-site units (that may or may not otherwise be passed over)
- Outreach efforts
- Utility weatherization account
- Hardship fund for on-bill payments

Each agency is required to provide documentation to the Company to verify how expenditures were occurred.

Community action agencies are required to file annual report with the Company on how funds were expended. Empire will file a condensed report of each of the three agencies individual annual reports with the Commission Staff, OPC and the Division of Energy (DE) as to how annual funds were expended.

Any additional information is left to the Agencies discretion (e.g., estimated additional homes weatherized as a result of the expenditures).

20. Empire shall investigate the feasibility of a bill payment extension for residential and small commercial accounts to be prolonged from twenty-one days to thirty-one days before the 0.5% for residential and 5% for commercial penalty begins. The results of the study shall be presented to OPC and Staff within 6 months following the Transaction. The results of the study

shall be used to inform recommendations on payment term extensions in the context of Empire's next rate case.

21. For existing (as of the date of the approved stipulation) bad debt and arrearage related to customers who received benefits through a low income program will be matched by the Company (below the line) dollar (customer) for dollar (Company) assuming that the customer account remains current for a period of at least 12 months after reconnection. This program shall be in place for a period of 18 months from the Transaction.

- The Company will record any and all action taken on the customer-side to pay the amount towards the reduction of said bad debt/arrearages and file a comprehensive report of actions to date in future rate cases.

22. Empire will commit to having a link on their front homepage signaling clearly for ratepayers with a "Trouble Paying Your Bill" signage. Said link will contain information on the Company's delinquency policy, including fees, timelines, cut-off practices, Community Action Agency other 3<sup>rd</sup> party contacts (e.g., Salvation Army, United Way, etc...), LIHEAP, LIWAP, and additional Company specific programs (e.g., EASE, etc...). Said link will also contain contact information for prospective at-risk ratepayers and information regarding paragraph 21 above.

23. Empire commits to an annual meeting with each of the local Community Action Agencies in-person for the next five years in Joplin, Missouri at Empire's headquarters with extended invitations to (at least) the Commission Staff, OPC, and the Division of Energy to discuss progress to date Strengths, Weaknesses, Opportunities, and Threats to Empire's low-income population.

**DIVISION OF ENERGY OVERSIGHT OF WEATHERIZATION FUNDS**

24. Empire and The Empire District Gas Company agree to provide DE an annual payment totaling up to 5% of the agreed to weatherization funds for a pilot program concerning the administration and monitoring of the funds (not to exceed an annual cap of \$12,500) to the extent DE is utilized for the management of those funds. Said funds, will be provided for a period of five years and be considered below the line and not recovered in future rates. Nothing in this paragraph will affect Staff's and OPC's ability to oppose funding for DE in future cases whether for Empire or any other utility. DE shall work with the OPC, Staff, and Empire to develop reporting standards for its administration and monitoring activities to be presented at the annual meetings with each local Community Action Agency.

**GENERAL PROVISIONS**

A. This Stipulation has resulted from negotiations among the Signatories and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation in total, then this Stipulation shall be void and no Signatory shall be bound by any of the agreements or provisions hereof. The stipulations herein are specific to the resolution of this proceeding, and all stipulations are made without prejudice to the rights of the Signatories to take other positions in other proceedings except as otherwise provided herein. The Signatories agree that any and all discussions related hereto shall be privileged and shall not be subject to discovery, admissible in evidence, or in any way used, described or discussed.

B. This Stipulation is being entered into for the purpose of disposing of all issues in this case. The Signatories represent that the terms of this Stipulation constitute a fair and reasonable resolution of the issues addressed herein, in a manner which is not detrimental to the public interest. Except as otherwise addressed herein, none of the Signatories to this Stipulation shall be deemed to have approved, accepted, agreed, consented or acquiesced to any accounting

principle, ratemaking principle or cost of service determination underlying, or supposed to underlie any of the issues provided for herein.

C. The Signatories further understand and agree that the provisions of this Stipulation relate only to the specific matters referred to in the Stipulation, and no Signatory or person waives any claim or right which it otherwise may have with respect to any matter not expressly provided for in this Stipulation. The Signatories further reserve the right to withdraw their support for the settlement in the event that the Commission modifies the Stipulation in a manner which is adverse to the Signatory, and further, the Signatories reserve the right to contest any such Commission order modifying the settlement in a manner which is adverse to the Signatory contesting such Commission order. The Signatories agree that the details of this Stipulation have no precedential value in any future proceeding not related to enforcement of this agreement.

D. The non-utility Signatory Parties enter into this Stipulation in reliance upon information provided to them by the Joint Applicants and this Stipulation is explicitly predicated upon the truth of representations made by the Joint Applicants.

E. In the event the Commission accepts the specific terms of this Stipulation without modification, the Signatories waive, with respect to the issues resolved herein: their respective rights pursuant to Section 536.070(2), RSMo 2000 to call, examine and cross-examine witnesses; their respective rights to present oral argument or written briefs pursuant to Section 536.080.1, RSMo 2000; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2, RSMo 2000; their respective rights to seek rehearing pursuant to Section 386.500, RSMo 2000; and their respective rights to judicial review pursuant to Section 386.510, RSMo 2000. Furthermore, in the event the Commission accepts the specific terms of this

Stipulation without modification, the Signatories agree that the pre-filed testimony of all witnesses who have pre-filed testimony in this case shall be included in the record of this proceeding without the necessity of such witnesses taking the stand.

F. Staff shall have the right to provide, at any agenda meeting at which this Stipulation is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that Staff shall, to the extent reasonably practicable, promptly provide other Signatories with advance notice of when Staff shall respond to the Commission's request for such explanation once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or previously designated confidential by any Signatory.

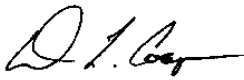
G. Except as otherwise addressed in this Stipulation, Commission approval of the acquisition by LU Central and Liberty Sub Corp. of the stock of Empire, and for the Joint Applicants to execute and perform in accordance with the terms of the Agreement, does not in any way, limit, form a basis for determination, or constitute a defense against any Signatory proposing, or the Commission ordering, the disallowance and/or imputation of account balances, expenses, revenues and/or other ratemaking findings, regarding Empire's operations in a future rate proceeding.

H. To assist the Commission in its review of this Stipulation, the Signatories also request that the Commission advise them of any additional information that the Commission may desire from the Signatories relating to the matters addressed in this Stipulation, including any procedures for furnishing such information to the Commission.



**WHEREFORE**, the Signatories hereto recommend that the acquisition by LU Central and Liberty Sub Corp. of the stock of Empire as contemplated by the Agreement and Plan of Merger is reasonable and not detrimental to the public interest and respectfully request that the Commission approve this Stipulation and Agreement subject to the conditions contained herein.

