

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In The Matter Of: Electronic Joint Application Of American :
Electric Power Company, Inc., Kentucky Power Company, And : **Case No 2021-00481**
Liberty Utilities Co. For Approval Of The Transfer Of Ownership :
And Control Of Kentucky Power Company. :

**REPLY BRIEF OF ATTORNEY GENERAL AND
KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.**

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The Attorney General, by his Office of Rate Invention (“AG”), and Kentucky Industrial Utility Customers, Inc. (“KIUC”) submit this Reply Brief in response to the initial Briefs filed by American Electric Power Company, Inc. (“AEP”), Kentucky Power Company (“Kentucky Power”), and Liberty Utilities Co. (“Liberty”) (collectively, “Joint Applicants”) at the Kentucky Public Service Commission (“Commission” or “KPSC”) on April 12, 2022.

ARGUMENT

I. The Relief Requested By AG-KIUC Is Legally Authorized Under The Public Interest Standard.

Joint Applicants raise a series of legal challenges to the authority of this Commission to grant the relief requested by AG-KIUC.¹ Joint Applicants claim that the AG-KIUC proposals would constitute arbitrary action by the Commission in violation of Section 2 of the Kentucky Constitution, would rewrite the law to read “*customer interest*” in lieu of “*public interest*,” are contrary to Commission precedent, would constitute “*bad public policy*” by imposing an “*exit*

¹ Joint Applicants’ Post-Hearing Brief at 50-56.

fee” on AEP, would require the Commission to unlawfully award damages for past actions or inactions, and would constitute an unlawful taking of AEP’s property in violation of both the United States and Kentucky Constitutions. However, while Joint Applicants accuse AG-KIUC of interpreting the “*public interest*” standard too broadly, Joint Applicants’ interpretation is unduly restrictive and constrains the Commission from upholding its statutory mandates under KRS Chapter 278.

The U.S. Supreme Court addressed the meaning of “*public interest*” as used in the Federal Power Act and Natural Gas Act. The Court determined that the scope of the Federal Power Commission’s (now FERC’s) authority under the “*public interest*” standard must be given context and viewed within the purpose of the relevant legislation, explaining that the Court’s cases “*have consistently held that the use of the words ‘public Interest’ in a regulatory statute is not a broad license to promote the general public welfare. Rather, the words take meaning from the purposes of the regulatory legislation.... Thus, in order to give context and meaning to the words ‘public interest’ as used in the Power and Gas Acts, it is necessary to look to the purposes for which the Acts were adopted.*”²

As the U.S. Supreme Court held, context matters when determining the meaning of the “*public interest*” standard. In the context of selling an electric utility from one public utility holding company to a different public utility holding company, any issue that directly affects rates or service standards falls within the Commission’s “*public interest*” jurisdiction.³

² *NAACP v. FPC*, 425 U.S. 662, 669 (1976) (holding that the FPC had no authority to prohibit racial discrimination by utilities).

³ *In the Matter of: Application for Approval of the Transfer of Control of Kentucky-American Water Company to RWE Aktiengesellschaft and Thames Water Aqua Holdings GMBH*, Case No. 2002-00018 (May 30, 2002) at 7 (KRS 278.020(7) requires any party seeking approval of a transfer of control to prove “*that the proposed transfer will not adversely affect the existing level of utility service or rates or that any potentially adverse effects can be avoided through the Commission’s imposition of reasonable conditions on the acquiring party.*”).

AEP announced its intent to place its Kentucky Power asset under strategic review in April 2021. That began the sales process. AEP controlled who could participate in that process, what information they would be shown, and the parameters for selecting the ultimate purchaser. AEP now seeks permission to sell Kentucky Power to the highest bidder consistent with its fiduciary duty to shareholders. This is the initial context for defining “*public interest*.”

In 1972, the Legislature divided the Commonwealth into certified service territories.⁴ Any person who requires electricity in the service territory awarded to Kentucky Power must buy it from Kentucky Power. Because of this monopoly system, the Legislature gave the Commission broad authority to ensure that rates are fair, just and reasonable for the services rendered.⁵ This broad authority gives further context and meaning to the term “*public interest*” as used in the transfer of control statute.

As the Kentucky Court of Appeals held, “*the real goal for the PSC is to establish fair, just and reasonable rates. There is no litmus test for this and there is no single prescribed method to accomplish the goal.*”⁶ The Court also explained that “[c]onsumers of public utilities must rely on the Commission to protect them from unreasonable and unfair rates.”⁷ Viewed in this context, the authority of the Commission to protect the “*public interest*” is much broader than Joint Applicants contend.

Any issue, which directly affects rates or service standards falls within the Commission’s public interest jurisdiction. This includes the community solar issues raised by Walmart, the PJM issues raised by LS Power, and the rate and service issues raised by AG-KIUC, including:

⁴ KRS 278.016-278.018.

⁵ KRS 278.030.

⁶ *National-Southwire Aluminum Co. v. Big Rivers Electric Corp.*, 785 S.W.2d 503, 513 (Ky. App. 1990).

⁷ *Ky. Indus. Util. Customers, Inc. v. Ky. PSC*, 504 S.W.3d 695, 706 (Ky. App. 2016).

1. The sale to Liberty will cause rates to be higher by \$83.9 million because its stand-alone small utility business model will be less efficient.
2. AEP's under investment in the distribution system and its failure to live up to its reliability commitments will require \$354.5 million to remedy.
3. The termination of various AEP intercompany agreements regarding the sale of receivables, taxes, and inventory and spare parts, as well as a debt downgrade will cost ratepayers \$64.3 million.
4. Curing the transmission subsidy for five years and incentivizing AEP to cooperate with the Commission's FERC Protest will cost \$75 million.

