

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

In the Matter of the Request of The Empire      )  
District Electric Company d/b/a Liberty for      )  
Authority to File Tariffs Increasing Rates      )      Case No. ER-2024-0261  
for Electric Service Provided to Customers      )  
in its Missouri Service Area      )

**The Office of the Public Counsel's Initial Brief**

Respectfully submitted,

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December 16, 2025

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Denotes Highly Confidential Information that has been redacted  
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**COMES NOW** the Office of the Public Counsel and for its Initial Brief states:

### **Introduction**

As all Commissioners acknowledged during the Commission's November 5, 2025, open meeting, The Empire District Electric Company d/b/a Liberty's customer service is inadequate as shown by numerous Liberty customer affecting actions and inactions in the record, including the *plethora* of Liberty billing issues.<sup>1</sup> Liberty's customer service falls far below what its customers deserve and, therefore, as the Commissioners discussed, the Commission should not increase Liberty's general electric rates in this case.<sup>2</sup> Indeed, the Commission should not even entertain increasing Liberty's rates.

Further, if the Commission allows Liberty to continue its privilege of having a Fuel Adjustment Clause (FAC), then the Commission should change the sharing mechanism in that FAC from 95/5 to 50/50,<sup>3</sup> or something between 50/50 and 90/10,<sup>4</sup> and exclude from that FAC

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<sup>1</sup> During the open meeting Chair Hahn said:

We heard time and time again from the public, from public counsel, Staff, and from Liberty itself that Liberty has struggled to provide adequate or reliable customer service to customers. The customer service issues span much more than delays in answering customer calls or a bill that was sent late to a customer on an occasion. The evidence we've been presented shows that Liberty was unable to accurately send bills to customers for months on end. And while these billing issues were continuing, Liberty made further missteps like not staffing customer centers and not appropriately communicating these issues to customers and other stakeholders. All of this amounting to what has been referred to in testimony as egregious mismanagement, which has been substantiated by hundreds of customers using similar language at local public hearings.

We heard a lot of testimony from Liberty about what changes Liberty is working on or intends to make, and that we are looking forward to seeing, but we are not presented with sufficient testimony that Liberty has made significant current improvements that would be immediately noticeable to customers. While I am impressed with the leadership changes at Liberty and the exceptional talent Liberty has been able to attract to help address these issues, I do not think that as the record stands today, Liberty has met its burden. And in this case, as in all electric rate cases, we look backwards toward the test year to assess performance, which brings me to just and reasonable rates. The commission must set rates that are just and reasonable to both the utility and the customer. As I previously mentioned, in my view, Liberty has not yet satisfied its burden that an increase to its revenue requirement or a rate increase will result in just and reasonable rates. What I feel I need and what I think the customers deserve is for Liberty to make documented improvements in its billing and service before a rate increase is implemented.

<sup>2</sup> See argument for **Issue No. 163**.

<sup>3</sup> Ex. 206, Public Counsel witness Lena M. Mantle direct testimony, pp. 25-35.

<sup>4</sup> Ex. 207, Public Counsel witness Lena M. Mantle rebuttal testimony, p. 7.

Liberty's costs to serve large load customers,<sup>5</sup> but otherwise not change Liberty's FAC. Because Liberty's customer service is inadequate, Liberty's general electric rates and FAC parameters otherwise should not change in this or any other case until after Liberty shows that it has improved its customer service to where that service has become adequate.

If the Commission were to adopt and order the terms of the opposed *Non-Unanimous Global Stipulation and Agreement* ("Settlement") filed on October 6, 2025, then it would *reward* Liberty with a \$97 million per year rate increase phased-in over three years, a 19% increase over present rates. Any rate increase, as the evidence in this case overwhelmingly shows, is simply not just and reasonable. Rejecting *any* rate increase until Liberty resolves a fundamental aspect of customer service—accurate billing—is a just and reasonable outcome under the circumstances.

Absent monopoly power over a captive customer base, the evidence is that Liberty would lose customers in droves as they chose competitors who provide better service.<sup>6</sup> As a surrogate

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<sup>5</sup> Ex. 207, Public Counsel witness Lena M. Mantle rebuttal testimony, pp. 29-30.

<sup>6</sup> Tr. 4; 19-20, Wanda Johnson at the July 22, 20205, local public hearing at Bolivar:

My comment would be that my concern with Liberty Utilities is the fact that they are so incompetent in their billing and it's been over a year. You get no bill, you get two bills in one day and another one the next day after that. It's just totally -- If it was at a business here in town, their accounting department would be fired. They spend a lot of money just on postage sending all these bills out. I mean, we got three in one month. Some people get ten.

· · · · · My other concern with Liberty Utilities is the fact that we have no choice, a lack of choice. I am very fortunate that I live outside of town but my business is in town. I'm on Southwest Electric out in the county. My children live here in town and they're on Liberty Utilities. Their bill is as big as their mortgage. Now when did that become okay. Your utility bills should not be as big as your mortgage or bigger, larger than your mortgage payment. And they're young. They're in their thirties and forties. I don't know how people who are on social security can afford their medicine, their utility bill. Their home is probably paid for. But how can they afford it. I don't see how they can. So I would say the biggest thing is the lack of choice. I don't understand why we don't have a choice.

· · · · · On my road out here in the county Liberty has poles on one side of the road and Southwest Electric has poles on the same road on the opposite side. I think we should have a choice. I don't think we should be – it should be a monopoly where we have no choice. It's ridiculous. And they've got us and there's nothing we can do about it.

· · · · · So the community feels like nobody is helping. Nobody can do anything about it. We've been told it's all over Facebook on our community chat why go tonight, nothing is going to change, they're not going to do anything. So I'm asking you to do something. I'm not just asking you. I'm going to ask my state rep also to do it.

for competition, the Commission should incent Liberty to improve its customer service similar to how a company facing competition is incented. In a competitive market, a company providing poor service would lose not only customers, but also revenues. While the Commission could justifiably order Liberty's rate revenues be reduced in this case, an outcome that may better reflect the natural consequences of Liberty's unacceptable performance, not approving any rate increase as Public Counsel proposes, is a better outcome for Liberty than if Liberty had to compete for its customers.

Liberty's rates from its last rate case are just and reasonable until the Commission determines that they are not.<sup>7</sup> Because it is seeking a rate increase Liberty has the burden of showing that its current rates no longer are just and reasonable.<sup>8</sup> Liberty achieved earnings above its authorized rate of return during the updated test year<sup>9</sup> which suggests that Liberty's current rates provide it with an opportunity to recover its costs plus a reasonable return on its investments.

If the Commission were to reward Liberty by increasing Liberty's rates, then the evidence, including Public Counsel's evidence on individual issues, supports that Liberty should get an increase of no more than about \$53.6 million per year, about a 10.5% increase. This represents Public Counsel's best estimate of the sum of all of the rate increase offsets identified by the Public

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something. We need to be deregulated and have a choice on who provides our electricity so it's competitive because here in the United States of America it's about capitalism and competition and there's no competition here in the city of Bolivar. It's a monopoly. And Liberty Utilities has got us by the short hairs.

<sup>7</sup> § 393.140(11), RSMo, ("No corporation shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such services as specified in its schedule filed and in effect at the time; nor shall any corporation refund or remit in any manner or by any device any portion of the rates or charges so specified, nor to extend to any person or corporation any form of contract or agreement, or any rule or regulation, or any privilege or facility, except such as are regularly and uniformly extended to all persons and corporations under like circumstances."); *State ex rel. AG Processing v. PSC*, 340 S.W.3d 146 (Mo. App. 2011).

<sup>8</sup> § 393.150.2, RSMo.

<sup>9</sup> Ex. 207, Public Counsel witness Lena M. Mantle rebuttal testimony, p. 5, Table 1.

Counsel's experts after they are deducted from the Staff's filed true-up testimony mid-point ROE revenue requirement shortfall recommendation of \$129 million.

There are other reasons for the Commission to deny giving Liberty a rate increase, and to direct Liberty to come back with a new case once it has fixed its problems. For example, Liberty has not complied with the Commission's September 7, 2016, ***Order Approving Stipulations and Agreements and Authorizing Merger Transaction*** in Case No. EM-2016-0213 where the Commission ordered:

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.<sup>10</sup>

Disingenuously, Liberty claims in Ex. 227 that Liberty satisfied these requirements in its witness Colin Penny's direct testimony (Ex. 43) at pages 3-4 and 9-10.<sup>11</sup>

Important to more than one contested issue, in its April 23, 2025, ***Order Establishing True-Up Period***, the Commission ordered a cut-off date of March 31, 2025, for truing-up the following:

- Capital structure;
- Cost of debt;
- All rate base components;
- Customer growth/loss;
- Depreciation expense;
- Amortization expense (intangible & regulatory assets/liabilities);
- Property tax;
- Payroll and associated items (i.e., overtime, benefits, payroll taxes);
- Pension and Other Post-Employment Benefits (OPEBs) (Financial Accounting Standard 87 and 106);
- Fuel and purchase power expense, to include, but not be limited to, updated contract prices for fuel, wind power, fuel transportation and fuel storage;

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<sup>10</sup> See Ex. 205, Geoff Marke Surrebuttal testimony, pp. 18-19.

<sup>11</sup> Liberty provided no workpapers to support this testimony.

- Rate case expense; and
- Income tax expense.

The Commission also ordered, “Parties may propose the incorporation of discrete adjustments beyond the true-up period, *provided they are known and measurable.*” (Emphasis added). As Public Counsel will explain when it addresses each specific issue in this brief, for capital structure (**Issue No. 1.b.**) and cost of debt (**Issue No. 1.c.**) both Liberty and Staff have relied on a beyond March 31, 2025, unexecuted inter-affiliate promissory note. In addition, Liberty is predicated the expense of water usage at State Line facility on a May 28, 2025, water rate change, and Liberty has based its fuel and purchase power expense (**Issue Nos. 43 & 85**) on forecasted fuel and energy market costs beyond March 31, 2025, in both its direct and its true-up cases.

When deliberating this case, in addition to Liberty’s billing-related and other customer service issues which Public Counsel addresses under **Issue No. 163**, the Commission should keep in mind the following.

Liberty originally intended to file this rate case during the Summer of 2024 shortly after it migrated to using Customer First for customer billings on April 8, 2024.<sup>12</sup> Given the billing issues that ensued after that migration, it is unsurprising that Liberty did not file that rate case until November 6, 2024.<sup>13</sup> When it filed that rate case Liberty filed tariff sheets that it had designed to increase its revenues by \$92.1 million annually although its filed revenue requirement analysis indicated a \$153 million shortfall.

Public Counsel reviewed Liberty’s November 6, 2024, rate case filing and workpapers and then pointed out to Liberty the apparent disconnect between Liberty’s proposed tariff sheets and

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<sup>12</sup> Liberty filed its 60 days’ notice of its intent to file a general rate case on March 25, 2024. Ex. 206, Public Counsel witness Lena M. Mantle direct testimony, p. 3. Liberty migrated its customer billings to Customer First on April 8, 2024. Tr. 11:109, 113, Liberty witness Tim Wilson.

<sup>13</sup> Ex. 206, Public Counsel witness Lena M. Mantle direct testimony, pp. 3-4.

revenue requirement analysis. After much discussion, Liberty acknowledged the tariff sheets it filed on November 6, 2024, would not increase its revenues to the level it had intended. Liberty's remedy was to submit on February 3, 2025, substitutes to the rate schedules it had filed with the Commission so that, as substituted, the schedules were designed to increase its revenues by \$153 million annually.<sup>14</sup> As to the change from tariff sheets designed to collect an additional \$92.1 million annually to those designed to collect an additional \$153 million annually, Public Counsel witness Lena M. Mantle, who has been actively involved in Commission proceedings since August 1983,<sup>15</sup> testified, "I have never seen an error anywhere near this magnitude before in an electric utility's request to this Commission to increase its general rates."<sup>16</sup>

Public Counsel responded to Liberty's substitute rate schedules by filing on February 5, 2025, a motion to reject all of Liberty's tariff sheets and dismiss its application, as did Staff. To avoid the Commission ruling on those motions, on February 26, 2025, Liberty withdrew all of its tariff sheets and prefilled testimony, and immediately filed new tariff sheets designed to increase its revenues by \$153 million annually with prefilled testimony.<sup>17</sup> Those are the tariff sheets that underlie this current review of Liberty's rates.

When reviewing Liberty's direct case Public Counsel witness Mantle uncovered Liberty errors and misunderstandings. In her testimony she explains in detail some of Liberty's misunderstandings of fundamental Missouri ratemaking concepts<sup>18</sup>—concepts such as that values for the same components in the FAC base and cost-of-service are to be the same, fuel adjustment clauses operate independently of general rates,<sup>19</sup> and that fuel adjustment clause test year revenues

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<sup>14</sup> Ex. 206, Public Counsel witness Lena M. Mantle direct testimony, pp. 3-14.

<sup>15</sup> Ex. 206, Public Counsel witness Lena M. Mantle direct testimony, p. 1.

<sup>16</sup> Ex. 206, Public Counsel witness Lena M. Mantle direct testimony, p. 4.

<sup>17</sup> Ex. 206, Public Counsel witness Lena M. Mantle direct testimony, p. 16.

<sup>18</sup> Ex. 206, Public Counsel witness Lena M. Mantle direct testimony, pp. 5-22.

<sup>19</sup> Ex. 206, Public Counsel witness Lena M. Mantle direct testimony, p. 21.

are irrelevant to determining cost-of-service based revenue requirements.<sup>20</sup> She also details how she investigated the “three wildly varying numbers for the increase in Liberty’s FAC fuel and purchased power costs—\$60.67 million, \$41.8 million, and \$0.39 million.” Each of these numbers is based on a different Liberty representation of how much of Liberty’s stated rate increase was due to fuel-related costs. She also describes how these varying representations show Liberty’s fundamental lack of understanding of how its fuel adjustment clause works.<sup>21</sup>

Most of the parties, including Liberty, proposed a true-up period ending March 31, 2025, “for the sole purpose of updating the following items: capital structure; cost of debt; all rate base components; customer growth/loss; depreciation expense; amortization expense (intangible & regulatory assets/liabilities); property tax; payroll and associated items (i.e., OT, benefits, payroll taxes); Pension and OPEB (FAS 87/106); fuel and purchase power expense, to include, but not be limited to, updated contract prices for fuel, wind power, fuel transportation and fuel storage; rate case expense; and Income Tax Expense.”<sup>22</sup> They also proposed, “Parties may also propose the incorporation of discrete adjustments beyond the true-up period, provided they are known and measurable.” The Commission adopted all of these proposals in its April 23, 2025, *Order Establishing True-Up Period*.

Despite the foregoing, often doing so without stating it was doing so or proposing to do so, Liberty relied on post March 31, 2025, data to make adjustments to its test year. Liberty did so for the natural gas prices its used for determining net fuel and purchased power costs. See arguments under **Issue Nos. 43, 85, and 91**. It did so for ARR/TCR<sup>23</sup> revenues. See argument under **Issue No. 42**. It did so for water usage at its State Line facility. See argument under **Issue**

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<sup>20</sup> Ex. 206, Public Counsel witness Lena M. Mantle direct testimony, pp. 8-14.

<sup>21</sup> Ex. 206, Public Counsel witness Lena M. Mantle direct testimony, pp. 5-21.

<sup>22</sup> *Corrected Updated Non-Unanimous Joint Proposed Procedural Schedule* filed April 8, 2025.

<sup>23</sup> Auction Revenue Rights/Transmission Congestion Rights (Southwest Power Pool).

**No. 70.** It appears that it also did so for amortizing unprotected Excess Accumulated Deferred Income Taxes and gas transportation costs. See arguments under **Issue Nos. 87 and 135.**

Despite a clear Commission order and press release, Liberty put the wrong time for the Commission-ordered Aurora local public hearing in the notice of local public hearings it mailed to its customers as a bill insert.<sup>24</sup> Because of Liberty's error the Commission held both a noon and an evening in-person local public hearing in Aurora, Missouri, on July 24, 2025. It was fortuitous that the Commission held both because the turnout was high at each.

In its case, Liberty advances arguments to support what it has done, even when what it has done and the arguments supporting its actions are inconsistent. For example, Liberty argues both that **selling** a “slice” of its generating capacity to the Missouri Joint Municipal Electric Utility Commission and **buying** capacity by renewing its Elk River wind farm purchase power agreement both benefit its customers, although Liberty **needs to acquire more capacity** for future Southwest Power Pool (“SPP”) requirements.<sup>25</sup>

Liberty's attitude toward its customers' concerns and desires are demonstrated by the following responses Liberty executives made to questions Chair Hahn posed. When Chair Hahn asked upper level executive Liberty witness Amy Walt what steps Liberty was taking to improve in-person customer service assistance Ms. Walt testified that Liberty was trying to avoid in-person customer service assistance.<sup>26</sup>

And when Chair Hahn asked Liberty executive witness Timothy N. Wilson what steps Liberty was taking to address municipal street light outages, Wilson responded,

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<sup>24</sup> July 7, 2025, *Order Setting Additional Local Public Hearing*.

<sup>25</sup> Ex. 62, Liberty witness Timothy N. Wilson surrebuttal testimony, p. 7 (customer benefit to sell “slice” and to renew purchase power agreement); Ex. 49, Liberty witness Todd W. Tarter corrected direct testimony, pp. 6-7 (explanation of “slice” and that includes capacity); Ex. 10, Liberty witness Aaron J. Doll surrebuttal and true-up direct testimony, p. 3 (renewed Elk River purchased power agreement primarily for capacity).

<sup>26</sup> Tr. 11:72-77.

Q. (Chair Hahn) During the local public hearings, there were at least two cities that mentioned problems with Liberty restoring street lights that were out.<sup>27</sup> I think particularly in Bolivar, but I also think I recall another city mentioning it as an issue. I can't immediately recall which one. . . . . I noticed in the stipulation and agreement there is a reliability provision, but I'm not sure if the two are related. What action does Liberty plan to take to improve street light outages in the -- ***in the territory?*** (Emphasis added).

A. (Mr. Wilson) Right. We're actually working with the City of Bolivar for an extension to their MESA right now. And we're hyperfocused on ensuring that they continue to have street lights and adequate street lighting.<sup>28</sup>

\* \* \* \*

Q. (Mr. Williams) I want to follow-up on Chair Hahn's questions about Bolivar and street lights. You said something about ongoing negotiations. What were you referring to?

A. (Mr. Wilson) So they let their MESA agreement expire.

Q. Their what agreement?

A. MESA agreement.

Q. What is MESA?

A. Municipal Electric Supply Agreement, something along those lines.

Q. So it's a contract with the City and Empire for electric service to the municipality?

A. Yeah, for the lights.

Q. And that con- -- the current -- is there currently a contract in place?

A. Technically, I'm not sure. They let it expire. We're trying to extend it.<sup>29</sup>

Chair Hahn asked Mr. Wilson about outages of streetlights in Liberty's service territory. Mr. Wilson's response was limited to municipal contract negotiations with the City of Bolivar, and an assertion that Liberty is "hyperfocused on ensuring that they continue to have street lights and adequate street lighting."

Public Counsel has restated in this brief all of the 170 listed issues, those shown with strikeout no longer were contested issues by the start of the October 14, 2025, evidentiary hearing. Unless it decides not to increase Liberty's rates because Liberty's customer service is inadequate,

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<sup>27</sup> Raised by Buffalo Alderman Eric Kirchberg at the July 22, 20205, local public hearing at Bolivar (Tr. 4:14-17) and by Anthony Barnes at the July 22, 20205, local public hearing at Nixa (Tr. 3:52-55).

<sup>28</sup> Tr. 11; 123-124.

<sup>29</sup> Tr. 11; 129-130.

the Commission needs to resolve the remaining issues. After filing true-up rebuttal testimony the parties worked on quantifying the revenue requirement impacts of their issues. The results are in the attached table labeled, ***Issues Values***. Since the Settlement purports to resolve all of the issues—including Public Counsel’s issues—without identifying how each specific issue is resolved (a “black box” settlement), the Settlement does not enable the Commission to determine the revenue requirement impact of the settlement of each particular issue or the evidentiary basis for how the signatories resolved that particular issue. It is not clear to Public Counsel how the Commission can adopt the Settlement and resolve the large number of contested issues.

Public Counsel’s argument follows the Commission’s directive in footnote five of its April 10, 2025, ***Order Setting Updated Procedural Schedule and Assignment of Exhibit Numbers*** that briefs are to follow the numerical order of the disputed issues. Generally, where Public Counsel has not taken a position on an issue Public Counsel supports the position Staff took in the filed testimony of its witnesses. As a result, where Public Counsel positions differ from Staff’s pre-settlement positions Public Counsel’s positions cause additional offsets to Liberty’s initial revenue requirement increase request. Based on the attached ***Issues Values*** table, if Public Counsel were to prevail on every issue, then if Liberty’s inadequate customer service is ignored, under traditional cost-of-service ratemaking Liberty’s increase in annual rate revenues should be no more than a \$53.6 million. Further, if the Commission allows Liberty to continue its FAC, then the base factor in that FAC should be \$0.01111/kWh.

## **Argument**

### **Capital Structure/ROE/Cost of Debt**

#### **1. What is the appropriate rate of return?**

##### **a. Return on Common Equity – what return on common equity should be used for determining rate of return?**

If the Commission sets new general rates for Liberty (a/k/a “Empire”) in this case, then it should authorize an allowed return on common equity (“ROE”) for determining Empire’s rate-of-return of no more than 9.25% as Public Counsel witness David Murray recommends.<sup>30</sup> To estimate Empire’s cost of common equity (“COE”), Public Counsel witness David Murray used COE models and assumptions consistent with those investors use.<sup>31</sup> While Mr. Murray’s COE analysis shows that Empire’s COE has increased since its 2019 rate case when the Commission authorized a 9.25% ROE, Mr. Murray’s estimate of the electric utility industry’s COE in late 2019 to early 2020 was in the range of 5.5% to 6.5% or 325 basis points below Empire’s Commission-authorized ROE (Mr. Murray’s COE estimate at the time was corroborated by internal information he discovered from Empire).<sup>32</sup> In the instant rate case, Mr. Murray estimated Empire’s COE to be in the range of 7.8% to 8.5%, which is based on his estimate of the electric utility industry’s COE (Mr. Murray’s COE in this case is also corroborated by internal information he discovered from Empire).<sup>33</sup> Investors and Algonquin Power & Utilities Corp. (“APUC”), both recognize that although the COE has increased since late 2019/early 2020, because authorized ROEs are still above the COE, they do not expect a drastic change to authorized ROEs.<sup>34</sup> Although the authorized

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<sup>30</sup> Ex. 209, Public Counsel witness David Murray direct testimony, pp. 2-3, 25-55; Ex. 210, Public Counsel witness David Murray rebuttal testimony, p. 48; Ex. 211, Public Counsel witness David Murray surrebuttal testimony, p. 31.

