

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

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**Volume 28 MPSC 3d**

**January 1, 2018 – December 31, 2018**

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**Morris Woodruff**  
Reporter of Opinions

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**JEFFERSON CITY, MISSOURI**  
**(2021)**

## PREFACE

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This volume of the *Reports of the Public Service Commission of the State of Missouri* contains selected Reports and Orders issued by this Commission during the period beginning January 1, 2018 through December 31, 2018. It is published pursuant to the provisions of Section 386.170, et seq., Revised Statutes of Missouri, 2016, as amended.

The syllabi or headnotes appended to the Reports and Orders are not a part of the findings and conclusions of the Commission, but are prepared for the purpose of facilitating reference to the opinions. In preparing the various syllabi for a particular case an effort has been made to include therein every point taken by the Commission essential to the decision.

The *Digest of Reports* found at the end of this volume has been prepared to assist in the finding of cases. Each of the syllabi found at the beginning of the cases has been catalogued under specific topics which in turn have been classified under more general topics. Case citations, including page numbers, follow each syllabi contained in the Digest.

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## **THE COMMISSION**

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The following Commissioners served during all or part of the period covered by this volume

Daniel Y. Hall	Ryan Silvey
William P. Kenney	Maida Coleman
Scott Rupp	

## **CURRENT COMMISSIONERS AS OF SEPTEMBER 2021**

RYAN A. SILVEY	SCOTT RUPP
MAIDA COLEMAN	JASON R. HOLSMAN
GLEN KOLKMEYER	

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MORRIS L. WOODRUFF  
Chief Regulatory Law  
Judge

RONALD D. PRIDGIN  
Regulatory Law Judge

NANCY DIPPELL  
Deputy Chief Regulatory  
Law Judge

JOHN S. CLARK  
Senior Regulatory Law  
Judge

PAUL GRAHAM  
Regulatory Law Judge

CHARLES HATCHER  
Regulatory Law Judge

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Daniel Jordan  
Michael Bushmann

Kim Burton

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**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Ameren	)	
Transmission Company of Illinois for a Certificate of	)	<b><u>File No. EA-2017-0345</u></b>
Public Convenience and Necessity Authorizing it to	)	
Construct, Install, Own, Operate, Maintain and	)	
Otherwise Control and Manage a 345-kV Electric	)	
Transmission Line from Palmyra, Missouri to the	)	
Iowa Border and an Associated Substation Near	)	
Kirksville, Missouri	)	

**ORDER APPROVING UNANIMOUS STIPULATION AND AGREEMENT**

**CERTIFICATES**

**§21.1 Public interest**

The Project is needed to integrate wind energy in Missouri and to assist Missouri public utilities in complying with Missouri's Renewable Energy Standard. ATXI is qualified and financially able to build the Project. The Project is economically feasible because Ameren Missouri customers should receive benefits in excess of transmission charges. The Project will likely lead to reductions in Missourians' ultimate electric rates as compared to rates that would be paid without the Project. Further, the Project will generate significant property tax revenues for the counties through which the Project will be built, and will promote economic development in the region. As such, the Project is in the public interest. Accordingly, the Project is necessary and convenient for the public service, and ATXI has satisfied the *Tartan* criteria.

**§42 Electric and power**

The Commission may grant an electrical corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either necessary or convenient for the public service.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 10<sup>th</sup> day of  
January, 2018.

In the Matter of the Application of Ameren Transmission )  
Company of Illinois for a Certificate of Public )  
Convenience and Necessity Authorizing it to Construct, )  
Install, Own, Operate, Maintain and Otherwise Control ) **File No. EA-2017-0345**  
and Manage a 345-kV Electric Transmission Line from )  
Palmyra, Missouri to the Iowa Border and an Associated )  
Substation Near Kirksville, Missouri )

**ORDER APPROVING UNANIMOUS STIPULATION AND AGREEMENT**

Issue Date: January 10, 2018

Effective Date: January 20, 2018

On September 15, 2017, Ameren Transmission Company of Illinois (“ATXI”) applied to the Commission for a certificate of convenience and necessity (“CCN”) to build the above-referenced project, also known as “The Mark Twain Transmission Line Project” (or “the Project”).<sup>1</sup> With the application, ATXI also filed direct testimony.

The Project is planned to go through the counties of Marion, Knox, Adair, Schuyler and Lewis, mostly via existing transmission easements owned by Northeast Missouri Electric Power Cooperative and Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”). ATXI submitted proof that all of those counties, as well as the City of Kirksville, Missouri, assent to ATXI building the Project.

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<sup>1</sup> The Project has the same name, but different route, than the transmission line ATXI proposed in File No. EA-2015-0146. The Commission approved that application, but the Court of Appeals vacated that order due to ATXI not acquiring county assents prior to applying at the Commission. See *In the Matter of ATXI v. Neighbors United*, 523 S.W.3d 21 (Mo.App. W.D. 2017).

The Commission issued notice of the application, and the Commission received intervention requests from Midcontinent Independent System Operator, Inc.; Ameren Missouri; Neighbors United Against Ameren's Power Line ("Neighbors United"); International Brotherhood of Electrical Workers; AFL-CIO; Local Union No. 2; and Wind on the Wires. The Commission granted those requests.

On December 1, 2017, Neighbors United asked to withdraw as a party, stating it did not object to the Commission granting ATXI the CCN. The Commission granted Neighbors United's request on December 4, 2017.

On January 5, 2018, the remaining parties filed a Unanimous Stipulation and Agreement ("Stipulation"). The parties agree that ATXI should receive the requested certificate, subject to certain conditions.

Due to the Stipulation, this case may be decided without convening a hearing.<sup>2</sup> Also, the Commission need not separately state its findings of fact or conclusions of law.<sup>3</sup>

Based on the Commission's impartial and independent review of the application, supporting testimony, and the Stipulation, the Commission finds ATXI is engaged in the construction, ownership, and operation of interstate transmission lines that transmit electricity for the public use. Thus, ATXI is an electrical corporation and a public utility in Missouri, and the Commission has jurisdiction over ATXI and the Project.<sup>4</sup>

Furthermore, the Commission may grant an electrical corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either "necessary or convenient for the public service."<sup>5</sup> The Commission has stated

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<sup>2</sup> Section 536.060 RSMo 2016.

<sup>3</sup> Section 536.090 RSMo 2016.

<sup>4</sup> Although not requested, because the parties have arrived at the Stipulation, the Commission will cancel its November 30, 2017 Order Setting Procedural Schedule.

<sup>5</sup> Section 393.170, RSMo 2016.

five criteria that it will use when considering an application for certificate of convenience and necessity:

- 1) There must be a need for the service;
- 2) The applicant must be qualified to provide the proposed service;
- 3) The applicant must have the financial ability to provide the service;
- 4) The applicant's proposal must be economically feasible; and
- 5) The service must promote the public interest.<sup>6</sup>

The Project is needed to integrate wind energy in Missouri and to assist Missouri public utilities in complying with Missouri's Renewable Energy Standard. ATXI is qualified and financially able to build the Project. The Project is economically feasible because Ameren Missouri customers should receive benefits in excess of transmission charges. The Project will likely lead to reductions in Missourians' ultimate electric rates as compared to rates that would be paid without the Project. Further, the Project will generate significant property tax revenues for the counties through which the Project will be built, and will promote economic development in the region. As such, the Project is in the public interest. Accordingly, the Project is necessary and convenient for the public service, and ATXI has satisfied the *Tartan* criteria.

The Commission notes that the conditions in the Stipulation are virtually identical to the conditions the Commission imposed upon ATXI in the prior case involving the Project. The Commission shall grant the application, and approve the Stipulation, subject to the conditions agreed upon by the parties.<sup>7</sup>

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<sup>6</sup> *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).

<sup>7</sup> Although not requested, because the parties have arrived at the Stipulation, the Commission will cancel its November 30, 2017 Order Setting Procedural Schedule.

**THE COMMISSION ORDERS THAT:**

1. The application for a certificate of convenience and necessity filed by Ameren Transmission Company of Illinois on September 15, 2017, is granted, as conditioned below.

2. The Commission's November 30, 2017 Order Setting Procedural Schedule is cancelled.

3. The Unanimous Stipulation and Agreement filed on January 5, 2018, which is Exhibit 1 to this order, is approved, and the signatories of the Unanimous Stipulation and Agreement shall comply with its terms.

4. Throughout the right-of-way acquisition process, ATXI will use all reasonable efforts to abide by the depicted route on each of the 405 parcels identified as of the filing of its application as parcels over which an easement will be required, but will be allowed to deviate from the depicted route within one of the 405 parcels in two scenarios:

First, if surveys or testing do not necessitate a deviation, ATXI may deviate from the depicted route on a particular parcel if ATXI and the landowner agree, *e.g.*, upon request of the landowner and ATXI's agreement with the request. Second, if ATXI determines that surveys or testing require a deviation, ATXI will negotiate in good faith with the affected landowner and if agreement can be reached ATXI may deviate from the depicted route on that parcel, as agreed with the affected landowner. With respect to any parcel other than the 405 identified parcels where ATXI determines that testing or

surveys necessitate acquisition of an easement on that parcel, ATXI will negotiate in good faith with the landowner of the affected parcel over which ATXI has determined an easement is needed and, if agreement is reached, may deviate from the depicted route by locating the line on the affected parcel but will notify the Commission of the deviation and parcels affected prior to construction on that parcel. If agreement is not reached, despite good faith negotiations, ATXI will file a request with the Commission to allow it to deviate from the depicted route onto the affected parcel and shall, concurrently with the filing of its request with the Commission, send a copy of its request to the owner(s) of record of the affected parcel via U.S. Mail, postage prepaid, as shown by the County Assessor's records in the county where the affected parcel is located, or at such other address that has been provided to ATXI by the owner(s). ATXI shall fully explain in that request why ATXI determined the change in route is needed and file supporting testimony with its request and the name(s) and addresses of the owner(s) to whom it provided a copy of its request. After Commission notice of the opportunity for a hearing on the issue of whether the change in route should be approved is given to the owner, Staff and Public Counsel, the Commission will grant or deny the request.

5. Absent a voluntary agreement for the purchase of the property rights, the transmission line shall not be located so that a residential structure currently occupied by the property owners will be removed or located in the easement requiring the owners to move or relocate from the property.

6. Prior to the commencement of construction on a parcel, ATXI will secure an easement which will include a surveyed legal description showing the precise dimension, including the length and width, for the permanent transmission line easement area for each affected parcel. In addition, ATXI will track each easement grant by way of a spreadsheet that identifies each parcel by Grantor and County, and which contains the recording information for each parcel. Upon securing all necessary easements for the project, ATXI will file a copy of the spreadsheet with the Commission, to which a map will be attached. For each parcel, the map and the spreadsheet will include a unique indicator that allows the Commission to see where on the map that parcel is located.

7. ATXI shall follow the construction, clearing, maintenance, repair, and right-of-way practices set out in *Schedule DJB-02* attached to Douglas J. Brown's Direct Testimony.

8. ATXI shall file with the Commission in this case all required government approvals and permits—e.g., any applicable land disturbance permits, Missouri State Highway Commission permits, or US Army Corps of Engineers permits—before beginning construction on that part of the Mark Twain project where the approvals and permits are required.

9. ATXI shall file with the Commission the annual report it files with FERC.



10. Because the following rules do not pertain to ATXI due to their lack of retail customers, the Commission finds good cause to waive them, and so waives them:

Commission Rules 4 CSR 240-3.145, .165, .175, 190(1), (2), (3)(A)-(D).

11. This order shall become effective on January 20, 2018.

12. This file shall be closed on January 21, 2018.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Hall, Chm., Kenney, Rupp, and  
Coleman, CC., concur.  
Silvey, C., abstains.

Pridgin, Deputy Chief Regulatory Law Judge

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Kansas City Power )  
& Light Company for Approval of the Accrual and ) **File No. EO-2018-0062**  
Funding of Wolf Creek Generating Station )  
Decommissioning Costs at Current Levels )

**ORDER APPROVING STIPULATION AND AGREEMENT**

**ELECTRIC**

**§45 Decommissioning costs**

The Commission approved a stipulation and agreement that maintained KCP&L's Missouri retail jurisdiction annual decommissioning expense accruals and trust fund payments for Wolf Creek Generating Station at current levels.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 23<sup>rd</sup> day  
of January, 2018.

In the Matter of Application of Kansas City Power & Light Company for Approval of the Accrual and Funding of Wolf Creek Generating Station Decommissioning Costs at Current Levels. )  
) **File No. EO-2018-0062**  
)  
)

**ORDER APPROVING STIPULATION AND AGREEMENT**

Issue Date: January 23, 2018

Effective Date: February 22, 2018

This order approves the stipulation and agreement between Kansas City Power & Light Company (KCP&L) and the Staff of the Commission regarding KCP&L's funding for the decommissioning of its Wolf Creek Generating Station.

Commission rule 4 CSR 240-3.185 (3) states, in part:

On or before September 1, 1990, and every three years after that, utilities with decommissioning trust funds shall perform and file with the commission cost studies detailing the utilities' latest cost estimates for decommissioning their nuclear generating unit(s) along with the funding levels necessary to defray these decommissioning costs. These studies shall be filed along with appropriate tariff(s) effectuating the change in rates necessary to accomplish the funding required.

On September 1, 2017, KCP&L filed an application pertaining to Wolf Creek asking the Commission to: (a) find that the 2017 cost study and 2017 funding analysis satisfies the requirements of 4 CSR 240-3.185(3); and (b) approve the continuation of the annual accrual at the current level of \$1,281,264.<sup>1</sup>

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<sup>1</sup> In filing its application, KCP&L did not comply with the 60-day notice provision of 4 CSR 240-4.017(4), which requires advance notice of an intent to file a new case before the Commission. In the stipulation and

Staff and KCP&L filed a non-unanimous stipulation and agreement on January 5, 2018. Commission rule 4 CSR 240-2.115 provides that if no party objects to a non-unanimous stipulation and agreement within seven days of its filing, the Commission will treat the stipulation and agreement as unanimous. The Office of the Public Counsel, the only other party, did not sign the stipulation and agreement, but has not opposed the agreement. Therefore, the Commission will treat the stipulation and agreement as unanimous.

The stipulation and agreement asks the Commission to:

- Approve the stipulation and agreement;
- Receive into evidence the stipulation and agreement, the 2017 Cost Study, and the Funding Analysis;
- Find that KCP&L's 2017 Cost Study and Funding Analysis satisfies the requirements of 4 CSR 240-3.185(3);
- Find that KCP&L's Missouri retail jurisdiction annual decommissioning expense accruals and trust fund payments shall continue at the current level of \$1,281,264;
- Find, in order for the decommissioning fund to retain its qualified tax status, that the annual decommissioning costs for Wolf Creek, inclusive of the Independent Spent Fuel Storage Installation (ISFSI), are included in KCP&L's current Missouri cost of service and are reflected in its current Missouri retail rates for ratemaking purposes; and
- Authorize KCP&L to continue to record and preserve Wolf Creek asset retirement obligation costs, as agreed to by the Staff, Public Counsel, and KCP&L, and authorized by the Commission in Case No. EU-2004-0294.

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agreement, KCP&L requests a waiver of that requirement, presenting a verified statement that it had no communication with the Office of the Commission within the 150 days before it filed the application, thus providing good cause for the requested waiver. The Commission will grant the requested waiver.

Having considered the 2017 decommissioning cost study for the Wolf Creek Generating Station and the stipulation and agreement, both of which will be received into evidence, the Commission determines that the stipulation and agreement should be approved. In doing so, the Commission finds that KCP&L's 2017 cost study satisfies the requirements of 4 CSR 240-3.185(3). In addition, the Commission finds that KCP&L's Missouri retail jurisdiction annual decommissioning expense accruals and trust fund payments shall continue at the current level of \$1,281,264. The Commission also finds that the current decommissioning costs for Wolf Creek are included in KCP&L's current Missouri cost of service and are reflected in its current Missouri retail rates for ratemaking purposes.

**THE COMMISSION ORDERS THAT:**

1. The stipulation and agreement filed by the Kansas City Power & Light Company and the Staff of the Missouri Public Service Commission on January 5, 2018, is approved.
2. The signatories shall comply with the terms of the stipulation and agreement.
3. The stipulation and agreement and Kansas City Power & Light Company's 2017 Cost Study and Funding Analysis are admitted into evidence.
4. Kansas City Power & Light Company's retail jurisdiction annual decommissioning expense accruals and trust fund payments shall continue at the current level of \$1,281,264.
5. Kansas City Power & Light Company is authorized to continue to record and preserve Wolf Creek asset retirement obligation costs, as agreed by the Commission Staff, the Office of the Public Counsel, and KCP&L and authorized by the Commission in Case No. EU-2004-0294.

6. Kansas City Power & Light Company's request for waiver of the 60-day notice requirement of 4 CSR 240-4.017(1) is granted.

7. This order shall become effective on February 22, 2018.

8. This file shall be closed on February 23, 2018.

BY THE COMMISSION



A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

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

Woodruff, Chief Regulatory Law Judge

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Union Electric	)	
Company d/b/a Ameren Missouri for Approval of	)	
Decommissioning Cost Estimate for Callaway	)	<b><u>File No. EO-2018-0051</u></b>
Energy Center and Funding Level of Nuclear	)	
Decommissioning Trust Fund	)	

**ORDER APPROVING STIPULATION AND AGREEMENT**

**ELECTRIC**

**§45 Decommissioning costs**

The Commission approved a stipulation and agreement that maintained Ameren Missouri’s annual decommissioning expense accruals and trust fund payments for Callaway Energy Center at current levels.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 23<sup>rd</sup> day  
of January, 2018.

In The Matter of the Application of Union Electric )  
Company d/b/a Ameren Missouri for Approval of )  
Decommissioning Cost Estimate for Callaway )  
Energy Center and Funding Level of Nuclear )  
Decommissioning Trust Fund )

**File No. EO-2018-0051**

**ORDER APPROVING STIPULATION AND AGREEMENT**

Issue Date: January 23, 2018

Effective Date: February 22, 2018

This order approves the stipulation and agreement between the Union Electric Company d/b/a Ameren Missouri and the Staff of the Commission regarding Ameren Missouri's funding for the decommissioning of its Callaway Energy Center.

Commission rule 4 CSR 240-3.185 (3) states, in part:

On or before September 1, 1990, and every three years after that, utilities with decommissioning trust funds shall perform and file with the commission cost studies detailing the utilities' latest cost estimates for decommissioning their nuclear generating unit(s) along with the funding levels necessary to defray these decommissioning costs. These studies shall be filed along with appropriate tariff(s) effectuating the change in rates necessary to accomplish the funding required.

On September 1, 2017, Ameren Missouri filed an application pertaining to Callaway asking the Commission to 1) approve Ameren Missouri's decommissioning cost estimates for the Callaway Energy Center (Callaway or Plant) and for the Callaway Independent Spent Fuel Storage Installation (ISFSI); 2) approve the continuation of the funding level of its nuclear decommissioning trust fund at the current \$6,758,605 amount, with \$6,323,396 allocated to plant decommissioning and \$435,209 allocated to ISFSI decommissioning; 3) find that the Callaway decommissioning costs are to be included in Ameren Missouri's



current cost of service for ratemaking purposes; and 4) confirm that this funding level is based on the parameters and assumptions stated in the application.

Staff and Ameren Missouri filed a non-unanimous stipulation and agreement on January 4, 2018. Commission rule 4 CSR 240-2.115 provides that if no party objects to a non-unanimous stipulation and agreement within seven days of its filing, the Commission may treat the stipulation and agreement as unanimous. The Office of the Public Counsel, the only other party, did not sign the stipulation and agreement, but has not opposed the agreement. Therefore, the Commission will treat the stipulation and agreement as unanimous.

Having considered the 2017 decommissioning cost study, Ameren Missouri's funding adequacy analysis calculating the required annual funding levels for Plant and ISFSI decommissioning, assuming a decommissioning cost escalation rate of 4.0519%, and the stipulation and agreement, which will be received into evidence, the Commission determines that the stipulation and agreement should be approved. In doing so, the Commission finds that Ameren Missouri's 2017 decommissioning cost study satisfies the requirements of 4 CSR 240-3.185(3). In addition, the Commission finds that Ameren Missouri's retail jurisdiction annual decommissioning expense accruals and trust fund payments shall continue at the current level of \$6,758,605, with \$6,323,396 allocated to Plant decommissioning and \$435,209 allocated to ISFSI decommissioning. The Commission also finds that the current decommissioning costs for Callaway are included in Ameren Missouri's current Missouri cost of service and are reflected in its current retail rates for ratemaking purposes. The Commission acknowledges that the annual decommissioning expense and contribution amount proposed in the stipulation and

agreement is based on Attachment 3, the August 2017 *Decommissioning Cost Analysis for the Callaway Energy Center*, and that Attachment 3, the August 2017 *Decommissioning Cost Analysis for the Callaway Energy Center*, meets the requirements of 4 CSR 240-3.185(3).

**THE COMMISSION ORDERS THAT:**

1. The stipulation and agreement filed by the Union Electric Company d/b/a Ameren Missouri and the Staff of the Missouri Public Service Commission on January 4, 2018, is approved.

2. The signatories shall comply with the terms of the stipulation and agreement.

3. The following documents are admitted into evidence: The Non-Unanimous Stipulation and Agreement; Attachment 3 to Ameren Missouri's *Application*, TLG Services, Inc.'s (TLG) "*Decommissioning Cost Analysis for the Callaway Energy Center*," dated August, 2017; and Attachment 4 to Ameren Missouri's *Application*, Ameren Missouri's funding adequacy analysis calculating the required annual funding levels for Plant and ISFSI decommissioning, assuming a decommissioning cost escalation rate of 4.0519%.

4. Ameren Missouri's Missouri retail jurisdictional annual decommissioning expense accruals and trust fund payments shall continue at the current level of \$6,758,605, with \$6,323,396 allocated to Plant decommissioning and \$435,209 allocated to ISFSI decommissioning.

5. Pursuant to 4 CSR 240-20.070(4)(C), the use of a jurisdictional demand allocator of 100.00% is approved.

6. The Commission approves the actuarial assumptions used in Attachment 4 to Ameren Missouri's *Application*, Ameren Missouri's funding adequacy analysis calculating the required annual funding levels for the Plant and ISFSI decommissioning, specifically:

- The after-tax value of Missouri jurisdictional sub-account of the Plant Tax-Qualified Nuclear Decommissioning Trust Fund as of June 30, 2017, was \$594,889,944.
- The after-tax value of Missouri jurisdictional sub-account of the ISFSI Tax-Qualified Nuclear Decommissioning Trust Fund as of June 30, 2017, was \$590,889.
- The proposed expense and contribution amount and allocation between Plant and ISFSI is to be effective beginning with calendar year 2018.
- The Plant decommissioning cost estimate is \$934,296,000 and the ISFSI decommissioning cost estimate is \$9,169,000, both in terms of 2017 dollars.
- Operating license expiration date of October 18, 2044.
- The Missouri jurisdictional allocator (for both Plant and ISFSI) is 100%.
- The federal income tax rate is 20%.
- The state income tax rate is 0%.
- The composite federal and state income tax rate is 20%.
- An asset allocation of 65% equities and 35% bonds is assumed to exist through 2043, at which time all equity investments will be divested.
- Investment management and trust fees are estimated at 15 basis points annually.
- An inflation rate of 2.200% is assumed for general (CPI) inflation.

- The pre-tax and expense nominal return on bonds is assumed to be 3.900%.
  - The pre-tax and expense real return on bonds is assumed to be 1.700%.
- The pre-tax and expense nominal return on equities is assumed to be 8.600%.
  - The pre-tax and expense real return on equities is assumed to be 6.400%.
- The pre-tax and expense nominal weighted-average return is assumed to be 6.955% through the 2043 date of divestiture of equity investments.
  - The pre-tax and expense real weighted-average return is assumed to be 4.755% through the 2043 date of divestiture of equity investments.
  - The pre-tax and expense real weighted-average return is assumed to be 1.700% following the 2043 date of divestiture of equity investments.
  - The annualized pre-tax and expense nominal return over the life of the fund (Plant and ISFSI consolidated) will be 6.508%
- Decommissioning cost escalation is assumed to be 4.0519%.

7. ISFSI funds recovered from the DOE will be used to reduce balances in appropriate accounts by the amount of the proceeds until the costs of the re-racking project and dry cask storage construction project are covered. Any reimbursements for ISFSI decommissioning received by Ameren Missouri from DOE in excess of the re-racking project and dry cask storage construction project costs shall be refunded to ratepayers through the ratemaking process by Ameren Missouri pursuant to a methodology approved by the Commission.

8. Pursuant to 4 CSR 240-20.070(12), excess trust funds from the costs of decommissioning the Plant and ISFSI are to be reimbursed to the ratepayers through the ratemaking process by Ameren Missouri pursuant to a methodology approved by the Commission.

9. This order shall become effective on February 22, 2018.

10. This file shall be closed on February 23, 2018.

**BY THE COMMISSION**



A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

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

Woodruff, Chief Regulatory Law Judge

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Rate Increase Request of Indian     )  
Hills Utility Operating Company, Inc.                             )     **File No. WR-2017-0259**

**REPORT AND ORDER**

**EVIDENCE, PRACTICE AND PROCEDURE**

**§1 Generally**

The General Assembly has instructed the Commission to construe the statutes “liberally . . . with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities.”

**§1 Generally**

Findings of fact do not include summaries of the evidence, summaries of parties’ arguments, ultimate facts, and conclusions of law. Findings of fact resolve disputes of material fact—the facts that guide the Commission’s conclusions of law.

**§6 Weight, effect and sufficiency**

Where the evidence conflicts, the Commission determines which evidence is the most credible. Credibility determinations are implicit in the Commission’s findings of fact, and no law requires the Commission to expound upon which portions of the record the Commission accepted or rejected. When any evidence or argument is not discussed in this report and order, that does not indicate that the Commission has failed to consider such evidence or argument, it indicates that the evidence or argument is not dispositive of any issue.

**§6 Weight, effect and sufficiency**

The quantum of proof necessary to carry a burden of proof in an administrative action is a preponderance. Preponderance means greater weight in persuasive value. That means that a claimant must show that the claimant’s evidence and reasonable inferences from the evidence weigh more in favor of the claimant’s position than against claimant’s position.

**§8 Stipulation**

OPC filed an objection to the *Non-Unanimous Stipulation and Agreement*, so the *Non-Unanimous Stipulation and Agreement* did not resolve any issues, but constitutes the joint amended position statement of Indian Hills and Staff. The entire issues list remains in dispute, as framed between the Indian Hills and Staff and the OPC position statement.

**§8 Stipulation****§30 Settlement procedures**

On matters not informally resolved, including positions raised for the first time in the *Non-Unanimous Stipulation and Agreement*, the Commission must separately state its findings of fact.

**§30 Settlement procedures**

OPC filed an objection to the *Non-Unanimous Stipulation and Agreement*, so the *Non-Unanimous Stipulation and Agreement* did not resolve any issues, but constitutes the joint amended position statement of Indian Hills and Staff (“Indian Hills and Staff”). The entire issues list remains in dispute, as framed between the Indian Hills and Staff and the OPC position statement.

**EXPENSE****§24 Test year and true up**

The Commission concluded that accounting costs paid outside the test year would be included in Indian Hill’s cost of service. The Commission had not issued an order that set a test year, update period, or true-up dates for this case. Even if the Commission had ordered a test year, such an order does not inflexibly exclude costs paid outside the test year if the amounts support safe and adequate service, are known, and are measurable. Just and reasonable rates include such amounts. The Commission concludes that paying the accounting services outside Staff’s test year does not require excluding the accounting costs from Indian Hills’ rates and charges.

**§27 Additions and betterments****§42 Expenses relating to property not owned****§73 Expenses incurred in acquisition of property**

To serve a three-phase power connection, Crawford Electrical Cooperative required Indian Hills to pay a non-refundable payment in the sum of \$23,000 for an electrical extension. The three-phase power connection was a practical necessity. The company sought to capitalize this cost. Based on USoA Account 101 Utility Plant in Service the Commission held that the Company could not capitalize an electric line extension where another utility, not the Company, owned the line extension. Per Section 393.140(4). RSMo, USoA Account 101 must “be observed by. . . water corporations.” Thus, “[t]he Company has no right to earn a return on the electric plant of another utility.” In reaching this conclusion, the Commission considered USoA Account 325, Electrical Pumping Equipment: “[T]his account shall include the cost installed of pumping equipment driven by electric power. . . . (6) Electric power lines and switching.” The Commission held that these words did not “negate[] Account 101’s basic requirement of ownership.”

**RATES****§8 Reasonableness generally**

The Commission must order tariffs that provide safe and adequate service at rates that are just and reasonable. The “just and reasonable” standard codifies constitutional

provisions that protect interests of Indian Hills. Indian Hills' rates must also be as "just and reasonable" to consumers as they are to the utility.

### **§8 Reasonableness generally**

The balance of investor interests and consumer interests does not appear in any single statute or judicially-made formula, but in the pragmatic adjustments that are the Commission's means to establish just and reasonable rates that ensure safe and adequate service. The Commission must decide this action on consideration of "all facts which in its judgment have any bearing" (sometimes called "all relevant factors").

### **§8 Reasonableness generally**

As to any one issue, more than one party's position may support safe and adequate service at just and reasonable rates. When that happens, the Commission must determine which position, or parts of positions, best support safe and adequate service at just and reasonable rates.

### **§118 Method of allocating costs**

Cost-of-service rate-making determines Indian Hills' rates by calculating Indian Hills' revenue requirement. The revenue requirement is how much it costs Indian Hills, in operating expenses ("expenses"), and for a return on its capital assets ("rate base"), to provide safe and adequate service, and includes a return sufficient to service debt and equity and continue attracting capital.

### **§121 Rate design, class cost of service for water utilities**

Cost-of-service rate-making determines Indian Hills' rates by calculating Indian Hills' revenue requirement. The revenue requirement is how much it costs Indian Hills, in operating expenses ("expenses"), and for a return on its capital assets ("rate base"), to provide safe and adequate service, and includes a return sufficient to service debt and equity and continue attracting capital.

## **SECURITY ISSUES**

### **§2 Obligation of the utility**

### **§30 Improper practices and irregularities**

### **§50 Loans to affiliated interests**

### **§69 Financing methods and practices generally**

Where the utility's cost of debt was significantly above the market cost of debt and resulted from the dealings among entities closely inter-related with the utility by common ownership on both sides of the transaction, the Commission imputed 5.75% as a reasonable imputed cost of debt. Here the financing agreement involved affiliate relationships raising the risk of self-dealing; and furthermore, the financing agreement contained a high interest rate and prevented refinancing. These conditions were not beneficial to ratepayers. A public utility should pay to its lenders, and pass along to its customers on rates and charges, the market price for the public utility's debt. Because debt has priority over equity, equity must compensate with a better return than debt. Therefore, when return on equity is at 12 percent, debt at 14 percent must be above the



market rate. An interest rate of 14 percent is significantly above the market rate. Indian Hills' business for profit is a State-granted monopoly. Those facts bring the loan within one of the Commission's primary functions—to substitute reasonable regulation for the missing marketplace.

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Rate Increase Request of )  
Indian Hills Utility Operating Company, Inc. )

File No. WR-2017-0259

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## REPORT AND ORDER

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**Issue Date: February 7, 2018**

**Effective Date: February 17, 2018**

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

In the Matter of the Rate Increase Request of )  
 Indian Hills Utility Operating Company, Inc. ) File No. WR-2017-0259

### REPORT AND ORDER

Issue Date February 7, 2018

Effective Date February 17, 2018

The Commission is ordering Indian Hills Utility Operating Company, Inc. (“Indian Hills”) to file new tariffs<sup>1</sup> in compliance with this report and order (“compliance tariffs”) providing a rate base of \$663,596 and an overall rate of return at 9.375 percent as follows:

<i>Capital Structure</i>	<i>Cost of Debt</i>	<i>Return on Equity</i>
50% debt / 50% equity	6.75%	12%

That compares with Indian Hills’ request for revenue above current collections approximately as follows<sup>2</sup>

<i>Increase</i>	<i>Amount</i>
<i>Requested</i>	\$750,280
<i>Ordered</i>	\$663,596

The Commission separately states its findings of fact,<sup>3</sup> reports its conclusions of law,<sup>4</sup> and orders relief as follows.

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<sup>1</sup> Tariff is the shorthand term used in Commission practice for the “schedules” described in Section 393.130.1, “showing all rates and charges made, established or enforced or to be charged or enforced, all forms of contract or agreement and all rules and regulations relating to rates, charges or service used or to be used, and all general privileges and facilities granted or allowed by such gas corporation, electrical corporation, water corporation, or sewer corporation [.]” Tariff may refer to an entire set, a subset, or a single page, of such schedules.

<sup>2</sup> These numbers do not constitute a ruling, only an estimate of the overall impact of this report and order based on the preliminary figures filed by the Commission’s staff in the Commission’s Electronic Filing Information System (“EFIS”) No. 179 (January 16, 2018) *Staff’s Rate Design Scenarios*. References to EFIS refer to this file No. WR-2017-0259 except where stated otherwise.

<sup>3</sup> Where required by Section 536.090.2.

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<sup>4</sup> As required by Section 386.420.2.

## I. Procedure

Before setting forth the substance of its decision, the Commission will explain the procedure by which this decision comes about.

### A. Jurisdiction and Authority

This case began with the filing of a letter, requesting a rate increase, from Indian Hills.<sup>5</sup> Indian Hills is within the Commission's jurisdiction because Indian Hills sells water to customers in Crawford County, Missouri,<sup>6</sup> and is a public utility<sup>7</sup> and a water corporation.<sup>89</sup> The Commission has authority to determine the content of Indian Hills' tariffs,<sup>10</sup> and the parties present competing positions on multiple issues seeking to persuade the Commission to order compliance tariffs in line with their positions.<sup>11</sup>

### B. Law and Policy

The Commission must order tariffs that provide safe and adequate service<sup>12</sup> at rates that are just and reasonable.<sup>13</sup> The "just and reasonable" standard codifies constitutional provisions that protect the property interests of Indian Hills.<sup>14</sup> Indian Hills' rates must also be as "just and reasonable" to consumers as they are to the utility.<sup>15</sup>

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<sup>5</sup> EFIS No. 1 (April 4, 2017).

<sup>6</sup> EFIS No. 140 (December 7, 2017) *Exhibit No. 212 - Direct Testimony of Geoff Marke* page 3 line 21.

<sup>7</sup> Section 386.020(43).

<sup>8</sup> Section 386.020(59).

<sup>9</sup> Section 393.140(11).

<sup>10</sup> Section 393.140(5) and (11).

<sup>11</sup> Section 393.140(11).

<sup>12</sup> Section 393.130.1.

<sup>13</sup> Section 393.130.1; and Section 393.150.2.

<sup>14</sup> *Bluefield Water Works & Improvement Co. v. Public Serv. Comm'n of the State of West Virginia*, 262 U.S. 679, 690 (1923).

<sup>15</sup> *Valley Sewage Co. v. Public Service Comm'n* 515 S.W.2d 845, 851 (Mo. App., K.C.D. 1974).

The General Assembly has instructed the Commission to construe the statutes “liberally . . . with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities.”<sup>16</sup>

The balance of investor interests and consumer interests does not appear in any single statute or judicially-made formula,<sup>17</sup> but in the pragmatic adjustments that are the Commission’s means to establish just and reasonable rates that ensure safe and adequate service.<sup>18</sup> The Commission must decide this action on consideration of “all facts which in its judgment have any bearing”<sup>19</sup> (sometimes called “all relevant factors”).<sup>20</sup>

All parties’ expert witnesses on rates employed a collection of financial, accounting, and economic analyses known as cost-of-service rate-making, which the Commission will use in its determinations. Cost-of-service rate-making determines Indian Hills’ rates by calculating Indian Hills’ revenue requirement.<sup>21</sup> The revenue requirement is how much it costs Indian Hills, in operating expenses (“expenses”), and for a return on its capital assets (“rate base”), to provide safe and adequate service, and includes a return sufficient to service debt and equity and continue attracting capital.<sup>22</sup> The parties’ evidence on cost of service comes mostly from Staff’s proposed test year of the 12 months between March 2016 and March of 2017, which is probative of Indian

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<sup>16</sup> Section 386.610.

<sup>17</sup> **Fed. Power Comm’n v. Hope Nat. Gas Co.**, 320 U.S. 591, 586 (1944).

<sup>18</sup> **Bluefield**, 262 U.S. at 692; **State ex rel. Associated Natural Gas Co. v. Public. Serv. Comm’n**, 706 S.W.2d 870, 873 (Mo. App., W.D. 1985) (citing **Hope Natural Gas Co.**, 320 U.S. at 602 - 03).

<sup>19</sup> Section 393.270.4.

<sup>20</sup> **State ex rel. Util. Consumers’ Council of Missouri, Inc. v. Pub. Serv. Comm’n**, 585 S.W.2d 41, 56 (Mo. banc 1979).

<sup>21</sup> **Hope Natural Gas Co.**, 320 U.S. at 603 (1944).

<sup>22</sup> **Hope Natural Gas Co.**, 320 U.S. at 603 (1944).

Hills' cost of service.<sup>23</sup> The Commission did not set a test year, update period, or true-up dates for this case.

### C. Procedural History

The above principles of law and policy apply to the thousands of line items that constitute a public utility's budget, and other operational considerations that must be the subject of tariffs. Those matters develop into issues for the Commission's determination as prescribed by the Commission's regulations.<sup>24</sup> The Commission's regulations provide that Indian Hills' letter initiated a small utility rate case.<sup>25</sup> A small utility rate case may proceed informally as a non-contested case,<sup>26</sup> or formally as a contested case,<sup>27</sup> or as both a non-contested case and a contested case in succession as it did here.

Indian Hills and the Commission's staff ("Staff")<sup>28</sup> filed a partial disposition agreement setting forth provisions for a partial settlement between Indian Hills and Staff.<sup>29</sup> The Office of the Public Counsel ("OPC")<sup>30</sup> filed a response stating that OPC

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<sup>23</sup> EFIS No. 100 (December 7, 2017) *Exhibit No. 7 - Direct Testimony of Todd Thomas* page 6 line 18.

<sup>24</sup> Section 386.410.1.

<sup>25</sup> 4 CSR 240-3.050.

<sup>26</sup> 4 CSR 240-3.050(14) and (15). Section 393.150.1 provides that the Commission may suspend tariffs pending a pre-decision hearing, which indicates a contested case, but no tariffs are pending. Otherwise, no evidentiary hearing, and therefore, no contested case, is required unless a party asks for an evidentiary hearing. ***State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n***, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

<sup>27</sup> 4 CSR 240-3.050(21).

<sup>28</sup> Staff is a party to every action before the Commission. 4 CSR 240-2.010(10).

<sup>29</sup> EFIS No. 14 (September 1, 2017) *Partial Disposition Agreement and Request for Evidentiary Hearing*.

<sup>30</sup> OPC is a party to every action before the Commission. 4 CSR 240-2.010(10).

objected to the partial disposition agreement.<sup>31</sup> Both the partial disposition agreement and the response included requests for an evidentiary hearing.<sup>32</sup>

The Commission issued a notice of contested case.<sup>33</sup> Pursuant to the Commission's scheduling order<sup>34</sup> as suggested by the parties,<sup>35</sup> the parties prepared a joint list of issues, which Staff filed on behalf of all parties.<sup>36</sup> The parties separately filed position statements<sup>37</sup> conforming to the list of issues.

Indian Hills and Staff then filed a *Non-Unanimous Stipulation and Agreement*.<sup>38</sup> The *Non-Unanimous Stipulation and Agreement* did three things. First, the *Non-Unanimous Stipulation and Agreement* incorporated the partial disposition agreement.<sup>39</sup> Second, the *Non-Unanimous Stipulation and Agreement* resolved all remaining disputes between Indian Hills and Staff. The *Non-Unanimous Stipulation and Agreement*

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<sup>31</sup> EFIS No. 18 (September 11, 2017) *Response of the Office of the Public Counsel to Partial Disposition Agreement and Request for Evidentiary Hearing*.

<sup>32</sup> Regulation 4 CSR 240-3.050(20) required OPC's response to "include a specified list of issues that [OPC] believes should be the subject of the hearing."

<sup>33</sup> EFIS No. 15 (September 5, 2017) *Notice of Contested Case and Order Directing Filings*.

<sup>34</sup> EFIS No. 28 (September 27, 2017) *Amended Notice of Hearing, and Order Establishing Procedural Schedule and Governing Procedure*, page 1, last line.

<sup>35</sup> EFIS No. 20 (September 19, 2017) *Motion for Joint Proposed Procedural Schedule*, page 3, tenth line.

<sup>36</sup> EFIS No. 81 (November 21, 2017) *List of Issues, Order of Witnesses, Order of Cross - Examination and Order of Opening*. The issues list appears at the later end of the process because the parties cannot know any sooner which of the thousands of line items in a public utility's budget, and other operational considerations that must be the subject of tariffs, will be at issue until after extensive discovery and intensive discussion.

<sup>37</sup> EFIS No. 82 (November 21, 2017) *Indian Hills Statement of Position*. EFIS No. 83 (November 21, 2017) *OPC Position Statement*. EFIS No. 84 (November 21, 2017) *[Staff's] Statement of Positions*. A position statement is a "writing filed whereby affirmative relief is sought" so each such filing sets forth "what relief is sought or proposed and the reason for granting it" as Section 536.063(2) requires in a contested case.

<sup>38</sup> EFIS No. 87 (November 22, 2017) *Non-Unanimous Stipulation and Agreement*.

<sup>39</sup> EFIS No. 91 (December 5, 2017) *Transcript - Volume 4 (Evidentiary Hearing 11-28-17)* page 394 line 1, through line 3.



expressly incorporates<sup>40</sup> the amounts specified in the *Non-Unanimous Stipulation and Agreement's* Attachment B. That Attachment B sets forth the same amounts for each issue, with two exceptions discussed below, as in the prepared testimony of Staff witnesses entered as exhibits at the evidentiary hearing.<sup>41</sup> In agreeing to those amounts, Indian Hills has agreed with Staff's position statement, except as otherwise specified in the *Non-Unanimous Stipulation and Agreement*.

Third, the *Non-Unanimous Stipulation and Agreement* set forth relief not previously raised in the position statements of either Indian Hills or Staff ("new positions"), but now sought by both Indian Hills and Staff, on matters in the issues list. The Commission will address new positions under the issues to which they relate.

OPC filed an objection<sup>42</sup> to the *Non-Unanimous Stipulation and Agreement*, so the *Non-Unanimous Stipulation and Agreement* did not resolve any issues, but constitutes the joint amended position statement of Indian Hills and Staff<sup>43</sup> ("Indian Hills and Staff"). The entire issues list remains in dispute, as framed between the Indian Hills and Staff and the OPC position statement.<sup>44</sup>

The Commission convened a public hearing in Indian Hills' service territory<sup>45</sup> and an evidentiary hearing at the Commission's offices in Jefferson City.<sup>46</sup> The parties filed

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<sup>40</sup> EFIS No. 87 (November 22, 2017) *Non-Unanimous Stipulation and Agreement*, page 5 paragraph 9.

<sup>41</sup> EFIS No. 91 (December 5, 2017) *Transcript - Volume 4 (Evidentiary Hearing 11-28-17)* page 383 line 16, through page 384 line 3; page 393 line 17, through line 25.

<sup>42</sup> EFIS No. 88 (November 22, 2017) *Objection and Response to Non-Unanimous Stipulation and Agreement*.

<sup>43</sup> 4 CSR 240-2.115(2)(D).

<sup>44</sup> 4 CSR 240-2.115(2)(D), second sentence.

<sup>45</sup> EFIS No. 59 (November 1, 2017) *Transcript Volume 2 (Local Public Hearing - 10-18-17)*.

<sup>46</sup> EFIS No. 90 (December 5, 2017) *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)*. EFIS No. 91 (December 5, 2017) *Transcript - Volume 4 (Evidentiary Hearing 11-28-17)*. EFIS No. 92 (December 5,

testimony from 17 expert witnesses, written argument<sup>47</sup> in the form of reconciliations,<sup>48</sup> rate design scenarios<sup>49</sup> and briefs.<sup>50</sup>

## II. General Conclusions of Law

On matters not informally resolved, including positions raised for the first time in the *Non-Unanimous Stipulation and Agreement*, the Commission must separately state its findings of fact.<sup>51</sup> Findings of fact do not include summaries of the evidence, summaries of parties' arguments, ultimate facts, and conclusions of law. Findings of fact resolve disputes of material fact—the facts that guide the Commission's conclusions of law.<sup>52</sup>

As to any one issue, more than one party's position may support safe and adequate service at just and reasonable rates. When that happens, the Commission must determine which position, or parts of positions, best support safe and adequate service at just and reasonable rates.

The Commission has made each determination on consideration of all position statements, authorities applicable to those position statements, and evidence relevant under those authorities. Where the evidence conflicts, the Commission determines which evidence is the most credible. Credibility determinations are implicit in the

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2017) *Transcript - Volume 5 In-Camera (Evidentiary Hearing 11-28-17)*. EFIS No. 93 (December 5, 2017) *Transcript - Volume 6 (Evidentiary Hearing 11 - 30 - 17)*.

<sup>47</sup> Section 536.080.

<sup>48</sup> EFIS No. 77 (November 17, 2017) *Reconciliation*.

<sup>49</sup> EFIS No. 179 (January 16, 2017) *Rate Design Scenarios*.

<sup>50</sup> EFIS No. 175 (January 4, 2018) *[Staff's] Post - Hearing Brief and [Staff's Proposed] Findings of Fact and Discussion*. EFIS No. 176 (January 4, 2018) *Brief of the Office of Public Counsel*. EFIS No. 177 (January 4, 2018) *Indian Hills' Brief*.

<sup>51</sup> Section 536.090.

<sup>52</sup> ***State ex rel. Noranda Aluminum, Inc. v. Pub. Serv. Comm'n***, 24 S.W.3d 243, 246 (Mo. App., W.D. 2000).

Commission's findings of fact,<sup>53</sup> and no law requires the Commission to expound upon which portions of the record the Commission accepted or rejected.<sup>54</sup> When any evidence or argument is not discussed in this report and order, that does not indicate that the Commission has failed to consider such evidence or argument, it indicates that the evidence or argument is not dispositive of any issue.

The quantum of proof necessary to carry a burden of proof in an administrative action is a preponderance.<sup>55</sup> Preponderance means greater weight in persuasive value.<sup>56</sup> That means that a claimant must show that the claimant's evidence, and reasonable inferences from the evidence,<sup>57</sup> weighs more in favor<sup>58</sup> of the claimant's position than against claimant's position.<sup>59</sup> As to whether an increased rate is just and reasonable, Indian Hills has the burden of proof.<sup>60</sup>

As to all issues, the following findings of fact apply generally.

### III. General Findings of Fact

1. Indian Hills sells about 25,740,000 gallons of water per year to 715 customers<sup>61</sup> in Crawford County, Missouri. Of Indian Hills' customers, half are full-time residents and half are part-time residents.<sup>62</sup> Part-time residents are those who have a

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<sup>53</sup> *Stone v. Missouri Dept. of Health & Senior Services*, 350 S.W.3d 14, 26 (Mo. banc 2011).

<sup>54</sup> *Stith v. Lakin*, 129 S.W.3d 912, 919 (Mo. App., S.D. 2004).

<sup>55</sup> *State Board of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App., W.D. 2000).

<sup>56</sup> *State v. Davis*, 422 S.W.3d 458, 464 (Mo. App., E.D. 2014).

<sup>57</sup> *Farnham v. Boone*, 431 S.W.2d 154 (Mo. 1968).

<sup>58</sup> *State Board of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App., W.D. 2000).

<sup>59</sup> *Hager v. Director of Revenue*, 284 S.W.3d 192, 197 (Mo. App., S.D. 2009).

<sup>60</sup> Section 393.150.

<sup>61</sup> EFIS No. 116 (December 7, 2017) *Direct Testimony of Ashley Sarver* page 2, line 14, through line 17.

<sup>62</sup> EFIS No. 101 (December 7, 2017) *Exhibit No. 8 - Rebuttal Testimony of Todd Thomas* page 9 line 19, through line 23.

primary residence outside Indian Hills' service territory and for whom a residence in Indian Hills' service territory is a second home.<sup>63</sup>

### Corporate Structure<sup>64</sup>

2. Central States Water Resources, Inc. manages First Round CSWR, LLC.<sup>65</sup> First Round CSWR, LLC owns holding companies that own Indian Hills and other public utilities: Hillcrest Utility Operating Company, Inc., ("Hillcrest") Raccoon Creek Utility Operating Company, Inc., and Elm Hills Utility Operating Company.<sup>66</sup>

3. Since March of 2015, First Round CSWR, LLC and its subsidiaries have:

- a. Purchased five wastewater treatment plants with associated sewer pumping stations, gravity force mains, and gravity conveyance lines.<sup>67</sup>
- b. Designed, permitted, and completed construction, with Missouri Department of Natural Resources ("MDNR") approval, of approximately \$2.4 million of sanitary sewer systems since March of 2015.<sup>68</sup>
- c. Designed, permitted, and completed construction of major wastewater improvements for two wastewater systems that Elm Hills Utility Operating Company, Inc. acquired.<sup>69</sup> Those systems had been in receivership for approximately ten years and had Missouri Attorney

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<sup>63</sup> EFIS No. 101 (December 7, 2017) *Exhibit No. 8 - Rebuttal Testimony of Todd Thomas* page 9 line 19, through line 23.

<sup>64</sup> All limited liability companies ("LLC") in these findings of fact are Missouri LLCs, except Fresh Start Ventures, LLC, which is a Nevada LLC. All corporations listed in these findings of fact are Missouri corporations.

<sup>65</sup> EFIS No. 94 (December 7, 2017) *Direct Testimony of Josiah Cox, Inc.* page 9 line 17, through line 18.

<sup>66</sup> EFIS No. 94 (December 7, 2017) *Direct Testimony of Josiah Cox, Inc.* page 3 line 9, through line 13.

<sup>67</sup> EFIS No. 94 (December 7, 2017) *Direct Testimony of Josiah Cox, Inc.* page 4 line 4, through line 6.

<sup>68</sup> EFIS No. 94 (December 7, 2017) *Direct Testimony of Josiah Cox, Inc.* page 4 line 6, through page 5 line 2.

<sup>69</sup> EFIS No. 94 (December 7, 2017) *Direct Testimony of Josiah Cox, Inc.* page 5 line 2, through line 11.

General enforcement actions pending.<sup>70</sup> For example, Elm Hills Utility Operating Company, Inc. recently obtained Commission approval to acquire a water company and sewer company that had been in Missouri state-appointed receivership for about ten years and had AG enforcement actions pending.<sup>71</sup>

- d. Designed, permitted, and completed construction with MDNR approval of approximately \$2.6 million of drinking water systems.<sup>72</sup>

4. First Round CSWR, LLC also owns Confluence Rivers Utility Operating Company, Inc., which has filed an application with the Commission to acquire several water companies and several sewer companies, alleging various states of distress among those companies.<sup>73</sup>

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<sup>70</sup> EFIS No. 94 (December 7, 2017) *Direct Testimony of Josiah Cox, Inc.* page 5 line 2, through line 11; page 7 line 5, through line 11.

<sup>71</sup> File No. SM-2017-0150, ***In the Matter of the Application of Elm Hills Utility Operating Company, Inc., and Missouri Utilities Company for Elm Hills to Acquire Certain Water and Sewer Assets of Missouri Utilities Company, for a Certificate of Convenience and Necessity, and, in Connection Therewith, to Issue Indebtedness and Encumber Assets.***

<sup>72</sup> EFIS No. 94 (December 7, 2017) *Direct Testimony of Josiah Cox, Inc.* page 5 line 12, through page 6 line 5.

<sup>73</sup> File No. WM-2018-0116 EFIS No. 1 (November 2, 2017) *Application and Motion for Waiver, In the Matter of the Application of Confluence Rivers Utility Operating Company, Inc. to Acquire Certain Water and Sewer Assets, For a Certificate of Convenience and Necessity, and, in Connection Therewith, To Issue Indebtedness and Encumber Assets.* File No. SM-2018-0117, EFIS No. 1 (November 2, 2017) *Application and Motion for Waiver, In the Matter of the Application of Confluence Rivers Utility Operating Company, Inc. to Acquire Certain Water and Sewer Assets, For a Certificate of Convenience and Necessity, and, in Connection Therewith, To Issue Indebtedness and Encumber Assets.*

### The Indian Hills System

5. The physical plant through which Indian Hills delivers water to its customers (“the system”) is approximately 50 years old.<sup>74</sup> From the system’s construction through 2017, no major capital improvements occurred.<sup>75</sup> By report dated August 25, 2014, MDNR cited 27 deficiencies in compliance with drinking water standards.<sup>76</sup>

6. The Commission authorized Indian Hills to buy the system,<sup>77</sup> operate it,<sup>78</sup> and encumber it for financing improvements bringing the system into regulatory compliance (“the acquisition case”).<sup>79</sup> On March 31, 2016,<sup>80</sup> Indian Hills bought the system from I.H. Utilities, Inc.

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<sup>74</sup> EFIS No. 94 *Exhibit No. 1 - Direct Testimony of Josiah Cox (Public & Confidential)* page 11 line 16, through line 17.

<sup>75</sup> EFIS No. 94 *Exhibit No. 1 - Direct Testimony of Josiah Cox (Public & Confidential)* page 11 line 17, through line 18.

<sup>76</sup> EFIS No. 94 (December 7, 2017) *Exhibit No. 1 - Direct Testimony of Josiah Cox (Public & Confidential)* Schedule JC-01.

<sup>77</sup> File No. WO-2016-0045, EFIS No. 14 (February 3, 2016) *Order Approving Transfer of Assets and Issuance of Certificate of Convenience and Necessity Commission* page 6 paragraph 2, ***In the Matter of the Application of Indian Hills Utility Operating Company, Inc. to Acquire Certain Water Assets of I. H. Utilities, Inc. and, in Connection Therewith, Issue Indebtedness and Encumber Assets.***

<sup>78</sup> File No. WO-2016-0045, EFIS No. 14 (February 3, 2016) *Order Approving Transfer of Assets and Issuance of Certificate of Convenience and Necessity Commission* page 6 paragraph 1, ***In the Matter of the Application of Indian Hills Utility Operating Company, Inc. to Acquire Certain Water Assets of I. H. Utilities, Inc. and, in Connection Therewith, Issue Indebtedness and Encumber Assets.***

<sup>79</sup> File No. WO-2016-0045, EFIS No. 14 (February 3, 2016) *Order Approving Transfer of Assets and Issuance of Certificate of Convenience and Necessity Commission* page 8 paragraph 17, ***In the Matter of the Application of Indian Hills Utility Operating Company, Inc. to Acquire Certain Water Assets of I. H. Utilities, Inc. and, in Connection Therewith, Issue Indebtedness and Encumber Assets.***

<sup>80</sup> EFIS No. 94 *Exhibit No. 1 - Direct Testimony of Josiah Cox (Public & Confidential)* page 1 line 12, through line 13.

7. In the acquisition case, the Commission ordered that the financing allowed in that case be used solely for buying the system and improving plant. But Indian Hills commingled those moneys with other Glarner entities.<sup>81</sup>

8. When Indian Hills acquired the system, the system was not in compliance with MDNR standards related to the following.<sup>82</sup>

- a. Only one well in service. For drinking water systems serving over 500 individuals, MDNR's design guides require at least two wells.<sup>83</sup>
- b. Reliability. There was no backup power or backup pumping system.<sup>84</sup>
- c. Water loss. The system was losing about 75 percent of all the water it pumped to line leakage.<sup>85</sup>
- d. Insufficient pressure. MDNR requires a minimum water pressure of 21 psi, with a guideline of 35 psi for residential drinking water systems. At the time of acquisition, the system had maximum psi of 20 at the back of

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<sup>81</sup> EFIS No. 204 *Surrebuttal Testimony of Keri Roth (Public)* page 2 line 12, through line 18. File No. WO-2016-0045, EFIS No. 14 (February 3, 2016) *Order Approving Transfer of Assets and Issuance of Certificate of Convenience and Necessity* page 9 paragraph 21, ***In the Matter of the Application of Indian Hills Utility Operating Company, Inc. to Acquire Certain Water Assets of I. H. Utilities, Inc. and, in Connection Therewith, Issue Indebtedness and Encumber Assets.***

<sup>82</sup> EFIS No. 94 (December 7, 2017) *Exhibit No. 1 - Direct Testimony of Josiah Cox (Public & Confidential)* page 11, line 18, through line 21.

<sup>83</sup> EFIS No. 94 (December 7, 2017) *Exhibit No. 1 - Direct Testimony of Josiah Cox (Public & Confidential)* page 12 line 1, through line 9.

<sup>84</sup> EFIS No. 94 (December 7, 2017) *Exhibit No. 1 - Direct Testimony of Josiah Cox (Public & Confidential)* page 12 line 11, through 17.

<sup>85</sup> EFIS No. 94 (December 7, 2017) *Exhibit No. 1 - Direct Testimony of Josiah Cox (Public & Confidential)* page 12 line 19, through page 13 line 10.

the lake community and, during peak usage, no water pressure at all in that area.<sup>86</sup>

- e. No redundant booster pump. If the only pump failed, the entire system would fail.<sup>87</sup>
- f. Insufficient storage. The system had only 20,000 gallons of storage for a system that averaged around 180,000 per day during the summer months.<sup>88</sup>

9. To rectify those issues, bring the system into MDNR compliance, and to provide safe and adequate service, Indian Hills has invested approximately \$1.84 million in the system.<sup>89</sup> By report dated November 4, 2016, MDNR found that the system was in compliance with drinking water standards.<sup>90</sup> Indian Hills completed remaining improvements by February 2017.<sup>91</sup>

10. The improvements include the following:

- a. An additional well.<sup>92</sup>

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<sup>86</sup> EFIS No. 94 (December 7, 2017) *Exhibit No. 1 - Direct Testimony of Josiah Cox (Public & Confidential)* page 1 line 1, through line 12.

<sup>87</sup> EFIS No. 94 (December 7, 2017) *Exhibit No. 1 - Direct Testimony of Josiah Cox (Public & Confidential)* page 14 line 14, through line 17.

<sup>88</sup> EFIS No. 94 (December 7, 2017) *Exhibit No. 1 - Direct Testimony of Josiah Cox (Public & Confidential)* page 14 line 19, through page 15 line 7.

<sup>89</sup> EFIS No. 94 (December 7, 2017) *Exhibit No. 1 - Direct Testimony of Josiah Cox (Public & Confidential)* page 26 line 4, through line 11.

<sup>90</sup> EFIS No. 94 (December 7, 2017) *Exhibit No. 1 - Direct Testimony of Josiah Cox (Public & Confidential)* Schedule JC-02.

<sup>91</sup> EFIS No. 94 (December 7, 2017) *Exhibit No. 1 - Direct Testimony of Josiah Cox (Public & Confidential)* page 21 line 11.

<sup>92</sup> EFIS No. 94 (December 7, 2017) *Exhibit No. 1 - Direct Testimony of Josiah Cox (Public & Confidential)* page 20 line 1, through line 2.



- b. Two new well houses with improved and standby disinfection and chlorination systems.<sup>93</sup>
- c. A backup generator for system reliability.<sup>94</sup>
- d. Two new storage tanks.<sup>95</sup>
- e. Booster pumps to maintain minimum system pressure.<sup>96</sup>

11. A substantial rebuild is still underway to provide safe and adequate water service to Indian Hills' customers and comply with federal and state regulations related to those services.<sup>97</sup>

### Operations

12. Smaller water utilities, especially distressed small water utilities, are particularly difficult to permit, build, and operate; they require more expertise and executive level skills than larger utilities because every employee needs to have expertise in multiple areas.<sup>98</sup>

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<sup>93</sup> EFIS No. 94 (December 7, 2017) *Exhibit No. 1 - Direct Testimony of Josiah Cox (Public & Confidential)* page 18 line 8, through line 21; page 20 line 12, through page 21 line 3.

EFIS No. 94 (December 7, 2017) *Exhibit No. 1 - Direct Testimony of Josiah Cox (Public & Confidential)* page 17.),

<sup>94</sup> EFIS No. 94 (December 7, 2017) *Exhibit No. 1 - Direct Testimony of Josiah Cox (Public & Confidential)* page 19 line 19, through line 23.

EFIS No. 94 (December 7, 2017) *Exhibit No. 1 - Direct Testimony of Josiah Cox (Public & Confidential)* page 16.

<sup>95</sup> EFIS No. 94 (December 7, 2017) *Exhibit No. 1 - Direct Testimony of Josiah Cox (Public & Confidential)* page 19 line 11, through line 12; page 20 line 7, through line 9.

<sup>96</sup> EFIS No. 94 (December 7, 2017) *Exhibit No. 1 - Direct Testimony of Josiah Cox (Public & Confidential)* page 20 line 22, through page 21 line 1.

<sup>97</sup> EFIS No. 94 (December 7, 2017) *Exhibit No. 1 - Direct Testimony of Josiah Cox (Public & Confidential)* page 22, line 6, through line 11.

<sup>98</sup> EFIS No. 101 (December 7, 2017) *Exhibit No. 8 - Rebuttal Testimony of Todd Thomas* page 7 line 5, through line 12. EFIS No. 100 (December 7, 2017) *Exhibit No. 7 - Direct Testimony of Todd Thomas* page 8 line 19, through page 9 line 19.

13. Since October 27, 2009, Indian Hills' current rates have consisted of a base charge of \$10.81 that includes 4,000 gallons and a volumetric rate of \$1.89 for every 1,000 gallons over 4,000 gallons. Indian Hills collects about \$97,291 annually in revenue.<sup>99</sup> The costs incorporated into the *Non-Unanimous Stipulation and Agreement* come from Staff's audit of Indian Hills' costs from March 2016 through March 2017 ("Staff's test year").<sup>100</sup>

#### **IV. Disputed Issues**

As noted above the parties submitted a List of Issues that will be addressed in order below, along with specific findings of facts that relate more specifically to each issue.

##### A. Expenses

The parties dispute whether and to what extent the Commission should include the following costs and expenses in Indian Hills' rate base.

##### *i. Payroll.*

The Commission is ordering that Indian Hills' compliance tariffs shall include amounts in rates and charges for the salaries of Josiah Cox and Todd Thomas as sought by Indian Hills and Staff. The issues list and the prevailing position statement use the following language.

- a. *What are the appropriate job titles to be used in [Missouri Economic Research and Information Center ("MERIC")] to compare and determine labor expense associated with Mr. Josiah Cox and Mr. Todd Thomas?*
  - *[T]he appropriate job title for MERIC purposes for Mr. Josiah Cox is Chief Executive and*

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<sup>99</sup> EFIS No. 94 (December 7, 2017) *Exhibit No. 1 - Direct Testimony of Josiah Cox (Public & Confidential)* page 21 line 22 , through page 23 line 2.

<sup>100</sup> EFIS No. 100 (December 7, 2017) *Exhibit No. 7 - Direct Testimony of Todd Thomas* page 6 line 18.

- *[T]he appropriate job title for MERIC purposes [is] Construction Manager for Mr. Todd Thomas.*
- b. *What are the appropriate MERIC salary or wages?*
- *[Josiah Cox: 2013 amount.]*
  - *[Todd Thomas: 2015 amount.]*
- c. *Should the Employment Cost Index inflation rate be applied in setting such amounts?*
- *No.*
- d. *What allocation factor (actual or assumed) should be used to determine payroll?*
- *An assumed allocation factor to determine payroll [of 16.61 percent].*
- e. *What level of experience should be used to set the labor expense associated with each employee?*
- *[T]he mean level of experience in the Missouri Economic Research and Information Center (MERIC) to annualize CSWR payroll.*

#### Findings of Fact

1. The standard for measuring employee salaries is the data of the Missouri Economic Research and Information Center (“MERIC”), an office within the Missouri Department of Economic Development.<sup>101</sup> MERIC classifies employees under job titles according to employee duties.<sup>102</sup> MERIC also breaks down salaries for job titles by geographical region.<sup>103</sup> The relevant geographic region for Indian Hills’ employees is St. Louis, Missouri.<sup>104</sup>

2. MERIC further breaks salary amounts down for any job title by experience level into entry, mean, and experienced; entry is the lowest, experienced is the highest

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<sup>101</sup> EFIS No. 116 (December 7, 2017) *Exhibit No. 104 - Direct Testimony of Ashley Sarver* page 3 line 9, through line 14.

<sup>102</sup> EFIS No. 8 (December 7, 2017) *Exhibit No. 5 - Rebuttal Testimony of Phil Macias* page 10 line 16, through line 18.

<sup>103</sup> EFIS No. 116 (December 7, 2017) *Exhibit No. 104 - Direct Testimony of Ashley Sarver* page 2 line 18, through line 20.

<sup>104</sup> EFIS No. 122 (December 7, 2017) *Exhibit No. 110 - Rebuttal Testimony of Ashley Sarver* page 10 line 7, through line 9.

and the intermediate is the mean.<sup>105</sup> Mean level describes employees of at least three and one half years' experience. All the employees of First Round CSWR, LLC have the mean level of experience in the business of running a water company.<sup>106</sup>

3. Indian Hills has no employees of its own and acts through six employees of First Round CSWR, LLC,<sup>107</sup> including Mr. Josiah Cox and Mr. Todd Thomas.

4. For First Round CSWR, LLC, and its subsidiaries including Indian Hills, Josiah Cox and Todd Thomas both act as contact for financial regulatory compliance with Staff and OPC, and as contact for environmental regulatory compliance with the MDNR and the Missouri Attorney General.<sup>108</sup>

5. The MERIC job title of General and Operations Manager signifies formulating policies, and diverse daily operations too general in nature to be classified in any one functional area.<sup>109</sup>

6. In addition to the responsibilities of General and Operations Manager, Josiah Cox's responsibilities to First Round CSWR, LLC and its subsidiaries, including Indian Hills, include acting as leader and director of overall company strategy and direction, and director of all financing activities including debt and equity increases.<sup>110</sup>

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<sup>105</sup> EFIS No. 116 (December 7, 2017) *Exhibit No. 104, Direct Testimony of Ashley Sarver* page 4 line 1, through line 7.

<sup>106</sup> EFIS No. 130 (December 7, 2017) *Exhibit No. 202 - Rebuttal Testimony of Keri Roth*, page 8 line 13, through line 15.

<sup>107</sup> EFIS No. 116 (December 7, 2017) *Exhibit No. 104 - Direct Testimony of Ashley Sarver* page 2 line 18, through line 20.

<sup>108</sup> EFIS No. 129 (December 7, 2017) *Exhibit. 201 - Direct Testimony of Keri Roth*, page 4 line 6, through line 26.

<sup>109</sup> EFIS No. 102 (December 7, 2017) *Exhibit No. 9 - Surrebuttal Testimony of Todd Thomas* page 4 line 10 through line 14.

<sup>110</sup> EFIS No. 129 (December 7, 2017) *Exhibit. 201 - Direct Testimony of Keri Roth*, page 4 line 6, through line 26.

In addition, Josiah Cox has done significant work in utility acquisition, including evaluating existing utility assets for acquisition, determining existing net book value of acquisition targets, and selecting engineering design and technology. Josiah Cox has also been responsible for ongoing operations and management, including monitoring all plant remote operations and emergency responses, new utility rate design and proforma financial models, and overall company-wide management across multiple states.<sup>111</sup> The MERIC job title matching Josiah Cox's responsibilities is Chief Executive.<sup>112</sup>

7. Todd Thomas' responsibilities to First Round CSWR, LLC and its subsidiaries including Indian Hills, are: utility acquisitions, construction and engineering management, third party contractor acquisition and contract negotiation and management.<sup>113</sup> The MERIC job title best matching Todd Thomas' responsibilities is Construction Manager.<sup>114</sup>

8. The most recent MERIC salary data is for 2016. To keep MERIC salary data accurate between rate cases, salary data within one year of a test year is sufficiently current that no inflationary factor is necessary.<sup>115</sup> However, significant fluctuations in

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<sup>111</sup> EFIS No. 97 (December 7, 2017) *Exhibit No. 4 - Direct Testimony of Phil Macias* page 13 line 16, through page 14 line 2.

<sup>112</sup> EFIS No. 101 (December 7, 2017) *Exhibit 101 - Rebuttal Testimony of Todd Thomas on Behalf of Indian Hills Utility Operations Company* page 7 line 20 through line 21.

<sup>113</sup> EFIS No. 129 (December 7, 2017) *Exhibit 201 - Direct Testimony of Keri Roth*, page 4 line 6, through line 26.

<sup>114</sup> EFIS No. 122 (December 7, 2017) *Exhibit 110 - Rebuttal Testimony of Ashley Sarver* page 8 line 20, through page 9 line 2.

<sup>115</sup> EFIS No. 130 (December 7, 2017) *Exhibit No. 202 - Rebuttal Testimony of Keri Roth*, page 8 line 5, through line 12.

salaries have occurred since 2013, almost \$10,000 over two years for some job titles.<sup>116</sup> When costs are fluctuating from year to year, a single year may represent a peak or a valley, so reliance on an anomalous year will distort rates.<sup>117</sup> To avoid that result, and better determine the cost of service for just and reasonable rates, two methods are available.

9. One method is to pick a year outside the fluctuations.<sup>118</sup> For Josiah Cox, the Commission applied the 2013 salary for Chief Executive of mean experience in two recent cases setting the rates of First Round CSWR, LLC subsidiaries.<sup>119</sup> Use of 2013 MERIC salary for Josiah Cox also avoids having to account for significant fluctuations in the MERIC wage levels shown in subsequent years for these employees' job categories.<sup>120</sup> Consistency among the subsidiaries of First Round CSWR, LLC also favors using the 2013 amount.

10. The other method is to normalize expenses by averaging years<sup>121</sup> ("normalizing"). Todd Thomas has not been with First Round CSWR, LLC long enough to make the 2013 MERIC salary accurate for him. Normalization is more accurate, and

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<sup>116</sup> EFIS No. 122 (December 7, 2017) *Exhibit 110 - Rebuttal Testimony of Ashley Sarver* page 7 line 24, through page 8 line 4.

<sup>117</sup> EFIS No. 116 (December 7, 2017) *Exhibit No. 104 - Direct Testimony of Ashley Sarver* page 4 line 17, through line 19.

<sup>118</sup> EFIS No. 116 (December 7, 2017) *Exhibit No. 104 - Direct Testimony of Ashley Sarver* page 4 line 17, through line 19.

<sup>119</sup> ***In the Matter of the Water Rate Increase Request of Hillcrest Utility Operating Company, Inc.***, File No. WR-2016-0064. File No. SR-2016-0202, ***In the Matter of the Application of a Rate Increase for Raccoon Creek Utility Operating Company Inc.*** EFIS No. 116 (December 7, 2017) *Exhibit No. 104 - Direct Testimony of Ashley Sarver* page 4 line 12, through line 17.

<sup>120</sup> EFIS No. 116 (December 7, 2017) *Exhibit No. 104 - Direct Testimony of Ashley Sarver* page 4 line 8, through line 19.

<sup>121</sup> EFIS No. 122 (December 7, 2017) *Exhibit No. 110 - Rebuttal Testimony of Ashley Sarver* page 10 line 18, through line 21.

the 2015 mean amount is the amount actually paid for the MERIC job title of Construction Manager that is closest to a three-year average.<sup>122</sup>

11. First Round CSWR LLC's records show that First Round CSWR LLC employees spend 16.61% of their time on Indian Hills.<sup>123</sup>

#### Discussion

All parties agree that MERIC job titles are the standard measure to set the amount of employee compensation that Indian Hills may collect through rates. For Todd Thomas, all parties agree that the most accurate MERIC classification is Construction Manager. For Josiah Cox, the most accurate MERIC classification is in dispute.

OPC argues that the appropriate classification is General Operations Manager because Josiah Cox is merely the top manager of a small utility, and the practice in Missouri is to call such a person the general manager. OPC's argument ignores the undisputed fact that Josiah Cox works not only for Indian Hills, but also for First Round CSWR, LLC, which requires his services as to four water companies and the acquisition of more. OPC implicitly acknowledges this when, as set out below, OPC argues in favor of allocating salary to Indian Hills in proportion to the hours worked on Indian Hills business. That reasoning supported the same conclusion as to Josiah Cox's work for Hillcrest in **Hillcrest Rate Case**,<sup>124</sup> ("**Hillcrest Rate Case**") and OPC shows no reason to decide otherwise here. The Commission concludes that the appropriate MERIC classification for Josiah Cox is Chief Executive.

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<sup>122</sup> EFIS No. 116 (December 7, 2017) *Exhibit No. 104 - Direct Testimony of Ashley Sarver* page 5 Line 7 through line 8.

<sup>123</sup> EFIS No. 129 (December 7, 2017) *Exhibit No. 201, Direct Testimony of Keri Roth* page 5 line 2, through line 9.

<sup>124</sup> File No. WR-2016-0064, EFIS No. 93 (July 12, 2016) *Report and Order*, page 16, ***In the Matter of the Water Rate Increase Request of Hillcrest Utility Operating Company, Inc.***,

As to MERIC experience levels, the parties agree, and the Commission concludes, that the years of experience of First Round CSWR, LLC employees in the water company business support a mean experience level. The Commission concludes that the mean experience level is appropriate.

As to the appropriate years for salaries and an inflation index, Indian Hills and Staff do not seek an inflation index. OPC also argues that the Commission should use no inflation index because OPC favors 2016 salary amounts, which are sufficiently recent to be accurate without inflation. And, at least as to Todd Thomas, normalization, for which his 2015 salary level substitutes, is more accurate than the 2016 data, so it requires an inflation factor even less than 2016 data. The Commission concludes that a straight application of 2016 MERIC salary levels is inaccurate for the salaries of Josiah Cox and Todd Thomas. The Commission concludes that the 2013 level for Josiah Cox and the 2015 level for Todd Thomas will support safe and adequate service at just and reasonable rates.

As to an allocation factor to apportion First Round CSWR, LLC employee time to Indian Hills, the parties argue that the most accurate method is by time records, which show that First Round CSWR, LLC employees spend 16.61 percent of their time on Indian Hills. The Commission concludes that the allocation factor of 16.61 percent reflects the proportion of employees' time spent on Indian Hills.

Therefore, on the issue of payroll, the Commission will order the filing of compliance tariffs according to Indian Hills and Staff.



*ii. Auditing and Tax Preparation Fee*

The Commission is ordering that Indian Hills' compliance tariffs shall include amounts in rates and charges for the auditing and tax preparation fees that Indian Hills pays to First Round CSWR, LLC as sought by Indian Hills and Staff. The issues list and the prevailing position statement use the following language.

*a. What is the appropriate amount of Indian Hill's auditing and tax preparation (accounting) costs to include in Indian Hill's cost of service?*

- \$13,993.

*b. Should accounting costs paid outside the test year be included in Indian Hill's cost of service?*

- Yes.

Findings of Fact

1. Standard practices for measuring just and reasonable rates include matching a public utility's yearly revenue requirement with its yearly cost of service ("matching principle").<sup>125</sup> Reasonable rates may include known and measurable amounts that did not occur within a test year, but will recur.<sup>126</sup>

2. Preparing tax returns and auditing financial statements is part of any professionally operated utility and even more important for a distressed utility trying to raise capital. Indian Hills must file tax returns.<sup>127</sup> Indian Hills must have audited financial statements to secure funding from any major government source for water system improvement. A potential source of financing to one of First Round CSWR, LLC's

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<sup>125</sup> EFIS No. 130 (December 7, 2017) *Exhibit No. 202 - Rebuttal Testimony of Keri Roth* page 4 line 11 through line 12.

<sup>126</sup> EFIS No. 124 (December 7, 2017) *Surrebuttal Testimony of Ashley Sarver* page 3 line 18, through page 4 line 7.

<sup>127</sup> EFIS No. 90 *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)* page 227 line 4, through line 22.

subsidiaries rejected that subsidiary's application for equipment funding because the subsidiary lacked audited financial statements.<sup>128</sup>

3. First Round CSWR, LLC completed audited financial statements and prepared tax returns ("accounting") for itself and its subsidiaries. First Round CSWR, LLC billed Indian Hills an allocated amount for those accounting services ("accounting costs") before, but received payment after, March 2017.<sup>129</sup> The accounting costs included one-time retainers of \$500 for the audited financial statements and \$1,250 for the tax preparation, which Indian Hills will not pay again. The remaining accounting costs allocated to Indian Hills total \$13,933,<sup>130</sup> and that amount will recur yearly.<sup>131</sup>

#### Discussion

The accounting costs are required for Indian Hills. Tax returns are a legal necessity. Audited financial statements are a practical necessity. OPC argues that audited financial statements are not necessary because no Commission regulation includes audited financial statements in cost of service. No authority requires such a regulation to make a cost part of a public utility's revenue requirement. Nevertheless, OPC argues that none of the accounting costs should find their way into Indian Hills' rates and charges. In support, OPC cites the matching principle, and the fact that Indian Hills did not pay the bill for the accounting costs during Staff's proposed

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<sup>128</sup> EFIS No. 94 (December 7, 2017) *Direct Testimony of Josiah Cox* page 23 line 13, through page 24 line 5.

<sup>129</sup> EFIS No. 90 *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)* page 215 line 7, though line 17.

<sup>130</sup> EFIS No. 124 (December 7, 2017) *Surrebuttal Testimony of Ashley Sarver* page 2 line 17, through page 3 line 14.

<sup>131</sup> EFIS No. 99 (December 7, 2017) *Exhibit No. 6 - Surrebuttal Testimony of Phil Macias* page 6 line 19 though line 23.

test year. Unlike some other Commission cases,<sup>132</sup> the Commission did not issue an order that set a test year, update period, or true-up dates for this case. Even if the Commission ordered a test year in this case, such an order does not inflexibly exclude costs paid<sup>133</sup> outside the test year, if the amounts support safe and adequate service, are known, and are measurable. Just and reasonable rates include such amounts.<sup>134</sup>

In the alternative to excluding the accounting costs, OPC asks the Commission for the same relief as Indian Hills and Staff. That request is to include Indian Hills' allocated accounting costs, less the non-recurring retainers, in Indian Hills' rates and charges.

The Commission concludes that paying the accounting services outside Staff's test year does not require excluding the accounting costs from Indian Hills' rates and charges.

Therefore, on the issue of auditing and tax preparation fees, the Commission will order the filing of compliance tariffs according to Indian Hills and Staff.

*iii. Management Consulting Fees*

The Commission is ordering that Indian Hills' compliance tariffs shall include an amount in rates and charges for management consulting fees that Indian Hills pays to

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<sup>132</sup> See, for example, File No. GR - 2014 - 0086, EFIS No. 15 (January 23, 2014) *Order Determining Test Year, Update, and True-Up*, issued on January 23, 2014, ***In the Matter of Summit Natural Gas of Missouri Inc.'s Filing of Revised Tariffs To Increase its Annual Revenues For Natural Gas Service.***

<sup>133</sup> This distinguishes the basis for the Commission's rulings in this action from its ruling in ***Hillcrest Rate Case***. In ***Hillcrest Rate Case***, the Commission included in the cost of service no amount for fees that were not known, measurable, and paid. File No. WR-2016-0064 EFIS No. 93 (July 12, 2017) *Report and Order* page 20.

<sup>134</sup> EFIS No. 124 (December 7, 2017) *Surrebuttal Testimony of Ashley Sarver* page 4 line 5, through line 7.

Lois Stanley as sought by Indian Hills and Staff. The issues list and the prevailing position statement use the following language.

a. *Should a management consulting fee be included in the cost of service for Indian Hills?*

- Yes.

#### Findings of Fact

1. Indian Hills' infrastructure system includes about 16 miles of pipe,<sup>135</sup> consists of randomly gauged lines, and is about 50 years old.

2. No tracer wires exist to help locate lines by metal detection.<sup>136</sup> No map shows the original<sup>137</sup> or current<sup>138</sup> location of the system's mains and other infrastructure. Missouri One Call does not have that information because Missouri One Call gets that information from utilities<sup>139</sup> but Indian Hills' predecessors never gave that information to Missouri One Call.<sup>140</sup> Absent such resources, there are two options for locating infrastructure.

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<sup>135</sup> EFIS No. 95 (December 7, 2017) *Exhibit 2 - Rebuttal Testimony of Josiah Cox* page 18 line 13, through line 15.

<sup>136</sup> EFIS No. 90 (December 5, 2017) *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)* page 238 line 16, through 23.

<sup>137</sup> EFIS No. 95 (December 7, 2017) *Exhibit 2 - Rebuttal Testimony of Josiah Cox* page 18 line 1, through line 6.

<sup>138</sup> EFIS No. 90 (December 5, 2017) *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)* page 237 line 2, through line 18.

<sup>139</sup> EFIS No. 90 (December 5, 2017) *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)* page 236 line 2, through line 17.

<sup>140</sup> EFIS No. 90 (December 5, 2017) *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)* page 245 line 1, through page 246 line 8.

3. The first option is “potholing,” which means digging at random or close to a wet spot.<sup>141</sup>

4. The second option is to ask Lois Stanley. Ms. Stanley managed the system before Indian Hills bought it.<sup>142</sup> Ms. Stanley knows the infrastructure’s location and operation.<sup>143</sup> Ms. Stanley locates connections and other undocumented features of the system.<sup>144</sup> For example, Ms. Stanley has located buried valves, which saves Indian Hills the capital investment of installing new isolation valves.<sup>145</sup> Ms. Stanley also knows the location and gauge of lines in places where no one else knew that a line existed.<sup>146</sup>

5. Indian Hills has contracted with Ms. Stanley for that service and other applications of her institutional knowledge.<sup>147</sup> Under the contract, Indian Hills pays \$500 per month<sup>148</sup> to Ms. Stanley for her work on an as-needed basis, without regard to how many hours Ms. Stanley works in a month. As a result of this contract, no time sheets

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<sup>141</sup> EFIS No. 90 (December 5, 2017) *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)* page 238 line 16, through page 239 line 1.

<sup>142</sup> EFIS No. 95 (December 7, 2017) *Exhibit 2 - Rebuttal Testimony of Josiah Cox* page 18 line 7, through line 11.

<sup>143</sup> EFIS No. 95 (December 7, 2017) *Exhibit 2 - Rebuttal Testimony of Josiah Cox* page 18 line 7, through line 11.

<sup>144</sup> EFIS No. 96 (December 7, 2017) *Exhibit No. 3 - Surrebuttal Testimony of Josiah Cox* page 3 line 14, through line 16.

<sup>145</sup> EFIS No. 90 (December 5, 2017) *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)* page 233 line 6 through 23.

<sup>146</sup> EFIS No. 90 (December 5, 2017) *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)* page 238 line 1, through line 15.

<sup>147</sup> EFIS No. 96 (December 7, 2017) *Exhibit No. 3 - Surrebuttal Testimony of Josiah Cox* page 3 line 6, through line 8.

<sup>148</sup> EFIS No. 95 (December 7, 2017) *Exhibit 2 - Rebuttal Testimony of Josiah Cox* page 17 line 18, through 22.

are needed or used for her.<sup>149</sup> Indian Hills communicates with Ms. Stanley through Indian Hills' design engineer and operations and maintenance contractor.<sup>150</sup>

6. Indian Hills has the option to terminate the contract after three years, but Indian Hills may not terminate the contract because Indian Hills will likely still need to make repairs and replacements and to use Ms. Stanley's expertise on the system in the future.<sup>151</sup>

### Discussion

OPC argues that Indian Hills' contract with Ms. Stanley is merely a method to pay her more than the system is worth, impugns the value of her services, and denigrates the evidence describing Ms. Stanley's usefulness. For example, OPC emphasizes the absence of time sheets, but nothing requires Indian Hills to treat Ms. Stanley like an employee instead of a contractor. Indian Hills has demonstrated the value of Ms. Stanley' services and the Commission's findings of fact reflect the Commission's assessment of the evidence.

Significantly, OPC offers no alternative to Ms. Stanley's institutional memory for locating infrastructure. OPC also argues that Ms. Stanley could convey all the information that Indian Hills needs in less than three years, but no evidence suggests that such a feat is possible. On this record, the only alternative is potholing. Indian Hills has shown that contracting with Ms. Stanley, to locate lines before digging, is more

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<sup>149</sup> EFIS No. 96 (December 7, 2017) *Exhibit No. 3 - Surrebuttal Testimony of Josiah Cox* page 3 line 3, through line 5.

<sup>150</sup> EFIS No. 90 (December 5, 2017) *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)* page 237 line 19, through 22.

<sup>151</sup> EFIS No. 95 (December 7, 2017) *Exhibit 2 - Rebuttal Testimony of Josiah Cox* page 18 line 13, through line 15.

economical than digging blindly. The Commission concludes that the management fee is appropriate to include in this case.

Therefore, on the issue of management and consulting fees, the Commission will order the filing of compliance tariffs according to Indian Hills and Staff.

*iv. Bank Fees*

The Commission is ordering that Indian Hills' compliance tariffs shall include an amount in rates and charges for the bank fees as sought by Indian Hills and Staff. The issues list and the prevailing position statement use the following language.

*a. What is the appropriate level of bank fees to include in the cost of service for Indian Hills?*

- *[Twelve] months of bank fees in [Indian Hills'] cost of service totaling \$4,[932].*<sup>152</sup>

Findings of Fact

1. Indian Hills incurs charges for banking services.<sup>153</sup> The bank service most costly to Indian Hills is "lockbox service"<sup>154</sup> at Enterprise Bank and Trust.<sup>155</sup> Lockbox service means that a bank receives payments directly from a client's customers and records the receipts for the client.<sup>156</sup> Indian Hills receives a high quantity of low dollar

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<sup>152</sup> EFIS No. 90 (December 5, 2017) *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)* page 202 line 4, through 11.

<sup>153</sup> EFIS No. 98 (December 7, 2017) *Exhibit No. 5 - Rebuttal Testimony of Phil Macias (Public & Confidential)* page 11 line 19, through 20.

<sup>154</sup> EFIS No. 90 (December 5, 2017) *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)* page 250 line 19, through 21.

<sup>155</sup> EFIS No. 98 (December 7, 2017) *Exhibit No. 5 - Rebuttal Testimony of Phil Macias (Public & Confidential)* page 11 line 21, through 22.

<sup>156</sup> EFIS No. 98 (December 7, 2017) *Exhibit No. 5 - Rebuttal Testimony of Phil Macias (Public & Confidential)* page 12 line 2, through 4.

payments, the processing of which is a time consuming and labor-intensive process,<sup>157</sup> and lockbox is a common service<sup>158</sup> for addressing that challenge, because it offers several advantages to in-house processing.

2. The advantages of a lockbox service include much faster processing of payments,<sup>159</sup> which speeds up cash flow.<sup>160</sup> Cash flow is vital to meet the ongoing maintenance and repair of a small system.<sup>161</sup>

3. Also, that processing happens under the rigid process controls of a bank, which reduce the inherent risks associated with cash receipts.<sup>162</sup> In September 2017, the lockbox for Indian Hills' lockbox service processed 449 transactions; and the lockboxes for all CSWR First Round, LLC subsidiaries processed 1,165 transactions, all without error.<sup>163</sup> No error has occurred in two and one-half years of CSWR First Round, LLC using that subsystem.<sup>164</sup>

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<sup>157</sup> EFIS No. 98 (December 7, 2017) *Exhibit No. 5 - Rebuttal Testimony of Phil Macias (Public & Confidential)* page 12 line 10, through line 12.

<sup>158</sup> EFIS No. 90 (December 5, 2017) *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)* page 250 line 23, through page 251 line 3.

<sup>159</sup> EFIS No. 98 (December 7, 2017) *Exhibit No. 5 - Rebuttal Testimony of Phil Macias (Public & Confidential)* page 12 line 5, through line 6.

<sup>160</sup> EFIS No. 98 (December 7, 2017) *Exhibit No. 5 - Rebuttal Testimony of Phil Macias (Public & Confidential)* page 12 line 5, through line 6.

<sup>161</sup> EFIS No. 90 (December 5, 2017) *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)* page 251 line 15, through line 18.

<sup>162</sup> EFIS No. 98 (December 7, 2017) *Exhibit No. 5 - Rebuttal Testimony of Phil Macias (Public & Confidential)* page 12 line 7, through line 9.

<sup>163</sup> EFIS No. 98 (December 7, 2017) *Exhibit No. 5 - Rebuttal Testimony of Phil Macias (Public & Confidential)* page 13 line 1, through line 4.

<sup>164</sup> EFIS No. 98 (December 7, 2017) *Exhibit No. 5 - Rebuttal Testimony of Phil Macias (Public & Confidential)* page 13 line 4, line through 6.



4. Further, when Indian Hills pays for lockbox service, its pays only its actual cost for servicing Indian Hills' customers and not an allocation.<sup>165</sup>

#### Discussion

Indian Hills and Staff argue that the compliance tariffs should include an amount for lockbox service because that amount represents the cost of processing customer payments. Indian Hills must process payments somehow. OPC offers no alternative. Although OPC suggests that self-dealing has inflated the bank fees, OPC has raised no serious doubt as to whether Indian Hills is paying more than an ordinary price for lockbox services.

The provisions of the partial disposition agreement incorporated into the *Non-Unanimous Stipulation and Agreement*, include Indian Hills delivering documentation to Staff showing that Indian Hills has determined whether its bank fees are the most cost effective for Indian Hills by consulting with other banks.<sup>166</sup> That and similar documentation may show that Indian Hills has diligently explored alternative providers for banking services. But without it, any future Commission may conclude that Indian Hills' bank fees do not support safe and adequate service at just and reasonable rates, and may exclude bank fees from Indian Hills' cost of service.

Therefore, on the issue of bank fees, the Commission will order the filing of compliance tariffs according to Indian Hills and Staff.

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<sup>165</sup> EFIS No. 90 (December 5, 2017) *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)* page 251 line 18, through page 252 line 3.

<sup>166</sup> EFIS No. 87 (November 22, 2017) *Non-Unanimous Stipulation and Agreement* page 2, paragraph a.iv. EFIS No. 14 (September 1, 2017) *Partial Disposition Agreement and Request for Evidentiary Hearing*, Appendix 1: Partial Disposition Agreement of Small Water Revenue Increase Request, page 3 paragraph (4)(d).

*v. Rate Case Expense*

The Commission is ordering that Indian Hills' compliance tariffs shall include in rates and charges an amount for rate case expense shared between Indian Hills and Indian Hills' customers as sought by Indian Hills and Staff. The issues list and the prevailing position statement use the following language.

*a. What is the appropriate rate case expense to include in the cost of service for Indian Hills?*

- A normalized rate case expense of \$5,722 (includes a five year amortization and a 50/50 sharing of expert witness fees).*

Findings of Fact

1. The relief ordered in this action will benefit Indian Hills, in that Indian Hills will have just and reasonable rates; and will benefit customers, in that customers will have safe and adequate service.<sup>167</sup>

2. Pursuing this action required Indian Hills to incur expenses that include consultant fees, expert witness fees, lawyer fees, and the cost of publishing notices to customers.<sup>168</sup>

3. During discovery, Indian Hills mistakenly included an invoice for a video presentation shown at the local public hearing.

4. Preparation and presentation of a general rate action is a costly endeavor, as the fees charged by certain expert witnesses show.<sup>169</sup>

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<sup>167</sup> EFIS No. 123 (December 7, 2017) *Exhibit 111 - Surrebuttal Testimony of Jennifer K. Grisham* page 2 line 16, through line 20.

<sup>168</sup> EFIS No. 90 (December 5, 2017) *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)* page 260 line 15, though page 265 line 11.

<sup>169</sup> EFIS No. 90 (December 5, 2017) *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)* page 265 line 8, through line 11.

## Discussion

The Commission has authority to allocate rate case expense between Indian Hills and its customers.<sup>170</sup> The resulting compliance tariffs will benefit both Indian Hills and its customers, so both Indian Hills and its customers should bear the rate case expense.

Indian Hills and Staff seek a 50/50 split of rate case expense. OPC advocated for a \$250 cap on expert and consultant fees. Indian Hills and Staff proposed to amortize the customer's share over five years, which is within OPC's suggested range.

The Commission concludes that the rate case expense should be allocated using a 50/50 split. A 50/50 allocation reflects the joint benefits and burdens of the rate case. The issues raised were raised equally between the Company and OPC so that an equal sharing is appropriate. A five year amortization results in a lesser amount in rates per year and is reasonable.

Therefore, on the issue of rate case expense, the Commission will order the filing of compliance tariffs according to Indian Hills and Staff.

### *vi. Leak Repair Costs*

The Commission is ordering that Indian Hills' compliance tariffs shall include in rates and charges an amount for initial leak repair cost in the amount of \$90,000 amortized over three years, and future repair expense in operation and maintenance, as argued by Indian Hills and Staff. The issues list and the prevailing position statement use the following language.

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<sup>170</sup> *In Matter of Kansas City Power & Light Co.'s Request for Auth. to Implement a Gen. Rate Increase for Elec. Serv. v. Missouri Pub. Serv. Comm'n*, 509 S.W.3d 757, 776 (Mo. App., W.D. 2016).

a. *What are the appropriate accounts to book leak repair?*

- *Booking the initial leak repair cost in rate base and amortizing this amount over three years. Future repair expense should be booked in operation and maintenance accounts.*

b. *What is the appropriate level of leak repair to include in the cost of service?*

- *[\$90,000] included in rate base and amortize this amount three years.*

The Commission is also ordering the new relief sought in the *Non-Unanimous Stipulation and Agreement*:

- *Engineering Study.*
- *Monthly Usage Data.*
- *Repair Expense Tracker.*<sup>171</sup>

#### Findings of Fact

1. To comply with environmental regulations, Indian Hills had to increase pressure in its system,<sup>172</sup> which caused 300 leaks in 12 months.<sup>173</sup> Indian Hills addressed those leaks by doing an average of six repairs per week.<sup>174</sup>

2. When Indian Hills does a leak repair, it substitutes a new section of pipe for a leaking section of pipe.<sup>175</sup> When Indian Hills does a replacement, Indian Hills substitutes

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<sup>171</sup> The tracker is one of two items in Attachment B to the *Non-Unanimous Stipulation and Agreement* that is not supported in Staff's prepared testimony but is supported by live testimony at the evidentiary hearing. EFIS No. 91 (December 5, 2017) *Transcript - Volume 4 (Evidentiary Hearing 11-28-17)* page 383 line 16, through page 384 line 3; page 393 line 17, through line 25. The other is the return on equity percentage.

<sup>172</sup> EFIS No. 90 (December 5, 2017) *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)* page 286 line 3, through line 13.

<sup>173</sup> EFIS No. 102 (December 7, 2017) *Exhibit No. 9 - Surrebuttal Testimony of Todd Thomas* page 5 line 21, through line 22.

<sup>174</sup> EFIS No. 101 (December 7, 2017) *Exhibit 101 - Rebuttal Testimony of Todd Thomas on Behalf of Indian Hills Utility Operations Company* page 8 line 6, through line 8.

<sup>175</sup> EFIS No. 90 (December 5, 2017) *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)* page 316 line 4, through line 15.

new line from the main to the meter.<sup>176</sup> Compared to a repair, pipe replacement takes three or four times as long and replacing a main takes nine or ten times as long, and both interrupt service to customers.<sup>177</sup>

3. The condition of Indian Hills' system guarantees that the costs of repair and replacement will continue to accrue.<sup>178</sup>

4. Indian Hills spent approximately \$90,000 on repairs between March 2016 and March 2017.<sup>179</sup> Three years is a reasonable time for amortizing that amount.<sup>180</sup> Indian Hills has improved its recordkeeping system for repairs<sup>181</sup> to show how much Indian Hills must spend to make repairs or replacements in its system each year.<sup>182</sup> The difference is significant because a replacement is plant in service, which counts as capital in rate base and cannot be accounted for in new rates after it is used and made useful.<sup>183</sup>

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<sup>176</sup> EFIS No. 90 (December 5, 2017) *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)* page 316 line 2, through line 25.

<sup>177</sup> EFIS No. 102 (December 7, 2017) *Exhibit No. 9 - Surrebuttal Testimony of Todd Thomas* page 6 line 2, through line 11.

<sup>178</sup> EFIS No. 120 (December 7, 2017) *Exhibit No. 108 - Rebuttal Testimony of Jennifer K. Grisham* page 5 line 15, through page 6 line 5.

<sup>179</sup> EFIS No. 91 (December 5, 2017) *Transcript - Volume 4 (Evidentiary Hearing 11-28-17)* page 386 line 19, through line 24.

<sup>180</sup> EFIS No. 91 (December 5, 2017) *Transcript - Volume 4 (Evidentiary Hearing 11-28-17)* page 389 line 12, through page 390 line 24.

<sup>181</sup> EFIS No. 90 (December 5, 2017) *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)* page 290 line 5, through page 291, line 16.

<sup>182</sup> EFIS No. 120 (December 7, 2017) *Exhibit No. 108 - Rebuttal Testimony of Jennifer K. Grisham* page 5 line 21, through page 6 line 3.

<sup>183</sup> EFIS No. 120 (December 7, 2017) *Exhibit No. 108 - Rebuttal Testimony of Jennifer K. Grisham* page 6 line 10, through line 22.