Joint Applicants' allegations that the conditions requested by AG-KIUC will be arbitrary in violation of Section 2 of the Kentucky Constitution or unlawful under the Takings Clause is without merit. The Legislature established the public interest standard of review and enforcing that standard in an unbiased manner based upon substantial evidence is mandatory, not arbitrary. If the Commission rejects the change of control or conditions its approval on modifications that are not acceptable to the buyer or seller, then the status quo will be maintained and no private property will be taken.⁸ In any event, these constitutional arguments are premature given that *"an administrative agency cannot decide constitutional issues."*⁹ Moreover, *"[a] party challenging governmental action as amounting to an unconstitutional taking bears a rather hefty burden....courts are sensitive to the presumption of constitutionality, i.e., the rule that an act should be held valid unless it clearly offends the limitations and prohibitions of the Constitution."*¹⁰

⁸ See *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989); *F.P.C v. Hope Nat. Gas Co.*, 320 U.S. 591 (1944).

⁹ *Commonwealth v. DLX, Inc.*, 42 S.W.3d 624, 626 (Ky. 2001).

¹⁰ *Bobbie Preece Facility v. Commonwealth*, 71 S.W.3d 99, 102 (Ky. App. 2001).

II. Joint Applicants' Claims Of Rate Savings Are Speculative And Not Reflective Of Long-Term Rate Impacts.

Joint Applicants claim that *“Liberty **will** create approximately \$144.1 million in bill reductions for Kentucky Power customers through a \$40 million Eastern Kentucky Fuel Relief Fund and a three-year rate holiday from recovery of the Big Sandy Decommissioning Rider.”*¹¹ This claim is misleading since the majority of that \$144.1 million bill reduction estimate is attributable to Joint Applicants' assumption that securitization legislation will be successfully enacted.¹² Joint Applicants' bill reduction estimates therefore hinge largely upon the results of a political process involving a wide variety of stakeholders that could very well result in no securitization legislation.

The remainder of the bill reduction estimate (\$40 million) resulting from the proposed Eastern Kentucky Fuel Relief (“EKFR”) Fund is short-term rate relief. If the EKFR Fund is distributed over a 12-month period (as AG-KIUC recommend) in order to achieve the 14-16% reduction reflected in Joint Applicants' estimates, then the \$40 million bill reduction will last for only one year. Thus, it will do nothing to help Kentucky Power's retail customers offset substantially increasing electric bills in year two and beyond. On the other hand, if the \$40 million is used as an FAC off-set (as proposed), it will likely take many years to be fully distributed and the percentage rate reductions advertised by Joint Applicants will be much lower.

¹¹ Joint Applicants' Post-Hearing Brief at 1 (emphasis added); *See also* Joint Applicants' Post-Hearing Brief at 20-21.

¹² Joint Applicants' Response to Staff Post-Hearing Data Request No. 4.

III. Joint Applicants' Proposed Transmission Subsidy Solution Will Only Exacerbate The Problem.

In response to both the Commission's and intervenors' very real concerns about Kentucky Power being forced to subsidize AEP's out-of-state transmission spending by \$15 million annually, Liberty proposes to "*swing the pendulum of transmission-cost allocation in the favor of Kentucky Power customers*" by proffering more transmission projects because approximately 95% of those costs will be funded by other companies in the AEP East Zone.¹³ Under this proposal, Liberty will assume Kentucky Power's transmission capital plan, which includes nearly \$340 million in transmission projects through 2024 and \$700 million total over the next five years.¹⁴

Liberty proposes to "*fix*" the transmission spending issue by undertaking *more* transmission spending. This cynical approach only makes the current problems worse. Remaining bound to the AEP East Zone creates incentives for transmission "*arms races*" between states in an effort to avoid becoming the victim of out-of-state subsidization. Whether needed or not, spend more on transmission because your neighbors will pay for the majority of the costs, and your neighbors will be doing the same thing to you.

Rather than remaining bound to the AEP Transmission Zone and the potential for out-of-state subsidization, Kentucky Power should support the approach outlined in the Commission's FERC Protest. This is the only way for the Commission to control transmission costs in Kentucky.

¹³ Joint Applicants' Post-Hearing Brief at 22.

¹⁴ Joint Applicants' Post-Hearing Brief at 22-23 (citing Joint Applicants' Response to KIUC 2-8).

IV. A Stand-Alone Utility Built from The Ground Up Will Result In Higher Costs

Joint Applicants fail to provide valid evidence in support of their claim that Liberty's local business model approach will result in savings for ratepayers. In fact, Joint Applicants' Brief is devoid of any mention of the sole piece of quantitative analysis they provided in an attempt to support that claim - the Excel spreadsheet provided in Joint Applicants' Response to Staff 1-17. This is not surprising given that Liberty was unable to support the inputs contained in that Excel spreadsheet.¹⁵ Liberty simply assumed cost savings of 25% or 50% for broad categories of costs with no, or at least very little, analysis. Half of Liberty's claimed annual savings of \$8.9 million came from the assumption that it could perform the function "*Other Transmission*" for \$4.3 million cheaper than AEP, despite the Liberty witness not knowing what activities were included in "*Other Transmission*" or how Liberty could do it for half the cost of AEP.¹⁶

Joint Applicants point to Liberty's experiences with other utilities in other states (Granite State Electric and Empire Electric) in support of their claim that Liberty can operate Kentucky Power less expensively.¹⁷ But there is no credible basis to believe that the savings realized in prior transactions can be replicated by Liberty in Kentucky. Granite State Electric and Empire Electric were very different situations.