<sup>31</sup> Ex. 209, Public Counsel witness David Murray direct testimony, pp. 41-54.

<sup>32</sup> Ex. 211, Public Counsel witness David Murray surrebuttal testimony, pp. 21- 22.

<sup>33</sup> Ex. 209, Public Counsel witness David Murray direct testimony, pp. 50-52.

<sup>34</sup> Ex. 209, Public Counsel witness David Murray direct testimony, pp. 37-38; Ex. 211, Public Counsel witness David Murray surrebuttal testimony, pp. 21-31.

ROE margin over the COE has declined, utility companies can still create wealth for their shareholders by investing in their systems, just not as much as during the extremely low cost of capital environment in late 2019-to-early 2020.<sup>35</sup> Although the increase in the electric utility industry's COE over the last few years caused Mr. Murray to recommend a 9.5% authorized ROE in Ameren Missouri's and Evergy Missouri West's recent rate cases, Case Nos. ER-2024-0319 and ER-2024-0189, respectively, due to Empire's troubled rollout of Customer First, authorizing a 9.25% ROE is fair and reasonable.<sup>36</sup>

Public Counsel's discovery in this case revealed a fundamental aspect of capital budgeting which contradicts Empire's basis for its requested ROR, and, frankly, most utility companies' bases for their requested RORs. As the Commission is aware, utility companies claim that their ROR recommendations are based on their estimates of the cost of capital used to fund their investments included in rate base. Empire witness Mr. Dane and Staff witness Mr. Walters both testify that setting Empire's authorized ROR based on its cost of capital is consistent with the principles established in the US Supreme Court *Hope* and *Bluefield* decisions.<sup>37</sup> The Commission should be very alarmed and concerned about the integrity of utility ROR recommendations when internal corporate records reveal that for internal capital budgeting purposes the utility companies are estimating a cost of capital that is much lower than their ROR witnesses' cost of capital estimates. Not only did Mr. Murray discover that APUC's estimates of its regulated utilities' costs of capital are lower than Mr. Dane's estimates, Mr. Murray also discovered that APUC specifically

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<sup>35</sup> Ex. 209, Public Counsel witness David Murray direct testimony, pp. 38-40; Ex. 211, Public Counsel witness David Murray surrebuttal testimony, p. 27.

<sup>36</sup> Ex. 209, Public Counsel witness David Murray direct testimony, pp. 2-3; Ex. 211, Public Counsel witness David Murray surrebuttal testimony, p. 31.

<sup>37</sup> Ex. 210, Public Counsel witness David Murray rebuttal testimony, pp. 42-44.

targets a ROR for capital investment purposes that is higher than its cost of capital, which APUC identifies as its “hurdle rate.”<sup>38</sup>

A “hurdle rate” is a commonly recognized term in corporate finance as it relates to capital budgeting decisions. If management estimates a project will earn a return at or above the “hurdle rate” it will typically prioritize funding that project because it is more likely to increase shareholder wealth/value above the initial investment. It is common in corporate finance for management to set their hurdle rate at parity with their cost of capital.<sup>39</sup> However, in reviewing APUC’s corporate documents, Mr. Murray discovered that APUC’s board of directors (“BOD”) approved a hurdle rate of \*\*\*

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\_\_\_\_\_ \*\*\*<sup>40</sup> In response to OPC Data Request No. 3029, Liberty witness Mr. Dane claims that \*\*

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Notwithstanding Mr. Murray’s concern over Mr. Dane’s qualifications to speak about the intentions of APUC’s BOD, Mr. Dane’s answer still highlights contradictions in the premise he claims for his recommended ROE range of 9.75% to 11%, which supposedly is based on a rational estimate of Empire’s COE. If Mr. Dane were correct in his interpretation of APUC’s premise for its hurdle rate, then utility investments that are expected to achieve a 9.2% ROE would destroy shareholder value/wealth because the average authorized ROE on APUC’s regulated utility portfolio is below its regulated utility portfolio’s COE. However, this is only the case if APUC agrees with Mr. Dane that its regulated utilities have a COE consistent with his estimate. APUC does not agree with him. Based on APUC’s own internal methodology for estimating the COE for

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<sup>38</sup> Ex. 209, Public Counsel witness David Murray direct testimony, Sch. DM-D-9 HC, p. 1.

<sup>39</sup> Ex. 211, Public Counsel witness David Murray surrebuttal testimony, p. 21.

<sup>40</sup> Ex. 209, Public Counsel witness David Murray direct testimony, Sch. DM-D-9 HC, p. 1.

<sup>41</sup> Ex. 211, Public Counsel witness David Murray surrebuttal testimony, Sch. DM-S-8C.

its regulated utilities Mr. Murray determined that if APUC targeted a 53% common equity ratio to finance its investment in Empire, it would have estimated Empire's COE to be \*\* \_\_\_\_ \*\*.<sup>42</sup> and if it targeted Mr. Murray's recommended common equity ratio of 45%, it would have estimated Empire's COE to be \*\* \_\_\_\_ \*\*.<sup>43</sup>

Mr. Murray's COE estimate for Empire of 7.8% to 8.5% is not only corroborated by APUC's own internal COE estimates for its regulated utilities, but it is also corroborated by third-party investment sources that estimate the fair value for utility stocks. Wall Street investment analysts have routinely been applying a COE in the range of 8% to 8.5% to estimate fair prices for utility stock investments.<sup>44</sup> Just as with APUC's own decision \*\* \_\_\_\_\_

\_\_\_\_\_, \*\*, Wall Street analysts also do not expect a significant change in authorized ROEs because before the recent increase in the COE authorized ROEs exceeded the COE by significant margins. Since the spread has narrowed Wall Street analysts now characterize it to be "meaningfully" higher.<sup>45</sup>

While Mr. Murray recommends a 9.25% authorized ROE, as Mr. Murray points out in his testimony, the Commission could authorize a ROE as low as the lowest fair and reasonable Empire COE estimate in evidence (even if lower than any other witness's ROE recommendation) and still comply with the principles established in *Hope* and *Bluefield*.<sup>46</sup>

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<sup>42</sup> Ex. 210, Public Counsel witness David Murray rebuttal testimony, p. 47.

<sup>43</sup> Ex. 209, Public Counsel witness David Murray direct testimony, pp. 50-52.

<sup>44</sup> Ex. 209, Public Counsel witness David Murray direct testimony, p. 38; Ex. 210, Public Counsel witness David Murray rebuttal testimony, pp. 30-31; Ex. 211, Public Counsel witness David Murray surrebuttal testimony, p. 27.

<sup>45</sup> Ex. 211, Public Counsel witness David Murray surrebuttal testimony, p. 27.

<sup>46</sup> Ex. 210, Public Counsel witness David Murray rebuttal testimony, pp. 2, 42-47.

**b. Capital Structure – what is the appropriate capital structure to use for ratemaking in this proceeding?**

The Commission should use the 45% common equity and 55% long-term debt capital structure that Public Counsel witness David Murray recommends for determining Empire's authorized rate-of-return.<sup>47</sup> As Mr. David Murray testified, Empire is financed through debt and equity injections made by affiliates who ultimately access the financial markets through their ultimate parent, APUC, and their immediate parent, Liberty Utilities Co. ("LUCo").<sup>48</sup> Mr. Murray's recommended capital structure is consistent with the low-end of the proportion of leverage APUC had communicated to LUCo debt investors that it intended to target for purposes of financing its low-risk investments in its regulated utilities group, which includes Empire.<sup>49</sup>

Before Empire's ultimate parent company, APUC, started to experience financial instability after reporting its third quarter 2022 earnings, APUC and LUCo had fairly stable costs of capital consistent with a stable investment grade credit rating.<sup>50</sup> However, between APUC's poor financial performance and uncertainty related to LUCo's proposed acquisition of Kentucky Power Company, investors in LUCo's debt required a higher coupon rate than one consistent with

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<sup>47</sup> Ex. 209, Public Counsel witness David Murray direct testimony, pp. 3, 8-20; Ex. 210, Public Counsel witness David Murray rebuttal testimony, pp. 15-17, 47-48; Ex. 211, Public Counsel witness David Murray surrebuttal testimony, pp. 13-14.

<sup>48</sup> Ex. 209, Public Counsel witness David Murray direct testimony, pp. 4-6, 19; Ex. 210, Public Counsel witness David Murray rebuttal testimony, pp. 4, 14, 16.

<sup>49</sup> Ex. 209, Public Counsel witness David Murray direct testimony, pp. 8-9; Ex. 210, Public Counsel witness David Murray rebuttal testimony, p. 15; Ex. 211, Public Counsel witness David Murray surrebuttal testimony, p. 15.

<sup>50</sup> Ex. 209, Public Counsel witness David Murray direct testimony, p. 11; Ex. 210, Public Counsel witness David Murray rebuttal testimony, p. 17; Ex. 211, Public Counsel witness David Murray surrebuttal testimony, p. 37 and Sch. DM-S-11 HC, p. 1.

a stable ‘BBB’-rated utility.<sup>51</sup> Investors in LUCo’s debt required higher coupon rates, despite LUCo’s capital structure consisting of a common equity ratio of approximately 60%.<sup>52</sup>

APUC had historically targeted a 45% to 50% common equity ratio for LUCo’s capital structure because it recognized that LUCo’s low-risk regulated utilities, including Empire, could support the corresponding proportion of debt and still maintain at least a ‘BBB’ credit rating.<sup>53</sup> A 45% common equity ratio is also consistent with the authorized common equity ratio for Empire’s Canadian natural gas distribution company affiliate, Liberty Utilities Gas New Brunswick LP (“LUNB”), whose immediate holding company, Liberty Utilities (Canada) LP (“LUCA”) issued its own third-party long-term debt at a cost of 3.315%.<sup>54</sup> As APUC has transitioned to a pure-play regulated utility holding company, rating agencies have communicated that APUC can carry more debt relative to its cash flows and maintain a ‘BBB’ credit rating than before APUC divested its non-regulated operations.<sup>55</sup>

Empire’s per books capital structure is predominately a function of affiliate financing transactions.<sup>56</sup> APUC first advances funds to Empire via affiliate “money pool” capital infusions.<sup>57</sup> When APUC decides to file a rate case, it attempts to reclassify the capital transferred via “money pool” infusions to common equity and long-term debt to achieve a 53% common

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<sup>51</sup> Ex. 209, Public Counsel witness David Murray direct testimony, pp. 21-22, Sch. DM-D-5 C; Ex. 210, Public Counsel witness David Murray rebuttal testimony, pp. 20-21; Ex. 211, Public Counsel witness David Murray surrebuttal testimony, Sch. DM-S-11 HC, p. 1.

<sup>52</sup> Ex. 209, Public Counsel witness David Murray direct testimony, p. 55, Sch. DM-D-5 C; Ex. 210, Public Counsel witness David Murray rebuttal testimony, p. 17; Ex. 211, Public Counsel witness David Murray surrebuttal testimony, Sch. DM-S-11 HC.

<sup>53</sup> Ex. 209, Public Counsel witness David Murray direct testimony, pp. 2, 15-16; Ex. 210, Public Counsel witness David Murray rebuttal testimony, p. 15; Ex. 211, Public Counsel witness David Murray surrebuttal testimony, pp. 13, 30

<sup>54</sup> Ex. 210, Public Counsel witness David Murray rebuttal testimony, pp. 39-40.

<sup>55</sup> Ex. 209, Public Counsel witness David Murray direct testimony, pp. 17-18; Ex. 211, Public Counsel witness David Murray surrebuttal testimony, pp. 29-30.

<sup>56</sup> Ex. 209, Public Counsel witness David Murray direct testimony, pp. 7, 12-13; Ex. 210, Public Counsel witness David Murray rebuttal testimony, pp. 7, 11, 14.

<sup>57</sup> Ex. 210, Public Counsel witness David Murray rebuttal testimony, pp. 7-10.

equity ratio for purposes of supporting its requested authorized ROR.<sup>58</sup> The mere fact that Empire's capital accounts can be adjusted based on accounting entries that are unrelated to third-party financial transactions is a sufficient basis for rejecting Empire's per books capital structure for ratemaking. However, in this case APUC not only failed to reclassify its capital injections into Empire by the ordered March 31, 2025, true-up cut-off date, it resorted to a *pro forma* adjustment based on a hypothetical June 30, 2025, affiliate promissory note that still was unexecuted at the time of the mid-October 2025 evidentiary hearing.<sup>59</sup>

The Commission has consistently recognized that APUC's Missouri operating utility subsidiaries do not have market-based capital structures because they are not issuing their own long-term debt. The Commission adopted some version of LUCo's capital structure to set the authorized ROR for Liberty Utilities (Midstates Natural Gas) Corp. ("Liberty Midstates") in Case No. GR-2014-0152, Liberty Utilities (Missouri Water) LLC ("Liberty Water") in Case No. WR-2018-0170, and Empire in Case No. ER-2019-0374.<sup>60</sup> Nothing has changed that should cause the Commission to now adopt Empire's internally assigned capital structure. In fact, when the Commission made its decision in Case No. ER-2019-0374, Empire was still issuing its own commercial paper, but it was in the process of fully consolidating all its debt financing at LUCo when it began participating in LUCo's affiliate money pool agreement on October 1, 2020.<sup>61</sup>

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<sup>58</sup> Ex. 210, Public Counsel witness David Murray rebuttal testimony, pp. 7-11.

<sup>59</sup> Ex. 7, Liberty witness Daniel S. Dane true-up rebuttal testimony, pp. 1-2; Ex. 211, Public Counsel witness David Murray surrebuttal testimony, p. 4; Kansas Corporation Commission Docket No. 26-EPDE-131-SEC, *In the Matter of the Application of The Empire District Electric Company for Authorization to Issue up to \$400 Million of Long-Term Debt to Liberty Utilities Co. to Repay Short-Term Intercompany Borrowings and for Other Corporate Purposes*, opened and application filed October 29, 2025:

<https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202510291556377114.pdf?Id=1c8429d1-94e5-4648-94ba-b47c1b3a800b>.

<sup>60</sup> Ex. 209, Public Counsel witness David Murray direct testimony, p. 15.

<sup>61</sup> Ex. 210, Public Counsel witness David Murray rebuttal testimony, p. 4.

Moreover, additional time and facts have highlighted APUC’s lack of continuity and efficiency in attempting to legitimize its internally assigned capital structures for Empire, Liberty Midstates, and Liberty Water. For example, as Mr. Murray testified, Empire’s quarterly Financial Surveillance Monitoring Reports (“FSMR”) filed for purposes of benchmarking Empire’s earnings for fuel adjustment clause (“FAC”) purposes indicate Empire’s common equity ratios ranged from \*\* \_\_\_\_ \*\* to \*\* \_\_\_\_ \*\* during September 2023 through March 2025, despite the fact that Empire’s authorized ROR was set based on a 46% common equity ratio.<sup>62</sup> Empire’s inflated common equity ratios in its FSMRs imply Empire is earning a lower ROE than if APUC booked its capital infusions into Empire more consistent with its authorized common equity ratio.<sup>63</sup>

Although Liberty Midstates and Liberty Water do not file FSMRs, they filed rate increase applications not long before Empire did.<sup>64</sup> Mr. Murray also testified in those cases. Mr. Murray’s analysis of Liberty Water’s per books capital structures was that, as of September 30, 2023, its capital structure consisted of 78% of “money pool” capital (i.e. affiliate short-term debt). Mr. Murray’s analysis of Liberty Midstates’ capital structure was that, as of March 31, 2023, its capital structure consisted of 32.59% of “money pool” capital.<sup>65</sup>

Similar to APUC’s manipulation of Empire’s per books capital structure through *pro forma* adjustments to achieve a 53% ratemaking common equity ratio, APUC had to make *pro forma* adjustments to its internal accounting records for Liberty Midstates and Liberty Water to achieve its desired approximate 53% ratemaking common equity ratio.<sup>66</sup> APUC has shown it will adjust its figures through any means possible, whether internal bookkeeping entries before a rate case test

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<sup>62</sup> Ex. 210, Public Counsel witness David Murray rebuttal testimony, p. 11.

<sup>63</sup> Ex. 210, Public Counsel witness David Murray rebuttal testimony, pp. 12-13 and Sch. DM-R-2.

<sup>64</sup> Case Nos. WR-2024-0104 and GR-2024-0106.

<sup>65</sup> Ex. 210, Public Counsel witness David Murray rebuttal testimony, pp. 9-10.

<sup>66</sup> Ex. 211, Public Counsel witness David Murray surrebuttal testimony, p. 17.

period or even *pro forma* adjustments because of its inability to update its books in time for a rate case, to achieve a requested 53% ratemaking common equity ratio. APUC does this whether it, or LUCo, has a 40% common equity ratio or a 60% common equity ratio.

In Empire's 2019 rate case, the Commission set Empire's authorized ROR based on LUCo's adjusted common equity ratio of approximately 46%, which was consistent with LUCo's targeted common equity ratio of 45% to 50%. As Mr. Murray testified, LUCo's current common equity ratio is skewed higher at around 60% due to APUC's infusion of common equity capital because it anticipated that it would assume \$1.221 billion in debt if it closed its acquisitions of Kentucky Power Company and AEP Kentucky Transmission Company, Inc.<sup>67</sup> Because the costs of debt included in the various parties' requested RORs are consistent with a 'BBB'-rated regulated utility, Empire's ratemaking capital structure should be based on a common equity ratio consistent with that 'BBB' rating. In the past APUC has admitted that it targets a consistent common equity ratio in the range of 45% to 50%. In Empire's rate case immediately before APUC indirectly acquiring Empire on January 1, 2017, Empire requested that the Commission set its ROR based on a ratemaking common equity ratio of approximately 49%.<sup>68</sup> Therefore, the Commission should set Empire's authorized ROR based on the low-end of APUC's targeted range until Empire's ratepayers are being charged a debt cost more consistent with a stronger credit rating.

### **c. Cost of debt – what cost of debt should be used for determining rate of return?**

The Commission should use an embedded cost of debt of 4.30% based on all of the third-party debt LUCo guarantees and the regulated subsidiary debt which it consolidates on its balance

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<sup>67</sup> Ex. 210, Public Counsel witness David Murray rebuttal testimony, pp. 16-17.

<sup>68</sup> Ex. 209, Public Counsel witness David Murray direct testimony, p. 19.

sheet.<sup>69</sup> With the exception of LUCo's \$850 million of debt issued on January 12, 2024, Public Counsel's cost of debt recommendation is based on the actual cost of this debt.<sup>70</sup> Public Counsel witness David Murray adjusted the debt LUCo issued on January 12, 2024, downward because it was priced more consistent with debt assigned a 'BBB-' rather than a 'BBB' credit rating.<sup>71</sup> LUCo's cost of debt has been higher after APUC's financial instability and uncertainty related to LUCo's investment and divestment strategies.<sup>72</sup> Empire's credit metrics have been stronger than both APUC's and LUCo's credit metrics during this period.<sup>73</sup> Therefore, Empire's ratepayers should not be charged this higher cost, regardless of whether it is through adoption of LUCo's embedded cost of long-term debt or through adoption of debt costs assigned to Empire through affiliate notes.

Empire's and Staff's cost of long-term debt recommendations of 4.53% based on Empire's book cost of long-term debt should be rejected. Empire's book cost of long-term debt is a function of affiliate financing transactions which are based on inconsistent internal methodologies for assigning coupon rates.<sup>74</sup> Unless they are adopted for ratemaking, these affiliate financing transactions have no real economic consequences. Empire's recommended cost of long-term debt of 4.53% as of the March 31, 2025, true-up date is not based on known and measurable assigned

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<sup>69</sup> Ex. 209, Public Counsel witness David Murray direct testimony, pp. 20-22, Sch. DM-D-11.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Ex. 209, Public Counsel witness David Murray direct testimony, pp. 6, 21-22; Ex. 210, Public Counsel witness David Murray rebuttal testimony, pp. 20-21; Ex. 211, Public Counsel witness David Murray surrebuttal testimony, Sch. DM-S-11

<sup>73</sup> Ex. 211, Public Counsel witness David Murray surrebuttal testimony, pp. 29-30.

<sup>74</sup> Ex. 209, Public Counsel witness David Murray direct testimony, pp. 4-7; Ex. 210, Public Counsel witness David Murray rebuttal testimony, pp. 7-9, 11, 18-21.

costs, because the hypothetical June 30, 2025, affiliate note upon which it is based was unexecuted as of the true-up date;<sup>75</sup> on that basis alone the Commission should reject it.<sup>76</sup>

**d. If the Commission adopts Staff's and Empire's recommended capital structure, is it appropriate to set a ratemaking capital structure and cost of debt based on projections beyond the true-up cut-off date of March 31, 2025?**

No. Missouri is a historical test year state where information is required to be known and measurable before being considered when designing utility rates.<sup>77</sup> Empire and Staff base their capital structure for Empire on a hypothetical June 30, 2025, promissory note that had not been executed by the March 31, 2025, true-up cut-off date, and which was still unexecuted as of the mid-October 2025 evidentiary hearing.<sup>78</sup>

Further, because APUC manages Empire's per books capital structure through affiliate financing transactions, not only should the Commission reject Empire's per books capital structure based on the ordered test year trued-up through March 31, 2025, it also should reject relying on either Empire's per books capital structure post March 31, 2025, or any projections of Empire's per books capital structure post March 31, 2025, premised on affiliate financing transactions.

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<sup>75</sup> As of the mid-October 2025 evidentiary hearing the note still was unexecuted.

