Exhibit No.:	____________
Issue(s):	Storm URI/MPPM/FAC
Witness/Type of Exhibit:	Mantle/Surrebuttal
Sponsoring Party:	Public Counsel
Case No.:	ER-2021-0312

SURREBUTTAL TESTIMONY

OF

LENA M. MANTLE

Submitted on Behalf of the Office of the Public Counsel

THE EMPIRE DISTRICT ELECTRIC COMPANY D/B/A LIBERTY

FILE NO. ER-2021-0312

** **

Denotes Confidential Information that has been Redacted

January 20, 2022

PUBLIC

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

AFFIDAVIT OF LENA M. MANTLE

STATE OF MISSOURI)
) **ss**
COUNTY OF COLE)

Lena M. Mantle, of lawful age and being first duly sworn, deposes and states:

1. My name is Lena M. Mantle. I am a Senior Analyst for the Office of the Public Counsel.

2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony.

3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

Lena M. Mantle
Lena M. Mantle
Senior Analyst

Subscribed and sworn to me this 14^{th} day of January 2022.

NOTARY PUBLIC NOTARY SEAL STATE OF MISSOURI
TIFFANY HILDEBRAND
My Commission Expires
August 8, 2023
Cole County
Commission #15637121

Tiffany Hildebrand
Tiffany Hildebrand
Notary Public

My Commission expires August 8, 2023.

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SURREBUTTAL TESTIMONY

OF

LENA M. MANTLE, P.E.

THE EMPIRE DISTRICT ELECTRIC COMPANY

CASE NO. ER-2021-0312

Q. What is your name?

A. Lena M. Mantle.

Q. Are you the same Lena M. Mantle who testified in direct and rebuttal in this case for the Office of Public Counsel ("OPC")?

A. Yes, I am.

Q. What is the purpose of your surrebuttal testimony?

A. I respond to the rebuttal testimony of The Empire District Electric Company ("Empire") and Commission Staff witnesses regarding the following issues:

1. Treatment of the extraordinary costs incurred by Empire in February 2021 due to extreme weather ("Storm Uri");
2. Specification and definition of the Market Price Protection Mechanism ("MPPM"); and
3. Modification of Empire's fuel adjustment clause ("FAC").

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Storm Uri Costs

Q. Would you summarize Staff's and Empire's rebuttal to your explanation of why, for purposes of electricity generation resource adequacy, it is important for electric utilities to not just satisfy their reserve planning margins based on the hour when their customers' energy requirements peaks, but also to evaluate the capability of their energy resources to satisfy their customers' energy requirements in every hour?[1]

A. Both Staff witness Jordan T. Hull and Empire witness Aaron J. Doll testify that it is their belief that meeting the Southwest Power Pool's ("SPP") capacity resource adequacy requirements proves that Empire was not deficient in providing the energy needs of its customers in February 2021.

Q. Empire witness Doll disagrees with you that Empire relies on the SPP to meet its customers' energy needs and points to Empire's compliance with the SPP's load resource adequacy margin requirement to support his position. What is your response?

A. As I described in my rebuttal testimony, meeting the SPP's load resource adequacy requirement does not show that Empire is not relying on the SPP to provide energy for its customers for the other non-peak hours.

Q. As a part of his argument, Mr. Doll states that, in your direct testimony, you are confusing energy and capacity.[2] Are you?

A. No. I am very clear about the difference between capacity and energy. Capacity is the maximum output an electricity generator can physically produce, measured in megawatts ("MW"). Energy is the amount of electricity a generator produces over a defined number of hours. For example, a generator with a capacity of 100

[1] Pages 3 – 11.
[2] Page 8.

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MW that runs at full capacity for 10 hours generates 1,000 MWh (100 MW * 10 hours = 1,000 MWh) of energy.

While having enough capacity is essential to having enough energy to meet customers' load requirement, having enough capacity does not necessarily ensure energy will be available when it is needed. I provided extensive direct and rebuttal testimony regarding the characteristics of the different types of Empire's generation and how those characteristics impacted the ability of Empire to provide energy for Empire's customers during Storm Uri.

Q. Does the SPP acknowledge that meeting the SPP resource adequacy requirement does not necessarily mean that there will be energy <u>when a utility</u> needs it?

A. Yes. In its 2021 SPP Resource Adequacy Report, the SPP states:

> Attachment AA of the Southwest Power Pool, Inc. (SPP) Open Access Transmission Tariff (Tariff) requires a Load Responsible Entity (LRE) to maintain adequate capacity to meet its Resource Adequacy Requirement for the upcoming Summer Season. Maintaining appropriate planning reserves ensures that <u>SPP</u> will have sufficient capacity <u>to serve peak demand</u> obligations. (Footnote omitted, emphasis added)[3]

There are a couple of key points in this quote. First is that the objective of the SPP's resource adequacy requirement is for the *<u>SPP</u>* to maintain adequate capacity. It is not to ensure that any one of its Load Responsible Entities (regulated electric utilities) has adequate capacity to meet the energy needs of its customers at a just and reasonable cost. This is the responsibility of the individual electric utility.

Secondly, the resource adequacy requirement is set so that the SPP will have significant capacity to serve *<u>peak demand</u>*.[4] Not to provide reliable energy

[3] Page 1.
[4] Attachment AA to SPP's OATT defines peak hour as "The highest demand including a) transmission losses for energy, b) the projected impacts of Non-Controllable and Non-Dispatchable Behind-The-Meter

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for every hour. Not to minimize outages. The resource adequacy requirement is to ensure that the SPP can meet the needs of one hour – the peak summer hour.

Q. Is the SPP resource adequacy requirement for Empire sufficient for Empire to be able to meet its customers' energy requirements on a stand-alone basis?

A Most likely it is not. The 12% requirement is what the SPP has determined is necessary for its members to meet the SPP's reliability requirement. On a stand-alone basis, it is likely that Empire needs more capacity.

Q. Isn't one of the advantages of being part of the RTO is that a utility can rely on other members' resources thus reducing the need for more resources?

A. Yes. It works well as long as some of the members have excess capacity available for others. However, most, if not all, of the SPP's members needed all of their capacity during Storm Uri leaving little inexpensive energy available for sharing with other utilities. Empire's customers would be better served paying for additional generation that could be relied on for decades rather than spending over $200 million in one month due to extreme weather.[5]

Q. Does meeting the SPP load resource adequacy requirement show that Empire does not rely on the SPP for energy as Empire witness Doll testifies?[6]

A. No. It only shows that Empire met the requirement the SPP placed on it for the SPP to meet its summer peak demand. It shows nothing regarding the ability of Empire's resources to provide energy the other 8,759 hours of the year.

What his rebuttal testimony shows is that Mr. Doll is assuming that having capacity equates to having the energy when customers need it.

Generation, and c) the projected impacts of Non-Controllable and Non-Dispatchable Demand Response Programs measured over a one clock hour period."

[5] See OPC witness John Robinett rebuttal testimony regarding the generation facilities that Empire could have obtained with the amount that the customers are now being asked to pay due to Storm Uri.

[6] Page 6.

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Q. Did Empire witness Doll provide any rebuttal testimony that shows that Empire is not relying on the SPP to fill in the energy gaps of its capacity?