In 2010, Algonquin Power announced an agreement to purchase the very small Granite State Electric for \$83 million.¹⁸ This is about 3% of the Kentucky Power purchase price. Importantly, Granite State was an "*electric retail distribution company*" whose properties "*consist principally of substations and distribution lines*" that are interconnected to the

¹⁵ Hearing Tr. (March 28, 2022) at 17:33:17.

¹⁶ Hearing Tr. (March 28, 2022) at 17:33:17.

¹⁷ Joint Applicants' Post-Hearing Brief at 32.

¹⁸ Transfer of Ownership of Granite State Electric Company and EnergyNorth Natural Gas, New Hampshire Public Utilities Commission, DG 11-040, Order No. 25,370 at p. 5 (May 30, 2012).

transmission facilities of others.¹⁹ Running a distribution only utility that owns no transmission or generation is very different than running a vertically integrated electric utility operating as an FRR entity in PJM.

Algonquin Power agreed to merge a Liberty subsidiary with Empire Electric on February 9, 2016.²⁰ Empire provided electric service in Missouri, Kansas, Arkansas and Oklahoma.²¹ Liberty also operated utilities in Missouri and Arkansas.²² The merger of two smaller utilities into one larger company was expected to result in efficiencies. The President and CEO of Empire Electric testified: *“As a result of the transaction, Empire customers will be served by a larger, more capable organization ...We believe the merger will provide opportunities for our customers, employees, and shareholders to achieve benefits that would not otherwise be available if Empire were to remain an independent company ... The merger adds scale for both Empire and Liberty Utilities, thus providing opportunities to pursue efficiencies, share costs across a larger customer base, leverage best practices, and enhance service offerings. The inherent increase in scale and market diversification will also provide increased financial stability and strength, which could not be achieved without the combination of the companies.”*²³ This is the opposite of the Kentucky Power situation. Instead of creating a larger more efficient utility, Liberty proposes to create a small stand-alone utility built from the ground up. That is why Mr. Kollen determined that the acquisition will result in higher costs, not savings.

¹⁹ Granite State Electric Company, March 31, 2010 audited Financial Statement at p. 9 (attached).

²⁰ Direct Testimony of Brad P. Beecher, President and Chief Executive Officer of Empire Electric at p. 4 (attached).

²¹ *Id.* at p. 2.

²² *Id.* at 5.

²³ Beecher Direct Testimony at p. 7.

As AG-KIUC explained in its Initial Brief, Joint Applicants did not present a realistic study of Kentucky Power’s cost structure under Liberty ownership, such as Liberty would develop for budget purposes, nor the type of comprehensive savings analyses produced in other Commission transfer of control cases. When the Commission approved the acquisition of KU by LG&E in 1997, LG&E provided an extensive and detailed analysis performed by Deloitte & Touche which showed 10-year total non-fuel savings from the merger of \$764 million with costs to achieve of \$77 million.²⁴ Joint Applicants provided absolutely no analysis that even comes close to the transfer of control studies previously relied on by the Commission.

The Commission should not stake the energy future of Eastern Kentucky on guesswork and hope. AEP is responsible because it selected the highest bidder consistent with its private interest, not the operator that would be best for ratepayers or the economy in general.

The Commission should rely upon the analysis of AG-KIUC witness Kollen, who has experience in dozens of utility mergers and acquisition proceedings and who *conservatively* quantified the increase in operating expenses from Liberty’s standalone utility business model at \$83.9 million.²⁵ This compensation should come from AEP.

V. Joint Applicants Fail To Address The 2023 ROE “Make Whole” Calculation Required By The Rockport Settlement Agreement.

Joint Applicants argue that AG-KIUC are attempting to relitigate the Rockport UPA Settlement approved in Case No. 2017-00179.²⁶ But Joint Applicants fail entirely to address AG-KIUC’s recommended adjustments to the 2023 ROE “*make whole*” provision of the Rockport Settlement Agreement.

²⁴ In the Matter of: Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of Merger, Case No. 97-300 (September 12, 1997) Order at 2.

²⁵ Direct Testimony of Lane Kollen at 27:6-11.

²⁶ Joint Applicants’ Post-Hearing Brief at 59-60.

Under the Rockport Settlement Agreement, the \$50.8 million in annual fixed cost savings from the termination of the Rockport UPA on December 8, 2022 are to be flowed through Kentucky Power's PPA rider in their entirety, offset only for any amortization of the Rockport deferrals and for the revenue equivalent of any deficiency in 2023 earnings compared to the Company's authorized return on equity. However, using 2023 per books earnings as the starting point is unreasonable since those earnings will be reduced by transition and integration costs.²⁷

To remedy this problem, AG-KIUC recommend that the Commission either: 1) direct Kentucky Power to exclude all transition and integration costs from its 2023 per books earnings, which would be very difficult to administer; or 2) utilize per books earnings from an historic test year, with adjustments to include Rockport replacement capacity costs and to reduce revenues by the \$6.2 million Capacity Charge. Both of these adjustments would benefit Liberty.

VI. AEP Should Compensate Ratepayers For the Costs Of Deaffiliation.

a. Sale Of Receivables

Joint Applicants claim that the decades-old practice of selling receivables to AEP Credit is actually increasing Kentucky Power's costs. *"The sale of receivables increases Kentucky Power's costs because financing for receivables currently incurs a 2.8% interest rate. Liberty does not sell receivables and thus does not accrue interest on those accounts."*²⁸ In other words, free money. Joint Applicants are not correct. Waiting to get paid after bills are sent is not free. There is a time value of money cost. The cash from the sale of receivables displaces common equity and long-term debt and the associated financing costs at Kentucky Power grossed-up

²⁷ AG-KIUC Post-Hearing Brief at 28-31.