<sup>76</sup> Ex. 7, Liberty witness Daniel S. Dane true-up rebuttal testimony, pp. 1-2; Ex. 211, Public Counsel witness David Murray surrebuttal testimony, p. 4; Kansas Corporation Commission Docket No. 26-EPDE-131-SEC, *In the Matter of the Application of The Empire District Electric Company for Authorization to Issue up to \$400 Million of Long-Term Debt to Liberty Utilities Co. to Repay Short-Term Intercompany Borrowings and for Other Corporate Purposes*, opened and application filed October 29, 2025:

<https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202510291556377114.pdf?Id=1c8429d1-94e5-4648-94ba-b47c1b3a800b>.

<sup>77</sup> See *Empire Dist. Elec. Co. v. P.S.C.*, 630 S.W.3d 887 (Mo. App. 2021).

<sup>78</sup> Ex. 7, Liberty witness Daniel S. Dane true-up rebuttal testimony, pp. 1-2; Ex. 211, Public Counsel witness David Murray surrebuttal testimony, p. 4; Kansas Corporation Commission Docket No. 26-EPDE-131-SEC, *In the Matter of the Application of The Empire District Electric Company for Authorization to Issue up to \$400 Million of Long-Term Debt to Liberty Utilities Co. to Repay Short-Term Intercompany Borrowings and for Other Corporate Purposes*, opened and application filed October 29, 2025:

<https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202510291556377114.pdf?Id=1c8429d1-94e5-4648-94ba-b47c1b3a800b>.

## **Rate Base Items**

### **Plant & Accumulated Depreciation**

- 2. What is the appropriate amount of plant in service and depreciation reserve to include in rate base?**
- a. What is the appropriate amount of common plant removal for plant and accumulated depreciation?**

As the Commission authorized in its April 23, 2025, *Order Establishing True-Up Period*, Public Counsel is proposing that the Commission make discrete adjustments beyond the March 31, 2025, true-up period out to December 31, 2025, to reflect the known and measurable impacts of the retirements of general plant through December 31, 2025.<sup>79</sup> Based on the general plant amortization periods the Commission last ordered, Public Counsel witness John Robinett has identified the number of asset lines per the FERC account and the total value per account that needs to be retired through discrete adjustments through December 31, 2025, to better reflect what Liberty's Missouri retail customers should be paying for their electric service.<sup>80</sup> The following table taken from page five of Ex. 216, Public Counsel witness John A. Robinett rebuttal testimony, shows Public Counsel's proposed adjustments.

<b>Account Number</b>	<b>Account Description</b>	<b>Assets Lines to Retire</b>	<b>Dollars to Retire</b>
391	Office Furniture and Equipment	8	\$ 15,235.03
393	Stores Equipment	1	\$ 8,259.67
394	Tools, Shop and Garage Equipment	0	\$ -
395	Laboratory Equipment	4	\$ 23,704.08
397	Communication Equipment	11	\$ 127,816.62
398	Miscellaneous Equipment	0	\$ -

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<sup>79</sup> Ex. 215, Public Counsel witness John A. Robinett direct testimony, pp. 19-20; Ex. 217, Public Counsel witness John A. Robinett surrebuttal testimony, pp. 11-15.

<sup>80</sup> Ex. 216, Public Counsel witness John A. Robinett rebuttal testimony, p. 5.

**b. Should the Commission order Empire to retire general plant assets that will exceed their amortization period before the effective date of new rates?**

Yes, because doing so will most accurately reflect in the rates going forward the impact of the retirements of the dollars associated with the general plant amortization periods that end after the true-up period ends but before those rates take effect. When an amortization period ends, Liberty is considered to have fully recovered its amortized investment and, therefore, no longer should recover for that investment in its rates. That is what Public Counsel witness John A. Robinett is proposing at page five of his rebuttal testimony.<sup>81</sup>

**c. Should Empire be allowed to earn a return on retired non-AMI meters that created a negative reserve balance?<sup>82</sup>**

No. The negative depreciation reserve balance created by retiring the FERC Account 370 non-AMI meters has the effect of increasing Liberty's rate base upon which the Commission allows a return (profit), *i.e.*, Liberty would be allowed a profit for retired meters that are neither used nor useful.<sup>83</sup> Instead, consistent with Public Counsel witness John Robinett's recommendations for similar stranded plant in Missouri American Water Company and Spire Missouri general rate cases<sup>84</sup> and how the Commission has ordered in other cases,<sup>85</sup> the Commission should allow Liberty to recover the remaining undepreciated balance (reserve deficiency) through a regulatory asset that is not rate-based using a five-year amortization period.

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<sup>81</sup> Ex. 216, Public Counsel witness John A. Robinett rebuttal testimony, p. 5.

<sup>82</sup> See also **Issue 48. If Empire is not allowed to earn a return on retired non-AMI meters that created a negative reserve balance, how should the negative reserve balance be treated?**

<sup>83</sup> Ex. 215, Public Counsel witness John A. Robinett direct testimony, pp. 18-19; Ex. 216, Public Counsel witness John A. Robinett rebuttal testimony, pp. 5-7.

<sup>84</sup> Ex. 216, Public Counsel witness John A. Robinett rebuttal testimony, pp. 5-7.

<sup>85</sup> See *Mo. Pub. Serv. Comm'n v. Office of Pub. Counsel (In re Evergy Metro., Inc.)*, 677 S.W.3d 526 (Mo. App. 2023), *State ex rel. Mo. Office of the Pub. Counsel v. PSC of Mo.*, 293 S.W.3d 63, 74-76 (Mo. App. 2009) (excluded from rate base and amortized); *In the Matter of Missouri-American Water Company's Tariff Sheets Designed to Implement General Rate Increase for Water and Sewer Service Provided to Customers in the Missouri Service Area of the Company*, Report and Order, effective September 14, 2000, Case No. WR-2000-281, 9 Mo. P.S.C. 3d 254, 286-87 (Original cost removed from rate base and accumulated depreciation removed from depreciation reserve).

Stated differently, the Commission should allow Liberty to recover its unrecovered capital investment in non-AMI meters (return of) through a regulatory asset upon which it does not get a return (return on).

**d. Should Empire be allowed to earn a return on Empire's investment in non-AMI meters?**

No. Liberty retired more on its plant books for its non-AMI meters (FERC Account 370 meters) than it had on its books for accumulated depreciation reserves for its non-AMI meters.<sup>86</sup> In other words, Liberty's non-AMI meters were not fully depreciated when Liberty retired them. The result is that Liberty will continue to get a return on those meters that are no longer used and useful unless the Commission prescribes a different accounting treatment for the remaining undepreciated balance. Consistent with his recommendations for similar stranded plant in Missouri American Water Company and Spire Missouri general rate cases, Public Counsel witness John Robinett recommends that the Commission allow Liberty to recover the remaining undepreciated balance (reserve deficiency) through a non-ratebased regulatory asset using a five-year amortization period.<sup>87</sup> The Commission has acted similarly in other cases.<sup>88</sup>

**e. What is the appropriate balance of Iatan and PCB transformer costs to include as an offset to accumulated depreciation?**

Public Counsel has not taken a position on this issue.

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<sup>86</sup> Ex. 215, Public Counsel witness John A. Robinett direct testimony, pp. 18-19.

<sup>87</sup> Ex. 216, Public Counsel witness John A. Robinett rebuttal testimony, pp. 5-7.

<sup>88</sup> See *Mo. Pub. Serv. Comm'n v. Office of Pub. Counsel (In re Evergy Metro., Inc.)*, 677 S.W.3d 526 (Mo. App. 2023), *State ex rel. Mo. Office of the Pub. Counsel v. PSC of Mo.*, 293 S.W.3d 63, 74-76 (Mo. App. 2009) (excluded from rate base and amortized); *In the Matter of Missouri-American Water Company's Tariff Sheets Designed to Implement General Rate Increase for Water and Sewer Service Provided to Customers in the Missouri Service Area of the Company*, Report and Order, effective September 14, 2000, Case No. WR-2000-281, 9 Mo. P.S.C. 3d 254, 286-87 (Original cost removed from rate base and accumulated depreciation removed from depreciation reserve).

**f. Should the Commission include depreciation reserve accumulated beyond the March 31, 2025, true-up date?**

Yes. As the Commission authorized in its April 23, 2025, *Order Establishing True-Up Period*, Public Counsel is proposing that the Commission make discrete adjustments for accumulated depreciation reserves beyond the March 31, 2025, true-up period out to the effective date of new rates in setting rates going forward as doing so will best reflect the status of the accounts when the rates become effective. Public Counsel proposed in its witness John Robinett's direct testimony values from September 30, 2024, through January 2, 2026.<sup>89</sup> Public Counsel witness John Robinett updated the values in his surrebuttal testimony to reflect March 31, 2025, true-up investments, and carried those numbers forward through the then anticipated effective date of new rates—January 2, 2026. Public Counsel witness John Robinett in surrebuttal testimony recommends accrual of \$10,673,109.72 on a monthly basis or a total adjustment of \$96,759,780.99 which would decrease the revenue requirement by approximately \$7.5 million in recognition of reserve accruals through January 2, 2026—the then end of the tariff suspension period.<sup>90</sup>

It is known and measurable that depreciation accrual will continue to happen. That accrual is readily quantifiable based on the plant in service as of March 31, 2025. Because of how this Commission designs general rates the additional accrued depreciation will reduce Liberty's revenue requirement since the additional accrued depreciation increases depreciation reserve which reduces the rate base to which rate-of-return is applied.<sup>91</sup> Further, like true-up items, Liberty's depreciation reserve changes over time and significantly impacts the calculated revenue requirement. It warrants being valued as close to the date Liberty's new rates take effect as possible.

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<sup>89</sup> Ex. 215, Public Counsel witness John A. Robinett direct testimony, pp. 19-20, Sch. JAR-D-9.

<sup>90</sup> Ex. 217, Public Counsel witness John A. Robinett surrebuttal testimony, pp. 11-13, Sch. JAR-S-2.

<sup>91</sup> Ex. 217, Public Counsel witness John A. Robinett surrebuttal testimony, p. 14.

**g. Should the Company recover reclassified Asbury stranded plant costs?**

Public Counsel has not taken a position on this issue.

**h. Should Empire recover the cost of repairs to Riverton 10?**

No. As Public Counsel witness John A. Robinett, testified, Liberty poorly timed when it repaired Riverton unit 10 and its retail customers should not have to pay for Liberty's increased costs due to its mismanagement of when to retire and when to repair that unit.<sup>92</sup> Staff concurs.<sup>93</sup> The following of events which show Liberty's mismanagement is based on Mr. Robinett's direct and surrebuttal testimony cited in footnote 92.

- February 8, 2021—Liberty had a fire at Riverton 10 that forced it offline;
- February 8, 2022—Date by which Liberty could use SPP's within-one-year-of-retirement generating unit replacement tariff provision for Riverton 10;
- April 1, 2022—Date by which Liberty had decided to replace Riverton 10;
- January 1, 2023—Date when Liberty notified SPP it was seeking to use a SPP tariff provision that allowed replacement of a unit if replaced within one year and date when Liberty sought a FERC waiver of that one-year period limitation; and
- September 5, 2023—Date when Liberty decided to repair Riverton 10 after the FERC denied Liberty's waiver request.

Liberty should have chosen to replace Riverton 10 within the one-year SPP replacement period, *i.e.*, before February 8, 2022. Had it done so, it would not have needed to repair Riverton 10 just to retire it by August 1, 2026. Liberty's customers should not pay for Liberty mismanaging its replacement of Riverton 10.

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<sup>92</sup> Ex. 215, Public Counsel witness John A. Robinett direct testimony, pp. 9-13; Ex. 217, Public Counsel witness John A. Robinett surrebuttal testimony, pp. 2-9.

<sup>93</sup> Ex. 167, Brodrick Niemeier surrebuttal & true-up direct testimony, pp. 1-8.

**i. Should the Commission order OPC's recommended disallowance of 2% of the rate base inclusion of transmission and distribution projects since Empire's last rate case over \$1 million?**

Yes, despite the transmission and distribution projects Liberty has undertaken since its last rate case (including **Project Toughen Up** as well as replacements and upgrades to the system), Liberty has not shown that its frequent outages and voltage problems<sup>94</sup> that adversely affect retaining and building load have improved significantly or that its SAIDI (system average interruption duration index),<sup>95</sup> SAIFI (system average interruption frequency index),<sup>96</sup> and CAIDI (customer average interruption duration index)<sup>97</sup> scores have improved significantly either.<sup>98</sup> For these reasons, and the issues with and stemming from Liberty's Customer First program, Public Counsel recommends excluding nearly \$10 million from Liberty's rate base should the Commission decide to set new Liberty electric rates in this case.<sup>99</sup>

**j. Should Empire be allowed to earn a return on Empire's investment in new AMI meters?**

No. As Public Counsel's argument under **Issue No. 163** demonstrates, Empire's customers have not benefitted from Empire's implementation of new AMI meters. Instead, they have experienced the degradation of Liberty's customer service since Liberty moved to AMI infrastructure, including billing problems. Public Counsel does not oppose Liberty recovering its

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<sup>94</sup> Ex. 225, Public Counsel witness Jordan Seaver rebuttal testimony, pp. 1-8, 12-15.

<sup>95</sup> SAIDI: the system average interruption duration index shows the average duration, measured in minutes, of interruption of electric service by number of customers (not momentary interruptions). The time period for the averaged values is one year. Ex. 225, Public Counsel witness Jordan Seaver rebuttal testimony, p. 2.

<sup>96</sup> SAIFI: the system average interruption frequency index shows the frequency of service interruptions, measured in minutes (so, not momentary interruptions), averaged over the total customer population. The time period for the averaged values is one year. Ex. 225, Public Counsel witness Jordan Seaver rebuttal testimony, p. 2.

<sup>97</sup> CAIDI: the customer average interruption duration index attempts to depict the time needed for restoring power after an interruption, measured in minutes (so, again, not momentary interruptions). This is done by dividing the sum of all interruption durations (in minutes) by the total number of interruptions. The time period for the individual durations and the total number of interruptions is one year. Ex. 225, Public Counsel witness Jordan Seaver rebuttal testimony, p. 2.

<sup>98</sup> Ex. 225, Public Counsel witness Jordan Seaver rebuttal testimony, pp. 1-8.

<sup>99</sup> Ex. 225, Public Counsel witness Jordan Seaver rebuttal testimony, pp. 1, 15-17.

investment in new AMI meters, but Public Counsel does oppose Liberty profiting on that investment when the main purpose of those meters—accurate billings—is not happening. If they had choice in electric providers Liberty would have lost, and would continue to lose, customers and revenues because of its inaccurate billings that have continued since at least April 2024.<sup>100</sup>

### **Cash Working Capital**

#### **3. What is the appropriate value for the income tax expense lag in the Cash Working Capital schedule?**

Public Counsel has not taken a position on this issue.

### **Prepayments**

#### **4. What is the appropriate balance of prepayments?**

Public Counsel has not taken a position on this issue.

### **Materials, Supplies, and Inventory**

#### **5. What is the appropriate amount of materials and supplies to include in Empire's rate base?**

Public Counsel has not taken a position on this issue.

#### **6. What is the appropriate amount of fuel inventory to include in Empire's rate base?**

Public Counsel has not taken a position on this issue.

### **Customer Deposits**

#### **7. What is the appropriate amount of customer deposits to include in Empire's rate base?**

Public Counsel has not taken a position on this issue.

### **Customer Advances**

#### **8. What is the appropriate amount of customer advances to include in Empire's rate base?**

Public Counsel has not taken a position on this issue.

### **Regulatory Assets/Liabilities**

#### **9. What is the appropriate rate base and amortization expense for Plum Point deferred carrying costs?**

Public Counsel has not taken a position on this issue.

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<sup>100</sup> Ex. 205, Geoff Marke surrebuttal testimony, pp. 10-11.

**10. What is the appropriate rate base and amortization expense for Iatan I deferred carrying costs?**

Public Counsel has not taken a position on this issue.

**11. What is the appropriate rate base and amortization expense for Iatan II deferred carrying costs?**

Public Counsel has not taken a position on this issue.

**12. What is the appropriate rate base and amortization expense for the Customer Program Collaborative (DSM) account?**

Public Counsel has not taken a position on this issue.

**13. What is the appropriate rate base and amortization expense for interruptible service credits incurred after the January 2022 implementation of the Company's MEEIA program? Should they be tracked separately from the Customer Program collaborative (DSM) vintage costs incurred prior to January 2022?**

Public Counsel has not taken a position on this issue.

**14. What is the appropriate rate base and amortization expense balance for the PeopleSoft Costs?**

Public Counsel has not taken a position on this issue.

**15. What is the appropriate rate base amount and amortization expense for the Low-Income Pilot Program to include in Empire's cost of service?**

Public Counsel has not taken a position on this issue.

**16. What is the appropriate rate base balance for the prepaid pension asset, pension tracker, and OPEB tracker?**

Public Counsel has not taken a position on this issue.

**17. Should the solar initiative include rebates paid for systems that became operational after December 31, 2023?**

Public Counsel has not taken a position on this issue.

**18. What is the appropriate rate base and amortization expense for the solar initiative and solar rebate regulatory assets?**

Public Counsel has not taken a position on this issue.

**19. What is the appropriate rate base and amortization expense for the Riverton 12 tracker?**

Public Counsel has not taken a position on this issue.

**20. Should the Riverton 12 O&M amortizations continue to be tracked through the effective date of rates in this case?**

Public Counsel has not taken a position on this issue.

**21. What balance for the PISA regulatory assets and associated amortization expense should be included in the revenue requirement?**

Public Counsel has not taken a position on this issue.

**22. Should Empire's PISA assets be reduced for deferred costs related to Riverton 10 repairs?**

Consistent with its position on **Issue No. 2h.**, because Liberty mismanaged timing when to retire and when to repair Riverton 10, Public Counsel opposes including Riverton 10 repair costs in Liberty's PISA deferral balances. Repeating what Public Counsel said there, the following of events which show Liberty's mismanagement is based on Mr. Robinett's direct and surrebuttal testimony cited in footnote 92.

- February 8, 2021—Liberty had a fire at Riverton 10 that forced it offline;
- February 8, 2022—Date by which Liberty could use SPP's within-one-year-of-retirement generating unit replacement tariff provision for Riverton 10;
- April 1, 2022—Date by which Liberty had decided to replace Riverton 10;
- January 1, 2023—Date when Liberty notified SPP it was seeking to use a SPP tariff provision that allowed replacement of a unit if replaced within one year and date when Liberty sought a FERC waiver of that one-year period limitation; and
- September 5, 2023—Date when Liberty decided to repair Riverton 10 after the FERC denied Liberty's waiver request.

Liberty should have chosen to replace Riverton 10 within the one-year SPP replacement period, *i.e.*, before February 8, 2022. Had it done so, it would not have needed to incur these costs to repair Riverton 10 only to retire it by August 1, 2026. Liberty's customers should not pay for Liberty mismanaging its replacement of Riverton 10.

**23. Should the Riverton Environmental Costs be reflected in rate base and amortization expense?**

Public Counsel has not taken a position on this issue.

**24. In consideration of all relevant factors, what is the appropriate rate base and amortization expense balance for the tornado AAO?**

Public Counsel has not taken a position on this issue.

**25. ~~What is the appropriate balance of the PAYGO tracker regulatory asset?~~**

**26. How long should the PAYGO tracker regulatory asset be amortized?**

Public Counsel has not taken a position on this issue.

**27. Should the Company be allowed a return on the PAYGO tracker regulatory asset balance?**

Public Counsel has not taken a position on this issue.

**28. ~~Should the Company be allowed to recover property tax expense that was tracked since the effective date of the applicable statute? If so, what should be the approved rate base and amortization period?~~**

**29. Should the Company be allowed to include the deferred long-term maintenance prepayment costs in rate base? If so, what is the appropriate deferred long-term maintenance prepayment balances as it pertains to Riverton, StateLine, and the Wind SWMA?**

Public Counsel has not taken a position on this issue.

**30. ~~Is there a lawful SB-EDR regulatory asset? Should rates reflect the SB-EDR regulatory asset and respective amortization, including recovery of all SB-EDR discounts incurred since the Company's last rate case?~~**

**31. Should the over-amortization of Empire's unprotected Excess Accumulated Deferred Income Taxes (EADIT) be reflected in rate base and amortization expense?**

Public Counsel believes this issue is resolved among the parties and is not briefing it.

**32. What is the appropriate balance for the rate base recognition and amortization expense of the unprotected EADIT tracker?**

Public Counsel believes this issue is resolved among the parties and is not briefing it.

**33. What is the appropriate rate base and amortization expense balance for protected EADIT?**

Public Counsel has not taken a position on this issue.

**34. How should the deferred Asbury AAO costs be returned to customers?**

Public Counsel has not taken a position on this issue.

**35. What is the appropriate rate base and amortization expense balance for the Asbury AAO liability?**

Public Counsel has not taken a position on this issue.

## **ADIT**

### **36. What is the appropriate ADIT balance to be included in rate base?**

Public Counsel believes this issue is resolved among the parties and is not briefing it.

### **37. Should a net operating loss (NOL), deferred tax asset balance be included in rate base?**

No. Only net operating losses associated to accelerated depreciation should be included in rate base;<sup>101</sup> however, Liberty has used up that net operating loss with two consecutive years of positive taxable income.<sup>102</sup>

## **Income Statement Issues**

### **38. What is the appropriate balance of retail revenues?**

Public Counsel has not taken a position on this issue; however, Public Counsel points out that Liberty's customer service billing issues and its decision during the update period to cease disconnecting customers in arrears for nonpayment severely impacts correctly quantifying Liberty's Missouri retail revenues and bad debt. As Staff witness Kim Cox observed in her direct testimony after recounting numerous data issues, "Staff's results are only as good as the data provided."<sup>103</sup>

### **39. ~~What level of PAYGO revenue should be included in the revenue requirement?~~**

### **40. What is the appropriate level of miscellaneous revenues to be included in Empire's revenue requirement?**

- a) What is the appropriate balance of forfeited discount revenues?**
- b) What is the appropriate balance of reconnect/misc revenues?**
- c) What is the appropriate balance of rent revenues?**
- d) What is the appropriate balance of other electric revenues?**
- e) What is the appropriate balance of Plum Point Transmission revenues?**

Public Counsel has not taken a position on this issue.