A. No, he did not. His testimony centers on meeting SPP capacity requirements, not on meeting energy requirements of Empire's customers.

Q. Mr. Doll testifies that the lack of bilateral capacity contracts show that Empire is not relying on the SPP for energy for its customers.[7] What is a bilateral capacity contract?

A. My understanding is that a bilateral capacity contract is a contract with another party for capacity only with no provision for energy generated from that capacity.

Q. Does the lack of a bilateral capacity contract signify that Empire is not relying on the SPP for energy?

A. No. The types of dedicated capacity resources, the availability of those capacity resource to generate energy, and the dispatchability of the capacity resources signifies that Empire is relying on the SPP for energy.

Q. Did Empire do any analysis to determine that, by Empire's meeting the SPP capacity resource adequacy requirements, its resources were adequate to meet its customers' energy requirements in all hours of the year?

A. No. According to Empire's response to OPC data request 8112, Empire *presumes* that if it has sufficient resources to meet its peak demand, it has sufficient resources to meet its customers' load demand over every other hour during the year. This presumption resulted in extraordinary costs for Empire in February 2021.

[7] Page 8.

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Q. What does Staff witness Hull use to support his position that Empire has adequate resources to meet its customers' energy needs?

A. Mr. Hull also assumes that, because Empire met its SPP resource adequacy requirement, Empire has significant resources to meet the energy needs of its customers. Mr. Hull uses as support for his testimony Empire's most recent resource plan filed in EO-2019-0049 that shows that Empire's capacity balance never drops below a 12% reserve margin over the 20-year planning horizon.

Q. Did Staff do any independent analysis to determine that by meeting the SPP capacity resource adequacy requirements, Empire's resources were adequate to meet its customers' energy requirements?

A. No. According to Mr. Hull's response to data request 406, the only independent analysis Staff conducted was to review whether or not Empire's capacity resources as provided in Empire's resource planning filing in EO-2019-0049 met the SPP's resource adequacy requirements from 2019 through 2023.

Q. Did you participate on the Staff team that developed the Commission's Electric Utility Resource Planning Chapter 22?

A. Yes.

Q. Do the Commission's resource planning rules provide a resource reserve margin that equates to adequate resources to meet the energy requirements of the electric utility's customers?

A. No. The capacity balance spreadsheet Staff reviewed is just a snapshot measurement for one hour. The provision of a capacity balance spreadsheet is a reporting requirement, not the resource objective that must be met.

The Commission's resource planning rule 20 CSR 4240-22.010 *Policy Objectives* provides the fundamental objective of the Commission's resource planning Chapter 22 *Electric Utility Resource Planning* as follows:

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> (2) The fundamental objective of the resource planning process at electric utilities shall be to provide the public with energy services that are safe, reliable, and efficient at just and reasonable rates, in compliance with all legal mandates, and in a manner that serves the public interest and is consistent with state energy and environmental policies. (Emphasis added)

Empire's resources were neither reliable nor efficient to provide its customers with energy services in February 2021. The lack of resources to meet customers' requirements demonstrates better than any modeling that the resource plans of Empire were inadequate.

Q. You say that Mr. Hull refers to Empire's filed long-term resource plan to support his belief that Empire has enough resources to meet its customers' energy requirements. Has Empire followed its filed resource plan in the last five years?

A. No, it has not. The 600 MW of wind resources that are being added to rates in this case were not part of Empire's long-term resource plan. The retirement of Asbury in 2019 was not part of Empire's long-term resource plan. These decisions were made independently outside of the resource planning process and then, with additional inputs updated, run through the resource planning models.[8]

Q. Does Empire look at the hourly reliability of its generation to meet its customers' energy requirements in its resource planning process?

A. It does not. It makes available energy from the SPP for every hour of the planning horizon. It does not look at the adequacy of its resources for meeting its customers' needs.

[8] It is these models, with the new projected inputs and the predetermined resource changes that were supplied to the Commission to justify the Wind Projects.

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Q. What is the major indicator that Empire meeting the SPP capacity resource adequacy requirements did not result in adequate resources to meet Empire's customers' needs during Storm Uri?

A. The number one indicator of resource inadequacy is the $243 million in cost Empire incurred to meet its customer's needs during Storm Uri when normalized prices were estimated to be $12 million for the amount of energy consumed by Empire's customers during Storm Uri. This 20-fold increase in fuel cost indicates that just meeting SPP resource adequacy requirements for the peak hour was not adequate to assure those resources were adequate for the other 8,759 hours of the year.[9]

If Empire had adequate resources in the extreme situation caused by Storm Uri, the difference between the revenues produced from its generation would have nearly net out the cost charged by the SPP for Empire's load leaving customers responsible for only the cost of fuel.

Q. Is there anything else in Mr. Doll's testimony to which you would like to respond?

A. Yes. In his response to my direct testimony regarding the consistent negative margin of Empire's current wind purchase power agreements ("PPAs"), Mr. Doll demonstrates the conflicting positions of Empire regarding its resources.

Q. What do you mean?

A. In response to my direct testimony that the margins from the generation from Empire's two wind PPAs were, and still are, consistently negative,[10] Mr. Doll

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[9] Empire's submission to the Commission of its Electric Generation Reporting Requirements for February 2021 (BEGR-2021-1044 file "pscg 0221"), show that Empire's February 2021 peak was 1,220 MW, but only **__ ** MW of its resource capacity was providing energy in that hour.

[10] I consistently review the FAC monthly reports provided by Empire. The only month that I have ever seen a positive margin was February 2021 when SPP prices were extreme. Even with the extreme prices in that month, one of the PPAs had a negative margin. *Liberty – Empire District February 2021 Electric Net Fuel and Purchased Power Report*, submitted in EFIS in BFMR-2021-1076 on August 26, 2021.

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responds that it is unfair to evaluate the wind PPAs by the market value they produce. However, Empire used its projected positive margin for its Wind Projects to justify adding these projects to its generation portfolio. Empire also justified the early retirement of the Asbury because its market margin – which was positive – was not great enough to cover Asbury's costs.

Q. Is there any other Empire rebuttal testimony to which you would like to respond?

A. Yes. I would like to respond to Empire witness Charlotte Emery's testimony that, if the Commission does not grant an accounting authority order ("AAO") regarding certain Storm Uri costs, "it may be necessary for the Company to recover the Winter Storm Uri costs through this case."[11]

Q. Has OPC changed its position regarding this Storm Uri AAO since you filed your direct testimony?

A. No. OPC filed testimony in Case No. EU-2021-0274 on January 7, 2022, that this AAO is unnecessary.

Q. If Empire continues to seek to recover its Storm Uri costs in this case, is there any additional information that the Commission should consider regarding the costs Empire incurred to meet its customers' loads during Storm Uri?

A. Yes. There is a lot of testimony on the provision of adequate service. Empire is charged with providing safe and adequate service at just and reasonable rates. Attention should be given to "just and reasonable rates" and the magnitude of the costs that Empire incurred for February 2021. Having a FAC there is little

[11] Page 35.

incentive for Empire to keep its fuel and purchased power costs low. Whatever they are, Empire will collect 95% of them through its FAC.[12]

Despite the availability of generation and the revenues produced, the SPP charges a cost to Empire for customer loads. This cost is determined by 1) the load market price, and 2) the magnitude of the load. While Empire had no control over the cost that the SPP charged it for load, Empire had control over the other part of the equation – its load.