5. A systemic replacement program for system mains and service connections, based on historic repair data and engineering expertise, would help address the leak issue caused by increases in pressure from the required plant upgrades.<sup>184</sup>

6. In utility accounting practice, a “tracker” is a provision that sets an amount certain (“baseline”) for a specified line item and directs that amounts above the baseline shall be recorded in a specified account under the Uniform System of Accounts (“USoA”) for consideration at the next rate case. A two-way tracker records both amounts above the baseline and amounts below the baseline.<sup>185</sup> A tracker is useful for monitoring an amount when it is uncertain whether that amount will increase or decrease.<sup>186</sup> The existence of a tracker does not pre-determine rate-making treatment in the next rate case.<sup>187</sup>

#### Discussion

As to the amount for leak repair that Indian Hills should collect in rates, the parties dispute how much of the costs reported as repairs are really replacement of capital items, and how many repeated repairs profited contractors where prudence directed a replacement instead of a repair. The Commission has found the evidence weighs more in favor of Indian Hills and Staff.

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<sup>184</sup> EFIS No. 134 (December 7, 2017) *Exhibit No. 206 - Rebuttal Testimony of John A. Robinett* page 4 line 11, through line 20. EFIS No. 90 (December 5, 2017) *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)* page 356 line 10, through line 14.

<sup>185</sup> EFIS No. 90 (December 5, 2017) *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)* page 388 line 3, through line 21.

<sup>186</sup> EFIS No. 90 (December 5, 2017) *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)* page 392 line 4, through line 15.

<sup>187</sup> EFIS No. 90 (December 5, 2017) *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)* page 394 line 16, through line 20.

Pursuant to its statutory authority,<sup>188</sup> the Commission's regulations<sup>189</sup> incorporate USoA published by the National Association of Regulatory Utility Commissioners. Staff cites the provisions of USoA stating that operating expenses include items of maintenance:

Work performed specifically for the purpose of preventing failure, restoring serviceability or maintaining life of plant.  
[<sup>190</sup>]

That language describes repairs to the system.

OPC argues for a maintenance expense of \$5,198, and for capitalizing \$90,426 in leak repairs. In support, OPC criticizes Indian Hills for the many leaks caused by an increase in pressure. The increase in pressure was necessary to comply with environmental regulations. OPC criticizes Indian Hills for having no plan in place to deal with the resultant leaks, but offers no evidence of how to plan for leaks except by being ready to fix them when they appear, which Indian Hills has done. OPC also criticizes Indian Hills for keeping inadequate records, but the improvement in Indian Hills' recordkeeping is undisputed. OPC criticizes Indian Hills for how Indian Hills prioritized its improvements to the system and doing repairs instead of replacements, but reasonable minds may disagree as to which action was prudent under the facts known at the time. Moreover, OPC cites no authority under which the quality of management influences the account under which Indian Hills must record an expense.

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<sup>188</sup> Section 393.140(4).

<sup>189</sup> 4 CSR 240-50.030(1).

<sup>190</sup> EFIS No. 127 (December 7, 2017) *Exhibit No. 114 - USoA Operating Expense Instructions*, second page.

OPC also cites USoA Account 343 Transmission and Distribution Mains. But that provision states that adding a minor and insubstantial item of property constitutes a maintenance expense:

When a minor item of property which did not previously exist is added to plant, the cost thereof shall be accounted for in the same manner as for the addition of a retirement unit, as set forth in paragraph B (I), above, if a substantial addition results, otherwise the charge shall be to the appropriate maintenance expense account. [<sup>191</sup>]

That language describes adding a section of pipe, which is how Indian Hills repairs its lines, so that language reinforces Staff's argument that repairs constitute a maintenance expense.

As to future repair expenses, Indian Hills and Staff seeks to establish a repair expense tracker as follows.

**Repair Expense Tracker:** The signatories agree to a two-way tracker for repair expenses related to water main repair and service line repair expense, with a \$90,000 base amount.<sup>192</sup>

In its brief, OPC objects to this position, arguing that the tracker is not on the issues list and is not the subject of any pre-filed testimony. OPC did not object to testimony on the tracker at the evidentiary hearing.<sup>193</sup> On the contrary, OPC actively cross-examined several witnesses on that subject. Because the Commission received evidence on the tracker without objection, and because that evidence has probative value as to just and

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<sup>191</sup> EFIS No. 128 (December 7, 2017) *Exhibit No. 115 - Utility Plant Instructions*, second page.

<sup>192</sup> EFIS No. 87 (November 22, 2017) *Non-Unanimous Stipulation and Agreement* page 5 paragraph 8. Emphasis in original.

<sup>193</sup> Commission regulation 4 CSR 240-2.130(7)(A) requires that "[d]irect testimony shall include all testimony and exhibits asserting and explaining that party's entire case-in-chief." Under that regulation, the Commission denied a tracker in **Hillcrest Rate Case**. But, in that case, the applicant raised that position for the first time in its post-hearing brief. File No. WR-2016-0064, EFIS No. 93 (July 12, 2016) *Report and Order*, page 18 through page 19.



reasonable rates for safe and adequate service, the Commission must consider that evidence along with the other evidence.<sup>194</sup>

As the findings show, deferred recording will not involve any USoA account not ordinarily used in setting water rates. And, even if it did, the record shows good cause for a variance from USoA on this point.<sup>195</sup> The parties dispute sharply whether the cost of fixing leaks will rise or fall, and such uncertainty supports the use of a tracker. Indian Hills' history of frequent breakdowns, repairs, and replacements in the past supports a projection of frequent breakdowns, repairs, and replacements in the future. Comparing the expense in future years to the amount currently in rates will be helpful in its next small public utility rate case.

Nevertheless, the Commission expressly states that ordering the repair expense tracker does not constitute a pre-judgment as to any amounts to include in future rates. Moreover, ordering the repair expense tracker does not constitute a prejudgment as to whether any repair is more prudent than any replacement. With those caveats in place, on the issue of repair expenses and a tracker, the Commission will order the filing of compliance tariffs according to Indian Hills and Staff.

Also, Indian Hills and Staff ask for an order directing the filing of monthly usage data as follows.

On a quarterly basis, Indian Hills will submit to the Staff Water and Sewer Department monthly usage data, inclusive of water loss.<sup>196</sup>

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<sup>194</sup> Section 536.070(8).

<sup>195</sup> 4 CSR 240-2.060(4).

<sup>196</sup> EFIS No. 87 (November 22, 2017) *Non-Unanimous Stipulation and Agreement* page 6 paragraph 13.

Such a provision will supply data for the future. OPC offers no evidence or argument to the contrary. The Commission will order that the monthly usage data include both water lost and water billed, and will order the data submitted to OPC at the same time as Indian Hills submits it to Staff.

Further, Indian Hills and Staff ask for an order directing a study of the system and a plan for improvements. And, in their brief, Indian Hills asks for even more detailed reporting instructions:

Indian Hills agrees to develop a five-year Distribution System Improvement Plan (DSIP) for replacement of mains and service connections, where such replacement is necessary and prudent. The goal of the DSIP will be to continue current efforts to reduce the frequency of significant leaks and water loss, and provide a predictable construction schedule for its customers. To develop the DSIP, Indian Hills will perform an engineering study to outline the water system areas based on historical repair data and current distribution line plans that should be scheduled for main replacement, and submit the DSIP to OPC and the PSC Water and Sewer Department by April 15, 2018. The DSIP will include the engineering study and the five-year schedule proposal to address the most problematic portions of the system. Thereafter, Indian Hills shall submit progress reports as to the replacement program developed in the DSIP with its annual reports. The progress reports will update the DSIP, with explanations of any adjustments to the five-year schedule. The progress reports will continue for a five year period (until April 15, 2023), unless sooner modified by Commission order.

That language better describes the study.

With those further provisions, on the issue of leak repair expense including the new positions, the Commission will order relief as sought by Indian Hills and Staff.

vii. *Extension of Electrical Service*

The Commission is ordering that Indian Hills' compliance tariffs shall include amounts in rates and charges for the electrical extension as argued by OPC, and as argued in the alternative by Staff. The issues list and the prevailing position statement use the following language.

a. *Should the Company be able to capitalize the electric line extension?*

- *The Company does not own the electric line extension. For this reason, no party should recommend that it be capitalized. This is OPC's position, which is consistent with NARUC USOA, Account 101.*

b. *If so, what are the appropriate accounts to book the extension of electric line service?*

- *Again, the Company does not own the electric line extension. This question [of capitalization] should be moot for all parties.*

Findings of Fact

1. Indian Hills' system uses industrial electrical and pumping equipment for a new well, booster pumps, ground storage and well house<sup>197</sup> ("the equipment") that required a three-phase power connection.<sup>198</sup>

2. To serve the three-phase power connection, Crawford Electrical Cooperative ("the Cooperative") required Indian Hills to pay "a non-refundable payment in the sum of \$23,000" for the cost of facilities (electrical extension") required to make service available to [Indian Hills for the equipment] on or before commencement of construction of such facilities."<sup>199</sup>

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<sup>197</sup> EFIS No. 98 (December 7, 2017) *Exhibit No. 5 - Rebuttal Testimony of Phil Macias (Public & Confidential)* page 4 line 4, through line 7.

<sup>198</sup> EFIS No. 101 (December 7, 2017) *Exhibit No. 8 - Rebuttal Testimony of Todd Thomas* page 15 line 16, through 21.

<sup>199</sup> EFIS No. 101 (December 7, 2017) *Exhibit No. 8 - Rebuttal Testimony of Todd Thomas* page 16 line 8, through 11.

3. The alternative to the three-phase power connection was a “phase-a-matic converter.”<sup>200</sup> A phase-a-matic converter is more expensive, less reliable, and more susceptible to power surges.<sup>201</sup> A phase-a-matic converter lowers equipment life spans, increases operations and maintenance costs, and results in higher customer rates.<sup>202</sup> The electrical extension was a practical necessity for the equipment and any other new plant requiring electricity.<sup>203</sup>

4. Indian Hills made that payment to the Cooperative on May 17, 2016.<sup>204</sup> The Cooperative constructed the electrical extension. The Cooperative owns the electrical extension.<sup>205</sup>

5. Indian Hills does not own the electrical extension.<sup>206</sup>

#### Discussion

OPC argues that, because Indian Hills does not own the electrical extension, Indian Hills must treat the cost as an expense, not capital, and recommends amortizing it over five years. In support, OPC cites USoA Account 101 Utility Plant in Service.<sup>207</sup>

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<sup>200</sup> EFIS No. 101 (December 7, 2017) *Exhibit No. 8 - Rebuttal Testimony of Todd Thomas* page 16 line 15, through 18.

<sup>201</sup> EFIS No. 101 (December 7, 2017) *Exhibit No. 8 - Rebuttal Testimony of Todd Thomas* page 16 line 18, through 21.

<sup>202</sup> EFIS No. 101 (December 7, 2017) *Exhibit No. 8 - Rebuttal Testimony of Todd Thomas* page 16 line 18, through 21.

<sup>203</sup> EFIS No. 90 (December 5, 2017) *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)* page 363 line 23 through line 25.

<sup>204</sup> EFIS No. 101 (December 7, 2017) *Exhibit No. 8 - Rebuttal Testimony of Todd Thomas* page 16 line 12, through line 14.

<sup>205</sup> EFIS No. 135 (December 7, 2017) *Exhibit No. 207 - Surrebuttal Testimony of John A. Robinett* Schedule JAR-S-1 Affidavit of Brett Palmer, Manager of Operations with Crawford Electric Cooperative, Inc.

<sup>206</sup> EFIS No. 90 (December 5, 2017) *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)* page 362 line 3, through line 5.

<sup>207</sup> Incorporated into the Commission’s regulation 4 CSR 240 - 50.030(1) pursuant to the authority at Section 393.140(4).

A. This account shall include the original cost of utility plant, included in the plant accounts prescribed herein and in similar accounts for other utility departments, owned and used by the utility in its utility operations, and having an expectation of life in service of more than one year from date of installation, including such property owned by the utility but held by nominees. Separate subaccounts shall be maintained hereunder for each utility department.”<sup>208</sup>

That language shall “be observed by . . . water corporations [.]<sup>209</sup>”

Account 101’s plain language requires ownership for capitalization. Account 101 extends capital treatment to things possessed by another entity, but not to things owned by another entity, and bases capitalization squarely on ownership. Ownership of the electrical extension is in the Cooperative. Indian Hills does not own the electrical extension. As OPC argues, “The Company has no right to earn a return on the electric plant of another utility [.]<sup>210</sup>”

In favor of capitalizing the electrical extension, Indian Hills and Staff cite USoA Account 325, Electrical Pumping Equipment:

[T]his account shall include the cost installed of pumping equipment driven by electric power . . .

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6. Electric power lines and switching. [<sup>211</sup>]

None of those words in Account 325 negates Account 101’s basic requirement of ownership. Indian Hills also offered expert testimony that any utility may capitalize

<sup>208</sup> EFIS No. 134 (December 7, 2017) *Exhibit No. 206 - Rebuttal Testimony of John A. Robinett* page 2 line 16, through line 25 (emphasis OPC’s).

<sup>209</sup> Section 393.140(4).

<sup>210</sup> EFIS No. 176 (January 4, 2018) *Brief of the Office of the Public Counsel* page 32.

<sup>211</sup> EFIS No. 98 (December 7, 2017) *Exhibit No. 5 - Rebuttal Testimony of Phil Macias (Public & Confidential)* page 4 line 15.

anything remotely connected with the operation of a capital item.<sup>212</sup> Indian Hills cites no authority supporting that argument, and its testimony on that issue is unpersuasive. Indian Hills alleges that the three-phase power connection was a practical necessity, which OPC does not dispute, and the Commission has found.

Also, Staff cites an earlier decision in which the Commission ordered the capitalization of a cost for inspection fees.<sup>213</sup> The earlier decision's analysis is unpersuasive. The earlier decision cites no authority for treating something that a utility does not own as a capital asset.

In the alternative, Staff supports OPC's position,<sup>214</sup> which the Commission concludes is correct under the law, that the electrical extension constitutes an expense. The electrical extension represents a one-time payment for the construction of Cooperative property to serve Indian Hills. The Commission will order the compliance tariffs to amortize the amount over five years. The Commission bases that ruling on the experience, knowledge, and training of expert witnesses<sup>215</sup> and not, as Indian Hills argues, on a mistaken reading of the contract with the Cooperative.<sup>216</sup>

The Commission concludes that the electrical extension constitutes an expense, and not a capital item. Therefore, on the issue of the electrical extension, the

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<sup>212</sup> EFIS No. 90 (December 5, 2017) *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)* page 362 line 24, through page 364 line 25.

<sup>213</sup> Case No. ER-90-101, *Report and Order* (October 5, 1990) page 33 through 34, ***In the matter of Missouri Public Service for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company, at al.***

<sup>214</sup> EFIS No. 120 (December 7, 2017) *Exhibit No. 108 - Rebuttal Testimony of Jennifer K. Grisham* (Public & Confidential) page 4 line 16, through 18.

<sup>215</sup> EFIS No. 91 (December 5, 2017) *Transcript - Volume 4 (Evidentiary Hearing 11-28-17)* page 388 line 23, through page 390 line 23. EFIS No. 120 (December 7, 2017) *Exhibit No. 108 - Rebuttal Testimony of Jennifer K. Grisham* (Public & Confidential) page 4 line 16, through 18.

<sup>216</sup> EFIS No. 101 (December 7, 2017) *Exhibit No. 8 - Rebuttal Testimony of Todd Thomas* page 16 line 3, through line 11.

Commission will order the filing of compliance tariffs according to the OPC position statement and Staff’s alternative position.

B. Rate of Return<sup>217</sup>

The Commission is ordering that Indian Hills’ compliance tariffs shall include amounts in rates and charges for a:

- a. Debt to equity ratio of 50/50 as sought by OPC,
- b. Cost of debt at 6.75 percent as sought by OPC, and
- c. Return on equity at 12 percent as sought by Indian Hills and Staff.

The resulting rate of return is 9.375 percent.

Findings of Fact

1. Standard financial practice measures the return on an investment by multiplying the cost of each capital component (debt and equity) by its respective proportion in the capital structure, and adding the two products together, yielding a weighted average cost of capital, (“WACC”) which equals the rate of return.<sup>218</sup>

100% Capitalization	=	Debt %	x Return on Debt	= Cost of Debt	=	Weighted Cost of Capital (Rate of Return)
		Equity %	x Return on Equity	= Cost of Equity		

2. As the table above shows, capital structure is the proportion of debt to equity that finances an enterprise. Whatever the returns on debt and equity, the proportions of

<sup>217</sup> The Commission addresses this issue out of the sequence set forth in the issues list for a more logical progression in the construction of a rate. The issues list numbers the issues as VIII Rate Design and IX. Rate of Return. But rate of return is part of the revenue requirement that Indian Hills must collect, and rate design is how Indian Hills will collect the revenue requirement, so the Commission addresses those issues in that order.

<sup>218</sup> EFIS No. 103 (December 7, 2017) *Exhibit No. 10 - Direct Testimony of Dylan W. D’Ascendis* page 3, line 1, Table 1.

debt and equity constitute the multiplier for each. For that reason, capital structure is crucial in determining a rate of return.

3. Determining values for the variables in the WACC formula may include using a proxy. A proxy is an entity that is similar in significant characteristics. Public utilities may be significantly similar for WACC while appearing significantly different otherwise; for example, public utilities that vary greatly in size may constitute valid proxies because their financial strength is the same.<sup>219</sup>

4. When it comes time for payment to lenders and investors, or collection, debt has priority over equity; so equity must compensate for debt's priority by offering a higher rate.<sup>220</sup>

#### Discussion

Indian Hills' returns depend on the Commission's rulings on values related to capital components. Those rulings are as follows.

100% Capitalization	=	50% debt	x 6.75%	= 3.375%	=	9.375% Rate of Return
		50% equity	x 12.00%	= 6.000%		

The grounds for those rulings are as follows.

#### *i. Capital Structure.*

The issues list and the prevailing position statement use the following language.

#### *a. What capital structure should be used for determining rate of return?*

- *[A] 50-50 capital structure to reflect what the Company should be working toward, over time, in order to improve its financial standing. Currently, the*

<sup>219</sup> EFIS No. 95 (December 7, 2017) *Exhibit No. 2 - Rebuttal Testimony of Josiah Cox (Public & Confidential)* page 17 line 1, through 12; EFIS No. 103 *Exhibit 10, Direct Testimony of Dylan W. D'Ascendis*, Schedule DWD-3 page 1 of 9, and Schedule DWD-4 page 2 of 12.

<sup>220</sup> EFIS No. 103 (December 7, 2017) *Exhibit No. 10 - Direct Testimony of Dylan W. D'Ascendis* 19 line 5, through line 20.



*utility is highly leveraged with debt, which arguably could have impacted its ability to obtain a lower cost of debt on the market.*

### Findings of Fact

1. The contributions of both customers and the public utility act like a partnership in support of safe and adequate service.<sup>221</sup> Just and reasonable rates recognize the public utility investments that benefit customers by providing, not only a fair rate of return, but also the ability to build up balance sheet strength and create some financial standing and integrity that allow the public utility to borrow funds under less restrictive conditions, particularly with arm's-length transactions with lenders.<sup>222</sup>

2. Sound ratemaking practice accomplishes those goals by using a hypothetical capital structure under which a public utility can retain earnings to grow the invested capital by reinvestment in plant, and to pay down more expensive borrowing sources.<sup>223</sup> Reinvestment and paying down debt will produce an actual capital structure of common equity and debt in a ratio representative of a stronger business entity.<sup>224</sup> For a system with no history of reinvestment, like Indian Hills' system, a hypothetical capital structure may result in safer and more adequate service at rates that give the public utility the opportunity for greater financial strength.<sup>225</sup>

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<sup>221</sup> EFIS No. 93 (December 5, 2017) *Transcript - Volume 6 (Evidentiary Hearing 11-30-17)* page 553 line 19, through line 22.

<sup>222</sup> EFIS No. 93 (December 5, 2017) *Transcript - Volume 6 (Evidentiary Hearing 11-30-17)* page 553 line 22, through page 554 line 7.

<sup>223</sup> EFIS No. 93 (December 5, 2017) *Transcript-Volume 6 (Evidentiary Hearing 11-30-17)* page 554 line 8, through line 22.

<sup>224</sup> EFIS No. 93 (December 5, 2017) *Transcript-Volume 6 (Evidentiary Hearing 11-30-17)* page 554 line 23, through page 555 line 4.

<sup>225</sup> EFIS No. 93 (December 5, 2017) *Transcript-Volume 6 (Evidentiary Hearing 11-30-17)* page 555 line 23, through page 556 line 7.

3. A 50/50 hypothetical capital structure is appropriate for supporting a public water utility in the state of Missouri.<sup>226</sup> That is because keeping debt at 50 percent or below discourages excessive debt that unduly burden customers,<sup>227</sup> and keeping equity at 50 percent or above discourages excessive equity costs.<sup>228</sup> In these circumstances, a public utility should have no more than 50 percent debt and no less than 50 percent equity.<sup>229</sup>

4. A 50/50 ratio of debt to equity thus reflects the goals of safe and adequate service at just and reasonable rates because it may result in safer and more adequate service at rates that give the public utility the opportunity for greater financial strength.<sup>230</sup>

5. Indian Hills does not issue stock for public trade, so its actual capital structure is uncertain,<sup>231</sup> and a hypothetical capital structure is more certain to support safe and adequate service at just and reasonable rates.<sup>232</sup> For Indian Hills, a 50/50 hypothetical capital structure will direct Indian Hills toward capital re-investment and repayment of

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<sup>226</sup> EFIS No. 172 (December 11, 2017) *Exhibit No. 213 - Surrebuttal Testimony of Michael P. Gorman* page 4 line 21, through page 5 line 3.

<sup>227</sup> EFIS No. 169 (December 11, 2017) *Exhibit No. 213 - Direct Testimony of Michael P. Gorman* page 3 line 21, through line 23.

<sup>228</sup> EFIS No. 169 (December 11, 2017) *Exhibit No. 213 - Direct Testimony of Michael P. Gorman* page 3 line 21, through line 23.

<sup>229</sup> EFIS No. 169 (December 11, 2017) *Exhibit No. 213 - Direct Testimony of Michael P. Gorman* page 3 line 8, through line 10.

<sup>230</sup> EFIS No. 93 (December 5, 2017) *Transcript-Volume 6 (Evidentiary Hearing 11-30-17)* page 555 line 23, through page 556 line 7.

<sup>231</sup> Just how uncertain Indian Hills' capital structure is appears in the testimony of Indian Hills and OPC. Indian Hills claims to have an actual capital structure 77.12% debt and 22.88% equity. EFIS No. 103 (December 7, 2017) *Exhibit No. 10 - Direct Testimony of Dylan W. D'Ascendis* page 3 line 1, Table 1. OPC alleges that Indian Hills' actual capital structure has but a fraction of that equity. EFIS No. 170 (December 11, 2017) *Exhibit No. 214 - Rebuttal Testimony of Michael P. Gorman (Confidential)* page 3 line 8, through line 11.

<sup>232</sup> EFIS No. 93 (December 5, 2017) *Transcript - Volume 6 (Evidentiary Hearing 11-30-17)* page 545 line 2, through line 8.

high-interest debt, which will result in financial health<sup>233</sup> and access to outside capital.<sup>234</sup> Those results favor both the utility and the customers.

### Discussion

Indian Hills and Staff argue that the Commission should order that the compliance tariffs include amounts for rates and charges based on a capital structure of 78.8 percent debt and 21.2 percent equity because that is Indian Hills' actual capital structure. Assuming, without deciding, that 78.8/21.2 represents Indian Hills' actual capital structure, the Commission concludes that a 50/50 hypothetical capital structure better supports safe and adequate service at just and reasonable rates. OPC's evidence showed that a 50/50 capital structure provides financial strength that better balances the interests of Indian Hills and its customers by protecting the customers from unduly burdensome debt and capital expenses while strengthening Indian Hills' finances.<sup>235</sup>

Indian Hills argues that Indian Hills cannot have a 50/50 capital structure because Indian Hills cannot obtain conventional financing. But one of the advantages to a 50/50 capital structure is that it will help Indian Hills find outside capital.<sup>236</sup> Further, the Commission directed Indian Hills to use the financing authorized in the acquisition case

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<sup>233</sup> EFIS No. 93 (December 5, 2017) *Transcript-Volume 6 (Evidentiary Hearing 11-30-17)* page 553 line 23, through 555 line 3. EFIS No. 169 (December 11, 2017) *Exhibit No. 213 - Direct Testimony of Michael P. Gorman* page 3 line 24, through page 4 line 2.

<sup>234</sup> EFIS No. 169 (December 11, 2017) *Exhibit No. 213 - Direct Testimony of Michael P. Gorman* page 3 line 20, through line 21.

<sup>235</sup> EFIS No. 172 (December 11, 2017) *Exhibit No. 213 - Surrebuttal Testimony of Michael P. Gorman* page 4 line 21, through page 5 line 3.

<sup>236</sup> Indian Hills also cites **Hillcrest Rate Case**, in which the Commission used an actual capital structure, but offers no authority requiring the Commission to reach a similar result on a different record.

solely to acquire and improve the system. Indian Hills violated that directive.<sup>237</sup> A 50/50 capital structure will encourage financial integrity, which the Commission intended in the acquisition case, for the benefit of the system in which Indian Hills and the customers share an interest. The Commission encourages Indian Hills to seek outside financing before its next rate case.

Therefore, on the issue of capital structure, the Commission will order the filing of compliance tariffs according to the OPC position statement.

*ii. Cost of Debt.*

The issues list and the prevailing position statement use the following language.

*b. What cost of debt should be used for determining rate of return?*

- *OPC recommends 6.75% as a reasonable imputed cost of debt [.] Mr. Gorman and Mr. Meyer explain why the Company's financing agreement has not been shown to be prudent. The financing agreement involves affiliate relationships raising the risk of self-dealing; and furthermore, the financing agreement contains a high interest rate and prevents refinancing. These conditions are not beneficial to ratepayers, and it would be unreasonable to pass forward these costs to ratepayers.*

Findings of Fact

1. Indian Hills' cost of debt is significantly above market cost of debt for a distressed public utility.<sup>238</sup> Indian Hills' cost of debt is the result of dealings among entities closely inter-related with Indian Hills through chains of common ownership on both sides of the transaction as follows.

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<sup>237</sup> EFIS No. 204 *Surrebuttal Testimony of Keri Roth (Public)* page 2 line 12, through line 18. File No. WO-2016-0045, EFIS No. 14 (February 3, 2016) *Order Approving Transfer of Assets and Issuance of Certificate of Convenience and Necessity* page 9 paragraph 21, ***In the Matter of the Application of Indian Hills Utility Operating Company, Inc. to Acquire Certain Water Assets of I. H. Utilities, Inc. and, in Connection Therewith, Issue Indebtedness and Encumber Assets.***

<sup>238</sup> EFIS No. 93 (December 5, 2017) *Transcript - Volume 6 (Evidentiary Hearing 11-30-17)* page 552 line 19, through line 23.

Lender and Borrower<sup>239</sup>

2. Robert Glarner, Jr. and David Glarner (“the Glarners”) own GWSD, LLC.<sup>240</sup>
3. GWSD, LLC, owns:
  - a. 87 percent of First Round CSWR, LLC;<sup>241</sup> and
  - b. A minority percentage of Central States Water Resources, Inc.,<sup>242</sup> which manages First Round CSWR, Inc.<sup>243</sup>
4. First Round CSWR, LLC:
  - a. Manages Indian Hills; and
  - b. Owns Indian Hills Utility Holding Company, Inc., which owns Indian Hills.<sup>244</sup>
5. Indian Hills borrowed \$1.45 million<sup>245</sup> from Fresh Start Venture, LLC (“the loan”).<sup>246</sup>

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<sup>239</sup> EFIS No. 136 (December 7, 2017) *Exhibit No. 208 - Direct Testimony of Greg R. Meyer (Confidential)* page 3 line 1, through page 4 line 9; and Confidential Schedule GRM-1.

<sup>240</sup> EFIS No. 91 (December 5, 2017) *Transcript - Volume 4 (Evidentiary Hearing 11-28-17)* page 420 line 1, through line 2.

<sup>241</sup> The remaining 13 percent of First Round CSWR, LLC belongs to Josiah Cox. EFIS No. 91 (December 5, 2017) *Transcript - Volume 4 (Evidentiary Hearing 11-28-17)* page 419 line 17, through line 25.

<sup>242</sup> EFIS No. 91 (December 5, 2017) *Transcript - Volume 4 (Evidentiary Hearing 11-28-17)* page 423 line 13, through line 19. The majority owner of Central States Water Resources, Inc. is Josiah Cox. EFIS No. 91 (December 5, 2017) *Transcript - Volume 4 (Evidentiary Hearing 11-28-17)* page 419 line 1, through line 4.

<sup>243</sup> EFIS No. 91 (December 5, 2017) *Transcript - Volume 4 (Evidentiary Hearing 11-28-17)* page 422 line 23, through page 423 line 2.

<sup>244</sup> EFIS No. 91 (December 5, 2017) *Transcript - Volume 4 (Evidentiary Hearing 11-28-17)* page 423 line 13, through line 19.

<sup>245</sup> EFIS 103 *Exhibit No. 10 Direct Testimony of Dylan W. D’Ascendis* page 39 line 8.

<sup>246</sup> EFIS No. 91 (December 5, 2017) *Transcript - Volume 4 (Evidentiary Hearing 11-28-17)* page 412 line 11, through line 13.

6. Fresh Start Venture, LLC is funded, and is indirectly controlled,<sup>247</sup> by the Glarners.<sup>248</sup>

7. Josiah Cox, Robert Glarner, Jr., and David Glarner, constitute the officers and board of directors for Central States Water Resources, Inc.,<sup>249</sup> Indian Hills Utility Holding Company, Inc.,<sup>250</sup> and Indian Hills.<sup>251</sup>

8. When Josiah Cox inquired into financing for Indian Hills, he did not offer to secure any financing with the personal guarantee of himself, Robert Glarner, Jr., or David Glarner.<sup>252</sup>

#### Other Small Water Companies in Missouri

9. For the five years before October 13, 2016, 25 small water companies, applied for new rates from the Commission, including Hillcrest.<sup>253</sup>

10. Almost all of those companies had debt outstanding, some had environmental issues, and some secured their debt with assets other than their system including personal guarantees of the owners.<sup>254</sup>

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<sup>247</sup> The Glarners also own Water Fund LLC. EFIS No. 157 (December 7, 2017) *Exhibit No. 233 - Articles of Incorporation, Water Fund, LLC.*

<sup>248</sup> EFIS No. 91 (December 5, 2017) *Transcript - Volume 4 (Evidentiary Hearing 11-28-17)* page 420, line 1, through line 10; page 457 line 22, through page 458 line 1.

<sup>249</sup> EFIS No. 161 (December 7, 2017) *Exhibit No. 237 - 2017 Annual Registration Report Central States Water Resources, Inc.*

<sup>250</sup> EFIS No. 154 (December 7, 2017) *Exhibit No. 230-2017 Annual Registration Form, Indian Hills Utility Holding Company, Inc.*

<sup>251</sup> EFIS No. 149 (December 7, 2017) *Exhibit No. 225 - 2017 Annual Registration Report, Indian Hills Utility Operating Company, Inc.*

<sup>252</sup> EFIS No. 91 (December 5, 2017) *Transcript - Volume 4 (Evidentiary Hearing 11-28-17)* page 425 line 9, through page 426 line 6.

<sup>253</sup> EFIS No. 139 (December 7, 2017) *Exhibit No. 211 - Surrebuttal Testimony of Greg R. Meyer (Public)* page 6 line 16, through page 7 line 6; Schedule GRM-SUR-2. EFIS No. 91 (December 5, 2017) *Transcript - Volume 4 (Evidentiary Hearing 11-28-17)* page 487 line 18 through 20.

11. The average interest rate paid by those companies, other than Hillcrest, was 5.16 percent.<sup>255</sup>

### The Loan

12. The loan includes the following provisions.

- a. Interest at 14 percent.<sup>256</sup>
- b. A term of 20 years.<sup>257</sup>
- c. A pre-payment penalty.<sup>258</sup>

13. Pre-payment penalties are not unusual, but a pre-payment penalty combined with 14 percent interest is unusual, even for a distressed small water company.<sup>259</sup>

14. Moreover, the loan's penalty accelerates all 20 years' interest and makes it due if Indian Hills pays off the loan early, as in refinancing.<sup>260</sup> Refinancing under the pre-payment penalty is therefore of benefit only to the lender.<sup>261</sup>

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<sup>254</sup> EFIS No. 108 (December 7, 2017) *Exhibit No. 15 - Indian Hills Utility Operating Company, Inc., Small Water and Sewer Utility Debt Costs, Table of Financing*. EFIS No. 91 (December 5, 2017) *Transcript - Volume 4 (Evidentiary Hearing 11-28-17)* page 472 line 15, through 477 line 4.

<sup>255</sup> EFIS No. 139 (December 7, 2017) *Exhibit No. 211 - Surrebuttal Testimony of Greg R. Meyer (Public)* page 6 line 16, through page 7 line 6; Schedule GRM-SUR-2. EFIS No. 91 (December 5, 2017) *Transcript - Volume 4 (Evidentiary Hearing 11-28-17)* page 487 line 18 through 20.

<sup>256</sup> EFIS No. 91 (December 5, 2017) *Transcript - Volume 4 (Evidentiary Hearing 11-28-17)* page 490 line 19 through line 20.

<sup>257</sup> EFIS No. 91 (December 5, 2017) *Transcript - Volume 4 (Evidentiary Hearing 11-28-17)* page 492, line 6, through line 7.

<sup>258</sup> EFIS No. 91 (December 5, 2017) *Transcript - Volume 4 (Evidentiary Hearing 11-28-17)* page 490, line 19, through line 23.

<sup>259</sup> EFIS No. 93 (December 5, 2017) *Transcript - Volume 6 (Evidentiary Hearing 11-30-17)* page 552 line 3, through 553 line 13.

<sup>260</sup> EFIS No. 91 (December 5, 2017) *Transcript - Volume 4 (Evidentiary Hearing 11-28-17)* page 490, line 24, through page 491 line 4.

<sup>261</sup> EFIS No. 136 (December 7, 2017) *Exhibit No. 208 - Direct Testimony of Greg R. Meyer (Confidential)* page 14 line 1, through line 23.

15. The pre-payment penalties among all systems that First Round CSWR, LLC manages in Missouri aggregate to approximately \$15 million.<sup>262</sup>

#### Market Rate

16. A public utility should pay to its lenders, and pass along to its customers in rates and charges, the market price for the public utility's debt.<sup>263</sup>

17. Because debt has priority over equity, equity must compensate with a better return than debt. Therefore, when return on equity is at 12 percent, debt at 14 percent must be above the market rate.<sup>264</sup> An interest rate of 14 percent is significantly above the market rate.<sup>265</sup>

18. The market price of an entity that has not taken its debt to market is discernible as a hypothetical by comparing the observable market debt of a similarly situated entity—a proxy.<sup>266</sup>

19. Services like S&P or Moody's grade the quality of investments.<sup>267</sup> The cost of debt for an investment rate utility company is about 4.0%.<sup>268</sup> A small distressed utility

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<sup>262</sup> EFIS No. 91 (December 5, 2017) *Transcript-Volume 4 (Evidentiary Hearing 11-28-17)* page 491 line 11, through line 16.

<sup>263</sup> EFIS No. 169 (December 11, 2017) *Exhibit No. 213 - Direct Testimony of Michael P. Gorman* page 5 line 4, through line 8.

<sup>264</sup> EFIS No. 103 (December 7, 2017) *Exhibit No. 10 - Direct Testimony of Dylan W. D'Ascendis* page 19 line 5 through line 20; and EFIS No. 93 (December 5, 2017) *Transcript-Volume 6 (Evidentiary Hearing 11-30-17)* page 563 line 3, through page 564 line 4.

<sup>265</sup> EFIS No. 93 (December 5, 2017) *Transcript - Volume 6 (Evidentiary Hearing 11-30-17)* page 552 line 19, through line 23.

<sup>266</sup> EFIS No. 169 (December 11, 2017) *Exhibit No. 213 - Direct Testimony of Michael P. Gorman* page 5 line 4, through line 8.

<sup>267</sup> EFIS No. 169 (December 11, 2017) *Exhibit No. 213 - Direct Testimony of Michael P. Gorman* page 4 line 20, through line 21.

<sup>268</sup> EFIS No. 169 (December 11, 2017) *Exhibit No. 213 - Direct Testimony of Michael P. Gorman* page 5 line 2, through line 4.



like Indian Hills does not have a rating from S&P and Moody's<sup>269</sup> but distressed utilities generally do, and the rating is "below investment grade" for distressed utilities.<sup>270</sup> Therefore, the debt issuances of a below investment grade utility reflect the cost of debt for a distressed utility.<sup>271</sup>

20. In the last few years,<sup>272</sup> only one below investment grade utility issued bonds.<sup>273</sup> That utility issued bonds at 6.41 percent to 7.25 percent with a median of 6.75 percent.<sup>274</sup> Applying an indexed bond yield to the actual proxy rates of 6.41 percent to 7.25 percent also results in 6.75 percent.<sup>275</sup> That shows that a lower rate is available with an independent lender, and that the market rate for a utility comparable to Indian Hills, in arm's length dealing, is 6.75 percent.<sup>276</sup>

#### Discussion

Indian Hills and Staff ask the Commission to order that the compliance tariffs set rates and charges to include amounts to service the loan. OPC alleges that the loan's

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<sup>269</sup> EFIS No. 107 (December 7, 2017) *Exhibit No. 14 - Rebuttal Testimony of Michael E. Thaman, Sr.* page 3 line 20, through line 23.

<sup>270</sup> EFIS No. 169 (December 11, 2017) *Exhibit No. 213 - Direct Testimony of Michael P. Gorman* page 4 line 22, through page 5 line 2.

<sup>271</sup> EFIS No. 169 (December 11, 2017) *Exhibit No. 213 - Direct Testimony of Michael P. Gorman* page 4 line 22, through page 5 line 2.

<sup>272</sup> EFIS No. 172 (December 11, 2017) *Exhibit No. 216 - Surrebuttal Testimony of Michael P. Gorman* page 10, through line 13.

<sup>273</sup> EFIS No. 169 (December 11, 2017) *Exhibit No. 213 - Direct Testimony of Michael P. Gorman* page 4 line 13, through line 21.

<sup>274</sup> EFIS No. 169 (December 11, 2017) *Exhibit No. 213 - Direct Testimony of Michael P. Gorman* page 4 line 15, through line 20; Schedule MPG-3.

<sup>275</sup> EFIS No. 172 (December 11, 2017) *Exhibit No. 216 - Surrebuttal Testimony of Michael P. Gorman* page 12, through line 20.

<sup>276</sup> EFIS No. 169 (December 11, 2017) *Exhibit No. 213 - Direct Testimony of Michael P. Gorman* page 4 line 13, through page 5 line 8.

provisions are unjust and unreasonable as to the customers. OPC asks that the Commission order the tariffs to collect only those amounts that loan would require if Indian Hills procured the loan through an arm's length transaction in the marketplace.

The weight of the evidence favors OPC. OPC has shown that the loan's provisions include costs far above what Indian Hills must pay. The loan does not resemble an arm's-length transaction because the Glarners are behind each end of the transaction. The Commission understands the legal status of business organizations as legal persons. The Commission cannot ignore financial reality.

A loan constitutes a circuit that conducts money. The money starts with the lender, passes through the borrower's business for profit, and returns with interest to the lender. Lenders and borrowers may lend to and borrow from whomever they choose, on whatever terms they choose, as the law allows. However, the loan before the Commission is different from other lending transactions, even for a wholly-owned subsidiary, which must borrow money from whomever and under whatever provisions its owner says.

The difference with the Indian Hills loan is that Indian Hills' business for profit is a State-granted monopoly. The Commission has exclusively certified Indian Hills to provide water to captive customers.<sup>277</sup> Those customers cannot, as ordinary retail customers do, go to elsewhere to serve their residences with water. Those facts bring

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<sup>277</sup> File No. WO-2016-0045, EFIS No. 14 (February 3, 2016) *Order Approving Transfer of Assets and Issuance of Certificate of Convenience and Necessity Commission* page 6, paragraph 1. ***In the Matter of the Application of Indian Hills Utility Operating Company, Inc. to Acquire Certain Water Assets of I. H. Utilities, Inc. and, in Connection Therewith, Issue Indebtedness and Encumber Assets.***

the loan within one of the Commission's primary functions—to substitute reasonable regulation for the missing marketplace.<sup>278</sup>

The marketplace does not produce 14 percent interest and a 20-year pre-payment penalty—or even a ten-year pre-payment penalty—so far as the record shows. Therefore, the Commission must determine a marketplace interest rate for the loan based on the record.

Indian Hills relies heavily on the absence of any source of lower interest. But OPC has shown that a below-investment grade utility may issue debt for 6.75 percent. Indian Hills criticizes that analysis for dissimilarities between Indian Hills and OPC's proxy, mainly based on scale. That argument might have some resonance if Indian Hills' proxies did not include large utilities<sup>279</sup> among which are the largest utilities in Missouri.<sup>280</sup> And while Indian Hills' approach to equity considers the size of a public utility, Indian Hills has not shown that greater scale in operations results in fewer challenges to a distressed utility's operation or a greater ability to attract debt at lower rates.

Indian Hills' Exhibit 15 discusses<sup>281</sup> the other small water companies listed in Schedule GRM-SUR-2.<sup>282</sup> Schedule GRM-SUR-2 comes from the small public utility

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<sup>278</sup> EFIS No. 93 (December 5, 2017) *Transcript - Volume 6 (Evidentiary Hearing 11 - 30 - 17)* page 558 line 2, through 18.

<sup>279</sup> EFIS No. 103 (December 7, 2017) *Exhibit No. 10 - Direct Testimony of Dylan W. W. D'Ascendis* Schedule DWD-3, page 1 of 9, and Schedule DWD-4 page 2 of 12;

<sup>280</sup> EFIS No. 95 (December 7, 2017) *Exhibit No. 2 - Rebuttal Testimony of Josiah Cox (Public & Confidential)* page 17 line 1, through line 12. EFIS No. 104 (December 7, 2017) *Exhibit No. 11 - Rebuttal Testimony of Dylan W. D'Ascendis* page 9 line 1, through line 8. EFIS No. 105 (December 7, 2017) *Exhibit No. 12 - Surrebuttal Testimony of Dylan W. D'Ascendis* page 4 line 5, through line 12.

<sup>281</sup> EFIS No. 91 (December 5, 2017) *Transcript - Volume 4 (Evidentiary Hearing 11-28-17)* page 472 line 15, through line 25.

rate case filed by another Glarners' entity.<sup>283</sup> Schedule GRM-SUR-2 showed that such sources were available to 24 other small water companies in Missouri. No party challenges the accuracy of any cost of debt set forth in Schedule GRM-SUR-2. The average of those costs of debt, excluding Hillcrest, is 5.16 percent. That cost of debt is close to Staff's original recommendation.<sup>284</sup> Instead, Indian Hills seeks to distinguish itself from the small water companies listed in Schedule GRM-SUR-2.

But Indian Hills' distinguishing evidence is second-hand,<sup>285</sup> so Exhibit 15 inevitably carries the vagaries of second-hand evidence.<sup>286</sup> The absent declarants were not subject to cross-examination by the parties or the Commission, so the accuracy of the declarants' perceptions and representations is untested. Even conceding 100 percent candor and accuracy to Indian Hills' witness on this point does not increase the weight of Indian Hills' evidence on this point to match the plain content of Schedule GRM-SUR-2. Indian Hills has never challenged the accuracy of Schedule GRM-SUR2.

Even if the Commission gave full weight to Indian Hills' evidence on this point, the Commission would remain unconvinced.

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<sup>282</sup> EFIS No. 139 (December 7, 2017) *Exhibit No. 211 - Surrebuttal Testimony of Greg R. Meyer (Public)* page 6 line 16, through page 7 line 6; Schedule GRM-SUR-2. EFIS No. 91 (December 5, 2017) *Transcript - Volume 4 (Evidentiary Hearing 11-28-17)* page 487 line 18 through 20.

<sup>283</sup> File No. SR-2016-0202, EFIS No. 30, (October 13, 2016) *Rebuttal Testimony of Charles R. Hyneman* Schedule CRH R-1; page 12 line 17, through line 24. ***In the Matter of the Application of a Rate Increase for Raccoon Creek Utility Operating Company Inc.***

<sup>284</sup> EFIS No. 90 (December 5, 2017) *Transcript - Volume 3 (Evidentiary Hearing 11-27-17)* page 181 line 14, through line 18.

<sup>285</sup> EFIS No. 91 (December 5, 2017) *Transcript - Volume 4 (Evidentiary Hearing 11-28-17)* page 469 line 3, through line 4; page 470 line 17, through line 20; page 473, line 3, through line 7.

<sup>286</sup> OPC objected to Exhibit 15, summarizing Indian Hills' evidence on this point. The Commission overruled that objection under Section 536.070(11), which provides that "All the circumstances relating to the making of such . . . survey . . . may be shown to affect the weight of such evidence but such showing shall not affect its admissibility [.]" EFIS No. 91 (December 5, 2017) *Transcript - Volume 4 (Evidentiary Hearing 11-28-17)* page 477 line 5, through page 478 line 10.

Indian Hills argues that the lower interest rates of other small utilities are due to undesirable characteristics that Indian Hills does not have. For example, Indian Hills argues that some of the small utilities still have environmental issues that make their business risky. That logic does not aid Indian Hills because Indian Hills has, commendably, remedied its environmental violations. Indian Hills' improved condition should, under Indian Hills' logic, make lower interest available to Indian Hills.

Indian Hills also argues that some of the small utilities have additional collateral securing the loans—personal assets of the owners. That argument also works against Indian Hills because whether to offer such additional security is the investors' choice, and the customers need not pay the extra interest occasioned by that choice.

Indian Hills argues that Staff determined that the system had a net book value of only \$43,966 at the time of the acquisition case.<sup>287</sup> The acquisition case contains no Commission determination of the system's net book value, and the parties to the sale of Indian Hills' purchase valued the system at substantially more.<sup>288</sup> Moreover, Indian Hills does not show that its net book value distinguishes its cost of debt from the other small utilities.

Indian Hills also cites **Hillcrest Rate Case**, in which the Commission approved a 14% interest rate.<sup>289</sup> The Commission prefers to be consistent in its analysis and follow

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<sup>287</sup> EFIS No. 95 (December 7, 2017) *Exhibit No. 2 - Rebuttal Testimony of Josiah Cox (Public & Confidential)* page 4 line 21, through line 22.

<sup>288</sup> File No. WO-2016-0045, EFIS No. 1, *Application and, If Necessary, Motion for Waiver* Appendix E (Highly Confidential), ***In the Matter of the Application of Indian Hills Utility Operating Company, Inc. to Acquire Certain Water Assets of I. H. Utilities, Inc. and, in Connection Therewith, Issue Indebtedness and Encumber Assets.***

<sup>289</sup> **Hillcrest Rate Case** seems to be the strongest basis for Staff's lukewarm endorsement of 14 percent interest. EFIS No. 90 (December 5, 2017) *Transcript-Volume 3 (Evidentiary Hearing 11-27-17)* page 177 line 19, through line 24; page 181 line 2, through line 10. Indeed, Staff initially recommended five percent

its earlier decisions but will depart from earlier decisions when there is good reason. Here, there is good reason. **Hillcrest Rate Case** was the first rate case for of the Glarner entities. With a growing number of systems, and more experience in operations and regulatory practice, market prices for credit should follow. In this case, the record convinces the Commission that the interest rate and pre-payment penalty exceed what the marketplace offers, that the excess constitutes a benefit to the Glarners only, and not the ratepayers, and it would be unreasonable to pass forward these costs to ratepayers.

The premise underlying all Indian Hills' arguments about the loan is that it tried to get better financing but none was available. Indian Hills and Staff defy OPC to find a lender at market rates but that argument reverses the burden of proof; OPC has no duty to find Indian Hills a lender. Indian Hills has the burden of proof to show that its rate increase supports just and reasonable rates.<sup>290</sup> The documentation of Indian Hills' search for debt is scant and, in some cases, irrelevant.<sup>291</sup> The Commission finds it unconvincing.

Moreover, even if other Glarners' entities were Indian Hills' only possible source of capital, that limitation would not necessitate the loan's provisions. The Glarners' entities have routinely transferred equity among one another.<sup>292</sup> The loan's high interest

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interest. EFIS No. 174 (December 11, 2017) *Exhibit No. 245 - Recommended Rate of Return for Indian Hills Utility Operating Company, Inc. as of March 31, 2017*. The staff member making that recommendation participated no further in the case. EFIS No. 90 (December 5, 2017) *Transcript-Volume 3 (Evidentiary Hearing 11-27-17)* page 176 line 23, through page 177 line 10.

<sup>290</sup> Section 393.150.2.

<sup>291</sup> EFIS No. 137 (December 7, 2017) *Exhibit No. 209 - Direct Testimony of Greg R. Meyer* page 10 line 13, through page 12 line 14.

<sup>292</sup> EFIS No. 137 (December 7, 2017) *Exhibit No. 209 - Direct Testimony of Greg R. Meyer* page 5 line 1, through page 10 line 12.

rate and pre-payment penalty give the Glarners an advantage, even over Josiah Cox, because debt has priority over equity. No corresponding advantage to the customers is apparent.

Finally, the Commission conditioned Indian Hills' financing in the acquisition case on using those funds solely to buy and improve the system, but Indian Hills violated that directive by commingling those moneys with other Glarner entities.<sup>293</sup> And Indian Hills has not been forthcoming as to the relationships among the Glarners' entities. That strongly suggests to the Commission that the Glarners never intended Indian Hills to pay interest to anyone but themselves, and did not intend to pay themselves at a market rate.

The Commission will order that the compliance tariffs shall include an amount in Indian Hills' rates and charges for cost of debt as sought by OPC.

OPC also asks that the Commission order that the compliance tariffs include no amount for the pre-payment penalty in Indian Hills' rates and charges. Under that penalty provision, refinancing the debt at a lower rate would perversely burden customers even more, because they would pay the refinanced interest rate and every penny of the 14 percent interest rate that was due over 20 years, even if Indian Hills uses that money for merely a couple of years.

The *Non-Unanimous Stipulation and Agreement* provides that, if the Commission orders the compliance tariffs to include an amount for cost of debt at 14 percent:

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<sup>293</sup> EFIS No. 128 (December 7, 2017) *Exhibit No. 200 - Direct Testimony of Keri Roth* (Confidential) page 13 line 1, through line 4.

. . . the Company agrees to submit a modification of loan agreement to reduce the prepayment penalty term from 20 years to 10 years.<sup>294</sup>

Indian Hills argues that such a modification can only happen under Indian Hills' consent.

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That may be true. Borrowers and lenders may make whatever provisions on penalties, interest rates, and other provisions that they find suitable for themselves, as the law provides. But how the Glarners' entities relate to one another is not before the Commission.

Before the Commission is the content of tariffs that will support safe and adequate service at just and reasonable rates. The Commission makes that determination on a preponderance of the evidence on the record. The record does not show that a 20-year, or even a 10-year, pre-payment penalty supports safe and adequate service at just and reasonable rates.

Because Indian Hills has not carried its burden of showing the amount of any pre-payment penalty that supports safe and adequate service at just and reasonable rates, the Commission will order that the tariffs shall include in rates and charges no amount for a pre-payment penalty.

Therefore, on the issue of cost of debt, the Commission will order the filing of compliance tariffs according to the OPC position statement.

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<sup>294</sup> EFIS No. 87 (November 22, 2017) *Non-Unanimous Stipulation and Agreement* page 6.

<sup>295</sup> That provision unmistakably resembles the last-minute concession of a party to negotiations who, as the time for bargaining runs out, senses that it has over-reached.



iii. *Return on Equity.*

Staff's Initial Recommendation <sup>296</sup>	OPC <sup>297</sup>	Commission	Staff/Indian Hills Position Statement <sup>298</sup>	Indian Hills <sup>299</sup>
9.34%	9.34%	<b>12%</b>	12%	15.20%

The issues list and the prevailing position statement use the following language.

c. *What return on common equity should be used for determining rate of return?*

- *[R]eturn on equity (ROE) of 12%.*

Findings of Fact

1. Unlike debt, the return that investors demand for equity is not subject to direct observation.<sup>300</sup> Financial analysis calculates return on equity by applying financial models to proxy groups of companies that have common equity costs based in the market.<sup>301</sup> No proxy group can be identical in risk to any single company, so adjustments may be appropriate.<sup>302</sup>

2. Cost of equity models (“models”) include<sup>303</sup> the:

<sup>296</sup> EFIS No. 112 (December 7, 2017) *Exhibit No. 100 - Direct Testimony of Natelle Dietrich* page 4 line 3, through line 10.

<sup>297</sup> EFIS No. 169 (December 11, 2017) *Exhibit No. 213 - Direct Testimony of Michael P. Gorman* page 5 line 9, through line 11; EFIS No. 14 *Partial Disposition Agreement and Request for Evidentiary Hearing* Appendix 1, Attachment A second paragraph.

<sup>298</sup> EFIS No. 87 (November 22, 2017) *Non-Unanimous Stipulation and Agreement* page 5 paragraph 5.

<sup>299</sup> EFIS No. 91 (December 5, 2017) *Transcript - Volume 4 (Evidentiary Hearing 11 - 28 - 17)* page 400 line 10, through line 20.

<sup>300</sup> EFIS No. 103 (December 7, 2017) *Exhibit No. 10 - Direct Testimony of Dylan W. D'Ascendis* page 19 line 12, through line 13.

<sup>301</sup> EFIS No. 103 (December 7, 2017) *Exhibit No. 10 - Direct Testimony of Dylan W. D'Ascendis* page 6 line 11, through line 17.

<sup>302</sup> EFIS No. 103 (December 7, 2017) *Exhibit No. 10 - Direct Testimony of Dylan W. D'Ascendis* page 6 line 17, through line 20.

<sup>303</sup> EFIS No. 103 (December 7, 2017) *Exhibit No. 10 - Direct Testimony of Dylan W. D'Ascendis* page 7)

- a. Discounted Cash Flow (“DCF”) model, single-stage constant growth version. That model assumes that an investor buys a stock for an expected total return rate, which is derived from cash flows received in the form of dividends plus appreciation in market price, and determines the present value of an expected future stream of net cash flows by discounting those cash flows at the cost of capital.<sup>304</sup>
- b. Risk Premium Model (“RPM”). Risk Premium considers that debt is less risky than equity, so stock issuers must offer a premium to attract investors over bonds. Generally, the risk premium is the difference between cost of debt and return on equity.<sup>305</sup>
- c. Capital Asset Pricing Model (“CAPM”). CAPM focuses on the degree of risk that distinguishes one investment from the market as a whole. CAPM multiplies risk in the market as a whole times the instability of an investment relative to the market as a whole, and adds the risk-free return rate to determine RoE.<sup>306</sup>

3. Indian Hills used two proxy groups: a group of eight regulated water utilities and a group of non-regulated companies of comparable risk.<sup>307</sup> Applying the models to

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<sup>304</sup> EFIS No. 103 (December 7, 2017) *Exhibit No. 10 - Direct Testimony of Dylan W. D’Ascendis* page 16 line 11, through line 21.

<sup>305</sup> EFIS No. 103 (December 7, 2017) *Exhibit No. 10 - Direct Testimony of Dylan W. D’Ascendis* page 19 line 14, through line 20.

<sup>306</sup> EFIS No. 103 (December 7, 2017) *Exhibit No. 10 - Direct Testimony of Dylan W. D’Ascendis* page 30 line 12, through line 20.

<sup>307</sup> EFIS No. 103 (December 7, 2017) *Exhibit No. 10 - Direct Testimony of Dylan W. D’Ascendis* page 7 line, through line 8.

Indian Hills' proxy groups yields a return on equity at 10.35 percent before any adjustments ("Indicated Common Equity Cost Rate before Adjustment").<sup>308</sup>

4. No financial risk adjustment is necessary to account for instability because the Commission is ordering a 50/50 capital structure for Indian Hills.<sup>309</sup>

5. An adjustment between 1.34 percent and 3.94 percent<sup>310</sup> for the system's extremely small size is reasonable.<sup>311</sup>

### Discussion

Indian Hills' 12 percent cost of equity is the approximate half way point between the positions of OPC and Indian Hills, but splitting the difference is not the grounds for the Commission's ruling. The Commission is grounding its ruling on the method described in the testimony of Indian Hills' witness for return on equity, Dylan W. D'Ascendis.

Mr. D'Ascendis described how he used the characteristics of the proxy group. First, he examined the market-based equity costs of that group. Second he made adjustments for Indian Hills' unique risks relative to that proxy group. The Commission will apply that method as follows.

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<sup>308</sup> EFIS No. 103 (December 7, 2017) *Exhibit No. 10 - Direct Testimony of Dylan W. D'Ascendis* page 38 line 3, through line 17.

<sup>309</sup> EFIS No. 91 (December 5, 2017) *Transcript-Volume 4 (Evidentiary Hearing 11-28-17)* page 402 line 6, through line 9.

<sup>310</sup> EFIS No. 91 (December 5, 2017) *Transcript-Volume 4 (Evidentiary Hearing 11-28-17)* page 402 line 12, through line 19. This is the testimony of Dylan W. D'Ascendis. Indian Hills' witness for return on equity.

<sup>311</sup> EFIS No. 91 (December 5, 2017) *Transcript-Volume 4 (Evidentiary Hearing 11-28-17)* page 402 line 12, through line 19. This is the testimony of Dylan W. D'Ascendis. Indian Hills' witness for return on equity.

The Commission has already compensated for the significant investment to remedy environmental non-compliance with a hypothetical capital structure of 50/50. That capital structure reduces risk and stabilizes a public utility's finances more than a 65/35 capital structure, which Indian Hills and Staff seeks; and even further below 77.12/22.88, which is the capital structure that Indian Hills claims to have.

The Commission concludes that a 12% return on equity represents what the market would pay for equity in Indian Hills. An adjustment of 1.65 percent for the risk represented by the system's extremely small size is reasonable. Adding that adjustment to the Indicated Common Equity Cost Rate before Adjustment of 10.35 percent results in a 12% return on equity.

Therefore, on the issue of return on equity, the Commission will order the filing of compliance tariffs according to the Staff/Indian Hills position statement.

### C. Rate Design

The Commission is ordering that the compliance tariffs shall set forth a rate design, with a base charge and a seasonal volumetric rate, as described in Staff's primary scenario.<sup>312</sup> The issues list and the prevailing position statement use the following language.

*a. How should rates be developed based on the cost of service approved in this case?*

*b. Should a seasonal rate design be adopted in this case, and if so, what should be the structure of the seasonal and non-seasonal rates?*

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<sup>312</sup> EFIS No. 179 (January 16, 2018) *Staff's Rate Design Scenarios*.

Base Charge	Volumetric rate (per 1,000 gallons)	
\$50.90	\$14.05	April -- September
	\$9.37	October – March

Since the Commission has ordered a revenue requirement less than Indian Hills sought, the Commission is also ordering that Customer bills shall reflect the difference between the revenue requirement that Indian Hills sought and the revenue requirement that the Commission is ordering. The compliance tariffs shall proportionally reduce each of the seasonal volumetric rates set forth in Staff's primary scenario.

#### Findings of Fact

1. Generally, usage data helps to determine the costs that each type of customer is placing on the system and develop rates accordingly,<sup>313</sup> but current usage data for Indian Hills is limited.<sup>314</sup> Nevertheless other information about water systems in general and Indian Hills' system in particular, assists in designing rate structure.

2. Any water system must be ready to meet peak demand with sufficient infrastructure all year,<sup>315</sup> even though the peak demand does not last all year.<sup>316</sup>

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<sup>313</sup> EFIS No. 119 (December 7, 2017) *Exhibit No. 107 - Rebuttal Testimony of Curtis B. Gateley* page 6 line 14, through line 18.

<sup>314</sup> EFIS No. 119 (December 7, 2017) *Exhibit No. 107 - Rebuttal Testimony of Curtis B. Gateley* page 6 line 14, through line 18.

<sup>315</sup> EFIS No. 119 (December 7, 2017) *Exhibit No. 107 - Rebuttal Testimony of Curtis B. Gateley* page 2 line 14, through line 15

<sup>316</sup> EFIS No. 96 (December 7, 2017) *Exhibit No. 3 - Surrebuttal Testimony of Josiah Cox* page 4 line 16, through line 19.

Assumed principles underlying rate design also include assigning costs proportionally to the customers whose demands cause the costs.<sup>317</sup>

3. Ways in which a water company may bill its customers for water service include the following:

a. A base charge is a flat amount that applies to each customer just for being a customer, because some expenses are necessary to run the system without regard to how much water a customer uses.<sup>318</sup>

b. A volumetric rate, sometimes called a usage rate or a commodity rate, is an amount per gallon of water that passes through a customer's meter.<sup>319</sup>

4. A volumetric rate too high could cause customers to modify their behavior to an extreme degree to avoid using water.<sup>320</sup> If customers do not use enough water, Indian Hills will not have enough revenue to provide safe and adequate service.<sup>321</sup>

5. Use of the system varies by season because only half of Indian Hills' customers are full-time residents, who reside in Indian Hills' service territory all year.<sup>322</sup>

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<sup>317</sup> EFIS No. 96 (December 7, 2017) *Exhibit No. 3 - Surrebuttal Testimony of Josiah Cox* page 4 line 19, through page 5 line 3.

<sup>318</sup> EFIS No. 91 (December 5, 2017) *Transcript-Volume 4 (Evidentiary Hearing 11-28-17)* page 512 line 9, through line 14.

<sup>319</sup> EFIS No. 94 (December 7, 2017) *Exhibit No. 1 - Direct Testimony of Josiah Cox (Public & Confidential)* page 22 Line 1, through line 2.

<sup>320</sup> EFIS No. 91 (December 5, 2017) *Transcript-Volume 4 (Evidentiary Hearing 11-28-17)* page 509 line 16, through line 21.

<sup>321</sup> EFIS No. 91 (December 5, 2017) *Transcript-Volume 4 (Evidentiary Hearing 11-28-17)* page 515 line 22, through page 516 line 4.

<sup>322</sup> EFIS No. 119 (December 7, 2017) *Exhibit No. 107 - Rebuttal Testimony of Curtis B. Gateley* page 3 line 15, through line 17.

The other half of Indian Hills' customers are part-time residents,<sup>323</sup> who have another home elsewhere,<sup>324</sup> and are more likely to be present in Indian Hills' service territory from April through September.<sup>325</sup>

6. April through September correspond approximately to Missouri lake recreation season used by MDNR in the context of Water Quality.<sup>326</sup> During the lake recreation season, customers are all or almost all present, and the system is at its peak demand.<sup>327</sup> In other words, the occasional presence of part-time residents and full-time residents determines peak demand, which determines the necessary capacity of the system.<sup>328</sup>

7. Therefore, a seasonally adjusted volumetric rate, shifting cost recovery towards the lake recreation season, spreads costs among more customers including those whose seasonal presence drives the peak that the system must meet.<sup>329</sup>

### Discussion

In response to the Commission's post-hearing order, Staff filed rate design scenarios showing various configurations of amounts that Indian Hills could collect to

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<sup>323</sup> EFIS No. 119 (December 7, 2017) *Exhibit No. 107 - Rebuttal Testimony of Curtis B. Gateley* page 3 line 15, through line 17.

<sup>324</sup> EFIS No. 91 (December 5, 2017) *Transcript-Volume 4 (Evidentiary Hearing 11-28-17)* page 523 line 1, through line 11.

<sup>325</sup> EFIS No. 113 (December 7, 2017) *Exhibit No. 101 - Direct Testimony of Curtis B. Gateley* page 11, through line 14.

<sup>326</sup> MDNR regulation 10 CSR 20-7.031, Table A. EFIS No. 96 (December 7, 2017) *Exhibit No. 3 - Surrebuttal Testimony of Josiah Cox* page 5 line 4, through line 9.

<sup>327</sup> EFIS No. 96 (December 7, 2017) *Exhibit No. 3 - Surrebuttal Testimony of Josiah Cox* page 4 line 7, though line 10.

<sup>328</sup> EFIS No. 96 (December 7, 2017) *Exhibit No. 3 - Surrebuttal Testimony of Josiah Cox* page 4 line 7, though line 10.

<sup>329</sup> EFIS No. 96 (December 7, 2017) *Exhibit No. 3 - Surrebuttal Testimony of Josiah Cox* page 14 line 13, through page 5 line 3.

meet its revenue requirement. Neither Indian Hills nor OPC opposed any of those scenarios or provided alternatives. The Commission concludes that Staff's primary scenario represents the configuration that best balances Indian Hills' need for revenue with the customers' need for rates that are not oppressive.

The system must be able to provide service during peak usage times, so a rate design with a higher volumetric rate during the peak usage season will more efficiently pass costs to customers based on system use if properly implemented. This type of rate design, in conjunction with a standard monthly base charge, if properly implemented, will provide that users of the system, whether they are full time residents or second home owners, are bearing their share of Indian Hills' costs. Staff's primary scenario accomplishes this by shifting costs cautiously toward the months of April through September when the part-time residents are more likely using the system, and available to bear the costs of service, without jeopardizing Indian Hills' ability to collect revenue.

By contrast, OPC proposed a higher winter volumetric rate<sup>330</sup> that would cause customers to use less water,<sup>331</sup> and threatens Indian Hills' ability to provide safe and adequate service.<sup>332</sup> OPC argues that its lesser customer charge or disconnection fees will stop customers from doing so, and argues that Indian Hills should give customers notice when seasonal rates change. No evidence shows that either measure would be effective.

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<sup>330</sup> EFIS No. 91 (December 5, 2017) *Transcript-Volume 4 (Evidentiary Hearing 11-28-17)* page 509 line 22, though page 510 line 2.

<sup>331</sup> EFIS No. 91 (December 5, 2017) *Transcript-Volume 4 (Evidentiary Hearing 11-28-17)* page 509 line 8, through line 21.

<sup>332</sup> EFIS No. 91 (December 5, 2017) *Transcript-Volume 4 (Evidentiary Hearing 11-28-17)* page 515 line 22, through page 516 line 4.



Staff designed its primary scenario on the revenue requirement for which Staff argued as the Commission instructed. However, the Commission is ordering a revenue requirement less than that. Therefore, the compliance tariffs must collect a lesser amount than contemplated in Staff's primary scenario. The Commission will order that the difference shall appear in lesser volumetric charges for each season than set forth in Staff's primary scenario, so that water itself will be less costly.

Therefore, on the issue of rate design, the Commission will order the filing of compliance tariffs according to Staff's primary scenario with an adjustment to the volumetric rate as described.

#### **IV. Orders**

The Commission will order the filing of compliance tariffs pursuant to the determinations made in this report and order. The Commission will also order the filing of the reconciliation required by Section 386.420.4.

#### **THE COMMISSION ORDERS THAT:**

1. No later than February 14, 2018, Indian Hills Utility Operating Company, Inc. shall file the reconciliation as described in the body of this order.
2. No later than February 14, 2018, Indian Hills Utility Operating Company, Inc. shall file compliance tariffs as described in the body of this order.

3. This report and order shall be effective on February 17, 2018.

**BY THE COMMISSION**



A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Hall, Chm., Kenney, Rupp, Coleman,  
and Silvey, CC., concur;  
and certify compliance with  
Section 536.080, RSMo 2016.

Dated at Jefferson City, Missouri,  
on this 7<sup>th</sup> day of February, 2018.

Appendix: Appearances

For:

Indian Hills Utility Operating Company, Inc.:  
Dean L. Cooper, Attorney at Law  
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**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Sixth Prudence Review of Costs    )  
 Subject to the Commission-Approved Fuel                )  
 Adjustment Clause of The Empire District Electric    )  
 Company                                                            )     **File No. EO-2017-0065**

**AMENDED REPORT AND ORDER**

Affirmed on appeal: *Matter of the Sixth Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of The Empire District Electric Company v. Public Service Commission*, 572 S.W.3d 112 (Mo. App. W.D. 2019)

**ELECTRIC**

**§42 Planning and management**

Nothing in the Commission’s rules or in Missouri statutes requires an electric utility to hedge its natural gas supply. The decision to do so is a management decision for the company.

**§42 Planning and management**

The purpose of a hedging program is not to “beat” the market, nor is the purpose of a hedging program to always attempt to obtain the lowest price for natural gas. Rather, the purpose is to provide predictable fuel and purchased power costs over a multi-year period by reducing market risk.

**§42 Planning and management**

A hedging program may still provide value to a utility and its customers by reducing risk even if the adverse outcomes hedged against do not come to pass.

**EVIDENCE, PRACTICE AND PROCEDURE**

**§1 Generally**

A chart in party’s brief that illustrates data that is in evidence, is not itself evidence, and need not be struck from the brief. The Commission will determine whether the chart accurately illustrates the record evidence.

**EXPENSE**

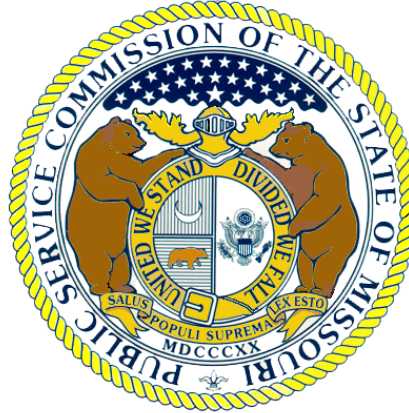
**§22 Reasonableness generally**

A utility’s management decision is judged by what the utility knew at the time it made the decision. If a utility has exercised prudence in reaching a decision an adverse result does not make the decision imprudent.

**§22 Reasonableness generally**

The presumption of prudence means utilities seeking a rate increase are not required to demonstrate in their case in chief that all expenditures are prudent. Rather, where some other participant in the proceeding creates a serious doubt as to the prudence of the expenditure, the applicant has the burden of dispelling those doubts and proving the questioned expenditure to have been prudent.

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Sixth Prudence Review )  
of Costs Subject to the Commission-Approved )  
Fuel Adjustment Clause of The Empire District )  
Electric Company )

**File No. EO-2017-0065**

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## AMENDED REPORT AND ORDER

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**Issue Date: February 28, 2018**

**Effective Date: March 10, 2018**

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Sixth Prudence Review	)	
of Costs Subject to the Commission-Approved	)	<b><u>File No. EO-2017-0065</u></b>
Fuel Adjustment Clause of The Empire District	)	
Electric Company	)	

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For the Office of the Public Counsel and the Public.

Chief Regulatory Law Judge: **Morris L. Woodruff**

# REPORT AND ORDER

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The Missouri Public Service issued its report and order resolving this case on January 3, 2018, and gave it an effective date of February 2, 2018. The Office of the Public Counsel filed a timely application for rehearing. In response to that application, the Commission will withdraw its January 3 report and order and replace it with this amended report and order. The amended report and order will be given a ten-day effective date to allow an opportunity for the filing of a new application for rehearing if any party wishes to do so.

The Missouri Public Service Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

### **Procedural History**

On February 28, 2017, the Commission's Staff filed its report regarding its sixth prudence audit of The Empire District Electric Company's costs subject to the company's fuel adjustment clause (FAC). Staff's report set forth the results of its prudence audit and concluded that Staff "identified no instances of imprudence on the part of Empire during the period of review." On March 10, the Office of the Public Counsel timely requested an evidentiary hearing. The Commission adopted the procedural schedule proposed by the parties and written direct, rebuttal, and surrebuttal testimony was filed by Empire, Staff, and Public Counsel. An evidentiary hearing was held on August 24. Thereafter, the parties filed initial and reply briefs.

### **Public Counsel's Motion to Strike a Portion of Empire's Reply Brief**

On October 27, Public Counsel filed a motion asking the Commission to strike a portion of Empire's reply brief. Public Counsel challenges a chart entitled Gas Market Review Prices, which appears on page 12 of that brief, alleging that the chart is not in evidence and has not been subject to cross-examination. Empire replied to Public Counsel's motion on November 6, explaining that the chart is based on data that is in evidence and is offered to illustrate that evidence.

The Commission agrees with Public Counsel that the brief of any party is not evidence and that the challenged chart is not evidence. As such, the Commission has not relied on the chart in reaching its decision. But the chart is intended to illustrate data that is in evidence. Public Counsel counters by asserting that the chart does not accurately illustrate the record evidence.

The chart is not direct evidence, but it is an illustration of record evidence. As such it is properly included in Empire's brief.<sup>1</sup> It is up to the Commission to determine whether it accurately illustrates the record evidence just as the Commission must weigh the accuracy of all the other arguments presented by the parties in their briefs. Public Counsel's motion to strike will be denied.

### **Findings of Fact**

1. Empire is a Missouri certificated electrical corporation as defined by Section 386.020(15), RSMo 2016, and is authorized to provide electric service to portions of Missouri.

2. The Commission first authorized Empire to utilize a fuel adjustment clause -

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<sup>1</sup> *Berlin v. Pickett*, 221 S.W.3d 406, fn. 4, (Mo. App. W.D. 2006).

an FAC – to recover certain costs from its ratepayers in a 2008 general rate case.<sup>2</sup> Subsequently, the Commission approved Empire’s continued use of an FAC in its 2010, 2011, 2012, 2015, and 2016 general rate cases.<sup>3</sup>

3. In this, Empire’s sixth prudence review since it was authorized to utilize an FAC, the Commission’s Staff:

reviewed, analyzed and documented items affecting Empire’s fuel and purchased power costs, net emission allowance costs, and items affecting Empire’s fuel and purchased power costs, net emission allowance costs, and off-system sales and renewable energy credit (“REC”) revenues for its FAC’s fourteenth, fifteenth, and sixteenth six-month accumulation period ....<sup>4</sup>

That eighteen-month period, beginning March 1, 2015 and ending August 31, 2016, is the period at issue in this prudence review case.<sup>5</sup>

4. Staff filed its Sixth Prudence Audit Report on February 28, 2017, and generally concluded that it found no evidence of imprudence by Empire for the items it examined during the period of review.<sup>6</sup> In particular, Staff “did not find Empire acted imprudently in the administration of its risk management strategies during the review period.”<sup>7</sup>

5. Further, Staff found that during the review period Empire experienced a hedging net loss on natural gas derivatives of \$10,712,168. However, Staff found “no indication of imprudence associated with Empire’s purchases of natural gas including the

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<sup>2</sup> *In the Matter of The Empire District Electric Company’s Tariffs to Increase Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company*, Case No. ER-2008-0093, 17 Mo. P.S.C. 3d 631 (July 30, 2008).

<sup>3</sup> Staff’s Sixth Prudence Audit Report, Ex. 200, Page 1.

<sup>4</sup> Staff’s Sixth Prudence Audit Report, Ex. 200, Page 1.

<sup>5</sup> Staff’s Sixth Prudence Audit Report, Ex. 200, Page 1.

<sup>6</sup> Staff’s Sixth Prudence Audit Report, Ex. 200, Page 1.

<sup>7</sup> Staff’s Sixth Prudence Audit Report, Ex. 200, Page 14.

hedging loss on natural gas derivatives for the prudence review period.”<sup>8</sup>

6. Staff made the same finding of no indication of imprudence in each of Empire’s five previous prudence audit reports.<sup>9</sup>

7. Public Counsel challenged Staff’s finding of no-indication-of-imprudence and requested an evidentiary hearing, arguing that Empire’s inflexible natural gas hedging policies resulted in significant additional costs to ratepayers.<sup>10</sup>

8. Empire purchases natural gas as a fuel source for the generation of electricity to sell to its customers. Generation from natural gas accounts for approximately 40 percent of Empire’s total electric generation.<sup>11</sup>

9. In making hedging decisions, Empire utilizes a formal Risk Management Policy and has done so since 2001. The Risk Management Policy:

defines the goals of Empire’s hedging strategy as the provision of predictable fuel and purchased power costs over a multi-year period and the framework to allow for management of its risk positions. The framework includes a comprehensive set of tools to mitigate the adverse impacts associated with changing natural gas or wholesale electricity prices. In effect, the strategies set out to determine the reasonable amount of market risk to balance costs and volatility while still providing the electric customers with reasonable fuel costs.<sup>12</sup>

10. One of the stated objectives of the Risk Management Policy is to “[a]llow utilization of physical and financial tools to provide a predictably priced reasonable cost gas-supply.”<sup>13</sup>

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<sup>8</sup> Staff’s Sixth Prudence Audit Report, Ex. 200, Page 16.

<sup>9</sup> Doll Direct, Ex. 100, Page 2, Lines 11-19. .

<sup>10</sup> Motion for Evidentiary Hearing, Filed March 10, 2017.

<sup>11</sup> Mertens Surrebuttal, Ex. 105, Page 7, Lines 21-23.

<sup>12</sup> Sager Rebuttal, Ex. 106, Page 3, Lines 7-15.

<sup>13</sup> Energy Risk Management Policy, Ex. 18c, page 3. (Although the exhibit is marked as confidential, only appendix 12 of the RMP is confidential, see Transcript, Page 239.)

11. As to hedging, the Risk Management Policy provides that Empire will begin purchasing hedges for its gas needs four years before the gas will be burned, using this structure:

- Hedge a minimum of 10% of year four expected gas burn
- Hedge a minimum of 20% of year three expected gas burn
- Hedge a minimum of 40% of year two expected gas burn
- Hedge a minimum of 60% of year one expected gas burn

Current year hedging may reach up to 100% and any future year may reach up to 80%.<sup>14</sup> Empire's policy allows for hedging more than the minimum percentages, but not less.<sup>15</sup>

12. Empire's Risk Management Policy is overseen by a Risk Management Oversight Committee (RMOC). The RMOC is a committee formed of Empire's management team. Robert Sager, Empire's Vice President of Finance and Administration,<sup>16</sup> who testified for Empire, is the chair of that committee.<sup>17</sup>

13. The RMOC meets at least quarterly and monitors Empire's aggregate risks and ensures they are managed in accordance with the Risk Management Policy. As part of its oversight, the RMOC approves Empire's hedging strategies.<sup>18</sup>

14. If Empire's gas procurement managers were to conclude that market conditions were such that it would not be appropriate to hedge the minimum volumes of gas in a particular year, the managers would need to seek approval from the RMOC to change those minimum hedging requirement. The managers have never sought such a modification to the

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<sup>14</sup> Sager Rebuttal, Ex. 106, Page 5, Lines 16-24.

<sup>15</sup> Transcript, Page 170, Lines 9-20.

<sup>16</sup> Sager Rebuttal, Ex. 106, Page 1, Lines 3-4.

<sup>17</sup> Sager Rebuttal, Ex. 106, Page 2, Lines 14-19.

<sup>18</sup> Sager Rebuttal, Ex. 106, Pages 2-3, Lines 21-24, 1-6.

policy.<sup>19</sup>

15. Empire has always hedged at least the minimum amounts required by its policy, although in recent years it has moved closer to the minimum hedging bands established in its policy.<sup>20</sup>

16. There is nothing in the Commission's rules or in Missouri's statutes that requires Empire to hedge its natural gas supply. The decision to do so is a management decision for the company.<sup>21</sup>

17. The hedging practices of other utilities may vary. Different situations call for different responses. For example, Empire relies heavily on natural gas to generate electricity so it is more sensitive to the price of natural gas than would be another electric utility more reliant on coal-fired generation.<sup>22</sup>

18. Hedging costs are defined by Empire's FAC tariff as "realized losses and costs ... minus realized gains associated with mitigating volatility in the Company's cost of fuel, ...."<sup>23</sup>

19. Empire has engaged in natural gas price hedging since 2002. The net annual gains and losses it has realized from its financial hedging activities since that time are shown in this table:<sup>24</sup>

Year	Gains	Losses
2002	\$ 1,017,390	
2003	\$10,245,457	
2004	\$12,177,140	

<sup>19</sup> Transcript, Pages 176-177, Lines 19-25, 1-4.

<sup>20</sup> Transcript, Page 186, Lines 9-15.

<sup>21</sup> Transcript, Page 295, Lines 11-21.

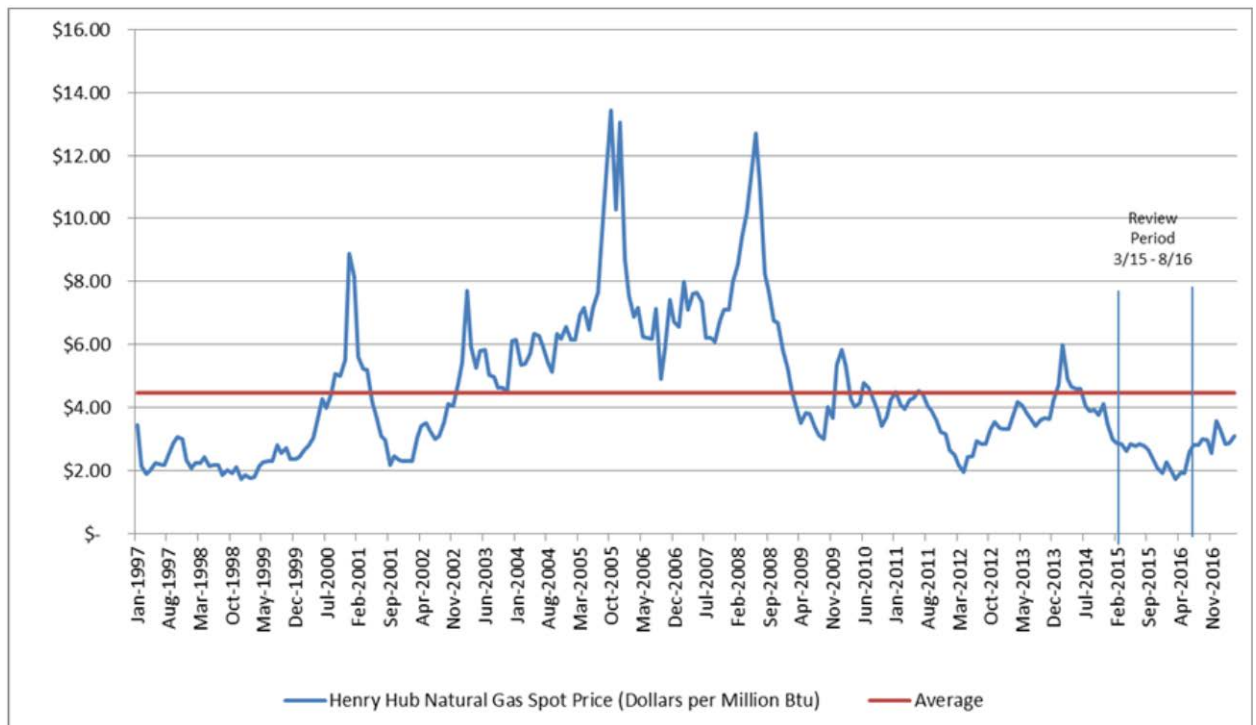
<sup>22</sup> Transcript, Page 296, Lines 12-19.

<sup>23</sup> The Empire District Electric Company Tariff, P.S.C. Mo. No. 5, Sec. 4 Sheet No. 17.

<sup>24</sup> The numbers are drawn from Doll Rebuttal, Ex. 101, Appendix AD-2 as corrected, and made public, at Transcript, Page 166, Lines 14-23.

2005	\$ 8,369,693	
2006	\$1,286,382	
2007	\$ 1,921,630	
2008	\$ 6,043,016	
2009		\$16,103,732
2010		\$ 5,984,150
2011		\$ 904,230
2012		\$ 5,374,710
2013		\$ 3,114,847
2014		\$ 1,233,467
2015		\$ 7,993,467
2016		\$ 3,803,464
2017	\$ 763,428	
Cumulative Total		\$2,259,949

20. The following chart shows monthly natural gas spot prices from January 1997 to April 2017, measured at the Henry Hub, a location in Louisiana used as a the standard delivery location for futures contracts on the NYMEX:<sup>25</sup>



The chart shows that the period of 2000 through 2008 was a period of high natural gas spot prices with frequent price spikes and general price volatility in the natural gas market. Since

<sup>25</sup> The chart is taken from Eaves Rebuttal, Ex. 202, Page 6.

2009, the natural gas market has been less volatile with a downward price trend. During the 18-month period covered by this prudence review, natural gas commodity price levels were lower than any 18-month period since 2000.<sup>26</sup>

21. The market change since 2009 is usually attributed to the emergence of shale gas production, improved transportation pipeline infrastructure, and reduced demand for natural gas.<sup>27</sup>

22. While the natural gas market has been less volatile in recent years compared to what it was between 2000 and 2008, there is no guarantee that those markets will not become increasingly volatile in the future. Indeed, current low natural gas prices may increase future demand, leading to higher prices and possible price spikes.<sup>28</sup> The fact that prices are currently low means the upside risk that prices will increase is greater than the possibility that prices will decrease from their current levels.<sup>29</sup> If utilities abstain from hedging until market volatility increases and market prices rise, the cost of hedging would also increase.<sup>30</sup>

23. For the period of March 2015 through August 2016, the audit period for this prudence review, Empire purchased hedges at various times between 2010 and 2015.<sup>31</sup>

24. In 2010 and 2011, when Empire was purchasing many of the higher priced hedges during the audit period, the NYMEX Henry Hub futures prices were showing market projections for 2015 of \$5.00 to \$7.00 rather than the \$2.00 monthly spot gas prices

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<sup>26</sup> Eaves Rebuttal, Ex. 202, Page 7, Lines 4-5.

<sup>27</sup> Hyneman Direct, Ex. 5, Pages 13-14, Lines 18-32, 1-8.

<sup>28</sup> Doll Surrebuttal, Ex. 102, Page 6, Lines 6-23.

<sup>29</sup> Transcript, Page 213, Lines 13-25.

<sup>30</sup> Sager Rebuttal, Ex. 106, Page 8, Lines 9-12, citing a Public Utilities Fortnightly article attached to Mertens Rebuttal, Ex. 104, Schedule BAM-1.

<sup>31</sup> Doll Rebuttal, Ex. 101, Page 2, Lines 9-10.



actually experienced during that period.<sup>32</sup> A further explanation of the Empire's hedging decisions leading into the audit period, an explanation that the Commission finds to be reasonable, is shown in the testimony of Empire's witness, Aaron Doll.<sup>33</sup>

25. For example, in responding to an assertion in the direct testimony of Public Counsel's witness, John Riley, that in December 2011 Empire hedged over a million dekatherm (Dth) of natural gas at \$5.44/MMBtu when the December 2011 price of natural gas was \$3.17, Doll explained that as of December 31, 2011, Empire's 2015 hedged position was comprised of five transactions, none of which were procured in December 2011. Rather, those positions had been procured at various dates in 2010 and 2011. In fact, the prices paid for gas in those transactions were reasonable based on 2015 NYMEX Henry Hub futures prices existing at the time the purchases were made.<sup>34</sup>

26. Doll further criticizes Riley's testimony as selectively providing "forecasts which are meant to estimate natural gas prices for an entire year to critique an individual transaction in a higher priced month."<sup>35</sup>

27. At the time Empire purchased its hedge positions, many of those positions were negative on a mark-to-market basis. Meaning that if those positions were immediately liquidated based on the current NYMEX price; the company would realize a financial loss.<sup>36</sup>

28. The fact that Empire purchased hedge positions that were negative on a mark to market basis does not mean those purchases were imprudent. The purpose of a hedging program is not to "beat" the market, nor is the purpose of a hedging program to always

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<sup>32</sup> Mertens Rebuttal, Ex. 104, Pages 10-11, Lines 13-16 and Table BAM-2.

<sup>33</sup> Doll Rebuttal, Ex. 101, Pages 3-6. and Doll Surrebuttal, Ex. 102, Pages 7-9, Lines 3-24, 1—23, and 1-7, including tables AD-1 and AD-2.

<sup>34</sup> Doll Rebuttal, Ex. 101, Page 3 and Table AD-1.

<sup>35</sup> Doll Surrebuttal, Ex. 102, Page 8, Lines 16-18.

<sup>36</sup> Transcript, Page 182, Lines 17-25. A sampling of Empire's Gas Position Reports for the period in question may be found in Ex. 16.

attempt to obtain the lowest price for natural gas.<sup>37</sup> Rather, the goal of Empire's RMP is to provide predictable fuel and purchased power costs over a multi-year period by using strategies to determine the reasonable amount of market risk to balance costs and volatility while still providing its electric customers with reasonable fuel costs.<sup>38</sup> The hedging program still provides value to Empire and its customers by reducing risk even if the adverse outcomes hedged against do not come to pass.<sup>39</sup>

29. In that regard, Empire's hedging program works in the same way as property insurance. There is value in purchasing earthquake insurance even if no earthquake occurs.<sup>40</sup>

30. Although Public Counsel's witness expressed near certainty that there would not be a "rapid increase in fuel costs" in the future,<sup>41</sup> other witness were less certain of the future fluctuations in the natural gas markets. Increasing demand for natural gas to generate electricity, increased exports of liquefied natural gas and increases in extreme weather may cause prices to increase.<sup>42</sup> In addition, wild cards, such as hurricanes, earthquakes, pipeline breaks, and other events can affect the natural gas market price. Adverse price movements in the natural gas market, such as occurred during the polar vortex of the winter of 2014, generally are not forecasted.<sup>43</sup>

31. Staff's review of Empire's hedging program found that the company incurred a

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<sup>37</sup> Transcript, Page 188, Lines 21-24.

<sup>38</sup> Sager Rebuttal, Ex. 106, Page 3, Lines 7-15.

<sup>39</sup> Mertens Surrebuttal, Ex. 105, Page 5, Lines 12-15.

<sup>40</sup> Mertens Surrebuttal, Ex. 105, Page 5, Lines 4-8.

<sup>41</sup> Transcript, Page 116, Lines 9-21. Public Counsel's witness was Charles R. Hyneman, Chief Public Utility Accountant for the Office of the Public Counsel. Hyneman Direct, Ex. 5, Page 1, Lines 4-6.

<sup>42</sup> Doll Rebuttal, Ex. 101, Page 9, Lines 1-9.

<sup>43</sup> Doll Rebuttal, Ex. 101, Page 8, Lines 3-12. The spot price for natural gas rose to \$31.27/Dth on February 6, 2014.

\$10,712,168 net hedging loss on natural gas derivatives resulting from its financial hedging during the review period.<sup>44</sup> Public Counsel agrees with Staff's calculation of financial hedging losses,<sup>45</sup> but contends Empire also lost money by hedging the price of natural gas through the purchase of natural gas supplies through forward contracts.<sup>46</sup>

32. Public Counsel calculated the losses from physical hedging by comparing the price Empire actually paid to the spot market price for gas for the amount of gas Empire used in each month. Adding what it describes as the physical hedging losses to Staff's calculation of net hedging losses on natural gas derivatives, Public Counsel asserts a total amount of hedging losses for the 18-month prudence review period attributable to Missouri ratepayers of \$13,104,811.<sup>47</sup>

33. Empire's hedging strategy includes physical forward purchasing of gas supplies as one of many elements of its overall hedging strategy.<sup>48</sup> However, for accounting purposes, physical forward contracts for the purchase of natural gas are treated as a normal purchase used in the ordinary course of business and are not included in calculations to determine hedging gains and losses.<sup>49</sup>

34. Empire must compete in a larger marketplace for the natural gas it uses for electric generation, as well as the pipeline space needed to transport that gas. Its first goal must be to ensure it has adequate supplies of gas to "keep the lights on."<sup>50</sup> Indeed, because Empire relies heavily on natural gas fueled electric generation, it is particularly

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<sup>44</sup> Staff's Sixth Prudence Audit Report, Ex. 200, Page 16.

<sup>45</sup> Riley Direct, Ex. 1, Page 18, Lines 14-19.

<sup>46</sup> Riley Direct, Ex. 1, Page 19, Lines 16-19.

<sup>47</sup> Riley Direct, Ex. 1, Pages 19-20, Lines 24-26, 1-12.

<sup>48</sup> Staff's Sixth Prudence Audit Report, Ex. 200, Page 15. Also, Transcript, Pages 268-269, Lines 25, 1-5.

<sup>49</sup> Sager Surrebuttal, Ex. 108, Page 6, Lines 1-5.

<sup>50</sup> Transcript, Page 308, Lines 3-23.

sensitive to the cost of its natural gas supplies.<sup>51</sup> For that reason, it is very unrealistic to base a calculation of hedging losses on the assumption that Empire could purchase all its gas supplies at spot market prices.

### **Conclusions of Law**

A. Subsection 386.020(15), RSMo 2016 defines “electrical corporation” as including:

every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, ... owning, operating, controlling or managing any electric plant except where electricity is generated or distributed by the producer solely on or through private property for railroad, light rail or street railroad purposes or for its own use or the use of its tenants and not for sale to others;

B. Section 386.266, RSMo 2016 gives the Commission authority to authorize an electrical corporation, such as Empire, to utilize a periodic rate adjustment mechanism, such as the FAC. Subsection 386.266.1 requires that such mechanisms allow the utility an opportunity to recover “prudently incurred fuel and purchased power costs, including transportation.” To ensure that only “prudently incurred” costs are recovered, paragraph 386.266.4(4), RSMO 2016 requires that any authorized periodic rate adjustment mechanism provide for:

prudence reviews of the costs subject to the adjustment mechanism no less frequently than at eighteen-month intervals, and shall require refund of any imprudently incurred costs plus interest at the utility’s short-term borrowing rate.<sup>52</sup>

C. Commission rule 4 CSR 240-20.090(7) also requires that such prudence reviews occur no less frequently than at eighteen month intervals.

D. In determining whether a utility’s conduct was prudent, the Commission will

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<sup>51</sup> Transcript, Page 307, Lines 8-17.

<sup>52</sup> The statutory requirement is repeated in Empire’s approved tariff, The Empire District Electric Company Tariff, P.S.C. Mo. No. 5, Sec. 4 Sheet No. 17.

judge that conduct by:

asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the tasks that confronted the company.<sup>53</sup>

E. The utility's management decision is judged by what the utility knew at the time it made the decision. "If the company has exercised prudence in reaching a decision, the fact that external factors outside the company's control later produce an adverse result does not make the decision extravagant or imprudent."<sup>54</sup>

F. By statute - subsection 393.150.2, RSMo - the requesting utility bears the burden of proving that a requested rate is just and reasonable.

G. Although Empire always bears the burden of proof, the Commission will, in the absence of adequate contrary evidence, presume that a utility's spending is prudent. This presumption of prudence affects who has the burden of proceeding, but does not change the burden of proof.<sup>55</sup>

H. The presumption of prudence means:

utilities seeking a rate increase are not required to demonstrate in their case in chief that all expenditures were prudent.... However, where some other participant in the proceedings creates a serious doubt as to the prudence of the expenditure, then the applicant has the burden of dispelling those doubts and proving the questioned expenditures to have been prudent.<sup>56</sup>

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<sup>53</sup> *In the Matter of the Determination of In-Service Criteria for the Union Electric Company's Callaway Nuclear Plant and Callaway Rate Base and Related Issues and In the Matter of Union Electric Company of St. Louis, Missouri, for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company*, Report and Order, 27 Mo. P.S.C. (N.S.) 183, 194 (March 29, 1985). Quoting a decision of the New York Public Service Commission, *Re. Consolidated Edison Co. of New York, Inc.* 45 P.U.R., 4<sup>th</sup> 331, 1982. The Commission's use of this standard was cited approvingly by the Missouri Court of Appeals in *State ex rel. Associated Natural Gas Co. v. Pub. Serv. Com'n*, 954 S.W.2d 520, 529 (Mo. App. W.D. 1997).

<sup>54</sup> *State ex rel. Missouri Power and Light Co. v. Pub. Serv. Com'n*, 669 S.W.2d 941, 948 (Mo. App. W.D. 1984).

<sup>55</sup> *Office of Pub. Counsel v. Mo. Pub. Serv. Com'n*, 409 S.W.3d 371, 379 (Mo. banc 2013).

<sup>56</sup> *In the Matter of the Determination of In-Service Criteria for the Union Electric Company's Callaway Nuclear Plant and Callaway Rate Base and Related Issues and In the Matter of Union Electric Company of St. Louis,*

The Missouri Supreme Court has acknowledged the appropriateness of that presumption in matters not involving affiliate transactions.<sup>57</sup>

I. The Commission has, by rule, encouraged natural gas distribution utilities to engage in hedging practices to ensure price stability. Commission rule 4 CSR 240-40.018(1)(A) urges natural gas utilities to “structure their portfolios of contracts with various supply and pricing provisions in an effort to mitigate upward natural gas price spikes, and provide a level of stability of delivered natural gas prices.” Subsection (1)(B) of that rule indicates “[f]inancial gains or losses associated with price volatility mitigation efforts are flowed through the Purchased Gas Adjustment (PGA) mechanism, subject to the applicable provisions of the natural gas utility’s tariff and applicable prudence review procedures.” Finally, and most importantly, subsection (1)(C) of the Commission’s rule recognizes that “[p]art of a natural gas utility’s balanced portfolio may be higher than spot market prices at times, and this is recognized as a possible result of prudent efforts to dampen upward volatility.” While Empire is an electric utility, not a natural gas distribution utility, its relatively heavy reliance on natural gas-fired electric generation increases its need to hedge to ensure price stability.