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<sup>101</sup> Ex. 214, Public Counsel witness John S. Riley surrebuttal testimony, p. 3, including footnote 3.

<sup>102</sup> Ex. 214, Public Counsel witness John S. Riley surrebuttal testimony, Sch. JSR-S-02 (confidential).

<sup>103</sup> [Ex. 105, Staff witness Kim Cox direct testimony, p. 20.](#)

#### **41. Renewable Energy Credits (“RECs”)**

- a. What amount of revenues from the sale of RECs should be included in Empire’s revenue requirement?**
- b. What amount of revenues from the sale of RECs should be included in Empire’s FAC base factor?**

Liberty’s fuel clause arises from § 386.266, RSMo, which allows the Commission to permit “periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in [an electric utility’s] prudently incurred fuel and purchased-power costs, including transportation.” The Commission promulgated rule 20 CSR 4240-20.090 for implementing fuel adjustment clauses. Consistent with the statute, that rule is designed so that fuel and purchased-power costs and revenues included in the fuel adjustment base components (which include REC sales revenues) equate to the costs and revenues of those same components that are used for setting general (base) rates; therefore, the amount of revenues from the sale of RECs that is included in Liberty’s fuel adjustment clause base factor must be the same as, i.e. match, the amount of revenues from the sale of RECs that is included in Liberty’s revenue requirement which is used to set its general (base) rates.<sup>104</sup>

In particular, rule 20 CSR 4240-20.090(1) includes the following definitions:

- (C) Base energy costs means the fuel and purchased power costs net of fuel-related revenues determined by the commission to be included in a RAM that are also included in the revenue requirement used to set base rates in a general rate case;
- (D) Base factor (BF) means base energy costs rate or rates that are established in a general rate proceeding and are included in the utility’s fuel adjustment clause (FAC). The base factor rates may vary within a year;
- (E) Base rates means the tariffed rates that do not change between general rate proceedings;

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<sup>104</sup> Ex. 206, Public Counsel witness Lena M. Mantle, pp. 6-7.

Public Counsel believes that Staff's \$7,557,793 of REC revenues<sup>105</sup> is an appropriate amount of REC revenues to include in Liberty's revenue requirement and for calculating Liberty's FAC base factor. This is the amount of REC revenues included in the calculation of the of \$0.01111/kWh FAC base factor Public Counsel is recommending to the Commission in this case.

**42. What level of TCR/ARR<sup>106</sup> revenues should be included in Empire's revenue requirement and for calculating Empire's FAC base factor?**

Because the Commission bases rates on historical test year information—here updated and trued-up with more recent historical information to ameliorate the effects of regulatory lag—and Liberty's ARR/TCR revenues fluctuate,<sup>107</sup> Public Counsel witness Angela Schaben calculated and graphed five-year rolling averages of Liberty's actual ARR/TCR revenues for the period of 2019-2024.<sup>108</sup> Recognizing the upward trend in the rolling averages, an historical five-year average of Liberty's ARR/TCR revenues best represents a normalized amount of ARR/TCR revenues to include in Liberty's revenue requirement and when calculating Liberty's FAC base factor.<sup>109</sup> The appropriate level of ARR/TCR revenues to include in Liberty's revenue requirement and for calculating Liberty's FAC base factor in this case is \$46,391,885, which is the annual average of the last five years of Empire's actual ARR/TCR revenues from the five-year period of April 2020 through March 2025 (the end of the true-up period).<sup>110</sup>

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<sup>105</sup> Ex. 113, Staff witness Brooke Mastrogianis direct testimony, Sch. BM-d3, as corrected by Ex. 144, Staff witness Brooke Mastrogianis rebuttal testimony, p. 14.

<sup>106</sup> Auction Revenue Rights / Transmission Congestion Rights (Southwest Power Pool).

<sup>107</sup> Ex. 220, Public Counsel witness Angela Schaben surrebuttal testimony, p. 4, Figure 1.

<sup>108</sup> Ex. 220, Public Counsel witness Angela Schaben surrebuttal testimony, p. 5, Figure 2.

<sup>109</sup> Ex. 220, Public Counsel witness Angela Schaben surrebuttal testimony, pp. 2-8.

<sup>110</sup> Ex. 220, Public Counsel witness Angela Schaben surrebuttal testimony, p. 1, 8, Table 1.

Liberty witness Todd W. Tarter testified about Liberty's true-up ARR/TCR revenue estimates. After explaining that Horizon Energy projected higher natural gas and market costs, he testified,

In its updated FAC base factor proposal, the Company has increased the TCR revenue in order to offset more of that cost. This was accomplished by having about a year of additional data and by weighting more recent years higher in the calculation. The TCR revenue offset assumption increased from \$23,533,318 to \$38,197,084 or 62.3%.<sup>111</sup>

What he does not describe, but which is revealed in Liberty surrebuttal workpapers, is that that this increase in TCR revenue includes five months of *projected* revenues for August 2025 through December 2025.

As stated in the introduction of this brief, in its April 23, 2025, *Order Establishing True-Up Period*, the Commission ordered a true-up cut-off date of March 31, 2025, for truing-up a number of items including "fuel and purchase power expense, to include, but not be limited to, updated contract prices for fuel, wind power, fuel transportation and fuel storage." As also stated in the introduction to this brief, the Commission also ordered, "Parties may propose the incorporation of discrete adjustments beyond the true-up period, *provided they are known and measurable.*" (Emphasis added).

When estimating the true-up level of ARR/TCR revenues it recommends, Liberty weighted more recent years higher, but it did not disclose, explain, or justify its weightings in its evidence. Further, Liberty relied on projected TCR revenues. As shown in Public Counsel's first paragraph on this issue above, Public Counsel's position is based on actual monthly data through March 31, 2025. As stated in that paragraph, the Commission should order that the appropriate level of

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<sup>111</sup> Ex. 51, Liberty witness Todd W. Tarter surrebuttal and true-up direct testimony, pp. 3-4.

ARR/TCR revenues to include in Liberty’s revenue requirement and for calculating Liberty’s FAC base factor in this case is \$46,391,885.

### **43. What is the appropriate balance of net fuel and purchased power costs?**

As stated in the introduction of this brief, in its April 23, 2025, *Order Establishing True-Up Period*, the Commission ordered a true-up cut-off date of March 31, 2025, for truing-up a number of items, including “fuel and purchase power expense, to include, but not be limited to, updated contract prices for fuel, wind power, fuel transportation and fuel storage.” As also stated in the introduction to this brief, the Commission also ordered, “Parties may propose the incorporation of discrete adjustments beyond the true-up period, *provided they are known and measurable.*” (Emphasis added).

Rather than proposing discrete adjustments to the natural gas prices used for determining net fuel and purchased power costs, Liberty without disclosing it was doing so, relied on forecasted 2025 natural gas prices in its direct case<sup>112</sup> and, despite the Commission’s order that the adjustments be known and measurable, used forecasted 2026 natural gas prices in its true-up<sup>113</sup> for deriving its net fuel and purchased power costs. Not only did Liberty use natural gas prices that are beyond even the March 31, 2025, true-up cut-off date, because those natural gas prices are forecasted, they are not known and measurable. Further, Liberty did not consider its natural gas hedging position when it derived its net fuel and purchased power costs.<sup>114</sup>

The only other party who developed net fuel and purchased power costs is the Commission’s Staff. Unlike Liberty, and in compliance with the Commission’s April 23, 2025, *Order Establishing True-Up Period*—true-up through March 31, 2025—Staff used actual

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<sup>112</sup> Ex. 201, Empire Response to OPC DR 8054.

<sup>113</sup> Ex. 200, Empire Response to OPC DR 8053.

<sup>114</sup> Ex. 49 Liberty witness Todd W. Tarter corrected direct testimony, p. 10.

historical Liberty fuel expense<sup>115</sup> and energy market prices,<sup>116</sup> and explicitly included Liberty's hedged natural gas positions to determine Liberty's net fuel and purchased power costs.<sup>117</sup> Staff's true-up variable fuel and purchased power expense is the appropriate expense to include in Liberty's revenue requirement and FAC.

**a. Should the Commission set rates based on natural gas fuel costs based on natural gas fuel prices (actual and/or projected) for periods beyond the March 31, 2025, true-up cut-off date?**

No. Missouri is a historical test year state where information is required to be known and measurable before being considered when designing utility rates.<sup>118</sup> Liberty used natural gas prices forecasted beyond March 31, 2025, but it did not propose to do so or give any rationale for doing so; it just did so.

Liberty used projected calendar year 2025 average natural gas prices of \$1.88/MMBtu in its direct case.<sup>119</sup> When it filed its surrebuttal/true-up direct case, Liberty used projected 2026 natural gas prices of \$4.04/MMBtu.<sup>120</sup> In contrast, Staff used a weighted average of natural gas price of \$2.99/MMBtu for the twelve months ended September 2024.<sup>121</sup>

In its April 23, 2025, *Order Establishing True-Up Period*, the Commission ordered a true-up cut-off date of March 31, 2025, for truing-up a number of items including "fuel and purchase power expense, to include, but not be limited to, updated contract prices for fuel, wind power, fuel transportation and fuel storage." Staff used Liberty's actual incurred natural gas prices and

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<sup>115</sup> Ex. 168 Staff witness Antonija Nieto surrebuttal & true-up direct testimony, pp. 4-5.

<sup>116</sup> Ex. 171, Staff witness Justin Tevie true-up direct.

<sup>117</sup> Ex. 116, Staff witness Antonija Nieto direct testimony, pp. 6-8; Ex. 168 Staff witness Antonija Nieto surrebuttal & true-up direct testimony, p. 5.

<sup>118</sup> See *Kan. City Power & Light Co.'s Request v. Mo. Pub. Serv. Comm'n*, 509 S.W.3d 757 (Mo. App. 2016).

<sup>119</sup> Ex. 49 Liberty witness Todd W. Tarter corrected direct testimony, p. 10; Ex. 51, Liberty witness Todd W. Tarter surrebuttal and true-up direct testimony, p. 3.

<sup>120</sup> Ex. 51, Liberty witness Todd W. Tarter surrebuttal and true-up direct testimony, p. 3.

<sup>121</sup> Ex. 116 Staff witness Antonija Nieto direct testimony, p. 7.

Liberty's actual hedges through the update period ended September 30, 2024, for its direct case to calculate an average fuel cost of \$3.43/MMBtu.<sup>122</sup> Staff did not disclose in true-up testimony what natural gas price it used for truing-up its case, but Staff's true-up direct workpapers show that Staff used Liberty's actual incurred natural gas prices and Liberty's actual hedges through March 31, 2025, end of the true-up period, to calculate an average true-up natural gas fuel cost of \$3.31/MMBtu.

Changes in the natural gas prices which are used to calculate the levels of the fuel costs included in revenue requirement and FAC base cost calculations significantly affect the outcomes. The large differences in Liberty's direct, Liberty's true-up and Staff's direct and true-up natural gas prices resulted in large differences in the levels of the fuel costs to include in Liberty's cost-of-service (revenue requirement) and FAC base costs. Liberty proposed fuel costs of \$\*\*  
\_\_\_\_\_ \*\* total company in its direct case,<sup>123</sup> but almost twice that amount \$\*\* \_\_\_\_\_  
\*\*<sup>124</sup> total company in its true-up direct case. Because it relied on historical fuel costs, the Staff's calculation of total company fuel costs of \$97,299,500<sup>125</sup> for Liberty's revenue requirement and FAC fuel base costs in its direct case only changed by 1.3%. Staff's true-up estimated fuel costs, not provided in testimony but in workpapers, was \$98,557,957.

Consistent with its ***Order Establishing True-Up Period***, if it orders new Liberty rates in this case, then the Commission should use Staff's estimates based on actual historical natural gas fuel prices that are not beyond the March 31, 2025, true-up cut-off date it ordered. This is

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<sup>122</sup> Ex. 116 Staff witness Antonija Nieto direct testimony, p. 7.

<sup>123</sup> Ex. 49 Liberty witness Todd W. Tarter corrected direct testimony, Confidential Direct Sch. TWT-3.

<sup>124</sup> Ex. 51, Liberty witness Todd W. Tarter surrebuttal and true-up direct testimony, Confidential True-Up Direct Sch. TWT-2.

<sup>125</sup> Ex. 113, Staff witness Brooke Mastrogiovanni direct testimony, Sch. BM-d3.

consistent with Public Counsel's recommendation that the Commission order Staff's FAC base factor.

**b. Should the Commission set rates based on energy market costs based on energy market prices (actual and/or projected) for periods beyond the March 31, 2025 true-up cut-off date?**

No. Missouri is a historical test year state where information is required to be known and measurable before being considered when designing utility rates.<sup>126</sup> Liberty used natural gas prices forecasted beyond March 31, 2025, but it did not propose to do so, it just did so. As discussed immediately above, big differences in natural gas prices cause big differences in fuel costs. Those big differences in fuel costs result in big differences in energy market prices which, in turn, result in big differences in the cost of power purchased for native load (According to Liberty \$\*\* \_\_\_\_\_ \*\*<sup>127</sup> total company in its direct case and \$\*\* \_\_\_\_\_ \*\*<sup>128</sup> total company in its true-up direct case) and in off-system sales revenues (According to Liberty \$\*\* \_\_\_\_\_ \*\*<sup>129</sup> total company in its direct case and \$\*\* \_\_\_\_\_ \*\*<sup>130</sup> total company in its true-up direct case). Staff direct estimates, based on three-year averages of Liberty actual market prices, were \$173,227,689 total company native load cost and \$200,925,856 of total company off-system sales revenues.

Consistent with its ***Order Establishing True-Up Period***, if it orders new Liberty rates in this case, then the Commission should use Staff's estimates based on actual historical energy market prices that are not beyond the March 31, 2025, true-up cut-off date it ordered. This is

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<sup>126</sup> See *Kan. City Power & Light Co.'s Request v. Mo. Pub. Serv. Comm'n*, 509 S.W.3d 757 (Mo. App. 2016).

<sup>127</sup> Ex. 49 Liberty witness Todd W. Tarter corrected direct testimony, Confidential Direct Sch. TWT-3.

<sup>128</sup> Ex. 51, Liberty witness Todd W. Tarter surrebuttal and true-up direct testimony, Confidential True-Up Direct Sch. TWT-2.

<sup>129</sup> Ex. 49 Liberty witness Todd W. Tarter corrected direct testimony, Confidential Direct Sch. TWT-3.

<sup>130</sup> Ex. 51, Liberty witness Todd W. Tarter surrebuttal and true-up direct testimony, Confidential True-Up Direct Sch. TWT-2.

consistent with Public Counsel's recommendation that the Commission order Staff's FAC base factor.

**44. What is the appropriate amount of long-term maintenance costs to include in Empire's cost of service?**

Public Counsel has not taken a position on this issue.

**45. What is the appropriate amount of non-wind generation operation and maintenance to include in Empire's cost of service?**

Public Counsel has not taken a position on this issue.

**46. Excluding Riverton 10 and 11, what is the appropriate level of depreciation and amortization expense of plant to include in the cost of service?**

Public Counsel, Staff and Liberty all use depreciation rates based on data through 2019 to calculate depreciation expense as of March 31, 2025, for Liberty's assets other than its generating assets.<sup>131</sup> Because it is relatively easy to take into account the effects of generating plant additions and accumulated reserve since the Commission last ordered Liberty's depreciation rates in Liberty's last general electric rate case, Case No. ER-2021-0312, Public Counsel witness John A. Robinett updated the depreciation rates for those assets, but Liberty and Staff did not.<sup>132</sup>

Excluding Riverton units 10 and 11, based on September 30, 2024, plant-in-service balances, Public Counsel's recommended generation depreciation rates would decrease depreciation expense by \$5,073,049 for steam and hydro generation facilities,<sup>133</sup> and would decrease depreciation expense for other generation (solar, wind combustion turbines and combined cycle units) by \$3,694,579 (\$35,034,614.84 - \$31,340,036.50).<sup>134</sup> Public Counsel's depreciation rate recommendations for Liberty's generation facilities are in Exhibit 217, Schedule JAR-S-9 Depreciation expense and rates.

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<sup>131</sup> Ex. 217, Public Counsel witness John A. Robinett surrebuttal testimony, p. 15.

<sup>132</sup> Ex. 217, Public Counsel witness John A. Robinett surrebuttal testimony, p. 15.

<sup>133</sup> Ex. 217, Public Counsel witness John A. Robinett surrebuttal testimony, p. 20.

<sup>134</sup> Ex. 217, Public Counsel witness John A. Robinett surrebuttal testimony, p. 21.

**47. What is the appropriate level of depreciation and amortization expense of plant to include in the cost of service for Riverton 10 and 11?**

Liberty is planning to finally retire both Riverton 10 and Riverton 11 by August 1, 2026.<sup>135</sup>

If the Commission authorizes new Liberty general rates in this case they will likely not be in effect before January 26, 2026—the current tariff suspension date.<sup>136</sup> Given the short period of time—about six months—between when new rates will become effective and when Liberty will finally retire both Riverton 10 and Riverton 11, Public Counsel recommends that depreciation expense for Riverton 10 and 11 be set to zero, and that the remaining net plant for Riverton units 10 and 11 as of March 31, 2025, plus six months of return on the current plant-in-service balance be placed into a regulatory asset which is amortized over five years.<sup>137</sup> This treatment is consistent with Public Counsel witness John Robinett's recommendations for similar stranded plant in Missouri American Water Company and Spire Missouri general rate cases<sup>138</sup> and with what the Commission has ordered in other cases.<sup>139</sup>

**48. If Empire is not allowed to earn a return on retired non-AMI meters that created a negative reserve balance, how should the negative reserve balance be treated?**

As Public Counsel stated in its argument under Issue 2.d., Liberty retired more on its plant books for its non-AMI meters (FERC Account 370 meters) than it had on its books for accumulated depreciation reserves for its non-AMI meters.<sup>140</sup> In other words, Liberty's non-AMI meters were not fully depreciated when Liberty retired them. The result is that Liberty will continue to get a

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<sup>135</sup> Ex. 215, Public Counsel witness John A. Robinett direct testimony, p. 8.

<sup>136</sup> November 14, 2025, *Order Granting Request for Further Extension of Time and Further Suspending Tariffs*.

<sup>137</sup> Ex. 217, Public Counsel witness John A. Robinett surrebuttal testimony, p. 21; Ex. 215, John A. Robinett direct testimony, pp. 8-9.

<sup>138</sup> Ex. 216, Public Counsel witness John A. Robinett rebuttal testimony, pp. 5-7.

<sup>139</sup> See *Mo. Pub. Serv. Comm'n v. Office of Pub. Counsel (In re Energy Metro., Inc.)*, 677 S.W.3d 526 (Mo. App. 2023), *State ex rel. Mo. Office of the Pub. Counsel v. PSC of Mo.*, 293 S.W.3d 63, 74-76 (Mo. App. 2009) (excluded from rate base and amortized); *In the Matter of Missouri-American Water Company's Tariff Sheets Designed to Implement General Rate Increase for Water and Sewer Service Provided to Customers in the Missouri Service Area of the Company*, Report and Order, effective September 14, 2000, Case No. WR-2000-281, 9 Mo. P.S.C. 3d 254, 286-87 (Original cost removed from rate base and accumulated depreciation removed from depreciation reserve).

<sup>140</sup> Ex. 215, Public Counsel witness John A. Robinett direct testimony, pp. 18-19.

return on those meters that are no longer used and useful, unless the Commission prescribes a different accounting treatment for the remaining undepreciated balance. Consistent with what the Commission has ordered in other cases<sup>141</sup> and Public Counsel witness John Robinett's recommendations for similar stranded plant in Missouri American Water Company and Spire Missouri general rate cases, Mr. Robinett recommends that the Commission allow Liberty to recover the remaining undepreciated balance (reserve deficiency) through a non-ratebased regulatory asset using a five-year amortization period.<sup>142</sup> To accomplish this, as Mr. Robinett recommends, the Commission should authorize Liberty to create a non-rate base asset (return of, but no return on) amortized over five years for the Missouri jurisdictional negative balance of \$9,450,862 as of March 31, 2025, for the non-AMI meters recorded in FERC USOA account 370.

**49. What is the appropriate amount to include for vegetation management expense?**

Public Counsel has not taken a position on this issue.

**50. What is the appropriate level of bad debt expense to be included in Empire's revenue requirement?**

Public Counsel has not taken a position on this issue.

**51. What is the appropriate rate case expense for this case?**

**a. Should the Commission disallow the rate case expense associated with Empire witness John J. Reed?**

Yes. Because of the lack of meaningful testimony from Mr. Reed in response to Public Counsel witnesses' direct testimony regarding Liberty's Customer First issues and Liberty's fuel adjustment clause the Commission should not allow Liberty to recover for his services through its customer rates.<sup>143</sup>

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<sup>141</sup> See *State ex rel. Mo. Office of the Pub. Counsel v. PSC of Mo.*, 293 S.W.3d 63, 74-76 (Mo. App. 2009) (excluded from rate base and amortized); *In the Matter of Missouri-American Water Company's Tariff Sheets Designed to Implement General Rate Increase for Water and Sewer Service Provided to Customers in the Missouri Service Area of the Company*, Report and Order, effective September 14, 2000, Case No. WR-2000-281, 9 Mo. P.S.C. 3d 254, 286-87 (Original cost removed from rate base and accumulated depreciation removed from depreciation reserve).

<sup>142</sup> Ex. 216, Public Counsel witness John A. Robinett rebuttal testimony, pp. 5-7.

<sup>143</sup> Ex. 205, Public Counsel witness Geoff Marke surrebuttal testimony, pp. 11-12.