Q. How?

A. Empire could have reduced its customers' usage when prices increased to an unprecedented amount. It could, and should, have initiated controlled service interruptions to reduce its aggregate cost of energy during Storm Uri.

Q. Is it your opinion that Empire should have turned off its customers' electricity during a period of extremely cold temperatures?

A. Yes. It is an opinion that does not come easy. I am not saying that Empire should have turned off electricity for extended amount of time for all of its customers. Controlled service interruptions, with information relayed on times and places before the commencement of the interruptions, following the Phase 1 and Phase II guidelines in Empire's Emergency Energy Conservation Plan, could have significantly reduced the cost that is being requested from customers in this case while taking into account the needs of its customers who provide essential health and public services. Empire's tariff sheets that outline its Emergency Energy Conservation Plan[13] are attached to this testimony as Schedule LMM-S-1.

[12] In Case EU-2021-0274 Empire is requesting an AAO so that it can request cost recovery of its portion of the fuel costs in a future rate proceeding.
[13] P.S.C. Mo. No. 6, Section 5, Original Sheets 22 and 23.

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Q. Would not controlled interruptions have inconvenienced Empire's customers?

A. Yes, for an hour a day every other day for a few days. I am confident that customers, had they known the magnitude of the cost Empire was incurring, would have been okay with some short-term inconvenience to mitigate the inconvenience of paying hundreds of millions of dollars over 13 years.[14]

Q. Did Empire curtail its customers' usage during Storm Uri?

A. Yes, but only when the SPP required it to do so. Empire provided the following description of the curtailments in its February 2021 Fuel and Purchased Power report submitted in BFMR-2021-1076:

** ____ **

In all other hours during Storm Uri, Empire just assumed that its customers were okay with paying astronomical prices for energy – costs that Empire is now asking its customers to repay along with an added return for its shareholder over the next 13 years.

Q. At what market price should Empire have begun controlled interruptions?

A. I do not know the exact price. However, I reviewed the SPP day ahead 5 minute prices for February 12 through February 19 and I do believe that the prices exceeded the point that customers would have been amenable to controlled

[14] OPC witness Dr. Geoff Marke is providing surrebuttal testimony recommending the Commission order a Value of Lost Load study to obtain Empire's customers appetite for controlled curtailments in exchange for lower bills in such a situation.

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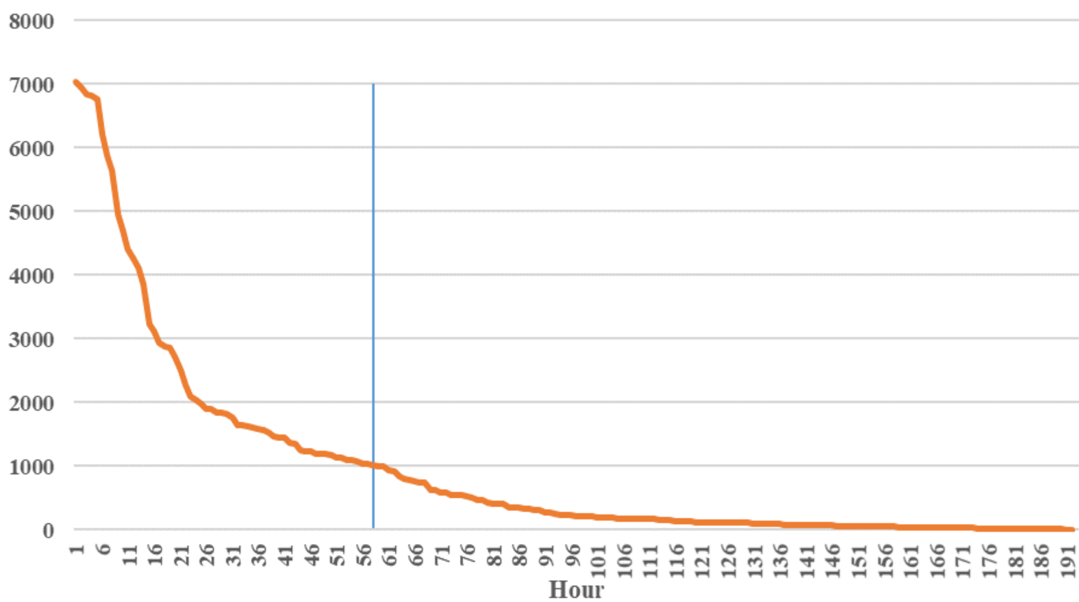
service curtailments. The graph below shows the range of the hourly prices[15] at the Empire load node.

Figure 1
Hourly Market Prices at Empire Load Node
February 12 – February 19, 2021
Ranked Highest to Lowest



The highest hourly price during this time period was over $7,000 per MWh.[16] During this time, there were over 24 hours where the price was over $2,000 per MWh and over 58 hours when the price was above $1,000 per MWh.

To get a perspective on how extreme prices were, the peak cost for a kilowatt-hour ("kWh") of energy was over $7.00/kWh. Empire's FAC base rate, which is the normalized fuel and purchased power cost from the last general rate case, is less than three cents a kWh ($0.03/kWh).

To get a comparison to what the SPP market prices were prior to Storm Uri, the average day-ahead market price for 2020 was $17.69/MWh or

[15] Calculated as the average of the 5-minute prices for that hour.
[16] The highest 5-minute price at the Empire load node was almost $9,600.

$0.01769/kWh.[17] Empire's average price for these eight days was $949 per MWh or almost a dollar a kWh.

Q. What do you recommend regarding Empire recovering Storm Uri costs?

A. In summary, Empire should not be allowed a return on its extraordinary Storm Uri costs in any event; and Empire should not recover the 5% incentive, unless the Commission greatly reduces the return on equity it allows Empire going forward.

In addition, Empire should absorb half of the costs it attributes to Storm Uri. The other half would be recovered from customers as an expense with no return to shareholders. The amount would be amortized on a time period not to exceed 10 years and not to exceed a rate of $0.0075 per kWh.

A detailed description of my recommendation regarding the treatment of the Storm Uri costs can be found on page 34 of my rebuttal testimony.

<u>Wind Projects' Market Price Protection Mechanism</u>

Q. Who testified in rebuttal on the market price protection mechanism?

A. Mark Oligschlaeger is the only Staff witness who mentions the Wind Projects market price protection mechanism ("MPPM"). He testifies that the MPPM would mitigate the financial consequences to Empire ratepayers if the wind projects prove to be uneconomic in the long-term; however, he gives no details as to the implementation of the MPPM.

Empire's witnesses, Todd Mooney, Timothy N. Wilson, Aaron Doll, and Tisha Sanderson each testify on the MPPM.

Q. What is your response to Mr. Oligschlaeger's rebuttal testimony?

A. I agree with him that the MPPM will mitigate the financial consequences to customers in the long run.

[17] 2020 State of the Market Report, SPP Market Monitoring Unit, August 12, 2021, page 1.

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Q. What does Empire witness Wilson testify regarding the MPPM?