J. Empire’s approved tariff provides that hedging costs, defined as “realized losses and costs ... minus realized gains associated with mitigating volatility in the Company’s cost of fuel ...,” are to be recovered under the fuel adjustment clause as a fuel cost incurred to support sales.<sup>58</sup>

K. Empire’s approved FAC tariff allows the utility to recover 95 percent of

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*Missouri, for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company*, Report and Order, 27 Mo. P.S.C. (N.S.) 183, 193 (March 29, 1985). Quoting, *Anaheim, Riverside, Etc. v. Fed. Energy Reg. Com’n*, 669 F.2d 799, 809 (D.C. Cir. 1981).

<sup>57</sup> *Office of Pub. Counsel v. Mo. Pub. Serv. Com’n*, 409 S.W.3d 371, 376 (Mo. banc 2013).

<sup>58</sup> The Empire District Electric Company Tariff, P.S.C. Mo. No. 5, Sec. 4 Sheet No. 17.

hedging costs through the FAC mechanism.<sup>59</sup> If those costs were not recoverable through the FAC, Empire could recover them by inclusion in its cost of service as part of a general rate proceeding.<sup>60</sup>

L. Section 386.266, RSMo 2016 governs the use by a utility of an interim energy charge or periodic rate adjustment mechanism, including the FAC used by Empire. Subsection 386.266.5 requires that:

[o]nce such adjustment mechanism is approved by the commission under this section, it shall remain in effect until such time as the commission authorizes the modification, extension, or discontinuance of the mechanism in a general rate case or complaint proceeding.

This is not a general rate case or complaint proceeding, so the provisions of Empire's FAC tariff cannot be modified in this case.

### **Decision**

Empire's \$10.7 million financial hedging loss during the 18-month prudence review period draws the attention of anyone looking at the prudence of the company's hedging decisions. Public Counsel uses the fact of those losses as its basis to challenge the prudence of Empire's overall hedging program. Public Counsel contends Empire has failed to adjust its hedging program to account for important changes in the natural gas market brought about by what it terms the "shale gas revolution."

This is a prudence review. That means the Commission will review Empire's conduct to determine whether it was reasonable, at the time, without the benefit of hindsight. During the course of the hearing, Public Counsel examined several individual hedging transactions to show that Empire experienced financial losses on those transactions. Public Counsel

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<sup>59</sup> Transcript, Page 197, Lines 12-14.

<sup>60</sup> Transcript, Page 302, Lines 12-15.

asserts the company should have anticipated and avoided those particular losses,<sup>61</sup> but Public Counsel's proposed adjustment was based on the prudence of Empire's overall hedging program, not on any particular hedging transaction. The mere fact that Empire's hedging program sustained financial losses does not mean that program was imprudent. Empire convincingly established that it operated a prudently designed and reasonable hedging program based on the information available to it at the time it made its decisions.

By pointing out the extent of the losses, Public Counsel has met the minimal requirement of demonstrating a serious doubt so as to place the burden on Empire to prove that its overall hedging policy is prudent. In the judgment of the Commission, Empire has met that burden.

Empire first implemented its risk management policy in 2001. While Empire has reviewed and modified aspects of that policy, the structure of the policy regarding the hedging of certain percentages of its anticipated natural gas needs up to four years before the gas is needed has not changed. In the first years in which that hedging policy was followed, natural gas prices trended upward, meaning purchases of hedge positions in the years before the gas was needed were profitable. In later years, natural gas prices have trended down, meaning the purchased hedge positions have lost money. However, this case is not about whether Empire has made or lost money as a result of its hedging program. Rather, the question is whether Empire acted prudently in continuing to hedge its natural gas purchases using its established risk management policy.

Empire did not undertake its hedging program in an attempt to beat the market and make a profit. Rather, consistent with the Commission's regulation of natural gas distribution companies, with which it shares some characteristics, Empire hedges to

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<sup>61</sup> For example, see Riley Direct, Ex. 1, Pages 17-18.



“structure [its] portfolios with contracts with various supply and pricing provisions in an effort to mitigate upward natural gas price spikes, and provide a level of stability of delivered natural gas prices.”<sup>62</sup> The Commission’s regulation recognizes that at times hedging will mean that the prices the utility will pay for gas will be higher than the spot price subject to the fluctuations of the market, but understands the value of price certainty to both the utility and its customers. It would be terribly unfair to penalize the utility for following a hedging policy just because it did not correctly anticipate the fluctuations of the natural gas markets.

It is very easy to look back at gas market spot prices with perfect 20-20 hindsight to say that Empire’s decision to continue its hedging program has cost its ratepayers a definite amount of money. But the value of certainty and risk reduction gained through the use of a hedging program is less easily defined. The value of having a hedging program truly is analogous to the cost and value of buying property insurance. A homeowner may buy earthquake insurance for a lifetime at a substantial cost and never suffer damage from an earthquake. That does not mean the insurance premiums have been wasted. The risk reduction offered by insurance has a value, although that value may not be fully realized until there is an earthquake, just as the value of hedging may not be fully realized until a combination of factors results in a price spike in the natural gas market.

Public Counsel suggests Empire’s hedging program is imprudent, aside from its resulting hedging losses, because it is purported to be unduly rigid. Empire does indeed continue to hedge a set percentage of the volume of its anticipated gas needs in the years leading up to the burning of that gas. Public Counsel uses this fact to conjure images of Empire heedlessly purchasing hedge positions knowing that they are certain to lose money

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<sup>62</sup> The quote is from Commission rule 4 CSR 240-40.018(1)(A).

for the company, knowing that those losses will simply be passed to ratepayers.<sup>63</sup> However, what Public Counsel decries as rigidity is really just an aspect of applying a consistent hedging strategy. No one can truly know the future and not purchasing a hedge position because of a belief that the price of natural gas will decrease in a few years is analogous to not buying earthquake insurance because of a belief that there will not be an earthquake. That decision may prove to be correct - there may not be an earthquake and there may not be a price spike - but that does not mean the decision to take the risk is the prudent decision.

Public Counsel and the other parties raise several matters that are not properly issues in this case, but that do raise the level of confusion surrounding the question of Empire's prudence. First, Public Counsel casts aspersions on Empire's FAC tariff provisions that allow for the recovery by Empire of hedging costs through operation of the FAC. Public Counsel suggests that Empire has little incentive to be prudent because it can just pass hedging losses to its ratepayers through the FAC. However, by statute, the provisions of Empire's FAC tariff can only be changed in a general rate case, not in this prudence review. Further, passing hedging losses through the FAC is not the only way Empire could recover those losses. In the same way it was allowed to recover such losses before it had an FAC, Empire could be allowed to include an amount for such losses in its cost of service established in a general rate case. Empire's hedging decisions were either prudent, or they were not; how those costs are recovered is not at issue.

Second, a good deal of time and testimony was devoted to discussion of Public Counsel's contention that Staff's review of Empire's FAC costs and revenues is not sufficient. From the other side, Empire points to Staff findings in previous prudence reviews

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<sup>63</sup> In adjusting its hedge purchases closer to the minimum bands established in its policy, Empire has shown appropriate consideration of current market conditions.

as support for its claim that this review should not find that it has been imprudent during this prudence review period. Neither contention is relevant to the Commission's decision in this case.

Third, Public Counsel points to decisions by other utilities and public utility commissions in other states to cease hedging activities at various times. Any such decisions certainly are not controlling on this Commission, and are not persuasive because the particular circumstances of each utility are different. What may be a prudent decision by one utility at one time may not bear any relation to the appropriate and prudent decision of another utility facing its own unique situation.

These are the issues identified by the parties and the Commission's decisions regarding those issues:

1. Was Empire's natural gas hedging policy that caused costs to be incurred for the period of March 1, 2015 through August 31, 2016 imprudent?

The Commission finds and concludes that Empire's natural gas hedging policy was prudent.

2. If the Commission finds that Empire's hedging policy was imprudent, should the Commission order a refund to Empire's customers?

Having found that Empire's policy is prudent, the Commission finds and concludes that there is no reason to order a refund.

**THE COMMISSION ORDERS THAT:**

1. The Report and Order issued on January 3, 2018 is withdrawn.
2. Staff's Sixth Prudence Audit Report and Recommendation regarding the costs subject to The Empire District Electric Company's fuel adjustment clause is approved.
3. Public Counsel's Objection and Motion to Strike is denied.

4. This amended report and order shall become effective on March 10, 2018.

**BY THE COMMISSION**



A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Hall, Chm., Kenney, and Coleman, CC., concur;  
Rupp, C., dissents; and Silvey, C., abstains;  
and certify compliance with the  
provisions of Section 536.080, RSMo 2016

Dated at Jefferson City, Missouri,  
on this 28<sup>th</sup> day of February, 2018.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Joint Application of )  
 Missouri-American Water Company and )  
 Spokane Highlands Water Company for )  
 MAWC to Acquire Certain Water Assets of )  
 Spokane Highlands and, in Connection )  
 Therewith, Certain Other Related Transactions )

**File No. WM-2018-0104**

**ORDER APPROVING TRANSFER OF ASSETS**

**EVIDENCE, PRACTICE AND PROCEDURE**

**§24 Procedures, evidence and proof**

Where no party requests an evidentiary hearing and no law otherwise requires one, the Commission may grant an applicant's request to transfer assets based upon the application and Staff's recommendation. Where the action is not a contested case, the Commission need not separately state its findings of fact.

**WATER**

**§4 Transfer, lease and sale**

The Commission will only deny a water corporation's application to sell its works or system if approval would be detrimental to the public interest.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 7<sup>th</sup> day of March, 2018.

In the Matter of the Joint Application of )  
Missouri-American Water Company and )  
Spokane Highlands Water Company for )  
MAWC to Acquire Certain Water Assets of )  
Spokane Highlands and, in Connection )  
Therewith, Certain Other Related Transactions )

**File No. WM-2018-0104**

**ORDER APPROVING TRANSFER OF ASSETS**

Issue Date: March 7, 2018

Effective Date: March 17, 2018

On October 24, 2017, Missouri-American Water Company (“MAWC”) and Spokane Highlands Water Company (collectively, “Applicants”) filed a joint application<sup>1</sup> with the Missouri Public Service Commission (“Commission”), which was subsequently amended, seeking authority for MAWC to purchase substantially all of the water assets of Spokane Highlands Water Company. Applicants also request a certificate of convenience and necessity for MAWC and a waiver from a Commission administrative rule.

MAWC is an existing regulated water and sewer utility currently providing water service to more than 450,000 customers in several service areas throughout Missouri. Spokane Highlands is a water corporation that provides water service to 49 single-family residential customers in a subdivision located to the east of the town of Spokane in Christian County, Missouri. MAWC and Spokane Highlands have entered into an Asset

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<sup>1</sup> The application was filed pursuant to Section 393.190, RSMo 2016, and Commission Rules 4 CSR 240-3.310 and 4 CSR 240-4.017(1).

Purchase Agreement (“Agreement”) providing for the sale by Spokane Highlands to MAWC of substantially all its water assets. A copy of the Agreement was included with the joint application.

On October 25, 2017, the Commission issued notice and set an intervention deadline. No applications to intervene were filed. Staff filed a recommendation on January 22, 2018, but MAWC objected to two provisions in the recommendation. Staff filed an amended recommendation on February 26, 2018, suggesting that the Commission approve the joint application with certain conditions. Staff represents that the Applicants do not object to the amended recommendation. Staff recommends that the Commission do the following:

1. Authorize Spokane Highlands to sell and transfer water utility assets, including its CCN, to MAWC, and for MAWC to provide water service in the Spokane Highlands service area, as requested;
2. Authorize MAWC to apply its existing rules and District #3 rates to the Spokane Highlands service area;
3. Require MAWC to submit new tariff sheets showing the Spokane Highlands service area, and a revised District #3 rate sheet and revised service charge sheet showing applicability to the Spokane Highlands service area in its PSC MO No.13 tariff prior to closing on the assets;
4. Approve MAWC’s existing depreciation rates for water utility plant accounts to apply to the Spokane Highlands service area assets;
5. If closing on the water system assets does not take place within thirty (30) days following the effective date of the Commission’s order approving such sale and transfer of the assets, require MAWC and/or Spokane Highlands to submit a status report within five (5) days after this thirty (30) day period regarding the status of closing, and additional status reports within five (5) days after each additional thirty (30) day period, until closing takes place, or until either MAWC or Spokane Highlands determines that the transfer of the assets will not occur;
6. If MAWC or Spokane Highlands determines that a transfer of the assets will not occur, require MAWC and/or Spokane Highlands to notify the

Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and require MAWC to submit tariff sheets as appropriate that would cancel tariff sheets filed and effective, if any, applicable to the Spokane Highlands service area;

7. Require MAWC to keep its financial books and records for Spokane Highlands plant-in- service and operating expenses in accordance with the NARUC Uniform System of Accounts;

8. Require MAWC to provide an example of its actual communication with the Spokane Highlands service area customers regarding its acquisition and operations of the Spokane Highlands water system assets, and how customers may reach MAWC regarding water matters, within ten (10) days after closing on the assets;

9. Require Spokane Highlands to provide to MAWC and for MAWC, as best as possible prior to or at closing, to take physical possession of and maintain all records and documents with respect to regulated operations, and any and all books and financial records of Spokane Highlands, including but not limited to all plant-in-service original cost documentation, along with depreciation reserve balances and records, invoices and purchase orders and purchase agreements, documentation of contribution-in-aid-of construction transactions, and any capital recovery transactions, all customer billing records and customer deposit records to the extent the Company has customer deposits;

10. To the extent any acquisition premium that may result from the purchase of Spokane Highlands utility assets by MAWC exists, require that any related acquisition adjustment be excluded from rate recovery in any future rate case;

11. Order MAWC to, within ninety (90) days after closing on the assets, correct its books and records to reflect the adjusted plant, depreciation reserve and Contributions in Aid of Construction balances reflected in Staff Accounting Schedules;

12. Require MAWC to provide in a general rate case an analysis documenting its proposed rate base values for Spokane Highlands water system assets, including an appropriate offset for associated CIAC;

13. Order MAWC to continue to maintain its existing allocation process already implemented with respect to procedures to allocate costs and investments between regulated entities of MAWC and between regulated and non-regulated MAWC operations, and to incorporate the newly acquired Spokane Highlands system into this allocation process;



14. Direct that MAWC continue to maintain its current time reporting and allocation system and to incorporate the newly acquired Spokane Highlands system into that time reporting and allocation system;
15. Make no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to MAWC, including expenditures related to the Spokane Highlands certificated service area and capacity adjustments, in any later proceeding;
16. Require MAWC to ensure adherence to Commission Rule 4 CSR 240-13 with respect to Spokane Highlands customers;
17. Require MAWC to include the Spokane Highlands customers in its established monthly reporting to the Customer Experience Department Staff on customer service and billing issues;
18. Require MAWC to distribute to the Spokane Highlands customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its water service, consistent with the requirements of Commission Rule 4 CSR 240-13.040 (2) (A-L), within ten (10) days of closing on the assets;
19. Require MAWC to provide adequate training for the correct application of rates and rules to all customer service representatives prior to Spokane Highlands customers receiving their first bill from MAWC; and,
20. Require MAWC to provide to the Customer Experience Department Staff a sample of ten (10) billing statements from the first month's billing within thirty (30) days of such billing.

No party requested an evidentiary hearing in this matter and no law requires one, so the Commission may grant the Applicant's request based upon the application and Staff's recommendation.<sup>2</sup> This action is not a contested case,<sup>3</sup> and the Commission need not separately state its findings of fact.

MAWC and Spokane Highlands are water corporations under Missouri law<sup>4</sup>, subject to the regulation, supervision and control of the Commission with regard to providing sewer

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<sup>2</sup> See, *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

<sup>3</sup> Section 536.010(4), RSMo 2016.

<sup>4</sup> Section 386.020(59), RSMo 2016.

service to the public. The Commission has jurisdiction to rule on the application because Missouri law requires that “[n]o ... water corporation shall hereafter sell ...its ... works or system ... without having first secured from the commission an order authorizing it so to do.”<sup>5</sup> The Commission will only deny the application if approval would be detrimental to the public interest.<sup>6</sup>

The parties agree that the public interest will suffer no detriment from the sale under the terms set forth in the Agreement, subject to Staff’s conditions. If the proposed sale and transfer is approved, those customers currently being served by Spokane Highlands will receive their water service from MAWC, which is fully qualified to own and operate the Spokane Highlands system and to provide safe and reliable water service. MAWC’s proposal to apply its existing water tariff and existing District #3 rates to customers in the Spokane Highlands service area is reasonable and will result in decreased water bills for those customers. The transaction will not have any impact on the tax revenues of any political subdivision where the water facilities are located.

Based on the information provided in the verified joint application and upon the verified recommendation and memorandum of Staff, the Commission finds that the proposed transfer of assets is not detrimental to the public interest and should be approved, subject to the conditions recommended by Staff. The Commission will make this order effective in ten days.

The application also asked the Commission to waive the 60-day notice requirement under 4 CSR 240-4.017(1), if necessary. Applicants assert that good cause exists in this case for granting such waiver because MAWC has had no communication with the office of

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<sup>5</sup> Section 393.190.1, RSMo 2016.

<sup>6</sup> *State ex rel. City of St. Louis v. Public Service Comm’n of Missouri*, 73 S.W.2d 393, 400 (Mo. 1934).

the Commission within the prior 150 days regarding any substantive issue likely to be in this case. The Commission finds that good cause exists to waive the notice requirement, and a waiver of 4 CSR 240-4.017(1) will be granted.

**THE COMMISSION ORDERS THAT:**

1. Applicants' request for waiver of the notice requirement under Commission Rule 4 CSR 240-4.017(1) is granted.

2. Missouri-American Water Company and Spokane Highlands Water Company's joint application for approval of the transfer of the assets to Missouri-American Water Company is granted, subject to the amended conditions recommended by the Commission's Staff which are delineated in the body of this order.

3. Spokane Highlands Water Company is authorized to sell and transfer to Missouri-American Water Company the water assets described in the joint application and the Asset Purchase Agreement entered into between those parties.

4. Missouri-American Water Company and Spokane Highlands Water Company are authorized to do and perform, or cause to be done and performed, such other acts and things, as well as make, execute and deliver any and all documents as may be necessary, advisable and proper to the end that the intent and purposes of the approved transaction may be fully effectuated.

5. Missouri-American Water Company is granted a certificate of convenience and necessity to provide water service within the Spokane Highlands service area as more particularly described in the application, subject to the conditions and requirements contained in Staff's amended recommendation, effective upon the date of closing of the purchase transaction.

6. Missouri-American Water Company shall apply its existing rules and District #3 rates to the Spokane Highlands service area.

7. Missouri-American Water Company shall submit new tariff sheets showing the Spokane Highlands service area and a revised District #3 rate sheet and revised service charge sheet showing applicability to the Spokane Highlands service area in its PSC MO No.13 tariff prior to closing on the assets.

8. Missouri-American Water Company's existing depreciation rates for water utility plant accounts are approved to apply to the Spokane Highlands service area assets.

9. If closing on the water system assets does not take place within thirty (30) days following the effective date of this order, Missouri-American Water Company and/or Spokane Highlands Water Company shall submit a status report within five (5) days after this thirty (30) day period regarding the status of closing, and additional status reports within five (5) days after each additional thirty (30) day period, until closing takes place, or until either Missouri-American Water Company or Spokane Highlands Water Company determine that the transfer of the assets will not occur.

10. If Missouri-American Water Company or Spokane Highlands Water Company determine that a transfer of the assets will not occur, Missouri-American Water Company and/or Spokane Highlands Water Company shall notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and Missouri-American Water Company shall submit tariff sheets as appropriate that would cancel tariff sheets filed and effective, if any, applicable to the Spokane Highlands service area.

11. Missouri-American Water Company shall keep its financial books and records for Spokane Highlands plant-in- service and operating expenses in accordance with the NARUC Uniform System of Accounts.

12. Missouri-American Water Company shall provide an example of its actual communication with the Spokane Highlands service area customers regarding its acquisition and operations of the Spokane Highlands water system assets, and how customers may reach Missouri-American Water Company regarding water matters, within ten (10) days after closing on the assets.

13. Spokane Highlands Water Company shall provide to Missouri-American Water Company, and Missouri-American Water Company, as best as possible prior to or at closing, shall take physical possession of and maintain all records and documents with respect to regulated operations, and any and all books and financial records of Spokane Highlands Water Company, including but not limited to all plant-in-service original cost documentation, along with depreciation reserve balances and records, invoices and purchase orders and purchase agreements, documentation of contribution-in-aid-of construction transactions, and any capital recovery transactions, all customer billing records and customer deposit records to the extent the Company has customer deposits.

14. To the extent any acquisition premium that may result from the purchase of Spokane Highlands utility assets by Missouri-American Water Company exists, any related acquisition adjustment shall be excluded from rate recovery in any future rate case.

15. Missouri-American Water Company shall, within ninety (90) days after closing on the assets, correct its books and records to reflect the adjusted plant, depreciation

reserve and Contributions in Aid of Construction balances reflected in Staff Accounting Schedules.

16. Missouri-American Water Company shall provide in a general rate case an analysis documenting its proposed rate base values for Spokane Highlands water system assets, including an appropriate offset for associated CIAC.

17. Missouri-American Water Company shall continue to maintain its existing allocation process already implemented with respect to procedures to allocate costs and investments between regulated entities of Missouri-American Water Company and between regulated and non-regulated Missouri-American Water Company operations, and to incorporate the newly acquired Spokane Highlands system into this allocation process.

18. Missouri-American Water Company shall continue to maintain its current time reporting and allocation system and to incorporate the newly acquired Spokane Highlands system into that time reporting and allocation system.

19. The Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to Missouri-American Water Company, including expenditures related to the Spokane Highlands certificated service area and capacity adjustments, in any later proceeding.

20. Missouri-American Water Company shall ensure adherence to Commission Rule 4 CSR 240-13 with respect to Spokane Highlands customers.

21. Missouri-American Water Company shall include the Spokane Highlands customers in its established monthly reporting to the Customer Experience Department Staff on customer service and billing issues.

22. Missouri-American Water Company shall distribute to the Spokane Highlands customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its water service, consistent with the requirements of Commission Rule 4 CSR 240-13.040 (2) (A-L), within ten (10) days of closing on the assets.

23. Missouri-American Water Company shall provide adequate training for the correct application of rates and rules to all customer service representatives prior to Spokane Highlands customers receiving their first bill from Missouri-American Water Company.

24. Missouri-American Water Company shall provide to the Customer Experience Department Staff a sample of ten (10) billing statements from the first month's billing within thirty (30) days of such billing.

25. This order shall become effective on March 17, 2018.

**BY THE COMMISSION**



A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

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

Bushmann, Senior Regulatory Law Judge

## STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Laclede Gas Company's            )  
Request to Increase Its Revenues for Gas            )  
Service                                                        ) **File No. GR-2017-0215**

In the Matter of the Laclede Gas Company d/b/a        )  
Missouri Gas Energy's Request to Increase Its        )  
Revenues for Gas Service                                 ) **File No. GR-2017-0216**

### AMENDED REPORT AND ORDER

Affirmed in part, reversed in part, and remanded: *Spire Missouri, Inc. v. Public Service Commission*, 618 S.W.3d 225 (Mo. 2021)

#### ACCOUNTING

##### **§9 Methods of accounting generally**

The Commission found that the parties were using a cash contribution method, and not Federal Accounting Standards (FAS) 87 or FAS 88 accrual accounting prior to September 1, 1994, the effective date of File No. GR-94-220.

##### **§9 Methods of accounting generally**

Investor-owned natural gas utilities under this Commission's jurisdiction are obligated to use the Uniform System of Accounts (USOA) prescribed by the Federal Energy Regulatory Commission (FERC).

##### **§13 Contributions by utility**

The Commission found that the parties were using a cash contribution method, and not Federal Accounting Standards (FAS) 87 or FAS 88 accrual accounting prior to September 1, 1994, the effective date of File No. GR-94-220.

##### **§13 Contributions by utility**

The Commission previously approved a Stipulation and Agreement for Laclede Gas Company, in File No. GR-2013-0171, allowing rate recovery for contributions Laclede would make to avoid benefit restrictions specified by the Pension Protection Act of 2006 (PPA). The Commission determined that Laclede contributed funds sufficient to avoid the restrictions outlined in the PPA.

##### **§17 Depreciation reserve account**

The Commission ordered Spire Missouri East, f/k/a Laclede Gas Company, to account for the sale of the Forest Park buildings transaction in accordance with the FERC Uniform



System of Accounts by increasing its accumulated depreciation reserve by the \$1.8 million loss on the retirement of the Forest Park buildings.

### **§17 Depreciation reserve account**

The Commission found that with regard to Spire Missouri East, f/k/a Laclede Gas Company's, accounting for the sale of its Forest Park buildings, neither a return on the \$1.8 million undepreciated value of the Forest Park buildings, nor any return of the \$1.8 million should be included in rates going forward. The Commission found the remainder of the \$5.8 million gain properly belonged to the shareholders.

### **§23.1 Employee Compensation**

The Commission found that Spire Missouri's earnings based and equity based incentive compensation was primarily for the benefit of the shareholders and not for the benefit of the ratepayers. Therefore, the Commission determined that Spire Missouri did not meet its burden of proving that its proposed increase in rates for earnings based and equity based incentive compensation plans was just and reasonable. Therefore, the Commission determined that Spire Missouri shall not recover earnings based or equity based employee incentive compensation amounts in rates.

### **§23.1 Employee Compensation**

The Commission found that the individual performance component (50 percent of the nonunion, nonexecutive and director incentive compensation) of Spire Missouri's employee incentive compensation plan encouraged, motivated, and retained talented employees to the benefit of ratepayers and, therefore, should be included in revenue requirement.

### **§23.1 Employee Compensation**

The Commission determined that 50 percent (the earnings based and equity based portions) of Spire Missouri's nonunion, non-executive or director employee incentive compensation plans should be disallowed from rates. Further, the Commission found the executive and director incentive compensation plan, which is 100 percent earnings and equity based, should also be disallowed. The Commission determined, however, that incentive compensation for union employees, is appropriately included in rates because this is the result of collective bargaining agreements. Therefore, Spire Missouri's proposed revenue requirement was reduced by 100 percent of the executive and director's incentive compensation plan and 50 percent of the other nonunion employee incentive compensation plan.

### **§23.1 Employee Compensation**

The Commission determined that because previous stipulation and agreements settled all issues but did not specifically address the capitalization of incentive compensation, the Commission would not reach back to those settled cases and remove capitalized earnings based and equity based incentive compensation from rate base.

**§23.1 Employee Compensation**

The Commission determined Spire Missouri had not met its burden to show that any upward adjustment to base salaries is just and reasonable to include in rates. Therefore, no adjustment in compensation expense was made due to the Commission disallowing portions of Spire Missouri's incentive compensation plans expense.

**§23.1 Employee Compensation**

The Commission concluded there is no statutory authorization or prohibition for the implementation of incentives related to performance metrics.

**§25 Maintenance, repairs and depreciation**

The Commission found that any replacement of the automated meter reading (AMR) device or battery is not maintenance, but is a capital expenditure that the company would have an opportunity to recoup in its next rate case. However, because of the benefits to the ratepayers presented by the purchase and renegotiation of the AMR contract, and because of the uncertainty as to what actual maintenance expense Spire Missouri will incur related to the AMR devices, the Commission ordered a maintenance tracker be established to ascertain Spire Missouri's actual maintenance expense on the AMR devices not covered by the contract and not including replacement of the devices or their batteries for possible recovery in Spire Missouri's next rate case.

**§27 Plant adjustment amount**

The Commission found that it had not previously had an opportunity to address how Spire Missouri should handle the accounting for its Forest Park property transaction because the issue was not presented to the Commission for authorization of the transactions. The Commission found that the ratepayers should not continue to pay for property that was necessary for the provision of utility service and was replaced with a more expensive property. The Commission ordered Spire Missouri to account for the sale of the Forest Park buildings transaction in accordance with the FERC Uniform System of Accounts by increasing its accumulated depreciation reserve by the \$1.8 million loss on the retirement of the Forest Park buildings.

**§27 Plant adjustment amount**

The FERC Uniform System of Accounts for gas utilities prescribes specific treatment for the sale of utility assets that constitute an operating unit or system.

**§38 Taxes**

The Commission found that actual property tax expense paid in 2017 was known and measurable even though it fell outside the test year. The Commission determined that coupled with the extraordinary event of decreased income tax expense due to the Tax Cuts and Jobs Act (TCJA), it would not be just to exclude the known and measurable taxes from increasing property tax expense. Therefore, as an offset to the reduction in current income tax expense, the Commission included the actual 2017 property taxes as an expense for the new rates. However, as 2018 property taxes were still not known and measurable, the Commission established a tracker to account for any amounts of

property tax expense over or under the amounts set out in rates for possible inclusion in Spire Missouri's next rate proceeding.

### **§38 Taxes**

The Commission excluded FIN 48 liability from accumulated deferred income tax (ADIT) finding that both ratepayers and shareholders benefit when the company takes an uncertain tax position with the IRS, because saving money on taxes benefits the company's bottom line and it also reduces the amount of tax expense for the ratepayers. The Commission determined that the best way to encourage the company to pursue these tax savings, and thus ultimately benefit both shareholders and ratepayers, was to exclude the FIN 48 liability from ADIT.

### **§38 Taxes**

The Commission found that while the specific income tax expense reduction due to the Tax Cuts and Jobs Act (TCJA) could not be calculated until the other decisions from this Report and Order are incorporated, it was a known and measurable expense. Therefore, the Commission found that based on the extraordinary event of the passage of the TCJA happening at the latter stages of the rate case, it was just and reasonable to reduce income tax expense using the TCJA effective composite income tax rate of 25.4483 percent.

### **§38 Taxes**

The Commission recognized that not all of the effects of the Tax Cuts and Jobs Act (TCJA) were known at the time because the IRS had not yet promulgated rules or issued guidance on all the aspects of the TCJA. Therefore, the Commission ordered that a tracker be established to account for any other effects (either over- or under-collection in rates) of the TCJA not captured by the current reduction in income tax expense for possible inclusion in rates at Spire Missouri's next rate case.

### **§38 Taxes**

The estimates of the percentage of "protected" versus "unprotected" accumulated deferred income taxes (ADIT) and the lack of evidence surrounding the appropriate amortization periods for each category, convinces the Commission that effects of the Tax Cuts and Jobs Act (TCJA) on ADIT were not sufficiently known and measurable to be included in the rate case. Thus, the Commission ordered a tracker be established to defer any amounts in excess ADIT over or under the \$11.5 million amount refunded in rates, from the effective date of rates resulting from the case, forward, for possible inclusion in a later rate case. Further, the determination of the actual split between protected and unprotected ADIT and the appropriate amortization periods was ordered to be determined in Spire Missouri's next rate case.

### **§38 Taxes**

The Commission found that the automated meter reading (AMR) device property taxes will not be due to be paid until December 31, 2018. Thus, these property taxes were beyond the test year and true-up period for the current case. Additionally, the Commission

found that normally the property taxes could not be included because they were not known and measurable. However, given the specific circumstances of this case, including the inclusion of a large income tax reduction to expenses due to the Tax Cuts and Jobs Act (TCJA) being incorporated in this case even though outside the test year and true-up period, the Commission determined that the property tax for AMR devices should be included in the property tax tracker.

**§39.1 OPEBS, Postretirement benefits other than pensions**

In balancing the needs of the ratepayers to keep rates from increasing, with the need of Spire Missouri to fulfill its pension obligations, the Commission determined that an 80 percent ERISA funding level was the most just and reasonable level.

**§39.1 OPEBS, Postretirement benefits other than pensions**

The Commission was not persuaded that a strategic financing review of the pension and benefit plans as requested by the Office of the Public Counsel was necessary since Spire Missouri's pension and benefit plans already receive scrutiny and utilize investment advisory and actuarial firms to assist in planning.

**§39.1 OPEBS, Postretirement benefits other than pensions**

The Commission previously approved a Stipulation and Agreement for Laclede Gas Company, File No. GR-2013-0171, allowing rate recovery for contributions Laclede would make to avoid benefit restrictions specified by the Pension Protection Act of 2006 (PPA). The Commission determined that Laclede contributed funds sufficient to avoid the restrictions outlined in the PPA.

**§39.1 OPEBS, Postretirement benefits other than pensions**

The Commission found that the approved Stipulation and Agreement in File No. GR-2013-0171, stated that Laclede Gas Company could include in the pension asset, contributions in excess of Employee Retirement Income Security Act (ERISA) minimums as they were made to avoid variable premiums from the Pension Benefit Guarantee Premiums. (*Order Approving Unanimous Stipulation and Agreement*, File No. GR-2013-0171 (issued June 26, 2013), attachment Stipulation and Agreement, para. 7.)

**§39.1 OPEBS, Postretirement benefits other than pensions**

The Commission concluded that in order to avoid the restriction on offering a lump sum payment option to retirees, the pension fund must be funded by at least 80 percent of Employee Retirement Income Security Act (ERISA) minimums.

**§39.1 OPEBS, Postretirement benefits other than pensions**

The Commission found that the parties were using a cash contribution method, and not Federal Accounting Standards (FAS) 87 or FAS 88 accrual accounting prior to September 1, 1994, the effective date of File No. GR-94-220.

**§39.1 OPEBS, Postretirement benefits other than pensions**

The Commission found historical data showed that with regard to Spire Missouri's Supplemental Executive Retirement Plan (SERP) expense, lump sum payments could be reasonably expected to recur and that when considering the historical averages, and excluding the one anomaly of an especially high payment, the size of the lump sum SERP payments was not volatile and was known and measurable. Thus, the Commission concluded that in accordance with the Missouri Court of Appeals decision in *State ex rel. GTE North, Inc. v. Mo. Pub. Serv. Com'n*, 835 S.W.2d 356, 368 (Mo App. W.D. 1992), the appropriate amount of SERP expense was \$468,731 as calculated by Staff.

**§40 Working capital and current assets**

The Commission determined that like other assets, the prepaid pension asset is appropriately included in rate base and is properly funded at the normal weighted average cost of capital.

**§41 Expenses generally**

The Commission found the actual expenses incurred to relocate Forest Park employees could not be determined from the evidence presented, but the \$200,000 lease expense and the \$1.95 million capital contributions should be deducted from the \$5.7 million total before the remainder is used to offset the construction cost of the new Manchester facility. The Commission ordered Spire Missouri to create a regulatory liability to record the rate base offset of the relocation expense to be amortized over five years beginning with the date the rates became effective.

**§43 Financial Accounting Standards Board requirements**

The Commission found that the parties were using a cash contribution method, and not Federal Accounting Standards (FAS) 87 or FAS 88 accrual accounting prior to September 1, 1994, the effective date of File No. GR-94-220.

**§43 Financial Accounting Standards Board requirements**

The Commission concluded that Federal Accounting Standards (FAS) 87 allows for the capitalization of the service cost component of FAS 87 Supplemental Executive Retirement Plan (SERP) expense.

**§43 Financial Accounting Standards Board requirements**

The Commission acknowledged that Spire Missouri could have waited to terminate its lease and purchase the automated meter reading (AMR) assets until after the true-up period and have taken advantage of any regulatory lag to retain the savings for its shareholders. Because the purchase occurred outside the test year but before September 30, 2017, it is appropriately a true-up issue. The Commission determined that Spire Missouri should be allowed to recover the \$16.6 million cost of the AMR devices. The Commission ordered Spire Missouri to establish Account 397.2 – AMR Devices as a new plant sub-account. Additionally, because of the planned obsolescence of these devices, the Commission found it was reasonable under these specific facts to authorize the amortization of these assets over 7.5 years.

**DEPRECIATION****§17 Life of property**

The Commission ordered Spire Missouri to establish Account 397.2 – AMR Devices as a new plant sub-account. Additionally, because of the planned obsolescence of these automated meter reading (AMR) devices, the Commission found it was reasonable under these specific facts to authorize the amortization of the assets over 7.5 years.

**DISCRIMINATION****§2 Obligation of the utility**

The Commission found that subsection 393.130.3, RSMo, forbids a gas corporation from giving an “undue or unreasonable preference or advantage” to any “person, corporation or locality.” The Commission concluded that the statute implied that not every preference or advantage is “undue” or “unreasonable.”

**§11 Inequality of rates**

The Commission found it was reasonable to allow Spire Missouri to recover fees resulting from the use of credit and debit cards to pay bills from all customers rather than from just those customers who use the credit or debit cards to pay their bills. The Commission determined that the policy would not result in an undue or unreasonable preference among customers because all customers can use the convenience of a credit or debit card if that tool is available to them.

**ELECTRIC****§13.1 Energy Efficiency**

The Commission found that the pilot program proposed by the Division of Energy lacked sufficient details, as it does not contain specific recommendations or formulas relating to the Missouri Energy Efficiency Investment Act (MEEIA), does not state a time period for the program or how it would be evaluated, and lacks specificity regarding on-bill financing, line extension policies, and interaction with MEEIA. Because of the lack of detail, the Commission could not determine if and to what extent the pilot program might affect the sales and revenues of electric utilities that are not participating as intervenors in this case, might be a prohibited promotional practice, and might be inconsistent with MEEIA requirements.

**EVIDENCE, PRACTICE AND PROCEDURE****§6 Weight, effect and sufficiency**

The Commission found there was insufficient evidence to establish that Spire Missouri East, f/k/a Laclede Gas Company, or Spire Missouri West, f/k/a Missouri Gas Energy, earned an actual return on equity that was significantly higher than necessary to attract necessary capital, to provide safe and reliable service, or significantly higher than commensurate returns by enterprises having corresponding risks indicating that their ordered rates were not just and reasonable.

**§6 Weight, effect and sufficiency**

The Commission found the actual expenses incurred to relocate Forest Park employees could not be determined from the evidence presented, but the \$200,000 lease expense and the \$1.95 million capital contributions should be deducted from the \$5.7 million total before the remainder is used to offset the construction cost of the new Manchester facility.

**§6 Weight, effect and sufficiency**

The Commission found the sworn testimony of Laclede Gas Company and Staff witnesses that were knowledgeable of the issue during the era in question to be more persuasive than the conclusions drawn by Laclede Gas Company more than 20 years later, even those conclusions drawn by its witness that was involved in some of the earlier cases. Further, the Commission found that Public Counsel's evidence quantifying excess contributions was not reliable. Therefore, the Commission denied Public Counsel's adjustment for pension contributions over the Employee Retirement Income Security Act (ERISA) minimums.

**§6 Weight, effect and sufficiency**

The Commission found that the pilot program proposed by the Division of Energy lacked sufficient details, as it does not contain specific recommendations or formulas relating to the Missouri Energy Efficiency Investment Act (MEEIA), does not state a time period for the program or how it would be evaluated, and lacks specificity regarding on-bill financing, line extension policies, and interaction with MEEIA. Because of the lack of detail, the Commission could not determine if and to what extent the pilot program might affect the sales and revenues of electric utilities that are not participating as intervenors in this case, might be a prohibited promotional practice, and might be inconsistent with MEEIA requirements.

**§26 Burden of proof**

The Commission concluded that Spire Missouri had the burden of proof to show that the proposed increased rate was just and reasonable. Citing, subsection 393.150.2, RSMo.

**§26 Burden of proof**

The Commission concluded that because Spire Missouri seeks an increase in rates for merger synergies, Spire Missouri has the burden to prove that such an increase is just and reasonable and that burden does not shift. Citing, Section 393.150.2, RSMo; and *Been v. Jolly*, 247 S.W.2d 840, 854 (Mo. 1952).

**EXPENSE****§6 Accounting**

The Commission found the actual expenses incurred to relocate Forest Park employees could not be determined from the evidence presented, but the \$200,000 lease expense and the \$1.95 million capital contributions should be deducted from the \$5.7 million total before the remainder is used to offset the construction cost of the new Manchester facility. The Commission ordered Spire Missouri to create a regulatory liability to record the rate

base offset of the relocation expense to be amortized over five years beginning with the date the rates became effective.

#### **§20 Methods of estimating**

The Commission found that the cost Spire Missouri would incur in future years resulting from the change in how costs are recovered for the use of credit or debit cards by customers to pay their bills are not yet known and measurable. The Commission found that the level of costs calculated by Staff should be utilized because it was based on actual costs incurred during the test year.

#### **§20 Methods of estimating**

The Commission found that a five-year average of bad debt expenses was the most appropriate method to calculate the amount of bad debt to include in rates. The Commission also found that Spire Missouri's normalization calculation provided an accurate estimate of future bad debt expense.

#### **§41 Employee's pension and welfare**

In balancing the needs of the ratepayers to keep rates from increasing, with the need of Spire Missouri to fulfill its pension obligations, the Commission determined that an 80 percent ERISA funding level was the most just and reasonable level.

#### **§46 Expenses of rate proceedings**

The Commission determined that it was reasonable for shareholders and ratepayers to share most of the rate case expenses in these cases. However, the Commission recognized that certain expenses, such as the customer notices and the depreciation study, were required by Commission rule or order and should not be part of the shared rate case expense.

#### **§46 Expenses of rate proceedings**

The Commission determined that it was just and reasonable for ratepayers and shareholders to share rate case expense because the shareholders who ultimately controlled 50 percent of the rate case issues should share 50 percent of the rate case expense with the exception of the customer notice cost and the depreciation study which were done because of Commission order and rule requirements.

#### **§61 Payments to affiliated interests**

The Commission determined it was not necessary or appropriate to order Spire Missouri to hire an outside auditor to examine the company's affiliate transactions and allocations.

#### **§65 Savings in operation**

The Commission found that public utilities are largely motivated to merge with and acquire one another for purposes of benefitting shareholders with some benefits to the ratepayers which are difficult to quantify.



**§65 Savings in operation**

The Commission determined that Spire Missouri presented insufficient credible evidence for the Commission to make a finding of the exact savings achieved or of an amount that would be just and reasonable to include in rates.

**§67 Taxes**

The Commission found that actual property tax expense paid in 2017 was known and measurable even though it fell outside the test year. The Commission determined that coupled with the extraordinary event of decreased income tax expense due to the Tax Cuts and Jobs Act (TCJA), it would not be just to exclude the known and measurable taxes from increasing property tax expense. Therefore, as an offset to the reduction in current income tax expense, the Commission included the actual 2017 property taxes as an expense for the new rates. However, as 2018 property taxes were still not known and measurable, the Commission established a tracker to account for any amounts of property tax expense over or under the amounts set out in rates for possible inclusion in Spire Missouri's next rate proceeding.

**§67 Taxes**

The Commission excluded FIN 48 liability from accumulated deferred income tax (ADIT) finding that both ratepayers and shareholders benefit when the company takes an uncertain tax position with the IRS, because saving money on taxes benefits the company's bottom line and it also reduces the amount of tax expense for the ratepayers. The Commission determined that the best way to encourage the company to pursue these tax savings, and thus ultimately benefit both shareholders and ratepayers, was to exclude the FIN 48 liability from ADIT.

**§67 Taxes**

The Commission found that while the specific income tax expense reduction due to the Tax Cuts and Jobs Act (TCJA) could not be calculated until the other decisions from this Report and Order are incorporated, it was a known and measurable expense. Therefore, the Commission found that based on the extraordinary event of the passage of the TCJA happening at the latter stages of the rate case, it was just and reasonable to reduce income tax expense using the TCJA effective composite income tax rate of 25.4483 percent.

**§67 Taxes**

The Commission recognized that not all of the effects of the Tax Cuts and Jobs Act (TCJA) were known at the time because the IRS had not yet promulgated rules or issued guidance on all the aspects of the TCJA. Therefore, the Commission ordered that a tracker be established to account for any other effects (either over- or under-collection in rates) of the TCJA not captured by the current reduction in income tax expense for possible inclusion in rates at Spire Missouri's next rate case.

**§67 Taxes**

The estimates of the percentage of “protected” versus “unprotected” accumulated deferred income taxes (ADIT) and the lack of evidence surrounding the appropriate amortization periods for each category, convinces the Commission that effects of the Tax Cuts and Jobs Act (TCJA) on ADIT were not sufficiently known and measurable to be included in the rate case. Thus, the Commission ordered a tracker be established to defer any amounts in excess ADIT over or under the \$11.5 million amount refunded in rates, from the effective date of rates resulting from the case, forward, for possible inclusion in a later rate case. Further, the determination of the actual split between protected and unprotected ADIT and the appropriate amortization periods was ordered to be determined in Spire Missouri’s next rate case.

**§68 Uncollectible accounts**

The Commission found that a five-year average of bad debt expenses was the most appropriate method to calculate the amount of bad debt to include in rates. The Commission also found that Spire Missouri’s normalization calculation provided an accurate estimate of future bad debt expense.

**GAS****§1 Generally**

The Commission rejected the request of the Missouri Industrial Energy Consumers for the company to provide surveillance reports to the non-regulatory parties to this case. The Commission found that unlike the Staff of the Commission and the Office of the Public Counsel, the other parties, specifically the industrial consumers, are not obligated to provide any regulatory function relating to Spire Missouri. Further, the non-regulatory parties were not subject to the same statutory prohibitions on the disclosure of sensitive business information that may be contained in those reports.

**§6 Transfer, lease and sale**

The Commission found, in accordance with Subsection 393.190.1, RSMo, a company is required to obtain Commission authorization prior to the sale of any part of its system that is necessary or useful in the performance of its duties to the public.

**§17.1 Purchased Gas Adjustment (PGA)**

In balancing the interests of the ratepayers and of the company, the Commission determined it was just and reasonable to move Spire Missouri East, f/k/a Laclede Gas Company’s gas storage costs out of the purchased gas adjustment (PGA) tariff and back into base rates.

**§17.1 Purchased Gas Adjustment (PGA)**

The Commission determined the approximately \$4.1 million of carrying costs and associated line of credit fees currently included in the purchased gas adjustment (PGA) mechanism should be removed from the PGA to maintain consistency.

**§18 Rates**

The Commission set Spire Missouri's customer charges including an inclining block rate in the summer and a level block rate in the winter. The Commission determined that an inclining block rate in the summer would incentivize conservation when customers have the most control over usage not necessary to heat their homes. Additionally, the Commission found that the level block in the winter would provide stabilization for customers during the winter months when they have more difficulty paying increased bills to heat their homes. The Commission directed rates be calculated based on the agreed to billing determinants and the revenue requirement set out in the order with no transition rates.

**§19 Revenue**

The Commission concluded that subsection 386.266.3, RSMo, authorizes a revenue stabilization mechanism (RSM) that allows adjustments for variations due to weather, conservation, or both. The Commission determined it could not approve Spire Missouri's proposed RSM because the RSM would make adjustments for all variations in average usage per customer (such as, fuel switching, rate class switching, new customers with non-average usage, and economic factors) and not just those limited to weather or conservation.

**§20 Return**

The Commission found there was insufficient evidence to establish that Spire Missouri East, f/k/a Laclede Gas Company, or Spire Missouri West, f/k/a Missouri Gas Energy, earned an actual return on equity that was significantly higher than necessary to attract necessary capital, to provide safe and reliable service, or significantly higher than commensurate returns by enterprises having corresponding risks indicating that their ordered rates were not just and reasonable.

**§20 Return**

The Commission found that with regard to Spire Missouri East, f/k/a Laclede Gas Company's, accounting for the sale of its Forest Park buildings, neither a return on the \$1.8 million undepreciated value of the Forest Park buildings, nor any return of the \$1.8 million should be included in rates going forward. The Commission found the remainder of the \$5.8 million gain properly belonged to the shareholders.

**§20 Return**

After considering the expert testimony and balancing the interests of the company's ratepayers and shareholders, the Commission found that 9.8 percent was a fair and reasonable return on equity for Spire Missouri.

**§40 Transportation****§41 Pipelines**

The Commission concluded Missouri law did not require, or authorize, the Commission to preapprove Spire Missouri's management decision to enter into a transportation agreement with a natural gas pipeline.

**§47 Auditing and bookkeeping**

The Commission determined it was not necessary or appropriate to order Spire Missouri to hire an outside auditor to examine the company's affiliate transactions and allocations.

**§58 Employee's pension and welfare**

In balancing the needs of the ratepayers to keep rates from increasing, with the need of Spire Missouri to fulfill its pension obligations, the Commission determined that an 80 percent ERISA funding level was the most just and reasonable level.

**§65 Financing costs and interest**

The Commission found that the capital structure of Spire Missouri without short-term debt is the reasonable capital structure for ratemaking purposes in this case. Similarly, the Commission determines that the cost of debt should be Spire Missouri's cost of long-term debt.

**§78 Payments to affiliated interests**

The Commission determined it was not necessary or appropriate to order Spire Missouri to hire an outside auditor to examine the company's affiliate transactions and allocations.

**§81 Savings in operation**

The Commission found that public utilities are largely motivated to merge with and acquire one another for purposes of benefitting shareholders with some benefits to the ratepayers which are difficult to quantify.

**§81 Savings in operation**

The Commission determined that Spire Missouri presented insufficient credible evidence for the Commission to make a finding of the exact savings achieved or of an amount that would be just and reasonable to include in rates.

**§85 Uncollectible accounts**

The Commission found that a five-year average of bad debt expenses was the most appropriate method to calculate the amount of bad debt to include in rates. The Commission also found that Spire Missouri's normalization calculation provided an accurate estimate of future bad debt expense.

**PUBLIC UTILITIES****§16 Property sold or leased to a public utility**

The Commission acknowledged that Spire Missouri could have waited to terminate its lease and purchase the automated meter reading (AMR) assets until after the true-up period and have taken advantage of any regulatory lag to retain the savings for its shareholders. Because the purchase occurred outside the test year but before September 30, 2017, it is appropriately a true-up issue. The Commission determined that Spire Missouri should be allowed to recover the \$16.6 million cost of the AMR devices. The Commission ordered Spire Missouri to establish Account 397.2 – AMR Devices as a new plant sub-account. Additionally, because of the planned obsolescence of these

devices, the Commission found it was reasonable under these specific facts to authorize the amortization of these assets over 7.5 years.

## **RATES**

### **§8 Reasonableness generally**

The Commission found that Spire Missouri's earnings based and equity based incentive compensation was primarily for the benefit of the shareholders and not for the benefit of the ratepayers. Therefore, the Commission determined that Spire Missouri did not meet its burden of proving that its proposed increase in rates for earnings based and equity based incentive compensation plans was just and reasonable. Therefore, the Commission determined that Spire Missouri shall not recover earnings based or equity based employee incentive compensation amounts in rates.

### **§8 Reasonableness generally**

The Commission determined Spire Missouri had not met its burden to show that any upward adjustment to base salaries is just and reasonable to include in rates. Therefore, no adjustment in compensation expense was made due to the Commission disallowing portions of Spire Missouri's incentive compensation plans expense.

### **§8 Reasonableness generally**

The Commission concluded there is no statutory authorization or prohibition for the implementation of incentives related to performance metrics.

### **§8 Reasonableness generally**

The Commission found that it was not reasonable to fund low-income energy affordability programs at the full level of need because ultimately, ratepayers will be paying for these programs.

### **§12 Capitalization and security prices**

The Commission found that the capital structure of Spire Missouri without short-term debt is the reasonable capital structure for ratemaking purposes in this case. Similarly, the Commission determines that the cost of debt should be the cost of Spire Missouri's cost of long-term debt.

### **§12 Capitalization and security prices**

The Commission determined that because previous stipulation and agreements settled all issues but did not specifically address the capitalization of incentive compensation, the Commission would not reach back to those settled cases and remove capitalized earnings based and equity based incentive compensation from rate base.

### **§20 Costs and expenses**

The Commission determined that 50 percent (the earnings based and equity based portions) of Spire Missouri's nonunion, non-executive or director employee incentive compensation plans should be disallowed from rates. Further, the Commission found the executive and director incentive compensation plan, which is 100 percent earnings and equity based, should also be disallowed. The Commission determined, however, that

incentive compensation for union employees, is appropriately included in rates because this is the result of collective bargaining agreements. Therefore, Spire Missouri's proposed revenue requirement was reduced by 100 percent of the executive and director's incentive compensation plan and 50 percent of the other nonunion employee incentive compensation plan.

#### **§40 Revenues**

The Commission concluded that subsection 386.266.3, RSMo, authorizes a revenue stabilization mechanism (RSM) that allows adjustments for variations due to weather, conservation, or both. The Commission determined it could not approve Spire Missouri's proposed RSM because the RSM would make adjustments for all variations in average usage per customer (such as, fuel switching, rate class switching, new customers with non-average usage, and economic factors) and not just those limited to weather or conservation.

#### **§41 Return**

After considering the expert testimony and balancing the interests of the company's ratepayers and shareholders, the Commission found that 9.8 percent was a fair and reasonable return on equity for Spire Missouri.

#### **§80 Kinds and forms of rates and charges in general**

##### **§89 Straight, block or step-generally**

The Commission set Spire Missouri's customer charges including an inclining block rate in the summer and a level block rate in the winter. The Commission determined that an inclining block rate in the summer would incentivize conservation when customers have the most control over usage not necessary to heat their homes. Additionally, the Commission found that the level block in the winter would provide stabilization for customers during the winter months when they have more difficulty paying increased bills to heat their homes. The Commission directed rates be calculated based on the agreed to billing determinants and the revenue requirement set out in the order with no transition rates.

#### **§80 Kinds and forms of rates and charges in general**

The Commission determined that like other assets, the prepaid pension asset is appropriately included in rate base and is properly funded at the normal weighted average cost of capital.

#### **§81 Surcharges**

The Commission concluded that Section 393.1012, RSMo, does not require the company to file a rate case every three years. Instead, that statute permits the company to continue collecting its authorized infrastructure replacement surcharge (ISRS) so long as it files a rate case every three years. The Commission determined the company could choose to cease collections of the ISRS rather than file a rate case.

**SECURITY ISSUES****§62 Proportion of debt to net plant**

The Commission found that a five-year average of bad debt expenses was the most appropriate method to calculate the amount of bad debt to include in rates. The Commission also found that Spire Missouri's normalization calculation provided an accurate estimate of future bad debt expense.

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Laclede Gas Company's )  
 Request to Increase Its Revenues for Gas ) **File No. GR-2017-0215**  
 Service ) **Tariff No. YG-2017-0195**

In the Matter of the Laclede Gas Company d/b/a )  
 Missouri Gas Energy's Request to Increase Its ) **File No. GR-2017-0216**  
 Revenues for Gas Service ) **Tariff No. YG-2017-0196**

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## AMENDED REPORT AND ORDER

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**Issue Date: March 7, 2018**

**Effective Date: March 17, 2018**



# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Laclede Gas Company's	)	
Request to Increase Its Revenues for Gas	)	<b><u>File No. GR-2017-0215</u></b>
Service	)	Tariff No. YG-2017-0195
In the Matter of the Laclede Gas Company d/b/a	)	
Missouri Gas Energy's Request to Increase Its	)	<b><u>File No. GR-2017-0216</u></b>
Revenues for Gas Service	)	Tariff No. YG-2017-0196

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For the Staff of the Missouri Public Service Commission.

**SENIOR REGULATORY LAW JUDGE:** Nancy Dippell

On February 21, 2018, the Commission issued its *Report and Order* resolving the above-captioned cases. On February 27, 2018, Spire Missouri Inc. and the Staff of the Missouri Public Service Commission filed a *Joint Request for Clarification or Modification* and Spire Missouri filed its *Spire Missouri Inc.'s Request for Clarification*. The motions request that the Commission clarify certain aspects of its *Report and Order*. The Commission set a date for responses and timely responses were received from the Office of the Public Counsel and the Missouri Industrial Energy Consumers.

The Commission has reviewed the requests for clarification and the responses and finds that clarification to its *Report and Order* is needed. Therefore, the Commission amends its *Report and Order* accordingly to clarify those sections. This amended report and order will be given a ten-day effective date to allow an opportunity for parties to file an application for rehearing.

The Missouri Public Service Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

### **Procedural History**

On April 11, 2017, Spire Missouri Inc., then known as Laclede Gas Company, and referred to herein as “Spire Missouri,”<sup>1</sup> filed tariffs designed to implement general rate increases for gas service in its Spire Missouri East (f/k/a Laclede Gas Company, and referred to herein as “LAC” or “Laclede”) and Spire Missouri West (f/k/a Missouri Gas Energy and referred to herein as “MGE”) territories. The tariffs would have increased Laclede’s annual gas revenues by approximately \$58.1 million, exclusive of associated taxes, of which approximately \$29.5 million is already being recovered through its infrastructure system replacement surcharge (ISRS), resulting in a net

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<sup>1</sup> This is the first general rate case the Commission has heard since Laclede Gas Company acquired Missouri Gas Energy on July 17, 2013. During the course of this proceeding, on August 30, 2017, Laclede Gas Company changed its name to Spire Missouri Inc. and now operates its two divisions in Missouri as Spire Missouri East and Spire Missouri West.

increase of \$28.5 million.<sup>2</sup> The tariffs would have increased MGE's annual gas revenues by approximately \$50.4 million, exclusive of associated taxes, of which approximately \$13.4 million is already being recovered through its ISRS, resulting in a net increase of \$37.0 million.<sup>3</sup> The tariff revisions carried an effective date of May 11, 2017.

By orders issued on April 19, 2017, the Commission suspended Spire Missouri's general rate increase tariffs until March 8, 2018, the maximum amount of time allowed by the controlling statute.<sup>4</sup> The following parties filed applications and were allowed to intervene: Missouri Industrial Energy Consumers (MIEC); Midwest Energy Consumers Group (MECG); Missouri Department of Economic Development – Division of Energy (DE); Consumers Council of Missouri (Consumers Council); Missouri School Boards' Association; The City of St. Joseph, Missouri; National Housing Trust; Environmental Defense Fund; MoGas Pipeline, LLC; USW Local 11-6; Kansas City Power and Light Company; and KCP&L Greater Missouri Operations.<sup>5</sup> On May 24, 2017, the Commission established the test year for these cases as the 12-month period ending December 31, 2016, to be updated for known and measurable changes through June 30, 2017 and trued-up for known and measurable revenue, rate base, and expense items through September 30, 2017. In its May 24, 2017 orders, the Commission also established a procedural schedule leading to an evidentiary hearing. The cases were consolidated for hearing purposes, but remain separate cases with similar filings.

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<sup>2</sup> File No. GR-2017-0215, In the Matter of Laclede Gas Company Request to Increase Its Revenues for Gas Service, Tariff No. YG-2017-0195, filed April 11, 2017.

<sup>3</sup> File No. GR-2017-0216, In the Matter of Laclede Gas Company d/b/a Missouri Gas Energy's Request to Increase Its Revenues for Gas Service, Tariff No. YG-2017-0196, filed April 11, 2017.

<sup>4</sup> Section 393.150, RSMo 2016. (All statutory references are to the Revised Statutes of Missouri 2016, unless otherwise noted.)

<sup>5</sup> The USW Local 11-6 intervened only in File No. GR-2017-0215 and Kansas City Power and Light Company and KCP&L Greater Missouri Operations intervened only in File No. GR-2017-0216.

In September and October 2017, the Commission conducted eleven local public hearings at various sites<sup>6</sup> in Laclede's and MGE's service areas. At those hearings, the Commission heard comments from Spire Missouri's customers and the public regarding the requests for rate increases.

In compliance with the established procedural schedule, the parties prefiled direct, rebuttal, and surrebuttal testimony and direct and rebuttal true-up testimony. The evidentiary hearing began on December 6, 2017, and concluded on December 15, 2017. The true-up hearing was held on January 3, 2018. The parties filed post-hearing briefs on January 9, 2018, and reply briefs on January 17, 2018.

On January 18, 2018, the Commission directed Spire Missouri to submit an affidavit explaining the specific adjustments that would be needed to include in rates any change in cost of service as a result of the Tax Cuts and Jobs Act<sup>7</sup> for each of Spire Missouri's operating units. The Commission also set a date for requests for a hearing on the issues and indicated that if a hearing were set it would be held on February 5, 2018. Spire Missouri filed an affidavit of Glenn Buck on January 22, 2018, and on January 25, 2018, Staff filed an affidavit in reply. On January 26, 2018, the Commission set a technical conference for January 30, 2018 and set a hearing on February 5, 2018. A hearing was held on February 5, 2018 and written closing statements were filed on February 6, 2018.

### **Complaint Case**

In addition to the above procedures, on April 27, 2016, the Office of the Public Counsel (OPC) filed a complaint with the Missouri Public Service Commission against

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<sup>6</sup> Hearings were held in Joplin, Independence, St. Joseph, Arnold, St. Louis, Sunset Hills, St. Charles, Kansas City, and Gladstone, Missouri.

<sup>7</sup> Public Law No.: 115-97; signed into law on December 22, 2017.

Spire Missouri assigned File No. GC-2016-0297. The complaint alleged that Spire Missouri's rates were excessive and should be reduced. On October 5, 2016, the Commission granted *OPC's Motion to Stay Proceedings*. On July 31, 2017, OPC filed a *Motion to Lift Stay and Consolidate with the Companies' Current Rate Cases*. The Commission granted that motion and on August 11, 2017, consolidated the complaint case with the two pending rate cases.

After hearing the evidence in this matter, the Commission finds there is insufficient evidence to establish that LAC or MGE have earned an actual return on equity that is significantly higher than necessary to attract necessary capital, to provide safe and reliable service, or significantly higher than commensurate returns by enterprises having corresponding risks indicating that their ordered rates were not just and reasonable. Therefore, the Commission denies Public Counsel's complaint. The Commission further notes, however, that in this order it has determined just and reasonable rates on a going forward basis.

### **The Partial Stipulations and Agreements**

On October 25, 2017, the Commission approved the *Joint Stipulation and Agreement* between the Missouri School Boards' Association and Spire Missouri which settled all issues between those parties.<sup>8</sup> During the course of the evidentiary hearing, various parties filed three additional non-unanimous partial stipulations and agreements: *Partial Stipulation and Agreement*,<sup>9</sup> *Partial Non-Unanimous Stipulation and*

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<sup>8</sup> *Order Approving Joint Stipulation and Agreement Regarding Spire West's (Formerly Known as Missouri Gas Energy) STP Tariff*, issued October 25, 2017.

<sup>9</sup> Filed December 13, 2017.

*Agreement*,<sup>10</sup> and *Non-Unanimous Stipulation Regarding Revenue Allocation and Non-Residential Rate Design*.<sup>11</sup> Those stipulations and agreements resolved issues that would otherwise have been the subject of testimony at the hearing. After the hearing, an additional non-unanimous *Partial Stipulation and Agreement Regarding Low Income Energy Affordability Program* was filed.<sup>12</sup> No party opposed those partial stipulations and agreements. As permitted by its regulations, the Commission treats the unopposed partial stipulations and agreements as unanimous.<sup>13</sup>

After considering these stipulations and agreements, the Commission independently finds and concludes that the stipulations and agreements are reasonable resolutions of the issues addressed by those agreements. The Commission further finds and concludes that those agreements should be approved. The issues resolved in those stipulations and agreements will not be further addressed in this report and order, except as they may relate to any unresolved issues.

Just prior to the hearing on February 5, 2018, Public Counsel, MIEC, MCEG, and Consumers Council filed a *Non-Unanimous Stipulation and Agreement Regarding Tax Cuts and Jobs Act*. Spire Missouri made an oral objection to the agreement at the hearing. Thus, under 4 CSR 240-2.115(D), that stipulation and agreement became “merely a position of the signatory parties” thereto.

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<sup>10</sup> Filed December 20, 2017.

<sup>11</sup> Filed December 20, 2017.

<sup>12</sup> Filed January 9, 2018.

<sup>13</sup> Commission Rule 4 CSR 240-2.115(C).



## **General Findings of Fact and Conclusions of Law**

Spire Missouri set out its rationale for increasing its rates in the direct testimony it filed along with its tariffs on April 11, 2017.<sup>14</sup> In addition to its filed testimony, Spire Missouri provided work papers and other detailed information and records to the Staff of the Commission, Public Counsel, and to the intervening parties. Those parties then had the opportunity to review Spire Missouri's testimony and records to determine whether the requested rate increase was justified.

Where the parties disagreed, they prefiled written testimony to raise those issues to the attention of the Commission. All parties were given an opportunity to prefile three rounds of testimony – direct, rebuttal, and surrebuttal. The process of filing testimony and responding to the testimony filed by other parties revealed areas of agreement that resolved some issues and areas of disagreement that revealed new issues. On December 1, 2017, the parties filed a list of the issues they asked the Commission to resolve. Some of the issues identified at that time were later resolved by the stipulations and agreements or otherwise by agreement at hearing. On December 29, 2017, the parties filed a further list of issues for Commission resolution at the true-up hearing. On January 1, 2018, the Commission additionally requested testimony and comment regarding the Tax Cuts and Jobs Act. Additional testimony was taken on February 5, 2017 on that issue. The unresolved issues will be addressed in this report and order.

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<sup>14</sup> Exhibit Nos. 1-4, 6, 10, 15, 19, 23, 28, 33, 35, 38, 46, and 50.

### **General Findings of Fact**

1. Spire Missouri is an investor-owned gas utility providing retail gas service to large portions of Missouri through its two operating units or divisions, Spire Missouri East (formerly known as Laclede Gas Company or LAC) and Spire Missouri West (formerly known as Missouri Gas Energy or MGE).

2. Spire Missouri is a wholly-owned subsidiary of Spire Inc.<sup>15</sup> In 2016, Spire Inc. had three gas distribution systems as wholly-owned subsidiaries including Laclede Gas Company in Missouri, Alabama Gas Corporation (Alagasco) in Alabama, and EnergySouth Inc. in Alabama and Mississippi.<sup>16</sup> Spire Inc. also holds gas marketing business segments and Spire STL Pipeline LLC, a company applying for permits at the Federal Energy Regulatory Commission (FERC) to build a pipeline.<sup>17</sup>

3. MGE serves approximately 500,000 customers on the western side of Missouri. The Commission approved the acquisition of MGE by Laclede Gas Company when it approved a *Unanimous Stipulation and Agreement* dated July 2, 2013, in Commission Case No. GM-2013-0254.<sup>18</sup>

4. The Commission last authorized a general rate increase for MGE on April 16, 2014, in Case No. GR-2014-0007, with new rates effective on May 1, 2014. That case was settled by a stipulation and agreement approved by the Commission that increased MGE's Missouri jurisdictional revenues by \$7.8 million and reset the ISRS to zero.<sup>19</sup>

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<sup>15</sup> Ex. 205, Staff Report - Cost of Service, p. 17.

<sup>16</sup> Ex. 205, Staff Report - Cost of Service, p. 17-18.

<sup>17</sup> Ex. 205, Staff Report - Cost of Service, p. 18; and Ex. 650, Lander Direct, p. 12.

<sup>18</sup> Ex. 205, Staff Report - Cost of Service, p. 3; and Ex. 55, Stipulation and Agreement in Case No. GM-2013-0254.

<sup>19</sup> Exhibit 204, Staff Cost of Service Report dated September 2017, p. 3.

5. LAC serves approximately 630,000 customers on the eastern side of Missouri.

6. The Commission last authorized a general rate increase for LAC on June 26, 2013, in Case No. GR-2013-0171, with new rates effective July 8, 2013. That case was also settled by a stipulation and agreement approved by the Commission and reset the ISRS rate to zero.<sup>20</sup>

7. A test year is a historical year used as the starting point for determining the basis for adjustments that are necessary to reflect annual revenues and operating costs in calculating any shortfall or excess of earnings by the utility. Adjustments, such as annualization and normalization, are made to the test year results when the unadjusted results do not fairly represent the utility's most current annual level of existing revenue and operating costs.<sup>21</sup>

8. A normalization adjustment is an adjustment made to reflect normal, on-going operations of the utility. Revenues or costs that were incurred in the test year that are determined to be atypical or abnormal will get specific rate treatment and generally require some type of adjustment to reflect normal or typical operations. The normalization process removes abnormal or unusual events from the cost of service calculations and replaces those events with normal levels of revenues or costs.

9. An annualization adjustment is made to a cost or revenue shown on the utility's books to reflect a full year's impact of that cost or revenue.<sup>22</sup>

10. The test year for this case is the twelve months ending December 31, 2016,

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<sup>20</sup> Exhibit 204, Staff Cost of Service Report dated September 2017, p. 3.

<sup>21</sup> Ex. 205, Staff Report - Cost of Service, p. 3.

<sup>22</sup> Ex. 205, Staff Report - Cost of Service, p. 97.

updated to June 30, 2017.<sup>23</sup>

11. The Commission also ordered a true-up period ending September 30, 2017, in order to account for any significant changes in Spire Missouri's cost of service that occurred after the end of the test year period but prior to the tariff operation of law date.<sup>24</sup>

12. For ratemaking purposes, a tracker mechanism is a unique regulatory tool used to ensure that rate recovery over time is made equal to the actual expenditures for a particular cost of service item. A tracker mechanism compares the ongoing amount of a cash expense actually incurred by a utility to the amount of the same expense reflected in the utility's rates, and provides rate recovery over time of the difference between the two totals. Generally, tracker mechanisms should only be used for certain cost items incurred by utilities that show unusual characteristics or are incurred under extraordinary circumstances. . . . Ongoing tracker mechanisms capture both under and over recovery of an expense for recovery from or return to ratepayers.

The overall goal of a tracker mechanism, when properly exercised, is to provide the utility with dollar for dollar recovery of reasonable and prudently incurred cash expenses, but no more and no less than dollar for dollar recovery.<sup>25</sup>

13. The Commission finds that any given witness' qualifications and overall credibility are not dispositive as to each and every portion of that witness' testimony. The Commission gives each item or portion of a witness' testimony individual weight based upon the detail, depth, knowledge, expertise, and credibility demonstrated with regard to that specific testimony. Consequently, the Commission will make additional specific weight and credibility decisions throughout this order as to specific items of testimony as is necessary.<sup>26</sup>

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<sup>23</sup> Ex. 205, Staff Report - Cost of Service, p. 4.

<sup>24</sup> Ex. 205, p. 4.

<sup>25</sup> Ex. 205, Staff Report - Cost of Service, p. 64

<sup>26</sup> Witness credibility is solely a matter for the fact-finder, "which is free to believe none, part, or all of the testimony". *State ex rel. Public Counsel v. Missouri Public Service Comm'n*, 289 S.W.3d 240, 247 (Mo.

14. Any finding of fact reflecting that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.<sup>27</sup>

### **The Rate Making Process**

15. The rates Spire Missouri will be allowed to charge its customers are based on a determination of the company's revenue requirement. The revenue requirement can be expressed as the following formula:<sup>28</sup>

$$\mathbf{RR = COS - CR}$$

where: **RR = Revenue Requirement**  
**COS = Cost of Service**  
**CR = Adjusted Current Revenues**

The cost-of-service for a regulated utility can be defined by the following formula:

$$\mathbf{COS = O + (V - D)R}$$

where: **COS = Cost of Service;**  
**O = Adjusted Operating Costs (Payroll, Maintenance, etc.), Depreciation Expense and Taxes**  
**V = Gross Valuation of Property Required for Providing Service**  
**D = Accumulated Depreciation Representing Recovery of Gross Property Investment**  
**R = Allowed Rate of Return**  
**V - D = Rate Base (Gross Property Investment less Accumulated Depreciation = Net Property Investment)**  
**(V - D)R = Return Allowed on Net Property Investment**

All parties accept the basic formula. Disagreements arise over the amounts that

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App. 2009).

<sup>27</sup> An administrative agency, as fact finder, also receives deference when choosing between conflicting evidence. *State ex rel. Missouri Office of Public Counsel v. Public Service Comm'n of State*, 293 S.W.3d 63, 80 (Mo. App. 2009).

<sup>28</sup> Ex. 201, Myers Direct, pp. 6-7.

should be included in the formula.

### **Conclusions of Law Regarding Jurisdiction**

A. Spire Missouri is a public utility, and a gas corporation, as those terms are defined in Subsections 386.020(18) and (43), RSMo. As such, Spire Missouri is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo.

B. Spire Missouri can charge only those amounts set forth in its tariffs.<sup>29</sup> Subsection 393.140(11), RSMo, gives the Commission authority to regulate the rates Spire Missouri may charge its customers for natural gas.

C. When Spire Missouri filed a tariff designed to increase its rates, the Commission exercised its authority under Section 393.150, RSMo, to suspend the effective date of that tariff for 120 days beyond the effective date of the tariff, plus an additional six months.

D. Sections 386.390 and 393.150, RSMo, authorize the Commission to determine complaints, including those regarding regulated utility rates.

### **Conclusions of Law Regarding Just and Reasonable Rates**

A. Utilities are required to provide safe and adequate service.<sup>30</sup> In determining the rates Spire Missouri may charge its customers, the Commission is required to determine that the proposed rates are just and reasonable.<sup>31</sup>

B. Spire Missouri has the burden of proving its proposed rates are just and reasonable.<sup>32</sup> In order to carry its burden of proof, Spire Missouri must meet the

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<sup>29</sup> Sections 393.130 and 393.140, RSMo.

<sup>30</sup> Sections 393.130 and 393.140, RSMo.

<sup>31</sup> Section 393.150.2, RSMo.

<sup>32</sup> Section 393.150.2, RSMo.

preponderance of the evidence standard.<sup>33</sup> In order to meet this standard, Spire Missouri must convince the Commission it is “more likely than not” that Spire Missouri’s proposed rate increase is just and reasonable.<sup>34</sup>

C. In determining whether the rates proposed by Spire Missouri are just and reasonable, the Commission must balance the interests of the investor and the consumer.<sup>35</sup> In discussing the need for a regulatory body to institute just and reasonable rates, the United States Supreme Court has held as follows:

Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the services are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment.<sup>36</sup>

In the same case, the Supreme Court provided the following guidance on what is a just and reasonable rate:

What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the

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<sup>33</sup> *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996), citing to, *Addington v. Texas*, 441 U.S. 418, 423, 99 S.Ct. 1804, 1808, 60 L.Ed.2d 323, 329 (1979).

<sup>34</sup> *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 109-111 (Mo. banc 1996); *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

<sup>35</sup> *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603, (1944).

<sup>36</sup> *Bluefield Water Works & Improvement Co. v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 690 (1923).

money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.<sup>37</sup>

The Supreme Court has further indicated:

‘[R]egulation does not insure that the business shall produce net revenues.’ But such considerations aside, the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.<sup>38</sup>

D. In undertaking the balancing required by the Constitution, the Commission is not bound to apply any particular formula or combination of formulas. Instead, the Supreme Court has said:

Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances.<sup>39</sup>

E. Furthermore, in quoting the United States Supreme Court in *Hope Natural Gas*, the Missouri Court of Appeals said:

[T]he Commission [is] not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of ‘pragmatic adjustments.’ ... Under the statutory standard of ‘just and reasonable’ it is the result reached, not the method employed which is controlling. It is not theory but the impact of the rate order which counts.<sup>40</sup>

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<sup>37</sup> *Bluefield*, at 692-93.

<sup>38</sup> *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (citations omitted).

<sup>39</sup> *Federal Power Commission v. Natural Gas Pipeline Co.* 315 U.S. 575, 586 (1942).

<sup>40</sup> *State ex rel. Associated Natural Gas Co. v. Pub. Serv. Comm’n*, 706 S.W. 2d 870, 873 (Mo. App. W.D. 1985).



## Issues

The issues are set out as the parties phrased them, but have been renumbered and reorganized herein.

### **I. Forest Park Property**

- A. **How should any gain resulting from the sale of the Forest Park property be treated for ratemaking purposes?**
- B. **How should the relocation proceeds from the sale of the Forest Park property, other than proceeds used for relocation purposes or contributed to capital for the benefit of customers, be treated for ratemaking purposes?**

## Findings of Fact

1. LAC owned and operated three large district service centers for several decades. These service centers provided leak detection, leak repair, construction, maintenance, marketing, and other services for the company. One of these service centers was located near Forest Park in the City of St. Louis (referred to as the “Forest Park property”).<sup>41</sup> The Forest Park property provided some functions, such as gas procurement, gas controls, and diversion services that were not provided at the other two service centers.<sup>42</sup>

2. After Laclede Gas Company purchased Missouri Gas Energy, certain restructuring of the company was undertaken. The major elements of the restructuring in the St. Louis area for LAC included: (a) the 2014 sale of the Forest Park property; (b) the 2015 termination of the lease for the Laclede Gas Company main corporate office at 720 Olive Street; (c) the 2015 leasing of new office facilities at 700 and 800 Market

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<sup>41</sup> Ex. 205, Staff Cost of Service Report, p. 48.

<sup>42</sup> Ex. 205, Staff Cost of Service Report, p. 48.

Street; and (d) and the 2016 construction of a new satellite operation facility on Manchester Avenue.<sup>43</sup>

3. In order to provide additional negotiation leverage for potential sale of the Forest Park property, LAC acquired two parcels in January 2013 that were adjacent to the Forest Park service center for \$450,000 plus some additional expenses.<sup>44</sup> These properties were included in the Forest Park property sale.

4. On June 27, 2013, LAC signed an agreement to sell the Forest Park property to The Cortex Innovation Community in St. Louis (Cortex). Cortex, an urban redevelopment corporation, purchased the property for an IKEA retail store now located on the property.<sup>45</sup>

5. Cortex obtained an appraisal of the property for the purpose of determining the property value for redevelopment by a specific retail business. That appraisal found the market value for the property with all of the buildings and structures was \$6.89 million. The appraised market value for the property with all the buildings demolished and removed was \$7.44 million.<sup>46</sup>

6. An agreement for sale between LAC and Cortex was reached and Cortex purchased the Forest Park property, including the buildings, other improvements, and land for \$8.3 million and an additional \$5.7 million for employee and equipment relocation expenses. The sale transaction closed in May of 2014.<sup>47</sup>

7. As part of the sale agreement, LAC retained the right to occupy the

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<sup>43</sup> Ex. 42, Kopp Rebuttal, p. 4.

<sup>44</sup> Ex. 250, Kunst Surrebuttal, Schedule JK-s1, p.2 (the specific "other expenses" were designated as "Confidential" in Staff's schedule and will not be denominated here).

<sup>45</sup> Ex. 205, Staff Cost of Service Report, pp. 48-49; and Ex. 251, Kunst Surrebuttal, Schedule JK-s2.

<sup>46</sup> Ex. 251, Kunst Surrebuttal, Schedule JK-s1.

<sup>47</sup> Ex. 205, Staff Cost of Service Report, p. 49; and Ex. 251, Kunst Surrebuttal, p. 2 and Schedule JK-s1, Attachment 6.

premises while it coordinated its move to other facilities.<sup>48</sup> The move from the Forest Park property was coordinated with moves to other facilities and the consolidation of “shared services” employees and functions after the acquisition of MGE.<sup>49</sup>

8. LAC continued to use portions of the Forest Park property for almost a year after the closing.<sup>50</sup> Eventually, LAC relocated management employees to the Shrewsbury and Berkeley service centers and other Forest Park employees were moved to a temporary location in the vicinity. In November 2016, LAC placed its newly constructed facility at 5311 Manchester (Manchester facility) into service where approximately 100 LAC employees responsible for construction and maintenance, leak detection and repair, and other functions were relocated.<sup>51</sup>

9. The Manchester service center location allows LAC to provide quick emergency response time to the city and also allows LAC to continue with its accelerated pipe replacement work that LAC previously performed at its Forest Park facility.<sup>52</sup>

10. The Manchester facility was a “partial replacement” for the Forest Park property and has an approximate \$7.7 million rate base value.<sup>53</sup>

11. The Manchester facility was the only capital expenditure in this case used to “replace” the Forest Park functions.<sup>54</sup>

12. The Manchester facility is more cost efficient to operate; however, the

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<sup>48</sup> Ex. 42, Kopp Rebuttal, p. 8.

<sup>49</sup> Ex. 42, Kopp Rebuttal, p. 8; and Ex. 205, Staff Cost of Service Report, p. 49.

<sup>50</sup> Ex. 251, Kunst Surrebuttal, p. 4; and Ex. 42, Kopp Rebuttal, p. 8.

<sup>51</sup> Ex. 205, Staff Cost of Service Report, p. 49; and Ex. 42, Kopp Rebuttal, p. 9.

<sup>52</sup> Ex. 251, Surrebuttal Testimony of Jason Kunst, p. 4.

<sup>53</sup> Ex. 205, Staff Report - Cost of Service, p. 49; and Ex. 251, Kunst Surrebuttal, pp. 3-4 and Schedule JK-s2.

<sup>54</sup> Tr. 1620.

capital cost is substantially greater than the existing Forest Park facility.<sup>55</sup>

13. LAC had owned the Forest Park property for many decades and the original buildings were fully depreciated many years ago. However, more recent capital improvements to the property resulted in additional gross plant of approximately \$3.3 million, offset by a depreciation reserve of \$1.5 million, leaving a net rate base asset for the capital improvements of \$1.8 million at the time of the sale.<sup>56</sup>

14. When the buildings were retired for accounting purposes, LAC credited the Forest Park building asset account by \$3.3 million and debited the depreciation reserve account by the same amount. Since the depreciation reserve balance associated with the buildings was \$1.5 million prior to the retirement, a negative reserve debit of \$1.8 million now exists.<sup>57</sup> Thus, ratepayers will continue paying for the old building (*i.e.* LAC will continue to earn a return on the \$1.8 million) while also paying for the new Manchester facility.<sup>58</sup>

15. LAC's gain or profit from the \$8.3 million sale price of property previously included in rate base after subtracting the \$1.8 million net book value of the buildings and \$700,000 for the land was \$5.8 million.<sup>59</sup>

16. LAC used \$1.5 million from the gain on the sale of the Forest Park property to make civic contributions for downtown St. Louis rehabilitation.<sup>60</sup>

17. LAC used \$1.95 million of relocation proceeds for the purchase of furniture

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<sup>55</sup> Ex. 43, Kopp Surrebuttal, Schedule SMK-S1.

<sup>56</sup> Ex. 64, Affidavit of Glenn Buck Related to Forest Park, pp. 1-2; and Ex. 251, Kunst Surrebuttal, p. 14.

<sup>57</sup> Ex. 64, Affidavit of Glenn Buck Related to Forest Park, pp. 1-2

<sup>58</sup> Ex. 64, Affidavit of Glenn Buck Related to Forest Park, p. 2; Ex. 438, Robinett True-Up Rebuttal, p. 3; and Tr. 1633 and 1643.

<sup>59</sup> Ex. 205, Staff Cost of Service Report, p. 49; and Ex. 251, Kunst Surrebuttal, p. 2.

<sup>60</sup> Tr. 1619.

and fixtures at its new offices located at 700 and 800 Market Street.<sup>61</sup> LAC recorded these purchases at a “zero” net book value.<sup>62</sup>

18. In Data Request 388, LAC reported its moving and relocation expenses, but the expenses were not tracked by particular move. With the exception of a lease expense for one of the temporary locations at a cost of \$200,000, it was not clear which expenses were used for moving Forest Park employees and equipment and which were used for moving employees and equipment from Olive to Market.<sup>63</sup>

19. LAC did not seek Commission authorization prior to the sale of the Forest Park property.

20. The Forest Park property was necessary and useful in the provision of utility service at the time of its sale.

21. Staff argues that the gain from the sale of the Forest Park property should be shared with ratepayers because LAC sold utility property that was needed for the provision of utility service that had to be replaced with a facility at a higher cost.<sup>64</sup>

22. With regard to the relocation proceeds, Staff proposes that \$3.6 million (the \$5.7 million relocation proceeds, less documented moving expenses and less the \$1.95 million in capital expenditures for furniture and fixtures) be used to offset the cost of the more expensive Manchester facility.<sup>65</sup>

23. It is just and reasonable to offset the cost of the more expensive replacement facility with the relocation proceeds less the known moving expenses for Forest Park and the capital contributions.

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<sup>61</sup> Ex. 42, Kopp Rebuttal, pp. 8-9; and Ex. 251, Kunst Surrebuttal, p. 6.

<sup>62</sup> Ex. 251, Kunst Surrebuttal, p. 6.

<sup>63</sup> Tr. 1649-1650.

<sup>64</sup> Ex. 251, Kunst Surrebuttal, p. 3.

<sup>65</sup> Ex. 251, Kunst Surrebuttal, p. 6.

### **Conclusions of Law**

A. A company is required to obtain Commission authorization prior to the sale of any part of its system that is necessary or useful in the performance of its duties to the public.<sup>66</sup>

B. Commission rule 4 CSR 240-40.040 requires a gas utility to use the Federal Energy Regulatory Commission (FERC) Uniform System of Accounts (USOA) for tracking its regulated property. The FERC USOA for gas utilities proscribes specific treatment for the sale of utility assets that constitute an operating unit or system as follows:

F. When gas plant constituting an operating unit or system is sold, conveyed, or transferred to another by sale, merger, consolidation, or otherwise, the book cost of the property sold or transferred to another shall be credited to the appropriate utility plant accounts, including amounts carried in account 114, Gas Plant Acquisition Adjustments. The amounts (estimated if not known) carried with respect there-to in the accounts for accumulated provision for depreciation, depletion, and amortization and in account 252, Customer Advances for Construction, shall be charged to such accounts and the contra entries made to account 102, Gas Plant Purchased or Sold. Unless otherwise ordered by the Commission, the difference if any, between (a) the net amount of debits and credits and (b) the consideration received for the property (less commissions and other expenses of making the sale) shall be included in account 421.1, Gain on Disposition of Property, or account 421.2 Loss on Disposition of Property (see account 102, Gas Plant Purchased or Sold).<sup>67</sup>

### **Decision**

The Commission has not previously had an opportunity to address how Spire Missouri should handle the accounting for the Forest Park property transaction because the issue was not presented to the Commission for authorization of the transactions.

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<sup>66</sup> Subsection 393.190.1, RSMo.

<sup>67</sup> Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act, 18 C.F.R. § Pt. 201, Gas Plant Instructions, 5. *Gas Plant purchased or sold, F.*

The Commission finds that the ratepayers should not continue to pay for property that was necessary for the provision of utility service and was replaced with a more expensive property.

The sale of the Forest Park property was not purely a land transaction. The appraisal Cortex received was given from the perspective of a client that had no use for the structures and would need the land cleared to build its retail facility. The fact is that these buildings were included in rate base and had an undepreciated net book value of \$1.8 million at the time of the sale. This transaction included the sale of the land and the buildings and when the buildings were sold any return on or of the building costs should have been removed from rates.

The FERC USOA for gas utilities proscribes specific treatment for the sale of utility assets that constitute an operating unit or system. Spire Missouri's recording of the transaction reduced the building asset account by \$3.3 million. However, its reduction of the depreciation reserve by the same amount (\$3.3 million) does not allow for the recognition of the \$1.8 million loss on the retirement of the Forest Park buildings and misrepresents the effect of the sale on the depreciation reserve. The Commission orders LAC to account for the sale of the Forest Park buildings transaction in accordance with the FERC USOA by increasing its accumulated depreciation reserve by the \$1.8 million loss on the retirement of the Forest Park buildings. Neither a return on the \$1.8 million undepreciated value of the Forest Park buildings, nor any return of the \$1.8 million shall be included in rates going forward. The remainder of the \$5.8 million gain properly belongs to the shareholders.

LAC partially replaced the Forest Park buildings with the Manchester facility. LAC also received \$5.7 million in moving expenses as part of the sale. It was necessary for LAC to continue to utilize the Forest Park facilities after the completion of the sale and it was necessary to replace a portion of the previous Forest Park facilities with the Manchester facility at greater cost. Although the Manchester facility may be less expensive to operate, it is a much more expensive capital asset than the Forest Park property and rates will include this more expensive capital. Therefore, it is appropriate for the Commission to order a portion of the \$5.7 million relocation costs be used to offset the higher costs of the partial replacement facility.

The actual expenses incurred to relocate Forest Park employees could not be determined from the evidence presented, but the \$200,000 lease expense and the \$1.95 million capital contributions should be deducted from the \$5.7 million total before the remainder is used to offset the construction cost of the new Manchester facility. The Commission adopts the Staff's proposal that Spire Missouri shall create a regulatory liability to record the rate base offset of the relocation expense which shall be amortized over five years beginning with the date the rates set in this case become effective.

## **II. Kansas Property Tax**

- A. What is the appropriate amount of Kansas property tax expense to include in MGE's base rates?**
- B. Should the tracker for Kansas property tax expense be continued?**

During the course of the hearing, Spire, Staff, and Public Counsel indicated they reached an agreement regarding Staff's surrebuttal position on the issue of Kansas



property tax and the continuation of a tracker for that expense.<sup>68</sup> They further indicated MIEC would waive cross-examination on these issues, but would brief the remaining issues.<sup>69</sup> MIEC did not, however, include any arguments on these topics in its briefs.<sup>70</sup> Thus, it appears that the parties reached agreement on these issues as set out below.

### **Findings of Fact**

1. MGE has natural gas inventory for use in its Missouri gas service area that is stored in the state of Kansas. MGE currently pays Kansas property tax for the natural gas inventory based on its volume of gas costs and the market price of gas as of January 1 of that year.<sup>71</sup>

2. The amount of actual Kansas property taxes paid by MGE since 2009 has been somewhat volatile with a downward trend from 2013 through 2016.<sup>72</sup>

3. Based on actual tax bills received for four of ten counties, the 2017 Kansas property tax amount will increase.<sup>73</sup> Thus, based on those actual tax bills, Staff calculated and recommended at the time of its surrebuttal testimony a normalized annual level of Kansas property taxes of \$1,454,069 (the average of the taxes for 2009 through 2016).<sup>74</sup> Staff indicated the revised normalized amount would be reflected in its true-up accounting schedules.<sup>75</sup>

4. Because of the volatility of the property tax amount and the Kansas laws

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<sup>68</sup> Tr. 1628.

<sup>69</sup> Tr. 1628.

<sup>70</sup> *Initial Brief of Missouri Industrial Energy Consumers* (filed January 9, 2018); and *Reply Brief of Missouri Industrial Energy Consumers* (filed January 17, 2018).

<sup>71</sup> Ex. 205, Staff Cost of Service Report, p. 130.

<sup>72</sup> Ex. 252, K. Lyons Surrebuttal, p. 3.

<sup>73</sup> Ex. 252, K. Lyons Surrebuttal, p. 4.

<sup>74</sup> Ex. 252, K. Lyons Surrebuttal, p. 4.

<sup>75</sup> Ex. 252, K. Lyons Surrebuttal, p. 4.

pertaining to this property tax,<sup>76</sup> the Commission has previously approved, as part of a stipulation and agreement, a tracker for the Kansas property tax amount.<sup>77</sup> In its Surrebuttal testimony, Staff recommended the tracker continue and be reviewed again in MGE's next general rate case.<sup>78</sup>

### **Conclusions of Law**

The Commission makes no additional conclusions of law for this issue.

### **Decision**

Based on actual tax bills for the 2017 tax year when compared to the actual amounts from 2009-2016, the Commission finds the Kansas property taxes remain volatile, with an increase in 2017 over the previous four years. The Commission further finds that an average of the actual Kansas property tax expense from 2009-2016 (\$1,454,069) is an appropriate amount to include in rates as a normalized annual level. Further, because of the past volatility of the Kansas property tax amount, the potential for future volatility given that the tax is set based on one-day price information, and the agreement of Spire, Staff, and Public Counsel, the Commission finds that the Kansas property tax tracker shall be continued.

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<sup>76</sup> Ex. 205, Staff Cost of Service Report, pp. 130-136.

<sup>77</sup> Ex. 205, Staff Cost of Service Report, pp. 130-131.

<sup>78</sup> Ex. 252, K. Lyons Surrebuttal, pp. 5-6.

### III. Cost of Capital

#### A. Return on Common Equity – What’s the appropriate return on common equity to be used to determine rate of return?

##### Findings of Fact

1. These issues concern the rate of return Spire Missouri will be authorized to earn on its rate base. Rate base is the net value of the utility’s assets. In order to determine a rate of return, the Commission must determine Spire’s capital structure and cost of obtaining the capital it needs.

2. To determine a return on equity, the Commission must consider the expectations and requirements of investors when they choose to invest their money in Spire Missouri rather than in some other investment opportunity. As a result, the Commission cannot simply find a rate of return on equity that is unassailably scientifically, mathematically, or legally correct. Such a “correct” rate does not exist. Instead, the Commission must use its judgment to establish a rate of return on equity attractive enough to investors to allow the utility to fairly compete for the investors’ dollar in the capital market without permitting an excessive rate of return on equity that would drive up rates for Spire’s ratepayers. To obtain guidance about the appropriate rate of return on equity, the Commission considers the testimony of expert witnesses.

3. Three financial analysts testified in the case regarding an appropriate return on equity. David Murray testified on behalf of Staff. Mr. Murray is the Utility Regulatory Manager of the Financial Analysis Unit for the Staff Division of the Missouri Public Service Commission. He holds a Bachelor of Science degree in Business Administration from the University of Missouri – Columbia, and a Master’s degree in

Business Administration from Lincoln University. Mr. Murray has been employed by the Commission since 2000 and has offered testimony in many cases before the Commission.<sup>79</sup> Mr. Murray recommends an allowed return on equity of 9.25 percent, within a range of 9.00 percent to 9.50 percent.<sup>80</sup>

4. Michael Gorman testified on behalf of Public Counsel and MIEC. Mr. Gorman is a consultant in the field of public utility regulation and is a Managing Principal of Brubaker & Associates, Inc. He holds a Bachelor of Science degree in Electrical Engineering from Southern Illinois University and a Master's Degree in Business Administration with a concentration in Finance from the University of Illinois at Springfield.<sup>81</sup> Gorman recommends the Commission allow Spire Missouri a return on equity of 9.20 percent, the midpoint of a recommended range of 8.90 percent to 9.40 percent.<sup>82</sup>

5. Pauline Ahern testified on behalf of Spire Missouri. Ms. Ahern is a consultant in the field of investor-owned utility regulation and is an Executive Director of ScottMadden, Inc. She holds a Bachelor of Arts degree in Economics from Clark University and Master's Degree in Business Administration with a concentration in finance from Rutgers University.<sup>83</sup> Ms. Ahern recommends the Commission allow Spire Missouri a return on equity of 10.35 percent, including a "flotation risk adjustment" of .16 percent and a "business risk adjustment" of .20 percent.<sup>84</sup>

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<sup>79</sup> Ex. 206, Staff Report Appendix 1, pp. 42-50.

<sup>80</sup> Ex. 205, Staff Report - Cost of Service, p. 8.

<sup>81</sup> Ex. 407, Gorman Direct, Appendix A, p. 1.

<sup>82</sup> Ex. 407, Gorman Direct, p. 2.

<sup>83</sup> Ex. 38, Ahern Direct, p. 1.

<sup>84</sup> Ex. 38, Ahern Direct, p. 5.

6. A utility's cost of common equity is the return investors require on an investment in that company. Investors expect to achieve their return by receiving dividends and through stock price appreciation.<sup>85</sup> In general, the United States Supreme Court has set out the financial and economic standards to consider in setting the cost of common equity.<sup>86</sup> That is, the Commission must authorize a return on equity sufficient to maintain financial integrity, attract capital under reasonable terms, and be commensurate with returns investors could earn by investing in other enterprises of comparable risk.<sup>87</sup>

7. The financial analysts in this case used a variety of methods to estimate a company's fair rate of return on equity including the Discounted Cash Flow (DCF) method, the Risk Premium Model (RPM), and the Capital Asset Pricing Method (CAPM).<sup>88</sup> The DCF is based on a theory that a stock's current price represents the present value of all expected future cash flows discounted at the investor's required rate of return or cost of capital.<sup>89</sup> The analysts also use variations of the DCF model.<sup>90</sup> The RPM is based on the principle that investors require a higher return to assume a greater risk.<sup>91</sup> Common equity investments have greater risk than bonds because bonds have more security of payment in bankruptcy proceedings than common equity and the coupon payments on bonds represent contractual obligations.<sup>92</sup> The CAPM assumes the investor's required rate of return on equity is equal to a risk-free rate of interest, plus

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<sup>85</sup> Ex. 407, Gorman Direct, p.19.

<sup>86</sup> Ex. 407, Gorman Direct, p. 20.

<sup>87</sup> Ex. 205, Staff Report - Cost of Service, p. 9; and Ex. 407, Gorman Direct, p. 20.

<sup>88</sup> Ex. 38, Ahern Direct, p. 4; Ex. 205, Staff Report - Cost of Service, p. 10; and Ex. 407, Gorman Direct, p. 20.

<sup>89</sup> Ex. 407, Gorman Direct, p. 22.

<sup>90</sup> Ex. 407, Gorman Direct, p. 20.

<sup>91</sup> Ex. 407, Gorman Direct, p. 37.

<sup>92</sup> Ex. 407, Gorman Direct, p. 37.

a risk premium associated with the specific security.<sup>93</sup> Generally, no one method is any more correct than any other method in all circumstances. Analysts balance their use of all three methods to reach a recommended return on equity.

8. Before examining the analysts' use of these various methods to arrive at a recommended return on equity, it is important to look at some other numbers. In 2014, the average authorized return on equity for a gas local distribution company (LDC) was approximately 9.78 percent.<sup>94</sup> Through the first six months of 2017 that dropped to approximately 9.5 percent. However, the most recent data available at the hearing showed that the average for the first three quarters of 2017 was approximately 9.8 percent.<sup>95</sup> Additionally, from 2015 through 2017, there has been a general trend upward in "fully litigated" authorized returns on equity.<sup>96</sup> Further, in the last three quarters of 2017, the United States had its strongest gross domestic product (GDP) growth since 2015.<sup>97</sup>

9. The Commission mentions the average allowed return on equity because Spire Missouri must compete with other utilities all over the country for the same capital. Therefore, the average allowed return on equity provides a reasonableness test for the recommendations offered by the return on equity experts.