Respectfully submitted,



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 //S// Cydney Mayfield by dlc

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**ATTORNEYS FOR JOINT APPLICANTS  
 AND ALGONQUIN POWER & UTILITIES  
 CORP.**

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was sent via U.S. Mail, postage prepaid, hand-delivery, electronic filing system, or electronically, this 23<sup>rd</sup> day of August, 2016, to the following:

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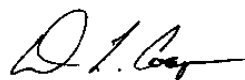
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**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of The Empire District Electric Company,     )  
Liberty Utilities (Central) Co. and Liberty Sub Corp.     )     Case No. EM-2016-0213  
Concerning an Agreement and Plan of Merger and     )  
Certain Related Transactions.     )

**STIPULATION AND AGREEMENT**

**COME NOW** The Empire District Electric Company (“Empire”), Liberty Utilities (Central) Co. (“LU Central”), and Liberty Sub Corp. (sometimes collectively hereinafter “Joint Applicants”), and Algonquin Power & Utilities Corp., and the Staff of the Missouri Public Service Commission (“Staff”), by and through their undersigned counsel and, pursuant to Missouri Public Service Commission (“Commission”) rule 4 CSR 240-2.115, request that the Commission approve this agreement as a comprehensive settlement of all issues relevant to the Joint Application filed by Empire, LU Central and Liberty Sub Corp. In support thereof, the signatories hereto agree as follows:

**BACKGROUND**

On March 16, 2016, Joint Applicants filed a Joint Application with the Commission under §393.190 RSMo., 2000, requesting an order from the Commission authorizing them to perform in accordance with the terms of an Agreement and Plan of Merger dated February 9, 2016 (the “Agreement”) pursuant to which LU Central and Liberty Sub Corp. will acquire all of the stock of Empire (the “Transaction”).

The Signatories have met to discuss resolution of this matter on a number of occasions. As a result, the Signatories have now reached a Stipulation and Agreement (“Stipulation”) set forth below which they recommend to the Commission, subject to the conditions and representations contained in the Stipulation.

The Signatories hereto recommend that the Commission approve the proposed Transaction subject to the following conditions (and subject to the unopposed stipulations filed on July 19, 2016, and any unopposed stipulations that may be filed in this case in the future):

**A. FINANCING CONDITIONS**

The following Financing Conditions shall remain in effect until such time as the Commission may order otherwise in a general rate case or other proceeding brought for that purpose:

1. In the event The Empire District Electric Company (“Empire”), and/or the affiliate on which it relies on for its debt financing (“Financing Affiliate”), should have its Standard & Poor’s (“S&P”) Corporate Credit Rating downgraded to below BBB- , Empire commits to file:

a. Notice with the Commission within five (5) business days of such downgrade;

b. A pleading with the Commission within 60 days which shall include the following:

i. A plan identifying all reasonable steps, taking into account the costs, benefits and expected outcomes of such actions, that will be taken to restore and maintain a S&P BBB- or above credit rating for Empire and/or the Financing Affiliate. If Empire’s plan does not involve taking steps to restore and maintain an S&P BBB- or above credit rating for either or both of these entities then Empire shall concisely state why the cost of such steps is not reasonable or necessary;

ii. Additionally, Empire shall specifically address the impact, or lack thereof, it believes the S&P Corporate Credit Rating of below BBB- has had and will have on its capital costs;

iii. Documentation, including but not limited to, a cost of capital study showing how Empire will not pass along higher capital costs to its Missouri customers, directly or indirectly, due to the downgrade(s);

iv. File with the Commission, every 45 days thereafter until Empire, and/or the Financing Affiliate, have regained an S&P Corporate Credit Rating of BBB- or above, a status report with respect to the implementation of steps to restore the Corporate Credit Ratings to BBB- or above and a study that estimates the increased cost of capital, if any, Empire has incurred due to S&P Corporate Credit Ratings of below BBB-;

v. If the Commission determines that Empire's, and/or the Financing Affiliate's, Corporate Credit Rating decline has caused its service to decline, Empire shall be required to file a report that demonstrates to the Commission that it can adequately safeguard capital produced and secured by its public utility assets. If Empire cannot sufficiently demonstrate this ability, then Empire shall execute reasonable steps to ensure Empire's S&P Corporate Credit Rating will be based on its own stand-alone credit quality. These steps may include consideration of restoring Empire's corporate financing functions and restricting the distribution of cash flows to its affiliates in the event that Empire has transferred these activities to an affiliate.

2. In the event Empire's affiliation with Algonquin Power & Utilities Corp. and its companies should cause Empire's and/or the Financing Affiliate's S&P Corporate Credit Rating to be downgraded to below BBB-, Empire, or the Financing Affiliate, shall pursue additional legal and structural separation, if necessary, from the affiliate(s) causing the downgrade, to

ensure Empire continues to have access to capital at the least cost. Empire shall not pay a dividend to its upstream parent companies until there is sufficient evidence that Empire's S&P Corporate Credit Rating has been restored to the rating Empire had before the event.

3. If Empire's S&P Corporate Credit Rating declines, and/or the credit rating of the Financing Affiliate declines, Empire shall file with the Commission a comprehensive risk management plan that assures Empire's access to and cost of capital will not be further impaired. The plan shall include a non-consolidation opinion if required by S&P.

4. Empire shall not seek an increase to the cost of capital as a result of this Transaction or Empire's ongoing affiliation with Algonquin Power & Utilities Corp. and its affiliates other than Empire after the Transaction. Any net increase in the cost of capital Empire seeks shall be supported by documentation that: (a) the increases are a result of factors not associated with the Transaction or the post Transaction operations of Algonquin Power & Utilities Corp. or its non-Empire affiliates; (b) the increases are not a result of changes in business, market, economic or other conditions caused by the Transaction or the post Transaction operations of Algonquin Power & Utilities Corp. or its non-Empire affiliates; and (c) the increases are not a result of changes in the risk profile of Empire caused by the Transaction or the post Transaction operations of Algonquin Power & Utilities Corp. or its non-Empire affiliates. The provisions of this section are intended to recognize the Commission's authority to consider, in appropriate proceedings, whether this Transaction or the post Transaction operations of Algonquin Power & Utilities Corp. or its non-Empire affiliates has resulted in capital cost increases for Empire. Nothing in this agreement shall restrict the Commission from disallowing such capital cost increases from recovery in Empire's rates.

5. If Empire's per books capital structure is different from that of the entity or

entities in which Empire relies for its financing needs, Empire shall be required to provide evidence in subsequent rate cases as to why Empire's per book capital structure is the most economical for purposes of determining a fair and reasonable allowed rate of return for purposes of determining Empire's revenue requirement.