A. He testifies that he believes that OPC wants to relitigate the terms of the MPPM.

Q. Does OPC want to relitigate the MPPM?

A. No. As I testified in direct, I support the goal of providing customer protections, but I am concerned with the lack of details regarding the MPPM. I provided many pages of direct testimony describing my concerns about the details of the MPPM, including that there should be a provision of interest and how jurisdictional allocation factors should be applied.

The Commission, in its *Report and Order* in Case No. EA-2019-0010,[18] states that it realized that the variables of the MPPM could change over time so customers do not need to lock-in future conditions based on assumptions made at the time the MPPM was created.

There have been considerable changes since the Commission ordered the MPPM which have caused Empire's estimate of the expected cumulative benefit/costs to swing **____________________ ** at the time of the filing of the *Non-unanimous Stipulation and Agreement* (which embodies the MPPM) in April 2019 to an expected **____________ ** when Empire responded to OPC's data request 8075 thirty months later in October 2021. In addition, in its supplemental response to OPC data request 8125, Empire provided that, in the first four months that all three wind projects were owned by Empire, Empire received revenues $7.5 million below what Empire had projected they would be when it filed its direct testimony in this case.

With this type of swing in the projected ability of the Wind Projects to generate revenues exceeding costs, while assuring shareholders receive a benefit,

[18] In the Matter of the Application of The Empire District Electric Company for Certificates of Convenience and Necessity Related to Wind Generation Facilities.

and the actual information now available which undermines those projections, there is ample reason for the Commission to review the MPPM to make sure that it still appropriately balances the interests of Empire's customers and shareholders.

Q. Is the MPPM as Empire envisions it different from the MPPM it modeled in the *Non-unanimous Stipulation and Agreement*?

A. Based on Empire's answers to OPC data requests, it is.

Q. How?

A. Empire's proposal is to include not just revenues from the SPP market and paygo in the MPPM as described in the *Non-unanimous Stipulation and Agreement*, but to also include revenues from the sale of renewable energy credits ("RECs") and the value of production tax credits ("PTCs"). Including these additional revenue streams would reduce the risk to Empire's shareholders.

Q. Did any Empire witness identify or explain any of these changes to add REC revenues and PTC values into the MPPM?

A. No. I discovered the additional revenue streams when I reviewed Empire's response to OPC data request 8075 for an update of Empire's cost/benefit worksheet attached to the *Non-unanimous Stipulation and Agreement*.

Later, in response to OPC data request 8086 that asked Empire what revenues it thought were included in the MPPM approved by the Commission, Empire stated:

> The revenues *ought* to reflect any revenue source that can be passed back to customers as an immediate offset to their base rates. Currently, the sources of those revenues are: distributions from each wind farm reflecting SPP market revenue net against operating expense and/or hedge settlement, any net revenue received for sales of renewable energy credits (REC), Paygo, and a revenue credit commensurate with the value of any production tax credits (PTC) the Company may receive. To the extent

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> additional sources of revenue become available to be extracted from the wind projects, and to the extent those revenues can be refunded back to customers, there ought to be consideration for future inclusion of such revenues to be consistent with the spirit of the MPPM. (Emphasis added.)

This response reads as if the revenues included in the MPPM, as approved by the Commission were not clear, even though the Appendix B to the *Non-unanimous Stipulation and Agreement* only mentions market revenues and revenues from paygo.

Q. Are the revenues from the sale of RECs and the value of PTCs something that Empire did not know about when negotiating the MPPM?

A. No. These are not new revenue streams. Empire touted each as a benefit of the Wind Projects to customers from the start.

Q. Would including REC revenues or PTC values change the MPPM that the Commission ordered?

A. Yes.

Q. Do you oppose including them?

A. No. I recommended including these revenues in my direct testimony.

Q. To what does Ms. Sanderson testify regarding the MPPM?

A. She limits her testimony to one component of the MPPM – the wind revenue requirement rate base component. She testifies that this component of the MPPM should not be formulaic, but should be updated at the conclusion of each of Empire's general rate cases. This is the extent of her rebuttal testimony on the MPPM.

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Q. Is this a change to the MPPM?

A. Yes. This is a change from Appendix B to the *Non-unanimous Stipulation and Agreement* that shows a formulaic calculation of the wind revenue requirement rate base component that reduces the rate base revenue requirement every year regardless of what customers are actually paying.

Q. Is it a significant change?

A. Yes. To get a measure of the impact, I used the MPPM spreadsheet supplied by Empire in response to OPC data request 8075 and assumed that rate base components only changed every four years. Every other assumption in the modeling stayed. With this scenario, Empire's expected MPPM case estimates **____

____

__ ** Moving from the formulaic determination of the rate base components to what actually occurs is a significant change to the MPPM.

Q. Is Ms. Sanderson's testimony consistent with the recommendation you made in your direct testimony regarding the MPPM wind revenue requirement?

A. Yes, it is.

Q. To what does Empire witness Doll testify about the MPPM?

A. Aaron Doll describes the MPPM as follows:

> Empire has agreed to a protection mechanism (MPPM) for its customers stating that revenues will be sufficient to cover their all-in cost and if not, the Company's shareholders will split the under-recovered portion with customers.[19]

He then testifies that "the construct [of the MPPM] ought to stay exactly as it was approved by the Commission."[20] However, he follows with testimony regarding

[19] Page 9.
[20] *Id.*

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how this construct should change when he recommends the components of the MPPM should accurately reflect the actual costs and benefits of Empire's customers.

Q. Does he explain what changes need to be made to the MPPM to assure that costs and benefits will be accurately reflected?

A. No, he does not, other than supporting Ms. Sanderson's recommendation for a change to the construct that the wind revenue requirement not be formulaic and that the costs and revenues should be accurate.

Q. To what does Empire witness Mooney's testify about the MPPM?

A. Mr. Mooney starts his testimony with the statement that the MPPM has already been decided by the Commission.[21] He then testifies:

> The MPPM provides up to $52.5 million of protection to customers from downside risk created by the Wind Projects during the first 10 years of the projects being placed into rates.[22]

Q. Did Mr. Mooney clarify in his rebuttal testimony what he meant by this?

A. He did not. So, to better understand Mr. Mooney's testimony, I asked Empire the following in OPC data request 8124[23]:

> What does Liberty witness Mr. Mooney mean when he states on page 3 of his rebuttal testimony, "The MPPM provides up to $52.5 million of protection to customers"? How does the MPPM provide up to $52.5 million of protection to Empire's customers? Is it possible for Empire's customers to receive $52.5 million from Empire at the end of the ten year period of the MPPM? If so, please provide the support in the Non-unanimous Stipulation and Agreement or elsewhere of how it is possible for Empire's customers to receive $52.5 million from Empire at the end of the ten year period of the MPPM.

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[21] I describe in my rebuttal testimony the differences in the interpretation by the signatories to the *Non-unanimous Stipulation and Agreement* of the MPPM in the Commission's *Report and Order* as to what the MPPM looks like.
[22] Page 3.
[23] This data request and Empire's response is attached to this testimony as LMM-S-3.