In his rebuttal testimony Liberty witness John J. Reed points to what the Maine Commission did with Central Maine Power Company for customer service issues similar to those at Liberty as “an extreme example.”<sup>144</sup> He testified that the Maine Commission “imposed a management efficiency adjustment, temporarily reducing CMP’s allowed ROE by 100 basis points.”<sup>145</sup>

As Public Counsel witness Dr. Geoff Marke, Ph.D., pointed out, Dr. Marke not only testified in his direct about what the Maine Commission did in response to customer service issues at Central Maine Power Company, he also testified to the greater financial impacts imposed on Central Hudson Gas & Electric in New York and National Grid in Massachusetts for their similar customer service issues, but Liberty witness Mr. Reed ignored them. Further, Dr. Marke pointed out that Mr. Reed failed to mention that the Central Maine Power Company issues “spurred a statutory change in Maine that now prevents utility customers from being disconnected if their bills do not exceed a \$50 threshold,” and “a voter referendum to replace the utility with a consumer-owned utility.”<sup>146</sup> Liberty’s witness Mr. Reed provided nothing of substance to advance the Commission’s decisions in this case and what he was paid for his services in this case should be excluded from Liberty’s rate case expense and revenue requirement.

Further, with respect to Liberty’s FAC, Mr. Reed’s testimony that there is no need for an incentive mechanism in Liberty’s FAC because Liberty participates in the SPP energy market<sup>147</sup> shows an apparent lack of understanding of Liberty’s FAC and the SPP energy market.<sup>148</sup> He provides no support for his belief that no incentive mechanism is necessary because prudence

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<sup>144</sup> [Ex. 45, Liberty witness John J. Reed rebuttal testimony](#), p. 22.

<sup>145</sup> [Ex. 45, Liberty witness John J. Reed rebuttal testimony](#), p. 22.

<sup>146</sup> Ex. 205, Public Counsel witness Geoff Marke surrebuttal testimony, p. 12.

<sup>147</sup> [Ex. 44, Liberty witness John J. Reed direct testimony](#), pp. 4-14.

<sup>148</sup> Ex. 207, Public Counsel witness Lena M. Mantle rebuttal testimony, pp. 20-21.

reviews are conducted <sup>149</sup> or his belief that prudent equates to efficient and cost-effective.<sup>150</sup> Public Counsel witness Ms. Mantle testifies about the limitations on FAC prudence reviews in Missouri and that this Commission has stated that they are not sufficient alone to spur an electric utility to keep its fuel and power purchase costs down.<sup>151</sup> In addition, Mr. Reed seems to not understand Missouri's FAC when he calls it an "energy cost recovery mechanism"<sup>152</sup> not realizing that it includes much more than the cost of energy.<sup>153</sup>

"[Liberty] stipulate[d] that the amount paid to John Reed for this case through October 9 of 2025 is \$123,288.75."<sup>154</sup>

**b. What amortization period should be used for the depreciation study and line loss study?**

No party filed a new depreciation study in this case; therefore, establishing an amortization to be used for a future depreciation study would be advisory. However, in this case any unamortized balance remaining for Liberty's 2019 depreciation study it filed in Case No. ER-2021-0312 should be adjusted, either by offsetting it against a regulatory liability or through a new amortization consistent with when Liberty's next electric base rate case is anticipated. A five year amortization period is appropriate because it is consistent with the Commission's rule requirement for utilities to file a new depreciation study every five years.<sup>155</sup>

**52. What is the appropriate level of insurance expense to be included in Empire's revenue requirement?**

Public Counsel has not taken a position on this issue.

**53. What is the appropriate level of injuries and damages & worker's compensation**

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<sup>149</sup> [Ex. 44, Liberty witness John J. Reed direct testimony](#), pp. 15-16.

<sup>150</sup> *Id.*

<sup>151</sup> Ex. 207, Public Counsel witness Lena M. Mantle rebuttal testimony, pp. 23-24.

<sup>152</sup> [Ex. 44, Liberty witness John J. Reed direct testimony](#), p. 19.

<sup>153</sup> Ex. 207, Public Counsel witness Lena M. Mantle rebuttal testimony, pp. 24-25.

<sup>154</sup> Tr. 11:12, Liberty counsel Diana Carter stipulating on behalf of Liberty.

<sup>155</sup> Rule 20 CSR 4240-3.175.

**expense to be included in Empire's revenue requirement?**

Public Counsel has not taken a position on this issue.

**54. What is the appropriate level of payroll expense and payroll taxes to be included in Empire's revenue requirement?**

Public Counsel has not taken a position on this issue.

**55. What is the appropriate level of payroll related benefits to be included in Empire's revenue requirement?**

Public Counsel has not taken a position on this issue.

**56. What is the appropriate level of incentive compensation expense to be included in Empire's revenue requirement?**

Public Counsel has not taken a position on this issue.

**57. Should severance be included in the revenue requirement? If not, what is the appropriate rate base and expense reduction for severance costs?**

Public Counsel has not taken a position on this issue.

**58. What is the appropriate level of PSC assessment expense to be included in Empire's revenue requirement?**

Public Counsel has not taken a position on this issue.

**59. What is the appropriate level of Department 115 wind O&M expense to include in the revenue requirement?**

Public Counsel has not taken a position on this issue.

**60. What is the appropriate level of non-FAC wind revenue and expense to include in the revenue requirement?**

Public Counsel has not taken a position on this issue.

**61. What is the appropriate level of rating agency fees to be included in Empire's revenue requirement?**

Public Counsel has not taken a position on this issue.

**62. What expense amount should be included in the revenue requirement for FAS 87 costs?**

Public Counsel has not taken a position on this issue.

**63. What expense amount should be included in the revenue requirement for FAS 88 costs?**

Public Counsel has not taken a position on this issue.

**64. What expense amount should be included in the revenue requirement for FAS 106 costs?**

Public Counsel has not taken a position on this issue.

**65. What expense amount should be reflected in the revenue requirement for SERP?**

Public Counsel has not taken a position on this issue.

**66. What level of dues and donations expense should the Commission recognize in Empire's revenue requirement?**

Public Counsel has not taken a position on this issue.

**67. What is the appropriate amount of Advertising Expense to include in Empire's revenue requirement?**

Public Counsel has not taken a position on this issue.

**68. What is the appropriate amount of customer payment fees to include in Empire's revenue requirement?**

Public Counsel has not taken a position on this issue.

**69. What is the appropriate amount of lease expense to include in Empire's revenue requirement?**

Public Counsel has not taken a position on this issue.

**70. What is the appropriate amount of expense to be included in cost of service associated with water used at State Line facility?**

Apparently, neither Staff nor Liberty has complied with the Commission's April 23, 2025,

*Order Establishing True-Up Period.* Staff used a two-year average of historical water usage at State Line ending March 31, 2025, the Commission ordered a true-up cut-off date,<sup>156</sup> but the cost of water usage at State Line is not explicitly included in the list of items the Commission ordered to be trued-up. Liberty is using new water rates that took effect on May 28, 2025,<sup>157</sup> which is beyond the March 31, 2025, true-up cut-off date. What the Commission should rely on is the cost of water usage at State Line based on historical information cut-off at the end of the update period of September 30, 2024. While Staff used historical water usage and costs from the October 1, 2022, beginning of the test year through the September 30, 2024, end of the update period for the cost of water usage at State Line in its direct case, Staff did not present its methodology when it

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<sup>156</sup> Ex. 168 Staff witness Antonija Nieto surrebuttal & true-up direct testimony, pp. 2-3.

<sup>157</sup> Ex. 20, Liberty witness Charlotte T. Emery true-up rebuttal testimony, pp. 21-22.

did so, saying in surrebuttal/true-up direct only, “Staff’s adjustment compared the actual invoiced amounts for State Line water usage during the test year with those from the update period.”<sup>158</sup>

Public Counsel does not know what the cost of water usage at State Line is based on historical information cut-off at the end of the update period of September 30, 2024.,

**71. Should new MAWC water rates that took effect on May 28, 2025, be included in the calculation of expense associated with water usage at State Line?**

No. See Public Counsel’s argument to the immediately preceding **Issue No. 70**.

**72. What level of cyber-security expense should the Commission recognize in Empire’s revenue requirement?**

No more than \$611,270 (\$3.72 per customer<sup>159</sup> for 164,320 Missouri electric customers<sup>160</sup>).

Liberty has a test year ending September 30, 2023, balance of \$263,762 for cybersecurity, which, based on 164,320 Missouri electric customers,<sup>161</sup> equates to \$1.41 per customer. Liberty witness Shawn Eck estimated “\$1.53 million for calendar year 2024 with additional ongoing costs expected through 2027,”<sup>162</sup> which equates to \$9.31 per customer, an increase of \$7.90 per Liberty customer.

As of the test year within Ameren Missouri’s most recent rate case, Case No. ER-2024-0319, Ameren’s non-labor cybersecurity O&M costs averaged out to approximately \$3.96 per Ameren Missouri customer.<sup>163</sup> Evergy Missouri West requested \$3.72 in base level non-labor cybersecurity O&M expense in Case No. ER-2024-0189.<sup>164</sup> Ameren and Evergy both operate

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<sup>158</sup> Ex. 168 Staff witness Antonija Nieto surrebuttal & true-up direct testimony, p. 2.

<sup>159</sup> (Evergy Missouri West requested \$3.72 for base level non-labor cybersecurity O&M expense in Case No. ER-2024-0189.) Ex. 219, Public Counsel witness Angela Schaben rebuttal testimony, p. 15.

<sup>160</sup> Ex. 219, Public Counsel witness Angela Schaben rebuttal testimony, p. 15, citing to Ex. Liberty witness Timothy N. Wilson direct testimony, p. 5.

<sup>161</sup> Ex. 219, Public Counsel witness Angela Schaben rebuttal testimony, p. 15, citing to Ex. Liberty witness Timothy N. Wilson direct testimony, p. 5.

<sup>162</sup> Ex. 12, Liberty witness Shawn Eck direct testimony, p. 14.

<sup>163</sup> Ex. 219, Public Counsel witness Angela Schaben rebuttal testimony, p. 15.

<sup>164</sup> Ex. 219, Public Counsel witness Angela Schaben rebuttal testimony, p. 15.

nuclear power plants, which should require more rigorous security standards, while Liberty does not.<sup>165</sup> Yet Liberty is requesting considerably more for non-labor cybersecurity O&M expense per customer than both Ameren Missouri and Evergy Missouri West.

Liberty has operated a cybersecurity program for several years. Even if some parts of its program needed improvement, it already should have had a strong cybersecurity program. Increasing cybersecurity expense from \$1.41 per customer to \$9.31 per customer for “improving” Liberty’s cybersecurity program is not reasonable. Cybersecurity expense is a cost allocated to Liberty based on Liberty’s cost allocation manual (“CAM”). It is difficult to determine the accuracy and reliability of data related to the true cost of cybersecurity service given the fact that the data Liberty has provided has been inconsistent.

### **73. Should the January 2025 CAM allocators be used for this case?**

No. The Commission should use the same April 2024 CAM allocators that Staff used. APUC’s sale of nearly all of its non-regulated assets occurred in January 2025.<sup>166</sup> The test year in this case is the twelve-month period ending September 30, 2023, updated through September 30, 2024, with a true-up period ending March 31, 2025. Using updated January 2025 allocators for expenses that occurred between September 30, 2023, through the non-regulated assets sale date in January 2025, would shift historical allocation expense, previously allocated to Liberty Power, to Liberty—essentially subsidizing non-regulated past affiliate operations.<sup>167</sup> CAM allocators for 2025 basically will only allocate costs to regulated operations because Algonquin divested its non-regulated assets in January; however, the costs from before 2025 being allocated were incurred not only for Algonquin’s regulated operations, but also for its non-regulated operations.

### **74. What is the appropriate level of A&G expense?**

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<sup>165</sup> Ex. 219, Public Counsel witness Angela Schaben rebuttal testimony, p. 15.

<sup>166</sup> Ex. 219, Public Counsel witness Angela Schaben rebuttal testimony, pp. 18-19.

<sup>167</sup> Ex. 219, Public Counsel witness Angela Schaben rebuttal testimony, pp. 13-14.

The appropriate level of A&G expense to include in Liberty's cost-of-service is \$24,483,862 (\$149 per customer  $\times$  164,320 Missouri customers). This is Staff's value of \$41,643,800 for Liberty's A&G expense (\$253.43 per customer) reduced by \$17,159,938 (\$104.43 per customer).<sup>168</sup>

Liberty's 2024 A&G expense was \$402 per customer, according to its FERC Form 1 filing,<sup>169</sup> while Liberty's Missouri electric investor-owned utility ("IOU") peers averaged A&G expenses of \$149 per customer in 2024,<sup>170</sup> a difference of \$253. Liberty should be held to the same standard of operating efficiency as its Missouri electric investor-owned utility ("IOU") peers.<sup>171</sup> The fact that Liberty operates in partially rural areas is not an adequate justification for higher A&G expenses.<sup>172</sup> Evergy West also operates in partially rural areas and has managed to keep A&G expense per customer reasonable, and considerably lower than Liberty's A&G expense per customer.<sup>173</sup> Liberty should be held to operate as efficiently as its Missouri IOU peers; therefore, the A&G expenses in Liberty's case should be reduced by \$41,572,960 (\$253 per customer  $\times$  164,320 Missouri customers) to \$24,483,862 (\$149 per customer  $\times$  164,320 Missouri customers). Table 4 from Public Counsel witness Angela Schaben's direct testimony illustrates Public Counsel's point about the relative A&G expenses per customer of Missouri IOUs over 2013-2024 and the reasonableness of using the average of Liberty's Missouri IOU peers for 2024 A&G expense in Liberty's cost-of-service for this case:

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<sup>168</sup> Ex. 220, Public Counsel witness Angela Schaben surrebuttal testimony, p. 17.

<sup>169</sup> Ex. 218, Public Counsel witness Angela Schaben direct testimony, pp. 6-7.

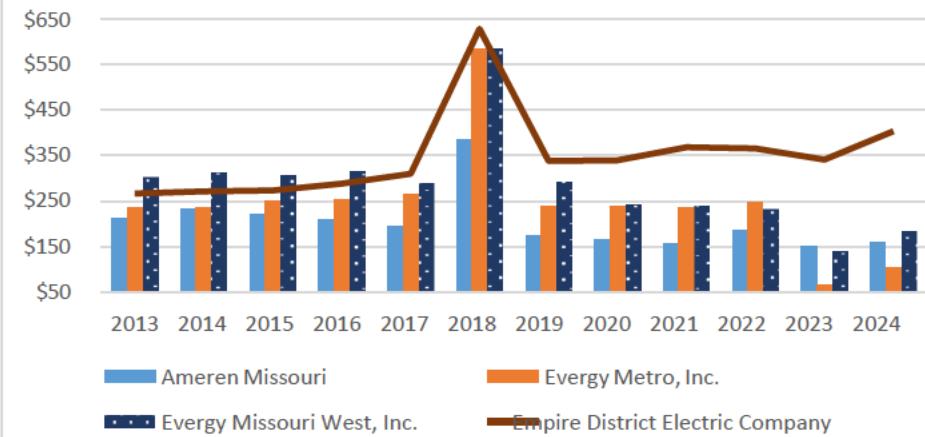
<sup>170</sup> Ex. 218, Public Counsel witness Angela Schaben direct testimony, p. 10.

<sup>171</sup> Ex. 218, Public Counsel witness Angela Schaben direct testimony, pp. 3-6.

<sup>172</sup> Ex. 220, Public Counsel witness Angela Schaben surrebuttal testimony, pp. 14-15.

<sup>173</sup> Ex. 218, Public Counsel witness Angela Schaben direct testimony, pp. 3-8.

Table 4: Missouri Electric IOU Adminstrative & General Expense per Customer



**75. What is the appropriate interest rate to calculate interest expense on customer deposits to include in Empire's rate base?**

Public Counsel has not taken a position on this issue.

**76. What is the proposed amortization expense balance of Ice Storm costs?**

Public Counsel has not taken a position on this issue.

**77. What is the appropriate amortization expense balance for the stub period EADIT?**

Public Counsel has not taken a position on this issue.

**78. What amount of intangible plant amortization expense should be included in the revenue requirement?**

Public Counsel has not taken a position on this issue.

**79. What is the appropriate level of depreciation clearing expense to be included in Empire's revenue requirement?**

Public Counsel has not taken a position on this issue.

**80. What are the appropriate depreciation rates to be ordered by the Commission?**

Public Counsel, Staff, and Liberty all use depreciation rates based on data through 2019 to calculate depreciation expense as of March 31, 2025, for Liberty's assets other than its generating assets.<sup>174</sup> Because it is relatively easy to take into account the effects of generating plant additions

<sup>174</sup> Ex. 217, Public Counsel witness John A. Robinett Surrebuttal testimony, p. 15.

and accumulated generating plant reserve since the Commission last ordered Liberty's depreciation rates in Liberty's last general electric rate case, Case No. ER-2021-0312, Public Counsel witness John A. Robinett updated the depreciation rates for those assets, but Liberty and Staff did not.<sup>175</sup>

Public Counsel does not oppose the use of a 20-year life for the Customer First software and Public Counsel supports the 5% depreciation rate recommended by Staff Witness Mr. Malachi Bowman for account 370.1 AMI-Meters.<sup>176</sup> As the parties are in agreement to continue to use the transmission, distribution, or general plant account depreciation rates that the Commission ordered in Case No. ER-2021-0312, the Commission should continue to order those depreciation rates.

For the generation depreciation accounts Public Counsel recommends changing the remaining life rates based on Public Counsel witness John Robinett's updated plant-in-service and accumulated depreciation reserve balances as of March 31, 2025.<sup>177</sup> Those balances were provided as updates from the direct testimony rates that were based on plant in service and accumulated depreciation reserves as of September 30, 2024. Public Counsel witness John Robinett utilized the same net salvage percentages that the Commission ordered in Case No. ER-2021-0312, which were criticized by both Staff and Liberty witnesses for using old data; however, both Staff and Liberty recommend that the Commission continue to use the currently ordered depreciation rates that do not account for current values of plant-in-service and accumulated depreciation reserves—values that would directly affect appropriate current depreciation rates.<sup>178</sup>

## **81. What level of property tax should be included in the revenue requirement calculation for non- wind property and wind property?**

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<sup>175</sup> Ex. 217, Public Counsel witness John A. Robinett surrebuttal testimony, p. 15.

<sup>176</sup> Ex. 153, Staff witness Malachi Bowman surrebuttal-true-up direct testimony, Sch. MB-s1.

<sup>177</sup> Ex. 217, Public Counsel witness John A. Robinett surrebuttal testimony, Schedule JAR-S-9.

<sup>178</sup> Ex. 215, Public Counsel witness John A. Robinett Direct pp. 5-9; Ex. 217, Public Counsel witness John A. Robinett surrebuttal testimony, pp. 15-24.

Public Counsel has not taken a position on this issue.

**82. Should federal income tax credits be recognized in the revenue requirement, and if so, what is the appropriate balance to be included in the revenue requirement?**

Public Counsel has not taken a position on this issue.

**83. ~~Should disposition losses offset current income tax expense?~~**

**84. What are the appropriate jurisdictional allocations to use for this case?**

Public Counsel has not taken a position on this issue.

**85. What is the value of the variable fuel and purchase power expense?**

This issue is duplicative of **Issue No. 43**. As Public Counsel stated there:

As stated in the introduction of this brief, in its April 23, 2025, *Order Establishing True-Up Period*, the Commission ordered a true-up cut-off date of March 31, 2025, for truing-up a number of items including “fuel and purchase power expense, to include, but not be limited to, updated contract prices for fuel, wind power, fuel transportation and fuel storage.” As also stated in the introduction to this brief, the Commission also ordered, “Parties may propose the incorporation of discrete adjustments beyond the true-up period, *provided they are known and measurable.*” (Emphasis added).

Rather than proposing discrete adjustments to the natural gas prices used for determining net fuel and purchased power costs, Liberty, without disclosing it was doing so, relied on forecasted 2025 natural gas prices in its direct case<sup>179</sup> and forecasted 2026 natural gas prices in its true-up<sup>180</sup> for deriving its net fuel and purchased power costs. Not only did Liberty use natural gas prices that are beyond even the March 31, 2025, true-up cut-off date, those natural gas prices are forecasted, they are not known and measurable. Further, Liberty did not consider its natural gas hedging positions when it derived its net fuel and purchased power costs.<sup>181</sup> The only other

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<sup>179</sup> Ex. 201, Empire Response to OPC DR 8054.

<sup>180</sup> Ex. 200, Empire Response to OPC DR 8053.

<sup>181</sup> Ex. 49 Liberty witness Todd W. Tarter corrected direct testimony, p. 10.

party who developed net fuel and purchased power costs is the Commission’s Staff. Unlike Liberty, and in compliance with the Commission’s April 23, 2025, *Order Establishing True-Up Period*—for true-up through March 31, 2025—Staff used actual historical Liberty fuel expense<sup>182</sup> and energy market prices,<sup>183</sup> and explicitly included Liberty’s actual hedged natural gas positions to determine Liberty’s net fuel and purchased power costs.<sup>184</sup> Staff’s true-up variable fuel and purchased power expense is the appropriate expense to include in Liberty’s revenue requirement and FAC base cost.

86. ~~Should Liberty be authorized to utilize the Reverse South Georgia Method to return protected excess ADIT to customers? If so, what is the appropriate annual amortization and weighted average remaining plant life to use?~~
87. **Should the Commission set rates based on amortization of unprotected Excess Accumulated Deferred Income Taxes (“EADIT”) beyond the true-up cut-off date of March 31, 2025?**

No. As stated in the introduction of this brief, in its April 23, 2025, *Order Establishing True-Up Period*, the Commission ordered a true-up cut-off date of March 31, 2025, for truing-up a number of items including “income tax expense,” but not EADIT. Further, it ordered, “Parties may propose the incorporation of discrete adjustments beyond the true-up period, *provided they are known and measurable.*” (Emphasis added). Because EADIT is not included in the true-up list and, further, no party proposed to make a discrete adjustment for EADIT, it appears to Public Counsel that the EADIT balance as of the end of the ordered September 30, 2024, update period is what should be used for establishing Liberty’s cost of service in this case.

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<sup>182</sup> Ex. 168 Staff witness Antonija Nieto surrebuttal & true-up direct testimony, pp. 4-5.

<sup>183</sup> Ex. 171, Staff witness Justin Tevie true-up direct.

<sup>184</sup> Ex. 116, Staff witness Antonija Nieto direct testimony, pp. 6-8; Ex. 168 Staff witness Antonija Nieto surrebuttal & true-up direct testimony, p. 5.