10. Mr. Murray testified that he believed the actual cost of common equity for Spire Missouri was in the range of 6.90 percent to 7.70 percent.<sup>98</sup> Mr. Murray also indicated that no state agency had found such a low range to be reasonable for many

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<sup>93</sup> Ex. 407, Gorman Direct, pp. 43-44.

<sup>94</sup> Tr. 1366.

<sup>95</sup> Tr. 1366.

<sup>96</sup> Ex. 40, Ahern Surrebuttal, pp. 39-40.

<sup>97</sup> Tr. p. 1299.

<sup>98</sup> Ex. 205, Staff Report - Cost of Service, p. 7 and 39; and Tr. 1290.

years.<sup>99</sup> Thus, instead of recommending that range for an authorized return on equity, he determined that utility capital markets were similar to those in place with the Commission authorized returns of approximately 9.5 percent for Missouri's large electric utilities.<sup>100</sup> Mr. Murray then adjusted that return downward based on his determination of a risk differential between natural gas companies and vertically integrated electric companies.<sup>101</sup> The Commission finds that Mr. Murray's recommended ROE is too low due to its reliance on Commission decisions in cases that had test years in 2014 and 2015, Mr. Murray's ROE recommendation does not consider the improving economy and increasing Federal Reserve interest rates.

11. Gorman's recommended return on equity was calculated very differently than Mr. Murray's but had a similar outcome at 9.2 percent. However, Gorman's return on equity is also too low when compared to average ROEs awarded by other state commissions to similarly situated utilities. Obviously, this Commission is not bound to follow the lead of other commissions in setting an appropriate ROE. Even so, Spire Missouri must compete in the capital market with those other utilities. Further, Gorman's analysis failed to take into account areas where Spire Inc. faces risk above that in faced by his proxy group. When appropriately adjusted for business risk and flotation cost adjustments, and other corrections suggested by Ms. Ahern, Gorman's common equity cost rates would be 9.89 percent, also very close to the national average.<sup>102</sup>

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<sup>99</sup> Tr. 1292.

<sup>100</sup> *In the Matter of Union Electric Company d/b/a Ameren Missouri*, Case No. ER-2016-0179 (*Order Approving Unanimous Stipulation and Agreement*, issued March 8, 2017) pp. 2-3; *In the Matter of Kansas City Power & Light Company*, Case No. ER-2016-0285 (*Report & Order*, issued May 3, 2017) at p. 22.

<sup>101</sup> Tr. 1299-3001; and Ex. 205, Staff Report - Cost of Service, p. 8.

<sup>102</sup> Ex. 39, Ahern Rebuttal, pp. 47-70.

12. In contrast to Mr. Murray and Gorman, the Commission finds Ms. Ahern's return on equity recommendation is too high. Ms. Ahern's methods are inconsistent in that she ignores the corporate parent structure (Spire Inc.) of Spire Missouri in determining a business risk adjustment for size, yet she compares LAC and MGE as stand-alone companies to other parent company entities in her proxy group.<sup>103</sup> While Spire Missouri operates through its LAC and MGE subsidiaries, Atmos Energy, New Jersey Resources, and Northwest Natural Gas, all publicly traded parent companies in the proxy group, also provide gas service via their subsidiaries.<sup>104</sup> When compared at the parent-company level, Spire Inc. falls in the middle of the other parent companies with regard to size.<sup>105</sup>

13. Considering the range of the expert ROE recommendations from 9.2 percent to 10.35 percent and each of their flaws, the most recent national average of 9.8 percent, and appropriate adjustments for risk, the growing economy, and the anticipated increase in Federal Reserve interest rates, the Commission finds the most reasonable authorized return on equity is 9.8 percent.

### **Conclusions of Law**

A. In assessing the Commission's ability to use different methodologies to determine just and reasonable rates, the Missouri Court of Appeals has said:

Because ratemaking is not an exact science, the utilization of different formulas is sometimes necessary. ... The Supreme Court of Arkansas, in dealing with this issue, stated that there is no 'judicial mandate requiring the Commission to take the same approach to every rate application or even to consecutive applications by the same utility, when the commission in its expertise, determines that its previous methods are unsound or inappropriate to the particular application' (quoting Southwestern Bell

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<sup>103</sup> Ex. 38, Ahern Direct, Schedule PMA-D3, p. 3.

<sup>104</sup> Ex. 38, Ahern Direct, Schedule PMA-D3, p. 3, 5, and 6.

<sup>105</sup> Ex. 38, Ahern Direct, Schedule PMA-D3.



Telephone Company v. Arkansas Public Service Commission, 593 S.W. 2d 434 (Ark 1980).<sup>106</sup>

Furthermore,

Not only can the Commission select its methodology in determining rates and make pragmatic adjustments called for by particular circumstances, but it also may adopt or reject any or all of any witnesses' testimony.<sup>107</sup>

B. The Court of Appeals has recognized that the establishment of an appropriate rate of return is not a "precise science":

While rate of return is the result of a straight forward mathematic calculation, the inputs, particularly regarding the cost of common equity, are not a matter of 'precise science,' because inferences must be made about the cost of equity, which involves an estimation of investor expectations. In other words, some amount of speculation is inherent in any ratemaking decision to the extent that it is based on capital structure, because such decisions are forward-looking and rely, in part, on the accuracy of financial and market forecasts.<sup>108</sup>

C. In addition to being imprecise, determining a return on equity also involves balancing a utility's need to compensate investors against its need to keep prices low for consumers.<sup>109</sup>

D. Missouri court decisions recognize that the Commission has flexibility in fixing the rate of return, subject to existing economic conditions.<sup>110</sup> "The cases also recognize that the fixing of rates is a matter largely of prophecy and because of this commissions, in carrying out their functions, necessarily deal in what are called 'zones of reasonableness', the result of which is that they have some latitude in exercising this

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<sup>106</sup> *State ex rel. Assoc. Natural Gas Co. v. Public Service Commission*, 706 S.W. 2d 870, 880 (Mo. App. W.D. 1985).

<sup>107</sup> *State ex rel. Assoc. Natural Gas Co. v. Public Service Commission*, 706 S.W. 2d 870, 880 (Mo. App. W.D. 1985).

<sup>108</sup> *State ex rel. Missouri Gas Energy v. Public Service Commission*, 186 S.W.3d 376, 383 (Mo App. W.D. 2005).

<sup>109</sup> *State ex rel. Pub. Counsel v. Pub. Serv. Comm'n*, 274 S.W.3d 569, 574 (Mo. Ct. App. 2009).

<sup>110</sup> *State ex rel. Laclede Gas Co. v. Public Service Commission*, 535 S.W.2d 561, 570-571 (Mo. App. 1976).

most difficult function."<sup>111</sup> Moreover, the United States Supreme Court has instructed the judiciary not to interfere when the Commission's rate is within the zone of reasonableness.<sup>112</sup>

### **Decision**

In order to set a fair rate of return for Spire, the Commission must determine the weighted cost of each component of the utility's capital structure. One component at issue in this case is the estimated cost of common equity, or the return on equity. Based on the competent and substantial evidence in the record, on its analysis of the expert testimony offered by the parties, and on its balancing of the interests of the company's ratepayers and shareholders, as fully explained in its findings of fact and conclusions of law, the Commission finds that 9.8 percent is a fair and reasonable return on equity for Spire Missouri. That rate is nearly the midpoint of all the experts' recommendations and is consistent with the national average, the growing economy, and the anticipated increasing interest rates. The Commission finds that this rate of return will allow Spire Missouri to compete in the capital market for the funds needed to maintain its financial health.

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<sup>111</sup> *State ex rel. Laclede Gas Co. v. Public Service Commission*, 535 S.W.2d 561, 570 -571 (Mo. App. 1976). In fact, for a court to find that the present rate results in confiscation of the company's private property, that court would have to make a finding based on evidence that the present rate is outside of the zone of reasonableness, and that its effects would be such that the company would suffer financial disarray. *Id.*

<sup>112</sup> *State ex rel. Public Counsel v. Public Service Commission*, 274 S.W.3d 569, 574 (Mo. App. 2009). See, *In re Permian Basin Area Rate Cases*, 390 U.S. 747, 767, 88 S.Ct. 1344, 20 L.Ed.2d 312 (1968) ("courts are without authority to set aside any rate selected by the Commission [that] is within a 'zone of reasonableness'").

- B. Capital Structure – What capital structure should be used to determine the rate of return?**
- C. Cost of Debt – What cost of long-term debt should be used to determine the rate of return?**
- D. Should short-term debt be included in the capital structure? If so, at what cost?**

### **Findings of Fact**

1. Another essential ingredient of the cost-of-service ratemaking formula is the rate of return, which is premised on the goal of allowing a utility the opportunity to recover the costs required to secure debt and equity financing. To arrive at a rate of return, in addition to considering the return on equity, the Commission must examine an appropriate ratemaking capital structure and Spire Missouri's embedded cost of debt.

2. Spire Inc. has been acquiring gas distribution utilities since 2013. Spire Inc. through Spire Missouri (known as Laclede Gas Company at the time) acquired the assets of MGE in 2013. That transaction was structured as a direct asset purchase with no long-term debt assumed in the transaction. Spire Inc. (known as The Laclede Group at the time) issued new equity and Spire Missouri issued debt to fund the purchase of MGE's assets.<sup>113</sup>

3. Spire Inc.'s other utility acquisitions were structured as stock purchases of a subsidiary corporation owning the utility systems. Spire Inc. funded its acquisition of Alagasco by issuing debt, issuing equity, and assuming \$250 million of Alagasco debt. Spire Inc. acquired EnergySouth similarly with the assumption of \$67 million of Mobile Gas debt. The acquisitions of Alagasco and EnergySouth resulted in Spire Inc. having a more leveraged capital structure than its subsidiary, Spire Missouri.<sup>114</sup>

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<sup>113</sup> Ex. 205, Staff Report - Cost of Service, p. 18.

<sup>114</sup> Ex. 205, Staff Report - Cost of Service, p. 18.

4. Spire Inc. holds natural gas utilities which are regulated in three states and a pipeline company subject to the jurisdiction of FERC.

5. Spire Missouri's expert witnesses with regard to capital structure, Pauline Ahern, Glenn Buck, Robert Hevert, and Steven Rasche, recommended the Commission adopt the capital structure of the utility, Spire Missouri, and not that of the parent company, Spire Inc.<sup>115</sup>

6. Spire Missouri's actual capital structure on the true-up date, September 30, 2017, was 54.2 percent common equity and 45.8 percent long-term debt.<sup>116</sup>

7. Spire Missouri has an independently determined capital structure in that its debt is secured by its own assets and not the assets of Spire Inc. or any of Spire Inc.'s other subsidiaries.<sup>117</sup> Additionally, Spire Missouri's assets do not guarantee the long-term debt of its parent or of any of Spire Inc.'s other public utilities or of Spire Marketing or Spire STL Pipeline.<sup>118</sup> Further, the Commission must approve any long-term debt issuances made by Spire Missouri.<sup>119</sup>

8. Spire Missouri's stand-alone capital structure supports its own bond rating.<sup>120</sup>

9. Spire Missouri's capital structure ratios are consistent with the capital structure ratios used by Staff in the most recent Laclede Gas Company rate case

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<sup>115</sup> Ex. 21, Buck Surrebuttal, p. 2; Ex. 22, Buck True-Up Direct, p. 2; Ex. 36, Hevert Surrebuttal, pp 15-16; Ex. 37, Rasche Surrebuttal, p. 18; and Ex. 40, Ahern Surrebuttal, pp. 24-25.

<sup>116</sup> Ex. 21, Buck Surrebuttal, p. 2; Ex. 22, Buck True-Up Direct, p. 2; and Ex. 36, Hevert Surrebuttal, p. 3.

<sup>117</sup> Ex. 39, Ahern Direct, pp. 3-4; and Tr. 1307.

<sup>118</sup> Ex. 39, Ahern Direct, p. 4; and Tr. 1307-1308.

<sup>119</sup> Ex. 39, Ahern Direct, pp. 3-4.

<sup>120</sup> Ex. 39, Ahern Direct, p. 4.

involving the MGE division, File No. GR-2014-0007. In that proceeding, Staff used the capital structure of 53.56 percent common equity and 46.44 percent long-term debt.<sup>121</sup>

10. Spire Missouri's capital structure ratios as of the true-up date are based on the actual capital structure that finances the assets and operations of the public utility for which the Commission is setting rates in this proceeding.<sup>122</sup>

11. Spire Inc.'s capital structure contains capital that has not been directly used to fund investments in LAC and MGE (such as the debt issued to acquire Alagasco and EnergySouth and the debt assumed from those companies).<sup>123</sup> Additionally, the capital structure of the parent, Spire Inc. includes the common equity of other public utilities and unregulated operations.<sup>124</sup> However, Spire Missouri does not have access to capital that is being used by Spire Inc.'s other subsidiaries.<sup>125</sup>

12. Spire Inc.'s actual capital structure on September 30, 2017, was 48.71 percent common equity and 51.20 percent long-term debt.<sup>126</sup>

13. Michael Gorman, on behalf of Public Counsel and MIEC, recommended a capital structure of Spire Missouri consisting of 47.2 percent equity and 52.8 percent long-term debt.<sup>127</sup> Mr. Gorman's recommendation reflects the removal of \$210 million of common equity for goodwill.<sup>128</sup> Mr. Gorman argues that the utility capital structure should be used, but that a \$210 million deduction from common equity should be made "to remove the capital supporting the goodwill asset."<sup>129</sup> With that adjustment (and

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<sup>121</sup> Ex. 60, Staff Accounting Schedule in GR-2014-0007; and Tr. 1304.

<sup>122</sup> Ex. 37, Rasche Surrebuttal, p. 18; and Tr. 1311.

<sup>123</sup> Ex. 205, Staff Report - Cost of Service, pp. 24-25.

<sup>124</sup> Tr. 1311-1312.

<sup>125</sup> Ex. 39, Ahern Rebuttal, p. 7.

<sup>126</sup> This was determined using the ratios provided by Staff, but removing the short-term debt.

<sup>127</sup> Ex. 414, Gorman Rebuttal, p. 5.

<sup>128</sup> Ex. 414, Gorman Rebuttal, pp. 4-5.

<sup>129</sup> Ex. 414, Gorman Rebuttal, p. 14.

another that was resolved during true-up), Mr. Gorman proposes a capital structure including 47.20 percent common equity, and 52.80 percent long-term debt.<sup>130</sup>

14. According to SNL and Value Line (industry and financial reports), the common equity ratio for the utility peers used by Mr. Gorman was 49.0 and 55.3 percent, respectively, *including* Spire Inc., the parent company in the proxy group.<sup>131</sup> Without including Spire Inc. the average common equity ratio was 50.42 and 56.5, respectively.<sup>132</sup>

15. Mr. Gorman admitted that his capital structure proposal was “a little light on common equity. . . .”<sup>133</sup>

16. The Stipulation and Agreement in File No. GM-2013-0254 indicates that the parties intended to prevent Spire Missouri from recovering the acquisition premium (the goodwill balance) from the purchase of MGE in rates.

17. The MGE acquisition by Laclede Gas Company was financed with both debt and equity. The acquisition financing, which included both debt and equity, funded the MGE transaction in its entirety, including both tangible utility assets and goodwill.<sup>134</sup>

18. Mr. Rasche testified that, with the exception of project financing, capital is not raised to support a specific asset.<sup>135</sup>

19. Cash is fungible. A particular dollar cannot be traced from the initial dollar invested to the specific asset purchased. Specific portions of the financing were not raised to fund specific portions of the acquisition.<sup>136</sup>

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<sup>130</sup> Ex. 414, Gorman Rebuttal, p. 14.

<sup>131</sup> Ex. 407, Gorman Direct, Schedule MPG-3.

<sup>132</sup> Ex. 407, Gorman Direct, Schedule MPG-3.

<sup>133</sup> Tr. 1376. See also, Tr. 1375 (Mr. Gorman testified, “I found that my adjustment to the Company’s capital structure has a relatively thin amount of common equity.”)

<sup>134</sup> Ex. 36, Hevert Surrebuttal, p. 7; and Ex. 37, Rasche Surrebuttal, p. 4.

<sup>135</sup> Ex. 37, Rasche Surrebuttal, p. 4.

20. No portion of the \$210 million goodwill asset is included in the company's rate base.<sup>137</sup>

21. Mr. Gorman's proposed adjustment is inconsistent with the actual method by which the MGE acquisition was financed, it ignores the basic financial principle of capital fungibility, and it is inconsistent with how other assets are treated.<sup>138</sup>

22. David Murray, on behalf of Staff, recommended a capital structure based on Spire Inc.'s consolidated capital structure with the inclusion of short-term debt.<sup>139</sup> He used Spire Inc.'s actual capital structure as of September 30, 2017, and included an average amount of short-term debt in excess of an average amount of construction-work-in-progress (CWIP) for the period September 30, 2014, through September 30, 2017. This capital structure consists of 45.56 percent common equity, 47.97 percent long-term debt and 6.47 percent short-term debt.<sup>140</sup>

23. Mr. Murray used five natural gas companies (Atmos Energy, Northwest Natural Gas, Southwest Gas, OneGas, and Spire Inc.) as his proxy group for his cost of capital analysis.<sup>141</sup> The five-year average common equity ratios for the natural gas companies in Staff's proxy group were: Atmos Energy, 53.73 percent; North West Natural Gas, 53.34 percent; Southwest Gas, 48.85 percent; and Spire Inc., 53.53 percent.<sup>142</sup>

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<sup>136</sup> Ex. 36, Hevert Surrebuttal, p. 11.

<sup>137</sup> Ex. 36, Hevert Surrebuttal, p. 13, citing Noack True-Up Direct, Laclede Gas Company, Schedule B (PDF 12) and Missouri Gas Energy Schedule B (PDF 55).

<sup>138</sup> Ex. 36, Hevert Surrebuttal, p. 14.

<sup>139</sup> Ex. 205 Staff Report, p.7; and Ex. 265, Murray Surrebuttal, p.2, 4, and Schedule 1-1.

<sup>140</sup> Ex. 205, Staff Report - Cost of Service, p. 7; and Ex. 265, Murray Surrebuttal, p.2, 4, and Schedule 1-1.

<sup>141</sup> Ex. 205, Staff Report - Cost of Service, Appendix 2, Schedule 8.

<sup>142</sup> Ex. 38, Ahern Direct, Schedule PMA-D2, page 2 of 2. (The five-year common equity ratio for OneGas was not in the record.)

24. None of Staff's proxy companies had five-year average common equity ratios as low as Staff's proposed 45.56 percent common equity ratio (or Mr. Gorman's proposed 47.20 percent) for Spire Missouri.

25. Similarly, Ms. Ahern's seven proxy natural gas companies had common equity ratios with the five-year average common equity ratio ranging from 53.46 percent in 2014 to 57.52 percent during the period of 2011-2015.<sup>143</sup>

26. In the last Laclede Gas Company rate case involving the MGE division, File No. GR-2014-0007, the Staff utilized a common equity ratio of 53.56 percent and a long-term debt ratio of 46.44 percent. This ratio is substantially similar to the 54.20 percent common equity ratio and 48.50 percent long-term debt ratio proposed by Spire Missouri in this proceeding.<sup>144</sup>

27. Staff also argues that short-term debt should be included if gas inventories for LAC are included in rate base.<sup>145</sup> While the specific issue of gas inventory carrying costs is addressed elsewhere in this Report and Order, Staff's approach is inconsistent with the fact that every other gas distribution company in Missouri, as well as Spire Missouri's MGE division, currently have these gas inventories in rate base.<sup>146</sup> Further, only rarely has short-term debt been included in the capital structure of major public utilities.<sup>147</sup>

28. Additionally, LAC's gas inventory is approximately \$82 million, while Staff proposes to include \$283 million of short-term debt in the capital structure, using the

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<sup>143</sup> Ex. 38, Ahern Direct, Schedule PMA-D2.

<sup>144</sup> Tr. 1305-1306.

<sup>145</sup> Ex. 259, Sommerer Surrebuttal, pp. 3-5.

<sup>146</sup> Ex. 259, Sommerer Surrebuttal, pp. 3-5.

<sup>147</sup> Tr. 1510-1511.



parent's capital structure.<sup>148</sup> Thus, the amount of short-term debt Staff proposes to include in the capital structure is far in excess of the value of LAC's gas inventories.

29. The average level of construction work in progress and other short-term assets exceeds the amount of short term debt outstanding during the true-up period after taking into consideration a September 15, 2017 funding of \$170 million of long-term debt instruments.<sup>149</sup> Mr. Murray's proposal to add short-term debt to the capital structure ignores this fact by using a three-year average rather than the customary "point in time" analysis of short term debt.<sup>150</sup>

30. It is not uncommon to include short-term assets such as cash working capital and materials and supplies in rate base.<sup>151</sup>

31. Spire Missouri's actual embedded cost of long-term debt is 4.123 percent as of the end of the true-up period, September 30, 2017.<sup>152</sup>

### **Conclusions of Law**

A. Rejecting Mr. Gorman's proposed adjustment to reduce common equity by the \$210 million goodwill balance is consistent with the Commission-approved Stipulation and Agreement in File No. GM-2013-0254. The Stipulation and Agreement states, at Subparagraph 3.a., "[n]either Laclede Gas [Company] nor its MGE division shall seek either direct or indirect rate recovery or recognition of any acquisition premium in any future general ratemaking proceeding in Missouri." The goodwill balance has been removed from rate base.

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<sup>148</sup> Ex. 265, Murray Surrebuttal, Schedule DM-s1-1, p. 1.

<sup>149</sup> Ex. 22, Buck True-Up Direct, p. 2; Ex. 37, Rasche Surrebuttal, p. 3; and Tr. 1269-70.

<sup>150</sup> Ex. 37, Rasche Surrebuttal, p. 4.

<sup>151</sup> Tr. 1502.

<sup>152</sup> Ex. 68, Noack True-up Direct, Schedule F.

### **Decision**

The Commission finds that the capital structure of Spire Missouri without short-term debt is the reasonable capital structure for ratemaking purposes in this case. Similarly, the Commission determines that the cost of debt should be the cost of Spire Missouri's cost of long-term debt.

The Commission's decision on capital structure is supported by the facts set out above including that Spire Missouri has an independently determined capital structure with its own long-term debt issuances secured by its own assets that are the subject of this rate case. These assets do not secure the debt of the parent or its other utilities or unregulated operations. In addition, while the Commission previously used the consolidated capital structure of the parent, Laclede Gas Company, it made up almost the entire holding company. Thus, a consolidated capital structure was basically the utility specific capital structure. Currently, however, the parent, Spire Inc., holds five utilities in three different states and is applying to build an interstate pipeline that will be subject to the FERC oversight. Thus, if the parent company's capital structure were used, regulatory policies employed by commissions in other two other states and at FERC, and financing practices followed by utilities or entities not regulated by the Commission, would affect the rates customers pay in Missouri. The changes to the company and the other facts set out above make it reasonable to use the utility-specific capital structure in this case, and not the consolidated capital structure.

Mr. Gorman's proposed adjustment is rejected. The Commission was not persuaded by Mr. Gorman's testimony regarding a reduction for goodwill. No portion of the \$210 million goodwill asset is included in the company's rate base. Because cash is

fungible, goodwill cannot be singled out to be considered financed only through equity. The evidence presented by Spire Missouri's four expert witnesses was more persuasive than Mr. Gorman's testimony on these issues. As shown by the facts set out above, Mr. Gorman's proposal is inconsistent with the actual method by which the MGE acquisition was financed, it ignores the basic financial principle of capital fungibility, and it is inconsistent with how other assets are treated. Further, if adopted, Mr. Gorman's proposal would reduce Spire Missouri's cash flows, increasing the risk of impairment of the goodwill asset. Because the GM-2013-0254 Stipulation and Agreement calls for customers to be held harmless from the costs of impairment of the goodwill asset, Mr. Gorman's proposal actually presents the risk of a cycle in which investors are subject to increasing risks and decreasing returns, eventually threatening Spire Missouri's ability to efficiently raise capital.

The Commission also finds Spire Missouri's witnesses to be more persuasive than Staff's witness with regard to capital structure and the inclusion of short-term debt. Staff's recommended capital structure is not consistent with: the capital structures of Staff's own proxy natural gas companies; the Commission's long-held precedent to exclude short-term debt from major public utility's capital structures; or the Staff's previously used capital structure in the true-up proceeding of Laclede's last rate case. For these reasons, the Staff's proposed capital structure is rejected.

Further, the Commission finds that short-term debt should not be included in the capital structure, even though the Commission is also finding in this Report and Order that the gas inventory carrying charges should now be recovered through rate base (see the gas inventories section below). The amount of short-term debt Staff

proposes to include in the capital structure is far in excess of the value of LAC's gas inventories.

The average level of construction work in progress and other short-term assets exceeds the amount of short term debt outstanding during the true-up period after taking into consideration funding of \$170 million of long-term debt instruments during the true-up period. Mr. Murray's proposal to add short-term debt to the capital structure ignores this fact by using a three-year average rather than the customary "point in time" analysis of short term debt.

Thus, the Commission determines the appropriate capital structure as of the true-up date is 54.2 percent common equity and 45.8 percent long-term debt. To be consistent with its findings related to capital structure, the Commission further finds that the cost of long-term debt should be based on Spire Inc.'s consolidated embedded cost of long-term debt of 4.123 percent as of September 30, 2017.

#### **IV. Rate Case Expense**

- A. What is the appropriate amount of rate case expense to include?**
- B. What is the appropriate normalization period for recovering rate case expense?**

#### **Findings of Fact**

1. Rate case expense is the sum of the costs a utility incurs in preparing, filing and litigating a rate case.<sup>153</sup>

2. Rate case expenses do not include the payroll or benefits of LAC or MGE employees that charge time to rate case expense. Those expenses are included in

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<sup>153</sup> Ex. 205, Staff Report - Cost of Service, p. 109.

payroll and benefit expense, and are not allocated between shareholders and ratepayers.<sup>154</sup>

3. Prudence is not the only consideration in determining what costs should be included in rates; the benefit to customers must also be considered when deciding what costs are reasonable for customer rates. Rate case expense can benefit both utility shareholders and customers, though often in different ways. A utility and its shareholders directly benefit from this expense because generally these costs are incurred in order to ensure an opportunity to receive a reasonable return on their investment. Customers benefit generally from being served by financially healthy utilities with the ability to provide safe and adequate service at just and reasonable rates.<sup>155</sup>

4. The consumer groups participating in this rate case were represented by hired counsel, and some also hired expert witnesses. While Spire Missouri is able to recoup the costs of its legal counsel and expenses through utility service rates, Public Counsel, the entity representing ratepayers, operates within a tight annual budget, and the intervenors pay their own legal and expert witness expenses.<sup>156</sup>

5. Spire Missouri's witness testified that the company enters into a rate case with an estimate of its rate case expenses but had no firm ceiling or other mechanism in place to limit those expenses.<sup>157</sup>

6. When LAC and MGE filed their direct case, Spire Missouri had budgeted \$994,447 (\$397,779 for MGE and \$596,668 for LAC) of Missouri jurisdictional rate case

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<sup>154</sup> Ex. 255, Majors Surrebuttal, p. 6.

<sup>155</sup> Ex. 205, Staff Report - Cost of Service, p. 111 and 114.

<sup>156</sup> Ex. 205, Staff Report - Cost of Service, pp. 109-112.

<sup>157</sup> Tr. 1713-1715.

expenses with the annual expense being \$132,593 for MGE and \$198,889 for LAC.<sup>158</sup>

7. At hearing, Spire Missouri's estimated rate case expense had risen to \$1.3 million, but it had already exceeded that estimate,<sup>159</sup> "largely because [Spire Missouri] had more issues than [it] expected."<sup>160</sup>

8. LAC and MGE have historically incurred relatively low levels of rate case expense compared to other Missouri utilities. In this case, LAC and MGE have incurred rate case expenses substantially higher than those historical levels. In three prior LAC rate cases and four prior MGE rate cases, total rate case expense exceeded \$1 million on only one occasion.<sup>161</sup>

9. Approximately half of the issues in this case were raised by Spire Missouri, which has a high level of discretion and control over the content and methodologies proposed in the rate case.<sup>162</sup>

10. Awarding a utility all of its incurred rate case expenses could provide that utility with a significant financial advantage over other participants in the rate case process, who may be constrained by budgetary and other financial restrictions. Such a practice does not encourage reasonable levels of cost containment in the utility's rate case expense decisions.<sup>163</sup>

11. One incentive for a utility to limit its rate case expense is for the shareholders to share that rate case expense.<sup>164</sup>

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<sup>158</sup> Ex. 28, Noack Direct, p. 21, Schedule MRN\_D1, Schedule H-10, and Schedule MRN\_D2, Schedule H-10.

<sup>159</sup> As of September 30, 2017, Spire Missouri's total amount of incurred rate case expenses were \$1,393,399. (Ex. 254, Majors Surrebuttal, p. 3).

<sup>160</sup> Tr. 1714.

<sup>161</sup> Ex. 255, Majors Surrebuttal, pp. 5-6.

<sup>162</sup> Tr. 1666 and 1707-1708; and Ex. 205, Staff Report - Cost of Service, pp. 111-112.

<sup>163</sup> Ex. 205, Staff Report - Cost of Service, p. 111.

<sup>164</sup> Ex. 205, Staff Report - Cost of Service, p. 113; and Tr. 1701 and 1777-1778.

12. Spire Missouri requested a three-year amortization of all prudently incurred rate case expenses with a three-year amortization of all those expenses except the current depreciation study. For the depreciation study, Spire Missouri requested a five-year amortization.<sup>165</sup>

13. Staff recommended that the proposed rate case expenses be recovered via a sharing mechanism between the ratepayers and the shareholders based on the ratio of LAC and MGE's Commission-authorized revenue requirement increase to their requested revenue requirement increase, net of Staff's adjustments. Staff's recommended methodology is similar to a sharing mechanism in the *Report and Order* in Case No. ER-2014-0370, Kansas City Power & Light Company's most recent rate case.<sup>166</sup>

14. Staff recommended the ultimately allowed rate case expense be split among LAC and MGE 53.5 percent and 46.5 percent, respectively, based on each division's requested revenue requirement increase. Staff further recommended that rate case expense be normalized over four years, the approximate time between rate cases for both LAC and MGE.<sup>167</sup>

15. Staff proposed one disallowance for the procurement of an outside consultant firm, ScottMadden, to perform a Cash Working Capital study. Staff proposed that this expense be born entirely by the shareholders and not be shared with the ratepayers because it was not a prudent expense.<sup>168</sup>

16. Public Counsel also recommended a disallowance for the expenses

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<sup>165</sup> Ex. 28, Direct Testimony of Michael R. Noack, p. 21

<sup>166</sup> *In the Matter of Kansas City Power & Light Company*, issued September 2, 2015.

<sup>167</sup> Ex. 254, Majors Surrebuttal, p. 3.

<sup>168</sup> Ex. 205, Staff Report - Cost of Service, p. 114-115; Ex. 255, Majors Surrebuttal, p. 8; and Tr. 1745.

related to Spire Missouri's witness, Thomas J. Flaherty, because of the high hourly rate charged by this expert.<sup>169</sup>

17. The company also admitted that it purposefully takes the more "aggressive" positions and builds "a little bit of cushion" into its requests.<sup>170</sup>

18. Part of the rate case expense was the cost of Commission-ordered customer notices.<sup>171</sup> The cost of providing those notices was \$436,000.<sup>172</sup>

19. Gas utilities are required to file a depreciation study every five years.<sup>173</sup> This rate case coincided with the required filing of a depreciation study. The cost of the depreciation study was \$54,114.<sup>174</sup>

20. Spire Missouri has pursued issues and incurred rate case expenses in this case that largely benefit only the shareholders, such as employing an outside expert witness to support its recommended return on equity of 10.35 percent, the highest of any large Missouri utility including two utilities owning nuclear power plants, and litigating the Forest Park property issue.<sup>175</sup>

21. Spire Missouri has pursued more new, unique shareholder-focused ratemaking tools in this case to insulate shareholders from risk, such as three new tracking mechanisms (environmental expense tracker, cyber security tracker, and major capital projects tracker) and a revenue stabilization mechanism.<sup>176</sup>

22. Spire Missouri has pursued utility expenses that are highly discretionary, do not benefit customers, and are typically allocated entirely to shareholders, such as

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<sup>169</sup> Tr. 1721 and 1841.

<sup>170</sup> Tr. pp. 1712-1713.

<sup>171</sup> *Order Setting Local Public Hearings and Directing Notice*, (issued June 28, 2017).

<sup>172</sup> Tr. 1701.

<sup>173</sup> 4 CSR 240-3.160(1)(A).

<sup>174</sup> Tr. 1722

<sup>175</sup> Ex. 255, Majors Surrebuttal, p. 7; and Tr. 1710.

<sup>176</sup> Ex. 255, Majors Surrebuttal, p. 7.



incentive compensation tied to earnings per share and a retention mechanism, a onetime adder to ROE for its claimed benefits of acquisitions in Alabama and Mississippi, and performance metrics.<sup>177</sup>

23. Spire Missouri's witness for rate case expense testified that the basic "goal" of the rate case is to receive its revenue requirement increase, that "there is a little bit of cushion built into what [Spire] asked for[.]"<sup>178</sup> and that the company never expected to actually receive that amount.<sup>179</sup> Such a request is purely for the benefit of the shareholders.

24. Public Counsel filed an earnings complaint against LAC and MGE in April 2016.<sup>180</sup> That complaint was stayed in October 2016 pending the filing of these rate cases and then consolidated with these cases in August 2017.<sup>181</sup>

### **Conclusions of Law**

A. Under Missouri law, the Commission must set just and reasonable rates.<sup>182</sup> In a rate case, the Commission has broad discretion to determine which expenses a utility may recover from ratepayers. The Missouri Supreme Court has stated that the Commission's statutory power and authority to set rates "necessarily includes the power and authority to determine what items are properly includable in a utility's operating expenses and to determine and decide what treatment should be accorded

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<sup>177</sup> Ex. 255, Majors Surrebuttal, pp. 7-8; and Tr. 1709.

<sup>178</sup> Tr. 1712-1713.

<sup>179</sup> Tr. 1711-1713.

<sup>180</sup> File No. GC-2016-0297.

<sup>181</sup> File No. GC-2016-0219, *Order Granting Motion to Stay Proceedings*, issued October 5, 2016; and *Order Granting Motion to Lift Stay and Consolidate Cases*, issued August 11, 2017.

<sup>182</sup> Section 393.130.1, RSMo, "...All charges made or demanded by any...electrical corporation ... shall be just and reasonable and not more than allowed by law or by order or decision of the commission..."

such expense items.”<sup>183</sup> The Commission’s authority extends to allocating an expense between certain classes or groups of ratepayers<sup>184</sup> and to requiring company shareholders to bear expenses the Commission finds to be unreasonable or unnecessary.<sup>185</sup>

B. Section 393.1012, RSMo, does not require Spire Missouri to file a rate case every three years. Instead, that statute permits the company to continue collecting its authorized infrastructure replacement surcharge (ISRS) so long as it files a rate case every three years. The company could choose to cease collections of the ISRS rather than file a rate case.

C. Commission rule 4 CSR 240-3.160(1)(A) requires a gas utility to conduct a depreciation study every five years.

D. The Commission has previously found rate case expense sharing was just and reasonable. In a 1986 decision, *In the Matter of Arkansas Power and Light Company*, the Commission “adopted Public Counsel’s proposed disallowance of one-half of rate case expense.”<sup>186</sup> The Commission also acknowledged this authority in a number of other cases.<sup>187</sup>

E. More recently, the Commission determined that rate case expense should be shared between the ratepayers and shareholders.<sup>188</sup> That decision was upheld by the

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<sup>183</sup> *State ex rel. City of W. Plains v. Pub. Serv. Comm’n*, 310 S.W.2d 925, 928 (Mo. 1958). See also, *State ex rel. KCP & L Greater Missouri Operations Co. v. Missouri Pub. Serv. Comm’n*, 408 S.W.3d 153, 166 (Mo. App. 2013).

<sup>184</sup> *State ex rel. City of W. Plains v. Pub. Serv. Comm’n*, 310 S.W.2d at 934.

<sup>185</sup> *State ex rel. KCP & L Greater Missouri Operations Co. v. Missouri Pub. Serv. Comm’n*, 408 S.W.3d at 164-165.

<sup>186</sup> Report and Order, File No. ER-85-265, 28 Mo. P.S.C. (N.S.) 435, 447 (1986),

<sup>187</sup> See, *In the Matter of Kansas City Power & Light Company*, Report and Order, File Nos. EO-85-185 and EO-85-224, 28 Mo. P.S.C. (N.S.) 229, 263 (1986), and *In the Matter of Missouri Gas Energy*, Report and Order, File No. GR-2009-0355, 19 Mo. P.S.C. 3d 245, 303 (2010).

<sup>188</sup> *In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General*

Western District Court of Appeals which found that “the remedy crafted by the [Commission] was a reasonable exercise of the [Commission’s] discretion and expertise in determining just and reasonable expenses to be borne by ratepayers.”<sup>189</sup>

### **Decision**

The Commission has broad discretion to determine which expenses a utility may recover from ratepayers. The Commission determines that it is reasonable for Spire Missouri shareholders and ratepayers to share most of the rate case expenses in these cases. However, the Commission recognizes that certain expenses, such as the customer notices and the depreciation study, were required by Commission rule or order and should not be part of the shared rate case expense.

In one sense, rate case expense is like other common operational expenses that a utility must incur to provide utility services to customers. Since customers benefit from having just and reasonable rates, it is appropriate for customers to bear some portion of the utility’s cost of prosecuting a rate case. However, rate case expense is also different from most other types of utility operational expenses, in that 1) the rate case process is adversarial in nature, with the utility on one side and its customers on the other; 2) rate case expense produces some direct benefits to shareholders that are not shared with customers, such as seeking a higher return on equity; 3) requiring all rate case expense to be paid by ratepayers provides the utility with an inequitable financial advantage over other case participants; and 4) full reimbursement of all rate case expense does nothing to encourage reasonable levels of cost containment.

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*Rate Increase for Electric Service*, Report and Order, File No. ER-2014-0370, issued September 2, 2015.  
<sup>189</sup> *In Matter of Kansas City Power & Light Co.’s Request for Auth. to Implement a Gen. Rate Increase for Elec. Serv. v. Missouri Pub. Serv. Comm’n*, 509 S.W.3d 757, 779 (Mo. Ct. App. 2016), reh’g and/or transfer denied (Nov. 1, 2016), transfer denied (Feb. 28, 2017).

Under Missouri law, the Commission must set just and reasonable rates,<sup>190</sup> and rates in this case, that include all of the utility's rate case expense, for the reasons set forth above, are not just or reasonable. However, the Commission determines that it is just and reasonable for ratepayers and shareholders to share rate case expense. In these cases, the just and reasonable sharing mechanism is based on the fact that the issues controlled by the company amounted to about half of the contested issues at hearing. Thus, the shareholders who ultimately controlled 50 percent of the rate case issues should share 50 percent of the rate case expense with the exception of the customer notice cost and the depreciation study were done because of Commission order and rule requirements.

This sharing mechanism is supported by the evidence showing approximately half of the litigated issues in these cases are driven primarily by Spire Missouri, which had complete control over the content and methodologies proposed when it filed its rate cases. Additionally, a number of these litigated issues were unique shareholder-focused ratemaking tools, such as the revenue stabilization mechanism, the requested high rate of return of 10.35 percent, three new tracking mechanisms to limit shareholder risk, and earnings-based incentive compensation which has been consistently denied by the Commission. It was Spire Missouri's decision and entirely within Spire Missouri's power to pursue these issues and to file this rate case and the shareholders stood to benefit from those issues. Also, the company witness admitted that the company "padded" its revenue requirement beyond what it expected to receive by pursuing strong positions on issues it did not expect to win, which is clearly to the benefit of the

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<sup>190</sup> Section 393.130.1, RSMo, "...All charges made or demanded by any...electrical corporation ... shall be just and reasonable and not more than allowed by law or by order or decision of the commission..."

shareholders over the ratepayers. Finally, rate case expense for this proceeding has far exceeded Laclede and MGE's estimates and their historical rate case expense levels.

Therefore, it is just and reasonable that the shareholders and the ratepayers who both benefited from the rate case, share in the rate case expense. The Commission finds that in order to set just and reasonable rates under the specific facts in this case, the Commission will require Spire Missouri shareholders to cover half of the rate case expense and the ratepayers to cover half with the exception of the cost of customer notices and the depreciation study.

Spire Missouri argues that its shareholders should not have to share rate case expense because it was required to file this rate case by Public Counsel's earnings complaint and by the ISRS statute.<sup>191</sup> The complaint case was stayed while the company made the decision to file a rate case and then ultimately consolidated with these cases. While the company would have been required to participate in that earnings complaint, the decision to instead file a rate case was purely within the discretion of the company.

Further, the ISRS statute does not require that a rate case be filed. Rather, that statute allows the company to continue to collect an authorized ISRS if it files a rate case at least every three years. Thus, Spire Missouri made a decision to continue collecting an ISRS by filing this rate case; it was not required to do so.

Staff and Public Counsel each argue that certain expenses of Spire Missouri in this matter were not prudent and should be born entirely by the shareholders. However, the Commission does not find that any specific individual items of rate case expense were imprudent. A rate case expense sharing mechanism will act as sufficient

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<sup>191</sup> Section 392.1012.3, RSMo.

incentive for the company to manage its costs. The Commission also finds that it is appropriate to require a full allocation to ratepayers of the expenses for Spire Missouri's depreciation study, recovered over five years, because this study is required under Commission rules to be conducted every five years. The Commission further finds that it is just and reasonable to require a full allocation to ratepayers of the expenses associated with the Commission-ordered notices provided in this case to be normalized over a four-year period.

The Commission concludes that Spire Missouri should receive rate recovery of 50 percent of its rate case expenses except the cost of the customer notices (\$436,000) and the depreciation study (\$54,114), which will be wholly included in rates. This amount should be normalized over four years which is roughly equal to the amount of time between rate cases for these companies.

## **V. PGA/ACA Tariff Revisions --**

### **A. Should LAC have new PGA/ACA tariff provisions pertaining to costs associated with affiliated pipeline transportation agreements?**

#### **Findings of Fact**

1. The Environmental Defense Fund, through its witness, Gregory M. Lander,<sup>192</sup> proposes a revision to LAC's Purchased Gas Adjustment/Actual Cost Adjustment (PGA/ACA) tariff. The proposed tariff provision would establish explicit standards to guide the Commission's review of the reasonableness of utility costs incurred for transportation of natural gas through an affiliated interstate natural gas

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<sup>192</sup> Lander is president of Skipping Stone, LLC, a consulting firm specializing in pipeline transportation issues. Ex. 650, Lander Direct, p. 1.

pipeline.<sup>193</sup>

2. In essence, the proposal would group the company's pipeline capacity into two "buckets" -- a supply reliability capacity bucket and a supply diversity capacity bucket.<sup>194</sup> Those categories would then be separately analyzed to assess whether that capacity is unnecessary or excessive. The Environmental Defense Fund does not propose to undertake such an analysis in this proceeding, but proposes to amend LAC's PGA/ACA tariff to establish procedures to be used in future PGA/ACA cases.<sup>195</sup>

3. The effect of the proposal would be to emphasize the importance of the supply reliability bucket over the supply diversity bucket.<sup>196</sup>

4. Although the review process that would be established by the proposed tariff language would not be limited to any particular gas supply contract, it is apparent that the Environmental Defense Fund is concerned about a 20-year precedent agreement that Spire Missouri has entered into with Spire STL Pipeline, LLC, a proposed interstate pipeline owned by Spire Missouri's corporate parent.<sup>197</sup> The Environmental Defense Fund has challenged that proposed pipeline at the Federal Energy Regulatory Commission (FERC).<sup>198</sup>

5. Staff, which would be required to implement the Environmental Defense Fund's proposed review process, is concerned that the proposal is complicated, does not take into consideration important issues, and may be lacking in sufficient detail to implement.<sup>199</sup>

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<sup>193</sup> Ex. 650, Lander Direct, p .5.

<sup>194</sup> Ex. 650, Lander Direct, p. 5.

<sup>195</sup> Ex. 650, Lander Direct, pp. 7-8.

<sup>196</sup> Ex. 650, Lander Direct, p. 8.

<sup>197</sup> Ex. 650, Lander Direct, p. 12.

<sup>198</sup> Tr. 1991.

<sup>199</sup> Ex. 233, Crowe Rebuttal, pp. 8-9.

6. If Spire STL Pipeline's pipeline is approved by the FERC, and if Spire Missouri enters into a transportation agreement with that affiliated pipeline, the Commission would review the prudence of that decision in a future ACA review case.<sup>200</sup>

### **Conclusions of Law**

A. The ACA filing procedure allows the Commission an opportunity to review the reasonableness of a gas utility's charges by evaluating its gas acquisition practices during the relevant time period.<sup>201</sup>

B. There is no provision in Missouri law that would require, or authorize, the Commission to preapprove Spire Missouri's management decision to enter into a transportation agreement with a natural gas pipeline.

### **Decision**

The Environmental Defense Fund's proposed revision of LAC's PGA/ACA tariff is unnecessary, premature, and inappropriate. If Spire Missouri ultimately makes a business decision to enter into a transportation agreement with a new interstate natural gas pipeline, the Commission will have an opportunity to review the prudence of that decision in a future ACA case. There is no need to preapprove, or pre-reject that hypothetical decision at this time. If the Environmental Defense Fund or any other stakeholder wants to further examine the establishment of standards for consideration of the prudence of future transportation agreements with affiliated pipelines, they may address such matters as part of the working group the Commission will establish to consider issues regarding Spire Missouri's Cost Allocation Manual.

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<sup>200</sup> Tr. 1889.

<sup>201</sup> See, *State ex rel. Associated Natural Gas v. Mo. Pub. Serv. Com'n*, 954 S.W.2d 520 (Mo. App. W.D. 1997).



## VI. Cost Allocation Manual

### A. Should a working group be created following this rate case to explore ideas for modifying the LAC and MGE CAM?

#### Findings of Fact

1. Spire Missouri uses a Commission-approved Cost Allocation Manual (CAM) to guide its decisions when assigning costs to its various utility operating companies and affiliates.<sup>202</sup>

2. Spire Missouri's existing CAM was approved by the Commission in 2013.<sup>203</sup> Since that approval, Spire Inc. has acquired Alagasco and Mobile Gas in Alabama and Willmut Gas in Mississippi and has created a new shared services entity.<sup>204</sup> Because of the changes in Spire Inc.'s structure, the existing CAM should be updated.

3. Spire Missouri agrees the existing CAM should be reviewed,<sup>205</sup> and supports the creation of a working group to consider changes to the CAM.<sup>206</sup>

4. Staff is also open to the creation of a working group to revise the CAM.<sup>207</sup>

5. Public Counsel is willing to take part in a working group to revise Spire Missouri's CAM.<sup>208</sup> Public Counsel also advocates for an independent third-party audit of Spire Missouri's affiliate transactions,<sup>209</sup> and argues the audit should take place before the working group starts its review. Public Counsel also suggests the Commission order Spire Missouri to file its new CAM with the Commission for approval

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<sup>202</sup> Ex. 23, Krick Direct, p. 8.

<sup>203</sup> Ex. 403, Hyneman Direct, p.17. A copy of the CAM can be found at Ex. 403, Hyneman Direct, Schedule CRH-D-3.

<sup>204</sup> Ex. 46, Flaherty Direct, p. 13. See *also*, Ex. 403, Hyneman Direct, p. 17.

<sup>205</sup> Tr. 1850.

<sup>206</sup> Tr. 1859.

<sup>207</sup> Tr. 1890.

<sup>208</sup> Tr. 1913.

<sup>209</sup> Tr. 1913-1914.

no later than six months after rates established in the case become effective.<sup>210</sup>

6. In its testimony, Public Counsel indicates the independent audit should be completed before the end of 2019,<sup>211</sup> and that the specific timing of the audit should be determined in conjunction with Spire Missouri to ensure the company has sufficient resources available to respond to discovery requests.<sup>212</sup>

7. The Environmental Defense Fund does not oppose the creation of a working group to revise the CAM, but urges the Commission to immediately order a particular change in the CAM to establish a process for Spire Missouri to follow before it enters into a transportation agreement with an affiliated pipeline company.<sup>213</sup>

8. Staff opposes the changes to the CAM proposed by the Environmental Defense Fund because they are complicated and lack sufficient detail to be implemented.<sup>214</sup>

### **Conclusions of Law**

A. The Commission's affiliate transaction regulations require Spire Missouri to utilize a CAM with regard to its transactions with affiliated companies.<sup>215</sup>

### **Decision**

The Commission finds that Spire Missouri's CAM should be rewritten, and the best way to accomplish that rewrite is to authorize a working group, comprised of Spire Missouri, Staff, Public Counsel, and any other interested stakeholders, to draft a

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<sup>210</sup> *Initial Brief of the Office of the Public Counsel* (filed January 9, 2018), pp. 14-18.

<sup>211</sup> Ex. 401, Azad Direct, p. 5.

<sup>212</sup> Ex. 401, Azad Direct, p. 6.

<sup>213</sup> Tr. 2004. The details of the modification proposed by the Environmental Defense Fund are set forth in Ex. 650, Lander Direct, Schedule EDF-06.

<sup>214</sup> Ex. 233, Crowe Rebuttal, p. 8.

<sup>215</sup> 4 CSR 240-40-015.2(E) and .3(D).

proposed CAM for the Commission's approval. That working group will be established by the Commission in a separate order. The Commission will not delay the working group by ordering the independent audit proposed by Public Counsel. The need for an independent audit will be addressed later in this order.

The Commission will not order Spire Missouri to adopt the specific changes to its CAM proposed by the Environmental Defense Fund. The Commission finds those specific changes to be complicated and difficult to implement. Further, the technical details of the revised CAM should be addressed by the interested stakeholders through the working group that will be authorized. If the Environmental Defense Fund wants to press for its desired changes through that process, it may do so. For the same reason, the Commission will not order Spire Missouri to comply with the other recommendations offered by Public Counsel, as those recommendations can best be addressed by the working group.

- B. Should an independent third-party external audit be conducted of all cost allocations and all affiliate transactions, including those resulting from Spire's acquisitions, to ensure compliance with the Commission's Affiliate Transaction Rule, 4 CSR 240-20.015?**

#### **Findings of Fact**

1. Public Counsel urges the Commission to order Spire Missouri to engage the services of an independent auditor - approved by Staff and Public Counsel – to undertake a focused affiliate transactions audit in order to provide the Commission with an objective and independent review of Spire Missouri's cost allocation practices.<sup>216</sup>

2. Public Counsel believes such an audit should "look at all the charges and

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<sup>216</sup> Ex. 401, Azad Direct, p. 5-6 and 23.

the allocation factors and the specific calculations in a level of detail that would far surpass the timeframe that's even allotted for a rate case proceeding."<sup>217</sup> The auditor would also be expected to examine Spire Missouri's compliance with the Commission's affiliate transaction rule and with its existing CAM.<sup>218</sup>

3. Public Counsel does not indicate how much such an audit would cost. Rather, Public Counsel's witnesses at the hearing suggested that the parties could agree on a budget and then solicit bids from interested auditors. It was also suggested that Spire Missouri's shareholders should be responsible for some, or all, of the cost of the audit.<sup>219</sup>

4. Another witness for Public Counsel explained that in the recent Westar/Great Plains Energy merger case, Great Plains Energy agreed to fund the first \$500,000 of the cost of a similar audit, with the balance of the audit costs being shared equally between shareholder and ratepayers.<sup>220</sup> That amount might not be required in this case and Public Counsel's witness suggested the parties get together to agree upon a budget for the audit work.<sup>221</sup>

5. Unlike Great Plains Energy in the merger case, Spire Missouri has not agreed to use shareholder funds to pay for an audit.<sup>222</sup>

6. The great majority of Spire Inc.'s expenses are allocated between regulated entities in multiple states, not with unregulated affiliates.<sup>223</sup>

7. One of the major reasons Public Counsel believes an outside audit is

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<sup>217</sup> Tr. 1929.

<sup>218</sup> Tr. 1930.

<sup>219</sup> Tr. 1906.

<sup>220</sup> Tr. 1981.

<sup>221</sup> Tr. 1985.

<sup>222</sup> *Reply Brief of Spire Missouri* (filed January 17, 2018), p. 39.

<sup>223</sup> Tr. 1938.

needed is because of the problems it experienced in obtaining responses to discovery requests made to Spire Missouri in this case.<sup>224</sup>

### **Conclusions of Law**

A. Subsection 393.140(5), RSMo, gives the Commission authority to “[e]xamine all persons and corporations under its supervision and keep informed as to the methods, practices, regulations and property employed by them in the transaction of their business.” In addition, subsection (8) of that section of the statute gives the Commission power to “examine the accounts, books, contracts, records, documents and papers of any such corporation or person . . . .”

B. Similarly, subsection 386.710(2), RSMo, gives Public Counsel the power and duty to “represent and protect the interests of the public in any proceeding before or appeal from the public service commission.”

C. Both Staff and Public Counsel have authority to audit Spire Missouri without the Commission having required the hiring of an outside auditor.

### **Decision**

It is apparent that both Public Counsel and Spire Missouri are frustrated with the other regarding discovery efforts relating to affiliate transactions and cost allocations. The Commission does not need to assess blame for those problems in this order, and neither party brought their discovery concerns to the Commission’s attention by filing either a motion to compel, or a motion to protect against discovery, during the course of this case when those concerns could have been addressed and discovery facilitated.<sup>225</sup>

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<sup>224</sup> Tr. 1929.

<sup>225</sup> Public Counsel did join, in essence, a motion to compel brought by Staff. At the discovery conference, however, the issues had been worked out by agreement of the parties. (Tr. 25-30). Further, the Regulatory Law Judge advised the parties that if discovery disputes needed to be addressed before a

Regardless, neither those discovery concerns, nor the other concerns described by Public Counsel, justify the expense necessary to undertake such an audit at this time.

It may be that a special audit would be helpful, and the working group the Commission will be establishing to examine Spire Missouri's CAM will be an appropriate forum for that discussion.

The Commission determines it is not necessary or appropriate to order Spire Missouri to hire an outside auditor to examine the company's affiliate transactions and allocations.

**C. How Should the Commission Account for an Alleged Downward Trend in the Cost of Spire Shared Services?<sup>226</sup>**

**Findings of Fact**

1. Spire Inc. has adopted a legal shared services entity – Spire Shared Services - to manage the cost of providing common and centralized services across its operating companies and business units.<sup>227</sup>

2. As part of his assessment of the operations of Spire Shared Services, Spire Missouri's witness, Thomas Flaherty, determined that the cost of operating Spire Shared Services was trending downward for the period 2013 through 2016.<sup>228</sup> Specifically, he found that Spire Shared Services' Operations and Maintenance (O&M) billings to Spire declined by 3.3 percent annually during that period.<sup>229</sup>

3. Public Counsel proposed that the downward cost trend identified by

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scheduled discovery conference, motions could be filed at any time and would be addressed as needed to make sure that deadlines could be met for filing testimony. (Tr. 30-31).

<sup>226</sup> This issue was not identified as such by the parties in the list of issues filed before the hearing. Nevertheless, evidence about it was taken at the hearing, and it was addressed in the briefs of Spire Missouri and Public Counsel.

<sup>227</sup> Ex. 46, Flaherty Direct, p. 13.

<sup>228</sup> Ex. 46, Flaherty Direct, pp. 63-64.

<sup>229</sup> Ex. 46, Flaherty Direct, p. 72.

Flaherty will be continued into 2017, and initially proposed a resulting reduction of O&M expense of \$4.9 million for LAC, and \$2.2 million for MGE.<sup>230</sup>

4. Mr. Flaherty responded to Public Counsel's proposed adjustment through his rebuttal testimony. First, he points out a calculation error in Public Counsel's proposed adjustment resulting from the improper application of after inflation adjusted dollars to a nominal cost base. Public Counsel's witness, Ara Azad recognized that error in her surrebuttal testimony and reduced the proposed reduction in O&M expense to \$2,062,266 to LAC and \$922,081 for MGE.<sup>231</sup>

5. Flaherty's rebuttal testimony also challenges the basis for Public Counsel's entire proposed adjustment of O&M expenses. As he explains, the decline in shared services charges that he measured between 2013 and 2016 reflects the realization of significant synergies resulting from the merger of LAC and MGE into Spire Missouri, as well as the acquisition of Alagasco by Spire Inc.<sup>232</sup>

### **Conclusions of Law**

The Commission makes no additional conclusions of law on this issue.

### **Decision**

The Commission agrees with Mr. Flaherty that the initial savings resulting from these transactions cannot be assumed to continue at the same rate in 2017. Public Counsel's proposed adjustment is based merely on speculation and will not be adopted.

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<sup>230</sup> Ex. 401, Azad Direct, p. 43.

<sup>231</sup> Ex. 426, Azad Surrebuttal, p. 10.

<sup>232</sup> Ex. 47, Flaherty Rebuttal, p. 41.

## VII. Gas Inventory Carrying Charges

- A. **Should LAC's natural gas and propane inventory carrying costs be recovered through rate base inclusion, as currently is the case with MGE, or recovered through the PGA/ACA process?**
- B. **Should Line of Credit (LOC) fees be removed from LAC's PGA consistent with inventory inclusion in rate base?**

### Findings of Fact

1. Currently, MGE recovers the cost of maintaining its gas storage inventories in its base distribution rates. LAC, on the other hand, recovers these gas inventory costs through its PGA/ACA mechanism.<sup>233</sup>

2. Spire Missouri proposed adjustments to LAC's PGA/ACA balances and cost of service to reflect the addition of the average storage inventory costs in rate base, consistent with the approach taken for MGE.<sup>234</sup>

3. Rate base is the utility's plant-in-service at original cost. Rate base often includes other values, as well, such as capitalized construction expenses, including interest and carrying costs, and other charges that the Commission has allowed the utility to capitalize and include in rate base. Also included in rate base are tools and equipment, materials and supplies, fuel stocks, prepayments of expenses, and cash working capital.

4. In 2005, LAC began recovering gas inventory carrying charges at the short-term debt rate through the PGA/ACA process pursuant to a stipulation and agreement in a rate case proceeding, File No. GR-2005-0284.<sup>235</sup> LAC continued to

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<sup>233</sup> Tr. 1445.

<sup>234</sup> Ex. 6, Lobser Direct, pp. 17-18.

<sup>235</sup> Ex. 205, Staff Report - Cost of Service, p. 62; Tr. 1437 and 1475.



recover the gas inventories associated with “cushion gas” in rate base.<sup>236</sup>

5. In Missouri, LAC is the only local distribution company collecting gas inventory carrying charges in this manner.<sup>237</sup> By putting gas inventory carrying costs back into rate base, these costs for LAC will be consistent with both its sister division, MGE, and with all other local distribution companies in the state.

6. One other benefit of including gas inventory carrying costs in rate base is it reduces the complexity that results from reviewing the separate gas inventory carrying cost recovery mechanism in the annual ACA review process.<sup>238</sup>

7. Staff argues that the gas inventory carrying cost should be included in rate base but only if a comparable amount of short-term debt is included in the capital structure.<sup>239</sup>

8. Public Counsel opposes including natural gas storage costs in rate base arguing that these costs should remain tied to the PGA mechanism because they are more like gas costs than long-term debt.<sup>240</sup>

9. LAC’s revenue requirement would be increased by approximately \$8 million if gas inventory carrying charges are included in rate base. However, ratepayers will also have the benefit of reduced PGA rates. The effect on revenue requirement for MGE is approximately \$3.5 million; however, this is not an incremental cost as MGE was already recovering gas inventory carrying costs in rate base.<sup>241</sup>

10. Other inventories, such as materials and supplies, are included in rate

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<sup>236</sup> Ex. 205, Staff Report - Cost of Service, p. 62.

<sup>237</sup> Ex. 205, Staff Report - Cost of Service, p. 63; and Tr. 1428.

<sup>238</sup> Ex. 205, Staff Report - Cost of Service, p. 62.

<sup>239</sup> Ex. 227, Sommerer Rebuttal, p. 5. (The Commission has decided the issue of capital structure elsewhere in this order and determined that the capital structure should be that of the utility and should not include short-term debt.)

<sup>240</sup> Ex. 410, Hyneman Rebuttal, pp. 6-16

<sup>241</sup> Tr. 1438; and Ex. 429, Gas Inventory Carrying Costs.

base using a 13-month average. A 13-month average helps create a more stable, long-term value for the asset.<sup>242</sup>

11. LAC's gas inventories have cycles whereby gas is injected and withdrawn at various times. However, some amount of gas to meet the reliability needs of LAC's distribution sales customers is maintained in storage year-round, regardless of the length of the injection and withdrawal cycle.<sup>243</sup>

12. Staff and LAC agree that if gas inventory carrying costs are included in rate base, the approximately \$4.1 million of carrying costs and associated line of credit fees currently included in the PGA mechanism for gas inventory carrying cost should be removed from the PGA to be consistent.<sup>244</sup>

### **Conclusions of Law**

The Commission makes no additional conclusions of law on this issue.

### **Decision**

The Commission has considered the effects on the ratepayers of removing these costs from the PGA and putting them back in rate base. The Commission has also considered the benefits of doing so and that PGA costs will be reduced potentially offsetting the rate base increases. In balancing the interests of the ratepayers and of the company, the Commission determines that it is just and reasonable to move LAC's gas storage costs out of the PGA tariff and back into base rates. By doing so, the Commission brings LAC back in line with MGE and every other natural gas local

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<sup>242</sup> Ex. 205, Staff Report - Cost of Service, pp. 61-63.

<sup>243</sup> Tr. 1517-1518.

<sup>244</sup> Ex. 209, Staff Report - Class Cost of Service, p. 33; *Staff's Initial Post-Hearing Brief* (filed January 9, 2018), p. 44; and *Initial Post-Hearing Brief of Laclede Gas Company and Missouri Gas Energy* (filed January 9, 2018), p. 64.

distribution company in Missouri. Additionally, placing gas inventory carrying charges in rate base has the benefit of reducing the complexity resulting from the review of the separate gas inventory carrying cost mechanism in the PGA tariff and in the annual ACA review. The Commission also determines the approximately \$4.1 million of carrying costs and associated line of credit fees currently included in the PGA mechanism should also be removed from the PGA to maintain consistency.

### **VIII. Credit Card Processing Fees**

- A. Should an amount be included in LAC's base rates to account for fees incurred when customers pay by credit card, in the same manner fees are currently included in MGE's base rates?**

#### **Findings of Fact**

1. Under LAC's current rate structure, customers who wish to pay their gas bill using a credit or debit card will be assessed a fee by the issuer of the credit card. MGE's customers who pay their bill using a credit or debit card do not pay such a fee. Instead, the credit card fee is paid by MGE and recovered through the rates charged to all customers. Spire Missouri proposes to change LAC's rate structure to match that of MGE, so that customers who pay their bill using a credit or debit card do not have to pay the credit card fee.<sup>245</sup>

2. Currently, approximately 30 percent of MGE's customers - who do not have to pay a fee - pay their bills using a credit or debit card. Approximately 11 percent of LAC's customers - who do have to pay a fee - pay their bills using a credit or debit card.<sup>246</sup>

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<sup>245</sup> Ex. 29, Noack Rebuttal, p. 4.

<sup>246</sup> Ex. 250, Kunst Surrebuttal, p. 19.

3. Public Counsel opposes the shifting of costs from customers who use a credit or debit card to pay their bills to all customers, including those who pay their bills by other methods.<sup>247</sup>

4. If LAC customers no longer have to pay a fee to pay their bills with a credit or debit card it is anticipated that more LAC customers will pay their bills by that method.<sup>248</sup>

5. Spire Missouri will benefit if more customers use credit cards because once the payment is made, the credit card company would assume the risk of non-payment.<sup>249</sup> Further, Spire Missouri would get its money sooner and without the risk of taking a bad check,<sup>250</sup> and it might see a reduction in its level of bad debt.<sup>251</sup>

6. While Spire Missouri has not proposed any cost adjustments in this case to recognize any savings from the change in cost recovery of credit and debit card fees,<sup>252</sup> any such benefits that do materialize would reduce the company's cost of service and ultimately benefit ratepayers in a future rate case.<sup>253</sup>

### **Conclusions of Law**

A. Subsection 393.130.3, RSMo, forbids a gas corporation to give an “*undue or unreasonable preference or advantage*” to any “person, corporation or locality.”<sup>254</sup> The statute implies that not every preference or advantage is “undue” or “unreasonable.”

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<sup>247</sup> Ex. 417, Conner Surrebuttal, p. 3.

<sup>248</sup> Ex. 29, Noack Rebuttal, p. 5.

<sup>249</sup> Ex. 29, Noack Rebuttal, p. 4.

<sup>250</sup> Ex. 30, Noack Surrebuttal, p. 4.

<sup>251</sup> Tr. 1026-1027.

<sup>252</sup> Tr. 1023.

<sup>253</sup> Tr. 1031.

<sup>254</sup> Emphasis added.

### **Decision**

Public Counsel's argument is based on the premise that those who cause a cost should pay for that cost. That is an appropriate maxim to consider when designing utility rates, but it is not an absolute limitation on the structure of such rates. No customer has a right to pay only their particular costs for receiving utility service, because the cost to serve each customer is different. If nothing else, each customer lives a greater or lesser distance from the interstate pipeline and requires a greater or lesser length of distribution system to obtain their gas supply. If each customer paid only their own individualized costs, Spire Missouri would have to establish thousands of different rates.

In this case, it is reasonable to allow Spire Missouri to recover fees resulting from the use of credit and debit cards to pay LAC bills from all LAC customers rather than from just those customers who use the credit or debit cards to pay their bills, just as it currently does for MGE customers. That policy does not result in an undue or unreasonable preference among customers because all customers can use the convenience of a credit or debit card if that tool is available to them. Ultimately, this is a policy question for which the Commission finds in favor of allowing the company to recover these costs from all ratepayers rather than imposing these costs on only some customers.

Having found that an amount should be included in LAC's base rates to account for fees incurred when customers pay by credit or debit card, the Commission must address the second portion of this issue.

**B. If yes, what is an appropriate amount to include in LAC's base rates for credit card fees?**

**Findings of Fact**

1. Staff proposes that Spire Missouri be allowed to recover an annualized amount for credit and debit card processing fees for LAC based on the number of actual credit card payments that occurred for LAC during the 12 months ending June 30, 2017, multiplied by the known and measurable average per payment transaction fee incurred by MGE for the same period.<sup>255</sup>

2. Spire Missouri counters that if customers are allowed to make credit or debit card payments without having to pay a separate fee, then more customers will take advantage of that payment option. Spire Missouri would include an amount in LAC's base rates that assumes the number of such payments by LAC customers will increase by 30 percent the first year, 50 percent the second year, 75 percent the third year, reaching the level of such payments made by MGE customers in the fourth year. Spire Missouri would then average those costs over four years, and include \$1,246,619 in base rates to recover those costs.<sup>256</sup>

3. In 2009, the year before MGE took over payment for credit and debit card transaction fees, only four percent of residential customers paid their bills with credit or debit cards. By 2012, the rate of customers paying their bills with credit or debit cards had increased to 14 percent.<sup>257</sup>

4. No one can say with certainty how LAC customers will respond to the removal of a separate charge for the use of credit or debit cards to pay bills. In

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<sup>255</sup> Ex. 250, Kunst Surrebuttal, p. 19; and Ex. 202, Staff's Accounting Schedule 10, p. 7 of 11, indicates this adjustment amounts to \$573,853.

<sup>256</sup> Ex. 30, Noack Surrebuttal, p. 5 and Schedule MRN-S1, as corrected at Tr. 1020.

<sup>257</sup> Ex. 250, Kunst Surrebuttal, p. 20.

addition, an increase in the use of credit and debit cards could have as yet unknown effects on other utility costs and revenues.<sup>258</sup> As a result, those costs in future years are not yet known and measurable.<sup>259</sup>

### **Conclusions of Law**

A. Spire Missouri proposes that an adjustment be made to account for anticipated changes in customer usage of credit or debit cards in future years. The Missouri Court of Appeals has indicated:

the criteria used to determine whether a post-year event should be included in the analysis of the test year is whether the proposed adjustment is (1) 'known and measurable,' (2) promotes the proper relationship of investment, revenues and expenses, and (3) is representative of the conditions anticipated during the time the rates will be in effect.<sup>260</sup>

### **Decision**

The Commission finds that the cost Spire Missouri will incur in future years resulting from the change in how costs are recovered for the use of credit or debit cards by LAC customers to pay their bills are not yet known and measurable. The Commission will utilize the level of costs calculated by Staff, which is based on actual costs incurred during the test year.

## **IX. Trackers**

### **Should LAC and MGE be permitted to implement an environmental tracker?**

#### **Findings of Fact**

1. A "tracker" is a rate mechanism that tracks the amount of a specific cost of service item actually incurred by a utility and then compares that amount to the amount

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<sup>258</sup> Tr. 1035.

<sup>259</sup> Ex. 250, Kunst Surrebuttal, p. 20.

<sup>260</sup> *State ex rel. GTE North, Inc. v. Mo. Pub. Serv. Com'n*, 835 S.W.2d 356, 368 (Mo App. W.D. 1992).

of an item that is currently included in a utility's rate levels. Any over-recovery or under-recovery of the item's amount set in rates is then booked to a regulatory asset or regulatory liability account, and made eligible for recovery in the utility's next general rate case proceeding through an amortization to expense.<sup>261</sup>

2. Spire Missouri requested authority for a tracker for its environmental compliance costs as they relate to 19 manufactured gas plant sites for which LAC and MGE may be a potential responsible party.<sup>262</sup>

3. During the next year, Spire Missouri may incur costs for federal, state, and local environmental compliance requirements for these gas plant sites. Spire Missouri expressed the intent to continue pursuing reimbursement for these costs from insurance companies and other potentially responsible third parties.<sup>263</sup>

4. Staff requested that Spire Missouri provide budgeted environmental costs for the period of 2015-2020, but Spire Missouri indicated there were no budgeted costs for expected environmental costs for MGE or LAC during that timeframe.<sup>264</sup> Spire Missouri projects no environmental costs will be incurred during the next two years.<sup>265</sup>

5. Spire Missouri's requested environmental tracker would isolate for special ratemaking treatment a cost of service for which LAC and MGE are not currently incurring material costs without considering other costs that may decline and offset any environmental cost increases that may occur in the future.<sup>266</sup>

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<sup>261</sup> Ex. 218, K. Lyons Rebuttal, p 2.

<sup>262</sup> Ex. 8, Lobser Surrebuttal, p 22.

<sup>263</sup> Ex. 8, Lobser Surrebuttal, p 22

<sup>264</sup> Ex. 218, K. Lyons Rebuttal, p.2. and Schedule KL-r1.

<sup>265</sup> Ex. 218, K. Lyons Rebuttal, p.2. and Schedule KL-r1.

<sup>266</sup> Ex. 218, K. Lyons Rebuttal, p.2



### **Conclusions of Law**

A. Spire Missouri requests both LAC and MGE be authorized to track through a deferred accounting mechanism environmental costs incurred to comply with federal, state, or local environmental compliance requirements. Subsection 386.266.2, RSMo, grants the Commission the authority to approve the use of an adjustment mechanism by a gas utility in order to “reflect increases and decreases in its prudently incurred costs, whether capital or expense to comply with any federal, state, or local environmental law, regulation, or rule.”

B. In determining whether an environmental tracker should be granted, Spire Missouri bears the burden of proof.<sup>267</sup>

### **Decision**

Although Spire Missouri bears the burden of proof, the company failed to present evidence to support the request for an environmental tracker. No evidence was presented on the historic level of environmental costs that would demonstrate a material level of costs or that either LAC or MGE will incur, or is likely to incur, significant environmental costs that would justify the extraordinary remedy of a tracker. The Commission denies Spire Missouri’s request for an environmental tracker.

## **X. Surveillance**

### **Findings of Fact**

1. Staff proposed a new format for surveillance data to allow more robust and separate earnings monitoring for LAC and MGE.<sup>268</sup>

2. Before this issue was taken up at hearing, Public Counsel, Spire Missouri,

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<sup>267</sup> *Been v. Jolly*, 247 S.W.2d 840, 854 (Mo. 1952).

<sup>268</sup> Ex. 205, Staff Report - Cost of Service, p. 6.

and Staff reached an agreement that Spire Missouri will provide to Staff and Public Counsel, surveillance documents for LAC and MGE separately on a quarterly basis. Those parties agreed that the information will be in the format set out by Staff.<sup>269</sup>

3. Public Counsel, Spire Missouri, and Staff also agreed that Spire Missouri would provide its general ledger and the Customer Care and Billing (CC&B) subledger on an annual basis, within 60 days of the close of Spire Missouri's fiscal year.

4. Additionally, as part of the agreement, Staff and Public Counsel may request copies of the general ledger and CC&B subledger on a more frequent basis than annually, if further support of the surveillance data is needed. Staff and Public Counsel agreed to first go to the company with requests to see the general ledger more frequently before making additional requests to the Commission. Spire Missouri agreed that it would provide the general ledger and CC&B subledger more frequently when requested or would provide secure access to the information.<sup>270</sup>

5. Public Counsel, Spire Missouri, and Staff also agreed that the information provided in the surveillance reports would be considered "confidential," and Staff agreed to follow all statutory provisions and Commission rules governing the use and protection of such confidential information.

6. The only remaining dispute on this issue involves the request by the MIEC to allow the parties to this rate case access to those same quarterly surveillance reports.

7. Staff and Public Counsel are the only parties to this case that are obligated to provide a regulatory function relating to Spire Missouri.

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<sup>269</sup> Tr. 1551-52 and 1569.

<sup>270</sup> Tr. 1551-52.

8. The non-regulatory parties to this case are not subject to the same statutory prohibitions on the disclosure of sensitive business information that may be contained in the surveillance reports.

### **Conclusions of Law**

A. Staff and Public Counsel are restricted by law from divulging confidential surveillance information to any person and are subject to being guilty of a misdemeanor for violation of this law.<sup>271</sup>

B. Information filed in accordance with the Commission's confidentiality rule is restricted from disclosure except to attorneys and experts. Specifically, Commission rule 4 CSR 240-2.135 states in part:

(6) Confidential information may be disclosed only to the attorneys of record for a party and to employees of a party who are working as subject-matter experts for those attorneys or who intend to file testimony in that case, or to persons designated by a party as an outside expert in that case.

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(13) All persons who have access to information under this rule shall keep the information secure and may neither use nor disclose such information for any purpose other than preparation for and conduct of the proceeding for which the information was provided. This rule shall not prevent the commission's staff or the Office of the Public Counsel from using confidential information obtained under this rule as the basis for additional investigations or complaints against any public utility.

C. Staff and Public Counsel are the only parties to this case that are obligated to provide a regulatory function relating to Spire Missouri.

D. The non-regulatory parties to this case are not subject to the same statutory prohibitions on the disclosure of sensitive business information that may be

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<sup>271</sup> Section 386.480, RSMo.

contained in the surveillance reports.

### **Decision**

The Commission finds that it is reasonable to adopt the agreement of Spire Missouri, Staff, and Public Counsel regarding surveillance. The Commission will order Spire Missouri to provide Staff and Public Counsel the surveillance data in the format agreed upon and set forth in Attachment 1 of *Staff's Initial Post-Hearing Brief* on a quarterly basis. Additionally, the Commission will order Spire Missouri to provide Staff and Public Counsel its general ledger and CC&B subledger on an annual basis, within 60 days of the close of Spire Missouri's fiscal year, and to make both the ledger and subledger available more frequently in the event further support of the surveillance data is needed.

The Commission rejects the request of MIEC to provide surveillance reports to the nonregulatory parties to this case. Unlike the Staff and Public Counsel, the other parties, specifically the industrial consumers, are not obligated to provide any regulatory function relating to Spire Missouri. Further, the non-regulatory parties to this case are not subject to the same statutory prohibitions on the disclosure of sensitive business information that may be contained in those reports.

The Commission previously determined that the parties to this case had an interest sufficient to allow their participation and different from the interest of the general public. However, outside the context of a formal proceeding, the Commission cannot know that the interests of each of these parties will continue. Further, outside the context of a formal proceeding where the Commission has determined that a party has an interest in the case, enforcing the Commission's confidentiality rule becomes

impossible. Therefore, the Commission denies MIEC's request.

## **XI. Rate Design**

- A. Should a Revenue Stabilization Mechanism or other rate adjustment mechanism be implemented for the Residential and SGS classes for MGE and LAC? If so, how should it be designed and should an adjustment cap be applied to such a mechanism?**
- B. Reflective of the answer to part A, should LAC's weather mitigated Residential Rate Design be modified to collect a customer charge and variable charge for all units of gas sold, or should it be continued in its current form?**
- C. Weather Normalization Adjustment Rider (WNAR) Tariff – should a WNAR be adopted? If so, what modifications to Staff's proposed tariff should be adopted?**

### **Findings of Fact**

1. After the Commission determines the amount of revenue necessary, it must decide how that revenue will be spread among Spire Missouri's customer classes via rates. The process of determining how Spire Missouri's non-gas revenue requirement will be allocated among the different customer classes is known as rate design.<sup>272</sup>

2. A non-unanimous stipulation and agreement with no objections is approved in this order and addresses the class cost of service and rate design issues with the exception of the residential customer charge and rate structure, and the revenue stabilization mechanism (RSM) or other tariffed rate adjustments.<sup>273</sup>

3. This case was unique in that it is the first instance that a RSM for weather

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<sup>272</sup> Ex. 209, Staff Report - Class Cost of Service, p. 11.

<sup>273</sup> *Nonunanimous Stipulation Regarding Revenue Allocation and Non-Residential Rate Design* (filed December 20, 2017).

and/or conservation was proposed under Section 386.266.3, RSMo.

4. Spire Missouri seeks a RSM that would appear as a separate charge on the customer bills and would vary in response to changes in average customer usage.<sup>274</sup>

5. Spire Missouri argues that a RSM is an appropriate rate design because most fixed costs do not increase with increased usage, tying recovery of fixed costs to customer usage discourages the company from pursuing energy efficiency programs, and the volumetric rate sometimes has the unintended consequence of allowing over-recovery during periods of high usage. Spire Missouri further argues that a RSM would simplify rate designs and would provide residential and commercial customers with more stability in their bills.<sup>275</sup>

6. LAC and MGE confirmed that historically, they have fully recovered their operating expenses, interest payments, depreciation expense, and income taxes.<sup>276</sup>

7. A RSM is not needed by Spire Missouri due to difficulty meeting its revenue requirement without a RSM.<sup>277</sup>

8. It is difficult to design a RSM that will distinguish lower usage due to economic conditions versus lower usage due to conservation.<sup>278</sup>

9. The RSM proposed by Spire Missouri adjusts for *all changes* in average customer use, not only due to variations in weather and/or conservation.<sup>279</sup> It would adjust rates for the effects of fuel switching, rate switching, new customers with non-

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<sup>274</sup> Ex. 238, Stahlman Rebuttal, p. 5.

<sup>275</sup> Ex. 14, T. Lyons, Surrebuttal, pp. 3-4.

<sup>276</sup> Ex. 753, Meyer Rebuttal, p. 22.

<sup>277</sup> Tr. 2359.

<sup>278</sup> Tr. 2326.

<sup>279</sup> Ex. 238, Stahlman Rebuttal, p. 6; and Ex. 15, Weitzel Direct, p. 21..

average usage, and economic factors.<sup>280</sup> For example, if Spire Missouri was to add low usage customers in place of current high usage customers, the RSM would treat their usage as too low and would make a rate adjustment allowing the company to recover the difference between those new customers' lower-than-average usage and an average customer's usage.<sup>281</sup> Additionally, if a large Small General Service (SGS) customer that acts more like a Large General Service (LGS) customer moved to an LGS rate, the overall average usage of the SGS class would decrease, the RSM would provide the company with additional compensation even though there was no change in actual total usage.<sup>282</sup>

10. The RSM proposed by the companies would not provide rate stability because of the numerous tariff changes per year. As proposed, the RSM would have up to four rate changes per year and an annual true-up.<sup>283</sup>

11. With a volumetric rate, the goal of the companies to increase revenues by selling more gas is misaligned with the goal of conservation for customers. This misalignment is best resolved by using Staff's climatic normal and weather normalization because annual natural gas usage is 95 percent correlated with annual heating degree days (HDD).<sup>284</sup>

12. Weather variations cause the greatest variations in revenues for the companies.<sup>285</sup>

13. Based on Staff's weather normalization regressions, a mechanism based

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<sup>280</sup> Ex. 238, Stahlman Rebuttal, p. 6.

<sup>281</sup> Ex. 238, Stahlman Rebuttal, p.8 and Sch. MLS-r-2; and Ex. 260, Stahlman Surrebuttal, p. 6.

<sup>282</sup> Ex. 238, Stahlman Rebuttal, p. 8; and Ex. 260, Stahlman Surrebuttal, p. 6.

<sup>283</sup> Ex. 753, Meyer Rebuttal, p. 23.

<sup>284</sup> Ex. 260, Stahlman Surrebuttal, pp. 4-5 and 9. (A "heating degree day" is a formula for capturing how hot or cold it is and is used in the weather normalization process of rate cases. Tr. 2434.)

<sup>285</sup> Ex. 753, Meyer Rebuttal, p. 23.

solely on weather could account for over 97 percent of usage variation within a given year.<sup>286</sup> Thus, a weather normalization adjustment rider would account for most of the variations due to weather.

14. During the hearing, Staff presented a sample tariff sheet with a Weather Normalization Adjustment Rider (WNAR) for Commission consideration.<sup>287</sup> That sample tariff sheet, which was admitted into the record as Exhibit 281, included a method of adjusting rates based only on weather variations.<sup>288</sup> No objection to the document was made, with the exception of proposed modifications submitted by Spire Missouri.<sup>289</sup>

15. Spire Missouri proposed that if the Commission were to reject its RSM and instead adopt the WNAR, three modifications should be made:

- Approve the WNAR for both LAC's and MGE's Residential and Small General Service Classes.
- Eliminate the \$0.01 per therm (or ccf) limit on adjustments that can be made. If the Commission determines that some limit is appropriate, it should be: (1) a limit only on *upward* adjustments and (2) that it be set at \$0.05 per therm or ccf. Additionally, provide that any adjustment amounts falling outside the \$0.05 limit would be deferred for recovery from customers in the next WNAR adjustment.
- Allow for at least three adjustments per year, including the annual required one, provided that there must be at least 60 days between each adjustment.

16. Changing the \$0.01 per therm (or ccf) limit on adjustments in the WNAR sample tariff to a limit of \$0.05 per therm (or ccf) on *upward* adjustments will ensure that any monthly increase for the average customer will not be so high as to provide

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<sup>286</sup> Ex. 238, Stahlman Rebuttal, p. 10.

<sup>287</sup> Ex. 281, Sample WNAR Tariff Sheet.

<sup>288</sup> Tr. 2433-2434.

<sup>289</sup> Ex. 63, Affidavit Regarding Weather Normalization Adjustment Rider.



rate shock while providing customers with an opportunity to receive a larger monthly decrease if the weather is exceptionally cold.<sup>290</sup> Additionally, by providing that any adjustments falling outside the \$0.05 limit will be deferred for recovery from customers in the next WNAR adjustment, the company is assured of receiving the appropriate revenue. Further, these changes are consistent with and can be administered in a similar manner to the PGA/ACA clauses in the LAC and MGE current tariffs.

17. The WNAR proposed in Exhibit 281 when modified according to Spire Missouri's second suggested modification set out above is a just and reasonable mechanism to account for weather variations.

18. With regard to the application of the WNAR to the Small General Services (SGS) customers, unlike residential customers, there is no established coefficient<sup>291</sup> for the relationship between weather and usage for SGS customers.<sup>292</sup> Additionally, "rate switchers"<sup>293</sup> are a common occurrence for LAC.<sup>294</sup> Larger customers are less weather sensitive than smaller customers because they use gas all year round for more than just heating.<sup>295</sup> Without knowing the final makeup of the customers in the SGS class, it is impossible to calculate an unbiased coefficient for the SGS class. Therefore, it is not just and reasonable to adopt this proposed modification.

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<sup>290</sup> Ex. 63, Affidavit Regarding WNAR, p. 2.

<sup>291</sup> "Correlation is a measure of how the variations in one dataset are consistent with the variations in another. A correlation coefficient is a number between -1 and +1 calculated so as to represent the linear dependence of two variables or sets of data. Generally speaking, the closer a correlation coefficient is to 1, the more the datasets vary consistently with each other. If the correlation is negative, the variation in one dataset gets more positive as the variation in the other dataset gets more negative. Conventionally, if a correlation coefficient is greater than 0.7 then it is interpreted that there is a strong positive relationship." (Staff Report, p. 97, fn. 47.)

<sup>292</sup> Ex. 205, Staff Report - Cost of Service, pp. 97-98

<sup>293</sup> Rate switching is when customers switch which rate class they will be served on during the test year or update period. (Ex. 205, Staff Report - Cost of Service, p. 97)

<sup>294</sup> Ex. 205, Staff Report - Cost of Service, pp. 90-99.

<sup>295</sup> Tr. 2569.

19. Staff's proposal limits the rate adjustments to two per year, thus including half of a heating and cooling season. This would account for customers who have limited seasonal usage (e.g. heat water only). A triannual filing as proposed by the company would cause one period to include either a majority of summer or of winter months where a majority of the changes would occur. For these reasons, this modification is not just and reasonable.

### **Conclusions of Law**

A. The Commission's powers are "limited to those conferred by the statutes."<sup>296</sup>

B. A RSM is authorized by Subsection 386.266.3, RSMo, which provides:

Subject to the requirements of this section, any gas corporation may make an application to the commission to approve rate schedules authorizing periodic rate adjustments outside of general rate proceedings to reflect the non-gas revenue effects of increases or decreases in residential and commercial customer usage due to variations in either weather, conservation, or both.

C. The statute authorizes an RSM that allows adjustments for variations due to *weather, conservation, or both*. The Commission cannot approve Spire Missouri's proposed RSM because the RSM would make adjustments for all variations in average usage per customer (such as, fuel switching, rate class switching, new customers with non-average usage, and economic factors) and not just those limited to weather or conservation.

### **Decision**

Spire Missouri has not provided evidence that the RSM it proposed is needed for either revenue recovery (Spire Missouri has had no difficulty in meeting its revenue

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<sup>296</sup> *State ex. Rel. Utility Consumers Council of Missouri v. Public Service Commission*, 585 S.W.2d 41, 49 (Mo. 1979).

requirement) or to incentivize conservation. Further, the RSM as proposed by Spire Missouri is not consistent with the statutory requirements that allow the Commission to approve a mechanism for adjusting rates outside of a general rate proceeding “to reflect the non-gas revenue effects of increases or decreases in residential and commercial customer usage due to variations in either weather, conservation, or both”<sup>297</sup> because it would adjust rates for *all changes* in average customer use, not only due to variations in weather and/or conservation. However, because annual natural gas usage is 95 percent correlated with annual HDD, using Staff’s climatic normal and weather normalization in the form of the WNAR tariff would more accurately resolve the revenue stabilization issue because it is specifically linked to weather fluctuations.

The Commission further finds that the \$0.01 per therm (or ccf) limit on adjustments under the WNAR tariff as proposed by Staff should be eliminated but that a limit of \$0.05 per therm (or ccf) on upward adjustments should be included. This will ensure that any monthly increase for the average customer will not be so high as to create rate shock, while providing customers with an opportunity to receive a larger monthly decrease if the weather is exceptionally cold. The WNAR tariff shall also provide that any adjustments falling outside the \$0.05 limit will be deferred for recovery from customers in the next WNAR adjustment. Thus, this mechanism becomes similar to the PGA/ACA process with regard to adjustments and a true-up period.

The Commission rejects the other two modifications to the WNAR that Spire Missouri proposed. The Commission will not order the WNAR to apply to the SGS

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<sup>297</sup> Subsection 386.266.3, RSMo.

classes because no coefficient has been established for the relationship between weather and usage and “rate switchers” seem to be a common occurrence for LAC. It is often assumed that the larger customers are less weather sensitive than smaller customers. Without knowing the final makeup of the customers in the SGS class, it is impossible to calculate an unbiased coefficient for the SGS class. Additionally, the Commission rejects Spire Missouri’s request to allow three rate adjustments per year. Staff’s proposal limits the rate adjustments to two per year, thus including half of a heating and cooling season. This would account for customers who have limited seasonal usage (e.g. heat water only). A triannual filing as proposed by the company, however, would cause one period to include either a majority of summer or of winter months where a majority of the changes would occur. Thus, the triannual filing would make the customer billing more volatile than Staff’s proposal.

The Commission determines that a RSM as proposed by Spire Missouri is not necessary for the company because the utility is not having any difficulty meeting its revenue requirement and has not been shown to be a good mechanism to incentivize conservation. Further, the RSM as proposed is not authorized by the statute. Therefore, the Commission rejects Spire Missouri’s proposed RSM. However, the Commission also determines that a WNAR tariff is in the public interest and is just and reasonable as set out by the Staff’s example tariff with the modification of an upward adjustment limit and elimination of a downward adjustment limit.<sup>298</sup> Spire Missouri shall include the WNAR tariff with a limit of \$0.05 per therm (or ccf) on upward adjustments and shall provide that any adjustments falling outside the \$0.05 limit will be deferred for recovery from customers in the next WNAR

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<sup>298</sup> Ex. 281, Sample WNAR Tariff Sheet.

adjustment.

**D. What should the Residential customer charge be for LAC and MGE, and what should the transition rates be set at until October 1, 2018?**

**Findings of Fact**

1. The customer charge is the set amount on every customer's bill that must be paid even if the customer uses no gas.

2. Customer-related costs are the minimum costs necessary to make gas service available to the customer, regardless of how much gas the customer uses. Examples include meter reading, billing, postage, customer account service, and a portion of the costs associated with required investment in a meter, the service line, and other billing costs. Customer-related costs are generally recovered through the customer charge while other costs are recovered through volumetric rates that vary with the amount of gas used.<sup>299</sup>

3. It is important to remember that determining an appropriate customer charge is a question of rate design, not a question of the company's revenue requirement. That means any increase in the company's customer charge would be accompanied by a decrease in volumetric rates so that, in theory, the company recovers the same amount of revenue.

4. In actual practice, because the amount collected from volumetric rates varies with the amount of gas used, the company will collect less money from volumetric rates when customers use less gas. Thus, for example, in the summer, when customers are using less gas for heating, the company runs the risk of collecting

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<sup>299</sup> Ex. 505, Hyman Rebuttal, pp. 9-10.

less revenue. However, a higher customer charge also creates the problem of customers dropping off the system seasonally.

5. A lower customer charge coupled with a volumetric rate encourages efficient consumption because higher usage causes higher bills.<sup>300</sup>

6. A lower customer charge can also help low-income customers, because they tend to use less natural gas than the general body of residential customers.<sup>301</sup>

7. LAC's current residential rate consists of a customer charge of \$19.50 and a seasonal volumetric charge of \$0.91686 per therm for the first 30 therms used in the winter, but no charge for therms used after 30 in the winter; \$0.31290 per therm for the first 30 therms in summer; and \$0.15297 for all therms over 30 in the summer. LAC's current "weather mitigated" rates result in a flat customer charge of \$47.01 (\$19.50 plus \$0.91686 per therm) for virtually every residential customer in the winter months.<sup>302</sup>

8. MGE's current residential rate consists of a \$23.00 customer charge and a flat volumetric rate of \$0.07380 per ccf used.<sup>303</sup>

9. A class cost of service study (CCOS) provides a basis for allocating and/or assigning to the customer classes a utility's cost of providing service to all customer classes in a manner that best reflects cost causation.<sup>304</sup>

10. Staff performed a separate CCOS for LAC and MGE.<sup>305</sup> Staff's CCOS for both LAC and MGE were primarily based on cost.<sup>306</sup> Staff's class cost of service

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<sup>300</sup> Ex. 505, Hyman Rebuttal, pp. 10, 11, and 13-15.

<sup>301</sup> Ex. 503, Kroll Direct, pp. 21-23.

<sup>302</sup> Ex. 209, Staff Report - Class Cost of Service, p. 20.

<sup>303</sup> Ex. 209, Staff Report - Class Cost of Service, p. 20.

<sup>304</sup> Ex. 209, Staff Report - Class Cost of Service, p. 2.

<sup>305</sup> Ex. 209, Staff Report - Class Cost of Service, p. 1.

<sup>306</sup> Ex. 236, R. Kliethermes Rebuttal, p. 6.

studies showed that on a strict cost allocation basis, the customer charge should be approximately \$26.00 per customer for LAC and \$17.01 for MGE.<sup>307</sup>

11. Staff included the following costs in the calculation of the residential customer charge:

- Distribution - services (investment and expenses)
- Distribution - meters and regulators (investment and expenses)
- Distribution - customer installations
- Customer deposits
- Customer billing expenses
- Uncollectible accounts (write-offs)
- Customer service & information expenses
- Portion of income taxes<sup>308</sup>

12. For LAC, Staff recommended an increased customer charge of \$26.00 and recommended charging customers for all therms including therms used after 30.<sup>309</sup> Alternatively, Staff presented an inclining block residential rate design for LAC with a \$26.00 customer charge and a volumetric charge per therm to increase for usage beyond 50 therms.<sup>310</sup> As a further alternative to decrease the customer charge, Staff presented a design for LAC consisting of a customer charge of \$22.00 plus a flat volumetric rate, and an alternative inclining block residential rate design with a \$22.00 customer charge and a volumetric charge per therm to increase for usage beyond 50 therms.<sup>311</sup>

13. For MGE, Staff recommended a customer charge of \$20.00, plus a flat volumetric rate per ccf.<sup>312</sup> Alternatively, Staff presented an inclining block residential

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<sup>307</sup> Ex. 209, Staff Report - Class Cost of Service, p. 20.

<sup>308</sup> Ex. 209, Staff Report - Class Cost of Service, p. 20.

<sup>309</sup> Ex. 209, Staff Report - Class Cost of Service, pp. 14 and 20.

<sup>310</sup> Ex. 209, Staff Report - Class Cost of Service, p. 24.

<sup>311</sup> Ex. 284, Inclining Block Rate Document.

<sup>312</sup> At the time Staff filed its Class Cost of Service Report, the volumetric rate was calculated to be \$0.13859 per ccf. However, the volumetric component of the rates for both MGE and LAC will change based on the revenue requirement outcome of these cases and the billing determinants stipulated to after

rate design for MGE with a \$20.00 customer charge and a volumetric charge per ccf to increase for usage beyond 50 ccf.<sup>313</sup>

14. Although Spire Missouri filed a CCOS, its proposed residential customer charge is not really based on its study. Rather, those proposed customer charges were designed to be in alignment with the RSM proposal that also included proposed transition rates from March to October 2018.<sup>314</sup>

15. Staff indicated that there was no “reasonable reason to delay implementation of ongoing rates.”<sup>315</sup>

16. Public Counsel proposed a customer charge of \$14.00 for both LAC and MGE.<sup>316</sup>

17. DE supported lower customer charges, but did not provide evidence related to a specific charge.<sup>317</sup> DE also supported a lower tail-block rate for LAC customers during the winter. This rate would apply only to the upper five percent of usage during the winter to decrease the effects of a cold winter.<sup>318</sup>

18. Raising the fixed customer charge to recover all of the fixed costs, such as Staff’s proposed \$26.00 customer charge for LAC, can cause rate shock for customers least able to afford the service.<sup>319</sup>

19. An inclining block rate is a volumetric rate where the customers pay more per unit of energy consumed at the higher levels of usage. An inclining block rate can

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the filing of Staff’s CCOS Report. (Ex. 209, p. 14).

<sup>313</sup> Ex. 209, Staff Report - Class Cost of Service, p. 23.

<sup>314</sup> Ex. 236, R. Kliethermes Rebuttal, p. 5; and Ex. 18, Weitzel Surrebuttal, pp. 17-18.

<sup>315</sup> Ex. 236, R. Kliethermes Rebuttal, p. 8

<sup>316</sup> Ex. 249, R. Kliethermes Surrebuttal, p. 8.

<sup>317</sup> Ex. 249, R. Kliethermes Surrebuttal, p. 8.

<sup>318</sup> Ex. 505, Hyman Rebuttal, pp. 16-17 and 23.

<sup>319</sup> Ex. 505, Hyman Rebuttal, pp. 17-18.



encourage energy efficiency.<sup>320</sup>

20. LAC and MGE customers' usage is very seasonal with 90 percent of the customers using less than 20 therms in the summer months.<sup>321</sup> Further, approximately 95 percent of the change in residential customer usage is due to weather.<sup>322</sup>

21. Customers are concerned about higher customer charges as evidenced by the numerous oral and written comments received at local public hearings saying the customer charges were too high.<sup>323</sup>

22. The Commission is not bound to set the customer charges based solely on the details of the cost of service studies. The Commission must also consider the public policy implications of changing the existing customer charges. There are strong public policy considerations in favor of lower customer charges.

23. Residential customers should have as much control over the amount of their bills as possible so that they can reduce their monthly expenses by using less gas, either for economic reasons or because of a general desire to conserve. A lower customer charge gives the customer the opportunity to conserve where appropriate. However, during the winter, conservation becomes much more difficult because the majority of the usage is for heating the home. A level block rate will give the customers some stability during the winter when they are less able to conserve. An inclining block rate in the summer coupled with a lower customer charge will give the customers the ability to achieve savings through conservation during the time when their usage is not critical to heating the home.