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In response Mr. Mooney provided a public version of the *Non-unanimous Stipulation and Agreement* and said:

> As defined in the Non-Unanimous Stipulation and Agreement, the Guarantee is defined as the "maximum exposure to the negative (regulatory liability) over the life of the Guarantee. The Guarantee will be a fixed positive value of $52,500,000 Missouri jurisdictional...exclusive of carrying costs." See attached "EA-2019-0010 Non Unanimous Stipulation" beginning on page 16.
>
> Pursuant to the Market Price Protection Mechanism approved in EA-2019-0010, "Any regulatory Liability existing at the end of the Guarantee Period shall be amortized starting with the effective date of rates in the first rate case after the end of the Guarantee Period. The appropriate amortization period will be determined in such rate case. If the regulatory liability exceeds the Guarantee amount of $52,500,000 (Missouri jurisdictional) at the end of the Guarantee period, the treatment of any amounts above the Guarantee shall be determined in the first rate case after the end of the Guarantee Period."[24]

Mr. Mooney's original response to OPC data request 8124 did not provide Mr. Mooney's understanding regarding what happens to the Guarantee amount. While I thought Mr. Mooney might be saying the MPPM provides up to $52.5 million of protection to customers, based on his response to my above data request, I still did not understand what he was referring to in this statement in his rebuttal testimony.

Q. Does the Guarantee amount in the MPPM provide a benefit Empire's customers of $52.5 million?

A. No. I reviewed Appendix B to the *Non-unanimous Stipulation and Agreement* to determine what would happen with this amount. The paragraph he misquotes is the only mention of the "Guarantee amount" in the document. Appendix B of the

[24] Mr. Mooney does not provide a cite for this quote. It is similar to a paragraph on page 18 of Appendix B to the Non-Unanimous Stipulation and Agreement with the exception that the actual paragraph states "If the ASV_Sum amount (row 29) exceeds the Guarantee amount of $52,500,000" instead of "If the regulatory liability exceeds the Guarantee amount of $52,500,000" found in his quote in this data request response.

Non-unanimous Stipulation and Agreement provides the following definition of "Guarantee":

> Guarantee = maximum exposure to the negative (regulatory liability) that <u>the Company is exposed</u> over the life of the guarantee. The Guarantee will be a fixed positive value of $52,500,000 Missouri jurisdictional (cell B7) exclusive of carrying costs. (Emphasis added)

While Mr. Mooney states in his rebuttal testimony that the $52.5 million is a cap on customer losses, the *Non-unanimous Stipulation and Agreement* approved by the Commission in EA-2019-0010 states the Guarantee only applies to the exposure of Empire's shareholders.

Q. Did OPC request Empire to clarify Mr. Mooney's response to OPC data request number 8124?

A. Yes. Mr. Mooney provided the following supplemental response:

> Yes, it is possible for Empire's customers to receive $52.5 million from Empire at the end of the ten year period of the MPPM. This would occur if the cumulative Annual Sharing Value after 10 years exceeds the Guarantee amount of $52.5 million and if the Commission determined in the subsequent rate case that customers should receive more.

In this supplemental response, Mr. Mooney changes his statement in his rebuttal testimony that "<u>[t]he MPPM provides</u> up to $52.5 million of <u>protection</u> to customers . . ." (emphasis added) to <u>the Commission ***could provide protection***</u> of up to $52.5 million in the first rate case subsequent to the end of the ten year MPPM.

Q. Does the MPPM in the *Non-unanimous Stipulation and Agreement* require the Commission to consider $52.5 million of protection for Empire's customers?

A. No. As Mr. Mooney acknowledges in his supplemental response to OPC data request 8124, the *Non-unanimous Stipulation and Agreement* only provides that

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the "treatment of any amounts above the Guarantee shall be determined in the first rate case after the end of the Guarantee Period."[25]

Q. Did Mr. Mooney answer your question in OPC data request number 8124 that asked whether it is possible for customers to receive $52.5 million from Empire at the end of the ten years of the MPPM?

A. Yes. He is correct that it is possible; however, the MPPM does not include a definite provision for Empire's customers to receive a total of $52.5 million. The $52.5 million "Guarantee" referred to by Mr. Mooney in his rebuttal testimony will only be provided to customers if the Commission determines in the subsequent rate case that customers should receive that amount. It is not a "Guarantee" for customers.

Q. Does Mr. Mooney's rebuttal testimony that "The MPPM provides up to $52.5 million of protection to customers" accurately reflect the MPPM described in the *Non-unanimous Stipulation and Agreement*?

A. No, it does not. In the MPPM described in the *Non-unanimous Stipulation and Agreement*, customers will get $52.5 million or more of protection ***only*** if, at the end of the ten years of the MPPM, the Commission decides that they should.

Q. From your review of the *Non-unanimous Stipulation and Agreement* and associated workpapers, is there a cap on either Empire's shareholders or customers in the MPPM?

A. My review of the filed MPPM revealed that, during the first 10 years, the cap on Empire's shareholders is zero ($0). They will absorb no losses while they will earn a return on the Wind Projects investment. Customers will absorb 100% of the losses over the ten years of the MPPM and pay the shareholders a return on the

[25] Page 18.

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Wind Projects.[26] After 10 years, up to $52.5 million of the cumulative losses for the first ten years would be split between shareholders and customers, with shareholders returning half of the cumulative losses, up to $26.5 million while at the same time earning a return of $252 million from the customers.

After ten years the Commission would determine what to do with any cumulative losses over $52.5 million.

Q. Mr. Mooney asserts that the Commission has already decided the MPPM. With regard to the sharing of losses from the wind projects, what does the Commission say in its *Report and Order* where it adopted the MPPM?

A. In its <u>Finding of Facts</u> regarding the MPPM design in paragraph 63.q. on page 28 of its *Report and Order* the Commission states in part:

> If there is a harm caused, there is a sharing mechanism with a Missouri-jurisdictional cap of $52.5 million for Empire to reduce costs to customers.

Q. What is your understanding of what the Commission meant?

A. I read this to say that if there is harm (cost is greater than revenue), there is a sharing of this harm with a cap of $52.5 million of the Missouri jurisdictional harm. It is not clear what the sharing is and what happens if the "harm" is greater than $52.5 million.

Q. Did the Commission say anything else regarding loss sharing?

A. Yes. In its <u>Finding of Facts</u> regarding the MPPM design, on page 29 in paragraph 68 of its *Report and Order,* the Commission states:

> 68. The cap of $52.5 million is appropriate because it is designed such that it should cover all situations up to those having a 0.5% probability of exceeding the cap over the 10-year period. Additionally, it is a "soft" cap,

[26] According to Empire's updated estimates provided in response to OPC data request 8075, over the first six years Empire expects the wind projects to generate losses that accumulate to **__________ ** before the wind projects begin to generate revenues greater than the costs in year seven of the MPPM. In that six years, customers will have also paid shareholders an estimated return on the capital costs of **__________ **.

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> as any amounts that would be incurred above that level, would go back to the Commission in a future rate case for a decision as to how they should be treated.

Q. Does this clarify the Commission's previous statement in paragraph 68.q of the prior page of its *Report and Order*?

A. Yes. It clarifies that the $52.5 million is the harm at the end of the 10-year period. It also clarifies that the Commission would, in a rate case that is more than ten years after the effective date of this rate case, decide what would happen with any "harm" over $52.5 million.