## **88. Riverton 10 Repairs**

### **a. Were the Riverton 10 repair costs prudently incurred?**

No. As Public Counsel witness John A. Robinett, testified, and Staff concurs,<sup>185</sup> Liberty poorly timed when it repaired Riverton unit 10 and its retail customers should not have to pay for Liberty's increased costs due to its mismanagement of the timing of when to retire and when to repair that unit.<sup>186</sup> The following of events which show Liberty's mismanagement is based on Mr. Robinett's direct and surrebuttal testimony cited in footnote 92.

- February 8, 2021—Liberty had a fire at Riverton 10 that forced it offline;
- February 8, 2022—Date by which Liberty could use SPP's within-one-year-of-retirement generating unit replacement tariff provision for Riverton 10;
- April 1, 2022—Date by which Liberty had decided to replace Riverton 10;
- January 1, 2023—Date when Liberty notified SPP it was seeking to use a SPP tariff provision that allowed replacement of a unit if replaced within one year and date when Liberty sought a FERC waiver of that one-year period limitation; and
- September 5, 2023—Date when Liberty decided to repair Riverton 10 after the FERC denied Liberty's waiver request.

Liberty should have chosen to replace Riverton 10 within the one-year SPP replacement period, *i.e.*, before February 8, 2022. Had it done so, it would not have needed to repair Riverton 10. Liberty's customers should not pay for Liberty mismanaging when to replace Riverton 10.

### **b. What amount of the Riverton 10 repairs capital cost should be included in rate base?**

None. This issue is duplicative of **Issue No. 2.h.**

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<sup>185</sup> Ex. 167, Brodrick Niemeier surrebuttal & true-up direct testimony, pp. 1-8.

<sup>186</sup> Ex. 215, Public Counsel witness John A. Robinett direct testimony, pp. 9-13; Ex. 217, Public Counsel witness John A. Robinett surrebuttal testimony, pp. 2-9.

As Public Counsel witness John A. Robinett, testified, Liberty poorly timed when it repaired Riverton unit 10 and its retail customers should not have to pay for Liberty's increased costs due to its mismanagement of when to retire and when to repair that unit.<sup>187</sup> Staff concurs.<sup>188</sup> The following of events which show Liberty's mismanagement is based on Mr. Robinett's direct and surrebuttal testimony cited in footnote 92.

- February 8, 2021—Liberty had a fire at Riverton 10 that forced it offline;
- February 8, 2022—Date by which Liberty could use SPP's within-one-year-of-retirement generating unit replacement tariff provision for Riverton 10;
- April 1, 2022—Date by which Liberty had decided to replace Riverton 10;
- January 1, 2023—Date when Liberty notified SPP it was seeking to use a SPP tariff provision that allowed replacement of a unit if replaced within one year and date when Liberty sought a FERC waiver of that one-year period limitation; and
- September 5, 2023—Date when Liberty decided to repair Riverton 10 after the FERC denied Liberty's waiver request.

Liberty should have chosen to replace Riverton 10 within the one-year SPP replacement period, *i.e.*, before February 8, 2022. Had it done so, it would not have needed to repair Riverton 10 only to retire it by August 1, 2026. Liberty's customers should not pay for Liberty mismanaging when to replace Riverton 10.

**c. Has Empire violated the Commission-ordered Stipulation and Agreement Paragraph 4(j) in Case No. EA-2023-0131 which states, among other things: “Liberty shall provide testimony on the decision process followed during the repair/replacement of Riverton Units 10 and 11 as well as any changes in policy resulting from that process”?**

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<sup>187</sup> Ex. 215, Public Counsel witness John A. Robinett direct testimony, pp. 9-13; Ex. 217, Public Counsel witness John A. Robinett surrebuttal testimony, pp. 2-9.

<sup>188</sup> Ex. 167, Brodrick Niemeier surrebuttal & true-up direct testimony, pp. 1-8.

Yes. In his direct testimony Public Counsel witness Mr. Robinett pointed out that in response to Public Counsel data request number 8507 submitted to Liberty, Liberty confidentially stated that it had capitalized Riverton 10 repair costs in FERC account 343.<sup>189</sup> Liberty did not provide anything in its direct case to show it had complied with the Commission's order. In rebuttal, Liberty witness Brian Berkstesser testified:

The Company acknowledges that testimony "on the decision process followed during the repair/replacement of Riverton Units 10 and 11 as well as any changes in policy resulting from that process" was not included in the initial filing of this rate case. The Company intends to include that testimony in the rate case where it first seeks cost recovery related to the replacement units. Liberty apologizes for the misunderstanding if the intent of the stipulation provision was for the testimony to be included in this case.<sup>190</sup>

In surrebuttal, Staff concurred that Liberty violated the Commission's order.<sup>191</sup>

## **89. Ozark Beach Crane Extension**

### **a. Were the costs of the crane extension project at Ozark Beach prudently incurred?**

No. This project exemplifies that Liberty is not putting its customers first when deciding what projects to undertake and when to undertake them. Liberty's witness Brian Berkstesser testified,

"You know, it's -- when we bring four barrels of 55-gallon drums across that lake to -- to bring hydraulic oil over, I just -- my mind would go to all sorts of unpleasant things, like an oil spill over the side of the dam heading towards Bull Shoals. It was just -- I didn't sleep well when we were doing those things. . . . . And -- and this extension eliminates all of that. You go across a bridge, it's all in a truck, you never have to take it on the water. All that gets avoided."<sup>192</sup>

This sounds more like a \$3 million capital expenditure "solution" in search of a problem. Liberty has shown neither that it should have undertaken this \$3 million project—that it was cost-effective

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<sup>189</sup> Ex. 215, Public Counsel witness John A. Robinett direct testimony, p. 9.

<sup>190</sup> Ex. 2, Liberty witness Brian Berkstesser rebuttal testimony, p. 6.

<sup>191</sup> Ex. 167, Staff witness Brodrick Niemeier surrebuttal & true-up direct testimony, pp. 1-4.

<sup>192</sup> Tr. 13:9.

from its customers' standpoint—or that, when considering customer rate impacts, it best timed when to undertake the project. These same criticisms apply to Liberty's roughly \$500 million or more investment in substations and transmission lines, and match the concerns of overspending on capital projects raised by former Empire employee Rick Hendricks in Schedule GM-7 to Ex. 202, Public Counsel witness Geoff Marke direct testimony and by David Johnson, a retired lineman, at the July 22, 2025, local public hearing in Bolivar, Missouri (Tr. 4:63-65).

**b. Does the crane extension project at Ozark Beach qualify for PISA?**

Not in issue.

**FAC**

**90. Which FERC subaccounts should be included in Empire's FAC tariff sheets?**

On October 21, 2025, Liberty filed a settlement agreement with Staff listing FERC subaccounts to be included and excluded from Liberty's FAC. While Public Counsel did not oppose that agreement, the FERC subaccounts listed in it do not include transmission revenue accounts. Not only should the FERC subaccounts listed in the October 21, 2025, settlement agreement be included in Liberty's FAC, the following transmission revenue subaccounts should be included as well:

GL	Descriptions
<b>457</b>	<b>Included:</b>
457137	Ot El RvOffSys LTFSTF PTP Trns [#]
457138	Ot El RvOffSys NnFrm PTP Trns [#]

## 91. What should be the FAC base factor for this case?

It is important that the Commission get Liberty's FAC base factor as correct as possible. Liberty's electricity customers use on a normalized annual basis about 5,178,271,000 kWh.<sup>193</sup> That means that every \$0.001/kWh Liberty's FAC base factor is off translates into about \$5 million per year. Spread over some 163,000 customers that averages to over \$30/customer/year. Missing by \$0.003/kWh increases the impact by threefold to over \$15 million per year and over \$90/customer/year.

As stated in the introduction of this brief, in its April 23, 2025, *Order Establishing True-Up Period*, the Commission ordered a true-up cut-off date of March 31, 2025, for truing-up a number of items including "fuel and purchase power expense, to include, but not be limited to, updated contract prices for fuel, wind power, fuel transportation and fuel storage." As also stated in the introduction to this brief, the Commission also ordered, "Parties may propose the incorporation of discrete adjustments beyond the true-up period, *provided they are known and measurable.*" (Emphasis added).

Rather than proposing discrete adjustments to the natural gas prices, without disclosing it was doing so Liberty relied on forecasted 2025 natural gas prices in its direct case<sup>194</sup> and forecasted 2026 natural gas prices in its true-up<sup>195</sup> for deriving its net fuel and purchased power costs. Not only did Liberty use natural gas prices that are beyond even the March 31, 2025, true-up cut-off, those natural gas prices are not known and measurable because they are forecasted. Further, Liberty did not consider its natural gas hedging position when it derived its net fuel and purchased power costs for its direct or for its true-up cases.<sup>196</sup>

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<sup>193</sup> Ex. 51, Liberty witness Todd W. Tarter surrebuttal and true-up direct testimony, true-up direct Sch. TWT-2.

<sup>194</sup> Ex. 201, Empire Response to OPC DR 8054.

<sup>195</sup> Ex. 200, Empire Response to OPC DR 8053.

<sup>196</sup> Ex. 49 Liberty witness Todd W. Tarter corrected direct testimony, p. 10.

Another large component of Liberty's FAC base cost is ARR/TCR revenue. As described in Public Counsel's argument under **Issue No. 42** above, Liberty used projected revenues through the end of 2025 for its true-up estimate of ARR/TCR Revenues. Disclosed in workpapers, but not in testimony, Liberty's FAC base factors include some components from 2023, some from 2024, and some projected through 2026.

The only party other than Liberty who developed net fuel and purchased power costs is the Commission's Staff. Unlike Liberty, and in compliance with the Commission's April 23, 2025, *Order Establishing True-Up Period*, for true-up through March 31, 2025, Staff used actual historical Liberty fuel expense<sup>197</sup> and energy market prices,<sup>198</sup> and explicitly included Liberty's hedged natural gas positions to determine Liberty's net fuel and purchased power costs.<sup>199</sup> Based on actual historical information before the March 31, 2025, true-up cutoff date, Staff's true-up variable fuel and purchased power expense is the appropriate expense to include in Liberty's revenue requirement and FAC.

Further, Staff included other annualized and normalized components, including ARR/TCR revenues and REC revenues, based on historical test year data with certain components updated through March 31, 2025, as the Commission ordered.<sup>200</sup> Because the values of Staff's components are based on Liberty's historical costs and revenues limited by the March 31, 2025, Commission-ordered true-up cut-off date as required by Commission order, the Commission should use Staff's true-up FAC base factor of \$0.01111/kWh in this case.

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<sup>197</sup> Ex. 168 Staff witness Antonija Nieto surrebuttal & true-up direct testimony, pp. 4-5.

<sup>198</sup> Ex. 171, Staff witness Justin Tevie true-up direct.

<sup>199</sup> Ex. 116, Staff witness Antonija Nieto direct testimony, pp. 6-8; Ex. 168 Staff witness Antonija Nieto surrebuttal & true-up direct testimony, p. 5.

<sup>200</sup> Ex. 165, Staff witness Brooke Mastrogiovanni surrebuttal / true-up direct testimony; Ex. 168 Staff witness Antonija Nieto surrebuttal & true-up direct testimony; Ex. 160, Staff witness Shawn E. Lange surrebuttal / true-up direct testimony.

However, if the Commission determines \$0.01111/kWh is the proper FAC base factor, then Liberty's cost-of-service and resulting revenue requirement need to be reduced to incorporate this lower base factor into it. If the costs of the components used to derive Liberty's FAC base factor are lower than the costs of those same components that are included in Liberty's revenue requirement, then Liberty will double collect some of its FAC costs.<sup>201</sup> For example, if the Commission determines that the FAC base factor should be \$0.01111/kWh, then the revenue requirement that includes the \$0.01397/kWh in the Settlement (labeled, "FAC Base") would need to be reduced by the \$0.00286/kWh<sup>202</sup> difference in the two base factors. Using Staff's normalized billing determinants results in a net system input of 5,174,826,620 kWh total company for the true-up period.<sup>203</sup> And the downward revenue requirement adjustment necessary to properly reflect Staff's FAC base factor is \$14,800,004 (total company).<sup>204</sup>

- 92. ~~What are the appropriate FAC Voltage Adjustment Factors for Empire?~~**
- 93. ~~What is the percentage of SPP and MISO transmission expense that should be recovered through the FAC?~~**
- 94. ~~Should SPP Schedules 1A and 12 for administrative costs be included in the FAC?~~**
- 95. ~~What percentage of the SPP transmission revenues should be included in the FAC and its base factor calculation?~~**

Liberty proposed to flow SPP transmission revenues through its FAC in its direct case.<sup>205</sup> Based on the language of the Settlement, which Public Counsel and Consumers Council of Missouri both opposed, it appears that the signatories to it are proposing that Liberty's revenues do not flow through its FAC, but that a percentage of its SPP transmission costs do.<sup>206</sup> Liberty and Staff's October 21, 2025, settlement agreement which lists FERC subaccounts to be included

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<sup>201</sup> Ex. 206, Public Counsel witness Lena M. Mantle, direct testimony, Sch. LMM-D-2, p. 15, Scenario 2.

<sup>202</sup> The difference between \$0.01397/kWh and \$0.01111/kWh.

<sup>203</sup> Ex. 165, Staff witness Brooke Mastrogiovanni surrebuttal / true-up direct testimony, p. 5.

<sup>204</sup> Tr. 13:67, Public Counsel witness Lena M. Mantle (\$0.00286/kWh \* 5,174,826,620 kWh).

<sup>205</sup> Ex. 219, Public Counsel witness Angela Schaben rebuttal testimony, p. 9.

<sup>206</sup> See paragraph 9 of the Settlement.

and excluded from Liberty's FAC supports that appearance since it omits—neither includes nor excludes—FERC transmission revenue subaccounts.

Public Counsel agrees with Liberty's direct position that SPP transmission revenues should flow through Liberty's FAC; however, they should be included in Liberty's FAC base factor and flow through Liberty's FAC at the same percentage as the SPP transmission costs that flow through Liberty's FAC and are included in its FAC base factor. That percentage should be based on Liberty's purchased power costs as percentage of Liberty's customers' energy requirements. No SPP transmission revenues flow through Liberty's currently effective FAC and none are included in the base factor of that FAC; however, a percentage of Liberty's transmission costs both flow through that FAC and are included in the base factor.

Rule 20 CSR 4240-20.090 speaks of costs net of revenues in rate adjustment mechanisms such as FACs. It is inconsistent with the Commission's intent by rule 20 CSR 4240-20.090 and with fairness to flow transmission costs through Liberty's FAC, but not transmission revenues.

Liberty's fuel clause arises from § 386.266, RSMo, which allows the Commission to permit "periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in [an electric utility's] prudently incurred fuel and purchased-power costs, including transportation." The Commission promulgated rule 20 CSR 4240-20.090 for implementing fuel adjustment clauses. Consistent with the statute, that rule is designed so that fuel and purchased-power costs and revenues included in the fuel adjustment base components equate to the costs and revenues of those same components that are used for setting general (base) rates.<sup>207</sup> Rule 20 CSR 4240-20.090 contemplates fuel-related revenues flowing through fuel adjustment clauses, but does not specifically include transmission revenues as revenues that flow through fuel adjustment clauses.

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<sup>207</sup> Ex. 206, Public Counsel witness Lena M. Mantle, pp. 6-7.

Liberty, Staff, and Public Counsel agree that less than all of Liberty's transmission costs should flow through its FAC. Including the same percentage of transmission revenues as the percentage of transmission costs that flow through Liberty's FAC would be evenhanded. If a portion of Liberty's transmission costs flow through its FAC, then so should the same portion of Liberty's transmission revenues.

- ~~96. What additional FAC reporting requirements, if any, should the Commission require of Empire?~~**
- ~~a. Should Empire's FAC reporting include providing its FAC reports to Public Counsel?~~**

**97. How should the FAC tariff sheets be revised?**

Liberty's FAC tariff sheets should be updated with the sharing mechanism the Commission orders. They also should be revised to exclude Liberty's costs to serve large load customers. If the Commission revises Liberty's general rates, then Liberty's FAC tariff sheets also should not only be updated to include its updated base factor and flow through the same percentage of Liberty's SPP transmission revenues and SPP transmission costs based on Staff's fuel model in this case, but also with Staff's other revisions. Other than the foregoing, Liberty's FAC tariff sheets should remain unchanged; however, should the Commission order other changes in Liberty's FAC, then they should be captured in Liberty's FAC tariff sheets.

- ~~98. What ratio of the difference between Empire's actual and base net fuel costs should the Commission order be shared between Empire and its customers as an incentive mechanism in Empire's FAC, should the Commission authorize continuation of an FAC for Empire?~~**

With their opposed Settlement, except for Public Counsel and Consumers Council of Missouri, the parties in this case uniformly now have the position that Liberty's FAC sharing mechanism should remain as it is at 95/5. Liberty's electricity customers use on a normalized

annual basis about 5,178,271,000 kWhs.<sup>208</sup> That means that for every \$0.001/kWh Liberty's FAC base rate is off, it translates into about \$5 million per year. Spread over some 163,000 customers that averages to over \$30/customer/year. Missing by \$0.003/kWh increases the impact by threefold to over \$15 million per year and over \$90/customer/year. As Public Counsel witness Lena M. Mantle testified, the closer the Commission gets the FAC to actual net FAC costs, the less impactful the magnitude of the sharing mechanism becomes.<sup>209</sup>

Public Counsel's primary position is that the Commission should not authorize Liberty to continue its FAC because of Liberty's poor resource planning decisions (*e.g.* retiring its Asbury unit prematurely) and choices with poor outcomes (*e.g.*, not preparing its Riverton 10 and 11 for extreme weather events until after Storm Uri) that its customers have been forced to bear.<sup>210</sup> Liberty's recent failure to perform heat rate testing further exemplifies Liberty's ambivalence to assuring its customers and the Commission that it is diligently maintaining and upgrading its thermal generating resources.<sup>211</sup>

With the foregoing in mind, if the Commission authorizes Liberty to continue its FAC, Public Counsel urges the Commission to include a meaningful sharing mechanism of 50/50 which will strongly incent Liberty to consider its customers when it makes its resource planning decisions. Liberty's prior decisions show that it ignores its customers when resource planning. Instead, it relies on the SPP energy market to meet its customers' needs, and uses its FAC to insulate it from the costs of its poor resource planning decisions.<sup>212</sup> For ratemaking, customers are treated as getting the benefit of lower of cost or market for electrical energy, but that benefit

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<sup>208</sup> Ex. 51, Liberty witness Todd W. Tarter surrebuttal and true-up direct testimony, true-up direct Sch. TWT-2.

<sup>209</sup> Tr. 13:68.

<sup>210</sup> Ex. 206, Public Counsel witness Lena M. Mantle direct testimony, pp. 22-23; Ex. 207, Public Counsel witness Lena M. Mantle rebuttal testimony, pp. 17-20.

<sup>211</sup> Ex. 217, Public Counsel witness John A. Robinett surrebuttal testimony, pp. 10-11.

<sup>212</sup> Ex. 206, Public Counsel witness Lena M. Mantle direct testimony, pp. 25-35.

evaporates when a utility has a FAC where the impact on the utility of that margin between cost and market is rendered meaningless.

The Commission is not limited to the two sharing mechanisms that the parties are now advocating—50/50 or 95/5. Public Counsel recommends that the Commission consider any sharing between 90/10 and 50/50, but points out that a sharing mechanism of 50/50 creates a greater incentive than a sharing mechanism of 90/10. Regardless of what sharing mechanism it orders, the Commission is required to support its choice to incent Liberty to be cost-effective.<sup>213</sup>

**99. Should Empire's FAC tariff sheets be revised in this docket to address the fuel and purchased power impacts of large load customers with 25 MW or more of demand?**

Yes. This is the opportune time to do so because FACs only can lawfully be changed during general rate proceedings such as this one.<sup>214</sup> Liberty's costs incurred to serve large load customers should be excluded from Liberty's FAC. Without this modification every large load customer will be subsidized by Liberty's other customers.<sup>215</sup> At this point in time, where all the impacts and all the costs of large load customers on Liberty and its customers are unknown, a simple line in the FAC tariff sheet that states that the energy, capacity, and transmission costs incurred due to each large load customer are excluded from the costs that flow through Liberty's FAC would suffice.<sup>216</sup>

**Billing Determinants and Rate Design**

**100. ~~What level of billing units and normalized revenues should be used in calculating rates?~~**

- ~~a. What update period adjustment should be used in calculating normalized billing units, revenues, and rates?~~**
- ~~b. What adjustment to December 19, 2024 data and manual adjustments should~~**

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<sup>213</sup> Ex. 207, Public Counsel witness Lena M. Mantle rebuttal testimony, p. 7.

<sup>214</sup> §386.266.5, RSMo.

<sup>215</sup> Ex. 207, Public Counsel witness Lena M. Mantle rebuttal testimony, p. 29.

<sup>216</sup> Ex. 207, Public Counsel witness Lena M. Mantle rebuttal testimony, pp. 29-30.

~~be used in calculating normalized billing units, revenues, and rates?~~

- c. ~~What rate switcher and Large Power customer annualization adjustment should be used in calculating normalized billing units, revenues, and rates?~~
- d. ~~What weather normalization and 365 days adjustment should be applied when determining normalized billing units, revenues, and rates?~~
- e. ~~What block weather normalization adjustment should be used in calculating normalized billing units, revenues, and rates?~~
- f. ~~What Missouri Energy Efficiency Investment Act (“MEEIA”) adjustment should be used in calculating normalized billing units, revenues, and rates?~~
- g. ~~What growth adjustment should be used in calculating normalized billing units, revenues, and rates?~~
- h. ~~What community solar facility and grid charge adjustment should be used in calculating normalized billing units, revenues, and rates?~~
- i. ~~What non Missouri kilowatt hour (“kWh”) adjustment should be used in calculating normalized billing units?~~
- j. ~~What Energy Efficiency Cost Recovery (“EECR”) adjustment should be used in calculating normalized billing units, revenues, and rates?~~

101. ~~What is the appropriate interclass allocation of revenue responsibility for setting rates in this case?~~

102. ~~Which party’s Class Cost of Service Study should be used in this case?~~

- a. ~~How should production costs be allocated within the Class Cost of Service study in this case?~~
- b. ~~How should distribution costs be allocated within the Class Cost of Service study in this case?~~

103. ~~What is the appropriate design of residential rates in this case?~~

104. ~~What are appropriate designs of non-residential rates in this case?~~

105. ~~What actions should the Commission order in this case with regard to creation of a Coincident Peak Demand Charge for non-residential customers and other Rate Modernization?~~

106. ~~What actions should the Commission order in this case with regard to the Residential Smart Charger Pilot program?~~

107. ~~What Economic Development Rider (“EDR”) revenue adjustment should be used in calculating normalized revenues and rates?~~

Public Counsel has not taken a position on this issue.

