BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of The Empire District Electric Company, Liberty Sub Corp. and Liberty Utilities (Central) Co. Compliance Filing as Required by Commission Order in Docket 16-EPDE-410-ACQ.	)))))	Docket No. 17-EPDE-393-CPL

THE EMPIRE DISTRICT ELECTRIC COMPANY'S RESPONSE TO STAFF'S REPORT AND RECOMMENDATION

The Empire District Electric Company ("Empire" or the "Company") provides the following Response to the Report and Recommendation filed by the Staff of the Kansas Corporation Commission("Commission") ("Staff") on November 1, 2018 ("Staff Report") in the above-captioned docket:

1. This matter arises out of the settlement agreement between Empire, the Staff and the Citizens' Utility Ratepayers' Board ("CURB") in a docket involving Liberty Sub Corp. and Liberty Utilities (Central) Corp.'s acquisition of Empire. In the settlement agreement in that docket (the "Settlement Agreement"), Liberty Utilities (Central) Corp. and Empire agreed to certain reliability metrics in an effort to maintain or improve Empire's quality of service that existed at the time of the settlement. Despite the fact that Empire's reliability has improved since the time of the acquisition, Staff seeks to invoke a financial penalty against Empire based on an overly narrow interpretation of the terms of the Settlement Agreement, and one that would treat Empire differently than every other electric utility in the state.

2. As Staff's Report indicates, the Settlement Agreement included a "Customer Service and Customer Notification" section that contains a number of provisions relating to quality of service. In particular, Paragraphs 50 and 51 of the Settlement Agreement contain benchmarks against which Empire's post-closing performance is to be judged, including reliability metrics in Paragraph 50 and

call answering metrics in Paragraph 51. Paragraph 50, which governs SAIDI, SAIFI and CAIDI metrics, states as follows:

> LU Central and EDE agree to maintain or improve EDE's current quality of service, consistent with the requirements of Commission rules. In addition, EDE agrees to the following quality of service parameters and penalties for non-compliance in the event of failure to maintain these parameters. Using the methodology established in the Annua1 Reliability Benchmarking Report of the Institute of Electronic and Electrical Engineers (IEEE), EDE's normalized[1] reliability statistics (SAIDI, SAIFI, CAIDI) for its Kansas operations (area 212) shall be calculated for years 2013 through 2015. EDE shall pay a refund to its Kansas customers for any year the Kansas Service area normalized annual statistics decrease in reliability below the 2013-2015 averages according to the following schedule:
>
> a. 5%-10%: $35,000
> b. 10%-15%: $70,000
> c. >15%: $105,000

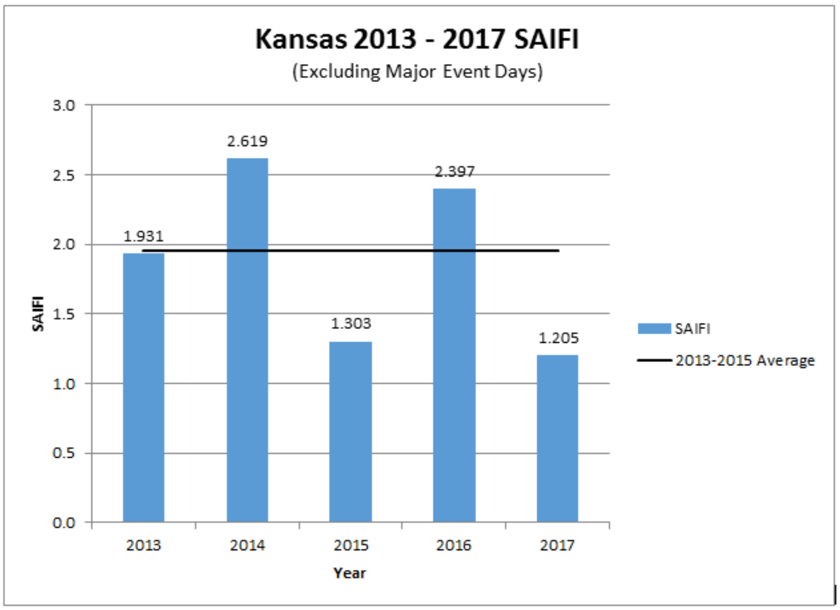
Settlement Agreement, 50.