6. The Joint Applicants will not obtain Empire financing services from an affiliate, unless such services comply with Missouri's Affiliate Transaction Rules.

7. To the extent the goodwill arising from the Transaction which is assigned to LU Central becomes impaired and such impairment negatively effects Empire's cost of capital, all net costs associated with the decline in Empire's credit quality specifically attributed to the goodwill impairment, considering all other capital cost effects of the Transaction and the impairment, shall be excluded from the determination of its rates.

8. For the first five years after closing of the Transaction, LU Central shall provide Staff and OPC, its annual goodwill impairment analysis in a format that includes spreadsheets in their original format with formulas and links to other spreadsheets intact and any printed materials within 30 days after it is performed. Thereafter, this analysis will be made available to Staff and OPC upon request.

9. Staff will retain a copy of Liberty Utilities' financial/valuation model. Staff will continue to protect the confidentiality of the information contained within that model.

**B. DEPRECIATION CONDITIONS**

1. Electric Assets

a. For purposes of accruing depreciation expense, Empire shall use the ordered depreciation rates for Empire that are awaiting approval by the Commission in Case No. ER-2016-0023, and those depreciation rates attached hereto that were attached

to the Stipulation and Agreement in that case as Schedule JAR(DEP)-r2. Depreciation rates resulting from Case No. ER-2016-0023 are to remain in effect until they are changed in a subsequent rate proceeding.

b. Empire shall continue to book all plant and depreciation reserve records in compliance with the format set forth in Title 18: Conservation of Power and Water Resources, Part 101—Uniform System Of Accounts Prescribed For Public Utilities and Licensees Subject To The Provisions Of The Federal Power Act (FERC USOA).

c. Empire will continue to prepare and maintain its books in accordance with the FERC Uniform System of Accounts (USOA).

d. Empire shall submit the following information in accordance with 4 CSR 240-3.175 - Submission Requirements for Electric Utility Depreciation Studies.

i. FERC USOA requires the following information to be recorded as part of a Continuing Plant Inventory Record (CPR).

ii. FERC USOA CPR Rule 8. Continuing plant inventory record means company plant records for retirement units and mass property that provide, as either a single record, or in separate records readily obtainable by references made in a single record, the following information:

1. For each retirement unit:

a. The name or description of the unit, or both;

b. The location of the unit;

c. The date the unit was placed in service;

d. The cost of the unit as set forth in Plant Instructions 2

and 3 of this part; and



e. The plant control account to which the cost of the units is charged; and

2. For each category of mass property:

a. A General description of the property and quantity;

b. The quantity placed in service by vintage year;

c. The average cost as set forth in Plant Instructions 2 and 3 of this part; and

d. The plant control account to which the costs are charged.

2. Gas Assets

a. For purposes of accruing depreciation expense, Empire shall ensure that The Empire District Gas Company (“EDG”) uses the currently ordered depreciation rates for EDG approved by the Commission in File No. GR-2009-0434, and attached as Schedule JAR(DEP)-r3 until changed in a subsequent rate proceeding.

b. Empire shall ensure that EDG continues to book all plant and depreciation reserve records in compliance with the format set forth in Title 18: Conservation of Power and Water Resources, Part 201—Uniform System Of Accounts Prescribed For Natural Gas Companies Subject To The Provisions Of The Natural Gas Act (FERC USOA).

c. Empire shall ensure that EDG prepares and maintains its books in accordance with the FERC Uniform System of Accounts (USOA).

d. Empire shall ensure that EDG submits the following information in accordance with 4 CSR 240-3.275 Submission Requirements for Gas Utility Depreciation Studies.

i. FERC USOA requires the following information shall be recorded as part of a Continuing Plant Inventory Record (CPR).

ii. FERC USOA CPR Rule 8. Continuing plant inventory record means company plant records for retirement units and mass property that provide, as either a single record, or in separate records readily obtainable by references made in a single record, the following information:

1. For each retirement unit:

- a. The name or description of the unit, or both;
- b. The location of the unit
- c. The date the unit was placed in service;
- d. The cost of the unit as set forth in Plant Instructions

2 and 3 of this part; and

e. The plant control account to which the cost of the units is charged; and

2. For each category of mass property:

- a. A general description of the property and quantity;
- b. The quantity placed in service by vintage year;
- c. The average cost as set forth in Plant Instructions 2

and 3 of this part; and

d. The plant control account to which the costs are charged.

3. Water Assets: Empire shall continue to utilize the depreciation rates ordered in Case No. WR-2012-0300, attached hereto as Schedule JAR(DEP)-r4, and those depreciation

rates shall remain in effect until they are changed in a subsequent rate proceeding.

**C. DEFERRED TAXES CONDITIONS**

1. Empire will record on its books all deferred taxes related to income tax deductions or credits created by Empire's operations.

**D. RATEMAKING/ACCOUNTING CONDITIONS**

1. Goodwill associated with the premium over book value of the assets paid for the shares of Empire stock (referred to for purposes of this stipulation as "Acquisition Premium") will be maintained on the books of LU Central. The amount of any acquisition premium paid for Empire shall not be recovered in retail rates. Nothing herein shall preclude any party to this Agreement from taking a position in any future ratemaking proceedings involving Empire regarding the ratemaking measures and adjustments necessary to ensure no impact from the acquisition premium on rates. Empire will not seek direct or indirect recovery or recognition of any acquisition premium through any purported acquisition savings "sharing" adjustment (or similar adjustment) in future rate cases.

2. Transaction costs include, but are not limited to, those costs relating to obtaining regulatory approvals, development of transaction documents, investment banking costs, costs related to raising equity incurred prior to the close of the Transaction, payments to employees who invoke severance payment agreements, and communication costs regarding the ownership change with customers and employees. Empire will not seek either direct or indirect rate recovery or recognition of any transaction costs through any purported acquisition savings "sharing" adjustment (or similar adjustment) in any future rate cases.

3. Transition costs are those costs incurred to integrate Empire under the ownership of LU Central and includes integration planning and execution, and "costs to achieve."

Transition costs include capital and non-capital costs. Non-capital transition costs can be ongoing costs or one-time costs. Non-capital transition costs can be deferred on the books of LU Central or Empire to be considered for recovery in future Empire rate cases. If subsequent rate recovery is sought, Empire will have the burden of proving that the recoveries of any transition costs are just and reasonable and the costs provide benefits to its customers.

**E. AFFILIATE TRANSACTIONS AND COST ALLOCATION MANUAL (CAM) CONDITIONS**

1. Empire is to be operated after the purchase in compliance with the affiliate transaction rule, or will obtain any necessary variances from the MoPSC's affiliate transaction rule as defined in 4 CSR 240-20-015(10) and 4 CSR 240-40-015(10).