108. ~~What amount of Excess Facilities Charge (“XC”) revenues should be included in the revenue requirement and rate design?~~

Public Counsel has not taken a position on this issue.

**109. Should the Transmission Service (“TS”) Interruptible Credit be increased?**

Public Counsel has not taken a position on this issue.

**110. Should the Commission order Empire to provide each rate code customer charge count at the fraction level for each month of the test year, update period, and through true up (if applicable) in the next general rate increase?**

### **Various Tariff Issues**

**111. Should the compliance tariff sheets in this case:**

- a. remove Rider SR?**
- b. remove the DSIM bill line item, with any remaining balances associated with Cycle 1 and Schedule DSIM to be addressed in a future rate case?**

**112. Should there be any changes to TEPP?**

**113. Should the Miscellaneous Tariff Issues, identified by Staff as being titled or filed incorrectly, be changed as recommended by Staff?**

### **Green Button Connect**

**114. Should the Commission order Empire to implement Green Button Connect My Data (“GBC”) in this rate case?**

- a. In the event that the Commission orders Empire to implement GBC in this rate case, should the Commission order the tariff proposed by Renew Missouri related to GBC?**
- b. In the event that the Commission orders Empire to implement GBC in this rate case, should the Commission adopt Renew Missouri’s revenue requirement recommendation?**
- c. In the event that the Commission orders Empire to implement GBC in this rate case, should \$100,000 be included in Empire’s ordered revenue requirement to study its participation in a regional data hub?**

### **Customer Programs**

**115. Should the Low Income Pilot Program (LIPP) continue? If so, what, if any modifications made and what funding level should be ordered?**

**116. Should the Low Income Weatherization Assistance Program (“LIWAP”) be continued? If so, what, if any, modification should be made and what funding level should be ordered?**

**117. Should the Company resume administrative control of the LIWAP?**

**118. Should the customer charge be waived for income-eligible residential customers as proposed by OPC witness Dr. Marke?**

Yes. There is a strong need for waiving customer charges for income-eligible residential customers. Waiving customer charges for income-eligible residential customers is supported by Missouri law now, is easy to administer, allows for greater participation in the benefits of electricity, and will ease future data sharing among agencies.<sup>217</sup> Further, waiving this charge would be consistent with the recent income-eligible rate design (Limited Income Customer Charge Pilot Program) which this Commission approved Spire Missouri's most recent general rate case, Case No. GR-2025-0107.

- 119. Should the Critical Medical Needs program continue? If so, should any modifications be made and what funding level should be ordered?**
- 120. Should the Commission order the structure and meeting requirements for the Low Income Programs Collaborative, as recommended by CCM witness Jim Thomas?**
- 121. Should the Company adopt low income marketing strategies as recommended by CCM witness Jim Thomas?**
- 122. Should the Company adopt the best practices for identifying the needs of high energy burden and low income communities, targeting resources to those communities, and setting customer targets for achievement, as recommended by CCM witness Jim Thomas?**

#### **Miscellaneous Issues**

- 123. Should the Commission take any action in this case related to Empire's 2024 infrastructure inspections?**
- 124. Should Empire direct its internal audit department to examine its capitalization practices and ethical controls?**
- 125. Has Liberty fulfilled its requirements pertaining to the cost/benefit analysis of PISA projects greater than \$1 million?**
- 126. Is the use of the Value of Lost Load study results as an input to the emergency conservation plan tariff appropriate? What is the appropriate methodology for developing electricity market prices?**
- 127. Should Empire be ordered to refile its emergency conservation tariff within 90 days following the conclusion of its Value of Lost Load Study?**
- 128. What is the appropriate valuation of the Purchase Power Agreement ("PPA") replacement value as it pertains to the Market Price Protection**

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<sup>217</sup> Ex. 203, Public Counsel witness Geoff Marke rate design direct testimony, pp. 9-11.

**Mechanism (“MPPM”)?**

a. ~~When does the value associated with replacing the existing wind PPAs during the period of the guarantee become nonzero?~~

i. ~~If not zero, how should the nonzero PPA replacement value be calculated?~~

b. ~~Does the Annual Wind Value include TCR/ARR revenues?~~

c. ~~Does the Annual Wind Value include insurance proceeds?~~

d. ~~What is the Wind Revenue Requirement for the MPPM?~~

129. ~~Should Empire’s EADIT tracker continue?~~

130. ~~Should Empire continue its pension and OPEB tracker?~~

131. ~~Upon receipt of GRIP awards, how should Empire account for the proceeds?~~

132. **What system energy loss factor should be ordered in this case?**

Public Counsel has not taken a position on this issue.

133. **What jurisdictional allocation factors for demand and energy should the Commission order in this case?**

Public Counsel has not taken a position on this issue.

134. **What is the appropriate way of determining gas transportation costs?**

Public Counsel has not taken a position on this issue.

135. **Should annual gas transportation costs be calculated using the new rates established by the contract that took effect in June 2025?**

As stated in the introduction of this brief, in its April 23, 2025, *Order Establishing True-Up Period*, the Commission ordered a true-up cut-off date of March 31, 2025, for truing-up a number of items including “fuel and purchase power expense, to include, but not be limited to, updated contract prices for fuel, wind power, fuel transportation and fuel storage.” Further, it ordered, “Parties may propose the incorporation of discrete adjustments beyond the true-up period, *provided they are known and measurable.*” (Emphasis added). While new rates are known and measurable, unless a party has proposed discrete adjustments beyond the true-up period for gas transportation costs, the Commission should reject the proposed calculation immediately. If not, then the Commission should consider whether such a discrete adjustment is material to reflecting the future and consistent with how it treats other proposed discrete adjustments. In Public

Counsel's view Liberty's evidence is insufficient to constitute a proposal to incorporate discrete adjustments beyond the true-up period. Instead of proposing them, without even stating it was doing so, Liberty made them and did not disclose in the record they were post the March 31, 2025, true-up cut-off date until true-up rebuttal. See Ex. 49, Liberty witness Todd W. Tarter, direct testimony, p. 11, confidential direct schedule TWT-3; Ex. 52, Liberty witness Todd W. Tarter, true-up rebuttal testimony, p. 9. ("It is true the new contracts took effect as of June 2025, after the March 31, 2025, true-up date. However, the updated rates have been known and measurable since the referenced contract was executed in May 2024, well before the true-up date.").

**~~136. Should the PAYGO tracker be continued after the effective date of rates in this case?~~**

**~~137. Should the existing PAYGO tracker continue through the effective date of rates in this case?~~**

**~~138. In consideration of all relevant factors, should Staff's proposed ongoing Amortization Tracker be adopted?~~**

**139. Should Empire retain the authority to continue to defer the retirement cost of Asbury?**

Public Counsel has not taken a position on this issue.

**140. Did Empire provide the generating unit heat rate efficiency testing procedures and results as required by 20 CSR 4240-20.090(2)(A)15?**

No. Rule 20 CSR 4240-20.090(2)(A)15 provides:

(A) The electric utility shall file the following supporting information, in electronic format, where available, with all links and formulas intact, as part of, or in addition to, its direct testimony:

\* \* \* \*

15. A level of efficiency for each of the electric utility's generating units determined by the results of heat rate/efficiency tests or monitoring that were conducted or obtained on each of the electric utility's steam generators, including nuclear steam generators, heat recovery steam generators, steam turbines and combustion turbines within twenty-four (24) months preceding the filing of the general rate increase case.

A. The results should be filed in a table format by generating unit type, rated megawatt (MW) output rating, the numerical value of the latest result and the date of the latest result;

B. The electric utility shall provide documentation of the actual test/monitoring procedures. The electric utility may, in lieu of filing the documentation of these procedures with the commission, provide them to the staff, OPC, and to other parties as part of the workpapers it provides in connection with its direct case filing. If the electric utility submits the results in workpapers, it will provide a statement in its testimony as to where the results can be found in workpapers;

Liberty provided a table as a schedule to its witness Leigha Palumbo's direct testimony where it reported by generating unit, the date of the test and a single net heat rate, but it did not provide any of the underlying data or reports generated that were used to arrive at the final numbers it reported.<sup>218</sup> Those unprovided reports and heat rate curves would allow parties to perform additional analysis and draw additional conclusions. The single number heat rate result filed by Liberty is inadequate and, further, not all the heat rate test results in Schedule LP-8-Final HC meet the timing requirements of the Commission's rule.

Public Counsel witness John Robinett raised this issue in his direct testimony.<sup>219</sup> In rebuttal, Liberty witness Brian Berkstresser testified,

The Company partially agrees with Mr. Robinett's assertion. The heat rate test results initially provided were outside the 24-month period required by Commission Rule 20 CSR 4240-20.090(2)(A)15. We acknowledge this oversight and have since obtained the most recent heat rate test results, which will be provided as workpapers supporting this testimony.<sup>220</sup>

Public Counsel witness John Robinett searched through all of Liberty's workpapers and responses to data requests, including its responses to Staff's data requests, and while he found in rebuttal workpapers heat rate test values that were within the twenty-four months prior to the filing date of this rate case for Iatan units 1 and 2, and Plum Point, he was unable to find the comprehensive set of supporting materials, including testing procedures and data sheets for each unit tested.<sup>221</sup>

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<sup>218</sup> Ex. 42, Liberty witness Leigha Palumbo direct testimony Sch. LP-8-Final HC.

<sup>219</sup> Ex. 215, Public Counsel witness John A. Robinett direct testimony, pp. 15-18.

<sup>220</sup> Ex. 2, Liberty witness Brian Berkstresser rebuttal testimony, p. 8.

<sup>221</sup> Ex. 217, Public Counsel witness John A. Robinett surrebuttal testimony, pp. 9-11.

“Heat rate testing is a measure of the operating efficiency of thermal generating resources. Having a FAC where Liberty gets to recover almost 100% of its fuel costs from customers, removes the regulatory lag incentive for Liberty to keep or increase its generating units’ efficiency. A comparison of heat rate tests across rate cases allows for tracking of efficiency of the plants.”<sup>222</sup>

**a. If not, when should it provide these procedures and results?**

This information should have been provided concurrent with, or prior to, when Liberty filed this case. Given that Liberty already should have provided this information, Public Counsel recommends that the Commission order Liberty either to produce it to Public Counsel as soon as practicable either directly or, alternatively, by informing Public Counsel where it can find the information in the Commission’s electronic filing and information system (EFIS).

**141. ~~What is the base level of property tax to be established for the property tax tracker?~~**

**Customer Experience**

**142. How should the Company’s investment in Customer First be treated for ratemaking purposes in this case?**

If the Commission rejects Public Counsel’s position on **Issue No. 163** that Liberty’s customer service is so inadequate the Commission should not entertain Liberty’s rate increase request and the Commission proceeds with designing new Liberty electric general rates in this case, then the Commission must exclude Liberty’s investment in Customer First from rate recovery. For Liberty to recover its investment in Customer First through rates that investment must be “used and useful” and “fully operational and used for service.”<sup>223</sup> The text of § 393.135, RSMo., follows:

1. Except as provided in subsection 2 of this section, any charge made or demanded by an electrical corporation for service, or in connection therewith,

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<sup>222</sup> Ex. 217, Public Counsel witness John A. Robinett surrebuttal testimony, pp. 9-11.

<sup>223</sup> § 393.135, RSMo.

which is based on the costs of construction in progress upon any existing or new facility of the electrical corporation, or any other cost associated with owning, operating, maintaining, or financing any property before it is fully operational and used for service, is unjust and unreasonable, and is prohibited.

2. (1) An electrical corporation may be permitted, subject to the limitations in this subsection, to include construction work in progress for any new natural gas-generating unit in rate base. The inclusion of construction work in progress allowed under this subsection shall be in lieu of any otherwise applicable allowance for funds used during construction that would have accrued from and after the effective date of new base rates that reflect inclusion of the construction work in progress in rate base. The commission shall determine, in a proceeding under section 393.170, the amount of construction work in progress that may be included in rate base. The amount shall be limited by:

- (a) The estimated cost of such project; and
- (b) Project expenditures made within the estimated construction period for such project.

Base rate recoveries arising from inclusion of construction work in progress in rate base are subject to refund, with interest on the refunded amount at the same rate as the rate of interest for delinquent taxes determined by the director of revenue in accordance with section 32.065, if, and to the extent the commission determines, in a subsequent complaint or general rate proceeding, that construction costs giving rise to the construction work in progress included in rate base were imprudently incurred or if the project for which construction costs have been included in the rate base is not placed in service within a reasonable amount of time, as determined by the commission. Rate base used to determine return deferred under subdivision (2) of subsection 3 of section 393.1400 shall include an offset for rate base that has been used to determine return included in base rates as a result of construction work in progress inclusion in rate base under this subsection. The offset shall apply from and after the in-service date of the asset that has been used to determine return included in base rates as a result of construction work in progress inclusion in rate base under this subsection.

<sup>\*(2)</sup> This subsection shall expire on December 31, 2035, unless the commission determines, after a hearing conducted in 2035, upon a submission from an electrical corporation of an application requesting and demonstrating that good cause exists to extend the effectiveness of this subsection through December 31, 2045. The secretary of the commission shall notify the revisor of statutes when the conditions set forth for the extension of this subsection have been met.

As Public Counsel details in its argument for **Issue No. 163**, not only is Customer First not “used and useful” or “fully operational and used for service,” Liberty’s efforts to implement Customer First have degraded Liberty’s customer service. Not only must Liberty’s investment in Customer

First be excluded from Liberty's revenue requirement, Liberty's Customer First expenses must be excluded as well.

**A. What is the appropriate amount of Customer First Operations and Maintenance (O&M) expense to include in rates?**

None, because, as explained immediately above, Customer First is not "used and useful," and Missouri statute bars recovery of expenses associated with Customer First before Customer First is "fully operational and used for service." Moreover, Liberty's efforts to implement Customer First have degraded Liberty's customer service as explained in detail in this brief under **Issue No. 163**.

**i. How should the true-up cut-off date of March 31, 2025, impact the Commission's determination of Customer First Operations & Maintenance ("O&M") costs for ratemaking purposes?**

In its order where it established a true-up cut-off date of March 31, 2025, the Commission listed what was allowed to be trued-up. O&M costs are not on that list, but "all rate base components" is. While the March 31, 2025, cut-off date has no impact on the Customer First O&M costs—they are limited by the September 30, 2024, update period—it does impact the determination of when to evaluate whether Customer First is "used and useful" and "fully operational and used for service" for purposes of this rate case—that date is March 31, 2025. Public Counsel's argument for **Issue No. 163** marshals the evidence which shows that, not only was Customer First not "used and useful" or "fully operational and used for service" on March 31, 2025, it still is not "used and useful" or "fully operational and used for service," and Liberty's efforts to implement it have degraded its customer service.

**B. Should the Commission reduce the Company’s revenue requirement based on Empire’s service related to its investment in Customer First?**

If the Commission rejects Public Counsel’s position on **Issue No. 163** and designs new Liberty base rates in this case, then “Yes.” Because Customer First is not “used and useful,” is not “fully operational and used for service,” and has been detrimental to Liberty’s customer service as detailed in this brief under **Issue No. 163**, the Commission must exclude from Liberty’s revenue requirement Liberty’s investment in, and costs related to, Customer First.

**C. If the Company’s revenue requirement is reduced by the Customer First investment, should it be authorized to establish a regulatory asset to record monthly its earning when respective metrics have been met as proposed by Company witnesses Reed and Walt?**

No, Customer First is an ordinary utility investment, not an extraordinary event for which the Commission should allow such special accounting treatment—an accounting authority order (AAO). If Customer First becomes “used and useful” and “fully operational and used for service” Liberty may seek to include its investment in and costs to operate and maintain Customer First in its next general rate case as with any other capital investment.

**i. What are the billing and customer service metrics to be used to determine if the Company records a monthly entry in its regulatory asset as it relates to earnings for the Customer First investment?**

No one has proposed any such metrics. Tr. 11:153 Staff witness Kimberly Bolin.

**D. Should the Commission make a further disallowance of revenue requirement based on Empire’s provision of inadequate service due to its investment in Customer First?**

If the Commission rejects Public Counsel’s position on **Issue No. 163** and designs new Liberty base rates in this case, then the Commission not only must exclude Liberty’s investment and costs related to Customer First from Liberty’s revenue requirement used for designing those rates in this case, then the Commission should also authorize a lower return-on-equity than it

otherwise would due to Liberty's inadequate customer service caused by its efforts to implement Customer First as detailed in this brief under **Issue No. 163**.

~~143. Should the Commission order the incorporation of The Empire District Electric Company into the monthly Customer First meetings currently occurring between Staff and Liberty Water as ordered in the Order Approving Stipulation and Agreement in Case No. WR 2024-0104?~~

~~A. Should these meetings be further modified?~~

**144. Should the Commission order Empire's tariff to be revised to reflect SAP's new calculation method for budget billing?**

Public Counsel has not taken a position on this issue.

**145. Have bills been issued outside of the 26-35 day billing period required by Commission rule? Should the Commission order Empire to take specific action to comply with Commission rules?**

Public Counsel has not taken a position on this issue.

**146. Should the Commission order Empire to align its estimation calculation with its tariff description?**

Public Counsel has not taken a position on this issue.

**147. Should the Commission order Empire to work to reduce the number of estimated bills and rebills to pre-Customer First transition levels with a timeframe of completion 60 days after new rates take effect in this case?**

Public Counsel has not taken a position on this issue.

**148. Should the Commission order Empire to permanently cease estimating on-peak and off-peak interval reads for TOU billing purposes in favor of using actual reads when available?**

Yes. Liberty should always be using the best data available. Further, the public testimonies and comments vividly demonstrate the public's concerns and anxieties caused by Liberty's billing issues.<sup>224</sup> Liberty should be required to use actual data as part of its efforts to quell those concerns and anxieties, and to restore public confidence in its billings and usage information.

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<sup>224</sup> Tr. 2 (Joplin, July 21, 2025); Tr. 3 (Nixa, July 22, 2025); Tr. 4 (Bolivar, July 22, 2025); Tr. 5 (Branson, July 23, 2025); Tr. 6 (WebEx, July 23, 2025); Tr. 7 (Aurora, July 24, 2025); Tr. 8 (Aurora, July 24, 2025); Tr. 9, (WebEx, July 25, 2025); and Local Public Hearing Exhibit Nos. 1-6; Ex. 205, Geoff Marke surrebuttal testimony, Schs. GM-1 to GM-4.

**149. Should the Commission order Empire to review its processes for the storage, retrieval, and presentation of customer account information to ensure Customer Service Representatives are automatically presented with past, present and scheduled account activity and information relayed to customers in prior communications, in order to provide Customer Service Representatives with such account activity or communications? This would include the incorporation of service tickets into customer account notes.**

**A. If so ordered, should Empire be required to inform Staff of its plan to comply with the order within 60 days of the effective dates of rates, and file notice in this docket upon successful implementation?**

Public Counsel has not taken a position on this process review issue, but Public Counsel does not oppose the Commission issuing such an order; however, if it does so, then Public Counsel also should be informed of Liberty's plan to comply with that order—Public Counsel proposes it be informed within 60 days of the effective date of the Commission's Report and Order in this case.

**150. Should the Commission order Empire to develop consistent messaging for Customer Service Representatives to convey to customers experiencing common billing issues, and to train Customer Service Representatives to use that messaging and document all information relayed to customers in customer account notes?**

Yes. Liberty's messaging to its customers should be consistent, correct, and documented.

**A. If so ordered, should Empire be required to provide Staff with training materials and scripts used to comply with this order within 60 days of the effective date of rates in this case, along with any updates for a period of one year after the effective date of rates?**

Yes, As the representative of the public before the Commission, the Commission should order Liberty to provide them to Public Counsel too.

**151. Should the Commission order Empire to put in place a process to ascertain that Customer Service Representatives are advising customers of their right to file an informal complaint as prescribed by Commission Rule 20 CSR 4240-13.045(9)?**

Yes. Liberty should have documentation to substantiate that it is complying with Commission rules.

**A. If so ordered, should Empire be required to inform Staff of its plan to comply with the order within 60 days of the effective dates of rates, and file notice in this docket upon successful implementation?**

Yes. The Commission should also require that Public Counsel is informed contemporaneously.

**152. Should the Commission order Empire to put a process in place to ensure that each CSR is trained to note account activities comprehensively, including the development of a quality assurance process to verify that CSRs are adhering to account notation guidelines?**

Yes. Liberty should have documentation to substantiate that it is complying with Liberty's internal procedures.

**A. If so ordered, should Empire be required to inform Staff of its plan to comply with the order within 60 days of the effective dates of rates, and file notice in this docket upon successful implementation?**

Yes. The Commission should also require that Public Counsel is informed contemporaneously.

**153. Should the Commission order Empire to establish a process for customer callbacks that effectively records the need for a callback, tracks the status of that callback, and verifies the execution of the callback within a reasonable period of time following the request?**

Yes. Liberty should have documentation to substantiate the execution and responsiveness of its customer callbacks.

**A. If so ordered, should Empire be required to inform Staff of its plan to comply with the order within 60 days of the effective dates of rates, and file notice in this docket upon successful implementation?**

Yes. The Commission should also require that Public Counsel is informed contemporaneously.

**154. Should the Commission order Empire to provide an additional phone call notification for Autopay customers who have their accounts locked because of delayed billing notifying them of the situation and the need to speak with Empire's call center to remove the lock?**

Yes, to do so is a good customer service practice.