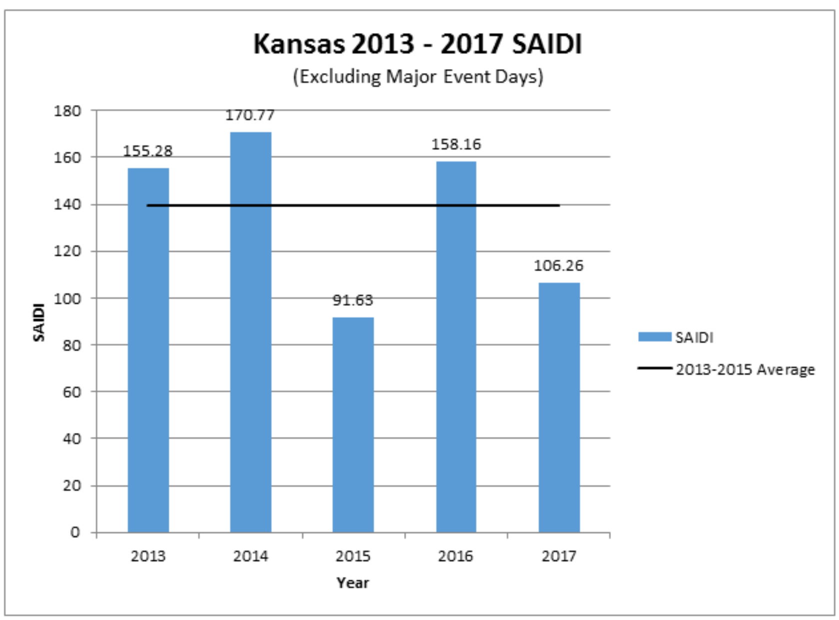
3. As detailed in Staff's Report, Empire's SAIFI and SAIDI normalized annual performance showed significant improvement when compared to the 2013-2015 averages. **Staff Report, page 1**. In fact, as reflected in Staff's Report, Empire's SAIFI performance for one full calendar year following Empire's acquisition improved substantially. In the first full year following the Settlement Agreement (calendar year 2017), Empire's SAIFI dropped from 1.983minutes to 0.695 minutes, a 65% decrease. **Staff Report, page 3**. In comparison to the 2013-2015 time period, its SAIFI declined 47%. For calendar year 2017, Empire's SAIDI performance experienced similar improvements, dropping from 132.776 minutes under Empire's prior ownership to 60.379 minutes under Empire's new ownership, a decrease of 55%. **Staff Report, page 3**. Measured against the 2013-2015 time period, Empire's SAIDI dropped 31%. Despite these significant improvements in SAIFI (the number of interruptions) and SAIDI (the duration of interruptions), Empire's CAIDI (a

[1]Normalized shall be defined as excluding major event days as defined by IEEE. The occurrence of any major event shall be considered in evaluating customer service reporting metrics.

measure of the average of length of an interruption by customer) for 2017, measured in comparison to the normalized average for 2013-2015 increased by 29.4% according to Staff and 23% according to Empire.

4. The following charts depict the significant improvement in reliability experienced by the Company's customers one year after the Company's acquisition in 2016:





5. Staff's view that the penalty provision of the Settlement Agreement is triggered because one of the three measured metrics (CAIDI) exceeded the 15% threshold is an overly narrow and nonsensical reading of Paragraph 50 of the Settlement Agreement. Paragraph 50 states that "EDE shall pay a refund to its Kansas customers for any year the Kansas Service area normalized annual statistics decrease in reliability below the 2013-2015 averages according to the following schedule."