Q. Did the Commission say anything else in its *Report and Order* regarding the sharing of harm?

A. Yes. In the <u>Decision</u> portion of its *Report and Order* on page 48, the Commission said:

> Paragraph 21 of the Non-Unanimous Stipulation and Agreement includes a Market Price Protection Mechanism with, among other terms, a $52.5 million cap on customer losses over the first 10 years of the Wind Projects (the time it is expected to take for the tax equity partners to recoup their investments).

This Commission language in the *Report and Order* is similar to Mr. Mooney's rebuttal testimony that the <u>cap on Missouri customers</u> is $52.5 million. In other words, customers will not lose more than $52.5 million.

Q. Are these Commission statements in its *Report and Order* consistent with Mr. Doll's rebuttal testimony that the under-recovery be split between customers and shareholders?

A. No.

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Q. What is your proposal with respect to the MPPM?

A. I propose that the MPPM be clarified. The Commission needs to take into account that the risk of higher capital costs of the projects has been realized, as have lower SPP market revenues than those Empire forecasted when negotiating the MPPM.

Therefore, as I testified in direct, it is my recommendation that any costs that exceed revenues should be split between Empire's shareholders and customers 50/50, with a cap of $26.25 million on the losses paid by customers after 10 years.

Q. How did you get to the amount of $26.25 when the rest of the witnesses and the Commission all discuss $52.5 million?

A. Appendix B to the *Non-unanimous Stipulation and Agreement* states that the $52.5 million is the "Guarantee" and the Guarantee is to be split 50/50 between customers and shareholders. Fifty percent of $52.5 million is $26.25 million.

Therefore, my position is consistent with the Commission's decision that there be a cap on losses to the customers.

Q. Is your position a fundamental, significant change to the MPPM as Mr. Mooney charges in his rebuttal testimony?[27]

A. No. It is not a fundamental change to the MPPM. As I demonstrate in this and in my rebuttal testimony, the construct of the MPPM is unclear. Adopting my recommendations would clarify and define the MPPM. It would also, given the information that is known now as compared to what was known at the time the Commission issued its *Report and Order* in Case No. EA-2019-0010, more fairly balance the risks of Empire's customers with those of its shareholders.

[27] Rebuttal testimony, page 4.

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Q. Mr. Mooney asserts that your position unwinds the MPPM.[28] Does it?

A. No. Customers are being required to pay not only the huge capital costs of these wind projects but also a return to the shareholders. A mechanism that provides customers some protection is in order.

What I seek is to clarify the MPPM - what costs and revenues should be included, the inclusion of interest, how jurisdictional allocation factors should be applied, how the PPA replacement value should be calculated, and the impact on customers.

Q. Mr. Mooney asserts that we only know marginally more now than we did when the Commission adopted the MPPM. Do you agree?

A. No. We now have certainty regarding the capital costs of the wind projects, and more information about the revenues they will generate.

Q. What do we know about their revenues that we did not know when the MPPM was ordered by the Commission?

A. Empire certainly knows more now about the ability of the wind projects to generate electricity than it did when it negotiated the MPPM. For example, Empire now knows that, at least in the short-run, generation will be curtailed at the North Fork Ridge and Kings Point wind projects due to potential wildlife concerns[29] which increases the risk of harm as measured by the MPPM. In addition, it now has actual generation and operational data for the Wind Projects that it did not have when the MPPM was negotiated.

Q. Would you summarize your position regarding the MPPM?

A. The MPPM should accurately include all costs and benefits associated with the Wind Projects. The cost and benefits should be tracked to assure that customers

[28] *Id.*
[29] See direct testimony of Dr. Geoff Marke, pages 54 – 55.

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receive all benefits and costs customers pay are accurately recorded. Because it is a 10-year mechanism, interest should be included in the MPPM. There should be no PPA replacement value in the MPPM.[30] Finally, it should be clarified that there is a cap of $26.25 million on losses absorbed by customers at the end of ten years.

Schedule LMM-D-3 attached to my direct testimony describes the MPPM that I am proposing.

Fuel Adjustment Clause

Q. Who testified for Empire in rebuttal regarding Empire's FAC?

A. Charlotte Emery, in her rebuttal testimony, adopted the direct testimony of Zachery Quintero who was Empire's FAC minimum filing requirement witness. Empire had determined that some of the FAC subaccounts provided in Mr. Quintero's direct testimony need to be revised. Therefore, Ms. Emery attached to her rebuttal testimony a revised schedule, Schedule CTE-1 that shows the subaccounts of the costs and revenues that Empire is asking the Commission to include in Empire's FAC. Ms. Emery testifies that the revisions are related to account classifications only, and do not impact Empire's proposed FAC.

Ms. Emery's schedule shows deletion of two subaccounts and addition of four subaccounts to Mr. Quintero's schedule containing the accounts where Empire proposes to record FAC costs and revenues.

[30] If a PPA replacement value is included, the benefit should be equal to the lesser of the least-cost manner of meeting the renewable energy standard ("RES") at the time renewables are needed or the portion of the wind projects revenue requirement consistent with the RES requirement.

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Q. Did Ms. Emery provide a detailed description of the costs or revenues that would be recorded in these subaccounts?

A. Not in her rebuttal testimony. In OPC data request 8122 to Empire I requested detailed descriptions of the costs or revenues that would be recorded in each of the added subaccounts. I have attached Empire's response as Schedule LMM-S-2.

Q. Which subaccounts is Empire requesting be added?

A. Empire is requesting the following subaccounts be added due to the Wind Projects:

a) Value of production tax credits (account 409115);
b) Wind hedge gains/losses (account 555501);
c) Wind project REC revenues prior to the effective date of this case (account 456210);
d) Wind project REC revenues after the effective date of this case (account 456215);
e) Unknown revenues from the wind projects (account 456250);
f) Wind paygo payments (account 456260); and
g) Gross distribution (or contribution) for market revenues (account 456270).

Empire is also requesting, through this schedule, to add purchased power net metering costs (account 555999), and integrated market facilitation (account 575700).

Q. Are any of these subaccounts included in Empire's proposed FAC tariff sheets, or the costs or revenues to be recorded in them?

A. No. With respect to the Wind Projects, Empire is recommending adding vague language that "new wind revenues" be included in the FAC. Empire did not include language for net metering costs or integrated market facilitation.

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Q. What is significant about these costs, revenues and subaccounts?

A. Some of these subaccounts[31] are for revenues (paygo and production tax credit value) and costs (hedging costs) that should not be included in Empire's FAC for reasons I provided in my rebuttal testimony. The subaccounts are needed for tracking for the MPPM and amounts for these items should be included in revenue requirement, but these revenues and costs should not be included in Empire's FAC.

In her response to OPC data request 8122, Ms. Emery states that one of the subaccounts (account 456210) is for revenues from the sale of renewable energy credits ("RECs") prior to the effective date of this case.

Q. Should the Commission include this subaccount in Empire's FAC?

A. No.

Q. Why not?

A. Ms. Emery states this subaccount will not be used after the effective date of this rate case. This subaccount is not needed for tracking revenues for Empire's FAC, and including this unnecessary subaccount will just increase the likelihood of confusion in future Empire FAC prudence reviews.