2. Algonquin Power & Utilities Corp. and its subsidiaries will commit that all information related to an affiliate transaction consistent with 4 CSR 240-20.015(5)(A)(1)-(2) and 4 CSR 240-40.015(5)(A)(1)-(2) charged to Empire will be treated in the same manner as if that information is under the control of Empire, and

3. Empire will provide no preferential service, information, or treatment to an affiliated entity over another party at any other time, consistent with 4 CSR 240-20.015(2) and 4 CSR 240-40.015(2).

**F. CUSTOMER SERVICE CONDITIONS**

1. Empire and Liberty will strive to meet or exceed the customer service and operational levels currently provided to their customers.

2. Empire and Liberty will meet with Staff Consumer and Management Analysis personnel on a periodic basis (such as quarterly) or, as Staff deems necessary, after the close of the Transaction to review contact center and other service quality performance. Staff and/or

OPC may request additional periodic meetings with Empire and Liberty personnel to address customer service operating procedures and the level of service being provided to Missouri customers.

3. Empire and Liberty shall notify Staff of any material operational changes concerning customer contact centers, or other customer service functions, occurring within 24 months of the close of the Transaction. Material operational changes include, but are not limited to: Empire and/or Liberty employing call deferral technologies such as Virtual Hold or Call Back In Queue, outsourcing call center or other service quality processes, such as meter reading, substantial changes in billing processes, and the utilization of services or management agreements to perform any of the customer service functions currently performed by any of the previously noted three companies. Empire and Liberty agree to begin reporting the utilization of call deferral technologies if and when they are implemented. Such reports shall include 1) the number of calls offered call deferral technology, and 2) the number of calls accepting call deferral technology.

4. Within thirty (30) days after closing the Transaction, Empire and LU Central shall provide Staff and OPC a current organizational chart, illustrating the positions and names of employees that have customer service responsibilities. In the event structural changes are made to Empire's organization, updated organizational charts shall be provided to Staff and OPC within 30 days of such changes.

5. Empire and Liberty agree to not make available, sell or transfer customer information to affiliated or unaffiliated entities without prior informed consent of the Missouri customer, other than as necessary to provide services to and in support of their regulated operations.

6. In evaluating billing systems for future use, the Joint Applicants shall consider the ability of any billing system to maintain or improve cumulative frequency distribution of bills ending in each block in each billing cycle and the quality of existing load research and metering data.

7. The Joint Applicants agree that Empire's load research sample will take into account both the summer and winter usage of the customers in each customer class before Empire's next subsequent rate case.

**G. ACCESS TO RECORDS CONDITIONS**

1. Empire shall provide Staff and OPC with access, upon reasonable written notice during working hours and subject to appropriate confidentiality and discovery procedures, to all written information provided to common stock, bond or bond rating analysts which directly or indirectly pertains to Empire or any affiliate that exercises influence or control over Empire or has affiliate transactions with Empire. Such information includes, but is not limited to, common stock analyst's and bond rating analyst's reports. For purposes of this condition, "written" information includes, but is not limited to, any written and printed material, audio and video tapes, computer disks, and electronically stored information. Nothing in this condition shall be deemed a waiver of any entity's right to seek protection of the information or to object, for purposes of submitting such information as evidence in any evidentiary proceeding, to the relevancy or use of such information by any party.

2. Empire agrees to make available to Staff and OPC, upon written notice during normal working hours and subject to appropriate confidentiality and discovery procedures, all books, records and employees as may be reasonably required to verify compliance with Empire's CAM and any conditions ordered by this Commission. Empire shall also provide Staff and OPC

any other such information (including access to employees) relevant to the Commission's ratemaking, financing, safety, quality of service and other regulatory authority over Empire; provided that any entity producing records or personnel shall have the right to object on any basis under applicable law and Commission rules, excluding any objection that such records and personnel of affiliates; (a) are not within the possession or control of Empire or (b) are either not relevant or are not subject to, the Commission's jurisdiction and statutory authority by virtue of, or as a result of, the implementation of the proposed Transaction.

3. Empire shall provide Staff and OPC access to and copies of, if requested by Staff or OPC, the complete Liberty Utilities Co, LU Central and Empire Board of Directors' meeting minutes, including all agendas and related information distributed in advance of the meeting, presentations and handouts, provided that privileged information shall continue to be subject to protection from disclosure and Empire shall continue to have the right to object to the provision of such information on relevancy grounds.

4. Empire will maintain records supporting its affiliated transactions for at least five years.

5. Should it be deemed necessary for Staff employees to travel to locations outside of the State of Missouri to examine any records deemed relevant to the subject matter at hand Empire shall bear all reasonable expense incurred by the employees, provided, however, that before any such expense shall be incurred by Staff, Empire shall be given reasonable notice to produce the records requested for inspection and examination at the office of the Commission at Jefferson City, Missouri or at Empire's offices in Joplin, Missouri, or at such other point in Missouri, as may be mutually agreed, in which case Empire shall make available at that place, at that time, a person(s) who is acquainted with the records.

**H. ENERGY EFFICIENCY CONDITIONS:**

Upon the close of the Transaction, Empire shall comply with any Commission order in ER -2016-0023 regarding Demand Side Management programs.

**I. NATURAL GAS PROCUREMENT PRACTICES:**

1. LU Central shall prepare a cost benefit analysis prior to any decision to materially change any existing gas procurement practices of EDG to a LU Central gas procurement approach. This should include, but not be limited to, an evaluation of EDG's existing supplier availability, hedging methods, gas volume accounting systems, transportation balancing systems, PGA and ACA recordkeeping and other existing EDG gas procurement practices as contrasted to changing a materially different gas procurement practice.

2. Prior to the effective date of the closing of the Transaction, Empire will provide Staff with evidence that no assignment of transportation and storage contracts with EDG interstate pipeline suppliers will be required due to the merger, or that acceptance of such assignment has been obtained. Further, Empire will provide evidence that no transfer of existing gas hedges for Empire or EDG will be required as a result of the merger, or that acceptance of such transfer has been obtained.

**J. PARENT COMPANY CONDITION:**

1. Algonquin Power & Utilities Corp., on behalf of itself, its successors, assignees, and its subsidiaries, and in consideration of the signatories' support of the proposed acquisition embodied in this document, agrees that it will uphold the conditions agreed to by Empire and LU Central in this Stipulation.



## **GENERAL PROVISIONS**

A. This Stipulation has resulted from negotiations among the Signatories and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation in total, then this Stipulation shall be void and no Signatory shall be bound by any of the agreements or provisions hereof. The stipulations herein are specific to the resolution of this proceeding, and all stipulations are made without prejudice to the rights of the Signatories to take other positions in other proceedings except as otherwise provided herein. The Signatories agree that any and all discussions related hereto shall be privileged and shall not be subject to discovery, admissible in evidence, or in any way used, described or discussed.