6. A plain reading of this sentence is that the calculation is of the "area normalized annual statistics" is ascertained by combining the SAIFI, SAIDI and CAIDI together to determine whether there is an overall drop in reliability performance. Staff's view - that if any one statistic (as opposed to the statistics) exceeds 15% - the penalty provision kicks in. The Company's reading of the settlement - that the word "statistics" refers to the combined SAIFI, SAIDI and CAIDI performance - is logical when one considers the intent of Paragraph 50, which was to ensure that Empire "maintain or improve EDE's current quality of service, consistent with the requirements of Commission rules." Clearly, Empire has not only maintained but improved its quality of service when comparing the average of its SAIFI, SAIDI and CAIDI. Using Staff's normalized data,[2] Empire's 2017 combined SAIDI/SAIFI/CAIDI performance improved from its 2013-2015 average by an overall of 16% according to Staff's numbers and 13% according to Empire's numbers, below any amount triggering a penalty.

7. Further, while SAIDI and SAIFI are independent reliability metrics, because CAIDI is a ratio of SAIDI and SAIFI it cannot be used in isolation to evaluate the trend of reliability. It is possible that both SAIDI and SAIFI reliability metrics could improve year over year, but the CAIDI metric would increase because SAIDI and SAIFI decrease at different ratios. This point is

[2]Empire and Staff have met to discuss the difference in their respective numbers regarding these metrics and plan to meet again to see if the differences can be resolved so both parties are relying upon the same numbers in subsequent annual compliance filings.

demonstrated by the hypothetical example below:

	Base Year	Example 1	Example 2
SAIDI	120.00	100.00	115.00
SAIFI	1.20	1.15	1.00
CAIDI = SAIDI / SAIFI	100.00	86.96	115.00

8. Based on the example above, both SAIDI and SAIFI decrease in Example 1 and Example 2 compared to the Base Year. However, in Example 2 because the relative decrease in SAIFI was greater than the relative decrease in SAIDI, the CAIDI metric increased. The Company submits that not only did the Settlement Agreement not contemplate penalties in this situation, but that it would be unnecessarily punitive to impose penalties in this situation. Staff has not cited to any evidence in the record from Docket 16-EPDE-410-ACQ that Paragraph 50 was intended to be interpreted in this manner. In fact, the only evidence that exists is that Staff intended to put the Company on par with other electric utilities subject to the Commission's regulations. Upon review of the reliability metrics applicable to other electric utilities in other merger cases, the Commission has expressly excluded CAIDI from penalty provisions of other utilities for this reason.

9. Staff witness Mark Doljac explained in Docket No. 07-KCPE-1064-ACQ (the docket involving Kansas City Power & Light Company's acquisition of Aquila's Missouri electric operations) that it was reasonable to exclude penalties based on CAIDI given this mathematical relationship (that CAIDI is a ratio of SAIDI and SAIFI):

> Q. Why has Staff agreed to eliminate penalty provisions for KCPL's normalized CAIDI performance?
>
> A. Applicant expressed its aversion to using all three continuity of service standards Staff proposed in direct testimony because there is a direct mathematical relationship between the three. Based on its contention, Applicant proposed the exclusion of the use of normalized CAIDI. I acknowledge Applicant's point; however, I believe it would be reasonable to include normalized CAIDI as a performance standard,

> because it reflects an electric utility's performance for restoring service interruptions when they occur. On the other hand, because normalized SAIDI, which is an indicator of overall service reliability, also captures the utility's performance for service restoration, Staff believes it would also be reasonable to exclude penalty provisions for normalized CAIDI under the condition that incentives that Staff proposed for SAIDI and CAIDI, $1.2 million and $600,000, respectively, are combined for SAIDI in the Agreement. Under this approach, Applicant would be subject to a maximum annual penalty of $1.8 million for its normalized SAIDI performance and, thus, the same total maximum penalty of $3 million for KCPL's service reliability performance that Staff proposed in direct testimony. The Parties agree to this compromise.
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> Staff believes the approach in the Agreement is also reasonable because (1) it would provide significant incentives for KCPL to limit the total time and frequency of customers' service interruptions, and (2) despite the exclusion of penalties directly associated with CAIDI, KCPL would still face substantial risk of penalty if its service restoration performance is not maintained. Hypothetically, if KCPL allows its service restoration performance to decline (i.e., CAIDI), in order to maintain overall reliability performance (i.e., SAIDI), KCPL would have to reduce the frequency of service interruptions (i.e., improve SAIFI) to avoid the increased risk of being assessed penalties.