²⁸ Joint Applicants' Post-Hearing Brief at 33.

weighted average cost of capital, or about 7.5%.²⁹ Displacing 7.5% money with 2.8% money is and always has been a good business practice. Mr. Kollen quantified the cost of ending the sale of receivables at \$15.3 million on a net present value basis.

b. Loss Of The AEP Tax Allocation Agreement

Under the AEP Tax Allocation Agreement, AEP reimburses Kentucky Power for the tax effects of its net operating losses (“NOL”) to the extent that AEP is able to utilize that loss against other taxable income.³⁰ That benefit would be lost under Liberty ownership. Joint Applicants contest Mr. Kollen’s position on two grounds.

First, they claim that Kentucky Power is projected to generate taxable income starting in 2024.³¹ Even if that forecast turns out to be true, it still leaves increased costs (based upon historical experience) of about \$2.1 million per year for 2022 and 2023.

Second, Joint Applicants argue that AEP is seeking to change its NOL practice in other jurisdictions and that, if successful, the Kentucky Commission may follow suit. All of this amounts to speculation regarding how ratemaking may evolve in the future. But the current practice provides for NOL reimbursement. That is what Liberty would be taking away. Over a ten-year period, the loss to ratepayers is \$27.8 million on a net present value basis.³²

c. Shared Inventory And Spare Parts

Kentucky Power is currently a party to three AEP affiliate agreements for sharing materials, supplies and spare parts.³³ Mr. Kollen calculated that deaffiliation from AEP and the

²⁹ Direct Testimony of Lane Kollen at 28:19-22.

³⁰ Direct Testimony of Lane Kollen at 30:8-13.

³¹ Joint Applicants’ Post-Hearing Brief at 34.

³² Direct Testimony of Lane Kollen at 32:16-20.

³³ Id. at 33:7-11.

loss of those agreements will cost Kentucky Power \$1.9 million per year, or \$13.9 million over ten years on a net present value basis. Mr. Kollen's recommendation was premised on the loss of the agreements related to Mitchell. To the extent that Wheeling Power operates Mitchell and Wheeling has access to the benefits of the affiliate agreements, then this issue will largely be resolved.

d. Costs From Debt Downgrade

S&P has placed Kentucky Power on negative credit watch with the expectation that if the Liberty transaction closes it will downgrade the Company's debt from BBB to BBB+. This is because AEP has a stronger credit profile than Liberty. Joint Applicants contend that a debt downgrade will not result in increased borrowing costs because "*[c]redit rating is only one factor that investors consider in financing considerations.*"³⁴ The credit rating may only be one factor, but it is by far the most important factor. For most investors, it is the only factor. The net present value cost of the downgrade over ten years is \$7.3 million.

VII. Requiring AEP To Contribute Distribution Related Funds To Uphold Its Reliability Commitments Is Consistent With Kentucky Precedent Requiring Other Sellers Of Utilities To Live Up To Their Prior Commitments.

Joint Applicants argue that AEP should not be required to provide any financial contributions to help remedy its chronic distribution underinvestment. They claim this would be retroactive ratemaking, a penalty, or an exit fee.³⁵ But by doing so, the Commission is merely holding AEP to its prior commitments to improve or at least maintain system reliability.

³⁴ Joint Applicants' Post-Hearing Brief at 36.

³⁵ Joint Applicants' Post-Hearing Brief at 50-56.

AEP made express commitments to this Commission to improve or at least maintain a certain level of reliability for customers. In Case No. 99-149, the AEP/Kentucky Power/Central and South West Corporation merger case, AEP/Kentucky Power agreed to at least maintain service quality and reliability at then existing levels, which were set forth in the Stipulation resolving the case.³⁶ In its Order approving that merger, the Commission held “[w]hile we recognize the difficulties presented by the terrain and topography in portions of Kentucky Power’s service territory, the Commission reminds Kentucky Power that its top priority must be service quality and reliability. In the event that Kentucky Power’s quality of service experiences a decline, the Commission is prepared to require additional measures be taken.”³⁷ In the Settlement Agreement in that case, AEP/Kentucky Power committed that it shall improve reliability and achieve the goal of limited outages. AEP “shall undertake all reasonable efforts to improve the quality and reliability of its service.”³⁸ The Settlement Agreement also provides that the “Company will undertake all reasonable expenditures to achieve the goal of limited customer outages.”³⁹

As AG-KIUC’s Initial Brief demonstrates in detail, Kentucky Power’s reliability indices have experienced a marked decline since 1999 and now rank among the worst in the nation.⁴⁰

Joint Applicants seek to have AEP excused from its prior commitment to improve or at least maintain system reliability because of the difficult terrain that makes up the service territory. “Kentucky Power provides electrical service under some of the most challenging and

³⁶ *In the Matter of: Joint Application of Kentucky Power Company, American Electric Power Company, Inc., and Central and South West Corporation Regarding a Proposed Merger*, Case No. 99-149, Order (June 14, 1999) (“AEP-CSW Order”) at 8 and attached Stipulation, Attachment C at 1 (committing “to maintain the overall quality and reliability of its electric service at levels no less than it has achieved in the calendar years 1995-1998.”).

³⁷ AEP-CSW Order at 9.

³⁸ KIUC Ex. 11

³⁹ *Id.*

⁴⁰ AG-KIUC Post-Hearing Brief at 20-21.