B. This Stipulation is being entered into for the purpose of disposing of all issues in this case. The Signatories represent that the terms of this Stipulation constitute a fair and reasonable resolution of the issues addressed herein, in a manner which is not detrimental to the public interest. Except as otherwise addressed herein, none of the Signatories to this Stipulation shall be deemed to have approved, accepted, agreed, consented or acquiesced to any accounting principle, ratemaking principle or cost of service determination underlying, or supposed to underlie any of the issues provided for herein.

C. The Signatories further understand and agree that the provisions of this Stipulation relate only to the specific matters referred to in the Stipulation, and no Signatory or person waives any claim or right which it otherwise may have with respect to any matter not expressly provided for in this Stipulation. The Signatories further reserve the right to withdraw their support for the settlement in the event that the Commission modifies the Stipulation in a manner which is adverse to the Signatory, and further, the Signatories reserve the right to contest any such Commission order modifying the settlement in a manner which is adverse to the

Signatory contesting such Commission order. The Signatories agree that the details of this Stipulation have no precedential value in any future proceeding not related to enforcement of this agreement.

D. The non-utility Signatory Parties enter into this Stipulation in reliance upon information provided to them by the Joint Applicants and this Stipulation is explicitly predicated upon the truth of representations made by the Joint Applicants.

E. In the event the Commission accepts the specific terms of this Stipulation without modification, the Signatories waive, with respect to the issues resolved herein: their respective rights pursuant to Section 536.070(2), RSMo 2000 to call, examine and cross-examine witnesses; their respective rights to present oral argument or written briefs pursuant to Section 536.080.1, RSMo 2000; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2, RSMo 2000; their respective rights to seek rehearing pursuant to Section 386.500, RSMo 2000; and their respective rights to judicial review pursuant to Section 386.510, RSMo 2000. Furthermore, in the event the Commission accepts the specific terms of this Stipulation without modification, the Signatories agree that the pre-filed testimony of all witnesses who have pre-filed testimony in this case shall be included in the record of this proceeding without the necessity of such witnesses taking the stand.

F. Staff shall have the right to provide, at any agenda meeting at which this Stipulation is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that Staff shall, to the extent reasonably practicable, promptly provide other Signatories with advance notice of when Staff shall respond to the Commission's request for such explanation once such explanation is requested from Staff. Staff's oral

explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or previously designated confidential by any Signatory.


G. Except as otherwise addressed in this Stipulation, Commission approval of the acquisition by LU Central and Liberty Sub Corp. of the stock of Empire, and for the Joint Applicants to execute and perform in accordance with the terms of the Agreement, does not in any way, limit, form a basis for determination, or constitute a defense against any Signatory proposing, or the Commission ordering, the disallowance and/or imputation of account balances, expenses, revenues and/or other ratemaking findings, regarding Empire's operations in a future rate proceeding.

H. To assist the Commission in its review of this Stipulation, the Signatories also request that the Commission advise them of any additional information that the Commission may desire from the Signatories relating to the matters addressed in this Stipulation, including any procedures for furnishing such information to the Commission.

**WHEREFORE**, the Signatories hereto recommend that the acquisition by LU Central and Liberty Sub Corp. of the stock of Empire as contemplated by the Agreement and Plan of Merger is reasonable and not detrimental to the public interest and respectfully request that the

Commission approve this Stipulation and Agreement subject to the conditions contained herein.

Respectfully submitted,



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//S// Mark Johnson by dlc

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**ATTORNEYS FOR JOINT APPLICANTS  
AND ALGONQUIN POWER &  
UTILITIES CORP.**

## CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent via U.S. Mail, postage prepaid, hand-delivery, electronic filing system, or electronically, this 4<sup>th</sup> day of August, 2016, to the following:

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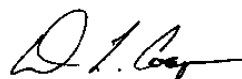
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**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Empire District Electric Company,        )  
Liberty Utilities (Central) Co. and Liberty Sub Corp.        )        Case No. EM-2016-0213  
Concerning an Agreement and Plan of Merger and                )  
Certain Related Transactions.                                        )

**STIPULATION AND AGREEMENT AS TO EDESR**

**COME NOW** The Empire District Electric Company (“Empire”), Liberty Utilities (Central) Co. (“LU Central”), and Liberty Sub Corp. (sometimes collectively hereinafter “Joint Applicants”), and The Empire District Electric SERP Retirees (“EDESR”), by and through their undersigned counsel and, pursuant to Missouri Public Service Commission (“Commission”) rule 4 CSR 240-2.115, request that the Commission approve this agreement as a settlement of the EDESR’s issues related to the Joint Application filed by the Joint Applicants. In support thereof, the signatories hereto state the following:

The Signatories hereto agree as follows:

The Signatories hereto recommend that the Commission approve the proposed transaction (“Transaction”) subject to the following condition:

**Supplemental Executive Retirement Plan (“SERP”)**

Empire will, within one year after the Transaction closes, cause to be performed an actuarial analysis with the intention of determining whether a SERP funded via a Rabbi trust according to the SERP plan is less expensive to ratepayers than benefits paid from Empire's general funds for the life of the plan (the “Study”).

The current SERP recipients shall be included in the development of all assumptions and allowed review and analysis of the Study. If the Study concludes 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 ratepayers of providing the alternate of SERP benefits from Empire's general funds, Empire will discuss the results of the Study with Staff and OPC, and to the extent neither party oppose the rate recovery of the Rabbi trust in place of the SERP funded from general funds, Empire will fund a Rabbi trust according to the plan. Any trust documents shall be subject to review by the SERP recipients' counsel.

### **General Provisions**

- A. This Stipulation has resulted from negotiations among the Signatories and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation in total, then this Stipulation shall be void and no Signatory shall be bound by any of the agreements or provisions hereof. The stipulations herein are specific to the resolution of this proceeding, and all stipulations are made without prejudice to the rights of the Signatories to take other positions in other proceedings except as otherwise provided herein. The Signatories agree that any and all discussions related hereto shall be privileged and shall not be subject to discovery, admissible in evidence, or in any way used, described or discussed.
- B. This Stipulation is being entered into for the purpose of disposing of The EDESR's issues in this case. The Signatories represent that the terms of this Stipulation constitute a fair and reasonable resolution of the issues addressed herein, in a manner which is not detrimental to the public interest. Except as otherwise addressed herein, none of the Signatories to this Stipulation shall be deemed to have approved, accepted, agreed, consented or acquiesced to any

accounting principle, ratemaking principle or cost of service determination underlying, or supposed to underlie any of the issues provided for herein.