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<sup>320</sup> Ex. 505, Hyman Rebuttal, pp. 17-18.

<sup>321</sup> Ex. 260, Stahlman Surrebuttal, p. 8.

<sup>322</sup> Ex. 260, Stahlman Surrebuttal, p. 9.

<sup>323</sup> Ex. 505, Hyman Rebuttal, pp. 4-8; and Tr. 2359-2360.

### **Conclusions of Law**

The Commission makes no additional conclusions of law for this issue.

### **Decision**

The Commission finds that Spire Missouri's customer charges for LAC should be \$22.00 and for MGE should be \$20.00 with an inclining block rate in the summer and a level block rate in the winter for both. An inclining block rate in the summer will incentivize conservation when the customers have the most control over usage not necessary to heat their homes. Additionally, the level block in the winter will provide stabilization for customers during the winter months when they have more difficulty paying increased bills in order to heat their homes. These rates shall be calculated based on the agreed to billing determinants and the revenue requirement set out in this order in the method set out in Staff Exhibit 284. The Commission sets no transition rates.

## **XII. Pensions, OPEBs and SERP**

- A. What is the appropriate amount of pension expense to include in base rates?**

### **Findings of Fact**

1. This issue deals with the amount of funding or pension expense for MGE and LAC's pension assets that should be reflected in rates.

2. Spire Missouri is proposing to include \$31 million in rates for contributions to the LAC pension plan.<sup>324</sup> This is designed to fund 90 percent of pension liabilities for LAC.<sup>325</sup> Public Counsel and the Union support this level of funding.<sup>326</sup>

3. Pension Benefit Guarantee Premiums (PBGC) is a federal agency created by the Employee Retirement Income Security Act (ERISA) that provides a form of insurance to protect pension benefits in the event of a default by a sponsor of a pension plan.<sup>327</sup>

4. Funding of pension liabilities at the level proposed by Spire Missouri will lower the PBGC premiums in the future and prevent further significant increase in the pension asset.<sup>328</sup> Each \$1,000 paid in pension expense by LAC will reduce PBGC premiums by \$34.00.<sup>329</sup>

5. Staff recommends funding LAC's pension at the 80 percent ERISA minimum level which is \$29 million for LAC.<sup>330</sup>

6. ERISA minimums are premised on pension trusts earning a sufficient amount of return on investment in the future, thus eliminating the need for additional funding.<sup>331</sup>

7. Spire Missouri, Staff, and Public Counsel agree that the pension expense for MGE should be \$5.5 million.<sup>332</sup>

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<sup>324</sup> Ex. 20, Buck Rebuttal, p. 9.

<sup>325</sup> Ex. 20, Buck Rebuttal, p. 9.

<sup>326</sup> *Initial Brief of the Office of the Public Counsel*, p. 37.

<sup>327</sup> Ex. 231, Young Rebuttal, p. 4.

<sup>328</sup> Ex. 263, Young Surrebuttal, p. 2.

<sup>329</sup> Ex. 231, Young Rebuttal, p. 6.

<sup>330</sup> Ex. 231, Young Rebuttal, p. 4.

<sup>331</sup> Ex. 231, Young Rebuttal, p. 2.

<sup>332</sup> Ex. 20, Buck Rebuttal, p. 11; *Staff's Initial Post-Hearing Brief* (filed January 9, 2018), p. 65; and *Office of the Public Counsel's Reply Brief* (filed January 17, 2018), p. 26.

8. Public Counsel also requests that the Commission order a strategic financing review of the pension and benefit plans.<sup>333</sup>

9. LAC's pension plans already receive much "scrutiny and utilize some of the nations' leading investment advisory and actuarial firms to assist it in planning."<sup>334</sup>

10. In the past, the Commission has investigated the pension plan practices of all the utilities in the state and found no shortcomings with regard to LAC's pensions.<sup>335</sup>

### **Conclusions of Law**

The Commission makes no additional conclusions of law on this issue.

### **Decision**

The pension asset of LAC has grown quite large and a 90 percent funding level would lower PGCB premiums in the future and prevent the regulatory asset from increasing in size substantially. However, a 90 percent funding level would require an additional \$2 million in pension expense, thus, raising rates. Additionally, the ERISA minimums are calculated to take into consideration growth of the funds through returns, thus, additional investment may not be needed. In balancing the needs of the ratepayers to keep rates from increasing, with the need Spire Missouri to fulfill its pension obligations, the Commission determines that an 80 percent ERISA funding level (\$29 million) for LAC is the most just and reasonable level.

With regard to MGE's pension asset funding, Spire Missouri, Staff, and Public Counsel reached consensus that the funding level should be \$5.5 million. Having reviewed the evidence before it, the Commission determines that \$5.5 million is a just

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<sup>333</sup> Ex. 408, Pitts Direct, p. 17.

<sup>334</sup> Ex. 20, Buck Rebuttal, p. 11; and Tr. 2087.

<sup>335</sup> Ex. 20, Buck Rebuttal, p. 11.

and reasonable funding level for MGE's pension expense.

Public Counsel also requested that the Commission order a strategic financing review of the pension and benefit plans. The Commission was not persuaded that such a review is necessary since Spire Missouri's pension and benefit plans already receive scrutiny and utilize investment advisory and actuarial firms to assist it in planning. Additionally, in the past the Commission has investigated the pension plan practices of all the utilities in the state and found no shortcomings with regard to LAC's pensions. The Commission will not order a review of the pension and benefit plans.

**B. What is the appropriate amount of the LAC and MGE pension assets?**

**Findings of Fact**

1. This issue is about what amount to use for regulatory purposes as the total of LAC's prepaid pension asset and MGE's prepaid pension liability.

2. The pension asset is a regulatory asset that represents an amount owed by ratepayers for LAC's and MGE's contributions to the company pension funds that have not been recovered in rates.<sup>336</sup> A pension liability is the opposite. That is, a liability is created when the company has collected more from ratepayers than it has paid (with regard to the authorized regulatory payments) into the pension funds.

3. Staff, MGE, and Public Counsel agree that MGE currently has a pension *liability* of \$28.4 million.<sup>337</sup> With regard to LAC, however, there is not agreement.

4. The prepaid pension asset is equal to the difference between cash

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<sup>336</sup> Ex. 20, Buck Rebuttal, p. 9.

<sup>337</sup> Ex. 286, Staff True-Up Accounting Schedule 02 — MGE, p. 1.

contributions to the pension trust and cash collected in rates since October 1, 1987.<sup>338</sup> The LAC pension asset amount has not been fully litigated for over 20 years. Staff and LAC agree that approximately \$131.4 million has accumulated in LAC's pension asset since 1996.<sup>339</sup> However, the disagreement comes down to how much customers paid in rates for pension expense between 1990 and 1994 for both FAS 87 and FAS 88 accounts, and from 1994 to 1996 for the FAS 88 account.

5. LAC argues that between the time it adopted FAS 87 in 1987 and its rate case in 1994, its pension asset accumulated \$19.8 million; and between that 1994 rate case and its 1996 rate case an additional \$9.0 million accumulated under FAS 88. Thus, LAC argues that its prepaid pension asset is \$28.8 million more than Staff's position.

6. Staff's witness, Matthew Young, did a thorough and credible review of prior testimony and workpapers in LAC rate cases during the relevant period.<sup>340</sup> The Commission adopts many of Mr. Young's findings as follows:

a. Pension expense is an item that is examined and adjusted in every large rate case.<sup>341</sup> Until the current case, however, LAC had not written testimony responsive to Staff's adjustment to LAC's proposed pre-1994 prepaid pension asset.<sup>342</sup>

b. LAC has not sought to include a pension asset in its accounting schedules for rate base in any rate case since 1987.<sup>343</sup>

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<sup>338</sup> Tr. 2074.

<sup>339</sup> Ex. 285, Staff True-Up Accounting Schedule 02 – LAC, p. 1.

<sup>340</sup> Ex. 263, Young Surrebuttal, p. 9.

<sup>341</sup> Ex. 263, Young Surrebuttal, p. 13.

<sup>342</sup> Ex. 263, Young Surrebuttal, p. 11.

<sup>343</sup> Ex. 263, Young Surrebuttal, p. 8.

c. In LAC's various rate cases between October 1, 1987 and September 1, 1994, neither LAC nor Staff accounting schedules itemized a pension asset in rate base in their accounting schedules.<sup>344</sup>

d. A prepaid pension asset was first proposed to be included in rate base by LAC in Case No. GR-96-193. In that case, LAC witness Waltermire supported a prepaid pension asset in LAC's rate base estimated at April 30, 1996, to include accrued pension liability and prepaid pension assets account balances for all Company sponsored retirement plans (excluding the SERP and Directors' plans) that had occurred since September 1, 1994 (the effective date of tariffs in Case No. GR-94-220).<sup>345</sup>

e. LAC did not seek to include in its rate base all costs deferred after its 1987 implementation of FAS 87 for financial reporting purposes.<sup>346</sup>

f. Based on the testimony presented in Case No. GR-96-193, including Staff witness Gibbs's direct testimony, both Staff and LAC were in agreement on the methodology to calculate the prepaid pension asset created by the adoption of FAS 87.<sup>347</sup>

g. LAC changed the methodology it used to calculate the rate base effect of the prepaid pension asset in its next rate case, Case No. GR-98-374. This is shown in the direct testimony in that case of LAC witness Fallert (then employed as the Controller of LAC) implying that LAC no longer calculated its

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<sup>344</sup> Ex. 263, Young Surrebuttal, p. 8.

<sup>345</sup> Ex. 263, Young Surrebuttal, p. 9.

<sup>346</sup> Ex. 263, Young Surrebuttal, p. 8-9.

<sup>347</sup> Ex. 263, Young Surrebuttal, p. 9.

pension asset beginning on September 1, 1994.<sup>348</sup>

h. In LAC's next rate case, Case No. GR-98-374, the direct testimony of Staff witness Traxler shows that Staff continued to calculate LAC's prepaid pension asset beginning with September 1, 1994.<sup>349</sup>

i. LAC changed the methodology it used to calculate the rate base effect of the prepaid pension asset in Case No. GR-98-374. However, Staff has maintained the adjustment to the booked asset in every LAC rate case since Case No. GR-94-220.<sup>350</sup>

j. LAC adopted FAS 87 for financial reporting purposes in 1987. However, FAS 87 was not used for regulatory purposes prior to the effective date of rates in Case No. GR-94-220.<sup>351</sup>

k. Additionally, in Case No. GR-92-165, LAC's rate case immediately prior to the 1994 case, both Staff and LAC filed direct testimony supporting the use of cash contributions to set pension expense. Since Staff and LAC had the same methodology, and other parties did not present a different position, it is likely rates were set using the current level of cash contribution instead of FAS 87 expense.<sup>352</sup>

l. The testimony of Staff witness Gibbs in Case No. GR-96-193, recognizing the recording of FAS 88 gains during the period under review, refutes LAC's contention that during the period prior to September 1, 1994, FAS

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<sup>348</sup> Ex. 263, Young Surrebuttal, pp. 10-11; citing, Fallert Direct, p. 10, Ins. 16-23, in Case No. GR-98-374.

<sup>349</sup> Ex. 263, Young Surrebuttal, pp. 10-11; citing, Traxler Direct, p. 22, Ins. 22 -23 through p. 23, Ins. 1-8, in Case No. GR-98-374.

<sup>350</sup> Ex. 263, Young Surrebuttal, p. 11.

<sup>351</sup> Ex. 205, Staff Report - Cost of Service, p. 67.

<sup>352</sup> Ex. 263, Young Surrebuttal, pp. 13-14.



88 was also used for setting rates.<sup>353</sup>

7. The Commission adopted the Stipulation and Agreement in Case No. GR-94-220 as a resolution of all issues and permitted LAC to book its pension and OPEB expenses to FAS 87 and FAS 106 accounts, respectively.<sup>354</sup>

8. The Commission's *Report and Order* in Case No. GR-94-220 authorized the deferral of OPEB expenses, SERP, and Directors' pension plan expenses described in paragraphs 8 and 9 of the Stipulation and Agreement in that case. However, the *Report and Order* is silent as to a deferral of any FAS 87 or FAS 88 expenses.<sup>355</sup>

9. The Stipulation and Agreement in Case No. GR-94-220 states that the parties agree to reflect the adoption by LAC of FAS 87 for all qualified pension plans and that the Commission approval of this Stipulation and Agreement shall constitute all necessary authorization for LAC to utilize FAS 87 and FAS 106 for ratemaking purposes.<sup>356</sup>

10. Prior to September 1, 1996, when rates from Case No. GR-96-193 became effective, accumulated pension assets in FAS 88 were not included in LAC's cost of service.<sup>357</sup>

11. Public Counsel agrees with Staff's calculation of the prepaid pension asset, with the exception that it believes Laclede's contributions in excess of the

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<sup>353</sup> Ex. 263, Young Surrebuttal, pp. 15-16.

<sup>354</sup> In the Matter of Laclede Gas Company's Tariff Sheets Designed to Increase Rates for Gas Service Provided to Customers in the Missouri Service Area of the Company, Case No. GR-94-220 (decided August 22, 1994), Volume 3 MPSC 3d, 135.

<sup>355</sup> In the Matter of Laclede Gas Company's Tariff Sheets Designed to Increase Rates for Gas Service Provided to Customers in the Missouri Service Area of the Company, Case No. GR-94-220 (decided August 22, 1994), Volume 3 MPSC 3d, 140.

<sup>356</sup> In the Matter of Laclede Gas Company's Tariff Sheets Designed to Increase Rates for Gas Service Provided to Customers in the Missouri Service Area of the Company, Case No. GR-94-220 (decided August 22, 1994), Volume 3 MPSC 3d, 135, *Report and Order*, Attachment A, para. 4.

<sup>357</sup> Ex. 205, Staff Report - Cost of Service, p. 67.

minimum required by ERISA should not be included in rate base. Public Counsel argues that LAC has overstated its ERISA minimums and, therefore, should not be allowed to use an exception in a previous stipulation and agreement to over-contribute to the pension asset. Thus, Public Counsel recommends a reduction in the value of the prepaid pension asset of approximately \$54 million.<sup>358</sup>

12. Public Counsel's witness admitted that his calculations of the contributions in excess of ERISA minimums were possibly overstated.<sup>359</sup>

13. LAC has a collective bargaining agreement with its Union employees that it will offer those employees the option of a lump sum payment at retirement.<sup>360</sup>

14. LAC has made contributions in excess of ERISA minimums. These contributions were made to avoid benefit restrictions of the Pension Protection Act and to avoid variable premiums of PBGC.<sup>361</sup>

### **Conclusions of Law**

A. Paragraph 7 of the Commission-approved Stipulation and Agreement from LAC's rate case, Case No. GR-2013-0171, states that LAC shall be allowed rate recovery for contributions it will make to avoid benefit restrictions specified by the Pension Protection Act of 2006 (PPA).<sup>362</sup> LAC contributed funds sufficient to avoid the restrictions outlined in the PPA.

B. Additionally, the Commission-approved Stipulation and Agreement in LAC's rate case, Case No. GR-2013-0171, also states that LAC can include in the

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<sup>358</sup> Ex. 413, Pitts Rebuttal, p. 4.

<sup>359</sup> Ex. 413, Pitts Rebuttal, p. 4.

<sup>360</sup> Tr. 2080.

<sup>361</sup> Tr. 2080-2081.

<sup>362</sup> Ex. 263, Young Surrebuttal, p. 8; Ex. 413, Pitts Rebuttal, p. 4; Ex. 20, Glen Buck Rebuttal, Schedule GWB-R2, p. 8; and Tr. 2084 and 2096.

pension asset contributions in excess of ERISA minimums as they were made to avoid variable premiums from the PBGC.<sup>363</sup>

C. One benefit restriction is the inability to offer a lump sum payment option to retirees. In order to avoid this restriction, the pension fund has to be funded by at least 80 percent of ERISA minimums.<sup>364</sup>

D. The Commission's *Report and Order* in Case No. GR-94-220 approved a Stipulation and Agreement as a "resolution of all issues" to that case.<sup>365</sup> The *Report and Order* stated in relevant part:

3. That Laclede Gas Company be permitted to book its pension and OPEB expenses to FAS 87 and 106 accounts respectively, and shall fund its OPEB accounts in accordance with Section 386.315, RSMo Supp. 1994.

4. That Laclede Gas Company be permitted to defer and book to Account 186 the OPEB expenses particularly described in paragraph 8 of the Stipulation and Agreement approved by this Report and Order.

5. That Laclede Gas Company be permitted to defer and book to Account 186 the expenses associated with its SERP and Directors' pension plans particularly described in paragraph 9 of the Stipulation and Agreement approved by this Report and Order.

6. That Laclede Gas Company be permitted to defer and book to Account 186 the expenses associated with line and main replacement particularly described in paragraph 11 of the Stipulation and Agreement approved by this Report and Order.

7. That Laclede Gas Company be permitted to defer and book to Account 186 the expenses associated with its former manufactured gas operations particularly described in paragraph 12 of the Stipulation and Agreement approved by this Report and Order.<sup>366</sup>

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<sup>363</sup> *Order Approving Unanimous Stipulation and Agreement*, File No. GR-2013-0171 (issued June 26, 2013), attachment *Stipulation and Agreement*, para. 7; See also, Ex. 20, Glen Buck Rebuttal, Schedule GWB-R2.

<sup>364</sup> e.g. 26 USC 436 (d)(5) and (3)(a) and 29 USC 1056 (g)(3)(A) and (C)(I); See also, 26 C.F.R. § 1.436-1.

<sup>365</sup> In the Matter of Laclede Gas Company's Tariff Sheets Designed to Increase Rates for Gas Service Provided to Customers in the Missouri Service Area of the Company, Case No. GR-94-220 (decided August 22, 1994), Volume 3 MPSC 3d, 139.

<sup>366</sup> In the Matter of Laclede Gas Company's Tariff Sheets Designed to Increase Rates for Gas Service Provided to Customers in the Missouri Service Area of the Company, Case No. GR-94-220 (decided August 22, 1994), Volume 3 MPSC 3d, 139-140.

### Decision

The Commission was persuaded by Staff's thoughtful and logical review of the supporting testimony from the period at issue as set out in the findings above. That testimony shows that parties were using a cash contribution method, and not FAS 87 or FAS 88 accrual accounting prior to September 1, 1994, the effective date of Case No. GR-94-220. The recording of the difference between LAC's pension fund contributions and the amount collected in rates began at September 1, 1994 for ratemaking purposes. The *Report and Order* from GR-94-220 supports Staff's position. That *Report and Order* was a resolution of all issues in the case and authorized LAC to book its pension and OPEB expenses to FAS 87 and 106 accounts; however, the *Report and Order* is silent to a deferral of any FAS 87 or FAS 88 expenses. The Commission finds the sworn testimony of LAC and Staff witnesses that were knowledgeable of the issue during the era in question to be more persuasive than the conclusions drawn by LAC more than 20 years later even those conclusions drawn by its witness that was involved in some of the earlier cases.

Further, Public Counsel's evidence quantifying excess contributions was not reliable. Therefore, the Commission denies Public Counsel's adjustment for pension contributions over the ERISA minimums.

After reviewing the evidence, the Commission determines that the amount of MGE's pension *liability* is \$28.4 million.<sup>367</sup> The Commission further determines that the appropriate amount of the LAC prepaid pension asset is approximately \$131.4 million

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<sup>367</sup> Ex. 296, Staff True-Up Accounting Schedule 02 — MGE, p. 1.

as set out by Staff.<sup>368</sup>

**C. How should the pension regulatory assets be amortized?**

**Findings of Fact**

1. Staff recommended an eight-year amortization of the prepaid pension asset while the company originally proposed a ten-year amortization.
2. LAC indicated that it was not opposed to Staff's proposal.<sup>369</sup>
3. Public Counsel originally proposed a twenty-year amortization<sup>370</sup> but has since agreed to the eight-year amortization as well.<sup>371</sup>
4. Thus, the only parties to file testimony on this issue agree to an eight-year amortization period.

**Conclusions of Law**

The Commission makes no additional conclusions of law on this issue.

**Decision**

The parties filing testimony on this issue have reached consensus that the prepaid pension asset should be amortized over eight years. The Commission finds that eight years is a reasonable amount of time to amortize the pension regulatory asset.

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<sup>368</sup> Ex. 297, Staff True-Up Accounting Schedule 02 – LAC, p. 1.

<sup>369</sup> Ex. 20, Buck Rebuttal, p. 9.

<sup>370</sup> Ex. 408, Pitts Direct, p. 17.

<sup>371</sup> *Initial Brief of the Office of the Public Counsel*, p. 39.

**D. What is the appropriate amount of SERP expense to include in base rates?**

**Findings of Fact**

1. The Supplemental Executive Retirement Plan (SERP) is an employee benefit fund for highly compensated employees and employees that defer a portion of their income as set out by Section 415 of the Internal Revenue Code.<sup>372</sup>

2. SERP applies to executives and non-executive employees of Spire Missouri.<sup>373</sup>

3. Staff has calculated the SERP expense as \$468,731 based on a three-year average.<sup>374</sup> Spire Missouri is in agreement with that amount.<sup>375</sup>

4. Public Counsel's position is that a normalized annual SERP payment of \$24,097 is the appropriate amount to include for SERP expense.<sup>376</sup>

5. Public Counsel argued that lump sum payments are erratic, nonrecurring, and difficult to predict and thus are not known and measurable.<sup>377</sup>

6. Upon retirement, Spire employees receiving SERP have the option of an annuity or a lump sum SERP payment. With only one or two exceptions, most employees choose the lump sum payment.<sup>378</sup>

7. Staff examined actual historical data for SERP payments from 2010 through 2016. The historical data shows that lump sum payments can be reasonably expected to recur.<sup>379</sup>

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<sup>372</sup> 26 U.S.C.A. § 415; and Tr. 2215.

<sup>373</sup> Tr. 2215.

<sup>374</sup> Ex. 296, Staff Updated True-Up Accounting Schedules-LAC; and Ex. 297, Staff Updated True-Up Accounting Schedules-MGE.

<sup>375</sup> Tr. 2219.

<sup>376</sup> Ex. 425, Hyneman Surrebuttal, p. 38.

<sup>377</sup> Ex. 425, Hyneman Surrebuttal, p. 33-36.

<sup>378</sup> Tr. 2213-2214.

8. Staff excluded one lump sum payment from its averages because this SERP payment was for the departure of a CEO and was unusually large. The departure of a CEO, and thus, a payment this large, is not expected to recur.<sup>380</sup>

9. Further, when a historical average is used, with the exclusion of any special anomalies, the size of lump sum SERP payments is not volatile.<sup>381</sup>

10. Lump sum SERP payments for Spire Missouri are known and measurable.

### **Conclusions of Law**

A. The Missouri Court of Appeals has stated:

the criteria used to determine whether a post-year event should be included in the analysis of the test year is whether the proposed adjustment is (1) 'known and measurable,' (2) promotes the proper relationship of investment, revenues and expenses, and (3) is representative of the conditions anticipated during the time the rates will be in effect.<sup>382</sup>

### **Decision**

Historical data shows that with regard to Spire Missouri's SERP expense, lump-sum payments can be reasonably expected to recur. In fact, with only a few exceptions, retiring employees opt to receive their SERP benefits by a lump sum payment instead of by annuity. Further, when considering the historical averages, and excluding the one anomaly of an especially high payment, the size of the lump sum SERP payments is not volatile and is known and measurable. The Commission finds that the appropriate amount of SERP expense is \$468,731 as calculated by Staff.

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<sup>379</sup> Ex. 263, Young Surrebuttal, p. 21.

<sup>380</sup> Ex. 263, Young Surrebuttal, p. 21.

<sup>381</sup> Ex. 263, Young Surrebuttal, pp. 21-22.

<sup>382</sup> *State ex rel. GTE North, Inc. v. Mo. Pub. Serv. Com'n*, 835 S.W.2d 356, 368 (Mo App. W.D. 1992).

## E. Should SERP payments be capitalized to plant accounts?

### Findings of Fact

1. Public Counsel recommends an adjustment of \$461,279 from plant-in-service to remove what it believes are capitalized SERP payments from the test year.<sup>383</sup>

2. Public Counsel argues that because SERP is accounted for on a pay-as-you-go accounting method and not an accrual method, it does not have any service cost component; and, it is inappropriate to capitalize any portion of SERP expense.<sup>384</sup>

3. Spire accounts for its SERP plan under Generally Accepted Accounting Principles (GAAP), Financial Accounting Standards (FAS 87) for financial reporting.<sup>385</sup>

4. FAS 87 allows for the capitalization of the service cost component of FAS 87 SERP expense.<sup>386</sup>

5. A service cost is the amount of cost that is booked in the current rate period for obligations that will be paid in future periods.<sup>387</sup>

6. Spire capitalizes its accrued SERP costs in accordance with the Uniform System of Accounts (USOA) and in accordance FAS 87. No payments are being capitalized.<sup>388</sup>

### Conclusions of Law

A. Investor-owned natural gas utilities under this Commission's jurisdiction are obligated to use the Uniform System of Accounts (USOA) prescribed by the Federal Energy Regulatory Commission (FERC).<sup>389</sup>

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<sup>383</sup> Ex. 410, Hyneman Rebuttal, p. 28; and *Initial Brief of the Office of the Public Counsel* (filed January 9, 2018), p. 41.

<sup>384</sup> Ex 403, Hyneman Direct, p. 16.

<sup>385</sup> Tr. 2211.

<sup>386</sup> Tr. 2211-2212.

<sup>387</sup> Tr. 2213.

<sup>388</sup> Ex. 21, Buck Surrebuttal, p. 18.



B. This Commission has authorized the use of FAS 87 for Laclede Gas Company and MGE and the recording of costs associated with company sponsored employee pension plans for ratemaking purposes.<sup>390</sup> FAS 87 allows for the capitalization of the service cost component of FAS 87 SERP expense.<sup>391</sup>

### **Decision**

All the parties agree that SERP payments should not be capitalized. Further, Spire Missouri is not capitalizing *payments* made to employees under its SERP. However, Spire Missouri is capitalizing some SERP expense. Spire Missouri must recognize, as SERP expense for accounting purposes, a portion of those future SERP payments for each year of the current employee's expected service. This is the "accrued service cost" relating to SERP expense. Accrued service cost for SERP expense is appropriately capitalized under current FAS. The Commission determines that the adjustment requested by Public Counsel is not appropriate.

### **F. Should the prepaid pension asset be funded through the weighted cost of capital or long-term debt?**

### **Findings of Fact**

1. Public Counsel argues that a prepaid pension asset is similar to a long-term debt obligation and should not be considered to be funded by equity from

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<sup>389</sup> 4 CSR 240-40.040.

<sup>390</sup> *Report and Order*, File Nos. GR-94-220 (issued August 22, 1994) and *Report and Order*, File No. GR-98-140 (issued August 21, 1998).

<sup>391</sup> Tr. 2211-2212.

shareholders. Because of this, Public Counsel argues that the pension asset should be funded at the cost of Spire Missouri's long-term debt.<sup>392</sup>

2. The prepaid pension asset represents a sum that investors have advanced that has not yet been paid by customers.<sup>393</sup>

3. Cash is fungible and attempting to earmark a funding source to specific assets within the same organizational structure is nothing more than optics - ultimately, all long-term financing (both debt and equity) will be used to fund all long-term assets, pensions or otherwise.<sup>394</sup>

4. Since 2002, through at least the last five rate cases for LAC, the prepaid pension asset has been included in rate base at the normal weighted average cost of capital.<sup>395</sup>

5. Staff accounted for the prepaid pension asset with a weighted cost of capital in its accounting schedules.<sup>396</sup>

### **Conclusions of Law**

The Commission makes no additional conclusions of law on this issue.

### **Decision**

The prepaid pension asset represents a sum that investors have advanced that has not yet been paid by customers. Cash is fungible and it is not easy or appropriate to pull one type of long-term asset out and assign it a particular funding source. The Commission determines that like other assets, the prepaid pension asset is

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<sup>392</sup> Ex. 408, Pitts Direct, p. 6.

<sup>393</sup> Tr. 2074.

<sup>394</sup> Ex. 20, Buck Rebuttal, p. 13.

<sup>395</sup> Ex. 20, Buck Rebuttal, Schedule GWB-R2.

<sup>396</sup> Ex. 296, True-Up Hearing Accounting Schedules – LAC; and Ex. 297, True-Up Hearing Accounting Schedules – MGE.

appropriately included in rate base and is properly funded at the normal weighted average cost of capital.

### **XIII. Income Taxes**

In addition to the accumulated deferred income tax presented by the parties at the hearing, the Commission has additionally considered the effects of the Tax Cuts and Jobs Act (TCJA).<sup>397</sup>

#### **A. What is the appropriate amount of accumulated deferred income tax to include for LAC and MGE?**

##### **Findings of Fact**

1. Deferred income taxes arise from temporary differences between the book and tax treatment of an item of income or expense. Thus, the deferred tax reserve is a net prepayment of income taxes by each company's customers prior to the time actual payment to the taxing authority is made.<sup>398</sup>

2. Under well-established regulatory principles, deferred taxes are treated as a reduction to rate base so ratepayers do not pay a return on funds provided to the utility at no cost.<sup>399</sup>

3. Staff and Spire Missouri have agreed that the statutory income tax rate of 38.3886 percent is the appropriate rate to apply in determining accumulated deferred income tax (ADIT) prior to the TCJA. They also indicated that their differences in determining the amount of ADIT would be resolved with the Commission's Report and

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<sup>397</sup> Public Law No.: 115-97.

<sup>398</sup> Ex. 205, Staff Report - Cost of Service, p. 72; and Ex. 425, Hyneman Surrebuttal, pp. 23-24.

<sup>399</sup> Ex. 205, Staff Report - Cost of Service, p. 72.

Order.<sup>400</sup>

4. Public Counsel argued that the Commission should include \$54.3 million of “FIN 48 liability” in ADIT.<sup>401</sup>

5. FIN 48 liability stems from uncertain tax positions in open tax years. Open tax years are years in which the Internal Revenue Service (IRS) may still audit the company’s tax filings and could potentially rule against the company’s position causing it to owe more taxes. Generally Accepted Accounting Principles (GAAP) allows the company to record only the portion of the tax liability on which the company expects to prevail as a deferred tax. The FIN 48 liability is the remaining portion that the company expects to have to pay. If the FIN 48 liability were included in ADIT, it would have the effect of decreasing revenue requirement by \$5 million.<sup>402</sup>

### **Conclusions of Law**

A. The Commission has previously decided against including FIN 48 liability in ADIT, determining that both ratepayers and shareholders benefit when a company takes uncertain tax positions with the IRS, because paying less income tax benefits the shareholders with increased revenues and the ratepayers with reduced tax expense.<sup>403</sup> The Commission found in that case that the best way to encourage the company to pursue uncertain tax positions was to treat the company fairly in the regulatory process by excluding from ADIT the FIN 48 liability, which the company expects to have to pay.

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<sup>400</sup> *Staff’s Notice*, (filed January 30, 2018), p. 1.

<sup>401</sup> Tr. 1082 and 1088.

<sup>402</sup> Tr. 1081-1083.

<sup>403</sup> *In the Matter of Union Electric Company, d/b/a AmerenUE’s Tariffs to Increase Its Annual Revenues for Electric Service*, Case No, ER-2008-0318, Report and Order (issued January 27, 2009), p. 54.

### **Decision**

Staff and Spire Missouri agree that the \$54.3 million of FIN 48 liability should be excluded from ADIT. Public Counsel argues that it should be included. As previously found by the Commission, both ratepayers and shareholders benefit when the company takes an uncertain tax position with the IRS, because saving money on taxes benefits the company's bottom line and it also reduces the amount of tax expense for the ratepayers. As in File No. ER-2008-0318, the Commission determines that the best way to encourage the company to pursue these tax savings, and thus ultimately benefit both shareholders and ratepayers, is to exclude the FIN 48 liability from ADIT. The Commission finds the FIN 48 liability shall be excluded from consideration in the deferred taxes account.

- B. What specific adjustments would be needed to include in rates any change in cost of service as a result of the Tax Cuts and Jobs Act for each of Spire's operating units?**

### **Findings of Fact**

1. The Tax Cuts and Jobs Act (TCJA) was signed into law on December 22, 2017, and will greatly reduce the amount of income taxes paid by Spire Missouri.
2. There has been no similar tax reform since 1986, and nothing similar is likely to happen again in the near future.
3. Beginning January 1, 2018, the TCJA will cause a significant (millions of dollars) reduction in income tax expense for Spire Missouri by reducing the federal corporate income tax applicable to Spire Missouri from 35 percent to 21 percent with

the effective composite federal and Missouri state tax rate being reduced from 38.3886 percent to 25.4483 percent.<sup>404</sup>

4. A reduction in Spire Missouri's federal corporate tax expense in revenue requirement due to the effects of the TCJA would reduce rates and save ratepayers millions of dollars annually.<sup>405</sup>

5. The effects of the reduced federal corporate tax expense can be calculated with great accuracy.<sup>406</sup>

6. The current accumulated deferred income tax reserve was deferred at a 35 percent corporate tax rate, but because of the reduction of the corporate tax rate by the TCJA, the reserve is overstated and will need to be flowed back to ratepayers.<sup>407</sup>

7. Spire Missouri is unique among large investor-owned utilities in Missouri in that it was before the Commission in the late stages of a rate proceeding when the TCJA became law and took effect. No other investor-owned utility in the state has the ability to reflect the tax changes in rates so quickly.

8. Spire Missouri has generally filed a rate case every four years.<sup>408</sup>

9. Not all of the effects of the TCJA are known as the Internal Revenue Service (IRS) and the Securities and Exchange Commission (SEC) have not yet issued guidance or promulgated rules on the implementation of the TCJA.<sup>409</sup>

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<sup>404</sup> Tr. 2893 and 2895; and Ex. 754, Spire Tax Reform Quantification.

<sup>405</sup> Tr. 2881 and 2889.

<sup>406</sup> Tr. 2895.

<sup>407</sup> Tr. 2893-2894.

<sup>408</sup> Ex. 254, Majors Surrebuttal, p. 3.

<sup>409</sup> Tr. 2894.

10. The test year is a historic period in which revenues, expenses, and investment is measured, to serve as a foundational guide to set rates for a utility going forward.<sup>410</sup>

11. The test year in this case was set as the 12 months ending December 31, 2016, updated through June 30, 2017, and trued-up through September 30, 2017.<sup>411</sup>

12. The “matching principle” in the context of setting rates is the concept that a utility’s revenues, expenses, rate base, and cost of capital are matched to each other during a generally consistent period such as the test year.<sup>412</sup>

13. If all the effects of the TCJA, including reduced income tax expense, are deferred under a regulatory liability until Spire Missouri’s next rate case, the balance in that account will likely reach over \$100 million, an unusually large regulatory liability.<sup>413</sup> This means that ratepayers would have been overpaying income tax expenses until the next rate case and would not start receiving the benefits of the income tax reduction set out in the TCJA for possibly as long as four years.<sup>414</sup> This is not a just and reasonable result.

14. Staff’s recommendation on this issue is that the financial benefits of the TCJA should be returned to the ratepayers in this rate proceeding and any effects that are not able to be put into rates immediately should be tracked so they may be flowed back to the ratepayers or the utility in a later proceeding.<sup>415</sup>

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<sup>410</sup> Tr. 2909.

<sup>411</sup> Ex. 205, Staff Report - Cost of Service, p. 4.

<sup>412</sup> Tr. 2909.

<sup>413</sup> Tr. 2974.

<sup>414</sup> Tr. 2973.

<sup>415</sup> Tr. 2894-2895.

15. Staff's witness Lisa Ferguson's method of estimating the change in the ADIT was clear and concise.<sup>416</sup> Ms. Ferguson based her calculation on the difference between the former composite tax rate of 38.3886 percent and the new effective composite tax rate of 25.4483 percent to determine the reduction to ADIT.<sup>417</sup> Ms. Ferguson also explained that she applied a 50/50 split between the "protected" and "unprotected" ADIT applying a 20-year amortization to protected ADIT and a 10-year amortization to unprotected ADIT.<sup>418</sup>

16. The amount of reduction to ADIT can be reasonably estimated as done by Staff's witness Ms. Ferguson. That estimate of the reduction to ADIT was \$11.5 million (a \$10.7 million reduction for LAC and an \$815,000 reduction for MGE).<sup>419</sup>

17. MIEC witness Greg Meyer also reached a similar estimate for the income tax expense and ADIT reductions and used nearly identical methodology.<sup>420</sup>

18. Actual property tax expense paid in 2017 is also now known and measurable even though it falls outside the test year. That amount was estimated at hearing to be an increase of approximately \$1.4 million.<sup>421</sup>

19. Property tax for 2018 is expected to increase but is not yet known and measurable because taxing authorities have not yet set the tax rates or set the assessed values and those taxes will not be assessed until later in 2018.<sup>422</sup>

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<sup>416</sup> Tr. 2969-2970.

<sup>417</sup> Tr. 2968-2969.

<sup>418</sup> Tr. p. 2969-2972

<sup>419</sup> Tr. 2968-2970.

<sup>420</sup> Tr. 2993-2996; and Ex. 754, Spire Tax Reform Quantification.

<sup>421</sup> Tr. 2956

<sup>422</sup> Tr. p. 2935 and 2956.



### **Conclusions of Law**

A. On December 22, 2017, the President of the United States signed into law the Tax Cuts and Jobs Act<sup>423</sup> which amends the Internal Revenue Code of 1986. Specifically, sections of the Internal Revenue Code are amended dealing with the income tax rate that Spire Missouri will be required to pay on its revenues earned beginning January 1, 2018.

B. In setting just and reasonable rates, the Commission considers *all* relevant factors.<sup>424</sup>

### **Decision**

The TCJA is the first major tax reform in the United States since 1986. As such, it will have a material effect on investor-owned public utilities and their ratepayers, including Spire Missouri, which is currently before this Commission for a rate case. A rate case is the only opportunity for the Commission to consider *all* factors surrounding the determination of just and reasonable rates that will allow the company an opportunity for a reasonable return on its investment. Because of this, the Commission cannot ignore the consequences of this extraordinary event.

Because of this major change in one of the factors the Commission considers in setting just and reasonable rates, the Commission requested information from the parties regarding the best and most fair way to incorporate the effects of the TCJA into the rates of Spire Missouri. By incorporating the TCJA in these rates, ratepayers will begin to see benefits of the TCJA almost immediately rather than waiting another three to four years until Spire Missouri files its next rate case. Additionally, by addressing

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<sup>423</sup> Public Law No.: 115-97.

<sup>424</sup> Subsection 393.270.4, RSMo; and *State ex rel. Util. Consumers' Council of Missouri, Inc. v. Pub. Serv. Comm'n*, 585 S.W.2d 41, 56 (Mo. banc 1979).

these tax implications now, the potential for Spire Missouri to over-earn is also lessened. Addressing the TCJA implications in the current rate case is complicated by the past test year method of determining just and reasonable rates and by the late stage of the rate case process at which the law was passed. The Commission, however, finds it is necessary to address the TCJA in the current case in order to set just and reasonable rates.

At the hearing on this particular issue, the evidence was clear that effective January 1, 2018, Spire Missouri's basic federal corporate income tax rate will be reduced from 35 percent to 21 percent, with the effective composite federal and Missouri state tax rate being reduced from 38.3886 percent to 25.4483 percent.<sup>425</sup> Beginning January 1, 2018, this change will reduce income tax expense, which in turn if considered in rates, will reduce Spire Missouri's revenue requirement by millions of dollars and, therefore, would save ratepayers millions of dollars. While the specific income tax expense reduction cannot be calculated until the other decisions from this Report and Order are incorporated, it is a known and measurable expense. The new federal corporate tax rate is set and can easily be included in the revenue requirement calculation once the Commission has made a final decision in this case. Staff and MIEC calculated a very similar number in determining what the tax reduction might be if the Commission decided certain issues in a particular way. There is no reason why, using this same methodology with the actual decisions of the Commission incorporated, the reduction in income tax expense cannot be calculated making this a known and measurable expense.

Therefore, the Commission finds that based on the extraordinary event of the

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<sup>425</sup> Ex. 754, Spire Tax Reform Quantification.

passage of the TCJA happening at the latter stages of this rate case, it is just and reasonable to reduce income tax expense in this case using the TCJA effective composite income tax rate of 25.4483 percent. Because these rates will not go into effect until near the end of March 2018, Spire Missouri's shareholders will receive the benefits of the lag and will maintain any previously collected taxes for the first quarter of 2018 with ratepayers seeing the benefits of reduced rates upon the effective date of the compliance tariffs.

The Commission further recognizes that not all of the effects of the TCJA are known at this time. The IRS has yet to promulgate rules or issue guidance on all the aspects of the TCJA. Therefore, the Commission will order that a tracker be established to account for any other effects (either over- or under-collection in rates) of the TCJA not captured by the current reduction in income tax expense for possible inclusion in rates at Spire Missouri's next rate case.

One additional consequence of the TCJA is its effect on ADIT. The parties presented evidence regarding the estimated effects, but because of the complex nature of deferred income taxes and the potential effect on cash flows to the company if the flow back of excess ADIT is not done correctly, this calculation as presented to the Commission still remains an estimate. The estimates of the percentage of "protected" versus "unprotected" ADIT and the lack of evidence surrounding the appropriate amortization periods for each category, convinces the Commission that effects of the TCJA on ADIT are not sufficiently known and measurable to include in the current rate case with any certainty beyond an estimate.

However, Spire Missouri and Staff indicated that they will be able to determine,

based on the former composite tax rate of 38.3886 percent and the new effective composite tax rate of 25.4483 percent, an appropriate estimated amount to set as a reduction to ADIT.<sup>426</sup> That amount calculated by Staff's witness Lisa Ferguson is \$11.5 million (a \$10.7 million reduction for LAC and as \$815,000 reduction for MGE). As part of its calculation, Staff applied a 50/50 split between the "protected" and "unprotected" ADIT applying a 20-year amortization to protected ADIT and a 10-year amortization to unprotected ADIT. However, the calculations and the determination of the actual split between protected and unprotected excess ADIT and the appropriate amortization period for the protected and unprotected excess ADIT have not been completed as of the date of this order. The protected component to be flowed back to the ratepayers shall be computed by Spire Missouri in accordance with the normalization requirements of the TCJA. The Commission orders that the ADIT amount for purposes of rates in this case shall be reduced by \$11.5 million. Additionally, the Commission orders that a tracker be established to defer any amounts in excess ADIT over or under the \$11.5 million amount refunded in rates, from the effective date of rates resulting from this case, forward, for possible inclusion in a later rate case. Further, the determination of the actual split between protected and unprotected ADIT and the appropriate amortization periods will be determined in Spire Missouri's next rate case.

Finally, one of Spire Missouri's arguments against including the effects of the TCJA in the present case was that it was unfair to the company to not also include certain property taxes that also fall outside of the test year. Having considered these arguments the Commission agrees that actual property tax expense paid in 2017 is now known and measurable even though it falls outside the test year. And, coupled with the

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<sup>426</sup> *Staff's Notice* (filed January 30, 2018).

extraordinary event of decreased income tax expense it would not be just to exclude these known and measurable taxes (estimated at hearing as approximately \$1.4 million) from increasing property tax expense. Therefore, as an offset to the reduction in current income tax expense, the Commission will include the actual 2017 property taxes as an expense for the new rates. However, as 2018 property taxes are still not known and measurable, the Commission will also establish a tracker to account for any amounts of property tax expense over or under the amounts set out in rates for possible inclusion in Spire Missouri's next rate proceeding.

#### **XIV. Incentive Compensation for Employees**

The Commission presents the issues related to incentive compensation in a different order than set out in the parties' issues list.

##### **A. Earnings Based Incentive Compensation – Should LAC and MGE be permitted to include earnings based and/or equity based employee incentive compensation amounts in base rates?**

##### **Findings of Fact**

1. Earnings based incentives are usually incentives based on financial metrics such as, net income, return on equity, and increases in stock prices. These components of an incentive compensation plan focus utility management on maximizing net income. They also provide motivation to utility management to request rate increases that are higher than needed to earn a reasonable return.<sup>427</sup>

2. Earnings based incentive compensation primarily benefits shareholders.<sup>428</sup>

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<sup>427</sup> Ex. 403, Hyneman Direct, p. 21 and Ex. 263, Young Surrebuttal, p. 26.

<sup>428</sup> Tr. 2721; Ex. 403, Hyneman Direct, p. 19; and Ex. 263, Young Surrebuttal, p. 25.

3. All employees of LAC and MGE are eligible for annual bonuses under Spire Missouri's Annual Incentive Plans (AIP).<sup>429</sup> This incentive compensation plan provides an annual cash payout to eligible union and nonunion participants based on four components, each component with its own objectives: corporate performance, business unit performance, individual performance, and team unit performance.<sup>430</sup>

4. Under the AIP, corporate performance and business unit performance are measured with financial metrics and net economic earnings per share (NEEPS) and operating income, respectively. Payouts under these two components are applicable to all employees.<sup>431</sup>

5. Corporate based earnings provide an incentive for management to focus on the non-Missouri regulated portions of the overall corporate structure which could be detrimental due to reduced focus on Missouri ratepayers.<sup>432</sup>

6. The Commission has previously determined that compensation based on corporate earnings is focused on shareholder wealth maximization and should be assigned to the shareholders.<sup>433</sup>

7. The Commission has a long history of removing earnings based employee compensation from rates. Examples of cases in which the Commission decided against allowing incentive compensation tied to financial benchmarks include: EC-87-114, Union Electric; TC-89-14, Southwestern Bell; TC-93-224, Southwestern Bell; GR-96-

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<sup>429</sup> Ex. 205, Staff Report - Cost of Service, p. 101; and Ex. 48, Mispagel Rebuttal, p. 6.

<sup>430</sup> Ex. 205, Staff Report - Cost of Service, pp. 101-102.

<sup>431</sup> Ex. 205, Staff Report - Cost of Service, p. 102.

<sup>432</sup> Ex. 263, Young Surrebuttal, p. 25.

<sup>433</sup> *In the Matter of Missouri Gas Energy's Tariff Sheets Designed to Increase Rates for Gas Service in the Company's Service Area*, File No. GR-96-285.

285, Missouri Gas Energy; GR-2004-0209, Missouri Gas Energy; ER-2006-0314, Kansas City Power & Light; and ER-2007-0291, Kansas City Power & Light.<sup>434</sup>

8. An incentive to maximize earnings could compromise service to ratepayers by reducing costs that are related to the quality of service. Corporate based earnings incentives provide an incentive for management to focus on the non-Missouri regulated portions of the overall corporate structure (including non-regulated business segments and out-of-state utilities), which could be detrimental to Missouri-regulated ratepayers.<sup>435</sup>

9. Spire Missouri admits that earnings based incentive compensation, in the form of stock, is meant to align the interests of its directors, officers, and employees with the interests of the shareholders.<sup>436</sup>

10. Any metric based on earnings per share is also based on the performance of all of Spire Inc.'s subsidiaries and non-Missouri regulated activities, because Spire Inc. is the only entity that has shares outstanding.<sup>437</sup>

11. Individual goals of certain executives were based on Spire Inc.'s achievement of earnings per share and for meeting Spire Inc.'s growth objectives.<sup>438</sup> A number of the metrics set out were also tied to the performance of Spire's Alabama and Mississippi operations.<sup>439</sup>

12. Spire Missouri's incentive based compensation for directors and executives is based entirely on financial metrics.<sup>440</sup> For other Spire Missouri employees,

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<sup>434</sup> Ex. 263, Young Surrebuttal, pp. 24-25.

<sup>435</sup> Ex. 263, Young Surrebuttal, p. 25.

<sup>436</sup> Ex. 403 Hyneman Direct, p. 23.

<sup>437</sup> Ex. 205, Staff Report - Cost of Service, pp. 17-18.

<sup>438</sup> Ex. 263, Young Surrebuttal, p. 30, citing Ex. 48, Mispagel Rebuttal, p. 8.

<sup>439</sup> Ex. 205, Staff Report - Cost of Service, p. 103.

<sup>440</sup> Tr. 2696.

50 percent of incentive compensation is attributed to financial metrics and 50 percent is attributed to other metrics assigned to that employee.<sup>441</sup> Public Counsel does not support the inclusion of incentive compensation payments based on earning metrics such as net income, earnings per share, or stock appreciation. Public Counsel also does not support the inclusion of any short-term compensation based on incentives that do not directly benefit utility customers.<sup>442</sup>

13. The third component of the AIP, individual performance, is applicable only to nonunion employees. The fourth component, team unit performance, is applicable only to union employees.<sup>443</sup> These components of the AIP are addressed elsewhere in this order.

### **Conclusions of Law**

A. Traditionally, the Commission has not allowed the recovery of incentive compensation tied to financial metrics in rates because “[t]hose financial incentives seek to reward the company’s employees for making their best efforts to improve the company’s bottom line. Improvements to the company’s bottom line chiefly benefit the company’s shareholders, not its ratepayers. Indeed some actions that might benefit a company’s bottom line, such as a large rate increase, or the elimination of customer service personnel, might have an adverse effect on ratepayers.”<sup>444</sup>

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<sup>441</sup> Tr. 2692 and 2697.

<sup>442</sup> Ex. 403, Hyneman Direct, p. 22.

<sup>443</sup> Ex. 205, Staff Report - Cost of Service, p. 103.

<sup>444</sup> *In the Matter of Missouri Gas Energy’s Tariffs to Implement a General Rate Increase for Natural Gas Service*, Case No. GR-2004-0209, Report and Order (issued September 21, 2004), p. 43. See also similar conclusions in *In the Matter of the Application of Kansas City Power & Light Company for Approval to Make Certain Changes in its Charges for Electric Service to implement Its Regulatory Plan*, Case No. ER-2007-0291, Report and Order (issued December 6, 2007), p. 49 (the Commission denied Kansas City Power & Light’s request to recover compensation tied to earnings per share).



B. The Commission's historical decisions are represented in its *Report and Order* in KCPL's rate case in File No. ER-2007-0291. Beginning on page 49 of that *Report and Order* the Commission said:

KCPL has the right to tie compensation to [earnings per share]. However, because maximizing [earnings per share] could compromise service to ratepayers, such as by reducing maintenance, the ratepayers should not have to bear that expense. What is more, because KCPL is owned by Great Plains Energy, Inc., and because GPE has an unregulated asset, Strategic Energy L.L.C., KCPL could achieve a high [earnings per share] by ignoring its Missouri ratepayers in favor of devoting its resources to Strategic Energy. Even KCPL admits it is hard to prove a relationship between earnings per share and customer benefits. Nevertheless, if the method KCPL chooses to compensate employees shows no tangible benefit to Missouri ratepayers, then those costs should be borne by shareholders, and not included in cost of service. [footnotes omitted]

C. Subsection 393.150.2, RSMo, provides that Spire Missouri has "the burden of proof to show that the...proposed increased rate is just and reasonable..."

### **Decision**

The Commission has traditionally not allowed earnings based or equity based compensation to be recovered in rates because such incentives are primarily for the benefit of shareholders and not for the benefit of the ratepayers. As the Commission has said in the past, incentivizing employees to improve the company's bottom line aligns the employee interests with the shareholders and not with the ratepayers. Aligning interests in this way can negatively affect ratepayers. The evidence in this case shows that Spire Missouri's nonunion employees' incentive compensation plan is made up of 50 percent financial metrics. Additionally, the executive and director incentive compensation is 100 percent based on financial metrics.

The Commission finds that Spire Missouri's earning based and equity based

incentive compensation is primarily for the benefit of the shareholders and not for the benefit of the ratepayers. Therefore, the Commission determines that Spire Missouri has not met its burden of proving that its proposed increase in rates for earnings based and equity based incentive compensation plans is just and reasonable. Spire Missouri shall not recover earnings based or equity based employee incentive compensation amounts in rates.

**B. What criteria should be applied to determine appropriate levels of employee incentive compensation?**

**Findings of Fact**

1. As stated above, for nonunion, nonexecutive Spire Missouri employees, 50 percent of incentive compensation is attributed to financial metrics, but 50 percent is attributed to individual performance metrics assigned to that employee.<sup>445</sup>

2. Spire Missouri's individual performance component of its incentive compensation plan is not based on financial metrics, but rather is based on service and operational metrics.<sup>446</sup>

3. An incentive compensation plan can motivate performance of employees to the benefit of ratepayers.<sup>447</sup>

4. An incentive compensation plan can also be a recruitment and retention tool allowing Spire Missouri to retain and motivate talented employees, which is also of benefit to the ratepayers.<sup>448</sup>

5. Most publicly-traded companies the size of Spire Missouri offer an incentive compensation plan.<sup>449</sup>

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<sup>445</sup> Tr. 2692 and 2697.

<sup>446</sup> Ex. 48, Mispagel Rebuttal, p. 7.

<sup>447</sup> Ex. 48, Mispagel Rebuttal, p. 5.

<sup>448</sup> Ex. 48, Mispagel Rebuttal, pp. 5 and 7.

6. Staff used five standards that had been previously articulated by the Commission to evaluate the nonunion employee incentive compensation component of Spire's AIP. Those standards were: 1) does the goal provide the employee an incentive to perform at a level above what is already required for the applicable job; 2) does a goal require improvement over past performance; 3) is the goal objective and measurable; 4) was the goal related to Missouri regulated operations; and 5) was the goal, if achieved, directly linked to overall ratepayer benefit.<sup>450</sup>

7. For the union employees, the incentive compensation plan establishes team goals. A majority of those team goals are customer-oriented, such as average call handle time, call abandonment rate, leak response time, etc.<sup>451</sup>

### **Conclusions of Law**

The Commission makes no additional conclusions of law on this issue.

### **Decision**

Staff used the five standards previously articulated by the Commission for evaluating the nonunion employee individual performance metrics for incentive compensation. The Commission has previously used these criteria in determining whether to allow incentive based compensation and finds that those criteria are generally appropriate to evaluate employee incentive compensation plans. However, in this case, the Commission was not persuaded by Staff's evaluations of the specific individual performance metrics that the non-earnings and non-equity based portion of the incentive compensation plan was inadequate to encourage and motivate employees to the benefit of the ratepayers. Therefore, the Commission finds that the individual

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<sup>449</sup> Ex. 48, Mispagel Rebuttal, p. 5.

<sup>450</sup> Ex. 205, Staff Report - Cost of Service, p. 27; and Ex. 263, Young Surrebuttal, p. 27.

<sup>451</sup> Ex. 205, Staff Report - Cost of Service, p. 103.

performance component (50 percent of the nonunion, nonexecutive and director incentive compensation) of Spire Missouri's employee incentive compensation plan encourages, motivates, and retains talented employees to the benefit of ratepayers and should be included in revenue requirement.

**C. What is the appropriate amount of employee incentive compensation to include in base rates?**

**Findings of Fact**

1. Spire Missouri's overall incentive compensation package for nonunion employees is heavily weighted toward financial metrics, and contains individual metrics that are vague, not designed to incent an employee to perform at a level higher than what is required for their base salary, and are not linked to ratepayer benefit.<sup>452</sup>

2. There is no opposition to including incentive compensation for union employees as this is the result of a collective bargaining agreement.<sup>453</sup>

3. The Staff recommended a total reduction to Spire Missouri's revenue requirement of \$4.8 million for non-union employee incentive compensation.<sup>454</sup>

4. The Commission has determined in this Report & Order that Spire Missouri's incentive compensation program expense should be disallowed.

**Conclusions of Law**

The Commission makes no additional conclusions of law on this issue.

**Decision**

The Commission has determined that 50 percent (the earnings based and equity based portions) of Spire Missouri's nonunion, non-executive or director employee

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<sup>452</sup> Ex. 263, Young Surrebuttal.

<sup>453</sup> Staff Initial Brief, p. 78; Public Counsel Initial Brief, p. 51;

<sup>454</sup> Ex. 268, Reconciliation – LAC; and Ex. 269, Reconciliation – MGE.

incentive compensation plans should be disallowed from rates. Further, the executive and director incentive compensation plan, which is 100 percent earnings and equity based, shall also be disallowed. Incentive compensation for union employees, however, is appropriately included in rates because this is the result of collective bargaining agreements. Therefore, Spire Missouri's proposed revenue requirement shall be reduced by 100 percent of the executive and director's incentive compensation plan and 50 percent of the other nonunion employee incentive compensation plan.

**D. Should LAC and MGE be permitted to capitalize earnings based and equity based employee incentive compensation amounts in base rates?**

**Findings of Fact**

1. The Commission previously determined that earnings based and equity based incentive compensation should not be recovered in rates.

2. Utilities typically capitalize a portion of their incentive compensation costs.<sup>455</sup>

3. Staff proposes to adjust base rates by removing the present value of the capitalized incentive compensation amounts from 2003 to present that it contends was inappropriately capitalized following past settled rate cases where the subject of incentive compensation was not litigated.<sup>456</sup>

4. Every LAC rate case since 2003 has been resolved through settlement and neither the issue of incentive compensation nor the issue of incentive compensation capitalization were specifically addressed in any stipulation or litigation.<sup>457</sup>

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<sup>455</sup> Tr. 2731.

<sup>456</sup> Ex. 205, Staff Report - Cost of Service, p. 104.

<sup>457</sup> Ex. 263, Young Surrebuttal, p. 23; and Tr. 2731-2731.

### **Conclusions of Law**

No additional conclusions of law are necessary for this issue.

### **Decision**

The Commission has decided above that earnings based and equity based incentive compensation should not be recovered in rates. Thus, that incentive compensation expense will not be included in rates and no part of the earnings based or equity based incentive compensation for the current case (test year through true-up period) should be capitalized in rate base going forward. However, Staff has also proposed to remove from rate base the value of incentive compensation that it contends was inappropriately capitalized by Spire Missouri following past settled rate cases where the subject of incentive compensation was not litigated. The Commission finds that it is not appropriate to make this adjustment. Because the stipulation and agreements settled all issues but did not specifically address the capitalization of incentive compensation, the Commission will not now reach back to those settled cases and remove capitalized earnings based and equity based incentive compensation from rate base. The Commission determines that no adjustment shall be made to remove the value of any capitalized past incentive compensation that may have been involved.

- E. To the extent the Commission declines to include employee incentive compensation in rates, what adjustment should be made to base salaries paid to employees?**

### **Findings of Fact**

1. “[T]he company uses industry market data from surveys and other publicly available sources to help determine competitive compensation, both on the base and

incentive level.”<sup>458</sup>

2. Both Staff and Spire Missouri compare base salary to market base salary.<sup>459</sup>

3. Spire Missouri also compares its incentive compensation to market based incentive compensation.<sup>460</sup>

4. LAC’s and MGE’s actual payout for individual incentive compensation was approximately 13 percent above market compensation.<sup>461</sup>

### **Conclusions of Law**

The Commission makes no additional conclusions of law on this issue.

### **Decision**

Both Staff and Spire Missouri compare the base salary paid by Spire Missouri to market salaries. Then Spire Missouri also compares incentive compensation to market incentive compensation. Thus, base salary is not less than market base salary and there is no need for any upward adjustment. Spire Missouri is free to compensate its employees in the manner it sees fit. However, in order to include the earnings based and equity based incentive compensation into rates, Spire Missouri must show that it is just and reasonable for the ratepayers to pay. The Commission determines Spire Missouri has not met its burden to show that any upward adjustment to base salaries is just and reasonable to include in rates. Therefore, no adjustment in compensation expense shall be made due to the Commission disallowing portions of Spire Missouri’s incentive compensation plans expense.

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<sup>458</sup> Ex. 48, Mispagel Rebuttal, p. 6.

<sup>459</sup> Tr. 2720.

<sup>460</sup> Tr. 2720.

<sup>461</sup> Ex. 263, Young Surrebuttal, p. 28.

## XV. Uncollectibles

### What is the appropriate amount of bad debt to include in base rates?

#### Findings of Fact

1. In Spire Missouri's Fiscal Year 2016, the company made a significant change to its write-off policy for both LAC and MGE. LAC went from writing off bad debt (considering it uncollectible) in 180 days after disconnection to writing off bad debt in 360 days after disconnection. MGE went from writing off bad debt in 30-45 days after disconnection to writing off bad debt in 360 days after disconnection. This change makes it difficult to compare the net uncollectible levels in 2016 (the test year) and those experienced prior to 2016.<sup>462</sup>

2. Because of this difficulty, Staff calculated its bad debt expense level based on an "annualized/normalized level" of actual bad debt for the most current twelve-months (the twelve months ending June 30, 2017).<sup>463</sup>

3. Public Counsel recommended that bad debt expense be set at the level of the test year uncollectibles.<sup>464</sup>

4. Spire Missouri calculated bad debt expense based on both a three-year average and on a five-year average and normalized the data due to the change in write-off policy.<sup>465</sup>

5. To normalize the bad debt expense for the change in write-off policy, Spire Missouri's witness, Timothy Krick, generated a list of all customer balances that had write-off dates scheduled on or after October 1, 2017, and then subtracted 180 days or

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<sup>462</sup> Ex. 23, Krick Direct, pp. 3-5.

<sup>463</sup> Ex. 205, Staff Report - Cost of Service, p. 136; and Ex. 253, McMellen Surrebuttal, pp. 2-3.

<sup>464</sup> Ex. 403, Hyneman Direct, p. 41.

<sup>465</sup> Ex. 24, Krick Rebuttal, pp. 9-10.



330 days for customers of LAC and MGE, respectively, to estimate when the customers would have systematically been written-off under the old policy.<sup>466</sup>

6. The Commission finds that Spire Missouri's normalization gives an accurate estimate of future bad debt expense.

7. Fiscal years 2016 and 2017 were two of the warmest years on record for LAC and MGE. Thus, write-offs for that time period would artificially be lower than other years.<sup>467</sup>

8. A twelve-month period is not long enough to fairly represent bad debt write-off trends and to fairly project future expense. An average over at least three years normalizes unusual variances that can occur in a shorter period such as twelve months.<sup>468</sup>

9. A five-year average is an even better predictor of future write-offs. A five-year average includes more data points, which reduces the standard deviation in statistical terms. Adding more data points helps to average out unusually warm and cold winters.<sup>469</sup>

10. The five-year average bad debt for LAC is \$8.3 million, and the five-year average bad debt for MGE is \$4.5 million.<sup>470</sup>

### **Conclusions of Law**

The Commission makes no additional conclusions of law on this issue.

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<sup>466</sup> Ex. 24, Krick Rebuttal, pp. 9-10, Schedule TWK-R1.

<sup>467</sup> Tr. 975.

<sup>468</sup> Ex. 24, Krick Rebuttal, p. 8.

<sup>469</sup> Ex. 24, Krick Rebuttal, p. 9; and Tr. 966 and 976.

<sup>470</sup> Tr. 966; and Ex. 24, Krick Rebuttal, Schedule TWK-R1.

### **Decision**

Both LAC and MGE had a change in write-off policy that makes comparing the data in the test year difficult. However, looking at only a twelve-month period of bad debt expenses does not provide enough data to project trends in bad debt expense. The five-year normalized average calculated by Spire Missouri, on the other hand, has sufficient data points to smooth out variations in bad debt. The Commission finds that a five-year average is the most appropriate method to calculate the amount of bad debt to include in rates. The Commission also finds that Spire Missouri's normalization calculation provided an accurate estimate of future bad debt expense. Thus, the Commission determines the appropriate amount of bad debt to include in rates are \$8.3 million for LAC, and \$4.5 million for MGE as calculated by Mr. Krick.

## **XVI. Performance Metrics**

- A. Should a proceeding be implemented to evaluate and potentially implement a performance metrics mechanism? If yes, how should this be designed?**

### **Findings of Fact**

1. Currently, neither LAC nor MGE have performance incentives based upon the achievement of any Commission-approved performance metrics. Spire Missouri proposes the Commission establish a separate proceeding<sup>471</sup> to consider incentivizing performance for Spire Missouri based on performance metrics in the areas of customer service, safety, and reliability, as well as other areas.<sup>472</sup> This performance incentive

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<sup>471</sup> Ex. 8, Lobser Surrebuttal, p. 23.

<sup>472</sup> Ex. 6, Lobser Direct, p.41.

would be independent of the revenue requirement in a subsequent rate case.<sup>473</sup>

2. LAC already monitors a variety of service, safety, reliability, and other operational metrics. LAC has previously provided those metrics to Staff. Spire Missouri proposes using historic performance levels to establish an appropriate benchmark for future performance.<sup>474</sup>

3. Spire Missouri believes that performance metrics align the interests of the shareholders with the customers by holding the company financially accountable for how well it serves customers.<sup>475</sup>

4. In this rate case, Spire Missouri did not provide a specific program with specific performance metrics to be considered. At this point, Spire Missouri is proposing that the Commission form a working group to develop a program with the following guidelines:

- a. the total sum of any positive or negative financial adjustments associated with exceeding or falling below such performance metrics not exceed \$2 million annually, after tax, across both business units (LAC and MGE);
- b. that each performance metric have a range of acceptable annual performance that is reasonably achievable based on historical experience;
- c. Spire Missouri report quarterly on results, toward an annual result;
- d. any financial adjustments for each particular metric be equivalent in value and only be made for performance that falls outside the range

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<sup>473</sup> Ex. 6, Lobser Direct, p.42.

<sup>474</sup> Ex. 6, Lobser Direct, p.41.

<sup>475</sup> *Initial Post-Hearing Brief of Laclede Gas Company and Missouri Gas Energy* (filed January 9, 2018), p. 115-116.

established for the metric; and

e. any financial adjustments be credited each year to a regulatory asset or liability, as applicable, subject to an annual review to confirm their accuracy; and the accumulated net value of such financial adjustments be tracked for return to or recovery from customers over a four-year period in Spire Missouri's next rate case proceeding.<sup>476</sup>

5. Staff takes no formal position on whether a proceeding should be implemented to evaluate and potentially implement a performance metric mechanism.

6. Public Counsel opposes implementing a proceeding to investigate performance mechanisms, indicating a lack of specific proposed metrics on the record.<sup>477</sup> Public Counsel also opposes the formation of a working group that might merely be a platform for topics outside providing safe and reliable service at just and reasonable rates.<sup>478</sup>

### **Conclusions of Law**

A. There is no statutory authorization or prohibition for the implementation of incentives related to performance metrics.

### **Decision**

The Commission supports performance metrics and incentives but because none were proposed by Spire Missouri, it was not possible to build a record supporting such in this case. A separate docket after the case would not be helpful for setting metrics in this case because it would not be possible to use them to modify existing

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<sup>476</sup> *Initial Post-Hearing Brief of Laclede Gas Company and Missouri Gas Energy* (filed January 9, 2018), pp. 116-117.

<sup>477</sup> Ex. 421, Marke Surrebuttal, p. 4.

<sup>478</sup> Ex. 421, Marke Surrebuttal, pp. 18-19.

rates. The commission hopes the record in the next rate case is more developed on this issue, allowing the commission to fully consider implementation of such mechanism. Therefore, the Commission will not establish a working group or separate proceeding to explore performance metrics for Spire Missouri at this time. Spire Missouri is encouraged to bring a more complete proposal in its next rate case.

## **XVII. Transition Costs**

### **Should LAC's and MGE's cost of service be adjusted to reflect the recognition of merger synergies through the test year?**

#### **Findings of Fact**

1. One reason public utilities merge with and acquire one another is to benefit shareholders.<sup>479</sup> Mergers and acquisitions cost money ("transition costs") but increase efficiency ("merger synergies").<sup>480</sup> Merger synergies also reduce expenditures ("synergy savings").<sup>481</sup>

2. Sound ratemaking practice does not encourage or discourage public utilities from merging when such merger is discretionary.<sup>482</sup> Rather, it maintains consistent ratemaking policy as to transition costs and synergy savings.<sup>483</sup> No special accounting or ratemaking treatment is necessary for a public utility to benefit from synergy savings.<sup>484</sup>

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<sup>479</sup> Ex. 224, Oligschlaeger Rebuttal, p. 15-16.

<sup>480</sup> Ex. 224, Oligschlaeger Rebuttal, p. 15-16.

<sup>481</sup> Ex. 224, Oligschlaeger Rebuttal, p. 15-16.

<sup>482</sup> Ex. 224, Oligschlaeger Rebuttal, p. 15-16.

<sup>483</sup> Ex. 224, Oligschlaeger Rebuttal, p. 15-16.

<sup>484</sup> Ex. 224, Oligschlaeger Rebuttal, p. 15.

3. Merger synergies may also benefit customers. Quantifying that benefit is possible,<sup>485</sup> but it is subjective and extremely difficult, even for experts.<sup>486</sup>

4. Spire Missouri's predecessor Laclede Gas Company merged with Alagasco four years ago, and merged with EnergySouth one and one-half years ago, resulting in merger synergies.<sup>487</sup> Because Laclede Gas Company, now Spire Missouri, has not had any change to its applicable tariffs since those mergers, Spire Missouri has retained all synergy benefits due to regulatory lag, while customer bills reflected no such benefit.

### **Conclusions of Law**

A. Because Spire Missouri seeks an increase in rates for merger synergies, Spire Missouri has the burden to prove that such an increase is just and reasonable.<sup>488</sup>

### **Decision**

Public utilities are largely motivated to merge with and acquire one another for purposes of benefitting shareholders. Shareholders benefit from these mergers because the synergy savings mean decreased expenses and increased profits. While it is clear that such transactions can also present some incidental benefits for ratepayers, they are difficult to quantify. Rates for Spire Missouri have not changed since the mergers, so Spire Missouri shareholders and not ratepayers, through regulatory lag, have received the benefit of any synergy savings for four years since merging with Alagasco and one-and-one-half years since merging with EnergySouth. In this case, Spire Missouri presented insufficient credible evidence for the Commission to make a finding of the

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<sup>485</sup> Ex. 55, *Stipulation and Agreement* in Case No. GM-2013-0254.

<sup>486</sup> Ex. 224, *Oligschlaeger Rebuttal*, p. 15.

<sup>487</sup> Ex. 9, *Lobser Surrebuttal* p. 15.

<sup>488</sup> Section 393.150.2, RSMo. The burden of proof does not shift. *Been v. Jolly*, 247 S.W.2d 840, 854 (Mo. 1952).

exact savings achieved or of an amount that would be just and reasonable to include in rates. Further, the Commission is not persuaded that it would be just and reasonable for Spire Missouri's rates to continue to include the benefits of synergy savings that it has enjoyed for the last several years. Because Spire Missouri has not met its burden of proof to show that increasing rates by an amount to include synergy savings on a going forward basis is just and reasonable, the Commission will not include synergy savings in rates.

## **XVIII. Low Income Energy Assistance Program**

### **A. What is the appropriate funding level for each division?**

#### **Findings of Fact**

1. On January 9, 2018, LAC and MGE, Staff, DE, and Consumers Council filed a Partial Stipulation and Agreement Regarding Low-Income Energy Affordability Program that has been approved in this order. The only issue left for the Commission to resolve for the Low-Income Energy Affordability Program is the level of funding.<sup>489</sup>

2. The current level of funding for LAC's low-income energy affordability program is \$600,000 annually, which LAC requests to maintain.<sup>490</sup>

3. MGE does not currently have a low-income energy affordability program. MGE proposes to fund a new one at \$500,000 annually.<sup>491</sup> However, LAC and MGE

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<sup>489</sup> Partial Stipulation and Agreement Regarding Low-Income Energy Affordability Program (filed January 9, 2018), EFIS No. 512.

<sup>490</sup> Ex. 18, Weitzel Surrebuttal, p. 26.

<sup>491</sup> Ex. 17, Weitzel Rebuttal, p. 12.

are amenable to a moderately higher level of funding.<sup>492</sup>

4. "Energy burden" is defined as the percentage of total income spent by a family on their utility bills. On average, Missouri low-income families spend 14 percent of their income on utilities and 30 percent on housing cost, while middle income families spend on average four percent of their income on utilities. In the dense urban areas of the state, which are served by Spire Missouri, it is common to have families with energy burdens that exceed 30 percent of their income, not including other housing costs.<sup>493</sup>

5. Low-income energy needs exceed \$5 million in each service area.<sup>494</sup>

6. The Low-Income Home Energy Assistance Program (LIHEAP) is the federal fuel assistance program designed to help pay low-income heating and cooling bills.<sup>495</sup>

7. Current LIHEAP funding is not adequate to meet the needs of low-income Missourians. The gross LIHEAP allocation to Missouri was \$65.7 million in 2016 and the number of average annual low-income heating and cooling bills "covered" by LIHEAP was 101,018. In comparison, the gross LIHEAP allocation to Missouri in 2015 reached \$73 million and covered 92,403 average annual bills and ran out of money before the end of the previous heating season.<sup>496</sup>

8. Consumers Council and DE proposed the programs be funded at \$1 million each for LAC and MGE service territories.

9. Even though there is a great need for funding of low-income energy

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<sup>492</sup> *Initial Post-Hearing Brief of Laclede Gas Company and Missouri Gas Energy* (filed January 9, 2018), p. 122; see also Tr. 696 (in which Spire Missouri's counsel stated Spire Missouri believes it needs to do all it can to help its most vulnerable customers maintain utility service).

<sup>493</sup> Ex. 800, Hutchinson Direct, p. 4.

<sup>494</sup> Ex. 800, Hutchinson Direct, pp. 5-6.

<sup>495</sup> Ex. 800, Hutchinson Direct, p. 5.

<sup>496</sup> Ex. 800, Hutchinson Direct, p. 5.



assistance programs, LAC's funds were not all distributed in years past.<sup>497</sup> Because of this, Staff and Public Counsel oppose increasing funding for the program.

10. The new program under the stipulation and agreement has been designed similar to a successful program, Ameren Missouri's Keeping Current. Additionally, the agreement provides that this program will be funded through a regulatory deferral so that any unused allocations will not be included in the revenue requirement.

### **Conclusions of Law**

The Commission makes no additional conclusions of law on this issue.

### **Decision**

The Commission finds that the energy burden low-income consumers face, combined with the LIHEAP funding decrease, requires a moderate increase of funding over what was proposed for LAC's and MGE's proposed low-income energy affordability programs. However, it is not reasonable to fund these programs at the full level of need because ultimately, ratepayers will be paying for these programs. The Commission determines that a 50 percent increase over the companies' proposals is a reasonable increase. Thus, the Commission orders these programs be funded at \$900,000 for LAC and \$750,000 for MGE.

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<sup>497</sup> Ex. 501, Kohl Direct, pp. 7-8.

**XIX. CHP****A. Should LAC and MGE implement a CHP pilot program as proposed by Division of Energy?****Findings of Fact**

1. Combined heat and power (CHP) refers to technologies that simultaneously generate electricity and use thermal energy from a single fuel source. This is accomplished by recovering the otherwise wasted heat from the electric generation process and using it to provide the thermal load for a building. CHP results in a total system efficiency of approximately 75 percent, compared with separate heat and power at approximately 50 percent.<sup>498</sup>

2. Missouri has at least 21 CHP installations, including schools, colleges, universities, hospitals, hotels, government, agriculture, and chemical facilities.<sup>499</sup>

3. DE has an interest in promoting the utilization of CHP technology to improve energy reliability and resiliency for critical infrastructure, such as hospitals, nursing homes, public water and wastewater treatment facilities, government facilities, emergency shelters, and data centers.<sup>500</sup>

4. DE proposes that the Commission approve a CHP pilot program, whereby Spire Missouri would work with DE to encourage customers in Spire Missouri's service area to adopt CHP technology. DE recommends that the Commission establish the following guidelines for the CHP pilot program:

- Establish a definition of critical infrastructure that encompasses the range of CHP applications, from individual facilities (e.g., hospitals) to communities (e.g., hospital plus water and wastewater treatment facility, shelter, and grocery store).

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<sup>498</sup> Ex. 502, Epperson Direct, p. 4; and Ex. 214, Eubanks Rebuttal, p. 2.

<sup>499</sup> Ex. 502, Epperson Direct, p. 5-6; and Tr. 861-862.

<sup>500</sup> Ex. 502, Epperson Direct, pp. 12-13.

- Authorize Spire Missouri to investigate and develop a proposed CHP pilot program to serve critical infrastructure, with a total program budget not to exceed \$5.1 million for 10 projects and with each specific project proposed to be included in the program filed with the Commission for its approval within 60 days.

- Allow Spire Missouri to track, and in the future seek recovery of, the cost of participating in the pilot program. Such costs might include offsetting up to \$10,000 of the cost of a project's feasibility study following a positive initial screening conducted by CHP TAP identifying a customer as a good candidate for CHP, the cost of any contribution by Spire Missouri to a project's installed cost (up to the lesser of \$500,000 or 30 percent of a project's installed cost), and any buy-down on the rate of interest offered for financing of a project.

- Allow Spire Missouri to extend the cost recovery periods (up to 15 years) for customer repayments on the customer portion of the cost of natural gas line extensions and other natural gas facilities necessary to develop a CHP system.

- Allow Spire Missouri to offer on-bill financing to assist potential CHP customers in funding the necessary capital improvements needed for CHP installation.

- Spire Missouri should use a societal cost test to evaluate the potential benefits of critical infrastructure projects. Spire Missouri currently uses a societal cost test in evaluating custom rebates under its Commercial and Industrial Rebate Programs.

- For projects jointly offered with electric utilities offering Missouri Energy Efficiency Investment Act (MEEIA) programs, the Commission should direct that the costs and benefits of CHP be symmetrically valued by developing a transparent and reproducible formula to reasonably allocate and assign the value of energy savings and project costs between natural gas and electric companies and customers.

- Allow a potential CHP pilot program customer to participate in otherwise-applicable EDRs or Special Contract service rates.<sup>501</sup>

5. DE's proposal has the potential to affect the sales and revenues of electric utilities that are not participating as intervenors in this case.<sup>502</sup>

6. DE's proposal would allow Spire Missouri to recover costs associated with contributing to a project's installed cost, which may be a prohibited promotional practice.<sup>503</sup>

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<sup>501</sup> Ex. 502, Epperson Direct, pp. 16-18.

<sup>502</sup> Ex. 214, Eubanks Rebuttal, p. 4.

7. MEEIA is a state statutory policy which is designed to encourage electric investor-owned utilities to offer and promote energy efficiency programs designed to reduce the amount of electricity used by the utility's customers. Under MEEIA and with Commission approval, electric utilities may offer demand-side programs and special incentives to participating customers. MEEIA does not apply to natural gas utilities, but DE's proposed pilot program would be jointly offered by Spire Missouri and the electric utilities.<sup>504</sup>

8. DE's proposal does not include any specific recommendations or formulas relating to MEEIA, and does not discuss whether individual CHP can qualify as demand-side programs under either the MEEIA statute or the Commission's rules.<sup>505</sup>

9. DE's CHP pilot program proposal is still in the conceptual phase and does not state a time period for the program or how it would be evaluated. The proposal lacks specificity regarding on-bill financing, line extension policies, and interaction with MEEIA.<sup>506</sup>

10. The \$5.1 million recommended for DE's pilot program would equate to an additional 25 percent beyond Staff's total revenue requirement recommendation in direct testimony, subject to true-up.<sup>507</sup>

### **Conclusions of Law**

The Commission makes no additional conclusions of law on this issue.

### **Decision**

DE has proposed a pilot program with the stated goal of promoting CHP

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<sup>503</sup> Ex. 214, Eubanks Rebuttal, p. 4-5.

<sup>504</sup> Ex. 214, Eubanks Rebuttal, p. 7.

<sup>505</sup> Ex. 214, Eubanks Rebuttal, p. 7.

<sup>506</sup> Ex. 214, Eubanks Rebuttal, p. 9.

<sup>507</sup> Ex. 244, Eubanks Surrebuttal, p. 3-4.

technology to improve energy reliability and resiliency for critical infrastructure. The Commission supports that goal, but DE has not been persuasive that the \$5.1 million pilot program as proposed should be approved and paid for by ratepayers. The proposed pilot program lacks sufficient details, as it does not contain specific recommendations or formulas relating to MEEIA, does not state a time period for the program or how it would be evaluated, and lacks specificity regarding on-bill financing, line extension policies, and interaction with MEEIA. This lack of detail does not allow the Commission to determine if and to what extent the pilot program may affect the sales and revenues of electric utilities that are not participating as intervenors in this case, may be a prohibited promotional practice, and may be inconsistent with MEEIA requirements. For all these reasons, the Commission concludes that the CHP pilot program should not be approved as proposed by DE. The Commission encourages the parties to continue discussions on how best to improve energy reliability and resiliency for critical infrastructure and submit more detailed recommendations in the future.

## **XX. AMR Meters**

### **A. What is the appropriate amount to include in rates to account for expenses related to LAC's purchase of automated meter reading (AMR) devices?**

#### **Findings of Fact**

1. Prior to July 1, 2017, LAC leased AMR devices from the company Landis & Gyr, who both owned and maintained the AMR devices.<sup>508</sup> As part of the contract LAC was charged a meter read rate of \$0.985 per meter, per month.<sup>509</sup>

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<sup>508</sup> Ex. 65, Lobser True-Up Rebuttal, p. 1.

<sup>509</sup> Ex. 292, Ferguson True-Up Rebuttal, p. 2.

2. Effective July 1, 2017, LAC purchased the AMR devices from Landis & Gyr for \$16.6 million<sup>510</sup> (\$16,624,220 for the 700,262 already deployed meter interface units).<sup>511</sup>

3. By purchasing the AMR devices LAC reduced the price per meter read from \$0.98 to \$0.24, which directly benefits ratepayers.<sup>512</sup> Landis & Gyr still read the meters under contract with LAC at a rate of \$0.24 per meter per month until June 30, 2020, and at \$0.30 per meter per month after that date.<sup>513</sup>

4. Staff included in its calculated cost of service the \$16,624,220 that LAC paid for the AMR devices.<sup>514</sup>

5. The AMR devices are distinct from the meters they monitor. Because of this, Staff recommends the establishment of Account No. 397.2 – AMR Devices.<sup>515</sup>

6. The useful life of the AMR devices is 20 years based on battery life. However, LAC will be switching to a new system in 2020 with replacement of all AMR devices completed by 2024. Thus, Staff recommends that the cost be *amortized* over a period of 7.5 years.<sup>516</sup>

7. Public Counsel agrees that the AMR should be listed in a new plant sub-account for the AMR meter interface units in Account 397.2 – AMR Devices. OPC recommends a five percent *depreciation* rate based on the average service life of the asset.<sup>517</sup>

8. Spire Missouri is also seeking to recover approximately \$700,000 in rates

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<sup>510</sup> Ex. 65, Lobser True-Up Rebuttal, p. 2.

<sup>511</sup> Ex. 292, Ferguson True-Up Rebuttal, p. 2.

<sup>512</sup> Ex. 65, Lobser True-Up Rebuttal, p. 2.

<sup>513</sup> Ex. 292, Ferguson True-Up Rebuttal, p. 2.

<sup>514</sup> Ex. 294, Patterson True-Up Direct, p. 2.

<sup>515</sup> Ex. 294, Patterson True-Up Direct, p. 2.

<sup>516</sup> Ex. 294, Patterson True-Up Direct, p. 2.

<sup>517</sup> Ex. 438, Robinett True-Up Rebuttal, p. 1.

for maintenance expenses. Though Landis & Gyr maintain the communications network and perform rudimentary maintenance on the devices, LAC is responsible for the cost of replacement of the devices and their batteries when they stop working or functioning properly. Landis & Gyr is also responsible for maintenance which is built into the monthly service fee.<sup>518</sup> Spire Missouri based its maintenance costs on a historic failure rate LAC has seen since the system was installed in 2005.<sup>519</sup>

9. Spire Missouri estimates that when all maintenance, replacement, and property tax expenses are combined with the roughly \$0.49 in depreciation and capital costs plus the \$0.24 Landis & Gyr contract meter rate, the total cost per month of AMR devices is approximately \$0.86. This would result in a \$0.12 per month reduction in cost for the ratepayer from the \$0.98 meter read rate prior to July 1, 2017.<sup>520</sup>

10. Staff opposes including \$694,256 (approx. \$700,000) as a maintenance expense, because Spire Missouri pays for device replacement (a capital cost) and not routine maintenance which is performed under the contract with Landis & Gyr.<sup>521</sup> Spire Missouri will recover those replacement costs as plant in service at the next general rate proceeding.<sup>522</sup>

### **Conclusions of Law**

A. Subsection 393.230.1, RSMo, empowers the Commission to ascertain valuation of property of any gas corporation. This would include the power to, “ascertain all new construction, extensions and additions to the property of every gas

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<sup>518</sup> Ex. 292, Ferguson True-Up Rebuttal, pp. 4-5; and Ex. 287, Response to Data Request 484.

<sup>519</sup> Ex. 65, Lobser True-Up Rebuttal, p. 3; See also, Ex. 292, Ferguson True-Up Rebuttal, p. 4, noting that paragraph 4 of the contract amendment with Landis & Gyr specifies that all maintenance and installation costs are included in the amended contract as Landis & Gyr’s responsibility through the year 2024.

<sup>520</sup> Ex. 65, Lobser True-Up Rebuttal, p. 4.

<sup>521</sup> Ex. 292, Ferguson True-Up Rebuttal, p. 4.

<sup>522</sup> Ex. 292, Ferguson True-Up Rebuttal, p. 6.

corporation[.]”

B. Subsection 393.240.2 RSMo, empowers the Commission by order to, “fix the proper and adequate rates of depreciation of the several classes of property of such corporation, person or public utility.”

### **Decision**

Spire Missouri directly reduced the cost to ratepayers by choosing to purchase rather than continue to lease the AMR devices. Spire Missouri asserts that savings to LAC’s customers will be around one million dollars a year. This one million dollar amount is calculated with the assumption that after recoupment of any cost to acquire the AMR devices (\$16.6 million), the company will be allowed to recoup approximately \$700,000 in maintenance for the devices, and an estimated \$400,000 in property taxes on the devices.<sup>523</sup>

The Commission recognizes that Spire Missouri could have waited to purchase the assets until after the true-up period and have taken advantage of any regulatory lag to retain the savings for its shareholders. Because this purchase occurred outside the test year but before September 30, 2017, it is appropriately a true-up issue. Spire Missouri shall be allowed to recover the \$16.6 million cost of the AMR devices. Spire Missouri shall establish Account 397.2 – AMR Devices as a new plant sub-account. Additionally, because of the planned obsolescence of these devices, the Commission finds it is reasonable under these specific facts to authorize the amortization of these assets over 7.5 years.

It is unclear from the record what, if any, maintenance expenses will be incurred by Spire Missouri with regard to the maintenance of the AMR devices given that Landis

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<sup>523</sup> A resolution of the property tax issue is set out below.



& Gyr are responsible for maintenance under the terms of the contract. The Commission is of the opinion that any replacement of the AMR device or battery would not be maintenance, but is a capital expenditure that the company will have an opportunity to recoup in its next rate case. However, because of the benefits to the ratepayers presented by this purchase and renegotiation of the AMR contract, and because of the uncertainty as to what actual maintenance expense Spire Missouri will incur related to the AMR devices, the Commission orders a maintenance tracker be established to ascertain Spire Missouri's actual maintenance expense on the AMR devices not covered by the contract and not including replacement of the devices or their batteries for possible recovery in Spire Missouri's next rate case.

**B. What is the appropriate amount to include in cost of service to account for property taxes related to the AMR devices?**

**Findings of Fact**

1. As set out above, on July 1, 2017, LAC purchased AMR devices that it previously leased from Landis & Gyr for approximately \$16.6 million.<sup>524</sup>
2. Spire Missouri estimates that property taxes for 2018 and beyond will be \$400,000 annually.<sup>525</sup> Spire Missouri seeks to recover that amount in this case.
3. Because the property was not purchased until July 2017, no property taxes would be assessed on the AMR devices until January 2018 and will not be due until December 31, 2018.
4. Staff argues it is inappropriate to allow recovery of any amount for property taxes related to the purchase of the AMR devices as they are outside the test

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<sup>524</sup> Ex. 65, Lobser True-Up Rebuttal, p. 2.

<sup>525</sup> Ex. 65, Lobser True-Up Rebuttal, p. 3.

year and true-up period and are not known and measurable.<sup>526</sup>

### **Conclusions of Law**

A. Spire Missouri seeks to recover in rates approximately \$400,000 that it estimates it will have to pay in property taxes annually on the AMR devices. The standard for if this amount can be recovered in rates in this rate case is whether the amount is known and measurable now.<sup>527</sup>

### **Decision**

The Commission finds that the AMR property taxes will not be due to be paid until December 31, 2018. Thus, these property taxes are beyond the test year and true-up period for this case. Also, to include these property taxes in rates, they must be known and measurable; at this point, they are not. However, given the specific circumstances of this case set out below, including the inclusion of a large income tax reduction to expenses due to the Tax Cuts and Jobs Act (TCJA) being incorporated in this case even though outside the test year and true-up period, the Commission determines that the property tax for AMR devices should be included in the property tax tracker set out elsewhere in this order. Therefore, even though the property tax for the AMR devices will not be included in current rates, they will be tracked for potential recovery in LAC's next rate case as discussed in further detail in the TCJA section of this order.

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<sup>526</sup> Tr. 2586.

<sup>527</sup> *In the Matter of Kansas City Power & Light Company's Request for Authority to Implement A General Rate Increase for Electric Service*, ER-2014-0370, 2015 WL 5244724, at \*71 (Sept. 2, 2015). *State ex rel. GTE North, Inc. v. Missouri Public Service Commission*, 835 S.W. 2d 356, 368 (Mo App. 1992).

**THE COMMISSION ORDERS THAT:**

1. The tariff sheets filed by Spire Missouri Inc., then known as Laclede Gas Company, on April 11, 2017, and assigned tariff number YG-2017-0195, are rejected.

2. The tariff sheets filed by Spire Missouri Inc., then known as Laclede Gas Company, on April 11, 2017, and assigned tariff number YG-2017-0196, are rejected.

3. Spire Missouri Inc. is authorized to file tariffs for its Spire Missouri East and Spire Missouri West divisions sufficient to recover revenues as determined by the Commission in this order.

4. The non-unanimous Partial Stipulation and Agreement filed on December 13, 2017 is approved.

5. The Partial Non-unanimous Stipulation and Agreement filed on December 20, 2017, is approved.

6. The Non-Unanimous Stipulation Regarding Revenue Allocation and Non-Residential Rate Design, filed on December 20, 2017, is approved.

7. The non-unanimous Partial Stipulation and Agreement Regarding Low Income Energy Affordability Program filed January 9, 2018, is approved.

8. The parties shall comply with the terms of the above-approved stipulation and agreements.

9. The complaint filed by the Office of the Public Counsel in File No. GC-2016-0297 is denied.

10. The Kansas property tax tracker previously ordered in File No. GR-2014-0007 shall be continued.

11. Spire Missouri Inc. shall provide the Staff of the Missouri Public Service

Commission and the Office of the Public Counsel surveillance data in the format agreed upon and set forth in Attachment 1 of Staff's Initial Post-Hearing Brief on a quarterly basis.

12. Spire Missouri Inc. shall provide the Staff of the Missouri Public Service Commission and the Office of the Public Counsel its general ledger and CC&B subledger on an annual basis, within 60 days of the close of Spire Missouri Inc.'s fiscal year, and shall make both the ledger and subledger available more frequently in the event further support of the surveillance data is needed.

13. A tracker shall be established to account for any other effects (either over- or under-collection in rates) of the TCJA not captured by the current reduction in income tax expense for possible inclusion in rates at Spire Missouri Inc.'s next rate case.

14. A tracker shall be established to defer any amounts in excess ADIT over or under the \$11.5 million amount refunded in rates, from the effective date of rates resulting from this case, forward, for possible inclusion in a later Spire Missouri Inc. rate case.

15. A tracker shall be established to account for any amounts of property tax expense, including for the automated meter reading devices that are discussion in this Report and Order, over or under the amounts set out in rates for possible inclusion in Spire Missouri Inc.'s next rate proceeding.

16. The Joint Request for Clarification or Modification filed by Spire Missouri Inc. and the Staff of the Missouri Public Service Commission is granted in part as set out in this amended report and order. Any request for clarification not granted is denied.

17. This amended report and order shall become effective on March 17, 2018.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

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

Dippell, Senior Regulatory Law Judge

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Liberty Utilities (Midstates Natural )  
Gas) Corp. d/b/a Liberty Utilities' Tariff Revisions )  
Designed to Implement a General Rate Increase for )  
Natural Gas Service in the Missouri Service Areas )  
of the Company )

**File No. GR-2018-0013**

**ORDER REGARDING APPLICATION TO INTERVENE**

**EVIDENCE, PRACTICE AND PROCEDURE**

**§22 Parties**

The Commission denied an application to intervene very late in a general rate case because the applicant failed to demonstrate good cause for the late intervention.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 14<sup>th</sup> day of March, 2018.

In the Matter of Liberty Utilities (Midstates  
Natural Gas) Corp. d/b/a Liberty Utilities' )  
Tariff Revisions Designed to Implement a )  
General Rate Increase for Natural Gas )  
Service in the Missouri Service Areas of the )  
Company )

**File No. GR-2018-0013**  
Tariff No. YG-2018-0036

**ORDER REGARDING APPLICATION TO INTERVENE**

Issue Date: March 14, 2018.

Effective Date: March 14, 2018

Liberty Utilities (Midstates Natural Gas) Corp. d/b/a Liberty Utilities (Liberty) filed tariffs on September 29, 2017, that would implement a general rate increase for its natural gas service. In response, the Commission ordered that applications to intervene be filed by November 6. The Missouri School Boards' Association (MSBA) filed an application to intervene out of time on March 5, 2018.

MSBA asks to intervene late in these proceedings because the effect of the federal Tax Cuts and Jobs Act of 2017 has only recently become an issue. MSBA indicates its willingness to accept the record as it now stands and explains that it wishes to participate for the limited purpose of addressing the federal tax law change.

Liberty responded to MSBA's application on March 9, arguing that there has been no showing of good cause for the late intervention. Liberty contends MSBA is a sophisticated party that could have filed a timely application to intervene if it had chosen to do so and should not be allowed to potentially disrupt these proceedings through its late intervention.

In the alternative, Liberty suggests MSBA's intervention, if granted, be limited to matters regarding the federal tax law change.

The Commission finds that MSBA has not shown good cause for its very late attempt to intervene in this case. Further, allowing MSBA to intervene at this late stage will not serve the public interest. Therefore the Commission will deny MSBA's intervention request.

**THE COMMISSION ORDERS THAT:**

1. The Missouri School Boards' Association's Application to Intervene Out of Time is denied.
2. This order shall be effective when issued.

**BY THE COMMISSION**



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

Morris L. Woodruff  
Secretary

Hall, Chm., Kenney, and Rupp, C., concur;  
Coleman, C., dissents, and  
Silvey, C., absent.

Woodruff, Chief Regulatory Law Judge



**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Joint Application of Farmers'	)	
Electric Cooperative and the City of Cameron for	)	<b><u>File No. EO-2018-0205</u></b>
Approval of a Written Territorial Agreement	)	
Designating the Boundaries of Each Electric Service	)	
Supplier Within Portions of DeKalb County	)	

**REPORT AND ORDER APPROVING TERRITORIAL AGREEMENT**

**ELECTRIC**

**§6 Territorial agreements**

Sections 394.312 and 416.041, RSMo, give the Commission jurisdiction over territorial agreements between electric utilities and municipally owned electric utilities.

**EVIDENCE, PRACTICE AND PROCEDURE**

**§23 Notice and hearing**

The Commission must hold an evidentiary hearing to determine if a territorial agreement should be approved, except when the matter is resolved by a stipulation and agreement and all parties agree to waive their right to a hearing. Even though no formal agreement to waive the hearing was submitted, the Commission need not hold a hearing since the opportunity for a hearing was provided and no party requested an opportunity to present evidence.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson Cameron on the 21<sup>st</sup>  
day of March, 2018.

In the Matter of the Joint Application of Farmers'	)	
Electric Cooperative and the Cameron of Cameron	)	
For Approval of a Written Territorial Agreement	)	<b><u>File No. EO-2018-0205</u></b>
Designating the boundaries of each electric service	)	
Supplier within portions of DeKalb County	)	

**REPORT AND ORDER APPROVING TERRITORIAL AGREEMENT**

Issue Date: March 21, 2018

Effective Date: March 31, 2018

**I. Procedural History**

On January 30, 2018, Farmers' Electric Cooperative ("Farmers") and the ~~Cameron~~ **City** of Cameron, Missouri ("Cameron") filed an application asking the Commission to approve a territorial agreement ("Agreement") pursuant to Sections 416.041 and 394.312, RSMo.<sup>1</sup> The Commission issued notice of the application and set an intervention deadline. There were no requests to intervene.

The Staff of the Commission filed its recommendation on March 1. Staff states that the Agreement will authorize Farmers to provide electric service to any new structures on a tract within DeKalb County and Cameron that Cameron would otherwise be able to serve. Farmers already serves structures on that tract. The tract's owner favors the Agreement, and wishes Farmers to serve any new structures on that tract.

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<sup>1</sup> Unless otherwise noted, calendar references are to 2018.

Staff states that the Agreement is not detrimental to the public interest. Thus, the Staff recommends Commission approval.