*unique conditions in the Commonwealth. Its service territory is mountainous and is the most heavily forested in Kentucky. Compounding these conditions are the low customer density and the long distribution lines, many of which traverse dense forests and mountains, required to serve isolated customers.... It is the challenging conditions facing the Company, which are largely unique to Kentucky Power, and not an underinvestment in the Company's distribution system, that account for the Company's reliability metrics."*⁴¹

That is not a valid justification. All of these same conditions existed 23 years ago when AEP pledged to improve or at least maintain system reliability. In 1999, the Kentucky Power service territory was mountainous and heavily forested, with low customer density. Moreover, the Commission expressly recognized the "*difficulties presented by the terrain and topography in portions of Kentucky Power's service territory*" when it mandated reliability improvements in 1999. These same conditions will probably exist 23 years hence. What has changed since 1999 is AEP's ability to invest its capital more profitably elsewhere, especially in its Transmission Companies. What has also changed since 1999 is the importance of reliable electric service to public health and safety as computers, the internet, remote work and remote learning become more prevalent.

In 1999, the Commission advised AEP and Kentucky Power that their "*top priority must be service quality and reliability.*" Also, the Commission expressly put AEP/Kentucky Power on notice in that "*[i]n the event that Kentucky Power's quality of service experiences a decline, the Commission is prepared to require additional measures be taken.*"⁴² Now is the only time to implement those additional measures, before AEP exits the Commonwealth.

⁴¹ Joint Applicants' Post-Hearing Brief at 45-46.

⁴² AEP-CSW Order at 9.

Kentucky precedent supports Commission action holding the seller of a utility to its prior regulatory commitments in a transfer of control case. In Case No. 2006-00197, the Commission considered the transfer of control of American Water Works Company/Kentucky-American Water Company (“Kentucky American”) from Thames Water Aqua Holdings GmbH / RWE (“Seller”) to an unknown buyer. The Commission approved the transfer conditioned on the Seller making capital contributions necessary to keep the utility’s pension funding ratio at the same level that existed when it acquired the utility. In other words, the Seller could not exit Kentucky and leave the utility’s pension and other postemployment benefit plans with increased unfunded liabilities since that would ultimately “foist” the financial obligation on ratepayers. This acquisition condition was in accordance with the Seller’s prior commitments to the Commission. In its Order, the Commission rejected the claim that requiring a capital contribution from the Seller to satisfy its prior regulatory commitments would constitute an “exaction,” explaining:

The Commission is not unmindful of AWWC and Kentucky-American’s significant capital needs. To the extent that RWE and Thames GmbH during their ownership of AWWC failed to ensure adequate funding of AWWC’s pension fund and other postemployment benefit plans to prevent increases in the level of unfunded liabilities, they must bear responsibility for such increases and should not be allowed to foist that responsibility onto the shoulders of AWWC’s new owners and ultimately on the ratepayers of AWWC’s regulated utilities. As they divest themselves of their interests in AWWC, RWE and Thames GmbH should be required to make the equity capital infusions necessary to render AWWC’s current pension funding ratio at the same level that existed when they acquired AWWC. This condition is not an exaction but merely eliminates the effects of a departing owner’s budgetary decisions and is consistent with that departing owner’s commitments to this Commission at the time of the acquisition.⁴³

⁴³ *In the Matter of: The Joint Petition of Kentucky-American Water Company, Thames Water Aqua Holdings GMBH, RWE Aktiengesellschaft, Thames Water Aqua US Holdings, Inc. and American Water Works Company, Inc. for Approval of a Change in Control of Kentucky-American Water Company*, Case No. 2006-00197, Order (April 16, 2007) at 26.

As that Order reflects, the Commission has required sellers of utilities to provide capital contributions to uphold their previous regulatory commitments. Accordingly, it is well-within the Commission's statutory authority to condition the sale of Kentucky Power on the requirement that AEP contribute the capital necessary to uphold its previous reliability commitments. Mr. Kollen quantified these costs at \$203.6 million for distribution system underinvestment and \$150.9 million for increased distribution maintenance expense, for a total of \$354.5 million.

CONCLUSION

WHEREFORE, the Commission should deny the application for failure to satisfy the public interest standard, or in the alternative adopt AG-KIUC's recommendations in this proceeding.

Respectfully submitted,

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UTILITY CUSTOMERS, INC.**

April 18, 2022



Granite State Electric Company
Financial Statements
For the year ended March 31, 2010

Granite State Electric Company

Notes to the Financial Statements

NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A. Nature of Operations

Granite State Electric Company (the Company, we, us, and our) is an electric retail distribution company providing electric service to approximately 42,700 customers in 21 communities in New Hampshire. The Company is a wholly owned subsidiary of National Grid USA (NGUSA), a utility holding company with regulated subsidiaries engaged in the generation, transmission, distribution and sale of both natural gas and electricity in New England and New York State. NGUSA is a wholly owned subsidiary of National Grid plc, a public limited company incorporated under the laws of England and Wales.

The properties of the Company consist principally of substations and distribution lines interconnected with transmission and other facilities of New England Power Company (NEP), a wholly owned subsidiary of NGUSA.

B. Basis of Presentation

The Company's accounting policies conform to generally accepted accounting principles in the United States of America (GAAP), including the accounting principles for rate-regulated entities (see Note 2), and are in accordance with the accounting requirements and ratemaking practices of the applicable regulatory authorities.

The accounts of the Company are maintained in accordance with the Uniform System of Accounts prescribed by regulatory bodies having jurisdiction.

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

The Company has evaluated events or transactions that occurred after March 31, 2010 through July 29, 2010 for potential recognition or disclosure in the financial statements. There were no subsequent events that needed to be disclosed.