Testimony in Support of Settlement by Mark F. Doljac, pp. 11-12. This was also explained by Kansas City Power & Light Company's witness, William Herdegen, in the same docket who testified that:

> Several of Staff's proposed measures are also redundant, either because they are mathematically equivalent or so highly correlated that they are measuring common processes and business decisions. For example, as Staff correctly notes, CAIDI = SAIDI/SAIFI.[3] Viewed alternatively, SAIFI * CAIDI = SAIDI. Thus, by measuring any two items (say, SAIDI and SAIFI), the value of the third measure is already determined. Therefore, any penalties set for all three measures are in fact only focused on SAIFI and SAIDI.

Rebuttal Testimony of William P. Herdegen, Docket No. 07-KCPE-1064-ACQ, p. 10.

10. Given this fundamental principle so clearly articulated by Mr. Herdegen and Mr.

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[3]Pg. 41 (12), Doljac.

Doljac, and accepted by the Commission, it would be appropriate to only apply the penalties in the Empire settlement to violations when there is an overall degradation in Empire's reliability, as measured by SAIDI, SAIFI and CAIDI, not CAIDI in isolation.

11. In the most recent electric utility merger case involving Westar Energy, Inc. and Kansas City Power & Light Company, the electric utilities, Staff, CURB and the other parties to the docket agreed that the utilities would be required to track and report SAIFI and SAIDI and penalties would be assessed only as to SAIFI and SAIDI. **Docket No. 18-KCPE-095-MER, Non-Unanimous Settlement filed March 7, 2018, Attachment 4**.

12. After Staff issued its Report, Empire and Staff met to discuss their respective interpretations of paragraph 50 of the Settlement Agreement. Both agree that the overall intent of that paragraph is to establish metrics that can be normalized and reviewed on an annual basis to measure whether quality of service has improved post-merger. With respect to Empire's position that CAIDI should not be considered in isolation from the other two metrics for the reasons set forth in this response, Staff indicated that it was willing to work with Empire to come up with an alternative metric to be used to measure quality of service and the parties have had initial discussions on the selection of an alternative metric. Notwithstanding Empire's belief that its interpretation of paragraph 50 of the Settlement Agreement is correct and should be followed in this instance, Empire is willing to continue to work with Staff on this matter to resolve its differences.

13. Empire is requesting that the Commission not assess Empire a penalty in this matter. When the statistics from the three performance metrics are considered as a whole, as they should be under the correct interpretation of the requirements under paragraph 50, it is clear that post-merger performance has significantly improved. Empire is willing to work with Staff to come up with another metric to resolve the differences between Empire and Staff prior to the next annual

compliance filing.

James G. Flaherty, #11177
ANDERSON & BYRD, LLP
216 S. Hickory ~ P.O. Box 17
Ottawa, Kansas 66067
(785) 242-1234, telephone
(785) 242-1279, facsimile
jflaherty@andersonbyrd.com

Sarah B. Knowlton
Senior Director, Regulatory Counsel
Liberty Utilities
116 North Main Street
Concord, NH 03301
Tel.: 603-724-2123
sarah.knowlton@libertyutilities.com
Attorneys for The Empire District Electric Company

VERIFICATION

STATE OF KANSAS
COUNTY OF FRANKLIN, ss:

James G. Flaherty, of lawful age, being first duly sworn deposes and says that he is attorney for The Empire District Electric Company; that he has read the above and foregoing Response to Staff's Report and Recommendation; and the statements therein contained are true.

James G. Flaherty

SUBSCRIBED AND SWORN to before me this 10th day of December, 2018.

NOTARY PUBLIC - State of Kansas
RONDA ROSSMAN
My Appt. Exp. 5/25/22

Notary Public

Appointment/Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was sent via U. S. Mail, postage prepaid, hand-delivery, or electronically, this 10th day of December, 2018, addressed to:

Cole Bailey
c.bailey@kcc.ks.gov

Michael R. Neeley
m.neeley@kcc.ks.gov

James G. Flaherty