The Office of the Public Counsel (“OPC”) filed comments on March 2. OPC expresses doubt that a clause in the Agreement allowing its automatic renewal allows the Commission to monitor whether the Agreement remains not detrimental to the public interest. OPC is also skeptical that the Agreement actually displaces competition between Farmers and Cameron. However, OPC does not object, and did not request a hearing.

## **II. Findings of Fact**

1. Cameron is a Missouri city of the third class that owns and operates a municipal electric utility that is authorized to provide electric service to customers that lie primarily within its city limits.

2. Farmers is a rural electric cooperative that provides electric service to its members.

3. On or about January 30, Farmers and Cameron entered into the Agreement. The Agreement would allow Farmers to continue to provide service to the tract of property located at 2108 East U.S. Highway 36 in Cameron, and would also allow Farmers to provide service to any new structures erected on that tract of property.

4. The owner of the tract of property in question does not object to the Agreement.

5. Allowing Farmers to provide service to that tract of property is both economical and practical. The Agreement would allow Farmers and Cameron to most efficiently and effectively use their existing facilities in the applicable areas, and to plan for future expansion while limiting duplicative facilities.

6. No other customer of Cameron or Farmers and no other electric **service** ~~serve~~ providers in the area will be impacted by the Agreement.

### **III. Conclusions of Law**

Sections 394.312 and 416.041, RSMo, give the Commission jurisdiction over territorial agreements between rural electric cooperatives and municipally owned electric utilities. The Commission may approve the application by report and order if it determines that approval of the territorial agreement in total is not detrimental to the public interest.

Section 394.312.5 requires the Commission to hold an evidentiary hearing to determine if a territorial agreement should be approved, except when the matter is resolved by a stipulation and agreement and all parties agree to waive their right to a hearing. No party objects to the Agreement. Even though no formal agreement to waive the hearing was submitted, the Commission need not hold a hearing since the opportunity for a hearing was provided and no party requested an opportunity to present evidence.<sup>2</sup>

### **IV. Decision**

Having considered the joint application and Staff's verified recommendation in support of approval of the application, the Commission finds that there are no facts in dispute and, therefore, accepts the facts as true. The Commission concludes that the Agreement is not detrimental to the public interest and should be approved.

#### **THE COMMISSION ORDERS THAT:**

1. The Joint Application and the Territorial Agreement between Farmers' Electric Cooperative and the Cameron of Cameron filed on January 30, 2018 are approved.
2. This order shall become effective on March 31, 2018.

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<sup>2</sup> *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Com'n of State of Mo.*, 776 S.W.2d 494 (Mo. App.W.D. 1989).

3. This file shall be closed on April 1, 2018.

**BY THE COMMISSION**



A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff  
Secretary

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

Pridgin, Deputy Chief Regulatory Law Judge.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Highway H	)	
Utilities, Inc. for Authority to Sell Certain Water and	)	<b><u>File No. SM-2018-0095</u></b>
Wastewater System Assets to the City of	)	
Waynesville, Missouri, and Pulaski County Sewer	)	
District Number 1, and, in Connection Therewith,	)	
Certain Other Related Transactions	)	

**ORDER GRANTING AUTHORITY TO TRANSFER ASSETS**

**CERTIFICATES**

**§52 Transfer, mortgage or lease generally**

The Commission approved a transfer of water and sewer assets from Highway H Utilities to the City of Waynesville.

**§54 Dissolution**

After receiving notice of closing on the sale of Highway H Utilities' water and sewer assets its respective certificate of convenience and necessity and the tariff authorizing Highway H to provide water or sewer service shall be cancelled.

**RATES**

**§57 Rates after expiration of franchise**

Customers will experience a relatively substantial rate impact after the transfer of water and sewer assets from Highway H Utilities to the City of Waynesville. However, even if Highway H Utilities were to remain in business, or if any other utility were to step on to own and operate these water and sewer assets, then substantial funds would need to be expended for maintenance and improvements similar to what the City of Waynesville is proposing.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 21<sup>st</sup> day of March, 2018.

In the Matter of the Application of Highway H Utilities, Inc. for Authority to Sell Certain Water and Wastewater System Assets to the City of Waynesville, Missouri, and Pulaski County Sewer District Number 1, and, in Connection Therewith, Certain Other Related Transactions )

**File No. SM-2018-0095**

**ORDER GRANTING AUTHORITY TO TRANSFER ASSETS**

Issue Date: March 21, 2018

Effective Date: April 20, 2018

On October 9, 2017, Highway H Utilities, Inc. (“Highway H”) filed an *Application and Request for Waiver* seeking authorization from the Commission to sell water and wastewater system assets to the City of Waynesville, Missouri and Pulaski County Sewer District Number 1 (“PCSD”). On October 30, 2017, WM-2018-0094 was consolidated with SM-2018-0095.

The City of Waynesville is a 3<sup>rd</sup> Class political subdivision and is not subject to Commission regulation. Waynesville currently provides water service to approximately 1,795 customers.

PCSD is a political subdivision and a chapter 204, RSMo, statutory sewer district and is not subject to Commission regulation. PCSD currently provides wastewater service to approximately 4,791 customers

On October 10, 2017, the Commission issued an Order Directing Notice and Setting an intervention deadline. No requests to intervene were received. On February 20, 2018,

the Staff of the Commission filed an amended recommendation stating that the proposed sale of assets was not detrimental to the public interest and urging the Commission to approve the application with special conditions. On March 5, 2018, the Office of the Public Counsel filed *OPC Comment on Transfer of Assets* expressing their opposition to the proposed sale. That comment did not include a request for hearing or other relief, but requested that non-Waynesville residents be notified that the Commission would have jurisdiction to hear complaints under 386.250(3), RSMo; the Commission will not grant that request. Missouri courts have determined that the Commission does not have the authority to regulate municipally owned utilities.<sup>1</sup>

Staff's amended recommendation indicated that a customer using 5,000 gallons of water a month would see an approximate increase of 167%, and a sewer increase of 218%. All PCSD customers will have to pay a \$500 one-time fee for funding future capital improvements. Additionally, customers with sewer pump units are required to pay a \$250 one-time fee for initial inspection of the pump units. Staff's Memorandum states: "Staff recognizes that customers would experience a relatively substantial rate impact if these transfers take place as proposed. However, if Hwy H were to remain in business, or if any other utility were to step in to own and operate these assets, then substantial funds would be expended for maintenance and improvements similar to what the City and PCSD are proposing, which would also likely result in rate increases. Additionally, with regard to rates, the customers of Hwy H would not be treated any differently than City and PCSD customers in neighboring areas, since those other customers presently pay the rates being proposed for Hwy H customers."

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<sup>1</sup> *Forest City v. City of Oregon*, 569 S.W.2d 330, 332-33 (Mo.App.1978)



Highway H (in response to OPC's comment) noted that the current customers of Highway H would be better served by governmental entities with access to capital necessary to meet increasingly stringent public health and environmental standards. Highway H also noted that PCSD customers will be able to pay the one-time fees over an 18-month time frame.

No party has requested a hearing and the Commission will act based on the joint application and upon Staff's recommendation. The Commission finds that the sale of water and sewer system assets of Highway H to the City of Waynesville and PCSD will not be detrimental to the public interest and should be approved.

**IT IS THEREFORE ORDERED:**

1. That the sale and transfer of the water system assets of Highway H Utilities, Inc. to the City of Waynesville, Missouri, is approved.
2. That the sale and transfer of the sewer system assets of Highway H Utilities, Inc. to Pulaski County Sewer District Number 1, is approved.
3. The Staff of the Commission recommended several conditions, which the Commission hereby adopts. The transfers are subject to the following special conditions:
  - a. Highway H is required to notify the Commission of closing on the assets, with each of the two buyers, within five days after each closing;
  - b. If closing on either the water system assets or sewer system assets does not take place within 30 days following the effective date of the Commission's order approving such, Highway H shall submit a status report within five (5) days after this 30 day period regarding the status of closing, and additional status reports within five days after each additional 30 day period, until closing takes place, or until Highway H, Waynesville, or PCSD determine that the transfer of the assets of either or both of the systems will not occur;

- c. Highway H is authorized to cease providing water and sewer service immediately after closing on the respective assets with Waynesville and PCSD;
  - d. After receiving notice(s) of closing, the respective CCN and tariff authorizing Highway H to provide water or sewer service will be cancelled;
  - e. If Highway H and/or Waynesville and /or PCSD determine that the transfer of any of Highway H's assets will not occur, Highway H shall notify the Commission of such, along with an explanation regarding resolution of the *Agreement for Sale of Water and Wastewater System*; and,
  - f. The Commission makes no ratemaking determination regarding any potential future regulatory oversight, if any.
4. That this order shall become effective on April 20, 2018.

**BY THE COMMISSION**



*Morris L. Woodruff*

Morris L. Woodruff  
Secretary

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

Clark, Regulatory Law Judge

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Rate Increase            )  
Request for Liberty Utilities (Missouri Waters), LLC        )  
d/b/a Liberty Utilities                                                    )        **File No. WR-2018-0170**

**ORDER DENYING MOTION TO DISMISS**

**WATER**

**§6 Jurisdiction and powers generally**

The public utility is exchanging services for the customers' acceptance of financial responsibility; any other reading misses the rules plain meaning: That the customer is directly financially responsible to the utility. Movants frame themselves as an intermediary, but they are the customer. Given that Silverleaf did not object to the classification of them having fewer than 1000 customers at the time of the sale of assets, it appears that Silverleaf did not then consider timeshare owners as utility customers.

**§6 Jurisdiction and powers generally**

Movants imply that they would rather tolerate potentially greater rate case expense for what they view as greater due process in a general rate case. Most of what Movants are classifying as a deprivation of due process is the procedural content of the Small Rate Procedure rule. As specified before, Liberty meets the minimal requirements to avail itself of the Small Rate Procedure.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 4<sup>th</sup> day of  
April, 2018.

In the Matter of the Application of Rate	)	
Increase Request for Liberty Utilities	)	<b>File No. WR-2018-0170</b>
(Missouri Water), LLC d/b/a Liberty Utilities	)	

**ORDER DENYING MOTION TO DISMISS**

Issue Date: April 4, 2018

Effective Date: April 4, 2018

On December 15, 2017, Liberty Utilities (Missouri Water), LLC d/b/a Liberty Utilities (“Liberty”) submitted a request to implement a general rate increase in its water and sewer rates, under 4 CSR 240-3.050, the Small Utility Rate Case Procedure (Small Rate Procedure).

On February 8, 2018, Orange Lake Country Club, Inc. and Silverleaf Resorts, Inc. (“Movants”) filed a *Motion to Dismiss, or in the Alternative, to Order Liberty Utilities (Missouri Water), LLC to File a Tariff Pursuant to Section 393.140(11)*. Parties were ordered to respond to the motion no later than February 23, 2018. The Commission’s Staff (“Staff”) and Liberty timely filed responses in opposition. Movants supplemented their motion to dismiss with a reply clarifying their position. All parties were permitted to brief the timeshare issue set out in Movants’ reply, and the parties filed timely briefs on March 7, 2018.

The requirements for a water or sewer utility to use the Small Rate Procedure are simply that the utility serves 8,000 or fewer customers. Movants essentially put forth three

reasons they believe the case should be dismissed, or that in the alternative Liberty should have to file a tariff as in a general rate case. First, Movants argue that Liberty is not the kind of small utility that the Small Rate Procedure was designed to assist. Second, Movants argue that Liberty has in excess of the 8,000 customers required by the Small Rate Procedure. Third, Movants argue indirectly that because they bear the majority of any rate case expense that would be factored into Liberty's rates, good cause exists to defer the rate case filing preference to Movants, who would rather pay the higher cost of rate case expense in exchange for greater due process participation.

**1) Is Liberty the kind of small utility that the Small Rate Procedure was designed to assist?**

Movants state that Algonquin Power & Utilities ("Algonquin") is the corporate parent of Liberty. The motion to dismiss asserts that Algonquin has annual revenue of two billion dollars, total assets of ten billion dollars, and over 2,200 employees. Movants' motion states: "The [Small Rate Procedure] is not necessary to advance Liberty Utilities (Missouri Water) interests because it is not the type of small, unsophisticated utility for which the [Small Rate Procedure] was designed." Movants point to the parent company Algonquin as evidence that Liberty is too large and sophisticated to use the Small Rate Procedure. Algonquin may be a large company with resources that could be deployed in a general rate making case; however, nothing in the Small Rate Procedure rule indicates that parent companies are a considered factor.

Statutory construction requires first looking to the plain language of the rule for ambiguity before attempting to decipher its meaning through intent. Here there is no ambiguity in the language of 4 CSR 240-3.050: "Notwithstanding the provisions of any

other commission rule to the contrary ... a water or sewer utility serving eight thousand (8,000) or fewer customers ... shall be considered a small utility under this rule.” While it is true that Liberty may be more sophisticated than a great many smaller water and sewer utilities for which the rule may have been designed, its use of the Small Rate Procedure is acceptable provided it has 8,000 or fewer customers.

**2) Does Liberty have in excess of the 8,000 customers required by the Small Rate Procedure rule?**

Movants state in their motion to dismiss:

“Silverleaf Resorts is an intermediary entity between Liberty Utilities (Missouri Water) and the 36,686 time-share vacation homeowners of these resort properties which pay Liberty Utilities (Missouri Water) for water and sewer services. Interpreted consistently with the purpose of the [Small Rate Procedure], Liberty Utilities (Missouri Water's) actual number of end-user customers greatly exceeds the 8,000 customer threshold for filing under [Small Rate Procedure].”

Commission Rule 4 CSR 240-3.010(7) defines customer: “Customer means any person, firm, partnership, corporation, municipality, cooperative, organization, governmental agency, etc., that accepts financial and other responsibilities in exchange for services provided by one (1) or more public utilities.

Liberty’s tariff defines a customer as: “Any person, firm, corporation or governmental body which has contracted with the company for water service or is receiving service from company, or whose facilities are connected for utilizing such service.”

Silverleaf contends that they have 36,686 timeshare owners who are also customers of Liberty as defined by Rule 4 CSR 240-3.010(7), and also under Liberty's tariff. Movants point out that Rule 4 CSR 240-3.010(7), does not require a contractual relationship between the customer and the public utility, only that they accept financial responsibility for the utilities services. Movants believe that timeshare owners meet that criterion as they are financially responsible to the resort for utility services, and a portion of their maintenance fees go to pay invoices from Liberty.

Movants see their role as merely an intermediary situated between the individual timeshare owners and the utility in their motion to dismiss, stating:

"Where there is an intermediary entity which simply passes through the utility bills, it is the number of end-user customers which should count for the purposes of determining [Small Rate Procedure] eligibility, not the number of intermediary entities, which do not own, control or manage any of the assets which provide service to the end-user customer."

Liberty in its sur-reply stated that under its approved tariff an affirmative act is required on the part of the customer to request service and be charged for it. Liberty's tariff P.S.C. MO No. 2, Orig. Sheet No. 10, Rule 4(a) states:

A written application for service, signed by the customer, stating the type of service required and accompanied by any other pertinent information, will be required from each customer before service is provided to any unit. Every customer, upon signing an application for any service rendered by the company, or upon taking of service, shall

be considered to have expressed consent to the company's rates, rules and regulations.

No information provided by any party indicates who applied for the water and sewer services.

The Commission's Staff in *Staff's Response to Movant's Reply* are of the opinion that, "The definition of "customer" under Commission regulation 4 CSR 240-3.010(7), leads Staff to calculate the number of customers by the number of meters served by a utility." Staff cites no authority for this assertion and "meter" does not appear in the 4 CSR 240-3.010(7), definition of customer.

The language of Rule 4 CSR 240-3.010(7), states clearly that a customer accepts financial responsibility in *exchange* for services provided by a public utility. An exchange is a two-way trade. While Movants state that no contractual relationship need exist between the customer and the public utility, this stretches the plain meaning. The public utility is *exchanging* services for the customers' acceptance of financial responsibility; any other reading misses the rules plain meaning: That the customer is directly financially responsible to the utility. Movants frame themselves as an intermediary, but they are the customer, as they are financially responsible to the utility; the individual timeshare customers are separately responsible to the resort for utility services and other maintenance fees. This is most clearly evidenced by the penalties for failure to pay such fees to the resort, which are liens and foreclosure, but not disconnection of utility services.

Additionally, prior to Liberty acquiring the water and sewer systems they were constructed for and owned by the resort. In August of 2005, Silverleaf sold the water and sewer assets to Algonquin, Liberty's parent company. In its brief on timeshare owners as



customers, Movants quote WO-2005-0206, *Order Approving Sale of Assets* in support of their proposition that the Commission recognizes timeshare owners as utility customers, "These customers will still need service when Algonquin buys Silverleaf's assets. There is clearly a need for sewer and water service." Movants failed to quote the preceding sentence in the order which states in part, "...Silverleaf currently serves 720 water and 250 sewer customers." Given that Silverleaf did not object to the classification of them having fewer than 1000 customers at the time of the sale of assets, it appears that Silverleaf did not then consider timeshare owners as utility customers.

**3) Should the Commission make Liberty file a general rate case at the preference of Movants as the utility's largest customer?**

Movants assert that they account for 60% of Liberty's revenues in Missouri, and accordingly will bear a majority of the rate case expense that is factored into rates. Movants imply that they would rather tolerate potentially greater rate case expense for what they view as greater due process in a general rate case. Most of what Movants are classifying as a deprivation of due process is the procedural content of the Small Rate Procedure rule. As specified before, Liberty meets the minimal requirements to avail itself of the Small Rate Procedure.

Movants read the Small Rate Procedure too narrowly. Movants state that there is no provision in the Small Rate Procedure by which an intervening party may request an evidentiary hearing; however, there is no provision indicating that intervenors may not request an evidentiary hearing. The Small Rate Procedure is silent on intervenors. Movants seek instruction from the Commission on how intervenors participate. There may be some limitations on what an intervenor may be able to do under the Small Rate

Procedure rule, and Movants may test those limitations, but those limitations are best addressed by application of the rules and not an advisory opinion.

The Commission will deny Movant's motion to dismiss.

**IT IS ORDERED THAT:**

1. Orange Lake Country Club, Inc. and Silverleaf Resorts, Inc.'s *Motion to Dismiss, or in the Alternative, to Order Liberty Utilities (Missouri Water), LLC to File a Tariff Pursuant to Section 393.140(11)* is denied.
2. This order shall be effective when issued.



**BY THE COMMISSION**

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

Morris L. Woodruff  
Secretary

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

Clark, Regulatory Law Judge

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter Of Liberty Utilities (Missouri Water) LLC )  
and Ozark International, Inc., Concerning An )  
Agreement To Acquire The Assets Of Bilyeu Ridge )  
Water Company, LLC, Midland Water Company, Inc., )  
Moore Bend Water Utility, LLC, Riverfork Water )  
Company, Taney County Water, LLC, and Valley )  
Woods Utility )

**File No. WM-2018-0023**

**ORDER APPROVING STIPULATION AND AGREEMENT AND GRANTING  
CERTIFICATES OF CONVENIENCE AND NECESSITY**

**WATER**

**§4 Transfer, lease and sale**

The Commission approved the transfer of several small water systems to a larger water provider.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 4<sup>th</sup> day of  
April, 2018.

In the Matter of Liberty Utilities (Missouri Water) LLC and     )  
Ozark International, Inc., Concerning an Agreement to     )  
Acquire the Assets of Bilyeu Ridge Water Company, LLC     )  
Midland Water Company, Inc., Moore Bend Water Utility,     )  
LLC, Riverfork Water Company, Taney County Water, LLC,     )  
And Valley Woods Utility     ) **File No. WM-2018-0023**

**ORDER APPROVING STIPULATION AND AGREEMENT AND GRANTING  
CERTIFICATES OF CONVENIENCE AND NECESSITY**

Issue Date: April 4, 2018

Effective Date: April 14, 2018

On September 14, 2017, Liberty Utilities (Missouri Water) LLC and Ozark International, Inc. filed a joint application with the Commission seeking authority for Liberty to purchase the franchise and operating assets of each of the following wholly-owned Ozark subsidiaries: Bilyeu Ridge Water Company, LLC; Midland Water Company, Inc.; Moore Bend Water Utility, LLC; Riverfork Water Company, LLC; Taney County Water, LLC; and Valley Woods Utility (the Ozark subsidiaries are collectively referred to as the “Ozark Utilities”). All of the companies to be acquired operate water systems. Valley Woods Utility also operates a sewer system.

The Commission issued notice of the joint application and set a deadline for intervention requests. The Missouri Department of Natural Resources applied to intervene and that request was granted.

The Commission’s Staff filed its Recommendation and Memorandum regarding the joint application on January 5, 2018. Staff recommended the joint application be granted,

subject to certain conditions. However, Staff recommended Liberty Utilities not be allowed to proceed with its proposal to consolidate the tariffed rules, regulations and rate schedules of the six Ozark Utilities into a single consolidated tariff.

Liberty Utilities and Ozark did not object to the conditions proposed by Staff, but did disagree with Staff's recommendation to deny consolidation of the tariffs of the subsidiaries. Because of the disagreement, the Commission set this matter for an evidentiary hearing to be held on March 22. On March 16, all parties filed a unanimous stipulation and agreement indicating their acceptance of all aspects of Staff's Recommendation, including the conditions proposed by Staff. By the terms of Staff's recommendation, which were incorporated into the stipulation and agreement, Liberty Utilities will adopt all rates, rules, and regulations in each of the Ozark Utilities' existing tariffs.

After reviewing the stipulation and agreement, the Commission independently finds and concludes that the stipulation and agreement is a reasonable resolution of the issues addressed by the stipulation and agreement and that such stipulation and agreement should be approved. Because of the unanimous agreement of the parties, this order will be made effective in ten days.

**THE COMMISSION ORDERS THAT:**

1. The Unanimous Stipulation and Agreement filed on March 16, 2018, is approved as a resolution of all issues. The signatory parties are ordered to comply with the terms of the stipulation and agreement. A copy of the stipulation and agreement is attached to this order.

2. Ozark is authorized to sell and transfer the regulated utility assets and its subsidiaries' certificates of convenience and necessity to Liberty Utilities, and Liberty Utilities is authorized to provide service in the Ozark service areas as requested.

3. To the extent any acquisition premium that may result from the purchase of Ozark's regulated utility assets by Liberty Utilities exists, any related acquisition adjustment shall be excluded from rate recovery in any future rate case.

4. Consistent with Staff's recommendation to adopt all rates, rules, and regulations in each of the Ozark Utilities' existing tariffs, Liberty Utilities is authorized to apply each of the Ozark Utilities' existing rates and rules on an interim basis immediately after closing on the assets, until an adoption notice tariff sheet becomes effective.

5. Liberty Utilities shall submit an adoption notice tariff sheet for the existing tariffs within ten days after closing on the assets and as a thirty-day tariff filing for the existing Ozark Utilities' tariffs.

6. The Ozark Utilities' existing depreciation and CIAC amortization rates for water utility plant accounts are approved to apply to their respective service areas' assets.

7. If closing on the water system assets does not take place within thirty days following the effective date of this order, Liberty Utilities or Ozark, or both, shall submit a status report within five days after this thirty day period regarding the status of closing, and shall submit additional status reports within five days after each additional thirty day period, until closing takes place, or until Liberty Utilities or Ozark determines that the transfer of the assets will not occur.

8. If Liberty Utilities or Ozark determines that a transfer of the assets will not occur, Liberty Utilities shall notify the Commission of such determination no later than the

date of the next status report, as addressed in ordered paragraph 7, after that determination is made.

9. Liberty Utilities shall, within ninety days after the effective date of this order authorizing the transfer of assets, correct its books and records to reflect the adjusted plant, depreciation reserve and Contributions in Aid of Construction balances reflected in Staff's Accounting Schedules.

10. Liberty Utilities shall develop and implement, with the review and assistance of Staff, comprehensive allocation procedures to allocate costs and investments between regulated and non-regulated operations and between the various regulated entities of Liberty Utilities' corporate parent consistent with the utility's current practices.

11. Liberty Utilities shall, upon closing of the sale, take physical possession of, and maintain pursuant to regulation, any and all books and records of each Ozark entity being acquired, including, but not limited to, all financial records, plant and depreciation reserve records, invoices, purchase orders and purchase agreements, all customer billing records and customer deposit records, all payroll and employee information, etc.

12. Liberty Utilities shall develop a comprehensive time reporting system specifically designed to identify time spent and cost incurred by its personnel on each of the Ozark Utilities and other Liberty Utilities entities. This time reporting shall be developed in time for use in Liberty Utilities' next rate cases.

13. Liberty Utilities shall, within ten days after closing on the assets, provide an example of its actual communication with customers of each of the Ozark Utilities regarding Liberty Utilities' acquisition and operations of the Ozark Utilities' water system assets, and how customers may reach Liberty Utilities regarding water matters.

14. Liberty Utilities shall include the Ozark Utilities' customers in its established monthly reporting to the Customer Experience Department (CXD) staff. Such reporting has previously been ordered by the Commission and is provided by both The Empire District Electric Company and Liberty Utilities. Liberty Utilities shall include metrics for the Ozark Utilities customers in whichever individual company customer service system – either The Empire District Electric Company or Liberty Utilities – may be serving the Ozark Utilities' customers. Such reporting shall include, but is not limited to, such metrics as: a) call center staffing; b) calls offered; c) average speed of answer; d) abandoned call rate; e) number of estimated bills; f) number of consecutive estimated bills; and g) calls answered by Integrative/Interactive Voice Response Unit. Liberty Utilities shall also include the Ozark Utilities' metrics in all future service quality reporting that may be provided to Staff by Liberty Utilities or The Empire District Electric Company, or both, which can be aggregated with service quality data reported to Staff for all affiliated companies.

15. Liberty Utilities shall distribute to Ozark Utilities' customers before the first billing from Liberty Utilities an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its water and sewer service, consistent with the requirements of Commission Rule 4 CSR 240-13.040(3)(A-L).

16. Liberty Utilities shall provide to the CXD staff a sample of ten billing statements from each of the first three months of bills issued to the Ozark Utilities' customers within thirty days of such billing.

17. The Commission makes no finding that would preclude it from considering the ratemaking treatment to be afforded any matters pertaining to Liberty Utilities, including



expenditures related to the Ozark Utilities' certificated service areas and capacity adjustments, in any later proceeding.

18. This order shall be effective on April 14, 2018.

19. This file shall be closed on April 15, 2018.

**BY THE COMMISSION**



A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

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

Woodruff, Chief Regulatory Law Judge

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of Entergy Arkansas, Inc.'s Notification )  
of Internal Restructuring or Alternative Application for )  
Approval of Restructuring and Related Relief )

**File No. EO-2018-0169**

**ORDER GRANTING APPLICATION**

**CERTIFICATES**

**§11 When a certificate is required generally**

**§18 Substitution or replacement of facilities**

**§21 Grant or refusal of certificate generally**

Operating as a public utility requires the Commission's prior permission and approval. Such permission and approval depend on whether the proposed service "is required by the public convenience and necessity [;]" and "necessary or convenient for the public service [.]". "Necessary" and "necessity" relate to the regulation of competition, cost justification, and safe and adequate service. On finding convenience and necessity, the Commission embodies its permission and approval in a certificate, which the regulations call a certificate of convenience and necessity.

**ELECTRIC**

**§4 Transfer, lease and sale**

Where no statute sets a standard specifically for granting a proposed corporate reorganization and transfer of assets, the Missouri courts apply the standard of "no public detriment" and will grant the application unless detrimental to the public. The Commission concluded that transferring the provision of wholesale electric service from EAI to Entergy Arkansas, LLC (EAL) would cause no public determinant where EAL would provide the same service with the same personnel and resources, EAL's regulated activity—electrical transmission—would be further separated from the unregulated generation and nuclear decommissioning activities of entities related to EAI, and financing would be easier for EAL.

**§8 Jurisdiction and powers of Federal Commissions**

Energy Arkansas Inc. (EAI) argued the Commission had no jurisdiction over EAI or its proposed corporate reorganization and transfer of assets because EAI had no retail customers in Missouri and the Commission did not set EAI's terms of service. In support of this argument, EAI cited the authority of the Federal Energy Regulatory Commission (FERC) to approve the transactions and set its terms of service. However, EAI cited no law which made FERC's authority preclusive of the Commission's authority in this case, and assuming without deciding that FERC's authority effectively reduced this action to a mere registration, that much authority remained and the Commission still has a duty to

rule on the application. Moreover, the statutes specifically required Commission authorization for a public utility to “exercise[e] any franchise,” undertake a corporate reorganization, and transfer necessary or useful plant or certain amounts of stock.

### **§9 Jurisdiction and powers of the State Commission**

The statutes provide that the Commission’s jurisdiction, supervision, powers, and duties generally extend throughout Missouri to any electric plant; to any entity that owns, leases, operates, or controls electric plant; and to any entity that manufactures or distributes electricity.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 12<sup>th</sup> day of April, 2018.

In the Matter of Entergy Arkansas, Inc.'s Notification )  
of Internal Restructuring or Alternative Application for ) **File No. EO-2018-0169**  
Approval of Restructuring and Related Relief )

**ORDER GRANTING APPLICATION**

Issue Date: April 12, 2018

Effective Date: April 24, 2018

Entergy Arkansas, Inc. (“EAI”) filed the application,<sup>1</sup> seeking authorization for a corporate reorganization and transfer of assets (“the transactions”), a certificate of convenience and necessity (“CCN”) for a new entity, and a waiver of regulations.

The Commission’s staff (“Staff”) filed a recommendation in favor of granting the application conditionally<sup>2</sup> and the Commission received no other filing<sup>3</sup> within the time provided by regulation.<sup>4</sup> When no party requests a hearing, the Commission may base its order solely on verified filings,<sup>5</sup> so this action is not a contested case<sup>6</sup> and the Commission need not separately state its findings of fact. The Commission independently finds, concludes, and orders as follows.

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<sup>1</sup> Electronic Filing Information System (“EFIS”) No. 1 (December 15, 2018) *Entergy Arkansas, Inc.'s Notification of Internal Restructuring or Alternative Application for Approval of Internal Restructuring and Related Relief*. EFIS references refer to this file except as stated otherwise.

<sup>2</sup> EFIS No. 8 (March 16, 2018) *Staff Recommendation*.

<sup>3</sup> The Office of the Public Counsel is a party to this action, 4 CSR 240-2.010(10), but exercised its discretion to not participate.

<sup>4</sup> 4 CSR 240-2.080(13).

<sup>5</sup> ***State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Com’n***, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

<sup>6</sup> Section 536.010(4). All sections are in RSMo 2016.

EAI is an Arkansas corporation and an Arkansas public utility holding a CCN from the Commission. EAI provides wholesale electric service to Missouri cities and electric cooperatives. EAI's assets in Missouri, including approximately 87 miles of transmission and distribution lines, are located in the Missouri counties of Dunklin, New Madrid, Oregon, Pemiscot, and Taney.

Those assets constitute electrical plant,<sup>7</sup> which defines EAI as an electrical corporation,<sup>8</sup> a type of public utility.<sup>9</sup> The statutes provide that the Commission's jurisdiction, supervision, powers, and duties generally extend throughout Missouri to any electric plant; to any entity that owns, leases, operates, or controls electric plant; and to any entity that manufactures or distributes electricity.<sup>10</sup> Therefore, EAI and its electric plant are within the Commission's jurisdiction.<sup>11</sup>

EAI argues that the Commission has no jurisdiction over EAI and the transactions because EAI has no retail customers in Missouri and the Commission does not set EAI's terms of service. EAI cites the authority of the Federal Energy Regulatory Commission ("FERC") to approve the transactions and set EAI's terms of service. But EAI cites no law governing the Commission's jurisdiction or authority under which those facts are relevant.<sup>12</sup>

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<sup>7</sup> Section 386.020(14).

<sup>8</sup> Section 386.020(15).

<sup>9</sup> Section 386.020(43).

<sup>10</sup> Section 386.250(1).

<sup>11</sup> Section 393.140(1).

<sup>12</sup> Assuming, without deciding, that FERC's authority effectively reduces this action to a mere registration, that much authority remains, and the Commission still has a duty to rule on the application.

Contrary to EAI's unsupported argument, the statutes specifically require Commission authorization for a public utility to "exercis[e] any franchise,"<sup>13</sup> undertake a corporate reorganization,<sup>14</sup> and transfer necessary or useful plant or certain amounts of stock.<sup>15</sup> The Commission may also waive its regulations, which otherwise govern a public utility,<sup>16</sup> and set conditions on its orders.<sup>17</sup> As to all those matters, the Commission concludes that the law expressly grants the Commission jurisdiction and authority over EAI.

In contrast, EAI also asks the Commission to release EAI from all liability related to the assets. EAI cites no statute authorizing such a declaration.<sup>18</sup> The Commission will deny that request.

### 1. The Transactions

The statutes do not set forth a standard for granting or denying authorization for the transactions. In such a case, Missouri courts apply the standard of "no public detriment." Under that standard, the Commission grants the application, unless detrimental to the public.<sup>19</sup>

On the closing date of the transactions, EAI will no longer provide wholesale electric service to wholesale customers in Missouri and will have formed a new subsidiary, Entergy Arkansas, LLC, ("EAL"), which will provide the service formerly

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<sup>13</sup> Sections 393.170.2; and 386.020(14), (15) and (43).

<sup>14</sup> Section 393.250(1).

<sup>15</sup> Section 393.190.

<sup>16</sup> 4 CSR 240-3.015.

<sup>17</sup> Sections 393.170.3.

<sup>18</sup> EFIS No. 1 (December 15, 2018) *Entergy Arkansas, Inc.'s Notification of Internal Restructuring or Alternative Application for Approval of Internal Restructuring and Related Relief* page 13 paragraph (e).

<sup>19</sup> *State ex rel. City of St. Louis v. Pub. Serv. Comm'n of Missouri*, 73 S.W.2d 393, 400 (1934).

provided by EAI with the same personnel and other resources. The transactions will cause no public detriment, EAI argues, because the transactions will alter the provider, but not the service. Also, EAI argues, public benefits will occur because a) EAL's regulated activity—electrical transmission—will be further separated from the unregulated generation and nuclear decommissioning activities of entities related to EAI; and b) financing will be easier for EAL. Staff agrees on the condition that EAL file evidence of registration to do business in Missouri from the Missouri Secretary of State.

The Commission concludes that the transactions will not be detrimental to the public, will grant the application, and will conditionally authorize the transactions.

## 2. Certificate of Convenience and Necessity

Operating as a public utility<sup>20</sup> requires the Commission's prior permission and approval. Such permission and approval depend on whether the proposed service "is required by the public convenience and necessity [;]"<sup>21</sup> and "necessary or convenient for the public service [.]"<sup>22</sup> "Necessary" and "necessity" relate to the regulation of competition, cost justification, and safe and adequate service.<sup>23</sup> On finding convenience and necessity, the Commission embodies its permission and approval in a certificate,<sup>24</sup> which the regulations call a certificate of convenience and necessity.<sup>25</sup> EAI has already demonstrated the public convenience and necessity of its services, which is why it holds

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<sup>20</sup> Section 393.170.2.

<sup>21</sup> 4 CSR 240-3.205(1)(E).

<sup>22</sup> Section 393.170.3.

<sup>23</sup> *State ex rel. Intercon Gas, Inc. v. Public Serv. Com'n of Mo.*, 848 S.W.2d 593, 597 (Mo. App., W.D. 1993).

<sup>24</sup> Section 393.170.2.

<sup>25</sup> 4 CSR 240-3.205.

a CCN from the Commission.<sup>26</sup> EAI asks the Commission to transfer the CCN of EAI to EAL, but the Commission will issue EAL a new CCN, and cancel EAI's CCN.

### 3. Waiver of Regulations

The standard for a waiver is good cause.<sup>27</sup> EAI and Staff also suggest that the Commission should waive the following regulations because they do not apply to the transactions or to the services that are the subject of this order:

4 CSR 240-3.110(1)(B) and (E)	Contract for sale and buyer information
4 CSR 240-3.175	Depreciation studies
4 CSR 240-3.190(1), (2), and (3)	Reports of specified events

EAI and Staff do not oppose each other's proposed waivers. The Commission concludes that good cause supports the waivers and will waive those regulations.

#### THE COMMISSION ORDERS THAT:

1. *Entergy Arkansas, Inc.'s Notification of Internal Restructuring or Alternative Application for Approval of Internal Restructuring and Related Relief* is granted and the transactions described in the body of this order are authorized.

2. The certificate of convenience and necessity ("CCN") issued to Entergy Arkansas, Inc. shall be canceled; and a CCN shall be issued to Entergy Arkansas, LLC to provide the services formerly provided by Entergy Arkansas, Inc., on the completion of the transactions, as described in the body of this order.

3. Regulations 4 CSR 240-3.175 and 4 CSR 240-3.190(1), (2), and (3) are waived for Entergy Arkansas, LLC.

<sup>26</sup> File No. EA-2012-0321, EFIS No. 7 (July 11, 2012) *Order Granting Certificate of Convenience and Necessity. In the Matter of the Application of Entergy Arkansas, Inc. for a Certificate of Convenience and Necessity Authorizing it to Own, Acquire, Construct, Operate, Control, Manage and Maintain Certain Electric Plant Consisting of Electric Transmission and Distribution Facilities Within Dunklin, New Madrid, Oregon, Pemiscot and Taney Counties, Missouri and/or for Other Relief.*

<sup>27</sup> 4 CSR 240-3.015 and 4 CSR 240-2.015(4)(B).



4. Paragraphs 1, 2, and 3 are conditioned on Entergy Arkansas, LLC filing with the Commission a certificate of registration from the Missouri Secretary of State.
5. The request for a declaration of release from liability is denied.
6. This order shall be effective on April 24, 2018.
7. This file may close on April 25, 2018.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

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

Daniel Jordan, Senior Regulatory Law Judge

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

Derald Morgan, Rick and Cindy Graver, William	)	
and Gloria Phipps and David Lott,	)	
	)	
Complainants,	)	<b><u>File No. WC-2017-0037</u></b>
	)	
v.	)	
	)	
Carl Richard Mills, Carriage Oaks Estates,	)	
Distinctive Designs and Caring Americans Trust	)	
Foundation, Inc. (f/k/a Caring Americans	)	
Foundation, Inc.), Carriage Oaks Not-for-Profit	)	
Water and Sewer Corporation,	)	
	)	
Respondents	)	

**REPORT AND ORDER**

**CERTIFICATES**

**§52 Transfer, mortgage or lease generally**

Carl Mills' transfer of water assets to Carriage Oaks LLC, and any subsequent transfers are void under Section 393.190(1), RSMo. Carl Mills shall apply to the Missouri Public Service Commission for a Certificate of Convenience and Necessity.

**SEWER**

**§5 Jurisdiction and powers generally**

The Commission has no jurisdiction over the sewer system. Section 386.020(49) RSMo creates an exemption to the definition of sewer corporation. It states that, "except that the term shall not include sewer systems with fewer than twenty-five outlets[.]" Without a service sewer line there is no "service sewer connection to the collecting sewer." Under that analysis there are seven sewer outlets, and the sewer system is outside the Commission's jurisdiction.

**WATER**

**§4 Transfer, lease and sale**

Carl Mills did not seek the Commission's approval before transferring the water assets. Carl Mills transferred the water and sewer assets several times and for various purposes. Having established that Carl Mills was under the jurisdiction of the Commission at the time he was providing water services to the subdivision for compensation; the

Commission's approval was required before the water assets could have been transferred or sold.

**§6 Jurisdiction and powers generally**

Carl Mills is a person who owns a utility devoted to the public use, and operated for gain. Therefore, Carl Mills is a water corporation as defined by Section 386.020(59) RSMo. and is subject to the Commission's jurisdiction.

**§6 Jurisdiction and powers generally**

What brings Carl Mills within the Commission's jurisdiction for regulation is the fact that water corporations are required to obtain a certificate of convenience and necessity to provide water service to customers. The protections afforded the community by regulation are not just from actual abuse, but from potential abuse. Carl Mills started serving customers under an initial structure that should have been regulated so no service or transfers can occur without Commission approval.

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



Derald Morgan, Rick and Cindy Graver, William )  
and Gloria Phipps and David Lott, )

Complainants, )

**File No. WC-2017-0037**

v. )

Carl Richard Mills, Carriage Oaks Estates, )  
Distinctive Designs and Caring Americans Trust )  
Foundation, Inc. (f/k/a Caring Americans )  
Foundation, Inc.), Carriage Oaks Not-for-Profit )  
Water and Sewer Corporation, )

Respondents )

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## REPORT AND ORDER

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**Issue Date:** April 12, 2018

**Effective Date:** May 14, 2018

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

Derald Morgan, Rick and Cindy Graver, William	)	
and Gloria Phipps and David Lott,	)	
	)	
Complainants,	)	<b>File No. WC-2017-0037</b>
	)	
v.	)	
	)	
Carl Richard Mills, Carriage Oaks Estates,	)	
Distinctive Designs and Caring Americans Trust	)	
Foundation, Inc. (f/k/a Caring Americans	)	
Foundation, Inc.), Carriage Oaks Not-for-Profit	)	
Water and Sewer Corporation,	)	
	)	
Respondents	)	

**APPEARANCES**

Appearing for the **Complainants:**

**Karl Finkenbinder**, Attorney, 100 Prairie Dunes Dr., Ste. 200, Branson MO 65616-6561,

Appearing for the **Respondents:**

**Bryan Wade**, Attorney, 901 St. Louis St., Suite 1800, Springfield MO 65806,

**Whitney S. Smith**, Attorney, 901 St. Louis St., Suite 1800 Springfield MO 65806,

Appearing for the **Staff of the Missouri Public Service Commission:**

**Jacob Westen**, Deputy Counsel, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.<sup>1</sup>

Appearing for the **Office of the Public Counsel:**

**Ryan Smith**, Senior Counsel, Governor Office Building, 200 Madison Street, Suite 650, Post Office Box 2230, Jefferson City, Missouri 65102.<sup>2</sup>

**REGULATORY LAW JUDGE:** John T. Clark

<sup>1</sup> EFIS No. 63 (February 2, 2018) *Staff's Motion to be Excused* – Staff counsel requested to be excused from the evidentiary hearing which was granted.

<sup>2</sup> Public Counsel appeared at the evidentiary hearing, where he asked to be excused. The request was granted. Transcript, p. 25.

## REPORT AND ORDER

### I. Procedural History

On August 4, 2016, Derald Morgan, Rick Graver, Cindy Graver, William Phipps, Gloria Phipps, and David Lott (“Complainants”) filed a complaint with the Missouri Public Service Commission (“Commission”) against Carl Richard Mills, Carriage Oaks Estates Homeowners Association, Distinctive Designs, and Caring Americans Trust Foundation, Inc. (f/k/a Caring Americans Foundation, Inc. (“Respondents”). An amended complaint was filed on August 11, 2016. Complainants alleged primarily that Respondent Carl Mills caused ownership of water and sewer facilities to be transferred to Caring Americans Trust Foundation, Inc. a non-profit corporation not formed as a water and sewer company, of which Complainants are not members and in which they have no say as to control or operation. Complainant’s alleged that Caring Americans Trust Foundation, Inc. has not obtained a Certificate of Convenience and Necessity from the Commission.<sup>3</sup>

The complaint was filed in relation to both the water and sewer systems. On August 11, 2016, file numbers WC-2017-0037 and SC-2017-0039 were consolidated under file number WC-2017-0037 because both files address a single complaint.<sup>4</sup> Additionally, both files involved the same complainants and respondents.

Respondents’ filed an answer to the amended complaint, stating that Complainants do not have an ownership interest in the water and sewer systems and therefore have no say in the operation or ownership of those systems. Respondents moved to dismiss the

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<sup>3</sup> The information provided in the Complaint also alleged the lack of a valid Operating Permit from the Missouri Department of Natural Resources, but that is outside the jurisdiction of the Commission

<sup>4</sup> EFIS No. 3 (August 11, 2016) *Order of consolidation*

complaint for lack of Commission jurisdiction.<sup>5</sup> An amended motion to dismiss was filed on February 14, 2017.<sup>6</sup> That motion was denied by the Commission August 3, 2017.<sup>7</sup>

Complainants moved to add Carriage Oaks Not-for-Profit Water and Sewer Corporation as a party and respondent on September 14, 2017.<sup>8</sup> The Commission treated this motion as a second amended complaint.<sup>9</sup> Respondents filed a motion to dismiss the second amended complaint on October 24, 2017.<sup>10</sup> Complainants filed a motion for partial summary determination on December 13, 2017.<sup>11</sup> The Commission denied both motions on January 23, 2018.<sup>12</sup>

Because there were material facts in dispute, the Commission held an evidentiary hearing on February 6, 2018, in Jefferson City, Missouri.<sup>13</sup>

## **II. Findings of Fact**

Any finding of fact where it appears the Commission has made a determination between conflicting evidence indicates the Commission attributed greater weight to that evidence, and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

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<sup>5</sup> EFIS No. 10 (September 6, 2016) *Respondents' Motion to Dismiss Complainants' Amended Petition and Entry of Appearance*

<sup>6</sup> EFIS No. 3 (February 14, 2016) *Respondents' Amended Motion to Dismiss*

<sup>7</sup> EFIS No. 34 (August 3, 2017) *Order Denying Motion to Dismiss, Granting Motion to Strike, and Directing Filing of Procedural Schedule*

<sup>8</sup> EFIS No. 37 (September 14, 2017) *Complainants' Motion to Add Carriage Oaks Not-For-Profit Water and Sewer Corporation as a Party*

<sup>9</sup> EFIS No. 40 (October 10, 2017) *Order Deeming Motion an Amended Complaint and Notice of Complaint*

<sup>10</sup> EFIS No. 46 (October 24, 2017) *Respondents' Motion to Dismiss Second Amended Complaint*

<sup>11</sup> EFIS No. 52 (December 13, 2017) *Complainants' Motion for Partial Summary Judgment Against Respondents, Complainants' Statement of Uncontroverted Material Facts, and Complainants' Legal Memorandum in Support of their Motion for Partial Summary Judgment*

<sup>12</sup> EFIS No. 60 (January 23, 2018) *Order Denying Respondents' Motion To Dismiss and Order Denying Complainants' Motion For Partial Summary Determination*

<sup>13</sup> Transcript, Volume 2 (hereinafter, "Tr."), In total, the Commission admitted the testimony of 2 witnesses and received 19 exhibits into evidence. Post-hearing briefs were filed on February 28, 2018, and the case was deemed submitted for the Commission's decision on that date when the Commission closed the record. "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 4 CSR 240-2.150(1).

1. The Office of the Public Counsel (“Public Counsel”) “may represent and protect the interests of the public in any proceeding before or appeal from the public service commission.” Public Counsel “shall have discretion to represent or refrain from representing the public in any proceeding.” Public Counsel did not participate in the evidentiary hearing in this matter.

2. The Staff of the Missouri Public Service Commission (“Staff”) is a party in all Commission investigations, contested cases and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission. Staff participated as a party in this matter, though Staff was excused from the evidentiary hearing.<sup>14</sup>

3. Complainants are homeowners in the Carriage Oaks Estates subdivision.<sup>15</sup> Under the Declaration of Restrictive Covenants and Easements all lots within the subdivision must receive water and sewer services from Respondent’s system.<sup>16</sup>

4. Mills Properties Group LTD is the developer of the subdivision. The sole member of Mills Properties Group is Carl Mills’ personal trust. This entity also does business under Distinctive Designs (a fictitious name) in Missouri.<sup>17</sup> Distinctive Designs is a named respondent. Distinctive Designs constructed the subdivision including the water system, sewer system and all mains; the well was not constructed by Distinctive Designs.<sup>18</sup>

5. Carriage Oaks LLC was formed by Carl Mills after his wife’s death for the purpose of being able to sell part of his ownership interest in Carriage Oaks Estates.

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<sup>14</sup> EFIS No. 63 (February 2, 2018) *Staff’s Motion to be Excused*

<sup>15</sup> Ex. 10, D. Morgan Direct, Page 3

<sup>16</sup> Ex. 14, Declaration of Restrictive Covenants and Easements, Page 6

<sup>17</sup> Tr., Pages 134-135

<sup>18</sup> Tr., Page 123



Carriage Oaks LLC is not a named respondent. Carriage Oaks LLC is owned by Carl Mills' personal trust.<sup>19</sup>

6. Caring Americans Trust Foundation Inc. was established by Carl Mills September 11, 2012, for the purpose of supporting other charitable organizations.<sup>20</sup> Caring Americans Trust Foundation is a named respondent. It was formed as a non-profit, and is not owned by Mr. Mills,<sup>21</sup> although he is on the board.<sup>22</sup> No Complainants are members.<sup>23</sup>

7. Carriage Oaks Not-for-Profit Water and Sewer Corp. was incorporated January 18, 2017.<sup>24</sup> Carriage Oaks Not-for-Profit Water and Sewer Corp. is a named respondent. Membership in the not-for-profit is comprised of all persons who own property that is or will be receiving water and sewer services. Each member is entitled to one vote per membership for the board of directors, though persons may hold multiple membership interests.<sup>25</sup>

8. Carriage Oaks Estates Homeowners Association includes as members any person who owns a lot in the subdivision. Carriage Oaks Homeowners Association is a named respondent. Voting is apportioned by class, with Class A members having one vote per lot owned, and the Class B member (Developer) having ten votes per lot owned.<sup>26</sup>

9. Carriage Oaks Estates is a subdivision in Stone County, Missouri, founded in 2001.<sup>27</sup> Carriage Oaks Estates is being developed in three phases; phase one has eight lots, phase two has an additional 24 lots, and phase three will have an additional 22 lots

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<sup>19</sup> Tr., Pages 75-76

<sup>20</sup> Ex. 24, Page 4

<sup>21</sup> Tr., Page 136

<sup>22</sup> Tr., Page 144

<sup>23</sup> Tr., Page 79

<sup>24</sup> EFIS No. 52 (December 13, 2017) *Complainants' Motion for Partial Summary Judgment Against Respondents, Complainants' Statement of Uncontroverted Material Facts, and Complainants' Legal Memorandum in Support of their Motion for Partial Summary Judgment*, Exhibit E, Articles of Incorporation of Carriage Oaks Not-for-Profit Water and Sewer Corporation

<sup>25</sup> Ex. 15, Page 1

<sup>26</sup> Ex. 14, Declaration of Restrictive Covenants and Easements, Pages 9-10

<sup>27</sup> Ex. 24, C. Mills Rebuttal, Page 5

(ground has not been broken on phase three).<sup>28</sup> Seven homes are currently developed in the subdivision.<sup>29</sup>

10. Carl Richard Mills is the developer of Carriage Oaks Estates. Carl Mills is a named Respondent. His personal trust owns Mills Properties Group LTD, Distinctive Designs LTD, and Carriage Oaks LLC. He is the founder and member of the board of both Caring Americans Trust Foundation Inc. and Carriage Oaks Not-for-Profit Water and Sewer Corp. He is a member of Carriage Oaks Homeowners Association with Class B voting rights. Carl Mills owns approximately 23 lots in the Carriage Oaks Estates subdivision.<sup>30</sup>

11. The water system was initially comprised of a well capable of delivering 55 gallons per minute, five bladder tanks, a well house and four inch PVC water mains.<sup>31</sup> The sewer system is comprised of a treatment plant with a tank, and mains.<sup>32</sup>

12. Only seven lots are developed and connected to the water and sewer system.<sup>33</sup> Sewer mains run through phases one and two, with both phases ready for immediate connection to the sewer system.<sup>34</sup>

13. All homeowners are required to connect to the water and sewer system.<sup>35</sup> All seven developed homes currently receive water service.<sup>36</sup>

14. Mr. Mills has not sought a Certificate of Convenience and Necessity from the Commission for any water or sewer systems.<sup>37</sup>

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<sup>28</sup> Tr., Pages 79-80

<sup>29</sup> Tr., Page 81

<sup>30</sup> Tr., Page 150

<sup>31</sup> Ex. 26, Page 1

<sup>32</sup> Ex. 18, Page 1

<sup>33</sup> Tr., Page 154

<sup>34</sup> Tr., Page 82

<sup>35</sup> Ex. 14, Declaration of Restrictive Covenants and Easements, Page 6

<sup>36</sup> Tr., 154

<sup>37</sup> Tr., Page 78

15. Carl Mills and his wife originally owned the water and sewer assets through his personal trust. Upon his wife's death the water and sewer assets remained with his personal trust until approximately 2007, when Carriage Oaks LLC came into being.<sup>38</sup>

16. Carriage Oaks LLC owned the water and sewer assets from 2007 until they were transferred to Caring Americans Trust Foundation Inc.<sup>39</sup>

17. On April 2, 2016, Carriage Oaks LLC transferred ownership of the water and sewer assets to Caring Americans Trust Foundation Inc.<sup>40</sup>

18. On January 27, 2017 Caring Americans transferred ownership of the water and sewer assets to Carriage Oaks Not-for-Profit Water and Sewer Corporation.<sup>41</sup>

19. Prior to 2014 homeowners were billed (through their annual homeowners assessment) for reimbursement of actual costs,<sup>42</sup> chemicals, and testing for the water and sewer assets, but were not billed for maintenance and management performed by Distinctive Designs.<sup>43</sup>

20. Carl Mills personally issued assessments for services to the Carriage Oaks Estates homeowners from the Carriage Oaks Homeowners Association.<sup>44</sup>

21. Since 2014 Distinctive Designs has charged for maintenance and management of the water and sewer system.<sup>45</sup> Distinctive Designs invoiced the homeowners association for services provided<sup>46</sup> pursuant to a contract between Distinctive Designs and Carriage Oaks LLC,<sup>47</sup> and a contract between Distinctive Designs and the

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<sup>38</sup> Tr., Page 74

<sup>39</sup> Tr., Pages 138-140

<sup>40</sup> Tr., Page 77

<sup>41</sup> Tr., Page 77

<sup>42</sup> Tr., Pages 120-127

<sup>43</sup> Ex. 24, C. Mills Direct, Page 7, also Ex. 11, Carriage Oaks Estates Property Owners Assessments

<sup>44</sup> Ex. 11, Pages 1-6

<sup>45</sup> Tr., Page 91

<sup>46</sup> Ex. 6 and Ex. 18, Invoices for services, also Tr., Page 129

<sup>47</sup> Tr., Page 120

homeowners association.<sup>48</sup> The homeowners association collects the water and sewer assessment used to reimburse Distinctive Designs from its members<sup>49</sup>

### **III. Conclusions of Law**

A. Complainants bear the burden of proof.<sup>50</sup> The burden of proof is the preponderance of the evidence standard.<sup>51</sup> In order to meet this standard, Complainants must convince the Commission it is “more likely than not” that Respondents violated an applicable statute, rule, or provision of a Commission-approved tariff.<sup>52</sup>

B. The issues for determination are whether the Commission has jurisdiction in this matter, and if so, whether Respondents have violated any state law, Commission rule, or company tariff.

C. The Commission has jurisdiction over this Complaint. Pursuant to Section 386.390, RSMo., “1. Complaint may be made ... by any person ... by petition in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law or of any rule or order or decision of the commission; ...”.

D. Whether the Commission has jurisdiction over Respondents, and when that jurisdiction attached, resolves most of the remaining issues in this matter.

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<sup>48</sup> Tr., Page 125

<sup>49</sup> Ex. 11, and Ex. 18

<sup>50</sup> *State ex rel. GS Technologies Operating Co., Inc. v. Pub. Serv. Comm'n of State of Mo.*, 116 S.W.3d 680, 693 (Mo. App. 2003).

<sup>51</sup> *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996).

<sup>52</sup> *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez*, 936 S.W.2d at 109 -111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

The Commission has jurisdiction over all water corporations<sup>53</sup> and sewer systems<sup>54</sup> Section 386.020(59), RSMo defines a water corporation: "Water corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling or managing any plant or property, dam or water supply, canal, or power station, distributing or selling for distribution, or selling or supplying for gain any water[.]" Section 386.020(49), RSMo defines a sewer corporation: "Sewer corporation" includes every corporation, company, association, joint stock company or association, partnership or person, their lessees, trustees or receivers appointed by any court, owning, operating, controlling or managing any sewer system, plant or property, for the collection, carriage, treatment, or disposal of sewage anywhere within the state for gain, except that the term shall not include sewer systems with fewer than twenty-five outlets[.]

E. Carl Mills owned plant or property for distributing water and for the treatment of sewage. He, through his personal trust, owned the water and sewer system from its construction through 2007 when it was transferred to Carriage Oaks LLC.

F. Carl Mills owned a water and sewer system devoted to the public use. Respondents assert that the Commission lacks jurisdiction over Respondents because the water and sewer system are not operated for the public use. While not listed as a requirement within the applicable statutes, Missouri courts have held that before the Commission has authority over a utility it must be devoted to a public use.<sup>55</sup>

In *Hurricane Deck Holding Co. v. Pub. Serv. Comm'n*, the Western Court of Appeals determined that, "...Hurricane Deck could constitute a "public utility," even though its

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<sup>53</sup> § 386.250(3), RSMo.

<sup>54</sup> § 386.250(4), RSMo.

<sup>55</sup> *State ex rel. M.O. Danciger & Co. v. Pub. Serv. Comm'n*, 275 Mo. 483, 205 S.W. 36, 40 (1918)

services were limited to the two subdivisions in which its water and sewer systems were located, where it offered service indiscriminately to all persons located within that service area.”<sup>56</sup> Respondents cite *Orlor v. Folsom Ridge, LLC*, WC-2006-0082 for authority that providing water services to current and future subdivision residents did not amount to being a public utility. *Orlor* is distinguishable from *Hurricane Deck* and the present matter because in *Orlor* connecting to the water and sewer system was both optional for individuals within an area and was offered only to individuals in that area who became members of the Big Island Homeowners Association (a discrete group of people).<sup>57</sup>

Here, all residents of Carriage Oaks Estates must be members of the Carriage Oaks Homeowners Association, and all residents must connect to the water and sewer system. Additionally, no evidence or testimony was introduced at the evidentiary hearing indicating water or sewer service was refused to any residents of the Carriage Oaks Estates subdivision. Therefore the water and sewer system owned by Carl Mills were devoted to the public use.

G. Carl Mills owned a utility operating for gain. Respondents also assert that the Commission lacks jurisdiction over Respondents because they are not operating a water or sewer system for gain. The definitions found at 386.020(49), RSMo and 386.020(59), RSMo require that utility services are being offered for gain. Respondents equate gain with making money or profit. Carl Mills stated multiple times at the evidentiary hearing that the water and sewer system had been provided for 14 years for free.<sup>58</sup> He testified that prior to 2014 the only expenses charged to homeowners were for chemicals and testing related to

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<sup>56</sup> *Hurricane Deck Holding Co. v. PSC*, 289 S.W.3d 260, 266 (Mo. App., W.D. 2009)

<sup>57</sup> *Orlor v. Folsom Ridge, LLC*, Report and Order, 16 Mo. P.S.C. 3d 28, 2007, Page 74

<sup>58</sup> Tr., Pages 89, 90, 93

the water and sewer system. Respondents' argument, from Mr. Mills' testimony, is that they did not make a profit, and in fact operated at a loss.<sup>59</sup>

Providing water and sewer services for gain has been interpreted by the courts to mean providing water and sewer services for compensation.<sup>60</sup> The utility does not even need to receive compensation, issuing the bill is sufficient.<sup>61</sup> *Hurricane Deck* addresses the potentiality of operating at a loss:

"...Hurricane Deck seeks — a legal rule exempting entities from PSC regulation unless and until the PSC first determined that the entity's "collections . . . are in excess of the expenditures necessary to operation of those systems."<sup>62</sup>

The court found such a determination would be inconsistent with the overriding purpose of public utility regulatory laws. Therefore, because Carl Mills issued assessments to the homeowners for water and sewer services he was operating for gain.

H. Carl Mills is a person who owns a utility devoted to the public use, and operated for gain. Therefore, Carl Mills is a water corporation as defined by Section 386.020(59) RSMo. and is subject to the Commission's jurisdiction.

I. The Commission has no jurisdiction over the sewer system. Section 386.020(49) RSMo creates an exemption to the definition of sewer corporation. It states that, "except that the term shall not include sewer systems with fewer than twenty-five outlets[.]" Commission Rule 4 CSR 240-60.010(3)(K), defines (sewer) outlet as a service sewer connection to the collecting sewer. Commission Rule 4 CSR 240-60.010(3)(E), defines service sewers to customers as any sewer pipe extending from the customer's residence or other structure to the utility's collecting sewer. Commission Rule 4 CSR 240-

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<sup>59</sup> Tr., Pages 122-124

<sup>60</sup> *Hurricane Deck Holding Co. v. PSC*, 289 S.W.3d 260, 267 (Mo. App., W.D. 2009)

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 268

60.010(3)(D), defines collecting sewers as sewers, including force lines, gravity sewers, interceptors, laterals, trunk sewers, manholes, lamp holes and necessary appurtenances, including service wyes.

Seven lots are currently developed with houses in phase one.<sup>63</sup> Carl Mills testified that phase one and two are ready for immediate connection to the water and sewer system.<sup>64</sup> He also testified that there are sewer mains that run through phase one and two.<sup>65</sup> “Service sewers to customers” would be the line running from the sewer main to the house. No evidence was presented regarding the existence of those lines absent a house.

Additionally the Declaration of Restrictive Covenants and Easements states that, “[p]rior to utilizing the wastewater central collection and treatment facility, all property owners shall have installed an approved “on-site” plumbing system to transfer all wastewater generated by the subject property to the collection and treatment facility.”<sup>66</sup> Without a service sewer line there is no “service sewer connection to the collecting sewer.” Under that analysis there are seven sewer outlets, and the sewer system is outside the Commissions jurisdiction.

J. Carl Mills did not seek the Commission’s approval before transferring the water assets. Carl Mills transferred the water and sewer assets several times and for various purposes. The first transfer was from his personal trust to Carriage Oaks LLC. That transfer was done so that he might sell ownership interest in the subdivision. Having established that Carl Mills was under the jurisdiction of the Commission at the time he was providing water services to the subdivision for compensation; the Commission’s approval

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<sup>63</sup> Tr., Page 30

<sup>64</sup> Tr., Page 82

<sup>65</sup> Tr., Page 82

<sup>66</sup> Ex. 14, Page 6



was required before the water assets could have been transferred or sold pursuant to Section 393.190.1, RSMo.

K. The controlling statute, 393.190(1), RSMo states:

No... water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage, or otherwise dispose of ... the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public... without having first secured from the commission an order authorizing it so to do. Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing same shall be void.

Because Mr. Mills did not seek Commission approval before transferring the water assets to Carriage Oaks LLC, that transfer is void. Any subsequent transfer of water assets without Commission approval would be void as well.

L. Section 393.170(2), RSMo states:

No such corporation shall exercise any right or privilege under any franchise hereafter granted, or under an franchise heretofore granted but not heretofore actually exercised ... without first having obtained the permission and approval of the commission.

A Certificate of Convenience and Necessity is a mandate to provide service to the area covered by it.<sup>67</sup> Because Carl Mills falls under the Commission's jurisdiction as a water corporation he needs a certificate from the commission before he can lawfully provide water services to customers within the Carriage Oaks Estates subdivision.

#### **IV. Discussion**

Carl Mills established the Carriage Oaks Estates subdivision in 2001. His company Distinctive Designs constructed the subdivision and water and sewer system with the exception of the well. The water and sewer assets were owned by his personal trust which

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<sup>67</sup> *State ex rel. Harline v. Pub. Serv. Comm'n of Mo.*, 343 S.W.2d 177 (Mo. Ct. App. 1960).

he controlled. Entities within his ownership, management, and control provided water and sewer services to the houses in the subdivision. The Declaration of Restrictive Covenants and Easements for Carriage Oaks Estates authorized Mr. Mills to transfer or sell the water and sewer assets without any approval from the homeowners association. His substantial voting power within the homeowners association meant that he could manage the water and sewer assets unchecked. Respondents have pointed out that the homeowners were all subject to the Declaration of Restrictive Covenants and Easements, and association bylaws upon purchasing their properties. This incorrectly assumes that the homeowners can contract away regulatory requirements through the agreement of private parties.

The record does not demonstrate any abuse by Carl Mills in regard to rates or safety. Carl Mills developed a subdivision and provided water and sewer services to the subdivision. He offered these services at cost for a period of time and appeared to provide safe service to the subdivision. What brings him within the Commission's jurisdiction for regulation is the fact that water corporations are required to obtain a certificate of convenience and necessity to provide water service to customers. The protections afforded the community by regulation are not just from actual abuse, but from potential abuse. Carl Mills started serving customers under an initial structure that should have been regulated so no service or transfers can occur without Commission approval.

Complainants allege that they have no say in the operation or management of the water or sewer system. Complainants ask that the water system and sewer system be placed with an entity where they have input in how the systems are managed. The Commission has no power to remove the water assets from their current owner, and it has no jurisdiction over the sewer system; this relief the Complainants request cannot be granted. However, in regard to the water system Respondents have engaged in a regulated

activity and are subject to the statutes governing that activity as well as the consequences for failing to comply with applicable statutes.

### **V. Decision**

In making this decision, the Commission considered the positions and arguments of all of the parties. After applying the facts to the law to reach its conclusions, the Commission concludes that the substantial and competent evidence in the record supports the conclusion that Carl Mills is a water corporation within the definition of 386.020(59) RSMo, and as such is subject to Commission jurisdiction.

Carl Mills' transfer of water assets to Carriage Oaks LLC, and any subsequent transfers are void under Section 393.190(1), RSMo.

Carl Mills does not have a Certificate of Convenience and Necessity to provide water for distribution within the state of Missouri. Carl Mills must apply for a Certificate of Convenience and Necessity to continue to operate that water system.

Complainants have failed to show by a preponderance of the evidence that there are more than 25 sewer outlets in the Carriage Oaks Estates subdivision. Therefore, Respondents are not a sewer corporation within the definition of Section 386.020(49) RSMo., and are currently outside the Commission's jurisdiction.

#### **THE COMMISSION ORDERS THAT:**

1. Any transfers of water assets made without Missouri Public Service Commission approval are void.

2. Carl Mills shall apply to the Missouri Public Service Commission for a Certificate of Convenience and Necessity.

3. Upon obtaining a Certificate of Convenience and Necessity, Carl Mills shall initiate a rate case with the Missouri Public Service Commission.

4. This order shall be effective May 14, 2018.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

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

Clark, Regulatory Law Judge

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Confluence Rivers	)	
Utility Operating Company, Inc. to Acquire Certain	)	
Water and Sewer Assets, For a Certificate of	)	<b><u>File No. WM-2018-0116</u></b>
Convenience and Necessity, and, in Connection	)	<b><u>File No. SM-2018-0117</u></b>
Therewith, To Issue Indebtedness and Encumber	)	
Assets	)	

**ORDER DENYING REQUEST TO JOIN PARTIES**

**EVIDENCE, PRACTICE AND PROCEDURE**

**§22 Parties**

Section 393.190.1, RSMo does not require the seller of a public utility to be joined as a party to an application for authority to acquire the assets of the public utility to be sold.

**SEWER**

**§4 Transfer, lease and sale**

Section 393.190.1, RSMo does not require the seller of a public utility to be joined as a party to an application for authority to acquire the assets of the public utility to be sold.

**WATER**

**§4 Transfer, lease and sale**

Section 393.190.1, RSMo does not require the seller of a public utility to be joined as a party to an application for authority to acquire the assets of the public utility to be sold.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 25<sup>th</sup> day of  
April, 2018.

In the Matter of the Application of Confluence Rivers	)	
Utility Operating Company, Inc. to Acquire Certain	)	
Water and Sewer Assets, For a Certificate of	)	<b><u>File No. WM-2018-0116</u></b>
Convenience and Necessity, and, in Connection	)	<b><u>File No. SM-2018-0117</u></b>
Therewith, To Issue Indebtedness and Encumber	)	
Assets	)	

**ORDER DENYING REQUEST TO JOIN PARTIES**

Issue Date: April 25, 2018

Effective Date: April 25, 2018

On March 15, 2018, the Office of the Public Counsel (“OPC”) filed a Response to Staff Recommendation and Motion for Hearing. In that motion, OPC moves the Commission to enjoin the parties who wish to sell their water and sewer assets to Confluence Rivers Utility Operating Company (“Confluence Rivers”), and to suspend these proceedings until those sellers are parties.

OPC relies on Section 393.190.1 RSMo, which prohibits anyone from selling public utility assets used to serve the public without a prior Commission order. The Staff of the Commission and Confluence Rivers oppose OPC’s request.

The Commission will deny OPC’s request. The plain language of the statute upon which OPC relies states that “. . . *Any person seeking any order* under this subsection . . . .”<sup>1</sup> Thus, the General Assembly contemplated that the seller of public utility assets is not

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<sup>1</sup> Section 393.190 RSMo 2016 (emphasis supplied).

the only party who can request relief under this subsection. This conclusion is consistent with the purpose of the statute, which is “. . . to ensure the continuation of adequate service to the public served by the utility.”<sup>2</sup> Furthermore, the relevant Commission rules do not require the assets’ sellers to be parties in the case.<sup>3</sup> Confluence Rivers’ application for relief under Section 393.190 RSMo is not insufficient due to the sellers not being parties.

For these reasons, the Commission will deny OPC’s request.

**THE COMMISSION ORDERS THAT:**

1. The Office of the Public Counsel’s request to join certain parties and to suspend these proceedings is denied.
2. This order shall become effective when issued.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Hall, Chm., Kenney, Rupp, and  
Silvey, CC., concur.  
Coleman, C., absent.

Pridgin, Deputy Chief Regulatory Law Judge

<sup>2</sup> *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. 1980).

<sup>3</sup> Commission Rules 4 CSR 240-3.310, 605.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Union Electric        )  
Company d/b/a Ameren Missouri for Approval                )  
Of Efficient Electrification Program                         )        **File No. ET-2018-0132**

**ORDER DENYING MOTION TO DISMISS AND  
DENYING MOTION TO REJECT**

**ELECTRIC**

**§9 Jurisdiction and powers of the State Commission**

**§35 Extensions**

The Commission found that it had jurisdiction to review and authorize various incentive and energy efficiency programs and line extension tariffs.

**§13.1 Energy Efficiency**

The Commission found that the proposed line-extension tariffs were not an issue that would violate the policy against single-issue ratemaking if the Commission were to approve them. Thus, the denied Staff's motion to reject the line extension tariff.

**§13.1 Energy Efficiency**

The Commission concluded that the risks and benefits of the particular various incentive and energy efficiency programs were factual issues to be heard by the Commission and were not reason for dismissal without an opportunity for a hearing.

**EVIDENCE, PRACTICE AND PROCEDURE**

**§2 Jurisdiction and powers**

The Commission found that it had jurisdiction to review and authorize various incentive and energy efficiency programs and line extension tariffs.

**§25 Pleadings and exhibits**

The Commission declined to dismiss the application for vagueness since Ameren Missouri clarified its request for waiver and it was limited to 4 CSR 240-14.020(1)(B) and (D).

**RATES**

**§104 Electric and power**

The Commission found that the proposed line-extension tariffs were not an issue that would violate the policy against single-issue ratemaking if the Commission were to approve them. Thus, it denied Staff's motion to reject the line extension tariff.



**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 2<sup>nd</sup> day of May, 2018.

In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Approval of Efficient Electrification Program	) ) ) )	<b>File No. ET-2018-0132</b> Tariff Nos. YE-2018-0103, YE-2018-0104, & YE-2018-0105
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**ORDER DENYING MOTION TO DISMISS AND  
DENYING MOTION TO REJECT**

Issue Date: May 2, 2018

Effective Date: May 2, 2018

On February 22, 2018, Union Electric Company d/b/a Ameren Missouri filed an application and accompanying tariff sheets seeking approval of two new tariffed programs that are collectively referred to as the “Charge Ahead” program. The application also seeks approval of modifications to Ameren Missouri’s existing distribution system extension procedures, variances from portions of the Commission’s regulations regarding promotional practices, and a request for an accounting authority order (AAO) for the Charge Ahead program.

On April 3, 2018, the Staff of the Missouri Public Service Commission (Staff) filed its recommendation and a request for an evidentiary hearing. Staff recommended that tariff sheets, filed as Tracking No. YE-2018-0103, related to Ameren Missouri’s line extension policy be rejected as single-issue ratemaking. Staff also recommended that tariff sheets filed as Tracking Nos. YE-2018-0104 and YE-2018-0105 be suspended for 120 days.

Ameren Missouri responded to Staff's recommendations. Ameren Missouri argues that its line extension tariff filing does not constitute single-issue ratemaking. Ameren cites to the Commission's order in File No. GT-2016-0026 in which the Commission stated that Laclede Gas Company's line extension tariffs did not change the amount that the company could charge its customers for natural gas service, but would only change the terms and conditions by which the company offered that service to its customers.<sup>1</sup> In that case, the Commission cited to a Missouri Court of Appeals case<sup>2</sup> that supported a finding that:

Tariffs that change terms and conditions of service are different than tariffs that change the rates charged by the utility. As a result, the relevant factors to consider regarding those tariffs are also different, and do not fall within the prohibited practice of single-issue ratemaking.<sup>3</sup>

For similar reasons, the Commission finds that the line-extension tariffs proposed by Ameren Missouri are not an issue that would violate the policy against single-issue ratemaking if the Commission were to approve them in this case. Therefore, the Commission will deny Staff's motion to reject the line extension tariff. In its recommendation, however, Staff states that its discovery was not complete. If, during the course of this proceeding, additional facts come to light convincing the Commission that this is single-issue ratemaking, the Commission will take the appropriate action on its own motion.

Also pending before the Commission is the Office of the Public Counsel's (Public Counsel) April 5, 2018 motion to dismiss Ameren Missouri's application. Public Counsel

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<sup>1</sup> *Order Denying Staff's Motion to Reject Tariffs*, File No. GT-2016-0026 (issued September 2, 2015).

<sup>2</sup> *State ex rel. Mo Gas Energy v. Public Service Commission*, 210 S.W.3d 330, 334 (Mo. App. W.D. 2006).

<sup>3</sup> *Order Denying Staff's Motion to Reject Tariffs*, File No. GT-2016-0026 (issued September 2, 2015) at p. 5.

argues in its motion that the Commission lacks jurisdiction to authorize the Charge Ahead programs because there is no specific authorization for the Commission to do so in the Missouri statutes. Public Counsel also argues that the Commission should reject the Charge Ahead programs “because Ameren Missouri proposes that its captive ratepayers pay for the program subsidies and associated line extensions”<sup>4</sup> which would expose those ratepayers to the risk of inefficiencies created in a competitive market. Finally, Public Counsel moves for the dismissal of Ameren Missouri’s application for a variance or waiver of the Commission’s promotion practices rules because it fails to specify the particular rule for which it is requesting a variance or waiver. In the alternative to dismissal, Public Counsel requested suspension of the tariff sheets and requested a hearing on the issues.

In response to Public Counsel, Ameren Missouri argues that the Commission has jurisdiction to authorize its proposed Charge Ahead program. Ameren Missouri states that well-settled case law confirms that the Commission is vested not only with the expressly stated statutory powers to approve various incentive and energy efficiency programs, but the Commission is also vested with all other powers “*necessary and proper to carry out fully and effectually all such powers so delegated*, and necessary to give full effect to the [Public Service Commission Law].”<sup>5</sup> Thus, Ameren Missouri argues the premise that there must be a statute that expressly authorizes these programs is wrong as a matter of law. The Commission agrees that it has jurisdiction to review and authorize such programs and line extension tariffs.

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<sup>4</sup> *The Office of the Public Counsel’s Motion to Dismiss Union Electric Company d/b/a Ameren Missouri’s Application*, (filed April 5, 2018), at para. 3.

<sup>5</sup> (Emphasis added). *State ex rel. Pitcairn v. Pub. Serv. Comm’n*, 111 S.W.2d 982, 986 (Mo. App. K.C. 1937), quoting *Public Service Commission v. St. Louis–San Francisco Railway Co.*, 256 S.W. 226, 228 (Mo. banc 1923).

With regard to Public Counsel's other points, the risks and benefits of the particular programs are issues to be heard by the Commission and not reason for dismissal without an opportunity for a hearing. Further, the Commission is also not inclined to dismiss an application due to Ameren Missouri's broad request for a variance from the entirety of Chapter 14<sup>6</sup> of the Commission's regulations related to promotional practices. In its response, Ameren Missouri clarified that it made its broad request in case the Commission interpreted the entirety of Chapter 14 as applicable. However, its request for waiver could be properly limited to 4 CSR 240-14.020(1)(B) and (D). The Commission is satisfied with the limitation on the request for a variance and finds no reason to dismiss the application for vagueness.

The Commission has suspended the proposed tariffs until August 21, 2018. The parties met in a procedural conference on April 23, 2018, to discuss potential settlement and a procedural schedule. The parties will be directed to file a proposed procedural schedule as set out below.

**THE COMMISSION ORDERS THAT:**

1. The motion to reject tariffs filed by the Staff of the Missouri Public Service Commission is denied.
2. The motion to dismiss filed by the Office of the Public Counsel is denied.
3. No later than May 9, 2018, the parties shall jointly file a proposed procedural schedule.

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<sup>6</sup> 4 CSR 240-14.

4. This order is effective when issued.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff  
Secretary

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

Nancy Dippell, Senior Regulatory Law Judge

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of Missouri-American Water Company's )  
 Request for Authority to Implement General Rate ) **File No. WR-2017-0285**  
 Increase for Water and Sewer Service Provided in )  
 Missouri Service Areas )

**REPORT AND ORDER**

**ACCOUNTING**

**§42 Accounting Authority Orders**

Elective replacement of lead service line performed for the purposes of providing safe and adequate service by avoiding the risks of partial lead service line replacement was found as a reason the Commission continued to allow of a water utility to defer and book the costs of customer-owned lead service line replacements under a previously approved Accounting Authority order. The Commission determined that public policy supports a full, as opposed to a partial, lead service line replacement as partial lead service line replacements have the potential to disrupt lead in service lines, presenting a serious health risk.

**§42 Accounting Authority Orders**

Extending the normal AAO amortization time period of 3-5 years to a 10 year amortization was justified due to the extraordinary nature and extent of a water utility's lead service line replacement program.

**EVIDENCE, PRACTICE AND PROCEDURE**

**§2 Jurisdiction and powers**

While rejecting a party's motion for a pilot project to gather information as duplicative of existing efforts, the Commission expressed its approval for gathering further information concerning the company's lead service line replacement program, and thus set up a separate working group that would not be a contested case to assist interested parties in discussing various aspects of the program.

**§24 Procedures, evidence and proof**

While rejecting a party's motion for a pilot project to gather information as duplicative of existing efforts, the Commission expressed its approval for gathering further information concerning the company's lead service line replacement program, and thus set up a separate working group that would not be a contested case to assist interested parties in discussing various aspects of the program.

**RATES****§18 Consolidation or sale**

The Commission considers many characteristics when deciding a request for single tariff pricing. Items considered include: centralization of workforce; local versus tariff-area-wide management; financing sources; support for acquisition of small, underperforming systems; corporate costs; distribution of customers; and applicability of infrastructure system replacement surcharges among other considerations.

**§18 Consolidation or sale**

The Commission determined that the benefits of consolidation presented did not outweigh the unique circumstance of St. Louis County being the sole county in the company's service area to qualify for infrastructure system replacement surcharges. Combining the water utility's three districts into one would disadvantage customers in St. Louis County by being the only customers paying the additional surcharge, while still contributing to improvements in other areas.

**§20 Costs and expenses**

A water utility's program to replace lead service lines, when not based on a legal requirement, requires the utility be made whole for the effort, but the utility is not entitled to a profit from the initiative. The Commission determined the distinction while noting the utility should be commended for its efforts.

**§77 Billing methods and practices**

The Commission found that new automated meter technology, along with the benefits of monthly billing, were appropriate reasons to move quarterly billed customers to monthly billing. Monthly billing helps customers evaluate their usage and avoids prolonged water leaks.

**§83 Cost elements involved****§118 Method of allocating costs**

The Commission considers that an important goal of rate design is to allow the utility to recover costs from those who cause the costs to be incurred while still allowing customers control over their bills through efficiency. Customer-related costs are generally recovered through the customer charge, which serves to prevent higher usage customers from subsidizing lower usage customers, sends all customers more accurate pricing signals, and provides more stable and predictable funding for utilities' fixed costs.

**§83 Cost elements involved****§118 Method of allocating costs****§119 Rate design, class cost of service for electric utilities**

Where feasible, direct assignment of costs to the responsible customer class is the preferred method of allocation.

**WATER****§13 Construction and equipment****§14 Maintenance****§15 Additions and betterments**

The Commission determined that public policy supports a full, as opposed to a partial, lead service line replacement as partial lead service line replacements have the potential to disrupt lead in service lines, presenting a serious health risk.

**§14 Maintenance****§15 Additions and betterments**

Tariff language specifying the customer's responsibility for their portion of the service line was determined by the Commission to not be a prohibition of the company's efforts to enter into mutual agreements with each customer to replace the customer's lead service lines. The customer still owns the line, is not required to consent to the replacement, and the company is not obligated to replace the customer-owned portion.

**§16 Rates and revenues**

The Commission considers many characteristics when deciding a request for single tariff pricing. Items considered include: centralization of workforce; local versus tariff-area-wide management; financing sources; support for acquisition of small, underperforming systems; corporate costs; distribution of customers; and applicability of infrastructure system replacement surcharges among other considerations.

**§16 Rates and revenues**

The Commission determined that the benefits of consolidation presented did not outweigh the unique circumstance of St. Louis County being the sole county in the company's service area to qualify for infrastructure system replacement surcharges. Combining the water utility's three districts into one would disadvantage customers in St. Louis County by being the only customers paying the additional surcharge, while still contributing to improvements in other areas.

**§16 Rates and revenues**

Where feasible, direct assignment of costs to the responsible customer class is the preferred method of allocation.

**§16 Rates and revenues****§17 Return**

A water utility's program to replace lead service lines, when not based on a legal requirement, requires the utility be made whole for the effort, but the utility is not entitled to a profit from the initiative. The Commission determined the distinction while noting the utility should be commended for its efforts.



**§31 Billing practices**

The Commission found that new automated meter technology, along with the benefits of monthly billing, were appropriate reasons to move quarterly billed customers to monthly billing. Monthly billing helps customers evaluate their usage and avoids prolonged water leaks.

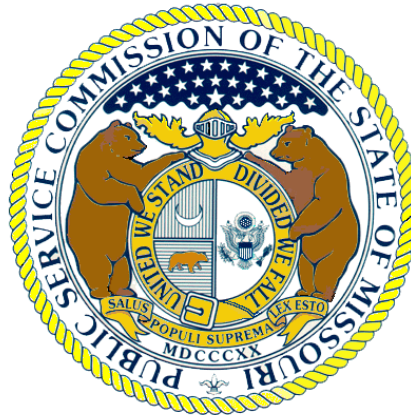
**§32 Accounting Authority orders**

Elective replacement of lead service line performed for the purposes of providing safe and adequate service by avoiding the risks of partial lead service line replacement was found as a reason the Commission continued to allow of a water utility to defer and book the costs of customer-owned lead service line replacements under a previously approved Accounting Authority order. The Commission determined that public policy supports a full, as opposed to a partial, lead service line replacement as partial lead service line replacements has the potential to disrupt lead in service lines, presenting a serious health risk.

**§32 Accounting Authority orders**

Extending the normal AAO amortization time period of 3-5 years to a 10 year amortization was justified due to the extraordinary nature and extent of a water utility's lead service line replacement program.

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of Missouri-American Water )  
 Company's Request for Authority to Implement ) File No. WR-2017-0285, et al.  
 General Rate Increase for Water and Sewer )  
 Service Provided in Missouri Service Areas. )

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## REPORT AND ORDER

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**Issue Date:** May 2, 2018

**Effective Date:** May 28, 2018

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

In the Matter of Missouri-American Water )  
 Company’s Request for Authority to Implement ) **File No. WR-2017-0285, et al.**  
 General Rate Increase for Water and Sewer )  
 Service Provided in Missouri Service Areas. )

**REPORT AND ORDER**

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**SENIOR REGULATORY LAW JUDGE:** Kim S. Burton

## **REPORT AND ORDER**

### **I. Procedural History**

#### **A. Tariff Filings, Notice, and Intervention**

On June 30, 2017, Missouri-American Water Company (MAWC) filed tariff sheets designed to implement a general rate increase for water and sewer utility services. The tariff sheets bore an effective date of July 31, 2017. In order to allow sufficient time to study the effect of the tariff sheets and to determine if the rates established by those sheets are just, reasonable, and in the public interest, the tariff sheets were suspended until May 28, 2018.

The Commission directed notice of the filings and set an intervention deadline. The Commission granted intervention requests from the following entities: Midwest Energy Consumers Group (“MECG”), Consumers Council of Missouri (“Consumers Council”), City of St. Joseph, Missouri (“St. Joseph”), Triumph Foods, LLC (“Triumph”), Missouri Industrial Energy Consumers (“MIEC”), Missouri Department of Economic Development – Division of Energy (“DE”), Utility Workers Union of America Local 335 (“UWUA”), City of Joplin, Missouri (“Joplin”), Kansas City Power & Light Company (“KCP&L”), KCP&L Greater Missouri Operations Company (“GMO”), Union Electric Company d/b/a Ameren Missouri, Public Water Supply District No. 1 of Andrew County (“PWSD1”), Public Water Supply District No. 2 of Andrew County (“PWSD2”), City of Warrensburg, Missouri (“Warrensburg”), City of Jefferson City, Missouri (“Jefferson City”), the City of Riverside, Missouri (“Riverside”), and the Empire District Electric Company (“Empire”).

The Commission consolidated the sewer rate case, File No. SR-2017-0286, with the water rate case, File No. WR-2017-0285.<sup>1</sup>

## **B. Test Year and True-Up**

On August 9, 2017, the Commission issued an order directing the parties to use a test year of the 12 months ending December 2016, with an update period of the six months ending June 2017, and a true-up period of the six months ending December 2017. The Commission also stated parties could present further adjustments for the Commission's consideration based on projected forecasted data past December 2017.

Although a true-up hearing was scheduled, MAWC and the Office of the Public Counsel ("OPC") filed a *Stipulation of Fact Related to True-Up and Motion to Suspend True-Up Procedural Schedule*.<sup>2</sup> The Commission granted the unopposed motion and canceled the true-up schedule.

## **C. Local Public Hearings**

To give MAWC's customers an opportunity to respond to the requested rate increase, the Commission conducted local public hearings in Mexico, Riverside, Warsaw, Warrensburg, St. Joseph, Maryland Heights, Ferguson, Arnold, St. Louis, and Jefferson City.<sup>3</sup>

## **D. Stipulations and Agreements**

Four separate non-unanimous stipulations and agreements were filed that resolved a number of the issues in dispute between the parties. The issues resolved in these three

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<sup>1</sup> EFIS Item No. 20. Order Directing Notice, Consolidating Cases, Establishing Deadlines, and Setting Procedural Conference.

<sup>2</sup> EFIS Item No. 419.

<sup>3</sup> EFIS Item No. 7. Order Setting Local Public Hearings.

partial stipulations and agreements will not be addressed further in this report and order, except as they may relate to any unresolved issues.

### **E. Evidentiary Hearing**

The evidentiary hearing was held on March 5-8, 2018. During the hearings, the parties presented evidence relating to the unresolved issues previously identified by the parties.

## **II. General Matters**

### **A. General Findings of Fact**

1. MAWC is a Missouri corporation that provides water service to approximately 464,187 customers and sewer service to approximately 12,844 customers throughout the State of Missouri. MAWC's service territory includes: Branson, Brunswick, Hollister, Houston Lake, Jefferson City, Joplin, Loma Linda, Mexico, Parkville, Platte Woods, Riverside, Reeds Spring, Sedalia, St. Charles, St. Joseph, St. Louis metropolitan area, Warrensburg, Warsaw, and other outlying areas in the State of Missouri.<sup>4</sup>

2. MAWC is a wholly owned subsidiary of American Water Works Company, Inc. ("American Water"), the largest investor-owned water and wastewater utility company in the United States.<sup>5</sup> Headquartered in Voorhees, New Jersey, American Water has regulated water utility subsidiaries in 16 states and provides a variety of services to approximately 15 million people in over 47 states and parts of Canada.<sup>6</sup>

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<sup>4</sup> Ex. 101, Staff Cost of Service Report, p 2.

<sup>5</sup> Id.

<sup>6</sup> Ex. 114 Smith Rebuttal, p 12.



3. American Water created the wholly-owned subsidiary, American Water Capital Corporation (“AWCC”), for the special purpose of serving as the primary funding vehicle for American Water and its subsidiaries, including MAWC.<sup>7</sup>

4. MAWC’s financial management is heavily integrated with AWCC and its other operations. MAWC has a Financial Services Agreement with AWCC through which AWCC arranges short-term borrowing and performs cash management for MAWC. AWCC is the primary source of long-term and short-term debt financing for MAWC. As recently as June 30, 2017, over 95 percent of the debt on MAWC’s balance sheet was received by means of debt issuance by AWCC.<sup>8</sup> The credit quality of AWCC is based on American Water’s consolidated credit quality.<sup>9</sup>

5. On June 30, 2017, MAWC filed tariff sheets seeking an increase in the Company’s annual base rate revenues of \$74,674,745, an increase of approximately 25.4% in rate revenues. Absent MAWC’s proposed Infrastructure System Replacement Surcharge (“ISRS”) calculations, MAWC sought a combined water and sewer rate revenue increase of approximately \$57,125,669 annually, an increase of approximately 19.4%.<sup>10</sup>

6. On March 1, 2018, the parties filed a Unanimous Stipulation and Agreement that resolved nearly all revenue requirement issues and set a total revenue requirement for MAWC of \$318 million; this is an approximate \$24 million increase over the previously authorized revenues, or an approximate 8.16% increase.<sup>11</sup>

7. Since rates went into effect from MAWC’s last general rate case in 2016,<sup>12</sup> MAWC has acquired small water and wastewater systems in the state. Namely, Jaxon

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<sup>7</sup> Ex101, Staff Cost of Service Report, p 32.

<sup>8</sup> Ex. 101, Staff Cost of Service Report p 33.

<sup>9</sup> Ex. 101, Staff Cost of Service Report, p 32.

<sup>10</sup> EFIS Item 2. Ex. 102, Staff Cost of Service Report, p. 1.

<sup>11</sup> EFIS Item No. 261, Stipulation and Agreement, March 1, 2018.

<sup>12</sup> See File No. WR-2015-0301.

Estates Water, Benton County Sewer, Woodland Manor Water, Jaxson Estates Sewer, and Village of Wardsville Water and Sewer.<sup>13</sup>

8. At the time the Company filed its new tariff sheets, MAWC was also in the process of acquiring Pevely Farms Water and Sewer, Spokane Highlands Water, Homestead Estates Sewer, and Radcliffe Place Sewer.<sup>14</sup>

9. Both the Company and Staff performed a Class Cost of Service (“CCOS”) study. As part of a settlement, parties agreed to use Staff’s calculations for billing determinants. When direct assignment of cost was not possible, Staff used the base-extra capacity method described in the American Water Works Association manual of water supply practices, Principles of Water Rates, Fees and Charges, Seventh Edition when calculating its CCOS study. This method is widely accepted for allocating costs to various customer classes.<sup>15</sup>

10. The long-standing policy of the Commission is to only include in customer rates those investments that are used and useful.<sup>16</sup>

## **B. General Conclusions of Law**

MAWC is a “water corporation,” “sewer corporation” and “public utility” as defined in Sections 386.020(43) and 386.020(49), 386.020(59) RSMo, respectively, and as such is subject to the personal jurisdiction, supervision, control and regulation of the Commission under Chapters 386 and 393 of the Missouri Revised Statutes. The Commission’s subject matter jurisdiction over MAWC’s rate increase request is established under Section 393.150, RSMo.

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<sup>13</sup> Ex. 101 Staff Cost of Service Report, p 3.

<sup>14</sup> Ex. 101 Staff Cost of Service Report, p 3.

<sup>15</sup> Ex. Dietrich 12.13.17 p.3-4.

<sup>16</sup> Ex. 500, Meyer Direct. P6.

Sections 393.130 and 393.140, RSMo, mandate that the Commission ensure that all utilities are providing safe and adequate service and that all rates set by the Commission are just and reasonable. Section 393.150.2, RSMo, makes clear that at any hearing involving a requested rate increase the burden of proof rests on the corporation seeking the rate increase. As the party requesting the rate increase, MAWC bears the burden of proof. In order to carry its burden of proof, MAWC must meet the preponderance of the evidence standard.<sup>17</sup>

OPC is a party to this case pursuant to Section 386.710(2), RSMo<sup>18</sup>, and by Commission Rule 4 CSR 240-2.010(10). Staff is a party to this case pursuant to Commission Rule 4 CSR 240-2.010(10).

The Commission finds that any given witness's qualifications and overall credibility are not dispositive as to each and every portion of that witness's testimony. The Commission gives each item or portion of a witness's testimony individual weight based upon the detail, depth, knowledge, expertise, and credibility demonstrated with regard to that specific testimony. Consequently, the Commission will make additional specific weight and credibility decisions throughout this order as to specific items of testimony as is necessary.<sup>19</sup>

Any finding of fact reflecting that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to

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<sup>17</sup> *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996), citing to, *Addington v. Texas*, 441 U.S. 418, 423, 99 S.Ct. 1804, 1808, 60 L.Ed.2d 323, 329 (1979).

<sup>18</sup> Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016 and subsequently revised or supplemented.

<sup>19</sup> Witness credibility is solely a matter for the fact-finder, "which is free to believe none, part, or all of the testimony". *State ex rel. Public Counsel v. Missouri Public Service Comm'n*, 289 S.W.3d 240, 247 (Mo. App. 2009).

that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.<sup>20</sup>

### **III. Disputed Issues**

#### **A. Lead Service Line Replacement Program**

##### **Findings of Fact**

11. The situation in Flint, Michigan increased scrutiny across the country concerning lead concentration in water systems.<sup>21</sup> Lead is a naturally occurring metal that is harmful if inhaled or swallowed. Exposure to lead can cause a variety of adverse health effects, including developmental delays in babies and toddlers and cardiovascular disease and decreased kidney functions in adults.<sup>22</sup>

12. Lead can leach into water over time through corrosion, which is the wearing away of metal due to a chemical reaction between water and plumbing materials. Lead in tap water usually comes from the decay of old lead-based pipes, fixtures, or from lead solder that connects water pipes.<sup>23</sup>

13. Lead solder was banned for use on water pipes in 1986. Congress also set limits on the amount of lead that can be used in plumbing.<sup>24</sup> Federal and state regulations require providers of public drinking water to regularly test for contaminants such as lead.<sup>25</sup>

14. While centralized treatment that adjusts the pH level in water may minimize lead corrosion, plumbing in older communities (including much of MAWC's service territory)

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<sup>20</sup> An administrative agency, as fact finder, also receives deference when choosing between conflicting evidence. *State ex rel. Missouri Office of Public Counsel v. Public Service Comm'n of State*, 293 S.W.3d 63, 80 (Mo. App. 2009)

<sup>21</sup> Ex. 1, Aiton Direct, p 16.

<sup>22</sup> Ex. 27, Naumick Rebuttal, Schedule GAN-1, p 6.

<sup>23</sup> Ex. 2, Aiton Rebuttal, Schedule BWA-1, p 3.

<sup>24</sup> Ex. 27, Naumick Rebuttal, Schedule GAN-1, p 4-5. 42 U.S.C. § 300g-6.

<sup>25</sup> Ex. 2, Aiton Rebuttal, Schedule BWA-1, p 3-6.

contains the type of pipes where lead contamination is an increased risk.<sup>26</sup> The installation of lead pipe for water service lines dates back 50 to 100+ years ago.<sup>27</sup>

15. A lead service line (“LSL”) is a term used to indicate that the service line connecting the water distribution main in the street to the customer’s home is made of lead pipe.<sup>28</sup> With a full LSL replacement, all segments of a service line that contain lead are removed. In contrast, during a partial LSL replacement, only a portion of the service line that contains lead is removed while the portion of the service line containing lead that is owned by the customer remains.<sup>29</sup>

16. Research indicates that galvanic corrosion can occur when only a portion of a LSL is replaced due to the different types of metal coming into contact.<sup>30</sup> The physical disturbance that occurs during a partial LSL replacement also has the potential to increase lead levels following a replacement.<sup>31</sup> A calcium inner coating that insulates lead from potentially corrosive water can easily be dislodged by the cutting or disturbance, exposing the lead material to drinking water. The currently accepted best practice is to undertake a full LSL replacement as opposed to a partial LSL replacement.<sup>32</sup>

17. An increasing number of utilities are reconsidering or avoiding the practice of partial LSL replacement where possible. Due to significant infrastructure needs, MAWC cannot avoid replacing aging infrastructure simply because of connections to LSLs.<sup>33</sup>

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<sup>26</sup> Ex. 1, Aiton Direct, p 16.

<sup>27</sup> Ex. 2, Aiton Rebuttal, Schedule BWA-1, p 3.

<sup>28</sup> Ex. 2, Aiton Rebuttal, Schedule BWA-1, p 3-5.

<sup>29</sup> EFIS Item No. 419, Stipulation of Fact Related to True-Up and Motion to Suspend True-Up Procedural Schedule, Exhibit B, p 1. Ex. 135, Transcript AAO Hearing, p123.

<sup>30</sup> Ex. 27, Naumick Rebuttal, Schedule GAN-1, p 7.