C. Accounting for the Effects of Rate Regulation

The Federal Energy Regulatory Commission (FERC) has jurisdiction over certain of the Company's activities, including (i) regulating certain transactions among our affiliates; (ii) governing the issuance, acquisition and disposition of securities and assets; and (iii) approving certain utility mergers and acquisitions (See Note 2- Rates and Regulatory). The Company is also subject to certain regulations of the New Hampshire Public Utilities Commission (NHPUC) in addition to FERC. (See Note 2)

D. Revenue Recognition

Revenues are based on billing rates authorized by the NHPUC. The Company records revenues in an amount management believes to be recoverable pursuant to provisions of approved tariffs, settlement agreements and state legislation. The Company defers for future recovery from or refunds to electric customers the difference between revenue and expenses from, default service, transmission service, and contract termination charges (CTC). The Company also records the distribution component of revenue for electricity delivered but not yet billed.

E. Property, Plant and Equipment

The cost of additions to property plant and equipment and replacements of retirement units of property are capitalized. Costs include direct material, labor, overhead and Allowance for Funds Used During Construction (AFUDC). Replacement of minor items of utility plant and the cost of current repairs and maintenance are

Exhibit No.:
Issue: The Empire District Electric
Company –Merger Impact
Witness: Brad P. Beecher
Type of Exhibit: Direct Testimony
Sponsoring Party: Empire District Electric
File No.: EM-2016-0213

**Before the Public Service Commission
of the State of Missouri**

Direct Testimony

of

Brad P. Beecher



DIRECT TESTIMONY
OF
BRAD P. BEECHER
THE EMPIRE DISTRICT ELECTRIC COMPANY
BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION
FILE NO. EM-2016-0213

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Brad P. Beecher, and my business address is 602 S. Joplin Avenue, Joplin,
3 Missouri, 64801.

4 **Q. WHO IS YOUR EMPLOYER AND WHAT POSITION DO YOU HOLD?**

5 A. The Empire District Electric Company ("Empire" or "Company") is my employer. I
6 hold the position of **President and Chief Executive Officer.**

7 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND.**

8 A. I graduated from Kansas State University in 1988 and hold a Bachelor of Science
9 Degree in Chemical Engineering.

10 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE.**

11 A. I was first employed by Empire in May of 1988 through August 1999. During that time,
12 I held roles as a Staff Engineer at Empire's Riverton power plant, and in budgeting and
13 fuel procurement in Empire's Energy Supply Department. In 1995, I became Director
14 of Strategic Planning. I held that position until I left Empire in August of 1999. Between
15 August of 1999 and February of 2001, I was employed at Black & Veatch in various
16 roles including, Service Area Leader for the Strategic Planning Group and as Associate
17 Director of Marketing and Strategic Planning. I rejoined Empire as General Manager-
18 Energy Supply in February of 2001. I was elected Vice President-Energy Supply in
19 April of 2001. In this position, I was responsible for Empire's energy supply function

1 including power plant construction, operation and maintenance and fuel procurement.

2 In April 2006, I became the Electric Chief Operating Officer, and, in February 2010, I

3 was named Executive Vice President. I assumed my current position in June, 2011

4 **Q. HAVE YOU PREVIOUSLY PRESENTED TESTIMONY BEFORE THIS**
5 **COMMISSION?**

6 A. Yes, I have presented testimony before the Missouri Public Service Commission
7 (“Commission”) on a number of occasions.

8 **Q. PLEASE DESCRIBE EMPIRE.**

9 A. Empire is a Kansas corporation with its principal office and place of business at 602 S.
10 Joplin Avenue, Joplin, Missouri 64801. Empire is engaged in the business of providing
11 electric utility services in Missouri, Kansas, Arkansas and Oklahoma: water utility
12 service in Missouri; and, through a wholly-owned subsidiary, certain
13 telecommunications services. In addition, through a wholly-owned subsidiary, The
14 Empire District Gas Company, Empire operates a natural gas distribution business in
15 northwest, north central and west central Missouri, providing regulated natural gas
16 service in 48 communities.

17 **Q. PLEASE DESCRIBE THE AREA SERVED BY EMPIRE.**

18 A. Empire provides electric service in an area of approximately 10,000 square miles in the
19 southwest corner of Missouri and reaches into adjacent corners of the states of Kansas,
20 Oklahoma, and Arkansas. Empire's operations are regulated by the utility regulatory
21 commissions of these four states as well as the Federal Energy Regulatory Commission
22 (“FERC”). The area embraces 119 incorporated communities in 21 counties in the four-
23 state area. Most of the communities in Empire’s service area are small, with only 32
24 containing a population in excess of 1,500. Only ten (10) communities have a

1 population in excess of 5,000, and the largest city, Joplin, Missouri, has a population
2 of approximately 50,000. The economy in our service area is diversified, featuring
3 small to medium manufacturing operations, agricultural, entertainment, tourism and
4 retail interests.

5 **Q. HOW MANY ELECTRIC CUSTOMERS DOES EMPIRE CURRENTLY**
6 **SERVE?**

7 A. At December 31, 2015, Company-wide, Empire served approximately 143,271
8 residential customers, 24,405 commercial customers, 353 industrial customers, 2,080
9 public authority and street and highway customers, and four wholesale customers. As
10 of December 31, 2015, in Missouri, Empire served approximately 127,592 residential
11 customers, 21,716 commercial customers, 283 industrial customers, 1,705 public
12 authority and street and highway customers, and three wholesale customers. Empire
13 also provides regulated water service to approximately 4,435 customers in the Missouri
14 communities of Aurora, Marionville, and Verona.

15 **Q. PLEASE DESCRIBE EMPIRE DISTRICT GAS COMPANY.**

16 A. The Empire District Gas Company was created in 2006 when Empire acquired Aquila's
17 Missouri natural gas distribution operations. It provides natural gas service to
18 approximately 42,230 gas customers on the western side of the state. The largest
19 communities served include Nevada, Sedalia, Chillicothe, Platte City, and Maryville.