- C. The Signatories further understand and agree that the provisions of this Stipulation relate only to the specific matters referred to in the Stipulation, and no Signatory or person waives any claim or right which it otherwise may have with respect to any matter not expressly provided for in this Stipulation. The Signatories further reserve the right to withdraw their support for the settlement in the event that the Commission modifies the Stipulation in a manner which is adverse to the Signatory, and further, the Signatories reserve the right to contest any such Commission order modifying the settlement in a manner which is adverse to the Signatory contesting such Commission order. The Signatories agree that the details of this Stipulation have no precedential value in any future proceeding not related to enforcement of this agreement.
- D. The non-utility Signatory Parties enter into this Stipulation in reliance upon information provided to them by the Joint Applicants and this Stipulation is explicitly predicated upon the truth of representations made by the Joint Applicants.
- E. In the event the Commission accepts the specific terms of this Stipulation without modification, the Signatories waive, with respect to the issues resolved herein: their respective rights pursuant to Section 536.070(2), RSMo 2000 to call, examine and cross-examine witnesses; their respective rights to present oral argument or written briefs pursuant to Section 536.080.1, RSMo 2000; their respective rights to the reading of the transcript by the Commission pursuant to




Section 536.080.2, RSMo 2000; their respective rights to seek rehearing pursuant to Section 386.500, RSMo 2000; and their respective rights to judicial review pursuant to Section 386.510, RSMo 2000. Furthermore, in the event the Commission accepts the specific terms of this Stipulation without modification, the Signatories agree that the pre-filed testimony of all witnesses who have pre-filed testimony in this case shall be included in the record of this proceeding without the necessity of such witnesses taking the stand.

- F. Except as otherwise addressed in this Stipulation, Commission approval of the acquisition by LU Central and Liberty Sub Corp. of the stock of Empire, and for the Joint Applicants to execute and perform in accordance with the terms of the Agreement, does not in any way, limit, form a basis for determination, or constitute a defense against any Signatory proposing, or the Commission ordering, the disallowance and/or imputation of account balances, expenses, revenues and/or other ratemaking findings, regarding Empire's operations in a future rate proceeding.
- G. To assist the Commission in its review of this Stipulation, the Signatories also request that the Commission advise them of any additional information that the Commission may desire from the Signatories relating to the matters addressed in this Stipulation, including any procedures for furnishing such information to the Commission.

**WHEREFORE**, the Signatories hereto recommend that the acquisition by LU Central and Liberty Sub Corp. of the stock of Empire as contemplated by the Agreement and Plan of

Merger is reasonable and not detrimental to the public interest and respectfully request that the Commission approve this Stipulation and Agreement subject to the conditions contained herein.

By:   
\_\_\_\_\_

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ATTORNEYS FOR JOINT APPLICANTS

\_\_\_\_\_  
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Attorney for The Empire District Electric  
SERP Retirees

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was sent via U.S. Mail, postage prepaid, hand-delivery, electronic filing system, or electronically, this 23<sup>rd</sup> day of August, 2016, to the following:

Cydney Mayfield  
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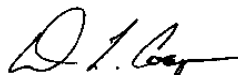
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BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the Matter of the Empire District Electric Company,        )  
Liberty Utilities (Central) Co. and Liberty Sub Corp.        )        Case No. EM-2016-0213  
Concerning an Agreement and Plan of Merger and                )  
Certain Related Transactions.                                        )

**AMENDED STIPULATION AND AGREEMENT**  
**AS TO DIVISION OF ENERGY AND RENEW MISSOURI**

**COME NOW** The Empire District Electric Company (“Empire”), Liberty Utilities (Central) Co. (“LU Central”), and Liberty Sub Corp. (sometimes collectively hereinafter “Joint Applicants”), and the Missouri Division of Energy (“DE”) and Earth Island Institute d/b/a Renew Missouri (“Renew Missouri”), by and through their undersigned counsel and, pursuant to Missouri Public Service Commission (“Commission”) rule 4 CSR 240-2.115, request that the Commission approve this agreement as a settlement of DE and Renew Missouri’s issues relevant to the Joint Application filed by Empire, LU Central and Liberty Sub Corp.

The Signatories hereto agree as follows:

The Signatories hereto recommend that the Commission approve the proposed Transaction subject to the following conditions:

- (1) **Demand-side management (“DSM”) programs.** Empire will work with DE, the Staff of the Commission (“Staff”), the Office of the Public Counsel (“OPC”) and other parties through the existing DSM Advisory Group to review and consider the viability of adopting additional energy efficiency programs for its customers. Within one year of the Commission’s finding of substantial compliance of the Empire Integrated Resource Plan that follows Commission approval of a Statewide Technical Reference Manual (TRM), Empire will develop and submit an application for approval of a portfolio of DSM programs under the Missouri Energy Efficiency

Investment Act (MEEIA), so long as any such portfolio is a part of Empire's adopted preferred resource plan in its Integrated Resource Plan, or has been analyzed through the integration process required by 4 CSR 240-22.060, and the portfolio and any DSIM submitted in the application is fully compliant with the MEEIA statute and applicable regulations.

(2) **Combined Heat and Power ("CHP").** Within one year of the completion of the merger transaction, Empire will assist DE and the US DOE Midwest CHP Technical Assistance Partnership ("CHP TAP") in completing an outreach effort for screening potential CHP customers within The Empire District Gas Company's ("EDG," a wholly owned subsidiary of Empire) service territory in Missouri. The screening tool to be provided by the CHP TAP is a survey to help determine if CHP is a good fit for the customers from a financial and technical perspective. Target sectors will include public, commercial, institutional and industrial facilities with consistent gas consumption throughout the year, indicative of consistent thermal load requirements. Example customers that may generally fit this profile include hospitals, large residential facilities such as nursing homes and correctional facilities, universities, and food manufacturers. Those surveyed customers with favorable evaluations will be encouraged to take the next step of contacting the CHP TAP for follow-up technical assistance services, which could include a more detailed CHP feasibility study. Detailed process/roles are as follows:

- (i) Empire will utilize its knowledge of the EDG service territory and customers to develop a list of customers in the target sectors territory-wide, with outreach occurring beyond the form of a bill insert. Empire will review the types of customers and number of customers of each type in the target sectors with the EDG Demand Side Management

Advisory Group (“DSMAG”). The DSMAG will be able to provide feedback regarding the types and number of customer’s identified, as well as how to optimize outreach efforts.