<sup>31</sup> Ex. 135, Transcript AAO Hearing, p123

<sup>32</sup> Ex. 108, Merciel Rebuttal, p 6.

<sup>33</sup> Ex. 2, Aiton Rebuttal, Schedule BWA-1, p9.

18. When main breaks occur, the break must be fixed quickly to restore water service to customers. A large amount of main breaks can result in a material amount of maintenance expense for water utilities.<sup>34</sup>

19. MAWC reviews its distribution system materials inventory to confirm the number and location of LSLs. MAWC uses service line tap records when available, local district knowledge, and in St. Louis, a database containing service tap information to estimate the total number of lead connections. MAWC's preliminary surveys indicate approximately 30,000 LSLs remain in MAWC's system.<sup>35</sup>

20. A water service line connects a customer's home or building to either a water utility's water distribution main or to a utility-owned water service line. Customers are required to own and maintain the portion of the water service line that typically extends from the outdoor water meter (or property line) to the house or building.<sup>36</sup> However, in St. Louis County, customers are required to own and maintain the entire water service line from and including the connection to MAWC's water main to the house or building.<sup>37</sup>

21. MAWC began a program on its own initiative to replace customer-owned LSLs encountered as part of its routine main replacement program. MAWC replaces mains throughout its service area based on multiple factors, including leaks or breaks in the line, or the pipe's age and material. MAWC also coordinates with local municipalities to replace mains in conjunction with road projects.<sup>38</sup>

22. Main replacements involve the utility disconnecting water service lines from a water main. In some situations, the service lines are owned by customers, in which case,

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<sup>34</sup> Ex. 110, Oligschlaeger Rebuttal, p19.

<sup>35</sup> Ex. 2, Aiton Rebuttal, Schedule BWA-1, p 9.

<sup>36</sup> See MAWC's Tariff Sheets - PSC MO No. 13 Original Sheet No. R. 12, Rule 4.C; PSC MO No. 13 1<sup>st</sup> Revised Sheet No. R 17.F.

<sup>37</sup> Ex. 108, Merciel Rebuttal, p 4.

<sup>38</sup> Id at 5-6.

MAWC must work on the customer's assets by cutting, shortening or extending pipeline, installing new fittings to physically connect the service line to a new water main. This work usually requires no action by individual customers.<sup>39</sup>

23. When MAWC encounters LSLs during a main replacement, as part of its Lead Service Line Replacement ("LSLR") Program, MAWC will proactively replace the lead portion of the service line. This may include Company-owned LSLs and/or lead goosenecks as well as customer-owned portions of LSLs.<sup>40</sup> Replacing LSLs in conjunction with main replacements is cost effective since it reduces restoration costs when coordinated with municipalities as part of road projects.<sup>41</sup>

24. When determining which mains to prioritize for replacements, MAWC prioritizes road construction coordination with municipalities, existence of leaks, and the presence of LSLs. If two mains have the same amount of leaks, MAWC would prioritize a replacement involving a LSL, especially if it serves an at-risk population.<sup>42</sup>

25. During calendar year 2017, MAWC replaced 228 customer-owned LSLs through its LSLR Program.<sup>43</sup> From January 2018 through May 2018, MAWC plans to replace approximately 1,200 customer-owner LSLs. Although the actual amount is unknown, MAWC estimates the cost for those replacements to be approximately \$7.2 million.<sup>44</sup>

26. Going forward, MAWC is targeting the replacement of approximately 3,000 customer-owned LSLs per year for an estimated ten years.<sup>45</sup> While the cost may vary,

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<sup>39</sup> Ex. 108, Merciel Rebuttal, p 5.

<sup>40</sup> Ex. 2, Aiton Rebuttal, Schedule BWA-1, p 5-6.

<sup>41</sup> Transcript Vol. 15, p 394-395.

<sup>42</sup> Transcript Vol. 15, p 395.

<sup>43</sup> EFIS Item No. 419, *Stipulation of Fact Related to True-Up and Motion to Suspend True-Up Procedural Schedule*, Exhibit A.

<sup>44</sup> Ex. 3, Aiton Surrebuttal, p 5-6.

<sup>45</sup> Ex. 3, Aiton Surrebuttal, p 6. Ex. 135 Transcript AAO Hearing, p 162, 173.

MAWC estimates the average cost to replace a single customer-owned LSL is approximately \$6,000.00.<sup>46</sup> The annual expense to perform the 3,000 LSLR is estimated to be between \$9 million and \$16.5 million annually.<sup>47</sup>

27. MAWC acknowledges that it does not own the service lines beyond its mains. As part of its “Water Service Line Replacement License” used in St. Louis for the LSLR Program, MAWC’s agreement with customers states that, “[t]he Customer water service line is currently and will continue to be owned and maintained by Customer.”<sup>48</sup>

28. In 2017, MAWC requested an Accounting Authority Order (“AAO”) that would allow MAWC to book the costs of its LSLR Program as a deferred asset for ratemaking consideration during this rate case.<sup>49</sup> In November 2017, the Commission approved MAWC’s AAO request, and allowed MAWC to defer costs incurred between January 1, 2017, through May 31, 2018, as part of its LSLR Program. The Commission directed MAWC to defer and book to Account 186 the costs of all customer-owned LSLR using its short-term borrowing rate as its carrying cost until the effective date of the Report and Order in this general rate case. The Commission reserved the right to consider any ratemaking treatment for the deferred costs until this rate case.<sup>50</sup>

29. The short-term debt rate is typically applied to debt that is recovered within one year.. In its Cost of Service Report, Staff applied a .99% short-term debt rate for MAWC.<sup>51</sup>

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<sup>46</sup> Transcript Vol. 15, p 417- 418.

<sup>47</sup> Ex. 135, Transcript AAO Hearing, p 170.

<sup>48</sup> Ex. 2, Aiton Rebuttal, Schedule BWA-1, p 12.

<sup>49</sup> See *In the Matter of the Application of Missouri-American Water Company for an Accounting Order Concerning MAWC’s Lead Service Line Replacement Program*, File No. WU-2017-0296.

<sup>50</sup> See *In the Matter of the Application of Missouri-American Water Company for an Accounting Order Concerning MAWC’s Lead Service Line Replacement Program*, File No. WU-2017-0296, EFIS Item No. 80 Report and Order.

<sup>51</sup> Ex. 101, Staff Cost of Service Report, p 15 . Transcript, Vol. 16, p 443,



30. Debts and other obligations that mature more than year from date of issuance or assumption are considered long-term debt.<sup>52</sup> In its Cost of Service Report, Staff applied a 5.35% embedded cost of long-term debt for MAWC.<sup>53</sup>

**i. Should MAWC Continue to Replace the Customer-Owned Portion of Lead Service Lines While Performing Water Main Repair and Replacement?**

**Conclusions of Law and Decision**

The Commission is a body of limited jurisdiction and has only such powers as are expressly conferred upon it by the statutes and powers reasonably incidental thereto.<sup>54</sup> The Commission has the statutory authority to prescribe methods for water corporations to keep their accounts, records and books.<sup>55</sup> Commission Rule 4 CSR 240-50.030 prescribes the use of the Uniform System of Account issued by the National Association of Regulatory Utility Commissioners in 1973, as revised July 1976 (“USoA”). MAWC must comply with the requirements of the USoA when reporting its accounts and records to the Commission.<sup>56</sup> However, after a hearing, the Commission can order the prescribed accounts in which particular outlays and receipts shall be entered, charged, or credited.<sup>57</sup>

An AAO is a deferral mechanism that allows a utility to “defer and capitalize certain expenses until it files its next rate case.”<sup>58</sup> An AAO is not a rate-making decision.<sup>59</sup> Although an AAO allows a cost to be placed in a separate account for future consideration, it does

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<sup>52</sup> 1976 Revisions of Uniform System of Account for Class A and B Utilities 1973, National Association of Regulatory Utility Commissioners, p 66.

<sup>53</sup> Ex. 101, Staff Cost of Service Report, p 15 and Appendix 2.

<sup>54</sup> *State ex rel. & to Use of Kansas City Power & Light Co. v. Buzard*, 350 Mo. 763, 766, 168 S.W.2d 1044, 1046 (1943).

<sup>55</sup> Section 393.140(4), RSMo.

<sup>56</sup> 4 CSR 240-50.030.

<sup>57</sup> Section 393.140(8), RSMo.

<sup>58</sup> *Mo. Gas Energy v. Pub. Serv. Comm’n*, 978 S.W.2d 436 (Mo.App W.D. 1998).

<sup>59</sup> *Id* at 438.

not create an expectation of recovery, nor does it bind the Commission to any particular ratemaking treatment.<sup>60</sup>

Among other debits, USoA Account 186. Miscellaneous Deferred Debits can be used for “unusual or extraordinary expenses, not included in other accounts.” General Instruction No. 7 of the USoA specifically states:

It is the intent that net income shall reflect all items of profit and loss during the period with the sole exception of prior period adjustments as described in General Instruction 8. Those items related to the effects of events and transactions which have occurred during the current period and which are not typical or customary business activities of the company shall be considered extraordinary items. Commission approval must be obtained to treat an item as extraordinary. Such request must be accompanied by complete detailed information.

The Commission previously found the LSLR Program costs to be extraordinary and authorized MAWC to defer and maintain the costs on its books in Account 186.<sup>61</sup> The evidence presented in this case supports the continuation of the LSLR Program. Lead in drinking water presents a serious health risk. Since partial LSL replacement has the potential to disrupt lead in service lines, public policy supports full LSL replacements.

OPC argues that the LSLR Program violates the terms of MAWC’s tariffs that specify that the customer is responsible for the repair and maintenance of their portion of the service line.<sup>62</sup> OPC incorrectly interprets MAWC’s tariff as a prohibition on MAWC’s efforts to enter a mutual agreement with a customer for the replacement of the customer’s LSLs. Under the terms of the written agreement between the customer and MAWC, the customer still owns the line and is responsible for its maintenance. The customer is not required to

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<sup>60</sup> *Id.*

<sup>61</sup> *In the Matter of the Application of Missouri-American Water Company for an Accounting Order Concerning MAWC’s Lead Service Line Replacement Program.* File No. WU-2017-0296, Report and Order.

<sup>62</sup> PSC MO No. 13 Original Sheet No. R. 12, Rule 4.C; PSC MO No. 13 1<sup>st</sup> Revised Sheet No. R 17.F.

consent to the replacement, and MAWC is not obligated to replace a customer-owned line outside of the LSLR Program. MAWC is electing to perform the replacements for purposes of providing safe and adequate service by avoiding the risks of partial LSL replacements.

For this reason, the Commission will permit MAWC to continue to defer and book to USoA Account 186 the costs of customer-owned LSL replacements using long-term borrowing rate as its carrying costs. The ratemaking treatment to be afforded these deferred costs may be considered by the Commission in MAWC's next rate case.

**ii. Should the Commission Order the Implementation of OPC's Proposed Lead Service Line Replacement Pilot Program?**

**Findings of Fact**

31. OPC opposes the LSLR Program and proposes an alternative two-year pilot study that is capped at \$4 million annually for full LSL replacements. OPC states that its proposed pilot study would facilitate substantive research, planning, and communication.<sup>63</sup>

32. American Water has worked extensively with stakeholders at the national, state, and local levels, including participating in working groups with the Environmental Protection Agency, CDC, children's health advisory groups, universities, and other utilities.<sup>64</sup>

33. MAWC has detailed protocols identifying how it addresses LSL discovered during construction. MAWC's written plan identifies how MAWC addresses sampling, flushing, and customer notification of the results of testing, as well as information for customers on how to reduce exposure to lead in drinking water.<sup>65</sup>

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<sup>63</sup> Ex. 200, Marke Direct, Sch. GM-3, p 9.

<sup>64</sup> Transcript, Vol. 15, p 328-329.

<sup>65</sup> Ex. 2, Aiton Rebuttal, Schedule BWA-1, p 5-6. Ex. 27, Naumick Rebuttal Rev., Schedule GAN-1, p 12-15.

34. MAWC does not have a written policy on how to proceed when customer consent is not given. MAWC's pattern and practice when replacing LSLs throughout the state is to attempt to contact the customer at least four times to obtain consent before replacing any portion of a customer-owned LSL. When a signed consent agreement is obtained, MAWC performs a full LSLR. If consent is not provided, due to the customer either being unresponsive or refusing to sign an agreement, MAWC performs a partial LSLR.<sup>66</sup>

### **Conclusions of Law and Decision**

OPC's proposed pilot program duplicates MAWC's efforts with the LSLR Program, which for reasons previously stated, the Commission has authorized MAWC to continue with AAO treatment. While many of the concerns expressed by OPC may warrant deeper review and input from stakeholders, the program proposed by OPC is limited to two years and does not appear focused on avoiding the health risks from partial LSL replacements as much as it is concerned with a cost-benefit analysis.

However, the Commission does think it is beneficial to further evaluate topics concerning the LSLR Program. At a minimum, doing so will help the Commission to evaluate ratemaking treatment for the LSLR Program in future rate cases. A working group set up in a separate docket that would not be a contested case would help interested parties discuss topics that include: the feasibility of prioritizing at-risk populations in the LSLR Program; the prudence of costs and how to handle unusual site restorations; a written plan identifying how MAWC will proceed when it lacks customer consent; what

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<sup>66</sup> EFIS Item No. 419, Stipulation of Fact Related to True-Up and Motion to Suspend True-Up Procedural Schedule, Exhibits A, B.

records MAWC should maintain; appropriate reporting requirements; the potential distribution of test kits; and, how to provide information to the public.

**iii. What Recovery Approach, If Found Prudent by the Commission, Should Be Adopted For The AAO Amount From WU-2017-0296?**

**Findings of Fact**

35. The appropriate true-up balance of the LSL Program through December 31, 2017, excluding all costs associated with customers that do not have a signed agreement is \$1,668,796 for 228 total replacements.<sup>67</sup>

36. In response to recommendations from Staff, MAWC agreed to provide annual reporting on the work it plans to perform as part of the LSLR Program, as well as information on completed work.<sup>68</sup>

37. Staff recommends the cost for the LSLR AAO, including carrying cost, be booked in Account 186, Miscellaneous Deferred Debits.<sup>69</sup> Instead of including the LSLR Program costs for 2017 in plant in service, Staff recommends the Commission allow MAWC to earn a return on the expense and amortize the expense and carrying costs over ten years, with the unamortized amount included in rate base. Staff justifies this inclusion in rate base by stating that when the Commission agrees a project associated with an AAO is necessary, the deferred amount is typically included in rate base along with a return on the expenditure.<sup>70</sup>

38. Similar to the cost of repairing sidewalks, mailboxes or a yard disturbed by improvement work, MAWC considers the cost to replace customer-owned LSLs to be a

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<sup>67</sup> EFIS Item No. 419, Stipulation of Fact Related to True-Up and Motion to Suspend True-Up Procedural Schedule, Exhibits A, B.

<sup>68</sup> Ex. 3, Aiton Surrebuttal, p 7.

<sup>69</sup> Ex. 107, McMellen Rebuttal, p 2-3.

<sup>70</sup> Transcript, Vol. 16, p 442-446.

restoration or incidental cost that is associated with restoring a service line to a safe condition.<sup>71</sup>

39. MAWC proposes the costs for the LSLR program be booked into USoA Account 345-Services, which states in pertinent part:

A. This account shall include the cost installed of service pipes and accessories leading to the customers' premises.

B. A complete service begins with the connection on the main and extends to but does not include the connection with the customer's meter. A stub service extends from the main to the property line, or the curb stop.<sup>72</sup>

40. By booking the LSL costs into Account 345-Services, MAWC states that when construction is completed, related costs would be recorded as plant in service and begin to be depreciated. In the next rate case, the cost of that plant, reduced by depreciation, would be included in rate base and earn a return on a going-forward basis.<sup>73</sup> Plant in service is an asset that is property owned by a company that provides a future benefit to the owner.<sup>74</sup>

41. "Account 186 – Miscellaneous Deferred Debits" in the USoA is used for all debits not elsewhere provided for, such as "deferred by authorization of the Commission, and unusual or extraordinary expenses, not included in other accounts, which are in the process of amortization, and items the final proper disposition of which is uncertain."<sup>75</sup>

42. There is no legal requirement for MAWC to replace customer-owned LSL.<sup>76</sup>

43. When AAO's are approved for recovery treatment by the Commission during a general rate case, they typically are recovered over three to five years. However, since

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<sup>71</sup> Transcript Vol. 15, p 284-286. Ex. 135, AAO Hearing Transcript, p 172.

<sup>72</sup> 4 CSR 240-50.030; 1976 Revisions of Uniform System of Account for Class A and B Utilities 1973, National Association of Regulatory Utility Commissioners, p 87-88.

<sup>73</sup> Transcript Vol. 15, p 288-289.

<sup>74</sup> Transcript, Vol. 16, p 444 - 447.

<sup>75</sup> 4 CSR 240-50.030; 1976 Revisions of Uniform System of Account for Class A and B Utilities 1973, National Association of Regulatory Utility Commissioners, p 61.

<sup>76</sup> Transcript AAO Hearing, p 166.

MAWC's LSLR Program is bigger and more extraordinary in nature than most AAO inclusions, Staff recommends the Commission amortize the amount over ten years.<sup>77</sup>

### **Conclusions of Law and Decision**

The Commission has broad discretion to determine which expenses a utility may recover from ratepayers. The Missouri Supreme Court has stated that the Commission's statutory power and authority to set rates "necessarily includes the power and authority to determine what items are properly includable in a utility's operating expenses and to determine and decide what treatment should be accorded such expense items."<sup>78</sup> The Commission's authority extends to allocating an expense between certain classes or groups of ratepayers.<sup>79</sup>

The AAO approved by the Commission in Case No. WU-2017-0296 included costs associated with MAWC's replacement of customer-owned LSLs performed from January 1, 2017, through December 31, 2017; the end of the true-up period in this rate case. The Commission also allowed the Company to book in USoA Account 186 the costs for the period of January 1, 2018, through May 31, 2018. However, the Commission's order was issued while MAWC was requesting the use of a future test year in this rate case. Since then, MAWC has agreed in a stipulation and agreement to withdraw its request for a future test year. Since the costs past December 31, 2017, are not known and measurable and are outside of the true-up period, the Commission will only consider the ratemaking treatment for the LSLR Program through the end of 2017.

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<sup>77</sup> Transcript Vol. 16, p 447-448.

<sup>78</sup> *State ex rel. City of W. Plains v. Pub. Serv. Comm'n*, 310 S.W.2d 925, 928 (Mo. 1958). See also, *State ex rel. KCP& L Greater Missouri Operations Co. v. Missouri Pub. Serv. Comm'n*, 408 S.W.3d 153, 166 (Mo. App. 2013).

<sup>79</sup> *State ex rel. City of W. Plains v. Pub. Serv. Comm'n*, 310 S.W.2d at 934.

As a regulated water corporation, MAWC must use the USoA.<sup>80</sup> MAWC seeks to defer the costs for the LSLR Program as a regulatory asset and include a monthly carrying charge equal to the weighted cost of capital from the last general rate case as part of the deferral, with the deferred amounts booked as a component of plant in service. MAWC would then recover the associated amortization expense for the deferred amount and include future customer-owned LSLRs in plant in service.<sup>81</sup>

As MAWC acknowledges, the LSLR Program is not based on a legal requirement, but rather is something MAWC considers to be “responsible, reasonable, and prudent.”<sup>82</sup> While MAWC should be commended and even made whole for its efforts, MAWC is not entitled to a profit from its initiative. USoA Account 345 specifies that the account is for repairs *up to* the customer’s lines. MAWC’s request to record future LSLR Program replacement costs in USoA Account 345 is improper since MAWC does not own and will never seek to own the customer-owned lines.

Account 186 is the proper account to book the ongoing program costs. The USoA states that ‘Amortization’ means “the gradual extinguishment of an amount in an account by distributing such amount over a fixed period, over the life of the asset or liability to which it applies, or over the period during which it is anticipated the benefit will be realized.”<sup>83</sup> OPC argues that the costs should be amortized over 65 years since that is the expected useful life of a service line, as what is typically included in Account 345.

Since the Commission concludes the LSLRs are costs that should be expensed, it would not be appropriate to amortize the costs over 65 years-the same time for service

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<sup>80</sup> Commission Rule 4 CSR 240-50.030(1).

<sup>81</sup> Ex. 107, McMellen Rebuttal, p 2.

<sup>82</sup> EFIS Item No. 440, MAWC’s Reply Brief, p4.

<sup>83</sup> 1976 Revisions of Uniform System of Account for Class A and B Utilities 1973, National Association of Regulatory Utility Commissioners, p 12.



lines included in plant in service. The Commission is persuaded by Staff's argument that while AAO costs are normally amortized over three to five years, the extraordinary nature and extent of the LSLR Program justifies extending the amortization period to ten years.

Therefore the Commission will permit MAWC to amortize over ten years the \$1,668,796 incurred for the LSLR Program from January 1, 2017, through December 31, 2017. MAWC's long-term debt rate as calculated in Staff's Cost of Service Report shall also be applied to the LSLR Program amount to be amortized.

#### **iv. How Should Costs Be Allocated?**

##### **Findings of Fact**

44. MAWC recommends the costs for the LSLR Program be assigned based on "Factor 9," which is used to allocate costs in USoA Account 345 – Services.<sup>84</sup> The factor is based on the relative cost of meters by size and customer classification. Factor 9 is calculated by weighting of the costs associated with the different meter sizes in each customer classification excluding public fire.<sup>85</sup> For purposes of the USoA Account 345 – Services, MAWC uses Factor 9 when allocating costs.<sup>86</sup>

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<sup>84</sup> Ex. 16, Heppenstall Rebuttal, p 16.

<sup>85</sup> Ex. 104, Staff's *Report on Class Cost of Service and Rate Design*, p4.

<sup>86</sup> Ex. 16, Heppenstall Rebuttal, p 16.

45. When possible, it is better to directly assign costs for the LSLR Program to customer classes than to allocate.<sup>87</sup> This method of assigning cost to the responsible class allows the costs to follow the benefits.<sup>88</sup> With the use of work orders, it is possible for service line replacement costs to be tracked and assigned to the responsible customer class.<sup>89</sup>

46. No evidence was presented to demonstrate Rate B or Rate J customers have lead service lines.<sup>90</sup>

### **Conclusions of Law and Decision**

Where feasible, direct assignment of costs to the responsible customer class is the preferred method of allocation. Credible evidence was presented in the testimony of MIEC's witness Collins that MAWC should be able to directly assign costs for service line replacements to the responsible class. MAWC did not refute that it could perform direct assignment. Therefore, the Commission concludes MAWC should directly assign the cost for the LSLR Program to the customer classes served by the replaced lines.

## **B. Consolidated Water Districts**

### **Findings of Fact**

47. MAWC is currently comprised of three different water-operating districts.<sup>91</sup>

The three water districts include the following service territories:

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<sup>87</sup> Transcript, Vol. 17, p 643.

<sup>88</sup> Ex. 505, Collins surrebuttal, p 7.

<sup>89</sup> Transcript, Vol. 18, p 892-893.

<sup>90</sup> See EFIS Item No. 426, Staff's Initial Brief, p 35

<sup>91</sup> Ex. 101 Staff Cost of Service Report, p 57.

- **District 1** – St. Louis Metro (St. Louis County, Warren County and St. Charles), Mexico, Jefferson City, Anna Meadows, Redfield, Lake Carmel, Jaxon Estates, and Wardsville;
- **District 2** – St. Joseph, Platte County, and Brunswick; and,
- **District 3** – Joplin, Stonebridge, Warrensburg, White Branch, Lake Taneycomo, Lakewood Manor, Rankin Acres, Spring Valley, Tri-States, Emerald Pointe, Maplewood, Riverside Estates, and Woodland Manor.<sup>92</sup>

48. Within each water district, MAWC has separate rate classes based on the customer's classification. "Rate A" combines residential, commercial and other public authorities. "Rate B" is used by sale for resale customers. "Rate J" consists of industrial customers.<sup>93</sup>

49. In the Report and Order issued two years ago in MAWC's last general rate case, the Commission authorized the consolidation of MAWC's eight water districts into the current three district structure and directed the parties to fully examine single-tariff pricing in the next rate case.<sup>94</sup>

50. Consolidated tariff pricing, otherwise referred to as single tariff pricing ("STP"), is the use of the same rates for the same service rendered by a water company, regardless of the customer's location.<sup>95</sup> In comparison, district-specific pricing ("DSP") takes all of the assigned costs of providing service to each individual district and develops rates based

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<sup>92</sup> Exhibit 103, Dietrich Direct, p 2.

<sup>93</sup> Exhibit 104, Staff's Class Cost of Service Report and Rate Design, p 5-6.

<sup>94</sup> Exhibit 18, Jenkins Direct, p 40. *In the Matter of Missouri-American Water Company, Report and Order*, File No. WR-2015-0301, May 26, 2016).

<sup>95</sup> Ex.15, Heppenstall Direct, p 14. Consolidated pricing may occur when a small water or sewer system is acquired and a regulating commission may not allow a water utility to immediately roll those rates into a consolidated rate cycle. Transcript Vol. 17 p 614.

upon that district's cost of service. In DSP, ratepayers pay only for those costs associated with providing service to that district.<sup>96</sup>

51. Eleven of the fourteen states in which American Missouri has subsidiaries have a form of consolidated rates. A national trend has been moving towards consolidated pricing.<sup>97</sup> MAWC now seeks to fully consolidate all water customers throughout the three districts into one statewide tariff group.<sup>98</sup>

52. The cities of Jefferson City, Warrensburg, and St. Joseph ("Coalition of Cities") propose the Commission return to the eight-district system. The Coalition of Cities argue that since the expense of prior infrastructure improvements in their municipalities were not spread across all MAWC service territories, it would be unfair for their prior contributions to not be considered for special ratemaking treatment. Should the Commission permit the use of STP, the Coalition of Cities urge the Commission to also consider an offset mechanism to credit those prior contributions. However, such an offset mechanism would defeat the purpose of consolidated pricing and would be returning to district-specific pricing.<sup>99</sup>

53. The operating characteristics of MAWC's service areas support STP. All the systems pump their treated water through transmission lines to distribution areas that include mains, booster pump stations and storage facilities. All of the areas rely on a centralized workforce for billing, accounting, engineering, administration, and regulatory matters. MAWC manages the state-wide operations from a common location. The various service areas also rely on a common source of funds for financing.<sup>100</sup>

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<sup>96</sup> Ex. 104, Staff's Class Cost of Service Report and Rate Design, p 10.

<sup>97</sup> Transcript, Vol 17, p 613-615.

<sup>98</sup> Ex. 22, LaGrand Direct, p 18.

<sup>99</sup> Transcript, Vol. 17, p 613.

<sup>100</sup> Ex. 15, Heppenstall Direct, p. 14-16.

54. There is a cycle to capital improvements in a water system that supports consolidated pricing.<sup>101</sup> Customers pay for system upgrades over time through depreciation expense and return on investment, not when the upgrades are installed.<sup>102</sup> STP socializes the costs that would have been paid directly by residents of a specific district.<sup>103</sup> For example, a new water treatment facility was put into service in Joplin in 2007. Under STP, the remaining cost of that facility would be socialized from 2018 until approximately 2057. Only a small portion of the total-when Joplin was its own district- would have been borne directly by residents of Joplin.<sup>104</sup>

55. A move to STP will also support MAWC's acquisition of small underperforming water and sewer systems. The acquisition of troubled utility systems by larger, financially stable utilities is in the best interest of Missouri and its citizens.<sup>105</sup>

56. A concern with STP is that by pooling all costs, all customers must pay a portion of all costs, regardless of costs causation. This could lead to a utility spending more money than necessary, sometimes referred to as "gold plating," since the overall increase would be spread to all customers, which would lower the impact. In comparison, a main detriment of DSP is that for small service areas with few customers, any large investment in rate base can create immediate and long-lasting affordability concerns.<sup>106</sup>

57. Staff recommends the Commission maintain the current three-district water system. Staff argues that the current system has the benefits of both DSP and STP.<sup>107</sup>

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<sup>101</sup> Transcript Vol. 17, p 611-612.

<sup>102</sup> Ex. 16, Heppenstall Rebuttal, p 12.

<sup>103</sup> Transcript Vol 17, p 612.

<sup>104</sup> Id.

<sup>105</sup> Ex.25, LaGrand Surrebuttal, p 26.

<sup>106</sup> Ex. 104, Staff Class Cost of Service Report and Rate Design, p 10-11

<sup>107</sup> Ex. 104, Staff Class Cost of Service Report and Rate Design, p 10-11. OPC, MIEC, and DED agree with Staff's recommendation to maintain the current three district water system.

58. Staff acknowledges that corporate costs are a substantial portion of the cost of service for MAWC. DSP makes allocating those corporate costs to separate service territories difficult. Combining service territories alleviates some of those difficulties by allocating corporate costs to a larger grouping of service territories via the districts in which they are assigned.<sup>108</sup>

59. Approximately 84% of MAWC's water customers live in the St. Louis service area within District 1. While there are over 390,000 Rate A customers in District 1, there are approximately 38,000 customers in District 2 and 38,000 in District 3.<sup>109</sup>

60. There are over 4,500 miles of main in MAWC's St. Louis County's water distribution system. Approximately 95% of the pipes in that system are cast iron or ductile iron. Generally, there are two generations of cast iron pipe. The oldest were generally manufactured prior to 1930, were thicker, and may have lasted beyond their expected service life with few or even no leaks. After 1930, cast iron pipe was thinner and did not prove to be as durable as older cast iron pipe. This newer cast iron pipe is referred to as "spun cast" pipe. Approximately two-thirds of MAWC's St. Louis County system is made up of this spun cast pipe. This spun cast pipe is two to almost four times more likely to experience failure than older pipe.<sup>110</sup>

61. In 2016, St. Louis County accounted for approximately 73% of the metered water sold by MAWC. Since 2007, MAWC has used an ISRS, a special rate mechanism, to address the cost of replacing aging mains in St. Louis County.<sup>111</sup> An ISRS is a statutorily authorized way for MAWC to recover costs for certain water utility plant projects. The applicable statutes allow MAWC to collect, through surcharges, the cost of eligible

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<sup>108</sup> Ex. 104 Staff Class Cost of Service Report and Rate Design, p 10-12.

<sup>109</sup> Ex. 137 and Ex. 45.

<sup>110</sup> Ex. Aiton Rebuttal Testimony, p 4.

<sup>111</sup> Ex. MIEC Meyer Direct, p 16.

replacements without the need of a formal rate proceeding.<sup>112</sup> The ISRS allows for periodic rate changes associated with certain plant in service additions outside of general rate cases.<sup>113</sup>

62. MAWC is only allowed to collect an ISRS from St. Louis County customers, since only projects performed in St. Louis County are eligible for ISRS recovery.<sup>114</sup>

63. In August 2017, MAWC filed its *Petition to Establish an Infrastructure System Replacement Surcharge (“ISRS”)*.<sup>115</sup> The Commission approved a Stipulation and Agreement setting new ISRS rates for the Company.<sup>116</sup> By statute, MAWC must file a new general rate case within three years should the Company choose to continue collecting an ISRS.<sup>117</sup> The ISRS would then be reset to zero when new customer rates are established during a general rate case and the replacement costs can be included in the Company’s new base rates.<sup>118</sup>

64. MAWC projects an increase in plant of 23% from December 2015 to December 2018.<sup>119</sup> Between January 2018 and May 2019, MAWC plans to perform over \$100 million of water and sewer infrastructure replacement investment that may be eligible for recovery through the ISRS.<sup>120</sup>

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<sup>112</sup> Sections 393.1000, 393.1003 and 393.1006, RSMo 2016.

<sup>113</sup> Ex. 110, Oligschlaeger Rebuttal p 23.

<sup>114</sup> Section 393.1003.1, RSMo, authorizes the use of an ISRS in a county with a charter form of government and with more than one million inhabitants. Section 1.100.2, RSMo (Supp. 2017) permits the application of the ISRS statute to St. Louis County, regardless of the county’s current population. See also, *Missouri-American Water Company v. Office of the Public Counsel*, 516 S.W.3d 823 (Mo. 2017).

<sup>115</sup> *In the Matter of the Petition of Missouri-American Water Company for Approval to Establish an Infrastructure System Replacement Surcharge (ISRS)*, PSC File No. WO-2018-0059, EFIS Item No. 1 MAWC’s Petition to Establish an Infrastructure System Replacement Surcharge and Motion for Waiver.

<sup>116</sup> *In the Matter of the Petition of Missouri-American Water Company for Approval to Establish an Infrastructure System Replacement Surcharge (ISRS)*, PSC File No. WO-2018-0059, EFIS Item No. 20, Order Approving Stipulation and Agreement.

<sup>117</sup> Section 393.1003.2 and 3.

<sup>118</sup> Section 393.1003.2 and 3, RSMo.

<sup>119</sup> Ex. 500, Meyer Direct, p 23.

<sup>120</sup> Ex. 1, Aiton Direct, p 9. Exhibit 45

### **Conclusions of Law and Decision**

The Commission is tasked with setting just and reasonable rates.<sup>121</sup> This means the Commission must set rates that are “fair to both the utility and its customers.”<sup>122</sup> The Commission’s authority extends to allocating an expense between certain classes or groups of ratepayers.<sup>123</sup>

In MAWC’s last rate case, the Commission approved a consolidation of its eight service territories into three. The Commission stated that the needs of the customer must be met no matter where they happen to live, or how recently the Company’s infrastructure in their area was installed or replaced. That principle still applies in this rate case.

Consolidation of the various districts benefits customers since a majority of MAWC’s costs, such as operations and management, are fixed. Consolidation helps customers by avoiding the rate shock that would occur when a system must undergo major system improvements. Although the water industry is moving towards STP, St. Louis County’s unique circumstance makes it inappropriate to consolidate all three water districts at this time. St. Louis County is subject to the ISRS, which is a surcharge not recovered from other customers of MAWC, which can increase a customer’s bill by as much as ten percent of the Company-wide revenues. By combining all three districts, customers in St. Louis County would be disadvantaged by being the only area paying the additional surcharge until costs can be included in rate base, while still contributing to improvements in other areas.

Moreover, while Districts 2 and 3 are comparable in the number of customers served, the St. Louis area is disproportionately larger. Full consolidation would increase the potential for imprudent spending by MAWC, since the impact of increases will be shared by more

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<sup>121</sup> Section 393.130 (2016).

<sup>122</sup> *State ex rel. Valley Sewage Co. v. Public Service Commission*, 515 S.W.2d 845, 850 (Mo. App. 1974).

<sup>123</sup> *State ex rel. City of W. Plains v. Pub. Serv. Comm’n*, 310 S.W.2d at 934.



customers. By combining Districts 2 and 3, the Company can still seek to acquire small struggling systems and make system improvements while avoiding rate shock.

Therefore, the Commission finds it appropriate for MAWC to consolidate Districts 2 and 3 Rate A and J customers while maintaining a separate District for St. Louis County customers. MAWC should remove those systems in District 1 that are not in St. Louis County, including Warren County, St. Charles, Anna Meadows, Redfield, Lake Carmel, Jaxon Estates, Wardsville, Mexico, and Jefferson City, and place those systems into the consolidated Districts 2 and 3.

Although MAWC initially sought to consolidate Rate B customers in Districts 2 and 3, it later agreed with the position of Public Water Supply Districts Nos. 1 and 2 of Andrew County that the volumetric rate for all Rate B sale for resale customers should be equivalent across districts.<sup>124</sup> Since no party disputes this position, the Commission finds it appropriate to apply an equivalent volumetric rate for Rate B customers for all service areas.

### **C. Residential Customer Charge**

#### **Findings of Fact**

65. Rate design serves two purposes. First, rates must be designed for each customer class in each service territory that will give the utility an opportunity to collect its approved revenue requirement. Secondly, rates must be designed to collect the appropriate levels of revenue from each service territory and from each customer class.<sup>125</sup>

66. Utilities incur both fixed and variable costs to provide service to customers.

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<sup>124</sup> Ex. 17, p 4, Ex. 136. PWSD Reply Brief.

<sup>125</sup> Ex.104, Staff's Class Cost of Service Report and Rate Design, p 6.

67. The parties agreed at hearing that the volumetric charge can be calculated based on the ultimate determination of rate design, specifically the customer charge. The parties do not dispute how that calculation is performed. From a recommended rate design and customer charge, an appropriate volumetric charge can be calculated.<sup>126</sup>

68. While 91.4% of MAWC's costs of providing water service are considered fixed costs, only 24.3% of its revenues are collected through the customer charge.<sup>127</sup> In an attempt to minimize the monthly customer charges, utilities frequently recover a portion of their fixed capacity costs through volumetric rates. MAWC currently recovers a substantial portion of fixed capacity costs through its volumetric charge.<sup>128</sup>

69. MAWC's fixed costs typically captured through the customer charge-or its "cost per customer"-includes expenses for meters, services, and billing and collections.<sup>129</sup>

70. The 5/8-inch meter ("5/8 meter") is the basic meter size for Rate A residential customers, although it also serves some commercial and other public authorities.<sup>130</sup> MAWC bills customers either monthly or on a quarterly basis. Currently, only customers in District 1's St. Louis area are billed quarterly.<sup>131</sup>

71. In District 1, MAWC's actual cost per customer for a 5/8 customer billed monthly is \$17.33 and \$28.23 for quarterly billed customers. In District 2, the cost per customer for a 5/8 meter customer billed monthly is \$17.67. In District 3, the cost per customer for a monthly billed 5/8 meter customer is \$15.05.<sup>132</sup>

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<sup>126</sup> EFIS Item No. 426, Staff's Initial Brief, p 31-32.

<sup>127</sup> Ex. 18, Jenkins Direct, p 19.

<sup>128</sup> Ex. MIEC York Surrebuttal p16,

<sup>129</sup> Ex. 137.

<sup>130</sup> Ex.116, Busch Rebuttal, p12. Ex. 45.

<sup>131</sup> Ex.116, Busch Rebuttal, p12. Ex. 136.

<sup>132</sup> Ex. 137.

72. For all Rate A, 5/8 meters customers, MAWC currently charges a monthly customer charge of \$15.38 and a quarterly charge of \$22.35.<sup>133</sup>

73. MAWC is proposing to lower the monthly customer charge for all Rate A 5/8 meter customers to \$10 per month from the current \$15.33 per month and to raise the quarterly customer charge from \$22.35 to \$30.00, or three times MAWC's proposed monthly customer charge.<sup>134</sup>

74. Staff supports maintaining the currently effective customer charges.<sup>135</sup>

75. DE asserts that from an efficiency perspective, the better policy would be to maintain the current \$22.35 customer charge for 5/8 meter quarterly billed customers and to set the monthly charge at one-third of that amount, or \$7.45 per month.<sup>136</sup>

76. At the Commission's request, MAWC submitted calculations on the impact a \$9.00 monthly/\$27.00 quarterly customer charge for 5/8 meter would have on rates.<sup>137</sup>

77. MAWC is currently installing Advanced Metering Infrastructure ("AMI") in its St. Louis County system. AMI radio antennae are added to existing meters or incorporated into new meters that are replaced due to length of service timing.<sup>138</sup> An AMI program allows remote reading of meters at customers' homes and businesses. As of June 13, 2017, MAWC had installed 46,000 meters that were equipped with the new AMI technology.<sup>139</sup> MAWC has approximately 370,000 residential customers who are billed on a quarterly basis, while the remainder are billed monthly. All quarterly billed customers are

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<sup>133</sup> Id.

<sup>134</sup> Ex. 116, Busch Rebuttal, p12.

<sup>135</sup> Ex. 104, Staff Class Cost of Service Report and Rate Design, p 6. OPC and CCM support Staff's position.

<sup>136</sup> Ex. 602, Hyman Rate Design Rebuttal, p 5-7. EFIS Item No. 424, Initial Brief of Missouri Division of Energy.

<sup>137</sup> Ex. 47. MAWC also submitted Ex. 46, which shows the rate impact of an \$8.00 customer charge for 5/8 meter.

<sup>138</sup> Ex. 1, Aiton Direct, p 10.

<sup>139</sup> Ex. 11, Clarkson Direct, p 21.

located in St. Louis County. MAWC seeks to convert the quarterly-billed customers to monthly billing.<sup>140</sup>

78. By transitioning customers to AMI, MAWC will be able to reassign the employees who typically read meters manually to other activities and convert quarterly customers to monthly billing. Monthly billing can also help customers identify water leaks sooner.<sup>141</sup>

### **Conclusions of Law and Decision**

Under Missouri law, the Commission must set just and reasonable rates.<sup>142</sup> Determining an appropriate customer charge is a question of rate design, not a question of the company's revenue requirement. The new AMI technology will enable better meter reading efficiencies and provides the opportunity to transition customers in St. Louis County from quarterly to monthly billing. Monthly billing helps customers evaluate their usage and avoids prolonged water leaks. Therefore, the Commission finds it is appropriate to move those quarterly customers to monthly billing once AMI technology is installed on a customer's meter.

Any increase in the Company's customer charge should be accompanied by a decrease in volumetric rates so that, in theory, the company recovers the same amount of revenue. The Commission considers that an important goal of rate design is to allow the utility to recover costs from those who cause the costs to be incurred while still allowing customers control over their bills through efficiency.

Customer-related costs are generally recovered through the customer charge, which serves to prevent higher usage customers from subsidizing lower usage customers, sends

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<sup>140</sup> Transcript Vol. 18, p 819.

<sup>141</sup> Transcript, Vol. 17, p 617-619.

<sup>142</sup> Section 393.130.1, RSMo, "...All charges made or demanded by any...water corporation ... shall be just and reasonable and not more than allowed by law or by order or decision of the commission..."

all customers more accurate pricing signals, and provides more stable and predictable funding for utilities' fixed costs.

MAWC seeks to increase the monthly customer charge for all 5/8 meter to \$10.00. Staff supports the higher monthly customer charge currently in effect of \$15.33, and DE suggests a lower monthly customer charge of \$7.45. MAWC's fixed operating costs (cost per customer) related to District 1 monthly customers with a 5/8 meter are \$17.33 and \$28.23 for quarterly customers.<sup>143</sup>

The Commission requested MAWC submit calculations on the impact a \$9.00 monthly/\$27.00 quarterly customer charge for 5/8 meter would have on rates for Rate A customers in all the districts.<sup>144</sup> Since a large portion of MAWC's residential customers are billed quarterly, moving the quarterly customer charge closer to the \$28.23 cost per customer amount will allow MAWC to recover more of its fixed costs through the customer charge. In addition, while a \$9.00 monthly customer charge for all Rate A 5/8 meter customers may be lower than the current \$15.33 customer charge, it is consistent with the range of customer charges proposed by the various parties.<sup>145</sup> Therefore, the Commission concludes that the appropriate 5/8 meter customer charge is \$9.00 per month and \$27.00 quarterly.

### **Decision Summary**

In making this decision as described above, the Commission has considered the positions and arguments of all of the parties. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has

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<sup>143</sup> Ex. 137 Monthly Customer Charge Work Paper from Barnes.

<sup>144</sup> Ex. 47.\$9 Monthly 5/8 Meter Charge Rates.

<sup>145</sup> Ex. 137 Monthly Customer Charge Work Paper from Barnes. All parties appear to be in agreement that the customer charge, regardless of the amount approved by the Commission, should be consistent across the districts for all Rate A 5/8 meter customers.

failed to consider relevant evidence, but indicates rather that the material was not dispositive of this decision.

By statute, orders of the Commission become effective in thirty days, unless the Commission establishes a different effective date.<sup>146</sup> In order that this case can proceed expeditiously, the Commission will make this order effective on May 28, 2018.

**THE COMMISSION ORDERS THAT:**

1. The April 6, 2018, *Motion of the Missouri Industrial Energy Consumers to Strike a Portion of the Initial Brief Missouri American Water Company* is denied.

2. The tariff sheets submitted on June 30, 2018, by Missouri-American Water Company, assigned Tariff Nos. YW-2017-0276 and YW-2017-0277, are rejected.

3. Missouri-American Water Company is authorized to file tariff sheets in compliance with this order no later than May 4, 2018.

4. Missouri-American Water Company shall file the information required by Section 393.275.1, RSMo, and Commission Rule 4 CSR 240-10.060 no later than May 9, 2018.

5. The Staff of the Missouri Public Service Commission shall file its recommendation concerning approval of Missouri-American Water Company's compliance tariff sheets no later than May 10, 2018.

6. Any other party wishing to respond or comment regarding Missouri-American Water Company's compliance tariff sheets shall file the response or comment no later than May 10, 2018.

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<sup>146</sup> Section 386.490.3, RSMo.

7. A separate working docket shall be opened to address issues concerning the LSLR Program. Parties in this case shall automatically be made parties to that docket unless they request otherwise.

8. Missouri-American Water Company shall file an annual report on the LSLR Program with the Commission for review by February 15 of each year after the effective date of the rates in this case. The required annual report shall include information on the footage of main, number of customer connections, and estimated number and costs of customer-owned lead service lines replaced for that year. The participants in the working docket described in Ordered Paragraph 7 may also recommend additional information to be included in the annual report.

9. This Report and Order shall become effective on May 28, 2018.

BY THE COMMISSION



A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Hall, Chm., Kenney, Coleman, and Silvey, CC., concur;  
Rupp, C., dissents.

Burton, Senior Regulatory Law Judge.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Request for an Increase in	)	
Annual Water System Operating Revenues for	)	<b><u>File No. WR-2017-0343</u></b>
Gascony Water Company, Inc.	)	

**REPORT AND ORDER**

**ACCOUNTING**

**§23.1 Employee compensation**

The Commission concludes Gascony's computation of Mr. Hoesch's salary is too high as it is based upon insufficient evidence. Mr. Hoesch failed to maintain accurate ongoing records of his time for operational and managerial duties performed.

**DEPRECIATION**

**§17 Life of property**

While Staff and OPC both agree that the in-service date for the UTV is 2007, Mr. Hoesch credibly testified that he purchased a second UTV for Gascony's exclusive use. The appropriate in-service date for the UTV to start depreciation is when it was placed into Gascony's service in 2015.

**EXPENSE**

**§42 Expenses relating to property not owned**

There is a lack of evidence that the St. Louis office is actually used. The fact that the company's documents were located at the Gascony Village office demonstrates that the St. Louis office was not often used for company business. While it may be convenient for Mr. Hoesch to conduct some of Gascony's business from his St. Louis residence, Gascony has failed to meet its burden of proof to demonstrate that use of a second office in St. Louis is necessary or reasonable.

**§51 Legal expense**

The Commission finds Staff's proposal for rate case expense recovered over a ten-year period to be the most reasonable and to have the least rate impact on Gascony's small number of customers.

**VALUATION**

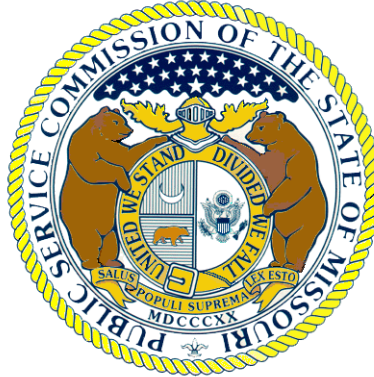
**§17 Factors affecting value or cost generally**

Lot 27 existed at the time Gascony applied for its CCN, at which time it already had a well and storage tank and was existing plant. Likewise, the Storage Building Lot also existed at the time and would have been presumably used to house utility equipment and parts.



While the properties should be included in rate base, they are offset by any Contribution in Aid of Construction. Because the developer has recovered his investment, the property is deemed "contributed" at no cost.

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Request for an )  
Increase in Annual Water System )  
Operating Revenues for Gascony Water )  
Company, Inc. )

**File No. WR-2017-0343**

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## REPORT AND ORDER

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**Issue Date:** May 9, 2018

**Effective Date:** May 19, 2018

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

In the Matter of the Request for an )  
 Increase in Annual Water System )                   **File No. WR-2017-0343**  
 Operating Revenues for Gascony Water )  
 Company, Inc. )

### REPORT AND ORDER

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## **APPEARANCES**

### **GASCONY WATER COMPANY, INC.:**

**Diana C. Carter**, Brydon, Swearingen & England, P.C., 312 East Capitol Avenue, P.O. Box 456, Jefferson City, Missouri 65102-0456.

### **STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:**

**Jacob Westen**, Deputy Counsel, **Lexi Kraus**, Legal Counsel, Post Office Box 360, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

### **OFFICE OF THE PUBLIC COUNSEL:**

**Lera L. Shemwell**, Senior Counsel, **Curtis Shube**, Senior Counsel, PO Box 2230, Jefferson City, Missouri, 65102.

**REGULATORY LAW JUDGE:** John T. Clark

## REPORT AND ORDER

### I. Procedural History

#### A. Case Filing

On June 19, 2017, Gascony Water Company, Inc. (“Gascony”) filed a letter with the Missouri Public Service Commission (“Commission”) requesting that the Commission approve increases in its annual water operating revenues, which resulted in the Commission opening a case, File Nos. WR-2017-0343. The case was initiated under Commission Rule 4 CSR 240-3.050, the Small Utility Rate Case Procedure, which describes the procedures by which small utilities may request increases in their overall annual operating revenues.

The Commission’s Staff and the Office of the Public Counsel (“OPC”) conducted an investigation and audit of Gascony’s water operations.

#### B. Partial Disposition Agreement

On November 17, 2017, the Commission’s Staff filed *Partial Disposition Agreement and Request for Evidentiary Hearing*, including related attachments (collectively, the “Agreement”). The Agreement was a partial resolution of Gascony’s water rate requests but also listed disputed issues for which Staff and Gascony requested an evidentiary hearing. The Office of the Public Counsel submitted a late-filed response to the Agreement asking that mileage be added to the list of disputed issues, but did not object of the remaining list of disputed issues or the remainder of the Agreement. The request for an evidentiary hearing under Commission Rule 4 CSR 240-3.050(21) asked that the disputed issues be resolved with contested case procedures.

### **C. Evidentiary Hearing**

The Commission issued a procedural schedule with an evidentiary hearing starting February 22, 2018. On February 15, 2018, Gascony filed a *Motion to Continue* asking that the Commission continue the evidentiary hearing and other related filing deadlines because Gascony's owner and president was hospitalized. The request to continue the evidentiary hearing and other filing deadlines was granted, and the Commission reset the evidentiary hearing. The evidentiary hearing was held on March 19, 2018.<sup>1</sup> During the hearing, the parties presented evidence relating to the disputed issues previously identified by the parties.

### **D. Case Submission**

During the evidentiary hearing held at the Commission's offices in Jefferson City, Missouri, the Commission admitted the testimony of nine witnesses and received 32 exhibits into evidence. Post-hearing briefs were filed according to the amended post-hearing procedural schedule. The final post-hearing briefs were filed on April 13, 2018, and the case was deemed submitted for the Commission's decision on that date.<sup>2</sup> No parties requested additional time to present additional evidence on any issue.

## **II. General Findings of Fact**

### **A. Parties**

1. Gascony Water Company, Inc. is a corporation in good standing organized under the laws of the state of Missouri.<sup>3</sup> Gascony possesses a certificate of convenience

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<sup>1</sup> Transcript, Vol. 2.

<sup>2</sup> "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 4 CSR 240-2.150(1).

<sup>3</sup> EFIS No. 8 (November 17, 2017) *Partial Disposition Agreement and Request for Evidentiary Hearing, Appendix A, Preliminary Observations of Water and Sewer Department*.

and necessity (“CCN”) to provide water service that was issued in File No. WA-97-510. That CCN went into effect in April 1999.<sup>4</sup> Gascony provides water service to approximately 26 full time customers and 151 part-time customers, and three commercial customers located in Gasconade County, Missouri.<sup>5</sup>

2. The Office of the Public Counsel (“Public Counsel”) is a party to this case pursuant to Section 386.710(2), RSMo<sup>6</sup>, and by Commission Rule 4 CSR 240-2.010(10).

3. The Staff of the Missouri Public Service Commission (“Staff”) is a party to this case pursuant to Section 386.071, RSMo, and Commission Rule 4 CSR 240-2.010(10).

## **B. Witnesses**

4. The Commission finds that any given witness’ qualifications and overall credibility are not dispositive as to each and every portion of that witness’ testimony. The Commission gives each item or portion of a witness’ testimony individual weight based upon the detail, depth, knowledge, expertise, and credibility demonstrated with regard to that specific testimony. Consequently, the Commission will make additional specific weight and credibility decisions throughout this order as to specific items of testimony as is necessary.<sup>7</sup>

5. Any finding of fact reflecting that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to

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<sup>4</sup> EFIS No. 8 (November 17, 2017) *Partial Disposition Agreement and Request for Evidentiary Hearing, Appendix A, Preliminary Observations of Water and Sewer Department.*

<sup>5</sup> EFIS No. 8 (November 17, 2017) *Partial Disposition Agreement and Request for Evidentiary Hearing, Appendix A, Preliminary Observations of Water and Sewer Department.*

<sup>6</sup> Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2000 and subsequently revised or supplemented.

<sup>7</sup> Witness credibility is solely a matter for the fact-finder, “which is free to believe none, part, or all of the testimony”. *State ex rel. Public Counsel v. Missouri Public Service Comm’n*, 289 S.W.3d 240, 247 (Mo. App. 2009).

that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.<sup>8</sup>

### C. Stipulated Facts

6. On November 17, 2017, the Commission's Staff filed *Partial Disposition Agreement and Request for Evidentiary Hearing*,<sup>9</sup> including related attachments. The Agreement was a partial resolution of Gascony's water rate requests but also listed disputed issues for which Staff and Gascony requested an evidentiary hearing. The Office of the Public Counsel submitted a late-filed response to the Agreement asking that mileage be added to the list of disputed issues, but did not object of the remaining list of disputed issues or the remainder of the Agreement.<sup>10</sup> The Agreement is attached hereto as Attachment A and incorporated herein by reference as if fully set forth.

7. The issues resolved in the partial disposition agreement include depreciation rates for the plant, capital structure (equity, return on equity, and rate of return), and adopting recommendations relating to maintaining timesheets, documenting improvement costs, and rights and responsibilities of customers.<sup>11</sup>

8. The unresolved issues in the partial disposition agreement include rate base, rate design, customer applications, land ownership, depreciation rates (for certain equipment), office rent, salaries, rate case expense, and mileage (added by OPC).<sup>12</sup>

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<sup>8</sup> An administrative agency, as fact finder, also receives deference when choosing between conflicting evidence. *State ex rel. Missouri Office of Public Counsel v. Public Service Comm'n of State*, 293 S.W.3d 63, 80 (Mo. App. 2009).

<sup>9</sup> EFIS No. 8 (November 17, 2017) *Partial Disposition Agreement and Request for Evidentiary Hearing*

<sup>10</sup> EFIS No. 11 (November 29, 2017) *Motion for Leave to Accept Late-Filed Response to Partial Disposition Agreement and Request for Evidentiary Hearing*; Regulation 4 CSR 240-3.050(20) required OPC's response to "include a specified list of issues that [OPC] believes should be the subject of the hearing."

<sup>11</sup> EFIS No. 8 (November 17, 2017) *Partial Disposition Agreement and Request for Evidentiary Hearing*, Appendix A.

<sup>12</sup> *Id.* and EFIS No. 11 (November 29, 2017) *Motion for Leave to Accept Late-Filed Response to Partial Disposition Agreement and Request for Evidentiary Hearing*.



9. The Commission took official notice of File No. WA-97-510, the case in which the Commission granted Gascony its certificate of convenience and necessity (“CCN”).<sup>13</sup>

#### **D. Gascony Water Company’s System**

10. Gascony Water Company provides service to three commercial customers, approximately 26 full-time customers, and 151 part-time customers in a fishing resort area known as Gascony Village, in Gasconade County, Missouri.<sup>14</sup>

11. Gascony’s system consists of a well, a 1000 gallon storage tank, a well house, and approximately six and a half miles of supply mains composed of two and two and a half inch PVC piping.<sup>15</sup>

12. The Gascony water systems have not had a rate increase since the certificate of convenience and necessity was granted in 1999, and water usage has increased dramatically since that time.<sup>16</sup>

13. In its original rate request letter, Gascony set forth its request for an increase of \$15,000 in its total annual water service operating revenues.<sup>17</sup>

#### **E. Test Period**

14. Staff used a test period in this case of the four months ending December 31, 2016, with an update period through June 30, 2017,<sup>18</sup> to annualize the available Gascony revenue and expense information and develop its revenue requirement recommendation.

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<sup>13</sup> Transcript, Vol. 2, p. 17.

<sup>14</sup> EFIS No. 8 (November 17, 2017) *Partial Disposition Agreement and Request for Evidentiary Hearing*, Appendix A.

<sup>15</sup> Gascony Ex. 1, Russo Direct, p. 3; Transcript, Vol. 2, p. 21.

<sup>16</sup> Transcript, Vol. 2, p. 83.

<sup>17</sup> EFIS No. 1 (June 19, 2017) Rate Increase Request.

<sup>18</sup> Staff Ex. 100, Young Rebuttal, p. 2, 30.

### **III. General Conclusions of Law**

#### **A. Jurisdiction**

Gascony is a “water corporation”, and a “public utility” as defined in Sections 386.020(59), 386.020(49), and 386.020(43), RSMo, respectively, and as such is subject to the personal jurisdiction, supervision, control and regulation of the Commission under Chapters 386 and 393 of the Missouri Revised Statutes. The Commission’s subject matter jurisdiction over Gascony’s rate increase request is established under Section 393.150, RSMo.

#### **B. Burden of Proof**

Section 393.150.2, RSMo, makes clear that at any hearing involving a requested rate increase the burden of proof to show the proposed increase is just and reasonable rests on the corporation seeking the rate increase. As the party requesting the rate increase, Gascony bears the burden of proving that its proposed rate increase is just and reasonable. In order to carry its burden of proof, Gascony must meet the preponderance of the evidence standard.<sup>19</sup> In order to meet this standard, Gascony must convince the Commission it is “more likely than not” that Gascony’s proposed rate increase is just and reasonable.<sup>20</sup>

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<sup>19</sup> *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996), citing to, *Addington v. Texas*, 441 U.S. 418, 423, 99 S.Ct. 1804, 1808, 60 L.Ed.2d 323, 329 (1979).

<sup>20</sup> *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 109 -111 (Mo. banc 1996); *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

### C. Law and Policy

Sections 393.130 and 393.140, RSMo, mandate that the Commission ensure all utilities are providing safe and adequate service and that all rates set by the Commission are just and reasonable. In determining whether the rates proposed by Gascony are just and reasonable, the Commission must balance the interests of the investor and the consumer.<sup>21</sup> In discussing the need for a regulatory body to institute just and reasonable rates, the United States Supreme Court has held as follows:

Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the services are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment.<sup>22</sup>

In the same case, the Supreme Court provided the following guidance on what is a just and reasonable rate:

What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.<sup>23</sup>

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<sup>21</sup> *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603, (1944).

<sup>22</sup> *Bluefield Water Works & Improvement Co. v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 690 (1923).

<sup>23</sup> *Bluefield*, at 692-93.

The Supreme Court has further indicated:

‘[R]egulation does not insure that the business shall produce net revenues.’ But such considerations aside, the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.<sup>24</sup>

In undertaking the balancing required by the Constitution, the Commission is not bound to apply any particular formula or combination of formulas. Instead, the Supreme Court has said:

Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances.<sup>25</sup>

Furthermore, in quoting the United States Supreme Court in *Hope Natural Gas*, the Missouri Court of Appeals said:

[T]he Commission [is] not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of ‘pragmatic adjustments.’ ... Under the statutory standard of ‘just and reasonable’ it is the result reached, not the method employed which is controlling. It is not theory but the impact of the rate order which counts.<sup>26</sup>

Gascony and Staff signed and filed the Agreement, in which those parties reached agreement on most of the issues related to Gascony’s rate increase requests. Public Counsel requested that mileage be added to the list of disputed issues, but otherwise did not object to the partial disposition agreement or the remaining list of disputed issues

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<sup>24</sup> *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (citations omitted).

<sup>25</sup> *Federal Power Commission v. Natural Gas Pipeline Co.* 315 U.S. 575, 586 (1942).

<sup>26</sup> *State ex rel. Associated Natural Gas Co. v. Public Service Commission*, 706 S.W. 2d 870, 873 (Mo. App. W.D. 1985).

addressed at the evidentiary hearing. Based on the evidence in this case, the Commission concludes that acceptance of the provisions of the Agreement on the issues contained therein is a fair and reasonable resolution of those issues. The Commission will adopt the provisions of the Agreement as set forth in Attachment A to this Report and Order.

#### **IV. Disputed Issues**

##### **A. What amount of Gascony's President's compensation should be included in Gascony's cost of service?**

###### **Findings of Fact**

1. Mr. Hoesch, Gascony's president, was permitted a \$15,000 salary included in Gascony's cost of service in the certificate of convenience and necessity case, File No. WA-97-510.<sup>27</sup>

2. Mr. Hoesch has both operational as well as managerial duties.<sup>28</sup>

3. Gascony's expert reviewed information from the Missouri Economic Research and Information Center to arrive at an hourly salary for Mr. Hoesch for both operational and managerial duties.<sup>29</sup>

4. Gascony's expert determined Mr. Hoesch's operational hours based on a two year average of his timesheets. Gascony's expert calculated that Mr. Hoesch worked 493.25 operational hours.<sup>30</sup>

5. Gascony's expert determined Mr. Hoesch's managerial hours based upon discussions with Mr. Hoesch regarding his management activities. Gascony's expert calculated that Mr. Hoesch spent 467.2 hours on management activities.<sup>31</sup>

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<sup>27</sup> Staff Ex. 102, Taylor Rebuttal, p. 10.

<sup>28</sup> Gascony Ex. 1, Russo Direct, p. 3-5.

<sup>29</sup> Gascony Ex. 1, Russo Direct, p. 3-5.

<sup>30</sup> Gascony Ex. 1, Russo Direct, p. 3-5.

6. Gascony's expert determined that Mr. Hoesch's salary for operational duties should be \$10,107, and should be \$17,777 for management duties for a total salary of \$27,884.<sup>32</sup>

7. Mr. Hoesch provided no time sheets for his time spent on operations prior to 2015.<sup>33</sup>

8. Mr. Hoesch provided no time sheets for his time spent on managerial activities prior to November 2017.<sup>34</sup>

9. Staff's expert determined what Mr. Hoesch's salary should be based upon Mr. Hoesch's submitted time sheets,<sup>35</sup> and an additional 129 management hours added to reach its \$15,000 recommendation.<sup>36</sup> Staff's comparison of ten small water and sewer companies' average total compensation was also used to justify this amount.<sup>37</sup>

10. Staff determined that Mr. Hoesch's salary for operational duties should be \$10,107 and, for management duties, should be \$4,893, for a total salary of \$15,000.<sup>38</sup>

11. Staff's comparison of small water and sewer companies included four water companies and six sewer companies. The number of customers per utility ranged from 49 customers to 245 customers. The total annual cost per customer ranged from \$61.20 to \$213.53.<sup>39</sup>

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<sup>31</sup> Gascony Ex. 1, Russo Direct, p. 3-5.

<sup>32</sup> Gascony Ex. 1, Russo Direct, p. 3-5.

<sup>33</sup> Transcript Vol. 2, p. 44.

<sup>34</sup> Transcript Vol. 2, p. 44.

<sup>35</sup> Staff Ex. 102, Taylor Rebuttal, p. 5.

<sup>36</sup> Staff Ex. 102, Taylor Rebuttal, p. 13.

<sup>37</sup> Staff Ex. 102, Taylor Rebuttal, p. 23, and Schedule MJT-r7.

<sup>38</sup> Staff Ex. 102, Taylor Rebuttal, p. 4.

<sup>39</sup> Staff Ex. 102, Taylor Rebuttal, Schedule MJT-r7.

12. Staff's position, based upon its comparison of ten water and sewer companies, is that Mr. Hoesch's total compensation plus travel expenses should be \$20,840.<sup>40</sup>

13. The average annual cost per customer for total compensation using only the water companies in Staff's comparison is \$156.53.<sup>41</sup>

### **Conclusions of Law and Decision**

The Commission concludes Gascony's computation of Mr. Hoesch's salary is too high as it is based upon insufficient evidence. Mr. Hoesch failed to maintain accurate ongoing records of his time for operational and managerial duties performed. Staff's analysis combines Mr. Hoesch's known operational hours with assumed managerial hours to reach the \$15,000 amount equal to his allotted salary amount included in WA-97-510. Staff's position is also insufficiently supported by the submitted evidence. No allowance was made for any increase in the nearly 20 years since the company was granted a CCN in File No. WA-97-510.

The most persuasive evidence offered is the chart provided by Staff that shows a comparison of recent small water and sewer companies. However, Gascony is not a sewer company and any comparison with sewer companies is inappropriate. Rather, the appropriate comparison for the Commission to use is a comparison of Gascony's compensation to that of other similar small water companies. The average annual cost per customer for total compensation using the water companies in Staff's chart is \$156.53. When the annual cost per customer is multiplied by the 177 Gascony customers, the resulting compensation plus travel amount is \$27,705.81. Mr. Hoesch's salary as president

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<sup>40</sup> Staff Ex. 102, Taylor Rebuttal, Schedule MJT-r7.

<sup>41</sup> Staff Ex. 102, Taylor Rebuttal, Schedule MJT-r7.

does not include travel, which is addressed later in this order as mileage rates. After subtracting the travel amount of \$5,840 ( $\$20,840 - \$15,000 = \$5,840$ ) presumed in Staff's chart, the salary amount for Mr. Hoesch's managerial and operational duties is \$21,865.81 per year ( $\$27,705.81 - \$5,840 = \$21,865.81$ ). The Commission finds that the appropriate level of president's compensation to include in the Gascony's cost of service is \$21,865.81.

**B. What amount of rents should be included in Gascony's cost of service?**

- **What is the appropriate amount of rent for the Gascony Village office?**
- **What is the appropriate amount of rent for the St. Louis office?**

**Findings of Fact**

1. Gascony is asking for annual rent amounts of \$2,159 for the St. Louis office, and \$2,210 for the Gascony Village office to be included in Gascony's cost of service.<sup>42</sup>

2. File No. WA-97-510 allowed Gascony to include rent of \$1,500 in its cost of service for use of a trailer located in Gascony Village.<sup>43</sup>

3. Mr. Hoesch found the single-wide trailer in which Gascony's office was located to be inadequate, and moved the office to his current residence in Gascony Village.<sup>44</sup> A majority of the operational activities performed by Mr. Hoesch occur on weekends.<sup>45</sup>

4. Mr. Hoesch also conducts Gascony company business from his residence in St. Louis. He does so because the company CPA and other businesses work traditional hours<sup>46</sup> (weekdays).

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<sup>42</sup> Gascony Ex. 1, Russo Direct, p. 6-7.

<sup>43</sup> Staff Ex. 102, Taylor Rebuttal, p. 24.

<sup>44</sup> Gascony Ex. 4, Hoesch Surrebuttal, p. 10.

<sup>45</sup> Gascony Ex. 1, Russo Direct, p. 5.

<sup>46</sup> Id. p. 10-11 and Staff Ex. 102, Taylor Rebuttal, p. 23-28.



5. Gascony responded to Staff's Data Request No. 1, requesting a description of facilities shared for regulated and non-regulated purposes, by providing only the owner's residence in Gascony Village.<sup>47</sup> Staff's Data Request No. 1 also asked the Gascony to provide documents, to which Gascony responded that the items were available for review at the company's office in Hermann, Missouri.<sup>48</sup>

6. Gascony was unable to obtain Commercial real estate rental information for the Gascony Village area.<sup>49</sup>

7. Gascony's expert computed a rent increase for the Gascony Village office by applying the consumer price index ("CPI") increase of 47.3088% from 1999 to 2016. Applying the CPI increase to the \$1,500 rent amount allotted in WA-97-510 yielded a rent amount of \$2,210 annually.<sup>50</sup>

8. Staff supports \$1,500 for office rent for the Gascony office, and opposes inclusion of rent for the St. Louis office, in Gascony's cost of service.<sup>51</sup>

### **Conclusions of Law and Decision**

Gascony has proposed annual rent of \$2,159 for the St. Louis office and \$2,210 for the Gascony Village office to be included in Gascony's cost of service. The Commission concludes that office rent of \$2,210 is reasonable and is supported by an increase in the consumer price index, as comparable commercial real estate rental information was unavailable. The Commission also concludes that moving Gascony's office from a single-wide trailer to Mr. Hoesch's current Gascony residence for the purpose of having more adequate space to conduct company business is reasonable and supportive of an increase

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<sup>47</sup> Staff Ex. 102, Taylor Rebuttal, p. 2-25.

<sup>48</sup> Staff Ex. 102, Taylor Rebuttal, p. 25

<sup>49</sup> Gascony Ex. 1, Russo Direct, p. 7.

<sup>50</sup> Gascony Ex. 1, Russo Direct, p. 7.

<sup>51</sup> Staff Ex. 102, Taylor Rebuttal, p. 24-28.

in rental expense. Staff is opposed to using the CPI, but offers no alternative methodology by which to calculate rent for the Gascony Village office other than as a percentage of Mr. Hoesch's residential costs.

There is a lack of evidence that the St. Louis office is actually used. The fact that the company's documents were located at the Gascony Village office demonstrates that the St. Louis office was not often used for company business. While it may be convenient for Mr. Hoesch to conduct some of Gascony's business from his St. Louis residence, Gascony has failed to meet its burden of proof to demonstrate that use of a second office in St. Louis is necessary or reasonable. The Commission concludes that no rent should be included for Mr. Hoesch's St. Louis residence in Gascony's cost of service.

The Commission finds that the appropriate amount of office rent to be included in Gascony's cost of service is \$2,210.

**C. What mileage rate should be used in computing the president's travel expenses to include in Gascony's cost of service?**

**Findings of Fact**

1. Gascony requests to recover travel costs related to the president's travels for Gascony business at the Federal IRS mileage rate.<sup>52</sup>
2. OPC supports using the State of Missouri mileage allowance of 0.37 cents per mile.<sup>53</sup>
3. Beginning in 2010, the state mileage allowance was modified to 0.37 cents per mile due to state budgetary constraints.<sup>54</sup>

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<sup>52</sup> Gascony Ex. 1, Russo Direct, p. 8, indicating that Gascony is supportive of Staff's position.

<sup>53</sup> OPC Ex. 202, Roth Rebuttal, p. 3.

<sup>54</sup> OPC Ex. 204, Mileage printout.

4. Staff supports using the Federal IRS mileage rate of 53.5 cents per mile because Gascony is not a state agency.<sup>55</sup>

### **Conclusions of Law and Decision**

The Commission concludes that Staff's approach of using the Federal IRS mileage rate is the most reasonable. Gascony is not a state agency, and therefore the state mileage allowance rate should not apply. Additionally, the state mileage was modified to 37 cents in 2010 for state budgetary constraints, which has no relation to utility cost of service. The Commission finds the appropriate rate to use for calculating the president's mileage to be included in Gascony's cost of service is the Federal IRS mileage rate of 53.5 cents per mile.

#### **D. Rate case expense**

### **Findings of Fact**

1. Gascony wishes to recover all prudently incurred costs of resolving this case. Gascony included a total rate case expense of \$18,000, normalized over a six-year period at \$3,000 a year. Gascony would also consider an eight year recovery period in the alternative, provided it can continue to recover any unrecovered amount from this rate case should it come back to the Commission for a rate case before eight years have lapsed.<sup>56</sup>

2. Gascony does not believe that \$18,000 will be the final level of rate case expense incurred.<sup>57</sup>

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<sup>55</sup> Staff Ex. 103, Taylor Surrebuttal, p. 2.

<sup>56</sup> Gascony Ex. 1, Russo Direct, p. 7-8.

<sup>57</sup> Gascony Ex. 1, Russo Direct, p. 7-8.

3. Gascony's proposed \$3,000 per year recovery would result in costs of approximately \$16.30 per customer yearly.<sup>58</sup>
4. Staff supports actual rate case expense normalized over ten years.<sup>59</sup>
5. Staff opines that the Commission could disallow 50% of rate case expense due to Mr. Hoesch failing to transfer assets as he testified he would in WA-97-510.<sup>60</sup>
6. OPC agrees with Gascony regarding recovery of actual, prudently incurred, rate case expense. OPC also agrees with normalizing the costs over a six year period.<sup>61</sup>

### **Conclusions of Law and Decision**

The Commission concludes that of the proposals for addressing rate case expense, actual rate case expense as proposed by Gascony, Staff, and OPC represents the correct amount of rate case expense to allow Gascony to recover in rates. The Commission does not agree that a 50% disallowance is appropriate, as there is not sufficient evidence to show wrongdoing by Gascony, or inflexibility such as would warrant a disallowance.

The Commission finds Staff's proposal for rate case expense recovered over a ten year period to be the most reasonable and to have the least rate impact on Gascony's small number of customers. Given Gascony's apparent over recovery of startup expenses in WA-97-510, the Commission is concerned that Gascony may over recover rate case expense. The parties propose normalizing rate case expense over time. Testimony indicates Gascony would over-recover if they came in after the normalization period, and amortizing with conditions would lessen the chance of over-recovery.<sup>62</sup> The Commission finds that actual rate case expenses should be amortized over ten years, and Gascony

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<sup>58</sup> Staff Ex. 102, Taylor Rebuttal, p. 29-30.

<sup>59</sup> Staff Ex. 102, Taylor Rebuttal, p. 31.

<sup>60</sup> Staff Ex. 102, Taylor Rebuttal, p. 31.

<sup>61</sup> OPC Ex. 202, Roth Rebuttal, p. 3-4.

should contact the Commission's Staff no later than ten years from the effective date of this order to determine if it would be prudent to file a rate case.

**E. What amount of depreciation expense for a trencher and a utility transport vehicle should be included in Gascony's cost of service, and what depreciation mechanism is applied?**

**F. What is the allowed rate base value for the trencher and the UTV?**

### **Findings of Fact**

1. The trencher is a 1984 Ditch Witch model 4010 and was purchased in 1995 by Gasc-Osage, Mr. Hoesch's realty company.<sup>63</sup>

2. Gasc-Osage sold the trencher to Gascony in 2015 for \$8,000.<sup>64</sup> Gascony placed the trencher in service in July 2015.<sup>65</sup> The \$8,000 value was derived from current market prices on websites.<sup>66</sup>

3. Gascony purchased a John Deere Gator ("UTV") in 2007 for \$4,200.<sup>67</sup>

4. In a 2013 rate case filed and then withdrawn by Gascony, Mr. Hoesch was informed that Staff would recommend disallowing the asset if it was also being used by his realty company.<sup>68</sup>

5. Mr. Hoesch purchased another UTV to be used solely by Gascony.<sup>69</sup> This second UTV was purchased in 2015 for \$3,500 and was placed into service in September 2015.<sup>70</sup>

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<sup>62</sup> Transcript Vol. 2, p. 152

<sup>63</sup> Staff Ex. 100, Young Rebuttal, p. 21-22.

<sup>64</sup> Staff Ex. 100, Young Rebuttal, p. 20.

<sup>65</sup> Gascony Ex. 1, Russo Direct, p. 9.

<sup>66</sup> Staff Ex. 100, Young Rebuttal, p. 21.

<sup>67</sup> Staff Ex. 100, Young Rebuttal, p. 27.

<sup>68</sup> Gascony Ex. 4, Hoesch Surrebuttal, p. 5.

<sup>69</sup> Gascony Ex. 4, Hoesch Surrebuttal, p. 5.

6. Staff assumed a useful life of 30 years for the trencher and 15 years for the UTV in recognition that the trencher and UTV still had economic value as of the June 30, 2017 update period.<sup>71</sup>

7. OPC supports using the depreciation rates ordered in WA-97-510.<sup>72</sup>

8. OPC and Staff agree that the original cost of the trencher is \$10,800, and \$4,200 for the UTV.<sup>73</sup>

9. OPC supports an in-service date for the trencher of 1999, and 2007 for the UTV.<sup>74</sup>

10. Staff supports an in-service date for the trencher of 1995, and 2007 for the UTV.<sup>75</sup>

### **Conclusions of Law and Decision**

The Commission finds Gascony's proposal for how to address depreciation and rate base value for the trencher and UTV to be the most reasonable. While Mr. Hoesch purchased the trencher in 1995 for his realty company, it was not transferred to Gascony until 2015. 2015 is the appropriate in-service date to start depreciation for the trencher.

While Staff and OPC both agree that the in-service date for the UTV is 2007, Mr. Hoesch credibly testified that he purchased a second UTV for Gascony's exclusive use. The appropriate in-service date for the UTV to start depreciation is when it was placed into Gascony's service in 2015.

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<sup>70</sup> Gascony Ex. 1, Russo Direct, p. 10.

<sup>71</sup> Staff Ex. 100, Young Rebuttal, p. 30-31.

<sup>72</sup> OPC Ex. 200, Robinett Rebuttal, p. 1.

<sup>73</sup> OPC Ex. 201, Robinett Surrebuttal, p. 2.

<sup>74</sup> OPC Ex. 201, Robinett Surrebuttal, p. 1-2.

<sup>75</sup> Staff Ex. 100, Young Rebuttal, p. 30.

Both of these transactions involve transfers between companies owned by Mr. Hoesch. Staff and OPC argue that these transactions are affiliate transactions. While there is no affiliate transaction rule for water cases in Missouri, the Commission can protect customers from the detrimental effects of transactions that are not arm's length with or without a rule.

In this case, concerns about affiliate transactions are unwarranted since the Commission concludes that 30 year and 15 year depreciation periods for the trencher and UTV, as proposed by Staff, are reasonable due to the equipment still being used and having economic value. Using straight line depreciation, the 30 year depreciation rate is 3.3%, and the 15 year depreciation rate is 6.7%.

The Commission finds that the appropriate rate base values for the trencher and UTV are \$8,000 and \$3,500, respectively. The Commission additionally finds that the trencher shall be depreciated over 30 years at a rate of 3.3% a year starting 2015, and the UTV shall be depreciated over 15 years at a rate of 6.7% a year starting 2015.

**G. Should Gascony be allowed to include in its rate base values real property identified as Lot 27 and real property identified as the Storage Building Lot? If so, what is a reasonable amount?**

#### **Findings of Fact**

1. Gascony has requested that the Commission include in rate base Lot 27, which includes the well, storage tank and pump house. Gascony is also requesting to include in rate base the Storage Building Lot.<sup>76</sup>

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<sup>76</sup> Gascony Ex. 1, Russo Direct, p. 8.

2. Gascony values Lot 27 at \$10,000, and the Storage Building Lot at \$7,500.<sup>77</sup>
3. Gasc-Osage deeded Lot 27 to Mr. Hoesch's children in the late 1980s.<sup>78</sup>
4. Mr. Hoesch testified in WA-97-510,

The Company's predecessor [Gasc-Osage] recorded a seventy thousand dollar (\$70,000) reserve for completion of a water system. A portion of this reserve is allocated to the cost of each lot to recover capital costs on the water plant. This reserve is the only mechanism that the Company's predecessor had in place to recover the costs of the water plant. The price of the lots does not include any other amounts, beyond this reserve, which are intended to provide costs associated with the water plant.<sup>79</sup>

This testimony demonstrates that Gasc-Osage had already recovered all existing tangible plant through the sale of lots.

5. Gascony's expert, when he worked for the Commission's Staff testified in WA-97-510:

Q. What did you discover in your review?

A. Based on the information provided by the Company it appears that all of the identified Plant in Service costs were expensed in the year occurred as a development cost.

Q. How does this affect the proposed rate base of the Company?

A. Items that have been previously expensed should not be included in rate base for ratemaking purposes. If companies were allowed to include previously expensed items in future rates they would in effect be receiving the benefit of that item twice. Based on our review of the Company's records, the Staff is recommending \$0 for rate base.<sup>80</sup>

6. Gasc-Osage deeded the property to Gascony on July 1, 2017.<sup>81</sup>
7. Staff and OPC support including Lot 27 and the Storage Building Lot in rate base, but believe the rate base value should be \$0 as there is no unrecovered investment.<sup>82</sup>

<sup>77</sup> Gascony Ex. 1, Russo Direct, p. 9.

<sup>78</sup> Staff Ex. 100, Young Rebuttal, p. 5, 10, and also Gascony Ex. 1, Russo Direct, p. 5.

<sup>79</sup> Staff Ex. 100, Young Rebuttal, p 8-9, quoting Hoesch's testimony from WA-97-510.

<sup>80</sup> Staff Ex. 100, Young Rebuttal, p. 7-8, quoting Russo's testimony from WA-97-510.

<sup>81</sup> Staff Ex. 100, Young Rebuttal, p. 18.



### **Conclusions of Law and Decision**

Gascony requested to have Lot 27 and the Storage Building Lot included in rate base. The Commission agrees with Staff and OPC that while the properties should be included in the rate base, there is no unrecovered investment. At the time Gascony was created, Gasc-Osage had already recovered its investment in plant through the sale of Gascony Village lots.

Lot 27 existed at the time Gascony applied for its CCN, at which time it already had a well and storage tank and was existing plant. Likewise, the Storage Building Lot also existed at the time and would have been presumably used to house utility equipment and parts. While the properties should be included in rate base, they are offset by any Contribution in Aid of Construction. Because the developer has recovered his investment, the property is deemed “contributed” at no cost.

The burden is on Gascony to show that there was an unrecovered investment, and Gascony has not met that burden. The Commission finds that Lot 27 and the Storage Building Lot are included in rate base with a value of \$0 as offset by Contribution in Aid of Construction.

**H. What are the appropriate Customer Equivalency Factors that will be used to determine rates for the various customer classes?**

### **Findings of Fact**

1. The current water rate design for Gascony is a flat quarterly charge for each customer classification. Customer classifications are based upon customer equivalency

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<sup>82</sup> Staff Ex. 100, Young Rebuttal, p. 7, 20, and OPC Ex. 201, Robinett Surrebuttal, p. 1.

factors with full time customers equaling one customer equivalent, and part-time customers equaling .35 of a full-time customer.<sup>83</sup>

2. Gascony's proposed customer equivalency factors as compared to current customer equivalency factors are as follows:

	Current	Proposed
Full-time	1.00	1.00
Part-time	0.35	0.50
Pool/Bathhouse	3.56	6.00
Kitchen	0.56	2.00
Dump Station	1.65	2.50

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3. An increase in part-time customer equivalent is appropriate because the usage of the facilities at Gascony Village by part-time customers has changed. Part-time customers are visiting more frequently and bringing a higher number of guests, which results in higher water consumption for part-time customers.<sup>85</sup>

4. The swimming pool house that existed when Gascony was originally certificated was replaced with a new swimming pool house. The number of showers was doubled from four to eight, the number of toilets was increased from two to six, and the number of urinals was increased from one to two.<sup>86</sup>

5. The kitchen that existed when Gascony was originally certificated has been replaced with a new kitchen. The new kitchen includes restrooms that did not exist in the old kitchen. The new kitchen has seating for approximately 100 people where the old kitchen had limited seating.<sup>87</sup>

<sup>83</sup> Gascony Ex. 1, Russo Direct, p. 12.

<sup>84</sup> Gascony Ex. 1, Russo Direct, p. 13.

<sup>85</sup> Gascony Ex. 1, Russo Direct, p. 13-14.

<sup>86</sup> Gascony Ex. 1, Russo Direct, p. 14.

<sup>87</sup> Gascony Ex. 1, Russo Direct, p. 15.

6. When rates were initially developed for Gascony, water usage was around 2.1 million gallons, and presently it is in excess of 6 million gallons.<sup>88</sup>

7. Staff's proposed customer equivalency factors as compared to current customer equivalency factors are as follows:

	Current	Proposed
Full-time	1.00	1.00
Part-time	0.35	0.35
Pool/Bathhouse	3.56	6.00
Kitchen	0.56	2.00
Dump Station	1.65	1.65

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8. Staff supports leaving the dump station equivalency factor at 1.65, as no infrastructure upgrades occurred at the dump station.<sup>90</sup> However, Staff does propose increasing the equivalent factor for the dump station if the part-time customer equivalency factor is increased since an increase in part-time customers would also mean an increase in usage of the dump station.<sup>91</sup>

### **Conclusions of Law and Decision**

Gascony bills for its services quarterly on a flat rate structure based upon the customer's classification, rather than by meter readings. Part-time customers are billed at a fractional rate of full time customers due to lower water usage, with full time customers having a customer equivalency factor of 1.0. Gascony requests to increase those amounts based upon an increase in water usage, and an increase in the frequency of part-time residents visiting the resort. Staff is not opposed to increasing the equivalency factor for

<sup>88</sup> Transcript Vol. 2, p. 83.

<sup>89</sup> Staff Ex. 104, Robertson Rebuttal, p. 5.

<sup>90</sup> Staff Ex. 104, Robertson Rebuttal, p. 4.

<sup>91</sup> Staff Ex. 104, Robertson Rebuttal, p. 6.

the kitchen and pool bathhouse because both of these have undergone significant upgrades since Gascony received a CCN.

Staff is opposed to increasing the equivalency factor for part-time customers because the evidence supporting this increase is primarily observational. OPC is supportive of Staff's position.

The Commission concludes that Gascony's position is the most reasonable and supported by the evidence. Testimony indicates that the amount of water used has increased dramatically since Gascony was certificated. Gascony states that more part-time customers visit with greater frequency and bring additional guests. These are not merely unsupported observations, but are supported by the upgrades made to the kitchen and pool bathhouse - upgrades that were undoubtedly made to accommodate an increased number of people at the resort.

The Commission finds that the customer equivalency factors Gascony should use for billing are as follows:

Full-time	1.00
Part-time	0.50
Pool/Bathhouse	6.00
Kitchen	2.00
Dump Station	2.50

**I. Should Gascony ensure that new customers complete an application for service, and should the availability of these applications be completed within 30 days of the resolution of the case?**

**Findings of Fact**

1. Gascony agrees that all new customers need to complete an application for service.<sup>92</sup>
2. Gascony disagrees with having to complete the applications within 30 days because it may not have any new customers during that time.<sup>93</sup>
3. The application requirement does not require that Gascony require new customers to complete the application within 30 days of the Report and Order.<sup>94</sup>

**Conclusions of Law and Decision**

Gascony's resistance to having an application available for new customers within 30 days appears to be a misunderstanding. What is being proposed, and what Gascony agrees with, is that Gascony have applications available for new customers within thirty days of the Report and Order, and that any new Gascony customers be required to fill out an application for service. As such the Commission finds that Gascony shall make applications for service available within 30 days of this Report and Order and shall require that all new customers complete that application.

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<sup>92</sup> Gascony Ex. 1, Russo Direct, p. 17-18.

<sup>93</sup> Gascony Ex. 1, Russo Direct, p. 17-18.

<sup>94</sup> Staff Ex. 106, Kiesling Rebuttal, p. 3.

### **Decision Summary**

In making this decision as described above, the Commission has considered the positions and arguments of all of the parties. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence but indicates rather that the material was not dispositive of this decision.

Gascony provides safe and adequate service, and the Commission concludes, based upon its independent review of the whole record, that the rates approved as a result of this order are just and reasonable and support the provision of safe and adequate service. The revenue increase approved by the Commission is no more than what is sufficient to keep Gascony's utility plant in proper repair for effective public service and provide to Gascony's investors an opportunity to earn a reasonable return upon funds invested.

#### **THE COMMISSION ORDERS THAT:**

1. The Commission adopts the provisions, other than those issues disputed at the evidentiary hearing, of the *Partial Disposition Agreement of Small Water Company Revenue Increase Request* including attachments, filed as Appendix A to, *Partial Disposition Agreement and Request for Evidentiary Hearing* filed on November 17, 2017. The signatories are ordered to comply with the terms of these partial disposition agreements, which are attached hereto as Attachment A and incorporated herein by reference as if fully set forth.
2. Gascony Water Company, Inc. is authorized to file tariff sheets sufficient to recover revenues approved in compliance with this order.

3. Gascony Water Company, Inc. shall file the information required by Section 393.275.1, RSMo 2000, and Commission Rule 4 CSR 240-10.060 no later than May 29, 2018.

4. This Report and Order shall become effective on May 19, 2018.

**BY THE COMMISSION**



A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

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

Clark, Regulatory Law Judge

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Spire Missouri )  
Inc. to Establish an Infrastructure System ) **File No. GO-2018-0309**  
Replacement Surcharge in its Spire Missouri )  
East Service Territory )

In the Matter of the Application of Spire Missouri )  
Inc. to Establish an Infrastructure System ) **File No. GO-2018-0310**  
Replacement Surcharge in its Spire Missouri )  
West Service Territory )

**ORDER GRANTING REQUESTS FOR WAIVER**

**EVIDENCE, PRACTICE AND PROCEDURE**

**§24 Procedures, evidence and proof**

The Commission concluded that 4 CSR 240-4.017(1) did not require the company to foretell issues that would be raised by other parties' objections. Thus, the Commission found good cause existed to grant the company the requested waiver of 4 CSR 240-4.017(1).



**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 24<sup>th</sup> day of May, 2018.

In the Matter of the Application of Spire Missouri Inc. to Change its Infrastructure System Replacement Surcharge in its Spire Missouri East Service Territory	)	
	)	<b><u>File No. GO-2018-0309</u></b>
	)	
	)	

In the Matter of the Application of Spire Missouri Inc. to Change its Infrastructure System Replacement Surcharge in its Spire Missouri West Service Territory	)	
	)	<b><u>File No. GO-2018-0310</u></b>
	)	
	)	

**ORDER GRANTING REQUESTS FOR WAIVER**

Issue Date: May 24, 2018

Effective Date: May 24, 2018

On April 30, 2018, Spire Missouri Inc., (“Spire”) filed pleadings requesting a waiver of the Commission’s 60-day notice of intended case filings rule.<sup>1</sup> Spire states that the Commission has good cause to waive that rule because Spire has not communicated with the Commission within the prior 150 days about this Infrastructure System Replacement Surcharge request.

The Office of the Public Counsel (“OPC”) objects. OPC states that Spire cannot truthfully verify that it has not communicated with the Commission about substantive issues likely to be in this case because Spire cannot predict what those issues are.

The pertinent rule states that a party can request a waiver of the Commission’s 60-day rule for good cause. Good cause for waiver “may include, among other things, a verified declaration from the filing party that it has had no communication with the office of

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<sup>1</sup> Commission Rule 4 CSR 240-4.017(1).

the commission within the prior one hundred fifty (150) days regarding any substantive issue likely to be in the case.”<sup>2</sup>

Spire filed a verified declaration from the filing party that it has had no communication with the office of the commission within the prior one hundred fifty (150) days regarding any substantive issue likely to be in the case. Thus, Spire’s request complies with the Commission’s rule. That rule does not require Spire to foretell issues raised by other party’s objections. The Commission finds good cause exists to grant Spire the requested waiver

**THE COMMISSION ORDERS THAT:**

1. The requests of Spire Missouri Inc., for waiver of Commission rule 4 CSR 240-4.017(1) are granted.
2. This order shall be effective on May 24, 2018.

**BY THE COMMISSION**



A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

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

Pridgin, Deputy Chief Regulatory Law Judge

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<sup>2</sup> Commission Rule 4 CSR 240-4.017(1)(D).

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Joint Application of Farmers' )  
Electric Cooperative and the City of Cameron for )  
Approval of a Change of Supplier for Certain )  
Customers in Clinton and Caldwell Counties for )  
Reasons in the Public Interest )

**File No. EO-2018-0276**

**ORDER GRANTING APPLICATION**

**PUBLIC UTILITIES**

**§7 Jurisdiction and powers of the State Commission**

**§26 Mutual companies; cooperatives**

Where a rural cooperative provided service for four structures in an industrial park within and owned by a City, one tenant wanted to upgrade to a three-phase line to expand its business, and the City could provide the upgrade more economically than the coop could without regard to any rate differential, the Commission could change the customer's supplier from the rural cooperative to the City.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 24<sup>th</sup> day of May, 2018.

In the Matter of the Joint Application of Farmers' Electric Cooperative and the City of Cameron for Approval of a Change of Supplier for Certain Customers in Clinton and Caldwell Counties for Reasons in the Public Interest )  
 ) File No. EO-2018-0276  
 )  
 )

**ORDER GRANTING APPLICATION**

Issue Date: May 24, 2018

Effective Date: June 5, 2018

Farmers' Electric Cooperative, a rural cooperative, (“the Coop”) and the City of Cameron (“the City”) (together, “the applicants”) jointly filed the application.<sup>1</sup> The Commission’s staff filed a recommendation<sup>2</sup> and the Commission received no reply to the recommendation within the time set by regulation.<sup>3</sup> No evidentiary hearing is necessary before granting unopposed relief, so this action is not a contested case, and the Commission need not separately state its findings of fact.

The Commission has jurisdiction to determine which of the applicants shall be the supplier for the structures specified in the application:

Once a rural electric cooperative . . . lawfully commences supplying retail electric energy to a structure through permanent service facilities, it shall have the right to continue serving such structure, and other suppliers of electrical energy shall not have the right to provide service to the structure [.] The public service commission, upon application made by an affected party, may order a change of suppliers on the basis that it is in the public interest for a reason other than a rate

<sup>1</sup> Electronic Filing and Information System (“EFIS”) No. 1 (April 5, 2018) *Joint Application for Change of Electric Supplier*.

<sup>2</sup> EFIS No. 3 (May 4, 2018) *Staff Recommendation to Approve Joint Application for Change of Electric Supplier*.

<sup>3</sup> 4 CSR 240-2.080(13).

differential, and the commission is hereby given jurisdiction over rural electric cooperatives to accomplish the purpose of this section. The commission's jurisdiction under this section is limited to public interest determinations [. <sup>4</sup>]

The verified filings support the following findings and conclusions.

The application asks to change the supplier for four structures in Clinton County and Caldwell County that constitute an industrial park. The industrial park is within the City's boundaries and the City owns it, but the Coop supplies the structures through a single-phase line. One structure has a commercial tenant who wants a three-phase line to expand its business. That upgraded service is more economical for the City to supply than the Coop. Therefore, the Commission concludes that granting the application is in the public interest, without regard to any rate differential,<sup>5</sup> and the Commission will grant the application.

**THE COMMISSION ORDERS THAT:**

1. The *Joint Application for Change of Electric Supplier* is granted.
2. This order shall become effective on June 5, 2018.

**BY THE COMMISSION**



A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

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

Jordan, Senior Regulatory Law Judge

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<sup>4</sup> Section 394.315.2, RSMo 2016.

<sup>5</sup> Nothing in the file shows that any rate differential is relevant to the application.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Great Plains            )  
Energy Incorporated for Approval of its Merger with        )  
Westar Energy, Inc.                                                        )  
**File No. EM-2018-0012**

**REPORT AND ORDER**

**ELECTRIC**

**§4 Transfer, lease and sale**

Approval of a proposed merger of electric service providers requires a Commission finding that the transaction is not detrimental to the public. The presence of detriments may be offset by potential benefits.

**EVIDENCE, PRACTICE AND PROCEDURE**

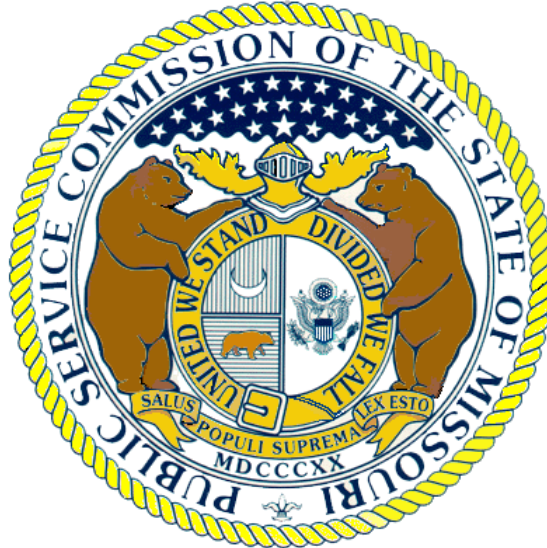
**§6 Weight, effect and sufficiency**

A party's request for conditions to be imposed on a transaction without supporting testimony or evidence allows no basis in the record to approve the proposed conditions.

**§24 Procedures, evidence and proof**

A party's request relating to renewable energy and energy efficiency conditions to be imposed on a merger transaction are not necessary where the proposed conditions are commitments by the utility and those commitments are either already completed or the utility's continued commitment is shown by evidence without a condition being imposed. The appropriate process for the Commission to consider policies relating to renewable energy and energy efficiency is through other Commission proceedings such as integrated resource planning and rate cases.

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Application of Great Plains  
Energy Incorporated for Approval of its Merger  
with Westar Energy, Inc.

)  
)  
)

**File No. EM-2018-0012**

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## REPORT AND ORDER

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**Issue Date:** May 24, 2018

**Effective Date:** June 3, 2018

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

In the Matter of the Application of Great Plains Energy Incorporated for Approval of its Merger with Westar Energy, Inc. )  
 ) **File No. EM-2018-0012**  
 )

### APPEARANCES

#### **GREAT PLAINS ENERGY INCORPORATED, KANSAS CITY POWER & LIGHT COMPANY, AND KCP&L GREATER MISSOURI OPERATIONS COMPANY:**

**Robert J. Hack** and **Roger W. Steiner**, Kansas City Power & Light Company, 1200 Main Street, 19<sup>th</sup> Floor, Kansas City, Missouri 64105.