20 **EXECUTIVE SUMMARY**

21 **Q. WHAT IS THE PURPOSE OF THIS TESTIMONY?**

22 A. The purpose of my testimony is to provide support for the Joint Application ("Joint
23 Application") filed by Empire, Liberty Sub Corp. ("LSC") and Liberty Utilities
24 (Central) Co. ("LU Central"). The Joint Application seeks an order authorizing the

1 applicants to take certain actions, the results of which will, among other things, permit
2 the acquisition by Algonquin Power & Utilities Corp. (“Algonquin”) (through its
3 wholly-owned subsidiary LU Central of all of the capital stock of Empire, all as more
4 detailed in the Agreement and Plan of Merger (the “Agreement”) executed on February
5 9, 2016. A copy of the Agreement is attached to my testimony as **Schedule BPB-1**. In
6 that regard, I will provide certain information about Empire’s operations in Missouri
7 and other information as is pertinent to the transaction. Among other things, I will
8 provide an explanation as to why the transaction will not be detrimental to the public
9 interest and, consequently, why it should be approved by the Commission.

10 **Q. WHY HAVE EMPIRE, LSC AND LU CENTRAL FILED THE JOINT**
11 **APPLICATION?**

12 A. As noted above, the transaction involves the acquisition by LU Central of Empire, with
13 Empire becoming a subsidiary of LU Central. Because the transaction involves a
14 merger by Empire, it must be submitted for the Commission’s consideration and
15 approval as contemplated by Missouri law (§393.190.1 RSMo). The Joint Application
16 has been filed to comply with this requirement.

17 **Q. PLEASE PROVIDE THE BACKGROUND FOR THE TRANSACTION.**

18 A. On December 13, 2015, the Board announced it had engaged a financial advisor to
19 explore strategic alternatives for the Company. As a result of those efforts the Board
20 announced on February 9, 2016, it had approved an agreement and plan of merger
21 whereby LU Central would acquire Empire and its subsidiaries. The transaction
22 benefits Empire’s stakeholders by providing benefits to customers, shareholders, and
23 employees alike. Specifically, the transaction benefits Empire and its customers by
24 providing increased corporate capability and scale by making Empire part of the

1 Algonquin family of utility companies. Following the transaction, Empire will maintain
2 the strong, investment-grade credit rating it will need to address future industry risks
3 and trends. This is addressed further in the testimony of David Pasieka.

4 **Q. PLEASE EXPLAIN THE NATURE OF THE TRANSACTION THAT IS THE**
5 **SUBJECT OF THE APPLICATION IN THIS CASE.**

6 A. Algonquin operates a U.S.-based subsidiary known as Liberty Utilities Co. (“Liberty
7 Utilities”). Liberty Utilities owns regulated electric, natural gas, and water utilities
8 serving approximately 560,000 customers across the U.S. In the central part of the
9 country, Liberty Utilities owns natural gas local distribution properties in Missouri,
10 Iowa and Illinois that serve about 83,000 customers. Liberty Utilities also owns
11 regulated water distribution utilities in Missouri, Arkansas and Texas that serve a total
12 of 43,000 customers. Assuming the Commission approves the transaction, Empire will
13 become an indirect subsidiary of Liberty Utilities. As part of the transaction, Liberty
14 Utilities has committed to maintaining Joplin, Missouri, as the regional headquarters
15 for all regulated utilities owned by Liberty Utilities in the mid-western states of
16 Missouri, Iowa, Illinois, Arkansas, Oklahoma, Kansas, and Texas. A description of the
17 transaction as contemplated by the Agreement and a further description of how
18 Empire’s operations will fit into Liberty Utilities’ business, is more fully addressed by
19 witnesses David Pasieka, Peter Eichler and Christopher Krygier.

20 **Q. PLEASE DESCRIBE YOUR UNDERSTANDING OF THE ISSUE THAT IS**
21 **PRESENTED FOR THE COMMISSION’S DETERMINATION**
22 **CONCERNING THE TRANSACTION DESCRIBED IN AND PRESENTED IN**
23 **THE JOINT APPLICATION.**

1 A. Although I am not an attorney, as I understand it the Commission must approve the
2 Joint Application unless the transaction is shown to be detrimental to the public interest.

3 **Q. IS THE PROPOSED TRANSACTION DETRIMENTAL TO THE PUBLIC**
4 **INTEREST?**

5 A. No. The transaction will have no adverse effect on Empire’s customers with respect to
6 rates, service, or otherwise. In contrast, I believe that the transaction will have a positive
7 long term impact on Empire’s customers and employees. Liberty Utilities has
8 committed to make Joplin the regional headquarters for all regulated utilities owned by
9 Liberty Utilities in the central states. Liberty Utilities also has committed to retain all
10 of Empire’s management team, its workforce following closing of the transaction and
11 will continue to operate Empire’s business under the Empire brand for at least 5 years.

12 **Q. WILL THE BOARD OF DIRECTORS BE RETAINED?**

13 A. A regional board of directors will be established to provide guidance and counsel on
14 local issues and enhanced customer service. All existing board members of Empire
15 will be offered a position on the board.