- (ii) CHP TAP/DE will provide Empire with an educational packet explaining CHP and a tailored CHP Screening Survey tool, to include explanation of the use that will be made of the customer data.
- (iii) Empire will email or mail and personally follow up by phone with customers to encourage completion of the survey, and, if requested, will assist customers with obtaining past billing information.
- (iv) Interested customers will complete the CHP Screening Survey tool and email or mail them to CHP TAP.
- (v) CHP TAP will score the surveys and share the results with surveyed customers, and offer those who “scored well” a follow-up conversation to discuss next steps and other available CHP TAP services, which could include a more detailed CHP feasibility study.
- (vi) CHP TAP will provide Empire with a survey report, with information aggregated to a level that does not disclose customer-specific information.
- (vii) Empire will share the report with interested stakeholders, including Staff, the Office of the Public Counsel and DE.
- (viii) If Empire determines that the requirements of this provision cannot be reasonably completed without additional CHP TAP assistance, Empire will ensure CHP TAP has complied with all statutes and Commission

rules regarding the handling of confidential information prior to releasing any customer specific information to CHP TAP.

- (3) Any recovery of third party or non-reoccurring costs associated with the Combined Heat and Power survey will not exceed five-thousand dollars (\$5,000).
- (4) Microgrid Industrial Consortium. Within six (6) months following the completion of the Transaction and the publication of best practices recommendations for microgrid interconnection by the Missouri University of Science and Technology's Microgrid Industrial Consortium, Empire will meet with DE to consider a microgrid interconnection strategy consistent with the best practices recommendations of the Microgrid Industrial Consortium.
- (5) Empire will review and consider the viability of offering a community solar or solar subscription program that provides its customers with the option of purchasing blocks of electricity generated from solar installations constructed and/or owned by Empire within the state of Missouri. Empire will solicit input and feedback on proposals and will work with Staff, OPC, DE, Renew Missouri, and other interested stakeholders to design a successful customer solar program, with the goal of submitting a formal proposal to the Commission within one year of the completion of the Transaction.

**General Provisions**

- A. This Stipulation has resulted from negotiations among the Signatories and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation in total, then this Stipulation shall be void and no Signatory shall be bound by any of the agreements or provisions hereof. The stipulations herein are specific to the resolution of this proceeding, and all stipulations are made without

prejudice to the rights of the Signatories to take other positions in other proceedings except as otherwise provided herein. The Signatories agree that any and all discussions related hereto shall be privileged and shall not be subject to discovery, admissible in evidence, or in any way used, described or discussed.

- B. This Stipulation is being entered into for the purpose of disposing of DE and Renew Missouri's issues in this case. The Signatories represent that the terms of this Stipulation constitute a fair and reasonable resolution of the issues addressed herein, in a manner which is not detrimental to the public interest. Except as otherwise addressed herein, none of the Signatories to this Stipulation shall be deemed to have approved, accepted, agreed, consented or acquiesced to any accounting principle, ratemaking principle or cost of service determination underlying, or supposed to underlie any of the issues provided for herein.
- C. The Signatories further understand and agree that the provisions of this Stipulation relate only to the specific matters referred to in the Stipulation, and no Signatory or person waives any claim or right which it otherwise may have with respect to any matter not expressly provided for in this Stipulation. The Signatories further reserve the right to withdraw their support for the settlement in the event that the Commission modifies the Stipulation in a manner which is adverse to the Signatory, and further, the Signatories reserve the right to contest any such Commission order modifying the settlement in a manner which is adverse to the Signatory contesting such Commission order. The Signatories agree that the details of this Stipulation have no precedential value in any future proceeding not related to enforcement of this agreement.



- D. The non-utility Signatory Parties enter into this Stipulation in reliance upon information provided to them by the Joint Applicants and this Stipulation is explicitly predicated upon the truth of representations made by the Joint Applicants.
- E. In the event the Commission accepts the specific terms of this Stipulation without modification, the Signatories waive, with respect to the issues resolved herein: their respective rights pursuant to Section 536.070(2), RSMo 2000 to call, examine and cross-examine witnesses; their respective rights to present oral argument or written briefs pursuant to Section 536.080.1, RSMo 2000; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2, RSMo 2000; their respective rights to seek rehearing pursuant to Section 386.500, RSMo 2000; and their respective rights to judicial review pursuant to Section 386.510, RSMo 2000. Furthermore, in the event the Commission accepts the specific terms of this Stipulation without modification, the Signatories agree that the pre-filed testimony of all witnesses who have pre-filed testimony in this case shall be included in the record of this proceeding without the necessity of such witnesses taking the stand.
- F. Except as otherwise addressed in this Stipulation, Commission approval of the acquisition by LU Central and Liberty Sub Corp. of the stock of Empire, and for the Joint Applicants to execute and perform in accordance with the terms of the Agreement, does not in any way, limit, form a basis for determination, or constitute a defense against any Signatory proposing, or the Commission ordering, the disallowance and/or imputation of account balances, expenses,

revenues and/or other ratemaking findings, regarding Empire's operations in a future rate proceeding.

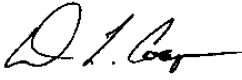
- G. To assist the Commission in its review of this Stipulation, the Signatories also request that the Commission advise them of any additional information that the Commission may desire from the Signatories relating to the matters addressed in this Stipulation, including any procedures for furnishing such information to the Commission.

**WHEREFORE**, the Signatories hereto recommend that the acquisition by LU Central and Liberty Sub Corp. of the stock of Empire as contemplated by the Agreement and Plan of Merger is reasonable and not detrimental to the public interest and respectfully request that the Commission approve this Amended Stipulation and Agreement subject to the conditions

contained herein.

Respectfully submitted,

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ATTORNEY FOR EARTH ISLAND  
INSTITUTE D/B/A RENEW MISSOURI

## CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent via electronic mail, this 23<sup>rd</sup> day of August, 2016, to the following:

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BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the Matter of the Empire District Electric Company,     )  
Liberty Utilities (Central) Co. and Liberty Sub Corp.     )     Case No. EM-2016-0213  
Concerning an Agreement and Plan of Merger and     )  
Certain Related Transactions.     )

**AMENDED STIPULATION AND AGREEMENT**  
**AS TO IBEW 1464 AND IBEW 1474**  
**AND MOTION TO MODIFY**  
**ORDER APPROVING STIPULATIONS AND AGREEMENTS**

**COME NOW** The Empire District Electric Company (“Empire”), Liberty Utilities (Central) Co. (“LU Central”), and Liberty Sub Corp. (sometimes collectively hereinafter “Joint Applicants”), and the International Brotherhood of Electrical Workers (“IBEW”) Local 1464 and IBEW Local 1474, by and through their undersigned counsel and, pursuant to Missouri Public Service Commission (“Commission”) rule 4 CSR 240-2.115, request that the Commission amend its Order Approving Stipulations and Agreements dated August 10, 2016 to approve this amended agreement as a comprehensive settlement of IBEW 1464 and IBEW 1474’s issues relevant to the Joint Application filed by Empire, LU Central and Liberty Sub Corp.