Q. Aside from your concerns with paygo, PTCs, hedge costs, and REC revenues from before the effective date of this rate case, are you concerned with any other Wind Project subaccounts Ms. Emery has listed for Empire's FAC in her Schedule CTE-1?

A. Yes. Ms. Emery provides that subaccount 456260 is for "gross distribution amount for market revenues."

[31] Subaccounts 409115, 555501, 575700, and 456260.

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Q. What is "gross distribution amount for market revenues"?

A. I am not sure, but it may be for "Partnership cash Distributions" to Empire.

Q. Would you explain?

A. One of the conditions that applies to the tax equity partner agreement of the *Non-unanimous Stipulation and Agreement* is that, in years 1 through 5 of the agreements, 100% of the "Partnership cash Distributions" go to Empire. In years 6 through 10, 60% of the cash distributions would flow to Empire. While "Partnership cash Distributions" is not defined in the *Non-unanimous Stipulation and Agreement*, it is my understanding that this "cash distribution" is the sum of all the forms of revenue (SPP market revenues, PTCs, paygo, REC payment from Empire, and hedge payment from Empire) net of the operation and maintenance ("O&M") costs of the wind projects.

The inclusion of the words "distribution amount" cause me to pause and wonder if the intent of this subaccount is to record the flow of "Partnership cash Distributions" to Empire. If so, I do not understand why Empire would also have accounts that record individual wind projects revenues like REC revenues and hedge gains/losses (subaccounts 456215 and 555501).

In addition, if the revenues are recorded net of the costs, then customers will be paying for the O&M costs twice – once as normalized in revenue requirement and again when the revenues are netted with these costs.

While this may not be the intent of the cost/revenues recording in this subaccount, the intent is unclear and should be clarified.

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Q. How should your concern with Ms. Emery's proposed subaccount 456260 for recording "gross distribution amount for market revenues" be addressed?

A. This concern should be addressed with separate subaccounts for each revenue type and cost as I proposed in my direct testimony. Then the costs and revenues can be accurately tracked for the MPPM and for Staff's prudence reviews of the FAC.

Q. Could Ms. Emery be proposing this subaccount 456260 for something other than the partnership cash distributions to Empire included in the tax equity agreements?

A. Yes. She may be proposing it for recording SPP market revenues from the Wind Projects. If that is the case, then this subaccount is appropriate. However, it should be defined that only SPP market revenues from the Wind Projects are recorded in this subaccount.

Q. Do any of the other subaccounts Ms. Emery is proposing concern you?

A. Yes. Ms. Emery proposes subaccount 456250 be included "to record any unexpected revenues for the wind project companies." She expects no activity at "the Empire level" for this subaccount.

Q. What is your concern with this subaccount?

A. While I applaud Empire for wanting to return any possible revenues to customers, Empire should not be allowed to pass unspecified revenues through its FAC. If the Commission allows such a subaccount, it then allows Empire to determine what goes through Empire's FAC instead of the Commission.

Therefore, the Commission should not include subaccount 456250 in Empire's FAC. If Empire wants to return revenues to its customers, it may do so with a regulatory liability account that gives the revenue back to customers in the next general rate case.

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Q. Are you concerned with any of the other subaccounts Ms. Emery is proposing to add to Empire's FAC?

A. Yes. I am concerned with subaccount 555999 Purchased Power Net Metering.

Q. Why?

A. Empire has not provided any evidence for why purchased power net metering costs should flow through its FAC. There is no evidence that shows the magnitude or volatility of these costs or how not flowing these costs through its FAC prevents Empire from earning a fair return on equity. In addition, Empire did not include any mention of net metering costs its proposed FAC tariff sheets. I recommend the Commission not include the costs from this subaccount in Empire's FAC

Q. What is Staff's position on including net metering costs in Empire's FAC?

A. Staff included these costs in its calculation of Empire's FAC base calculation in its *Cost of Service Report*[32] and Staff included an amount for net metering in its calculation of Staff's FAC base factor in Schedule BM-d2 to its *Class Cost of Service Report*. But Staff made no recommendation in its testimony regarding the inclusion of these costs in Empire's FAC.

Q. Do you know why Empire incurs these purchased power net metering costs?

A. No.

Q. Should the Commission allow these costs in Empire's FAC?

A. No. There has been no testimony provided to the Commission describing these costs or why they should be included in Empire's FAC. If the Commission allows these costs in Empire's FAC, it will be allowing undefined costs to flow through Empire's FAC.

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[32] Page 120.

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Q. Are you concerned with any other subaccounts Ms. Emery has listed for Empire's FAC in her Schedule CTE-1?

A. Yes, one more, subaccount 575700 IM Market Facilitation. Ms. Emery provides that this subaccount is for recording SPP administrative costs, but without any further specification, other than that the costs will be "administrative." She then goes on to say Empire did not include any costs related to this item in its revenue requirement model.

Q. Should the Commission allow these costs in Empire's FAC?

A. No. OPC supports Staff's position that SPP administrative costs are not fluctuating fuel and purchased power costs and should not flow through the FAC.[33]

Q. For each of the costs and revenues that are to be included in Empire's FAC, should it be listed in the FAC tariff sheets together with the subaccount where it is to be recorded, and also described in testimony?

A. Yes. Because Empire's FAC uses formula rates, the costs and revenues that are included in Empire's FAC should not be defined by the subaccount in which they are recorded. By defining the subaccount and not the cost or revenue, any cost or revenue included in that account can be included in Empire's FAC.

Q. Are you recommending that costs and revenues that were to be recorded in these subaccounts not be included in Empire's FAC?

A. No. Based on the limited title of these subaccounts provided by Empire, some of these subaccounts may consider market and REC revenues from the Wind Projects. These sources of revenues should flow through Empire's FAC.

[33] Rebuttal testimony of Brooke Mastrogiannis, page 7.

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Q. What do you recommend?

A. I recommend the Commission order Empire to provide a detailed listing of each and every cost and revenue it is proposing to include in its FAC, and the subaccount where each is to be recorded.

In addition, the costs and revenues that are to be included in Empire's FAC need to be provided accurately and specifically on Empire's FAC tariff sheets.

Q. Do you have any other concerns raised by Ms. Emery's response to OPC data request 8122?

A. Yes. In addition to limited definitions of the revenues and costs that would be recorded in each subaccount, Ms. Emery provided the amount included in the FAC base and revenue requirement for each of the subaccounts. This information on two of the subaccounts causes me concern regarding the calculation of the FAC base factor and Empire's revenue requirement.

Q. What is the first subaccount that you are concerned about with regard to the FAC base factor and Empire's revenue requirement?

A. Empire included $467,554 of revenue from the sale of RECs in its revenue requirement and its FAC base factor.[34] This equates to revenues of **__________

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__________ ___ ** is used for the Wind Projects, as it was for the current wind PPA REC sales, the Wind Project REC revenue would be $1,231,383.

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[34] Empire direct workpaper "2021 MO Rate Case Model Output – Final – Confidential.xlxs", tab "Costs".
[35] *Id.,* tab "RECs".

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Q. Why is this difference a concern?