**155. Should the Commission order Empire to investigate customer claims that My Account is not accurately displaying balances owed? Should Empire be required to report the results of its investigation to Staff, along with next steps as necessary?**

Yes, and Yes, and to make the required reporting to Public Counsel contemporaneously

**~~156. Should the Commission order Empire to make the tariff revisions detailed in pages 40-41 of Charles Tyrone Thomason's Rebuttal Testimony in this case?~~**

**~~157. Should the Commission suspend imposition and collection of customer late payment fees until after Empire demonstrates that its customer usage collection and billing systems are working correctly?~~**

**~~158. Should the Commission order Empire to notify customers that it will not be disconnecting customers for nonpayment until after the Company can demonstrate that its customer usage collection and billing systems are working correctly?~~**

**159. Should Empire be required to file an affordability plan with the Commission that provides a clear roadmap with deliverable actions with the expressed goal of lowering rates to be aligned with other electric utilities in Missouri? If yes, what parameters should be ordered?**

Yes. Liberty and the Commission should be primarily focused on achieving bill affordability through proactive efforts; otherwise, customer affordability concerns will drive Liberty and its customers in southwest Missouri into a downward economic spiral difficult to escape.<sup>225</sup> Liberty should be required to file an annual "Affordability" plan at the Commission which provides a clear roadmap with deliverable actions to the express goal of lowering rates to align them with other Missouri electric providers.<sup>226</sup>

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<sup>225</sup> See Ex. 203, Public Counsel witness Geoff Marke direct testimony, pp. 39-43.

<sup>226</sup> Ex. 204, Public Counsel witness Geoff Marke rebuttal testimony, pp. 11-13.

**160. Should Empire's ROE be reduced 25 basis points for poor customer service reflected by its bottom 5% position across U.S. utilities per J.D. Power?**

Yes.<sup>227</sup> Liberty is one of the worst performing electric utilities in the United States. In 2024, Liberty ranked 144 out of 151 utilities in JD Power customer satisfaction surveys,<sup>228</sup> and there is every reason to believe that 2025 will be worse. Liberty has failed to put customers first. If this Commission sets new Liberty rates in this case then it should make an explicit reduction to Liberty's authorized return on equity when doing so both to send Liberty a strong message that it will be held accountable for its failures and to strongly incent it to do better by its customers in the future.

**161. Should the Commission exclude from Empire's revenue requirement all of Empire's costs for contractual call center representatives Empire utilized due to issues with Empire's implementation of Customer First, including the costs of its ContactPoint360 ("CP360") contract?**

**162. Should the Commission exclude from Empire's revenue requirement all of Empire's excessive postage and billing costs related to its continued roll out of Customer First?**

**163. Should the Commission leave Empire's current rates in place until the Company can demonstrate that it is timely and accurately billing its customers for service?**

Yes. Liberty's customer service is so far below what its customers deserve the Commission should not entertain any increase to Liberty's general electric rates. Further, if the Commission continues Liberty's FAC than it should change the FAC sharing mechanism to 50/50, and exclude Liberty's costs to serve large load customers, but not otherwise change Liberty's FAC in this or any other case until after Liberty shows that its customer service is adequate.

Now is not the first time that Liberty's customers have experienced significant customer service issues. Soon after Algonquin acquired Empire on January 1, 2017, they were so bad that

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<sup>227</sup> Ex. 203, Public Counsel witness Geoff Marke direct testimony, pp. 55-56.

<sup>228</sup> Ex. 203, Public Counsel witness Geoff Marke direct testimony, p. 24.

during its May 28, 2020, weekly open agenda meeting when the Commissioners were discussing Liberty's 2019 general rate case (Case No. ER-2019-0374) Commissioner Rupp said,

Yeah, I agree they're not providing adequate customer service and agree with Staff's position and, you can chalk it up to growing pains, but most of the commentary on the local public hearing centered around the uh estimation of bills, and the wild uh swings of those bills. And then the poor information provided to customers when uh customers have called in to their calling service, and the lack of knowledge that the people working the phones had on the issue. So, I think there's a lot of training that needs to be done on the uh those fielding those phone calls and the Company needs to address, the estimation of bills and how much that is driving customer dissatisfaction.<sup>229</sup>

Like in Case No. Case No. ER-2019-0374, the record in this case is replete with evidence that Liberty's customer service is inadequate. In addition to providing background about Liberty's 2019 general rate case, background about Customer First, and explaining how and why Liberty electric ranks so poorly for customer satisfaction relative to other utilities in his direct testimony, Public Counsel witness Dr. Geoff Marke, Ph.D., testified that Liberty's current billing issues have been ongoing since at least when it migrated to billing its customers through its new Customer First systems on April 8, 2024.<sup>230</sup> Dr. Marke non-exhaustively identified the following billing-related issues:<sup>231</sup>

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<sup>229</sup> Ex. 203, Public Counsel witness Geoff Marke direct testimony, pp. 34-3, including footnote.

<sup>230</sup> Ex. 203, Public Counsel witness Geoff Marke direct testimony, pp. 32-49; Tr. 11:109, 113, Liberty witness Tim Wilson (April 8, 2024).

<sup>231</sup> Ex. 203, Public Counsel witness Geoff Marke direct testimony, pp. 39-40.

• Wrong customer charge	• Billed \$1000 for a month of service at a one-bedroom apartment
• No customer charge	• Bill is different from my online account
• No taxes	• Online account says I have a credit
• A different county's taxes	• No phone number or return address
• No bill this month	• Somebody else's bill
• 6 bills this month, each with different amounts	• Estimated bills when power was out
• Late fees are applied for a due date that has already passed	• Estimated bills when no one lives there
• No solar credit	• Billed amount does not match usage amount
• Added a decimal to my usage	• Same surcharge billed twice with different amounts on one bill

Liberty originally planned to transition to Customer First billing in October of 2022.<sup>232</sup>

Recognizing the complexities at Liberty, that transition was delayed until October 2023 while Liberty's affiliates proceeded to transition to Customer First billing.<sup>233</sup> Realizing in late 2023 that Liberty was not ready to transition to Customer First billing, the transition further was delayed to April 2024.<sup>234</sup> Although it was still experiencing Customer First billing issues,<sup>235</sup> and despite realizing that Liberty would have billing issues after it migrated to Customer First billings,<sup>236</sup> Liberty proceeded to transition to Customer First billing on April 8, 2024.<sup>237</sup> Almost immediately billing-related issues overtaxed the resources Liberty devoted to addressing them.<sup>238</sup>

In her rebuttal testimony Liberty witness Amy Walt rather candidly testified, “[M]y early observations suggest that the Company's implementation timeline was overly ambitious.”<sup>239</sup> Since Algonquin acquired Empire January 1, 2017, with the preacquisition intent to transition to

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<sup>232</sup> Tr. 11:114-116, Liberty witness Timothy N. Wilson.

<sup>233</sup> Tr. 11:115, Liberty witness Timothy N. Wilson.

<sup>234</sup> Tr. 11:115-116, Liberty witness Timothy N. Wilson.

<sup>235</sup> Tr. 11:116-117, Liberty witness Timothy N. Wilson.

<sup>236</sup> Tr. 11:121-122, Liberty witness Timothy N. Wilson.

<sup>237</sup> Tr. 11:112-113, Liberty witness Timothy N. Wilson.

<sup>238</sup> Ex. 53, Liberty witness Amy Walt rebuttal testimony, p. 14; Tr. 11:125, Liberty witness Timothy N. Wilson.

<sup>239</sup> Ex. 53, Liberty witness Amy Walt rebuttal testimony, p. 10.

enterprise-wide data collection to end-use systems, Algonquin failed to make good use of the time it had for preparing a smooth transition. Public Counsel suggests that rather than the transition timeline being overly ambitious, Algonquin and Liberty simply did not prudently use their time to prepare a smooth transition before making it. Liberty's inadequate response to the Commission's order in Case No. EM-2016-0213 for a well-documented business case analysis described in the introduction of this brief supports that Liberty squandered its opportunity to prepare a better transition at Liberty. Later in her rebuttal testimony Ms. Walt shares her perspective and vision:

The frustration and confusion expressed by customers is both valid and a compelling reflection of the challenges we must address. Liberty's decision to create the Chief Customer Officer role and to have it report directly to the CEO – is a clear acknowledgment of the seriousness of these issues. My appointment reflects a strategic shift in how we prioritize customer service and accountability. The previous operating framework did not adequately support the level of responsiveness, transparency, or reliability that our customers deserve. That structure contributed to delays, confusion, and a lack of clear ownership over the customer experience. We are committed to changing that – owning the problem, rebuilding trust, and delivering accurate, timely billing and service that reflects our values and customers' expectations.

\* \* \* \*

My primary goal is to restore customer trust by achieving consistent billing accuracy and timeliness. At its core, this means ensuring that every customer receives a bill that is correct, timely, and easy to understand. While we've made meaningful progress, the current approach is not yet efficient or sustainable. To move forward, we are deploying a robust set of daily performance metrics that will allow us to proactively identify and resolve issues before they reach our customers. We are also conducting a full review of our end-to-end processes and updating system configurations and integrations to address root causes – not just symptoms. The challenges our customers have experienced stem from misalignment across people, processes, and technology. Sustainable improvement requires coordinated action across all three. That's the framework we're applying, and it's the foundation for delivering the level of service our customers expect and deserve.

\* \* \* \*

**Q. Is this something that will happen overnight?**

A. No, it will not. While we are already seeing progress, meaningful and lasting improvement will take time. My goal is to provide transparency throughout this

journey – sharing where we’re focusing our efforts, what we’re learning, and how we’re improving. We recognize that trust has been eroded, and rebuilding it requires more than words – requires consistent, measurable performance over time. We understand that customers need to see sustained improvement before they can rely on us again. That’s why we are committed to a disciplined, data-driven approach that delivers results and restores confidence in our service.<sup>240</sup>

As Ms. Walt predicted, Liberty has not cured its Customer First billing issues at Liberty overnight. Ms. Walt’s simple example of how joint billing for multiple services complicates the billing process when meter reads are not synchronized in time<sup>241</sup> is so obvious it defies common sense that a prudent utility would not synchronize meter reads across utility services it is consolidating for billing purposes *before* starting to jointly bill for those services, and serves as a prime example of Algonquin and Liberty’s failures in implementing Customer First billing. Liberty recognized that it needed variances from the Commission’s rule to coordinate its transition to billing its customers through Customer First.<sup>242</sup>

As Public Counsel witness Dr. Geoff Marke testified, there were six town halls held for the public to speak to their issues with Liberty.<sup>243</sup> The first was held by Missouri State Senator Jill Carter on March 7, 2025, in Joplin. The second was held by the Board of Alderman of the City of Bolivar on April 3, 2025. The Commission’s Staff, with the assistance of Public Counsel, held the other four at Aurora, Branson, Ozark and Joplin, Missouri, on June 10-12, 2025, as part of its investigation the Commission ordered on February 27, 2025, in Case No. OO-2025-0233. In that order the Commission said,

Recently, the Commission has had numerous inquiries, complaints, comments, and testimony about issues with Liberty Utilities’ billing and customer service. These inquiries have come through the Commission’s customer service hotline, comments and testimony submitted at local public hearings for Liberty Utilities rate cases, and constituent inquiries received by Missouri’s legislators.

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<sup>240</sup> Ex. 53, Liberty witness Amy Walt rebuttal testimony, pp. 11-12.

<sup>241</sup> Ex. 53, Liberty witness Amy Walt rebuttal testimony, p. 17.

<sup>242</sup> Ex. 123, Staff witness Charles Tyrone Thomason direct testimony, pp. 3-4.

<sup>243</sup> Ex. 203, Public Counsel witness Geoff Marke direct testimony, p. 38.

Because of these persistent concerns, the Commission will direct its Staff to conduct an investigation of all of the Liberty Utility companies operating in the state of Missouri and file a report with any recommended actions to be taken by the Commission.

In its July status report in Case No. OO-2025-0233 Staff stated that it anticipated filing its investigation report by September 30, 2025. In its September status report Staff stated, “[D]ue to need for continued discovery, and the press of other business, Staff will be unable to meet its original anticipated filing date of September 30, 2025,” projected it would complete its investigation before the end of 2025, and requested “the Commission to direct it to submit its final investigative report no later than December 31, 2025.” During the evidentiary hearing for this case Staff witness Mr. Thomason testified on October 14, 2025, that one of the two reasons Staff slipped its date for filing its investigative report on Liberty’s billing and customer service issues in Case No. OO-2025-0233 was “that we keep finding new issues that require further follow-up.”<sup>244</sup>

Further, Liberty witness Ms. Walt testified on October 14, 2025, “So in September, we came. We spoke about delayed bills. The number one issue was collectives, and laid out a plan of how we’re attacking that.”<sup>245</sup> She further testified, “Today we’re at 295 -- I’m sorry, cancel/rebills, we have 475 cancel/rebills as of the last 30 days that have went out to our customers that we’re tracking,”<sup>246</sup> and “I do see today as I look at consecutive estimates of greater than two months, we have 295 customers who are experiencing that.”<sup>247</sup>

Consistent with the live testimony before the Commission, in prefilled direct testimony Staff’s overview witness testified, “First, the vast majority of the issues that Staff has heard regarding Customer First have impacted residential customers. The level of stress and uncertainty

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<sup>244</sup> Tr. 11:142, Liberty witness Timothy N. Wilson.

<sup>245</sup> Tr. 11:62, Liberty witness Amy Walt.

<sup>246</sup> Tr. 11:64, Liberty witness Amy Walt.

<sup>247</sup> Tr. 11:65-66, Liberty witness Amy Walt.

that so many of the Liberty residential customers have faced over the past months is unprecedented in Missouri.”<sup>248</sup> Staff witness Charles Tyrone Thomason details many of Liberty’s customer service issues.<sup>249</sup>

He identified a number of customer service issues in his direct testimony, including “the number of bills that [Liberty] has failed to send out on a timely and accurate basis over the past year”; “estimated bills and rebills; Preferred Payment Date Plan; Budget Billing (a.k.a. Average Payment Plan); bills outside of a 25-36 day billing period; and the failure to mail the Rights and Responsibilities brochure required by Commission rules.”<sup>250</sup>

In his rebuttal testimony Staff witness Charles Tyrone Thomason raised deficiencies with Liberty’s call center performance, including customer service representatives’ messaging inconsistencies, failure to call customers back, failure to inform customers of their right to file a complaint at the Commission, poor customer satisfaction survey results, failure to adequately document customer interactions in account notes.<sup>251</sup> He raised issues with customers’ payments, including inability to pay through Liberty’s Interactive Voice Response (“IVR”) system and issues with autopay.<sup>252</sup> He raised other customer service issues including a disconnect between billed amounts and online amounts shown owed, and Liberty’s failure to send customers a letter when it estimated their bill a third time.<sup>253</sup>

In his surrebuttal testimony prefiled September 17, 2025, Staff witness Charles Tyrone Thomason testified, “Staff has also recently learned that Liberty sent a total of 85,554 bills with a

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<sup>248</sup> Ex. 104, Staff witness James Busch, direct testimony, p. 3.

<sup>249</sup> Ex. 123C, Staff witness Charles Tyrone Thomason direct testimony & errata, Ex. 148, Staff witness Charles Tyrone Thomason rebuttal testimony, Ex. 172, Staff witness Charles Tyrone Thomason surrebuttal testimony, Tr. 11:138-142.

<sup>250</sup> Ex. 123, Staff witness Charles Tyrone Thomason direct testimony, pp. 7-4.

<sup>251</sup> Ex. 148, Staff witness Charles Tyrone Thomason rebuttal testimony, pp. 2-25.

<sup>252</sup> Ex. 148, Staff witness Charles Tyrone Thomason rebuttal testimony, pp. 31-34.

<sup>253</sup> Ex. 148, Staff witness Charles Tyrone Thomason rebuttal testimony, pp. 34-39.

due date less than twenty-one days after the billing date from April 2024 to July 2025, excluding customers with a Preferred Payment Date. A total of 20,391 of those bills were issued in June 2025 alone.”<sup>254</sup>

In addition to the foregoing, the local public hearings in this case evidence numerous customer service issues.<sup>255</sup> Examples of Liberty’s billing issues are zero bills (Tr. 4:8-12, 50-51), including the one with a bill date of March 31, 2025, and a due date of March 25, 2025, found at pages 29-31 of 48 in LPH Exhibit No. 1C; the multiple duplicate bills for the same amount shown due March 25, 2025, at page 5 of 14 in LPH Exhibit No. 2C (also see Tr. 3:60-61, Tr. 4:14, 19, 26, 34-40); the data comparing multiple years of costs and usages for Branson Financial Center including the graph for 2023, 2024, and 2025 average daily usages shown in LPH Exhibit No. 4 (Tr. 2: 38-40); Liberty’s failure to bill for usage through a new meter as shown by Tr. 7:15-20 and LPH Exhibit No. 5C; Liberty overbilling (Tr. 2:38-40, 63-72); Liberty’s failure to bill timely (Tr. 2:80-81, 100-115, 118-120, Tr. 4:14, 59); Liberty billing at the wrong rate (Tr. 2:129-30); and Liberty’s inability to resolve billing issues (Tr. 3:24-28, 30, 34-35, Tr. 4:28-29).

Further, Liberty’s customer service issues are shown by Liberty’s failure to repair streetlights, delay in disconnecting power to a burning structure (Tr. 4:16), rolling out a new billing system without adequate implementation and training (Tr. 4: 60-61), reliance on inaccurate meter reads (Tr. 8:47-48), and cutting ruts in yards (Tr. 2: 46-47, 128). One hundred seventy-three people—including Missouri State Representative Jamie Ray Gragg, Christian County (District 140), Missouri State Representative Brian Seitz, Taney County (District 156), Branson Alderman Glenn Schultz, Forsyth Alderman Scott Novak, Buffalo Alderman Eric Kirchberg, Sparta

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<sup>254</sup> Ex. 172, Staff witness Charles Tyrone Thomason rebuttal testimony, p.5 (Footnote omitted).

<sup>255</sup> Tr. 2 (Joplin, July 21, 2025); Tr. 3 (Nixa, July 22, 2025); Tr. 4 (Bolivar, July 22, 2025); Tr. 5 (Branson, July 23, 2025); Tr. 6 (WebEx, July 23, 2025); Tr. 7 (Aurora, July 24, 2025); Tr. 8 (Aurora, July 24, 2025); Tr. 9, (WebEx, July 25, 2025); and Local Public Hearing Exhibit Nos. 1-6.

Alderman Leo Arledge, Bolivar Alderman Dusty Ross, Aurora Mayor Tony Kennedy, former Branson Mayor Karen Best, Executive Director of both the Branson Area Lodging Association and Missouri Hotel Lodging Association Laurie Hayes, and other local business and community leaders—testified at the local public hearings the Commission held in this case about a month following the billing issues town halls, and there are seven hundred thirty-seven public comments filed in it as well. All demonstrate the magnitude of the public's interest. Recognizing the magnitude of these issues Liberty has suspended disconnections for nonpayment.<sup>256</sup>

Because of the lengths of time, the number and how customer affecting they are, Liberty's customer service issues, including billing issues are so severe that the Commission should determine that Liberty's customer service unacceptably falls far below what its customers deserve, conclude that Liberty is not providing adequate service, and decline to entertain increasing Liberty's general electric rates in this or any other case until after Liberty demonstrates that its customer service has become adequate. Further, unless it discontinues Liberty's FAC, the Commission should change Liberty's FAC sharing mechanism and except Liberty's costs to serve large load customers from its FAC, but otherwise not change Liberty's FAC in this or any other case until after Liberty demonstrates that its customer service has become adequate.

**~~164. Should the Commission order Empire to change the name of its billing platform?~~**

**~~165. Should the Commission order Empire to utilize an agreed-to, independent 3rd party auditor of its Customer First program and practices? If yes, what parameters should be followed?~~**

### **Pension Plan Issues**

**~~166. Should Empire, or any of its parents, consider a pension risk transfer scheme as it pertains to the Liberty Utilities defined benefit pension plan?~~**

**~~167. Should Empire continue to be bound by its prior agreements established in Case Nos. EM-2016-0213 21 and ER-2021-0312 to continue to fund its pension plan and to~~**

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<sup>256</sup> Tr. 11:83, Liberty witness Amy Walt.

~~not consider a pension risk transfer arrangement?~~

### **Cash Distributions**

**168. Should the Commission order Empire to file in this docket their proposal for any potential request for ratemaking recovery of distributable cash including their process for sweeping Empire's portion of year 1-5 distributable cash from the wind farm holding company prior to the commencement of distributable cash to the tax equity partners that will begin in 2026?**

### **Additional Issues**

**169. Should Empire's tariffs be modified to allow a self-read option for customers who opt out of AMI meters as a result of this case?**

Yes. To allow customers to self-read will avoid most of the meter reading costs associated with physically reading meters on site. Further, this is consistent with newly enacted § 386.820(3), RSMo, giving those who opt-out of AMI meters the option of self-reads, and will be consistent with the soon-to-be Commission rule 20 CSR 4240-10.035 implementing that statute (Case No. OX-2026-0045).

**170. What, if any, changes should be made to Empire's Emergency Energy Conservation Plan tariff as a result of this case?**

### **CONCLUSION**

Because of the lengths of time, the number, and how they affect customers, Liberty's customer service issues, including billing issues are so severe that the Commission should (1) determine that Liberty's customer service unacceptably falls far below what its customers deserve; (2) conclude that Liberty is not providing adequate service; and (3) decline to increase Liberty's general electric rates in this or any other case until after Liberty demonstrates that its customer service has become adequate. Further, the Commission should end Liberty's privilege of having a FAC, but if it does allow Liberty to continue its FAC, then the Commission should exclude from Liberty's FAC Liberty's costs to serve large load customers and change the sharing mechanism to

50/50 (or somewhere in the range of 50/50 to 90/10), but otherwise not make any changes to Liberty's FAC in this or any other case until after Liberty demonstrates that its customer service has become adequate.

Further, should the Commission disagree that Liberty's customer service issues warrant the Commission declining to entertain increasing Liberty's general electric rates, then Public Counsel requests the Commission to adopt Public Counsel's positions, and Staff's where Public Counsel has not taken a position, on each of the contested issues for the reasons set forth above and adjust Liberty's rates accordingly.

Respectfully,

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 16<sup>th</sup> day of December 2025.

/s/ Nathan Williams