1. On July 19, 2016, the Signatories executed and filed a Stipulation and Agreement As To IBEW 1464 and IBEW 1474, for the purpose of addressing issues raised by IBEW Locals 1464 and 1474.

2. The Commission issued an Order Approving Stipulations and Agreements on August 10, 2016, which, among other things, approved the Stipulation and Agreement As To IBEW 1464 and IBEW 1474.

3. Since that time, the Signatories have determined that certain revisions to the Stipulation and Agreement As To IBEW 1464 and IBEW 1474 would better describe and define the Signatories’ intent. Accordingly, the Signatories are providing this Amended Stipulation and

Agreement As To IBEW 1464 and IBEW 1474, and request that the Commission issue an order modifying its Order Approving Stipulations and Agreements dated August 10, 2016 to approve this Amended Stipulation in place of the Stipulation and Agreement As To IBEW 1464 and IBEW 1474 filed July 19, 2016.

The Signatories hereto agree and amend their prior Stipulation and Agreement in its entirety and hereto recommend that the Commission approve the proposed Transaction subject to the following conditions:

(1) There will be no layoff of any current bargaining unit members from either IBEW Local 1464 or 1474 as a result of the Transaction.

(2) Joint Applicants will fully comply with, and not cause any material amendment to, or termination of, the Empire District Electric Company Employees' Retirement Plan, prior to such time as the Retirement Plan may be addressed in the next collective bargaining agreements. Notwithstanding this agreement, Joint Applicants will continue until completed the double Pay Credits provisions of the Cash-Balance formula (commonly referred to as the "catch-up" provisions). Further, nothing in this paragraph prohibits Joint Applicants from making administrative changes to the Employees' Retirement Plan.

(3) All Empire employees formerly employed by Aquila Energy will continue to be covered under their current retirement benefit plan.

(4) For a period of ten years from the Transaction, the Joint Applicants will continue to abide by all agreements currently in force related to employee healthcare for bargaining unit members from IBEW Local 1464 and 1474 and will not change retiree healthcare benefits (defined as plan design and cost share) during the ten years from the Transaction for those bargaining unit members that retire during that ten year period, unless there is an application of

or amendment to the Affordable Care Act, that would impair the ability of Empire to provide the benefit or that substantially increases the cost to Empire of providing such benefits.

**General Provisions**

- A. This Stipulation has resulted from negotiations among the Signatories and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation in total, then this Stipulation shall be void and no Signatory shall be bound by any of the agreements or provisions hereof. The stipulations herein are specific to the resolution of this proceeding, and all stipulations are made without prejudice to the rights of the Signatories to take other positions in other proceedings except as otherwise provided herein. The Signatories agree that any and all discussions related hereto shall be privileged and shall not be subject to discovery, admissible in evidence, or in any way used, described or discussed.
- B. This Stipulation is being entered into for the purpose of disposing of IBEW 1464 and IBEW 1474's issues in this case. The Signatories represent that the terms of this Stipulation constitute a fair and reasonable resolution of the issues addressed herein, in a manner which is not detrimental to the public interest. Except as otherwise addressed herein, none of the Signatories to this Stipulation shall be deemed to have approved, accepted, agreed, consented or acquiesced to any accounting principle, ratemaking principle or cost of service determination underlying, or supposed to underlie any of the issues provided for herein.
- C. The Signatories further understand and agree that the provisions of this Stipulation relate only to the specific matters referred to in the Stipulation, and no Signatory or person waives any claim or right which it otherwise may have with

respect to any matter not expressly provided for in this Stipulation. The Signatories further reserve the right to withdraw their support for the settlement in the event that the Commission modifies the Stipulation in a manner which is adverse to the Signatory, and further, the Signatories reserve the right to contest any such Commission order modifying the settlement in a manner which is adverse to the Signatory contesting such Commission order. The Signatories agree that the details of this Stipulation have no precedential value in any future proceeding not related to enforcement of this agreement.

- D. The non-utility Signatory Parties enter into this Stipulation in reliance upon information provided to them by the Joint Applicants and this Stipulation is explicitly predicated upon the truth of representations made by the Joint Applicants.
- E. In the event the Commission accepts the specific terms of this Stipulation without modification, the Signatories waive, with respect to the issues resolved herein: their respective rights pursuant to Section 536.070(2), RSMo 2000 to call, examine and cross-examine witnesses; their respective rights to present oral argument or written briefs pursuant to Section 536.080.1, RSMo 2000; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2, RSMo 2000; their respective rights to seek rehearing pursuant to Section 386.500, RSMo 2000; and their respective rights to judicial review pursuant to Section 386.510, RSMo 2000. Furthermore, in the event the Commission accepts the specific terms of this Stipulation without modification, the Signatories agree that the pre-filed testimony of all witnesses who have pre-



filed testimony in this case shall be included in the record of this proceeding without the necessity of such witnesses taking the stand.

F. Except as otherwise addressed in this Stipulation, Commission approval of the acquisition by LU Central and Liberty Sub Corp. of the stock of Empire, and for the Joint Applicants to execute and perform in accordance with the terms of the Agreement, does not in any way, limit, form a basis for determination, or constitute a defense against any Signatory proposing, or the Commission ordering, the disallowance and/or imputation of account balances, expenses, revenues and/or other ratemaking findings, regarding Empire's operations in a future rate proceeding.

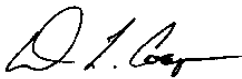
G. To assist the Commission in its review of this Stipulation, the Signatories also request that the Commission advise them of any additional information that the Commission may desire from the Signatories relating to the matters addressed in this Stipulation, including any procedures for furnishing such information to the Commission.

**WHEREFORE**, the Signatories hereto recommend that the acquisition by LU Central and Liberty Sub Corp. of the stock of Empire as contemplated by the Agreement and Plan of Merger is reasonable and not detrimental to the public interest and respectfully request that the

Commission modify its Order Approving Stipulations and Agreements dated August 10, 2016 to approve this Amended Stipulation and Agreement As To IBEW 1464 and IBEW 1474 in place of the Stipulation and Agreement As To IBEW 1464 and IBEW 1474 filed July 19, 2016.

Respectfully submitted,

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ATTORNEYS FOR IBEW 1464 AND IBEW  
1474

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was sent via electronic mail, this 26<sup>th</sup> day of August, 2016, to the following:

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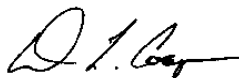
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**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 7<sup>th</sup> day of September 2016.



  
Morris L. Woodruff  
Secretary

**MISSOURI PUBLIC SERVICE COMMISSION**

**September 7, 2016**

**File/Case No. EM-2016-0213**

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***Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).***

***Sincerely,***



**Morris L. Woodruff  
 Secretary**

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Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.