A. The lower the REC revenue the higher the rate case revenue requirement and the FAC base, which means Empire keeps more of its revenues until its next case.

Q. What is your recommendation regarding REC revenue from the Wind Projects?

A. I propose revenues of $1,231,383 be included in the revenue requirement and the FAC base factor lowering the revenue requirement and base factor by $763,829.

Q. What other subaccount causes you concern regarding Empire's revenue requirement and FAC base factor?

A. Ms. Emery provides that the revenue requirement and FAC base factor include no revenue ($0) from paygo from the Wind Projects[36] despite Empire estimating in its MPPM that paygo would provide revenues of approximately **___** million a year. As I provided in my rebuttal testimony, because paygo is not a fuel, purchased power, or transportation cost it should not be included in Empire's FAC. The quickest way to get paygo to customers is to include an amount for it in Empire's revenue requirement and track the difference. OPC witness John Riley proposes this treatment in his direct testimony[37] and Empire witness Mooney stated in his rebuttal testimony that he did not reject Mr. Riley's proposal.

Q. Would you summarize your concern?

A. Empire seems reluctant to reduce revenue requirement for paygo even though Empire has touted paygo as a benefit of the tax equity agreements for the Wind Projects since it first proposed these projects to the Commission in 2018.

[36] Subaccount 456260.
[37] Page 6.

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Q. What do you recommend?

A. I recommend the Commission adopt the following recommendation of OPC witness John Riley:

> Erring on the side of caution, I recommend that the Commission include an estimate of $4 million in paygo payments in Empire's annual revenue requirement and track the difference between Empire's actual paygo revenues against that $4 million per year, and address the difference when designing Empire's rates in the next rate case.

If the Commission includes paygo in Empire's FAC, then not only should Empire's revenue requirement be reduced by $4 million, its FAC base should also be reduced by $4 million.

Q. What would be the impact of not including any paygo revenue in Empire's revenue requirement and only flowing the paygo revenue through Empire's FAC?

A. In addition to an inappropriate revenue stream flowing through Empire's FAC, this would result immediately in higher rates for customers and delay customers receiving any paygo benefits until the first FAC recovery period after the first FAC accumulation period that includes a paygo payment to Empire.

Q. Is Ms. Emery the only Empire witness who testifies in rebuttal regarding proposed modifications to Empire's FAC?

A. I could not find any other Empire rebuttal testimony regarding its FAC. Empire filed no rebuttal in opposition to my recommended modifications to its FAC detailed in my direct revenue requirement testimony[38] or the tariff language changes I proposed in my direct class cost of service testimony.

[38] Pages 26 – 30.

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Q. Did any Staff witness prefile rebuttal testimony regarding Empire's FAC to whom you would like to respond?

A. Yes. Staff witness Kimberly K. Bolin provided rebuttal testimony that, if the Commission decides to include the paygo revenues in the FAC, the customers will automatically receive the benefits of the paygo revenues and a tracker will not be needed.[39]

Q. What is your response?

A. First, as I provided in my direct testimony, because paygo is not a fuel, purchased power, or transportation related revenue, but rather a payment provided by the Wind Projects tax equity partners if production exceeds a set amount, the Commission should not flow paygo through Empire's FAC.

Second, because Empire's FAC is designed to only flow 95% of revenues above what is placed in the revenue requirement used to design general rates for customers, all revenues from the Wind Projects that are included in the MPPM, including SPP market revenues and REC revenues, need to be tracked to make certain that customers receive all the benefits, including the 5% of revenues that do not flow to customers through Empire's FAC. Assuming a paygo of $10 million a year, this would mean that Empire would get to keep $500,000 a year.[40] If there is no tracker, customers would not see the full benefit of the paygo payment. Their "harm" in the MPPM would increase $500,000 a year.

This tracking should include the revenues that are included in Empire's revenue requirement in this case, total revenues received, revenues that were returned to Empire's customers through Empire's FAC, and revenues that did not flow to Empire's customers through its FAC. These revenues will be returned to Empire's customers in Empire's next general rate case.

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[39] Page 13.
[40] This assumes no paygo is included in the FAC base factor.

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Q. Is your recommendation only for paygo if paygo flows through Empire's FAC?

A. No. All revenues that flow through the MPPM and Empire's FAC should be tracked in this manner.

Q. Did any other Staff witness prefile rebuttal testimony regarding Empire's FAC to whom you would like to respond?

A. Yes. Staff witness Brooke Mastrogiannis provided testimony on Empire's proposed modifications to its FAC.

Q. What is your response to Ms. Mastrogiannis' testimony on Empire's FAC?

A. I support the following positions of Ms. Mastrogiannis:

1. Only a percentage of transmission costs calculated using the amount of electricity purchased be included in Empire's FAC;
2. SPP schedules 1a and 12 costs should not be included in Empire's FAC; and
3. There should be no time-of-use ("TOU") features in Empire's FAC at this time.

Q. You recommend that transmission revenues should be included in Empire's FAC at the same percentage as its transmission costs, but Ms. Mastrogiannis testifies that the Commission has never approved a FAC that flows transmission revenues through it. Is she correct?

A. No. While the Commission has never ordered that transmission revenues be included in an electric utility's FAC as a contested matter, the Commission has approved Union Electric Company d/b/a Ameren Missouri's FAC which includes transmission revenues at the same percentage as transmission costs. Ameren

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Missouri's FAC tariff sheet provides the following be included in the purchased power factor (PP) in Ameren Missouri's FAC:[41]

> 2) One and 44/100 percent (1.44%) of transmission service costs reflected in FERC Account 565 and one and 44/100 (1.44%) of transmission revenues reflected in FERC Account 456.1 (Emphasis added).

Q. Is there anything else the Commission should consider when deciding whether or not to flow any transmission revenues through Empire's FAC?

A. Yes. Empire has proposed modifying its FAC to include transmission revenues. These revenues would be revenues from the same SPP schedules for which transmission costs currently are included in Empire's FAC. If the FAC tracks the changes in the costs, it should also track the revenues at the same percentage as the costs.

Q. What is your response to Ms. Mastrogiannis' proposal to modify the FAC language you proposed for extraordinary net fuel and purchased power costs?

A. Ms. Mastrogiannis is proposing to add the italicized language below to my proposed language:

> When extraordinary net costs have been incurred in an accumulation period, for good cause the Commission may allow (after opportunity for any party to be heard) the recovery period to extend beyond six months. The amount not recovered will be added to subsequent recovery periods with a true-up for the extraordinary cost at the end of the Commission approved recovery time period for the extraordinary cost. *However, this language does not preclude Empire or any other party from requesting in a case before the Commission different treatment for deferring extraordinary costs in a liability account for future recovery.*

I do not believe this language is necessary for different treatment of extraordinary costs, but I do not oppose the addition of the language.

[41] Mo. P.S.C. Schedule 6, 1st Revised Sheet No. 71.3.

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Q. Do you have any other responses to Staff's FAC recommendations?

A. As I have previously testified, the Commission should not include costs associated with net metering in the FAC. It is not a formal Staff recommendation, but is implied in Staff's calculation of its FAC base factor.

Q. Does this conclude your surrebuttal testimony?

A. Yes, it does.