16 **Q. PLEASE ELABORATE ON THE IMPACT ON EMPIRE’S EMPLOYEES.**

17 A. Empire has a dedicated and skilled workforce of managers, administrators and
18 professional and field staff with expertise in regulated utility operations that has a
19 strong reputation for delivering excellent customer service. The transaction will not
20 result in any involuntary reductions in Empire’s current administrative, professional,
21 and field workforce and its existing management team will be retained. In fact, the
22 transaction likely will lead to an expansion of employment opportunities as Empire’s
23 management team continues to oversee Empire’s ongoing operations and assumes
24 additional responsibility for the oversight management of Liberty Utilities’ other

1 operations in the central United States. Through the expertise of the employees at
2 Empire and Liberty Utilities, the capabilities of both organizations will be enhanced.

3 **Q. PLEASE DISCUSS THE IMPACT ON CUSTOMERS.**

4 A. Empire's customers will see no change in their day-to-day utility service or rates, and
5 they will continue to be served safely, effectively, and efficiently without interruption
6 by the same employees who serve them today. The day-to-day operations of Empire
7 in Missouri will continue as they have in the past, and continue to be regulated by and
8 be subjected to review by the Commission. As a result of the transaction, Empire
9 customers will be served by a larger, more capable organization. Our customers will
10 also see Empire continue its current level of involvement and charitable support for our
11 local communities.

12 We believe the merger will provide opportunities for our customers, employees, and
13 shareholders to achieve benefits that would not be available if Empire were to remain
14 an independent company, and that the merger will result in a combined company that
15 will be well positioned to succeed going forward. The merger adds scale for both
16 Empire and Liberty Utilities, thus providing opportunities to pursue efficiencies, share
17 costs across a larger customer base, leverage best practices, and enhance service
18 offerings. The inherent increase in scale and market diversification will also provide
19 increased financial stability and strength, which could not be achieved without the
20 combination of the companies. The increased geographic footprint will also diversify
21 risk surrounding weather events.

22 **Q. WILL THE PROPOSED TRANSACTION CHANGE EMPIRE'S STATUS AS A**
23 **REGULATED ELECTRIC, NATURAL GAS AND WATER UTILITY IN**
24 **MISSOURI?**

1 A. No. As a subsidiary of LU Central, Empire’s utility operations will continue to be
2 regulated by each of the five regulatory commissions that currently regulate Empire,
3 including this Commission.

4 **Q. HAS THE AGREEMENT BEEN APPROVED BY THE BOARD OF**
5 **DIRECTORS OF EMPIRE?**

6 A. Yes. A copy of the resolutions of the Board of Directors of Empire approving the
7 Agreement and the transaction and authorizing the execution of the Agreement is
8 attached hereto as Schedule BPB-2.

9 **Q. PLEASE CHARACTERIZE LIBERTY UTILITIES AS A MERGER**
10 **PARTNER.**

11 A. We are confident that Liberty Utilities is the right merger partner.

12 **Q. WHY?**

13 A. It has been Empire's opinion that for a utility merger to be truly beneficial, certain
14 consistent core values must exist in the merger partner. Certainly, financial parameters
15 must be achieved in the merger for the company giving up control, but if the resulting
16 entity is not committed to the core values of providing a positive customer experience,
17 continuous improvement, regulatory compliance, commitment to our community and
18 focus on safety, the long-term effects of the merger will not be maximized. We believe
19 that Liberty Utilities has exhibited these core values in its proposal by establishing
20 Joplin as the regional headquarters for LU Central, retaining all employees,
21 demonstrating a history of providing safe, reliable service to customers and committing
22 to continue to operate the existing businesses under the Empire brand. The merger
23 provides an opportunity to form an outstanding utility, including the Liberty Utilities’
24 current central United States operations, including Missouri. These factors coupled

1 with Algonquin's experience in its other markets, investment grade financial strength,
2 and its expertise in the renewable energy market led us to the conclusion that Algonquin
3 is the right merger partner for all concerned, including customers, employees,
4 regulators and shareholders.

5 **Q DOES THE TRANSACTION NEED TO BE APPROVED BY EMPIRE'S**
6 **SHAREHOLDERS?**

7 A. Yes. A simple majority of the outstanding shares of common stock must vote in favor
8 of the merger for it to be approved.

9 **Q. PLEASE DESCRIBE HOW THE SHAREHOLDER VOTE ON THE**
10 **TRANSACTION WILL BE STRUCTURED.**

11 A. Each share of common stock will be entitled to one vote that may be voted for or against
12 the Agreement as presented. We estimate that a proxy containing detailed information
13 about the Agreement will be mailed to each stockholder this spring. The proxy will
14 announce a meeting of the stockholders to be held sometime this summer.

15 **Q. DOES EMPIRE PRESENTLY HAVE A RATE CASE ON FILE?**

16 A. Yes. The transaction will have no impact on the current case.

17 **Q: WILL THE TRANSACTION HAVE ANY IMPACT ON THE TAX REVENUES**
18 **OF THE POLITICAL SUBDIVISIONS IN WHICH ANY OF THE**
19 **STRUCTURES, FACILITIES OR EQUIPMENT OF EMPIRE IS LOCATED?**

20 A. No. Empire will continue to be the owner of network and properties after the close of
21 the transaction and all of Empire's structures, facilities and equipment will remain in
22 place upon closing. Thus, there is no impact upon the tax base in any of the political
23 subdivisions.

1 **Q. WILL THE TRANSACTION HAVE ANY EFFECT ON THE COMMISSION'S**
2 **AUTHORITY TO REGULATE EMPIRE'S OPERATIONS?**

3 A. No. The Commission's jurisdiction over Empire will not be reduced or impaired. The
4 Commission will retain full regulatory supervision of Empire after the transaction is
5 completed. In addition, the transaction will not restrict the Commission's access to
6 Empire's books and records as is reasonably necessary to carry out the Commission's
7 responsibilities with respect to Empire's operations, including proper audits.

8 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

9 A. Yes it does.