**Karl Zobrist**, Dentons US LLP, 4520 Main Street, Suite 1100, Kansas City, Missouri 64111.

**James M. Fischer**, Fischer & Dority, P.C., 101 Madison Street, Suite 400, Jefferson City, Missouri 65101.

#### **WESTAR ENERGY, INC.:**

**Martin J. Bregman**, Bregman Law Office, L.L.C., 311 Parker Circle, Lawrence, Kansas 66049.

#### **STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:**

**Kevin A. Thompson**, Chief Staff Counsel, PO Box 360, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

#### **OFFICE OF THE PUBLIC COUNSEL:**

**Hampton Williams**, Public Counsel, **Lera Shemwell**, Senior Counsel, PO Box 2230, 200 Madison Street, Suite 650, Jefferson City, Missouri 65102-2230.

#### **MISSOURI DEPARTMENT OF ECONOMIC DEVELOPMENT-DIVISION OF ENERGY:**

**Marc Poston**, Senior Counsel, PO Box 1157, Jefferson City, Missouri 65102.

#### **RENEW MISSOURI ADVOCATES d/b/a RENEW MISSOURI:**

**Tim Opitz**, 409 Vandiver Dr., Building 5, Ste. 205, Columbia, Missouri 65202.



**MIDWEST ENERGY CONSUMERS GROUP:**

**David L. Woodsmall**, 308 E. High Street, Ste. 204, Jefferson City, Missouri 65101.

**MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION:**

**Peggy A. Whipple, Terry M. Jarrett, Heather H. Starnes**, Healy Law Offices, LLC, 514 E. High Street, Ste. 22, Jefferson City, Missouri 65101.

**KANSAS ELECTRIC POWER COOPERATIVE, INC.:**

**Andrew O. Schulte** and **Frank A. Caro, Jr.**, Polsinelli PC, 900 W. 48<sup>th</sup> Place, Ste. 900, Kansas City, Missouri 64112.

**Susan Henderson Moore**, Polsinelli PC, 221 Bolivar Street, Ste. 300, Jefferson City, Missouri 65101.

**FEDERAL EXECUTIVE AGENCIES:**

**Andrew J. Unsicker, Lanny L. Zieman, Thomas A. Jernigan**, 139 Barnes Drive, Ste. 1, Tydall Air Force Base, Florida 32403.

**Thomas Schmidt**, 11 Hillcrest Pl., St. Louis, Missouri 63122.

**SENIOR REGULATORY LAW JUDGE:** Michael Bushmann

## REPORT AND ORDER

### I. Procedural History

On August 31, 2017, Great Plains Energy Incorporated (“GPE”), Kansas City Power & Light Company (“KCPL”), KCP&L Greater Missouri Operations Company (“GMO”), and Westar Energy, Inc. (“Westar”) (collectively, “Applicants”) filed a joint application asking the Missouri Public Service Commission (“Commission”) to approve a transaction in which Westar and GPE will merge.

The Commission granted requests to intervene filed by the Missouri Department of Economic Development – Division of Energy (“DE”); Midwest Energy Consumers Group (“MECG”); Renew Missouri Advocates d/b/a Renew Missouri (“Renew Missouri”); Brightergy, LLC; Missouri Industrial Energy Consumers; Missouri Joint Municipal Electric Utility Commission (“MJMEUC”); Kansas Electric Power Cooperative, Inc. (“KEPCo”); Sierra Club; Natural Resources Defense Council; City of Independence, Missouri; Consumers Council of Missouri; and the Federal Executive Agencies.

On January 12, 2018, the Applicants, Commission Staff, Brightergy, LLC, and MJMEUC signed and filed a non-unanimous stipulation and agreement (“1<sup>st</sup> Agreement”) in which those parties proposed to settle all of the issues related to the merger. The signatory parties recommended that the merger be approved, subject to a number of conditions on a variety of subjects. There were objections filed to the 1<sup>st</sup> Agreement, so it became a joint position statement of the signatory parties.<sup>1</sup>

On March 8, 2018, the Applicants, Staff, Office of the Public Counsel (“OPC”), MECG, Brightergy, LLC, and MJMEUC filed another non-unanimous stipulation and agreement (2<sup>nd</sup> Agreement), that proposed new conditions to the merger in addition to those in the 1<sup>st</sup>

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<sup>1</sup> Commission Rule 4 CSR 240-2.115(2)(D).

Agreement. Renew Missouri and KEPCo filed objections to the 2<sup>nd</sup> Agreement, so it also became a joint position statement.<sup>2</sup>

The Commission held an evidentiary hearing on March 12 and 14, 2018.<sup>3</sup> During the evidentiary hearing, the parties presented evidence relating to the following unresolved issues previously identified by the parties:

1. Should the Commission find that GPE's merger with Westar is not detrimental to the public interest, and approve the merger?
2. Should the Commission condition its approval of GPE's merger with Westar and, if so, how?
3. Should the Commission grant the limited request for variance of the affiliate transaction rule requested by Applicants?
4. How should the bill credits proposed by Applicants be allocated between and within the various KCPL and GMO rate classes?

Final post-hearing briefs were filed on April 13, 2018, and the case was deemed submitted for the Commission's decision on that date when the Commission closed the record.<sup>4</sup>

## **II. Findings of Fact**

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

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<sup>2</sup> *Id.*

<sup>3</sup> Transcript ("Tr."), Vols. 2 and 3. The Commission admitted the testimony of 17 witnesses and 25 exhibits into evidence during the evidentiary hearing. In addition, the Commission took official notice of the following: Stipulation and Agreement dated January 12, 2018 in EM-2018-0012; Stipulation and Agreement dated March 8, 2018 in EM-2018-0012; Mo. PSC Report and Order in EA-2015-0256; Mo. PSC Report and Order in EA-2016-0208; Mo. PSC Report and Order in EC-2017-0107; Mo. PSC Report and Order in EO-2015-0240; Mo. PSC Report and Order in EO-2015-0241; Stipulation and Agreement dated October 26, 2017 in EE-2017-0113.

<sup>4</sup> "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 4 CSR 240-2.150(1).

1. KCPL and GMO are electrical corporations and public utilities that provide electric service to the public through their tariffs in Missouri. GPE is a Missouri corporation and the holding company for the stock of KCPL and GMO.<sup>5</sup>

2. Westar is a Kansas corporation operating as an electric public utility in Kansas and subject to the jurisdiction, supervision and control of the Kansas Corporation Commission (“KCC”).<sup>6</sup>

3. The Staff of the Missouri Public Service Commission (“Staff”) is a party in all Commission investigations, contested cases, and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.<sup>7</sup> Staff participated in this proceeding.

4. The Office of the Public Counsel is a party to this case pursuant to Section 386.710(2), RSMo<sup>8</sup>, and by Commission Rule 4 CSR 240-2.010(10).

5. On October 12, 2016, GPE, KCPL, and GMO filed an application with the Commission requesting a variance from the Commission’s Affiliate Transaction Rule, 4 CSR 240-20.015, which was submitted in connection with the May 29, 2016 Agreement and Plan of Merger (“Initial Transaction”), pursuant to which GPE and GP Star, Inc. would acquire all of the stock of Westar. That application was consolidated with GPE’s subsequent application to the Commission for approval of the Initial Transaction.<sup>9</sup>

6. The Commission took no action regarding the Initial Transaction and dismissed those cases at GPE’s request because the KCC rejected the Initial Transaction by an order issued on April 19, 2016. The primary concerns noted by the KCC related to the financial

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<sup>5</sup> *Application for Approval of Merger; Request for Variance from 4 CSR 240-20.015; and Motion for Expedited Treatment*, p. 1-2, File No. EM-2018-0012, filed August 31, 2017, EFIS Item No. 2.

<sup>6</sup> *Id.* at p. 3.

<sup>7</sup> Commission Rules 4 CSR 240-2.010(10) and (21) and 2.040(1).

<sup>8</sup> Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.

<sup>9</sup> 1<sup>st</sup> Agreement, p. 1-2.

condition of the merged company due to the magnitude of the acquisition premium GPE had agreed to pay and the amount of debt GPE had proposed to incur.<sup>10</sup>

### Merger provisions

7. GPE and Westar negotiated a new merger agreement which successfully resulted in the July 9, 2017 Amended and Restated Agreement and Plan of Merger (“Merger”). On August 31, 2017, the Applicants filed an application in this proceeding seeking approval of GPE’s merger with Westar, pursuant to the terms of the Merger.<sup>11</sup>

8. The Merger is designed to be a “merger of equals” whereby Westar and GPE will merge through the creation of a new holding company (“Holdco”) and an exchange of common stock. Holdco will be renamed by the close of the merger with a new, yet-to-be-determined name. Holdco will be a publicly-traded, non-utility holding company that will be the parent company owning KCPL, GMO, GPE’s other subsidiaries, and Westar and its subsidiaries.<sup>12</sup>

9. The Merger is structured as a tax-free exchange of stock, with no transaction debt used to finance the Merger, no exchange of cash (or other consideration), and no market or control premium paid to or received by either company. GPE’s shareholders will receive 0.5981 shares in the newly-formed Holdco in exchange for each existing share of GPE stock, currently trading at about \$31 per share. Westar shareholders will receive one share in Holdco in exchange for each share of Westar, which is currently trading at about \$51 per share.<sup>13</sup> The Merger will have no effect on the assets, liabilities, or outstanding debt of Westar or KPCL.<sup>14</sup>

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<sup>10</sup> Ex. 13, Ruelle Direct, p. 3; 1<sup>st</sup> Agreement, p. 2-3.

<sup>11</sup> 1<sup>st</sup> Agreement, p. 3.

<sup>12</sup> Ex. 3, Bryant Direct, p. 6.

<sup>13</sup> Ex. 3, Bryant Direct, p. 6; Ex. 14, Somma Direct, p. 4-5.

<sup>14</sup> Ex. 3, Bryant Direct, p. 7.

10. After the Merger, Holdco will have an equity value of approximately \$14 billion, which is the sum of the equity market capitalization of GPE and Westar immediately prior to the announcement of the Merger. Since both companies' stocks will continue to trade until closing, the combined actual market capitalization at closing will likely not be exactly equivalent to the sum of the two parts at announcement.<sup>15</sup>

11. Holdco's consolidated capital structure immediately following the closing will be approximately 59 percent equity and 41 percent long-term debt. This degree of equity capitalization is due to the equity issued by GPE in connection with the Initial Transaction and is higher than industry norms for utility holding companies. Holdco will rebalance its capital structure over time by repurchasing common stock in order to achieve and maintain a more balanced capital structure typical for utility holding companies and regulated utilities.<sup>16</sup>

12. Following the closing of the Merger, Holdco will be owned approximately 52.5 percent by Westar's shareholders and approximately 47.5 percent by GPE's shareholders.<sup>17</sup>

13. The Applicants evaluated the expected financial condition of Holdco after the merger by obtaining the assessments of two credit rating agencies, S&P and Moody's. Credit ratings are evaluations by credit rating agencies of the creditworthiness of debt issuing entities and a measure of the probability of default, or the failure to pay interest or principal on a debt security when due.<sup>18</sup>

14. After reviewing the Merger and considering both financial and business risk, S&P affirmed the current credit ratings for GPE and Westar and revised the outlook for the companies and their respective operating subsidiaries to Positive from Negative. Moody's upgraded the rating for GPE to Baa2 from Baa3 in recognition that the transaction-related

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<sup>15</sup> Ex. 14, Somma Direct, p. 5-6.

<sup>16</sup> Ex. 3 Bryant Direct, p. 9.

<sup>17</sup> Ex. 11, Reed Direct, p. 4.

<sup>18</sup> Ex. 3, Bryant Direct, p. 10-11.

debt used to finance the Initial Transaction had been redeemed and that the Merger would not require additional financings that would put pressure on GPE's credit quality. Moody's also indicated that it viewed the new Holdco as having a stronger credit profile and as benefiting from increased size, scale and diversification.<sup>19</sup>

### Merger benefits

15. The Merger will create a stronger combined company, with more customers, more geographic diversification, no transaction debt to complete the Merger, and the prospect for higher earnings growth rates than either GPE or Westar would be able to achieve on a stand-alone basis. Improving Holdco's financial condition will enhance its ability to access capital markets and meet the capital requirements of the utility operating subsidiaries. The Merger will also benefit shareholders by improving Holdco's ability to achieve competitive financial returns as the operating utilities are better able to earn near their Commission-authorized returns.<sup>20</sup>

16. The Merger provides an opportunity to reduce the upward pressure on customers' rates from increasing costs and flat or declining customer usage. A number of characteristics of this combination – including good strategic and cultural fit, joint plant ownership, contiguity of the KCP&L/GMO/Westar service territories, and complementary operational strengths – present opportunities for savings, service enhancements and economic development over the long term. These opportunities are unique to this combination and could not be replicated by either company individually in a transaction with any other entity.<sup>21</sup>

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<sup>19</sup> Ex. 3, Bryant Direct, p. 13-14.

<sup>20</sup> Ex. 13, Somma Direct p. 14-16, 20.

<sup>21</sup> Ex. 2, Bassham Direct, p. 5.

17. The Applicants have undertaken an integration planning effort to develop business and implementation plans and efficiency initiatives that have identified over 300 specific efficiencies that would result from the Merger. This integration planning effort has determined that the Applicants' net savings from the Merger over the first five years after closing are projected to be \$555 million, after reflecting transition costs of \$72 million. These savings are estimated to be \$28 million in 2018, increasing to \$160 million per year from 2022 and beyond.<sup>22</sup>

18. The Applicants will achieve staff efficiencies from the Merger without involuntary layoffs through natural staff retirements and attrition.<sup>23</sup>

19. The Merger is expected to result in significant economic benefits in both Missouri and Kansas. Specifically, the combination of the rate credits, lower future rate increases, and other economic activity generated by the Merger is expected to produce approximately \$331 million in direct local economic activity and \$176 million in incremental gross regional product within those economies between 2018 and 2030. This estimate of economic activity also accounts for the effect of reductions in spending that result from Merger savings.<sup>24</sup>

20. Customers will also experience little if any change in their day-to-day interactions with their electric service provider as a result of the Merger. Following the Merger, the Applicants will continue to operate the existing Westar contact center in Wichita, Kansas, and the existing contact center in Raytown, Missouri serving KCPL and GMO customers. The

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<sup>22</sup> Ex. 4, Busser Direct, p. 3, 9-10; Ex. 6, Greenwood Direct, p. 14.

<sup>23</sup> Ex. 4, Busser Direct, p. 17.

<sup>24</sup> Ex. 11, Reed Direct, p. 35; Ex 12, Reed Surrebuttal, p. 9-10.



Merger will enable Holdco to maintain or, over the longer term, potentially provide higher customer service quality.<sup>25</sup>

21. The Merger is expected to maintain, and possibly improve, the public safety. This Merger will not lead to cost cutting for vegetation management, maintenance, system improvements, or other areas of utility operations that would negatively impact the public safety.<sup>26</sup>

22. The Applicants have created an integration team, consisting of a program director and a staff of three employees, to coordinate and report on achievement of Merger efficiencies and savings after the closing of the Merger. This integration team has been trained to support the development of strategic plans by new combined departments, perform statistical analyses and data mining to identify trends, and provide communication around integration goals. The integration team will focus on the execution of four key objectives: monitor implementation efforts; coordinate interdependent merger activities; provide reporting to company officers and regulatory bodies; and identify and pursue additional savings opportunities.<sup>27</sup>

23. KCPL, Westar, and GMO will provide upfront bill credits to all retail electric customers totaling \$75 million to be allocated across the Applicants' electric rate jurisdictions in both Kansas and Missouri within 120 days of the closing of the Merger. The bill credits will be allocated among Applicants' electric rate jurisdictions in both Kansas and Missouri based on the proportion of jurisdictional retail megawatt-hour sales for the quarter-ending twelve-month period prior to the closing. The total amount of the bill credit allocation for Missouri results in bill credits to KCPL of \$14,924,840 and GMO of \$14,205,828. The upfront bill

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<sup>25</sup> Ex. 1, Akin Direct, p. 3.

<sup>26</sup> Ex. 1, Akin Direct, p. 6.

<sup>27</sup> Ex. 6, Greenwood Direct, p. 19-21.

credits are a separate and additional benefit the Applicants are providing in addition to the net savings that will be reflected in future rate cases.<sup>28</sup>

24. In addition to the upfront bill credits, all Merger savings serve to reduce the cost of service and to delay rate increases that would be required absent the Merger.<sup>29</sup>

25. Transaction costs refer to those costs necessary to support efforts to evaluate, negotiate and complete a transaction and the associated transaction agreements through and including approval of the transaction. Transaction costs include, but are not limited to, those costs relating to obtaining regulatory approvals, development of transaction documents, investment banking costs, costs related to raising equity incurred prior to the close of the Merger, change-in-control severance payments, internal labor and third party consultant costs incurred in performing any types of analysis or preparation (financial, tax, investment, accounting, legal, market, regulatory, etc.) to evaluate the potential sale or transfer of ownership, prepare for bid solicitation, analyze bids, and conduct due diligence. The Applicants will not seek recovery of transaction costs in rates.<sup>30</sup>

26. Prior to the Merger, Westar had already planned to retire five coal and gas generating units between 2023 and 2028. In order to determine the impacts of the Merger on those retirements, the Applicants conducted a combined integrated resource plan process, similar to that which KCPL conducts for its individual integrated resource plan filed in Missouri. That analysis demonstrated that these Westar plants can be retired in 2018, in a range of 5-10 years earlier than previously anticipated absent the Merger. The Merger-related savings from accelerating the retirement of the Westar units are forecast to be \$55.4 million over the first five years after the Merger closes. Savings from these retirements will result in

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<sup>28</sup> Ex. 9, Ives Direct, p. 8; 2<sup>nd</sup> Agreement, p. 5. The 1<sup>st</sup> Agreement provided for total bill credits of \$50 million, but under the 2<sup>nd</sup> Agreement that amount was increased to \$75 million.

<sup>29</sup> Ex. 9, Ives Direct, p. 17.

<sup>30</sup> Ex. 9, Ives Direct, p. 10-11.

lower revenue requirements and rate requests when KCPL, GMO and Westar file future rate cases than would otherwise be the case.<sup>31</sup>

### 1<sup>st</sup> Agreement proposed conditions

27. In the 1<sup>st</sup> Agreement, the Applicants and other parties agreed on commitments by the Applicants that are grouped into the following categories: General Conditions; Employee Commitments; Financing Conditions; Ratemaking, Accounting and Related Conditions; Affiliate Transactions and Cost Allocations Manual Conditions; Quality of Service Conditions; Reporting and Access to Records Conditions; Other Parent Company Conditions; GPE's Financial Valuation Model; Load Sampling; Sharing of Synergies; and, References to Specific Commission Rules.<sup>32</sup> The conditions agreed to in the 1<sup>st</sup> Agreement consist primarily of commitments proposed by the Applicants in direct testimony.<sup>33</sup> The 1<sup>st</sup> Agreement is incorporated by reference herein in its entirety, including its Exhibit A, as if fully set forth.

28. Key points of the general conditions include: maintaining the corporate headquarters in Kansas City, Missouri until 2032; continuing charitable giving and community involvement in Missouri for a minimum of five years; maintaining and promoting low income programs for at least five years; and, providing \$50,000 each to several Community Action Agencies.<sup>34</sup> These commitments acknowledge that KCPL, GMO and Westar have been and will continue to be major participants in local economies as employers and community leaders that provide meaningful resources.<sup>35</sup>

29. Key points of the employee commitments include: honoring existing collective bargaining agreements; maintaining substantially comparable employee compensation and

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<sup>31</sup> Ex. 9, Ives Direct, p. 20-21.

<sup>32</sup> 1<sup>st</sup> Agreement; Ex. 200, Dietrich Rebuttal, p. 3.

<sup>33</sup> Ex. 9, Ives Direct, Schedule DRI-1; Ex. 10, Ives Surrebuttal, p. 4-6; 1<sup>st</sup> Agreement, Exhibit A. The only substantial change between Schedule DRI-1 and the 1<sup>st</sup> Agreement, Exhibit A, is that the signatories to the 1<sup>st</sup> Agreement deliberately omitted conditions 10, 11, 12, 14, and 15.

<sup>34</sup> Ex. 200, Dietrich Rebuttal, p. 3.

<sup>35</sup> Ex. 9, Ives Direct, p. 25.

benefit levels for two years; and no involuntary severance as a result of the merger or closing certain generation facilities.<sup>36</sup> The Applicants made these commitments to give their employees important assurances and reflect the important role of KCPL and Westar as large employers in Missouri and Kansas.<sup>37</sup>

30. Key points of the financing conditions include makeup of the board of directors to include directors predominately from Missouri and Kansas; KCPL and GMO will not commingle assets with any other entity except as allowed by the Commission's affiliate transaction rule or Commission order; KCPL, GMO and Westar will conduct business as separate legal entities; the present legal entity structure for regulated and unregulated business operations shall be maintained; KCPL or GMO commit to various filings and conditions if S&P or Moody's downgrade their corporate credit rate or senior secured or unsecured debt to below investment grade; future cost of service and rates of KCPL and GMO will not be adversely impacted as a result of the merger; the cost of capital and return on equity capital will not be adversely affected as a result of the merger; Applicants agree that all retail electric customers will receive a one-time bill credit within 120 days of closing; neither KCPL nor GMO will seek to recover any transition costs related to the merger in excess of the benefits; goodwill shall not be included in the revenue requirement of KCPL or GMO; customers shall be held harmless from the risk or realization of any merger goodwill impairment; KCPL and GMO will not seek recovery of transaction costs; KCPL's and GMO's fuel and purchased power costs shall not be adversely affected; and, retail rates shall not increase as a result of the merger.<sup>38</sup> These financing conditions ensure that the financial condition of Holdco does not have any adverse impact on KCPL, GMO, or Westar, and

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<sup>36</sup> Ex. 200, Dietrich Rebuttal, p. 3.

<sup>37</sup> Ex. 9, Ives Direct, p. 25.

<sup>38</sup> Ex. 200, Dietrich Rebuttal, p. 4.

preserves a separation between KCPL, GMO, and Westar for both financial and governance purposes.<sup>39</sup> The Applicants have agreed to significant financial protections for customers that go well beyond the commitments typically required in “merger of equals” transactions.<sup>40</sup>

31. The ratemaking, accounting, and related conditions provide customers with Merger savings while protecting them from potential adverse outcomes. They explicitly commit and document that the utility subsidiaries will not recover any Merger goodwill or transaction costs, including change in control severance costs, or termination fees associated with the transaction. These conditions address concerns regarding the impact of the Merger on future rates.<sup>41</sup>

32. Key provisions of the conditions relating to affiliate transactions and cost allocations manual are KCPL and GMO will comply with the Commission’s affiliate transaction rule; intercompany charges may be recovered in the first general rate proceeding following closing at levels equal to the lesser of actual costs or the costs allowed in rate cases prior to closing; the Applicants shall maintain separate books and records, systems of accounts, financial statements and bank accounts for KCPL and GMO; Applicants shall maintain adequate records to support centralized corporate costs allocated to KCPL or GMO; Applicants agree to an independent third party management audit of the new holding company, KCPL and GMO corporate cost allocations and affiliate transaction protocols; KCPL and GMO will not make available, sell or transfer specific Missouri customer information consistent with the Commission’s decision in File No. EC-2015-0309; and, KCPL and GMO agree to file a new cost allocations manual reflecting changes necessitated by the merger.<sup>42</sup> These affiliate transaction and cost allocations manual conditions provide assurances that

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<sup>39</sup> Ex. 9, Ives Direct, p. 25-26.

<sup>40</sup> Ex. 11, Reed Direct, p. 32.

<sup>41</sup> Ex. 9, Ives Direct, p. 27.

<sup>42</sup> Ex. 200, Dietrich Rebuttal, p. 4-5.

future regulation by the Commission will continue to be effective post-Merger and that customer rates will not increase due to intercompany charges after the Merger closes.<sup>43</sup>

33. Key points of the quality of service conditions include a commitment to meet or exceed the customer service and operational levels currently provided to Missouri retail customers; and, KCPL and GMO will continue to provide various quality of service reports and to meet periodically with Staff.<sup>44</sup> The service quality conditions reflect the Applicants' commitment that service quality will be maintained or improved as a result of the Merger.<sup>45</sup>

34. The reporting and access to records conditions provide that KCPL and GMO commit to meet with Staff and provide the Commission with merger integration updates and will provide Staff with access to various analyses and materials related to ongoing operations and compliance with merger conditions and commitments.<sup>46</sup> These conditions help ensure that the Commission and its Staff have the information needed to perform future audits, to stay abreast of important developments at the utilities, and to protect utility customers pursuant to the Commission's statutory charge.<sup>47</sup>

35. Other parent company conditions state that Applicants agree to reaffirm and honor any prior commitments made by GPE, KCPL or GMO and that meeting capital requirements will be considered a high priority.<sup>48</sup>

36. The 1<sup>st</sup> Agreement also includes two conditions that were previously agreed to by GPE, KCPL, GMO, and Staff in a prior case, but which were inadvertently omitted from the commitments and conditions originally filed by Applicants in direct testimony. These relate to GPE's financial model and to load sampling and research practices at KCPL and GMO. The

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<sup>43</sup> Ex. 9, Ives Direct, p. 28.

<sup>44</sup> Ex. 200, Dietrich Rebuttal, p. 5.

<sup>45</sup> Ex. 9, Ives Direct, p. 29.

<sup>46</sup> Ex. 200, Dietrich Rebuttal, p. 5.

<sup>47</sup> Ex. 9, Ives Direct, p. 30.

<sup>48</sup> Ex. 200, Dietrich Rebuttal, p. 5.

1<sup>st</sup> Agreement also includes two new conditions. The first prohibits KCPL and GMO from proposing to increase cost of service due to sharing of transaction synergies between customers and shareholders. The second addresses successor Commission's rules with substantially the same content and language as current rules.<sup>49</sup>

37. The provisions of the 1<sup>st</sup> Agreement provide key protections for Missouri ratepayers to protect against any possible detriments resulting from the Merger.<sup>50</sup>

#### 2<sup>nd</sup> Agreement proposed conditions

38. In the 2nd Agreement, the Applicants and other parties agreed on commitments by the Applicants that are grouped into the following categories: Transition Costs; Future Mergers; Name Changes; Industrial Customer Meetings; Upfront Bill Credits; and Additional Reporting of Missouri Employment Information. The 2<sup>nd</sup> Agreement modifies and supplements the 1<sup>st</sup> Agreement, but does not replace it entirely.<sup>51</sup> The 2<sup>nd</sup> Agreement is incorporated by reference herein in its entirety as if fully set forth.

39. Transition costs are costs necessary to integrate Westar and GPE by creating the Merger efficiencies and savings and ensure that the post-Merger integration process is effective. Examples of transition costs include voluntary severance, other than change-in-control severance, costs incurred in integration planning, as well as costs incurred to enable network connectivity for the merged company and allow for a more efficient combined company. Transition costs are netted against gross savings to calculate and present net savings. Since transition costs are necessary to produce the realized Merger savings which will benefit customers in the form of lower revenue requirements and lower rates in future rate cases than would be the case absent the Merger, it is appropriate to defer transition costs

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<sup>49</sup> Ex. 10, Ives Surrebuttal, p. 6.

<sup>50</sup> Ex. 200 Dietrich Rebuttal, p. 5; Tr. Vol. 3, p. 269-270, 286-287.

<sup>51</sup> 2<sup>nd</sup> Agreement, p. 3-6.

incurred and to recover an amortized amount of such transition costs over an appropriate period, provided that demonstrated Merger savings (i.e., revenue requirement reductions) exceed the requested recovery of transition costs.<sup>52</sup>

40. In the 2<sup>nd</sup> Agreement, the Applicants and other parties agreed to defer Merger transition costs of \$7,209,208 for GMO and \$9,725,592 for KCPL's Missouri operations. Those signatories recommend recovery in the respective 2018 rate cases through amortization of such Merger transition costs for approval by the Commission over a 10-year period beginning when such costs have been included in Missouri base rates, with no carrying costs or rate base inclusion allowed for the unamortized portion of such costs at any time. The Applicants have agreed that no other Merger transition costs shall be requested for recovery from Missouri customers in the 2018 rate cases or thereafter.<sup>53</sup> This provision benefits ratepayers because it puts a specific dollar amount as a limitation on what KCPL or GMO could recover for Merger transition costs in a rate case.<sup>54</sup>

41. The condition regarding future mergers extends a provision of the 1<sup>st</sup> Agreement to Holdco and requires that Holdco comply with that provision and obtain Commission approval for any future merger no matter the name or type of business structure anticipated.<sup>55</sup>

42. The condition concerning name changes requires KCPL and GMO to clearly designate on customers' bills the name of the electric service provider so that customers will be able to access the appropriate rate schedules. This condition will benefit customers because it requires clarity as to which entity is providing service.<sup>56</sup>

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<sup>52</sup> Ex. 9, Ives Direct, p. 10-12.

<sup>53</sup> 2<sup>nd</sup> Agreement, p. 4.

<sup>54</sup> 2<sup>nd</sup> Agreement, p. 4; Tr. Vol. 3, p. 288.

<sup>55</sup> 2<sup>nd</sup> Agreement, p. 4; Tr. Vol. 3, p. 288.

<sup>56</sup> 2<sup>nd</sup> Agreement, p. 4; Tr. Vol. 3, p. 288-289.



43. The condition regarding industrial customer meetings requires the establishment of an ongoing dialogue between KCPL and GMO and their industrial customers. Meetings between those customers and senior management will occur outside of regulatory/governmental affairs, every six months during the period of 2019-2023.<sup>57</sup>

44. The provision regarding bill credits increases the total amount of upfront bill credits from \$50 million to \$75 million. The signatories agreed that the total amount of the upfront bill credits are to be allocated by the Applicants which results in allocations of bill credits to KCPL-MO of \$14,924,840 and GMO of \$14,205,828. The sum- total of the bill credit amount will be paid in one lump sum within one hundred and twenty (120) days of the closing of the Merger. The signatories agreed that the bill credits should be allocated between and among KCPL and GMO rate classes as follows:<sup>58</sup>

Allocation of bill credit amounts between rate classes - The Signatories agree that the allocation of the bill credit amounts among the rate classes shall be as follows:

<b>KCPL – Missouri:</b>		<b>Greater Missouri Operations</b>	
Residential:	\$5,116,317.62	Residential:	\$6,627,570.28
Small Gen SVC:	\$869,296.24	SGS:	\$1,811,667.78
Med. Gen SVC:	\$2,131,583.25	LGS:	\$2,260,908.37
Large Gen SVC:	\$3,648,156.67	LPS:	\$3,298,276.57
Large Power:	\$2,990,585.17	Lighting:	\$195,531.49
MO Lighting:	<u>\$168,955.05</u>	Thermal:	\$10,970.24
	\$14,924,894.00	TOD:	<u>\$903.27</u>
			\$14,205,828

<sup>57</sup> 2<sup>nd</sup> Agreement, p. 4.

<sup>58</sup> 2<sup>nd</sup> Agreement, p. 5-6; Tr. Vol. 3, p. 289-290.

Allocation of bill credit amounts within rate classes - The allocation of the bill credit sums between the customers within the rate classes shall be as follows:

**KCPL – Missouri:**

Residential:	Divided equally among the customer class by customer account
Small Gen SVC:	Divided equally among the customer class by customer account
Med. Gen SVC:	Divided equally among the customer class by customer account
Large Gen SVC:	Based on each customer's energy usage within the customer class
Large Power:	Based on each customer's energy usage within the customer class
MO Lighting:	Divided equally among the customer class by customer account

**Greater Missouri Operations:**

Residential:	Divided equally among the customer class by customer account
SGS:	Divided equally among the customer class by customer account
LGS:	Based on each customer's energy usage within the customer class
LPS:	Based on each customer's energy usage within the customer class
Lighting:	Divided equally among the customer class by customer account
Thermal:	Divided equally among the customer class by customer account
TOD:	Divided equally among the customer class by customer account

45. The condition in the 2<sup>nd</sup> Agreement concerning additional reporting of Missouri employment information states that the Applicants agree to provide reports to DE showing Applicants' year-end Missouri employment levels for each of calendar years 2021, 2022, and 2023 no later than thirty (30) days following the end of each such calendar year. The Applicants also agree to provide direct testimony in each rate case filed during the period 2019-2023 explaining employment metrics related to Missouri-based FTEs, turnover rate, and material changes to each since the closing of the merger.<sup>59</sup> This condition is beneficial to ensure that any Merger-related savings are not coming at the cost of job losses beyond voluntary severance.<sup>60</sup>

Renew Missouri proposed conditions

46. Renew Missouri witness Karl Rabago recommended that the Commission require the Applicants to develop and adopt Merger conditions in addition to those contained in the 1<sup>st</sup> Agreement and 2<sup>nd</sup> Agreement. Those additional conditions include:

<sup>59</sup> 2nd Agreement, p. 6.

<sup>60</sup> Tr. Vol. 3, p.337-338.

a. A firm date-certain commitment to close the Westar coal- and gas-fired power plants slated for early retirement, and an additional commitment to review the Applicants' existing generation fleet for more retirement opportunities.

b. A firm date-certain commitment to construct additional renewable energy generation.

c. A commitment to initiate a comprehensive, transparent, parallel integrated resource planning process for the combined companies, in both Missouri and Kansas, and to make provisions for stakeholders to submit a reasonable number of alternative development scenarios for evaluation in the planning effort.

d. A commitment to expand energy efficiency program efforts and customer energy efficiency education, and to develop a plan to cost-effectively achieve efficiency improvement across the combined service territories.

e. A commitment to offer green power programs to customers in all classes.

f. A commitment to develop pilot projects for shared or community generation projects.

g. A commitment to develop and implement a demonstration program for grid-connected energy storage.

h. A commitment to develop and seek regulatory approvals for implementation of a grid modernization plan, and to provide funding for a Value of Solar study to be managed by the Commission staff.

i. A commitment to refrain from implementing any new tariffs or rate designs adversely impacting development and adoption of distributed energy resources, including distributed generation for the next 5 years following approval of the Application.<sup>61</sup>

47. GPE owns or has contracted for almost 1,900 MW of renewable supply to serve its customers, exceeding the voluntary Kansas renewable standard and the Missouri

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<sup>61</sup> Ex. 450, Rabago Rebuttal, p. 24-25.

renewable requirements. KCPL and GMO additionally plan to retire approximately 850 MW of fossil-fueled generation by the end of 2019.<sup>62</sup> GPE has publicly stated that it plans to shut down six fossil-fueled generating units by December 31, 2019.<sup>63</sup>

48. KCPL and GMO are actively pursuing other clean energy initiatives regarding energy efficiency and green power rates.<sup>64</sup>

49. Since 2005, KCPL and GMO have added approximately 15% of renewable capacity to their supply mix and moved toward a cleaner and more diversified supply portfolio. In 2017, approximately 21% of GPE's retail sales were supplied by renewable energy.<sup>65</sup>

50. In KCPL and GMO's Integrated Resource Plan Annual Update filed in June 2017 for years 2017 through 2036, all new generation planned over the twenty-year period is only renewable energy for both companies.<sup>66</sup>

51. Under the Missouri Energy Efficiency Investment Act ("MEEIA"), KCPL and GMO are currently in a second 3-year cycle of demand side management programs and are developing Cycle 3 programs to be in effect beginning in 2019. From 2013 through 2017, KCPL and GMO implemented demand-side programs that have resulted in an approximately 260 MW reduction in retail customer demand.<sup>67</sup>

52. From 2012-2015, KCPL conducted a \$2.3 million SmartGrid demonstration project and operational testing of two forms of lithium-ion battery storage systems. KCPL

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<sup>62</sup> Ex. 5, Crawford Surrebuttal, p. 3.

<sup>63</sup> Ex. 5, Crawford Surrebuttal, p. 7-8.

<sup>64</sup> Ex. 5, Crawford Surrebuttal, p. 3.

<sup>65</sup> Ex. 5, Crawford Surrebuttal, p. 4-5.

<sup>66</sup> Ex. 5, Crawford Surrebuttal, p. 6.

<sup>67</sup> Ex. 5, Crawford Surrebuttal, p. 9.

continues to track the development and costs of storage technologies for future resource and demand-side program planning.<sup>68</sup>

53. KCPL and GMO each filed a renewable energy program tariff in File Nos. ER-2018-0145 and ER-2018-0146, respectively, on January 30, 2018. The Renewable Energy Program is a renewable subscription program where the Company executes one or more Power Purchase Agreements (“PPA”) to supply renewable energy to participating customers. The program will be offered to non-residential customers, and the companies plan to consolidate all subscriptions from its three jurisdictions (KCP&L-MO, KCP&L-KS, and KCP&L-Greater Missouri Operations Company) and serve them through this renewable PPA. KCPL and GMO have also proposed a new Solar Subscription Pilot Rider tariff, which is a community solar offering for residential and non-residential customers.<sup>69</sup>

54. KCPL and GMO have made substantial investment in the installation of Automated Meter Infrastructure (“AMI”), also known as smart meter technology. The AMI installation was completed in the urban portions of both companies at the end of 2016, with over 700,000 meters upgraded, or nearly 80% of all customers. In addition, KCPL and GMO have identified and applied various distribution automation and smart grid technologies on their systems, including automated reclosers with remote operation capabilities, smart switches with coordinated automatic reconfiguration (self-healing) capabilities, and communicating faulted circuit indicators. KCPL and GMO implemented these advancements voluntarily without any mandate imposed on them.<sup>70</sup>

55. The Applicants cannot provide a firm retirement date for the Westar coal and gas-fired power plants slated for retirement until the Southwest Power Pool (“SPP”)

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<sup>68</sup> Ex. 5, Crawford Surrebuttal, p. 9-10.

<sup>69</sup> Ex. 10, Ives Surrebuttal, p. 27; Ex. 5, Crawford Surrebuttal, p. 10.

<sup>70</sup> Ex. 5, Crawford Surrebuttal, p. 10-11.

completes the 2018 Integrated Transmission Planning study (“2018 ITP”). Westar has provided the required 6-month notice to the SPP for retirement of Tecumseh 7, Gordon Evans 1 and Gordon Evans 2 steam units which will allow for unit retirements by December 31, 2018. Westar has not yet provided this notice for the Murray Gill 3 or 4 units but intends to do so before summer of 2018 to allow for retirement by December 31, 2018. The SPP is currently conducting the 2018 ITP which includes 0 MW output for all units Westar plans to retire. The study will be finalized and approved by the SPP Board of Directors in July 2018.<sup>71</sup>

56. Like GPE, Westar has a strong history of pursuing renewable and clean energy. Westar has approximately more than 1,760 MW of renewable generation in its portfolio, exceeding its voluntary RES requirements. Westar is currently evaluating the addition of renewable generation and plans to retire 781 MW of fossil-fueled generation by the end of 2018. Westar is actively pursuing other clean energy initiatives, including energy storage and green power rates.<sup>72</sup>

57. After the Merger, the combined wind portfolio of the three Holdco utilities will make it one of the top five largest wind producers in the United States, with renewable energy accounting for approximately 30% of their retail sales.<sup>73</sup>

58. As part of their 2019 Integrated Resource Plan Update, KCPL and GMO plan on conducting a combined KCPL/GMO/Westar analysis.<sup>74</sup>

59. After the Merger closes, the Commission will continue to have regulatory authority over KCPL and GMO, the Holdco operating utility companies in Missouri, just as it

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<sup>71</sup> Ex. 5, Crawford Surrebuttal, p. 14.

<sup>72</sup> Ex. 5, Crawford Surrebuttal, p. 17.

<sup>73</sup> Ex. 5, Crawford Surrebuttal, p. 19; Ex. 7, Greenwood Surrebuttal, p. 13; Tr. Vol. 2, p. 85, 129-130; Ex. 15..

<sup>74</sup> Ex. 5, Crawford Surrebuttal, p. 20; Tr. Vol. 2, p. 247-249.

did before the Merger. All capital investments remain subject to Commission prudence reviews before affecting customers' base rates, and utility earnings are monitored regularly through the normal regulatory process.<sup>75</sup>

60. The Applicants plan to continue their current policies relating to renewable energy and energy efficiency without written conditions imposed on the Merger relating to those areas.<sup>76</sup>

61. The appropriate process for the Commission to consider policies relating to renewable energy and energy efficiency is through other Commission proceedings such as integrated resource planning and rate cases.<sup>77</sup>

62. The Applicants' policies of increasing the use of renewable energy and decreasing reliance on fossil fuel generation is driven by the market forces of decreasing costs of and increasing demand for renewable energy.<sup>78</sup>

63. It is profitable for KCPL and GMO to participate in demand side energy efficiency programs.<sup>79</sup>

#### Other proposed conditions

64. The KCC is currently considering approval of the Merger in a Kansas proceeding. OPC was concerned that the KCC could issue an order that had the result of being detrimental to Missouri ratepayers, so OPC proposed that the Commission impose an "equal outcome" provision to hold Missouri ratepayers harmless in that circumstance.<sup>80</sup> OPC subsequently withdrew that recommendation.<sup>81</sup>

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<sup>75</sup> Ex. 12, Reed Surrebuttal, p. 4.

<sup>76</sup> Tr. Vol. 2, p. 79, 118; Tr. Vol. 3, p. 283-285.

<sup>77</sup> Ex. 7, Greenwood Surrebutal, p. 7, 10-11; Tr. Vol. 2, p. 90-91, 167-168, 213.

<sup>78</sup> Tr. Vol. 2, p. 108-111, 126; Tr. Vol. 3, p. 284-285.

<sup>79</sup> Tr. Vol. 2, p. 109-110; Tr. Vol. 3, p. 284.

<sup>80</sup> Ex. 350, Marke Rebuttal, p. 6-7.

<sup>81</sup> 2<sup>nd</sup> Agreement, p. 5; Tr. Vol. 3, p. 315-318.

65. There are significant differences in the ratemaking practices and regulations in Missouri and Kansas such that what is agreed to or ordered in one state may not make sense in the other.<sup>82</sup>

66. In the KCC proceeding for approval of the Merger, Docket No. 18-KCPE-095-MER, the Applicants and a number of other parties filed a Non-Unanimous Settlement Agreement as a comprehensive settlement of all issues.<sup>83</sup> There are no provisions contained in that settlement agreement that would have a negative impact on Missouri ratepayers.<sup>84</sup>

67. DE does not oppose the conditions contained in the 2<sup>nd</sup> Agreement.<sup>85</sup> One provision in the 2<sup>nd</sup> Agreement requires the Applicants to submit annual reports to DE showing Applicants' Missouri employment levels and to provide direct testimony in each rate case during the period of 2019-2023 explaining certain employment metrics since the close of the Merger.<sup>86</sup>

68. DE witness Martin Hyman also supports four additional conditions to the Commission's approval of the Merger:

- a. An equal outcome provision requiring implementation of terms at least as favorable as those approved in Kansas;
- b. Using Missouri-based generation facilities and with terms acceptable to the Commission, Holdco working with stakeholders to develop and file one or more green tariff options for customers of both KCPL and GMO (in the event that the

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<sup>82</sup> Ex. 10, Ives Surrebuttal, p. 21-23.

<sup>83</sup> Ex. 451.

<sup>84</sup> Tr. Vol. 3, p. 273-274, 313, 331.

<sup>85</sup> Tr. Vol. 3, p. 624.

<sup>86</sup> 2<sup>nd</sup> Agreement, p. 6.



green tariffs offered by KCPL and GMO in their current rate cases are not approved);

- c. Using Missouri-based generation facilities and with terms acceptable to the Commission, Holdco working with stakeholders to develop and file one or more community, shared, and/or subscriber renewable energy programs for residential and small commercial customers of both KCPL and GMO (in the event that the shared solar programs offered by KCPL and GMO in their current rate cases are not approved); and,
- d. Holdco continuing the pursuit of all cost-effective demand-side savings under MEEIA.<sup>87</sup>

69. DE states that regarding proposed condition a. above it does not oppose withdrawal of the equal outcome provision.<sup>88</sup>

70. DE admits that for the proposed conditions b. and c. above relating to the stakeholder process for the green tariff and shared renewable energy programs, it would be beneficial to consider those issues in separate working dockets apart from this merger approval proceeding.<sup>89</sup>

71. DE admits that regarding proposed condition d. above there is no evidence that KCPL or GMO might be less aggressive on demand side savings after the Merger than they are currently.<sup>90</sup>

72. KEPCo has requested that the Commission impose additional conditions relating to ring fencing and Commission pre-approval before retirement of energy

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<sup>87</sup> Ex. 301, Hyman Surrebuttal, p. 14-15.

<sup>88</sup> Tr. Vol. 3, p. 330-331.

<sup>89</sup> Tr. Vol. 3, p. 329.

<sup>90</sup> Tr. Vol. 3, p. 330.

generation facilities.<sup>91</sup> KEPCo did not submit any witness testimony during the hearing in support of its positions.<sup>92</sup>

### Affiliate Transaction Rule Variance

73. If the merger is approved and closes, KCPL and GMO will begin exchanging good and services with Westar.<sup>93</sup>

74. Unless a variance is granted by the Commission, the Applicants' three regulated utility affiliates would be prevented from exchanging goods and services at cost post-merger and achieving savings that will ultimately benefit the customers of those utilities.<sup>94</sup>

### **III. Conclusions of Law and Discussion**

KCPL and GMO are both an "electrical corporation"<sup>95</sup> and "public utility"<sup>96</sup> and, thus, subject to the supervision of the Commission.<sup>97</sup> Westar is an electric public utility operating in Kansas under the jurisdiction of the KCC. Under Missouri law, the Applicants need the Commission's approval to complete their merger transaction.<sup>98</sup> In evaluating the proposed merger, the Commission may only approve the transaction if it is not detrimental to the public interest.<sup>99</sup> In a previous case, the Commission determined that:

In considering whether or not the proposed transaction is likely to be detrimental to the public interest, the Commission notes that its duty is to ensure that [the utility] provides safe and adequate service to its customers at just and reasonable rates. A detriment, then, is any direct or indirect effect of the transaction that tends to make the power supply less safe or less adequate, or which tends to make rates less just or less reasonable. The

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<sup>91</sup> Tr. Vol 2, p. 56.

<sup>92</sup> Tr. Vol. 2, p. 56-58.

<sup>93</sup> Ex. 9, Ives Direct, p. 32.

<sup>94</sup> Ex. 9, Ives Direct, p. 32, 34-36.

<sup>95</sup> Section 386.020(15), RSMo.

<sup>96</sup> Section 386.020(43), RSMo.

<sup>97</sup> Sections 393.140(1) and 386.250(1), RSMo.

<sup>98</sup> Section 393.190.1, RSMo.

<sup>99</sup> *State ex rel. City of St. Louis v. Public Service Com'n of Missouri*, 73 S.W.2d 393, 400 (Mo banc 1934).

presence of detriments, thus defined, is not conclusive to the Commission's ultimate decision because detriments can be offset by attendant benefits. The mere fact that a proposed transaction is not the least cost alternative or will cause rates to increase is not detrimental to the public interest where the transaction will confer a benefit of equal or greater value or remedy a deficiency that threatens the safety or adequacy of the service. In cases brought under Section 393.190.1 and the Commission's implementing regulations, the applicant bears the burden of proof. That burden does not shift. Thus, a failure of proof requires a finding against the applicant.<sup>100</sup>

Therefore, the Commission may not withhold its approval of the proposed transaction unless the Applicants fail in their burden to demonstrate that the transaction is not detrimental to the public interest, and detriment is determined by performing a balancing test where benefits are weighed against direct or indirect effects of the transaction that would diminish the provision of safe or adequate of service or that would tend to make rates less just or less reasonable.<sup>101</sup>

The Applicants argue that the merger of equals should be approved because it will create a larger, stronger combined company that is better positioned to meets the needs of its customers, make a positive effect on the environment, and achieve competitive financial returns. The Applicants state that any potential detriments are mitigated by the conditions contained in the 1<sup>st</sup> and 2<sup>nd</sup> Agreements. Staff, OPC, DE, MJMEUC, MECG, and FEA agree that the merger will not be detrimental to the public interest and should be approved if the Commission adopts the conditions set out in the 1<sup>st</sup> and 2<sup>nd</sup> Agreements. Renew Missouri and KEPCo do not oppose those conditions, but argue that the merger should not

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<sup>100</sup> Report and Order, *In the Matter of the Application of Union Electric Company, d/b/a AmerenUE, for an Order Authorizing the Sale, Transfer and Assignment of Certain Assets, Real Estate, Leased Property, Easements and Contractual Agreements to Central Illinois Public Service Company, d/b/a AmerenCIPS, and, in Connection Therewith, Certain Other Related Transactions*, 13 Mo.P.S.C.3d 16, 40, Case No. EO-2004-0108, issued October 6, 2004.

<sup>101</sup> Report and Order, *In the Matter of the Joint Application of Great Plains Energy Incorporated, Kansas City Power & Light Company, and Aquila, Inc., for Approval of the Merger of Aquila, Inc., with a Subsidiary of Great Plains Energy Incorporated and for Other Related Relief*, 17 Mo.P.S.C.3d 338, 541, Case No. EM-2007-0374, issued July 1, 2008.

be approved unless the Commission also imposes additional conditions that those parties have proposed and that were not included in the two Agreements.

#### Merger Approval and Proposed Conditions

The Applicants have structured the Merger as a “merger of equals” with a tax-free exchange of stock, no transaction debt used to finance the Merger, no exchange of cash or other consideration, and no market or control premium paid to or received by either company. In that regard, the Merger does not suffer from the problems that caused the KCC to reject the Initial Transaction, such as a large acquisition premium and debt. Instead, the Merger will create a stronger combined company, with more customers, more geographic diversification, no transaction debt to complete the Merger, and the prospect for higher earnings growth rates than either GPE or Westar would be able to achieve on a stand-alone basis.

The undisputed evidence in this case shows that the Merger will benefit shareholders, ratepayers, and the general public. The Merger will benefit shareholders by improving Holdco’s ability to achieve competitive financial returns as the operating utilities are better able to earn near their Commission-authorized returns.

The Merger benefits ratepayers by providing an opportunity to reduce the upward pressure on customers’ rates from increasing costs and flat or declining customer usage. Combining the companies will create operational efficiencies, without involuntary staff layoffs, resulting in net savings from the Merger over the first five years after closing of approximately \$555 million. The Merger provides upfront customer bill credits, no recovery of transaction costs in rates, and no change in the nature of customers’ interactions with

their service provider. All these Merger savings serve to reduce the cost of service and to delay rate increases that would be required absent the Merger.

The Merger will benefit the general public in Missouri and Kansas. The combination of the rate credits, lower future rate increases, and other economic activity generated by the Merger is expected to produce approximately \$331 million in direct local economic activity and \$176 million in incremental gross regional product within those economies between 2018 and 2030. The Merger will not lead to cost cutting for vegetation management, maintenance, system improvements, or other areas of utility operations that would negatively impact the public safety. The Merger will also allow Westar to retire five aging fossil-fueled generation plants earlier than scheduled.

In order to mitigate any possible detriments that may result from the Merger and ensure that customers receive the benefit of any savings the Merger will create, the Applicants and a number of other parties have proposed numerous conditions and commitments that are contained in the 1<sup>st</sup> and 2<sup>nd</sup> Agreements. No party has specifically objected to those conditions and commitments. The Commission finds all of the conditions and commitments in the 1<sup>st</sup> and 2<sup>nd</sup> Agreement to be reasonable and will adopt them.

Renew Missouri has proposed that nine additional conditions be imposed upon the Applicants if the Merger is approved. These requests involve firm commitments regarding retirement of fossil-fuel plants, increased renewable energy, integrated resource planning, energy efficiency, and energy storage (see Finding of Fact 46 above). The evidence showed that the Applicants have demonstrated a strong commitment to promoting renewable energy and energy efficiency. Since 2005, KCPL and GMO have added approximately 15% of renewable capacity to their supply mix, and all new generation

planned over the next twenty-year period is only renewable energy for both companies. KCPL and GMO are actively participating in demand-side energy efficiency programs and promoting renewable energy “green tariffs” and smart grid technology. Westar also has a strong history of pursuing renewable and clean energy. After the Merger, the combined wind portfolio of the three Holdco utilities will make it one of the top five largest wind producers in the United States, with renewable energy accounting for approximately 30% of their retail sales.

Renew Missouri does not dispute the Applicants’ past actions regarding renewable energy and energy efficiency, but argues that the merger integration process will consume considerable time and organizational energy, which increases the risk that these matters will be neglected while the Applicants are distracted with integration issues. The evidence showed, however, that the Applicants have already created a robust integration plan, including an integration team to coordinate and report on achievement of Merger efficiencies and savings after the closing of the Merger. There is no reason to believe that the Applicants will backslide and fail to pursue and achieve their goals for renewable energy. Moreover, the evidence also showed that there are powerful financial incentives for the Applicants to continue their policies of increasing the use of renewable energy and decreasing reliance on fossil fuel generation, which are driven by the market forces of decreasing costs of and increasing demand for renewable energy. In addition, in Missouri it is profitable for KCPL and GMO to participate in demand-side energy efficiency programs under the MEEIA laws.

The Commission will continue to have regulatory authority over KCPL and GMO after the Merger closes and will be able to address specific renewable energy issues in

other regulatory proceedings, such as rate cases, integrated resource planning dockets, workshops, and MEEIA and certificate cases, where all affected stakeholders will have notice and an opportunity to participate. In balancing the proposed benefits relating to renewable energy and energy efficiency to any possible detriments created by the Merger, the Commission concludes that the conditions proposed by Renew Missouri are not necessary and, therefore, will not be adopted.

DE does not oppose the 2<sup>nd</sup> Agreement, but witness Martin Hyman suggested four additional conditions to impose on the Applicants if the Merger is approved. DE does not oppose withdrawing the first condition, the equal outcome provision regarding approval by the KCC. Since there are significant differences in the ratemaking practices and regulations in Missouri and Kansas, the Commission finds that imposing an equal outcome provision at this time is not appropriate. The current proposed settlement agreement before the KCC poses no risk, as there are no provisions contained in that settlement agreement that would have a negative impact on Missouri ratepayers. The remaining three conditions recommended by DE which relate to renewable energy and energy efficiency are not necessary for the same reasons described above regarding the similar conditions proposed by Renew Missouri. The Commission concludes that the additional four conditions recommended by DE should not be adopted.

Finally, KEPCo has requested that the Commission impose additional conditions relating to ring fencing and Commission pre-approval before retirement of energy generation facilities. Since KEPCo did not submit any witness testimony during the hearing in support of its positions, there is no basis in the record to approve those proposed conditions. Those conditions will not be adopted.

### Affiliate Transaction Rule Variance

The Applicants have requested a limited variance from the Commission's affiliate transaction rule to facilitate transactions between the regulated operations of KCPL, GMO, and Westar by allowing all transactions to occur at cost except for wholesale power transactions, which will be based on rates approved by the Federal Energy Regulatory Commission.

The purpose clause of the affiliate transaction rule, 4 CSR 240-20.015, states the "rule is intended to prevent regulated utilities from subsidizing their non-regulated operations". If the merger is approved and closes, KCPL and GMO will begin exchanging good and services with Westar, which may constitute an "affiliate transaction" under the rule. As a result, the asymmetric pricing standards in 4 CSR 24-20.015(2), which prohibit a regulated electrical corporation from providing a financial advantage to an affiliated entity, may apply unless a variance is granted by the Commission. Without that variance, the Applicants' three regulated utility affiliates would be prevented from exchanging goods and services at cost post-merger and achieving savings that will ultimately benefit the customers of those utilities.

The Commission finds that the Applicants have demonstrated good cause to grant the variance. The Commission will grant the variance, but the variance will be limited only to transactions between the state-regulated operations of KCPL, GMO, and Westar and not to any transactions involving other affiliated entities such as Transource or Prairie Wind.<sup>102</sup> The Commission also finds that the Applicants' request does not limit the ability of any party

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<sup>102</sup> If the Applicants determine that additional variances are necessary to meet their savings goals from the Merger, they may request those variances in the future.



to assert that a particular transaction is imprudent or that the Commission lacks the authority to make such a finding.

#### **IV. Decision**

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts to the law to reach its conclusions, the Commission determines that the substantial and competent evidence in the record supports the conclusion that the Applicants have met, by a preponderance of the evidence, their burden of proof to demonstrate that the Merger transaction is not detrimental to the public interest, providing that the conditions and commitments contained in the 1<sup>st</sup> and 2<sup>nd</sup> Agreements are imposed. Therefore, the Commission will grant the Applicants' application, subject to the conditions in the 1<sup>st</sup> and 2<sup>nd</sup> Agreements. In addition, the Commission will grant the Applicants' request for a limited variance from the affiliated transaction rule. Since the Applicants have requested expedited treatment to permit the Merger to close in the first half of 2018, the Commission will make this Report and Order effective in ten days.

#### **THE COMMISSION ORDERS THAT:**

1. The Applicants' application for approval of the July 9, 2017 Amended and Restated Agreement and Plan of Merger is granted, subject to the conditions and commitments contained in the 1<sup>st</sup> Agreement and 2<sup>nd</sup> Agreement. A copy of the 1<sup>st</sup> Agreement is attached to this Report and Order as Attachment 1 and incorporated herein in its entirety as if fully set forth. A copy of the 2<sup>nd</sup> Agreement is attached to this Report and Order as Attachment 2 and incorporated herein in its entirety as if fully set forth. The Applicants shall comply with the conditions and commitments contained in the 1<sup>st</sup> and 2<sup>nd</sup> Agreements.

2. The Applicants are granted a limited variance from the Commission's affiliate transaction rule, 4 CSR 240-20.015, as described in the body of this order.

3. The Applicants are authorized to perform in accordance with the terms and conditions of the July 9, 2017 Amended and Restated Agreement and Plan of Merger and Merger-related instruments and agreements, and to take any and all actions as may be reasonably necessary and incidental to the performance of the Merger, including the creation of the new holding company and the reorganization thereunder, for the purposes and manner set forth in the application.

4. This order shall become effective on June 3, 2018.

BY THE COMMISSION



A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

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

Bushmann, Senior Regulatory Law Judge

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Union Electric        )  
Company d/b/a Ameren Missouri and Farmers'            )  
Electric Cooperative, Inc. for Approval of an            )  
Addendum to an Approved Territorial Agreement        )        **File No. EO-2018-0278**

**REPORT AND ORDER APPROVING SECOND  
ADDENDUM TO TERRITORIAL AGREEMENT**

**ELECTRIC**

**§11 Territorial agreements**

The Commission approved an addendum to a territorial agreement as being not detrimental to the public interest.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 30<sup>th</sup> day of  
May, 2018.

In the Matter of the Application of Union Electric )  
Company d/b/a Ameren Missouri and Farmers' ) **File No. EO-2018-0278**  
Electric Cooperative for Approval of an Addendum )  
To an Approved Territorial Agreement )

**REPORT AND ORDER APPROVING SECOND  
ADDENDUM TO TERRITORIAL AGREEMENT**

Issue Date: May 30, 2018

Effective Date: June 9, 2018

This order approves Addendum No. 2 to the Territorial Agreement between Union Electric Company d/b/a Ameren Missouri and Farmers' Electric Cooperative, Inc. (Farmers), which will allow Farmers to provide retail electric service to a three-phase irrigation system currently located in Ameren Missouri's service territory.

**Findings of Facts**

1. Farmers is a rural electric cooperative organized under Chapter 394, RSMo, engaged in the business of providing electricity and related services to its members. Its principal place of business is located in Chillicothe, Missouri. Farmers is duly authorized to conduct business in Missouri.

2. Ameren Missouri is a Missouri Corporation engaged in the business of providing electrical and gas utility services to customers in its Missouri service area. Its principal place of business is located in St. Louis, Missouri. Ameren Missouri is duly authorized to conduct business in Missouri.

3. On September 3, 1998, the Commission approved a Territorial Agreement between Ameren Missouri and Farmers that designated the boundaries for their respective exclusive service areas for new structures built in Caldwell, Chariton, Clinton, Daviess, DeKalb, Gentry, Linn, Livingston, and Ray Counties.<sup>1</sup> The Territorial Agreement established a process to be used for agreeing upon and seeking approval of future addenda to the Territorial Agreement, including a deadline of 45 days for Commission's Staff or the Office of Public Counsel to submit a pleading objecting to an addendum submitted for Commission approval. Failure of Staff or the Office of Public Counsel to submit an objection within that time frame would be deemed an approval.

4. The Commission previously approved a first addendum to the territorial agreement in 2013.<sup>2</sup> That earlier addendum authorized Farmers to provide service to a structure owned by Beetsma Farms, Inc., located near Mooresville, Missouri.

5. On April 9, 2018, Ameren Missouri and Farmers filed a *Joint Application for Approval of an Addendum to an Approved Territorial Agreement*, seeking to amend the existing Territorial Agreement. The second amendment would allow Farmers to serve a three-phase irrigation pump owned by Beetsma Farms, LLC, again located near Mooresville, Missouri.

6. The irrigation pump site is located within Ameren Missouri's exclusive service area by terms of the Territorial Agreement, but Farmers' existing facilities are closer to the location than Ameren Missouri's and Farmers is able to provide electric service to the location more economically than can Ameren Missouri. The customer, Beetsma Farms, has consented to the change of suppliers.

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<sup>1</sup> File No. EO-98-511.

<sup>2</sup> File No. EO-2014-0044.

7. The second addendum to the Territorial Agreement does not change any of the other terms or conditions of the Territorial Agreement, nor does it change the boundaries of the exclusive electric service territories of either Farmers or Ameren Missouri.

8. On April 10, the Commission ordered that notice of the joint application be provided to potentially interested persons and established April 30 as the deadline for submission of requests to intervene. No requests to intervene have been filed. The Commission also directed Staff to file a recommendation regarding the joint application by May 25.

9. On May 22, Staff filed a recommendation advising the Commission to approve the second addendum. The Office of Public Counsel has not objected to the joint application.

10. Based on the information provided in the application and Staff's recommendation, the Commission finds that the second addendum is in the public interest.

### **Conclusions of Law**

A. Section 394.312, RSMo 2016, gives the Commission jurisdiction over territorial agreements between electric cooperatives and electrical corporations, including any subsequent amendment to such agreement.

B. Pursuant to subsections 394.312.3 and .5, RSMo 2016, the Commission may approve a territorial agreement if it is found to be in the public interest.

C. Office of Public Counsel did not file a recommendation or objection within 45 days of the filing of the second addendum. By the terms of the Territorial Agreement, the Office of the Public Counsel is deemed to have approved the second addendum.

D. Section 394.312.5, RSMo 2016, provides that the Commission must hold an evidentiary hearing on the proposed territorial agreement unless an agreement is made between the parties and no one requests a hearing. Since no hearing was requested, the requirement for a hearing was met when the opportunity for hearing was provided and no proper party requested the opportunity to present evidence.<sup>3</sup> Therefore, no hearing is necessary for the Commission to make a determination.

### **Decision**

Having considered the joint application and Staff's verified recommendation in support of approval of the application, the Commission finds that there are no facts in dispute and, therefore, accepts the facts as true. The Commission concludes the submitted second addendum between the parties is not detrimental to the public interest and will be approved. In approving the second addendum, the Commission is making no ratemaking determinations and reserves the right to consider any ratemaking treatment in a later rate proceeding.

Because of the need to approve the second addendum expeditiously to allow Beetsma Farms to proceed with its irrigation project as soon as possible, the Commission will make this order effective in ten days.

### **THE COMMISSION ORDERS THAT:**

1. The Addendum No. 2 to the Territorial Agreement between Union Electric Company d/b/a Ameren Missouri and Farmers' Electric Cooperative, Inc. is approved.
2. Farmers' Electric Cooperative, Inc. is authorized to provide electric service to the property as described in the joint application and as set forth in Addendum No. 2.

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<sup>3</sup> *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Missouri*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

3. Union Electric Company d/b/a Ameren Missouri and Farmers' Electric Cooperative, Inc. are authorized to do such other acts and things, including making, executing, and delivering any and all documents that may be necessary, advisable, or proper to consummate the agreements reflected in Addendum No. 2 and implement the authority granted by the Commission in this order.

4. Union Electric Company d/b/a Ameren Missouri shall file with the Commission revised tariff sheets to reflect Addendum No. 1 and Addendum No. 2.

5. This order shall become effective on June 9, 2018.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Woodruff, Chief Regulatory Law Judge

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



**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

Edward Lander,	)	
	)	
Complainant,	)	
	)	
v.	)	<b><u>File No. WC-2018-0099</u></b>
	)	
Missouri-American Water Company,	)	
Respondent.	)	

**REPORT AND ORDER**

**EVIDENCE, PRACTICE AND PROCEDURE**

**§4 Presumption and burden of proof**

Leaks and properly functioning meters are objectively determinable. A leak on Complainant’s side of the meter will register on the meter. Here Complainant testified that when he turned all the items using water in the house off, there was no movement on the meter. Also, if the meter is not properly functioning, MAWC’s testing would have revealed this fact.

It is Complainant’s burden to show that the company has violated the law. Because he has not done so, his complaint fails and the Commission must rule in favor of the company.

**§6 Weight, effect and sufficiency**

The complaint against MAWC is based on the assumption that the high water bill for the third quarter of 2017 could only be the result of a defective water meter. Complainant did not, however, present any evidence to establish that the water meter was in fact defective. Testing of the water meter by MAWC revealed that it was not defective at the time it was tested. MAWC inspected the system and the area around the meter for leaks and found none. Additionally, MAWC presented evidence that Complainant’s water use for prior years was reasonably consistent with current water usage.

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



Edward Lander,	)	
	)	
Complainant,	)	
	)	<b>File No. WC-2018-0099</b>
v.	)	
	)	
Missouri-American Water Company,	)	
	)	
Respondent	)	

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## REPORT AND ORDER

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**Issue Date:** May 30, 2018

**Effective Date:** June 29, 2018

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Edward Lander,	)	
	)	
Complainant,	)	
	)	<b>File No. WC-2018-0099</b>
v.	)	
	)	
Missouri-American Water Company,	)	
	)	
Respondent	)	

## Appearances

**Complainant:** Edward Lander, appearing pro se, 185 Ladue Pines Dr., Creve Coeur, Missouri 63141.

**Missouri American Water Company:** Diana C. Carter, Brydon, Swearngen & England, P.C., 312 East Capitol Avenue, P.O. Box 456, Jefferson City, Missouri 65102-0456.

**Staff of The Missouri Public Service Commission:** Casi Aslin, Legal Counsel, Post Office Box 360, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

**Regulatory Law Judge:** John T. Clark

## REPORT AND ORDER

### I. Procedural History

On October 18, 2017, Edward Lander filed a formal complaint against Missouri-American Water Company (“MAWC”). After notice was issued, MAWC filed its *Answer*, on November 20, 2017. The Staff of the Missouri Public Service Commission (Staff) was directed to investigate and respond, and on December 4, 2017, Staff filed a report noting it found no violations of law by MAWC. No responses to the *Staff Report* were received.

On February 22, 2018, the Commission issued an order setting a procedural schedule. Pursuant to the procedural schedule the parties filed a stipulation of undisputed facts on March 12, 2018. The parties agree that the following facts are not in dispute:

### **Undisputed Facts**

1. Complainant resides at 185 Ladue Pines Dr., Creve Coeur, Missouri 63141.
2. The utility service complained of was received at Complainant's address listed in Paragraph 1.
3. Complainant is a customer of MAWC.
4. MAWC is a public utility under the jurisdiction of the Missouri Public Service Commission.
5. The amount at issue is \$800.
6. Complainant has contacted MAWC about his bills.

An evidentiary hearing was held on March 22, 2018, at the Commission's St. Louis office in Suite 105 of the Wainwright State Office Building, 111 N. 7<sup>th</sup> Street. During the evidentiary hearing the Commission admitted the testimony of three witnesses and received two exhibits into evidence. Edward Lander testified on his own behalf, Emily Vetter testified for MAWC, and Jim Busch testified for the Commission's Staff. MAWC filed a post-hearing brief on April 13, 2018, and Complainant filed a reply on April 23, 2018; the case was deemed submitted for the Commission's decision on that date.<sup>1</sup>

### **Background**

Edward Lander filed a complaint against MAWC alleging that Missouri American wrongfully billed him for approximately 200,000 gallons of water for the third quarter of 2017.<sup>2</sup> MAWC answered the complaint stating that during the same quarter for the preceding two years Mr. Lander's water usage was similar. The Commission's Staff

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<sup>1</sup> Commission Rule 4 CSR 240-2.150(1).

submitted a report declaring the Company had not violated any applicable statutes, Commission Rules, or Commission-approved Company tariffs related to the complaint. Staff concluded the bills rendered to Mr. Lander were correct. The amount in controversy is \$800.

## **II. Findings of Fact**

The parties' undisputed facts above are incorporated into the Commission's findings of fact.

1. Missouri American Water Company is a utility regulated by this Commission.
2. Complainant is disputing his bill from 2017,<sup>3</sup> where he was billed for approximately 200,000 gallons of water usage.<sup>4</sup>
3. Complainant has a 10,000 gallon swimming pool,<sup>5</sup> a sprinkler system,<sup>6</sup> and seven toilets<sup>7</sup> at his residence.
4. Complainant made an informal complaint to the Commission about MAWC (MPSC Complaint #: C201700703) on October 7, 2016. MAWC sent a field service representative to Complainant's house on September 15, 2016; September 17, 2016; and September 23, 2016. No leaks were found at the meter or service line. Each visit showed activity on the water meter.<sup>8</sup>
5. Complainant turned off all water usage within the house and the meter showed no activity.<sup>9</sup>

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<sup>2</sup> The actual time period the complaint concerned was unclear and was clarified during the evidentiary hearing.

<sup>3</sup> Transcript Vol. 3, page 33.

<sup>4</sup> EFIS No. 1 (October 18, 2017), Complaint

<sup>5</sup> Transcript Vol. 3, page 30.

<sup>6</sup> Transcript Vol 3, page 25.

<sup>7</sup> Transcript Vol. 3, page 34.

<sup>8</sup> Staff Ex. 100, Appendix A.

<sup>9</sup> Transcript Vol. 3, page 30.

6. MAWC tested Complainant's meter on October 31, 2016 and found it to be within its specifications for the meter.<sup>10</sup> The meter tested 98.8% accurate at high flow rates, and 100% accurate at low flow rates.<sup>11</sup>

7. MAWC's policy is to offer a one-time leak adjustment as a courtesy to customers.<sup>12</sup>

8. Complainant received a leak adjustment on January 16, 2016, for water usage from August 25, 2015, to November 19, 2015.<sup>13</sup>

9. Complainant received a second leak adjustment on November 7, 2016, for water usage from May 27, 2016, to August 24, 2016.<sup>14</sup>

10. Complainant testified that he had no recollection of receiving a second leak adjustment.<sup>15</sup>

11. Complainant fixed a running toilet himself in 2016.<sup>16</sup>

12. Complainant questioned MAWC's witness as to whether the meter system is, "100% foolproof?" MAWC's witness testified that a meter can go wrong, can stop, but typically slows down which is to the customer's advantage.<sup>17</sup>

13. Between 2004 and 2018 Complainant's water usage has exceeded 100,000 gallons per quarter ten times, and has exceeded 150,000 gallons per quarter seven times.

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<sup>10</sup> Staff Ex. 100, Appendix A.

<sup>11</sup> Staff Ex. 100, Appendix B.

<sup>12</sup> Transcript Vol. 3, page 37.

<sup>13</sup> Transcript Vol. 3, pages 37-38

<sup>14</sup> Transcript Vol. 3, page 38.

<sup>15</sup> Transcript Vol. 3, page 30.

<sup>16</sup> Transcript Vol. 3, pages 30, and 33-34.

<sup>17</sup> Transcript Vol. 3, page 46

Eight of those times exceeding 100,000 gallons per quarter have been in the third quarter.<sup>18</sup>

The alleged high water usage is consistent with Complainant's prior usage.

14. Complainant's water usage is not continuous and varies with the month and time of day.<sup>19</sup>

15. Staff's investigation concluded that MAWC did not violate its tariff. The company made efforts to work with Complainant, looked for leaks, checked the meter for accuracy, and offered a bill credit. Staff determined Complainant's water bills are correct.<sup>20</sup>

### **III. Conclusions of Law**

MAWC is a public utility as defined by Section 386.020(42), RSMo. Furthermore, MAWC is a water corporation as defined by Section 386.020(58), RSMo. Therefore, MAWC is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo.

Section 386.390 states that a person may file a complaint against a utility, regulated by this Commission, setting forth violation(s) of any law, rule or order of the Commission. Therefore, the Commission has jurisdiction over this complaint.

MAWC's tariff Rule 16E states, "[I]f the meter, when inspected and tested using the test streams prescribed by the Commission shall be found to be more than five percent (5%) defective or incorrect to the prejudice of the Customer or the Company, the Company shall adjust the Customer's bill according to these tariff rules[.]"

MAWC's tariff Rule 17C allows for bill credits based on over-recording of water use but is not required to give a bill credit when the meter test shows the meter to be accurate.

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<sup>18</sup> MAWC Ex. 200, page 1.

<sup>19</sup> MAWC Ex. 200, pages 2-11

<sup>20</sup> Staff Ex. 100, Appendix A.

The burden of showing that a regulated utility has violated a law, rule or order of the Commission is with the Complainant.<sup>21</sup>

#### **IV. Decision**

After applying the facts to its conclusions of law, the Commission has reached the following decision.

The complaint against MAWC is based on the assumption that the high water bill for the third quarter of 2017 could only be the result of a defective water meter. Complainant did not, however, present any evidence to establish that the water meter was in fact defective. Testing of the water meter by MAWC revealed that it was not defective at the time it was tested. MAWC inspected the system and the area around the meter for leaks and found none. Additionally, MAWC presented evidence that Complainant's water use for prior years was reasonably consistent with current water usage.

Leaks and properly functioning meters are objectively determinable. A leak on Complainant's side of the meter will register on the meter. Here Complainant testified that when he turned all the items using water in the house off, there was no movement on the meter. Also, if the meter is not properly functioning, MAWC's testing would have revealed this fact.

Complainant testified that he could not have used that much water as he only fills his pool as is necessary, and does not have his sprinkler set to water automatically. Complainant did not present any evidence on the amount of water his sprinkler uses. It is

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<sup>21</sup> In cases where a "complainant alleges that a regulated utility is violating the law, its own tariff, or is otherwise engaging in unjust or unreasonable actions,"..."the burden of proof at hearing rests with the complainant." *State ex rel. GS Technologies Operating Co., Inc. v. Public Service Comm'n*, 116 S.W.3d 680, 693 (Mo. App. 2003).



Complainant's burden to show that the company has violated the law. Because he has not done so, his complaint fails and the Commission must rule in favor of the company.

**THE COMMISSION ORDERS THAT:**

1. Edward Lander's complaint is denied.
2. This order shall become effective on June 29, 2018.
3. This case shall be closed on July 2, 2018.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

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

Clark, Regulatory Law Judge

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Assessment Against the Public    )  
Utilities in the State of Missouri for the Expenses of    )  
the Commission for the Fiscal Year Commencing        )  
July 1, 2018                                                        )  
**File No. AO-2018-0379**

**ASSESSMENT ORDER FOR FISCAL YEAR 2019**

**PUBLIC UTILITIES**

**§1 Generally**

The Commission established the assessment amount for fiscal year 2019.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public  
Service Commission held at  
its office in Jefferson City on  
the 20<sup>th</sup> day of June, 2018.

In the Matter of the Assessment Against     ) the Public Utilities in the State of Missouri     ) for the Expenses of the Commission for the     ) Fiscal Year Commencing July 1, 2018     )	) ) ) )	<b><u>Case No. AO-2018-0379</u></b>
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**ASSESSMENT ORDER FOR FISCAL YEAR 2019**

Issue Date: June 20, 2018

Effective Date: July 1, 2018

Pursuant to 386.370, RSMo, the Commission estimates the expenses to be incurred by it during the fiscal year commencing July 1, 2018. These expenses are reasonably attributable to the regulation of public utilities as provided in Chapters 386, 392 and 393, RSMo and amount to \$22,382,677. Within that total, the Commission estimates the expenses directly attributable to the regulation of the six groups of public utilities: electrical, gas, heating, water, sewer and telephone, which total for all groups \$12,726,816. In addition to the separately identified costs for each utility group, the Commission estimates the amount of expenses that could not be attributed directly to any utility group of \$9,655,861.

The Commission estimates that the amount of Federal Gas Safety reimbursement will be \$490,000. The unexpended balance in the Public Service Commission Fund in the hands of the State Treasurer on July 1, 2018, is estimated to be \$3,142,568. The Commission deducts these amounts and

estimates its Fiscal Year 2019 Assessment to be \$18,750,109. The unexpended sum is allocated as a deduction from the estimated expenses of each utilities group listed above, in proportion to the group's gross intrastate operating revenue as a percentage of all groups' gross intrastate operating revenue for the calendar year of 2017, as provided by law. The reimbursement from the federal gas safety program is deducted from the estimated expenses attributed to the gas utility group.

The Commission allocates to each utility group its directly attributable estimated expenses. Additional common, administrative and other costs not directly attributable to any particular utility group are assessed according to the group's proportion of the total gross intrastate operating revenue of all utilities groups. Those amounts are set out with more specificity in documents located on the Commission's web page at <http://www.psc.mo.gov>.

The Commission fixes the amount so allocated to each such group of public utilities, net of said estimated unexpended fund balance and federal reimbursement as follows:

Electric .....	\$ 8,442,062
Gas .....	\$ 5,880,780
Steam/Heating .....	\$ 49,104
Water & Sewer.....	\$ 3,074,056
Telephone.....	\$ 1,304,107
Total .....	\$ 18,750,109

The Commission will collect an assessment for the Office of Public Counsel which is included in the total assessment amount of \$18,750,109.

The Commission allocates a proportionate share of the \$18,750,109 to each industry group as indicated above. The amount allocated to each industry group is allotted to the companies within that group. This allotment is accomplished according to the percentage of each individual company's gross intrastate operating revenues compared to the total gross intrastate operating revenues for that group. The amount allotted to a company is the amount assessed to that company.

The Budget and Fiscal Services Department of the Commission is hereby directed to calculate the amount of such assessment against each public utility, and the Commission's Director of Administration shall render a statement of such assessment to each public utility on or before July 1, 2018. The assessment shall be due and payable on or before July 15, 2018, or at the option of each public utility, it may be paid in equal quarterly installments on or before July 15, 2018, October 15, 2018, January 15, 2019, and April 15, 2019. The Budget and Fiscal Services Department shall deliver checks to the Director of Revenue the day they are received.

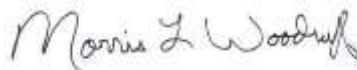
All checks shall be made payable to the Director of Revenue, State of Missouri; however, these checks must be sent to:

Missouri Public Service Commission  
Budget and Fiscal Services Department  
P.O. Box 360  
Jefferson City, MO, 65102-0360

**THE COMMISSION ORDERS THAT:**

1. The assessment for fiscal year 2019 shall be as set forth herein.

2. The Budget and Fiscal Services Department of the Commission shall calculate the amount of such assessment against each public utility.
3. On behalf of the Commission, the Commission's Director of Administration shall render a statement of such assessment to each public utility on or before July 1, 2018.
4. Each public utility shall pay its assessment as set forth herein.
5. The Budget and Fiscal Services Department shall deliver checks to the Director of Revenue the day they are received.
6. This order shall become effective on July 1, 2018.

**BY THE COMMISSION**

Morris L. Woodruff  
Secretary



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

Woodruff, Chief Regulatory Law Judge

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of The Empire            )  
District Electric Company for Approval of Its            )  
Customer Savings Plan                                            )     **File No. EO-2018-0092**

**REPORT AND ORDER**

**ACCOUNTING**

**§4 Jurisdiction and powers of the State Commission**

The Commission has the statutory authority to determine Empire's accounting treatment for its investment in the proposed wind generation and establish a depreciation rate for the wind assets.

**EVIDENCE, PRACTICE AND PROCEDURE**

**§2 Jurisdiction and powers**

Empire asked for a determination, prior to acquisition, that its decisions to acquire wind generation using a tax equity partner and to keep a coal plant open were reasonable. Although it is the public policy of this state to diversify the energy supply through the support of renewable and alternative energy sources, it is premature to make a legal conclusion that the decision to acquire wind generation is reasonable where Empire has not yet identified sites for the wind farms, contractors to build the wind generation assets, or tax equity partners to provide financing; and where there will likely be additional proceedings before the Commission related to a consumer savings plan, such as certificate cases for the wind farms, financing approval cases, or rate cases to consider adding the wind assets into the rate base, including prudently-incurred costs into rates. It is also premature to determine whether keeping the coal plant open is prudent where no one is recommending it be closed and where a later retirement could ultimately be a management decision subject to review by the Commission in a subsequent rate case.

**§8 Stipulation**

**§30 Settlement procedures**

Where some parties enter into a stipulation and agreement, but other parties object, the stipulation and agreement becomes a joint position statement of the signatory parties.

**§24 Procedures, evidence and proof**

A case is deemed submitted for the Commission's decision when reply briefs are filed.

**GAS****§78 Payments to affiliated interests**

The purpose of the affiliate transaction rule, 4 CSR 240 240-20.015, is to prevent regulated utilities from subsidizing their non-regulated operations. The Commission has the statutory authority to grant a variance to the Commission's affiliate transaction rule to effectuate the ownership and operation of the wind generation. In order to qualify for the variance, Empire must demonstrate good cause for its request.

The Commission waived the affiliate transaction rule where, without a waiver, the company could not implement a customer savings plan that would achieve millions of dollars in customer saving that would ultimately benefit its customers.



# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Application of The Empire )  
District Electric Company for Approval of Its )  
Customer Savings Plan )

**File No. EO-2018-0092**

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## REPORT AND ORDER

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**Issue Date:** July 11, 2018

**Effective Date:** August 10, 2018

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

In the Matter of the Application of The Empire                     )  
District Electric Company for Approval of Its                     )  
Customer Savings Plan                                                     )     **File No. EO-2018-0092**

### APPEARANCES

#### THE EMPIRE DISTRICT ELECTRIC COMPANY:

**Dean L. Cooper** and **Diana C. Carter**, Brydon, Swearingen & England, PO Box 456, Jefferson City, Missouri 65102.

**Sarah B. Knowlton**, Liberty Utilities, 116 North Main Street, Concord, New Hampshire, 03301.

#### STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:

**Kevin A. Thompson**, Chief Staff Counsel, **Nicole Mers**, Deputy Staff Counsel, **Marcella Forck**, Associate Staff Counsel, PO Box 360, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

#### OFFICE OF THE PUBLIC COUNSEL:

**Hampton Williams**, Public Counsel, **Nathan Williams**, Chief Deputy Public Counsel, PO Box 2230, 200 Madison Street, Suite 650, Jefferson City, Missouri 65102-2230.

#### MISSOURI DEPARTMENT OF ECONOMIC DEVELOPMENT-DIVISION OF ENERGY:

**Marc Poston**, Senior Counsel, PO Box 1157, Jefferson City, Missouri 65102.

#### RENEW MISSOURI ADVOCATES d/b/a RENEW MISSOURI:

**Tim Opitz** and **Andrew Linhares**, 409 Vandiver Dr., Building 5, Ste. 205, Columbia, Missouri 65202.

#### MIDWEST ENERGY CONSUMERS GROUP:

**David L. Woodsmall**, 308 E. High Street, Ste. 204, Jefferson City, Missouri 65101.

**CITY OF JOPLIN, MISSOURI:**

**Stephanie S. Bell** and **Marc H. Ellinger**, Ellinger & Associates, LLC, 308 E. High Street, Ste. 300, Jefferson City, Missouri 65101.

**SIERRA CLUB:**

**Henry B. Robertson**, Great Rivers Environmental Law Center, 705 Olive St., Ste. 614, St. Louis, Missouri 63101.

**SENIOR REGULATORY LAW JUDGE:** Michael Bushmann

## REPORT AND ORDER

### I. Procedural History

On October 31, 2017, The Empire District Electric Company (“Empire”) applied to the Commission for approval of its proposed plan to achieve customer savings through the development of wind generation using federal tax incentives in conjunction with a tax equity partner and the retirement of a coal-fired unit (the “Customer Savings Plan” or “CSP”).

The Commission granted requests to intervene filed by the Missouri Department of Economic Development – Division of Energy (“DE”); Midwest Energy Consumers Group (“MECG”); Renew Missouri Advocates d/b/a Renew Missouri (“Renew Missouri”); Sierra Club; City of Joplin, Missouri; Dogwood Energy, LLC; and Union Electric Company d/b/a Ameren Missouri. On April 24, 2018, Empire, Commission Staff, MECG, DE, and Renew Missouri signed and filed a non-unanimous stipulation and agreement in which those parties proposed to settle almost all of the issues related to the CSP.<sup>1</sup> An addendum to the stipulation and agreement was filed on May 7, 2018, which made a couple of minor language changes (collectively, the “Joint Position”). The Office of the Public Counsel (“OPC”) and the City of Joplin filed objections to the stipulation and agreement, so it became a joint position statement of the signatory parties.<sup>2</sup>

The Commission conducted a local public hearing on February 8, 2018, to provide an opportunity for the general public to comment on the CSP.<sup>3</sup> The Commission held an

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<sup>1</sup> The issue specifically not decided by the stipulation and agreement is the design of rates to flow back to customers due to a reduction in base rate revenue from the Tax Cuts and Jobs Act of 2017. This issue remains for a decision in File No. ER-2018-0228 or ER-2018-0366.

<sup>2</sup> Commission Rule 4 CSR 240-2.115(2)(D).

<sup>3</sup> Transcript (“Tr.”), Vol. 1.

evidentiary hearing on May 9-11, 2018.<sup>4</sup> During the evidentiary hearing, the parties presented evidence relating to the following unresolved issues previously identified by the parties:

1. Does the Commission have authority to grant Empire's requests?
2. Which of Empire's requests, if any, should the Commission grant?
3. What requirements should be applied to the Asbury regulatory asset?
4. Should Empire be required to make any additional filings in relation to the CSP? If so, what filings?
5. Should the Commission impose any requirements in regard to tax equity financing? If so, what requirements?
6. What conditions, if any, should be applied to the Asbury Employees?
7. Should the Commission require conditions related to any impacts on local property taxes? If so, what conditions?
8. Should there be any requirements associated with the Tax Cuts and Jobs Act of 2017? If so, what requirements?
9. Should there be any requirements associated with potential impacts of the wind projects on wildlife? If so, what requirements?
10. Should the Commission grant waivers of its affiliate transaction rules for the affiliate agreements associated with the CSP?

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<sup>4</sup> Tr., Vols. 3-8. The Commission admitted the testimony of 20 witnesses and 64 exhibits into evidence during the evidentiary hearing. In addition, the Commission took official notice of the following: Non-unanimous Stipulation and Agreement filed April 24, 2018 in EO-2018-0092; Addendum to Non-Unanimous Stipulation and Agreement filed May 7, 2018 in EO-2018-0092; Empire Tariff- Fuel & Purchase Power Adjustment Clause Rider-P.S.C. Mo. No. 5, Section 4, Original Sheet Nos. 17u-17ac; Mo. PSC Order Approving Stipulation and Agreement, and attached Stipulation and Agreement, in Case No. EO-2005-0263.

OPC and the City of Joplin contested each provision of the application and Joint Position at the evidentiary hearing.

Initial post-hearing briefs were filed on May 31, 2018. Reply briefs were filed on June 12, 2018, and the case was deemed submitted for the Commission's decision on that date when the Commission closed the record.<sup>5</sup>

## **II. Findings of Fact**

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. Empire is an electrical corporation and public utility that provides electric service to the public through its tariffs in Missouri.<sup>6</sup>

2. The Staff of the Missouri Public Service Commission ("Staff") is a party in all Commission investigations, contested cases, and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.<sup>7</sup> Staff participated in this proceeding.

3. The Office of the Public Counsel is a party to this case pursuant to Section 386.710(2), RSMo<sup>8</sup>, and by Commission Rule 4 CSR 240-2.010(10).

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<sup>5</sup> "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 4 CSR 240-2.150(1).

<sup>6</sup> *Application of The Empire District Electric Company for Approval of its Customer Savings Plan and Applications for Variance, and Motion for Waiver*, p. 3, File No. EO-2018-0092, filed October 31, 2017, EFIS Item No. 2.

<sup>7</sup> Commission Rules 4 CSR 240-2.010(10) and (21) and 2.040(1).

<sup>8</sup> Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.

4. On October 31, 2017, Empire filed an application with the Commission requesting approval of its CSP, a variance from the Commission's Affiliate Transaction Rule, 4 CSR 240-20.015, and waiver of the 60-day notice requirement in Commission Rule 4 CSR 240-4.017(1).<sup>9</sup>

#### Original Customer Savings Plan

5. In general, the original CSP, as contemplated in Empire's application and the direct testimony of its witnesses, proposed that Empire acquire, in conjunction with tax equity partners, up to 800 megawatts ("MW") of wind generation strategically located in or near Empire's service territory, which would allow Empire to acquire renewable generation for approximately 40 cents on the dollar. At the same time, Empire proposed to retire its Asbury coal plant, asserting that customers would save millions of dollars in annual operating expenses and avoid tens of millions of dollars of capital investments needed by April 2019 to meet environmental regulations. Because Empire estimated that this proposal would result in up to \$325 million in savings to its customers over the next 20 years, it was referred to as the Customer Savings Plan.<sup>10</sup>

6. In order to accelerate economic growth and business investment, the United States federal government provides tax relief for wind generation projects in the form of Production Tax Credits ("PTCs") and accelerated tax depreciation. Wind projects generate PTCs for the first ten years of commercial operations in the amount of \$24 per MW-hour, which is adjusted annually for inflation, as reported by the Internal Revenue Service. The PTCs represent a dollar for dollar reduction of the tax liability of an owner of a qualifying

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<sup>9</sup> *Application of The Empire District Electric Company for Approval of its Customer Savings Plan and Applications for Variance, and Motion for Waiver*, p. 9-11, File No. EO-2018-0092, filed October 31, 2017, EFIS Item No. 2.

<sup>10</sup> Ex. 16, Swain Direct, p. 5-6.

wind project.<sup>11</sup> These PTCs will be phased out by 2020, so in order to maximize these credits and realize the customer savings, Empire must act quickly to build or acquire eligible wind projects.<sup>12</sup>

7. In addition to qualifying for the tax benefits associated with the PTCs, wind projects also qualify for accelerated tax depreciation using the five-year Modified Accelerated Cost Recovery System (“MACRS”) schedule, pursuant to federal tax law. Depreciation is a deductible expense that reduces taxable income, decreasing income tax payable. Depreciating the assets of a wind project over a five year timeframe (compared to the approximately 30-year life of the project) creates income tax losses for the wind project in its first five years. These losses can also be used by its owner(s) to offset other sources of taxable income, realizing significant income tax savings.<sup>13</sup>

8. Empire proposed a tax equity structure in order to maximize customer savings by utilizing the value of the available tax incentives. Such a structure would enable Empire to reduce the capital investment it needs to construct the wind project by an amount that reflects the ability of a tax equity partner to utilize the tax savings provided by both PTCs and MACRS in the near term. This reduced capital investment would allow customers to realize the benefits of the full 10 years of PTCs and MACRS from day 1 through a reduced rate base. Given the time value of money, using a tax equity structure (as compared with direct ownership of a wind project by Empire without a partner) would result in between \$4.00 and \$7.00 per MW hour more savings for Empire customers.<sup>14</sup>

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<sup>11</sup> Ex. 11, Mooney Direct, p. 5.

<sup>12</sup> Ex. 16, Swain Direct, p. 7.

<sup>13</sup> Ex. 11 Mooney Direct, p. 7.

<sup>14</sup> Ex. 11, Mooney Direct, p. 8.



9. A tax equity structure is a method of financing renewable energy projects (including wind projects and solar generation projects) to optimize the value in the near term of available tax incentives. In a tax equity structure, large tax-paying corporations (typically large banks and insurance companies) become equity partners in a wind project. In exchange for providing a significant portion of the capital investment of the partnership, which is used to develop the wind generation facility, a tax equity partner receives the tax incentives generated from the wind project during the first ten years of the project's life. In addition, the tax equity partner receives cash distributions in the latter years of the project (typically in years 6 to 10) as part of its return on and recovery of the capital it invested. On or before the end of the first ten years when the tax equity partner has received its return on and recovery of its investment, the ownership structure "flips" and the majority of the ongoing financial benefits of the wind project transfers over to the non-tax equity partner, with the tax equity partner retaining a nominal residual stake in the partnership (typically 5%). At this point, the non-tax equity investor also has an option to purchase the tax equity investor's interest in the partnership.<sup>15</sup>

10. As of the date of the evidentiary hearing, Empire had not entered into any definitive tax equity agreements with tax equity partners, although the company is in advanced discussions with potential partners.<sup>16</sup>

11. As part of the CSP, Empire developed a Request for Proposals to evaluate potential bidders for construction of wind generation facilities in or near Empire's service territory. After evaluating bids from 10 developers on 18 sites, Empire concluded that there

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<sup>15</sup> Ex. 11, Mooney Direct, p. 8-9.

<sup>16</sup> Tr., Vol. 5, p. 469-470.

were multiple viable bids that fall within the range of the cost scenarios contemplated by the CSP, although no final bids have yet been awarded.<sup>17</sup>

12. As part of the relief requested from the Commission, Empire requested a finding that Empire's investment related to the CSP should not be excluded from Empire's rate base on the ground that the decision to proceed with the CSP was not prudent.<sup>18</sup>

13. Empire has not directly owned its own wind assets to date, but rather has entered into purchase power agreements with wind farm generators.<sup>19</sup> Empire's existing purchase agreements with wind farms will expire in 2025 and 2028.<sup>20</sup> When those agreements expire, Empire will need to replace that energy with some sort of renewable generation or to purchase renewable energy credits to meet the requirements of the Missouri Renewable Energy Standard.<sup>21</sup>

14. Also as part of the original CSP, Empire proposed to retire the Asbury coal-fired generation plant and create a regulatory asset for the net book value of that plant, which would allow Empire to remove the Asbury plant assets from "property, plant, and equipment" when those assets are retired, and record the net remaining unrecovered balance as a regulatory asset on Empire's balance sheet.<sup>22</sup>

15. Empire has requested authority to record its capital investment to acquire the wind assets as utility plant in service subject to audit in Empire's next general rate case. If Empire's capital investment is so recorded, it will need a depreciation rate.<sup>23</sup>

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<sup>17</sup> Ex. 20, Wilson Surrebuttal, p. 2, 4, 8-10.

<sup>18</sup> Ex. 2, Krygier Direct, p. 6-7.

<sup>19</sup> Tr., Vol. 5, p. 322.

<sup>20</sup> Tr., Vol. 3, p. 192; Vol. 5, p. 376.

<sup>21</sup> Tr., Vol. 5, p. 494-495, 502.

<sup>22</sup> Ex. 14, Sager Direct, p. 2-3.

<sup>23</sup> Ex. 103, Staff Affidavit, p. 4.

16. Because Empire does not have wind depreciation rates in place, it will need to have a depreciation rate for these assets effective as of the date that they are placed in-service. This rate would remain in effect until Empire's next rate case is completed and a full depreciation study can be completed for the wind projects. Empire requested that the Commission establish a 30-year life for the wind assets, resulting in a 3.33% depreciation rate.<sup>24</sup>

17. Empire will indirectly own the wind generation assets. The tax equity structure requires the creation of a separate wind project company to own and operate each wind project. Thus, Empire and the tax equity partner will create a new legal entity in the form of a limited liability company that will own each wind project. Each wind project company will be wholly owned by a holding company, which in turn will be wholly owned by Empire and the tax equity partner.<sup>25</sup>

18. Based on an analysis of nearly 70 different wind farms in the U.S., Empire presented credible evidence that the appropriate projected life of the wind assets is 30 years, and, using a zero percent net salvage rate, the annual accrual rate is 3.33%. Once the company obtains more information regarding the specific sites, manufacturer, design, and type of construction, Empire will update and adjust these estimates in a future depreciation study.<sup>26</sup>

19. Empire also requested that the Commission grant a variance from its affiliate transaction rule relating to contracts between Empire, Liberty Utilities Service Corp, and Empire's subsidiary, the wind project company, in order to implement the CSP.<sup>27</sup>

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<sup>24</sup> Ex. 2, Krygier Direct, p. 9; Ex. 18, Watson Direct, p. 5.

<sup>25</sup> Ex. 11, Mooney Direct, p. 10-12.

<sup>26</sup> Ex. 18, Watson Direct, p. 8-10.

<sup>27</sup> Ex. 2, Krygier Direct, p. 8-9.

20. The signatories to the Joint Position recommend that Empire be granted a variance, pursuant to Commission Rule 4 CSR 240-20.015(10), from Commission Rule 4 CSR 240-20.015(2)(A), and (3), as to the following arrangements between Empire and affiliates necessary to own and operate the wind projects so that goods and services provided under these contracts may be priced in the same manner that they are currently priced by Liberty Utilities Service Corp. ("Service Corp."), to include both direct and indirect costs:

a. Asset Management Agreement: Under this agreement, employees of Service Corp. that provide services to Empire will provide all asset management services to the wind project company, including (a) management of all agreements for the wind project company; (b) management of energy/financial reporting; (c) management of all banking/financing agreements; (d) management of all landowner/local tax/municipal issues; (e) management of all government permits/regulatory issues including NERC/FERC; (f) management of all reporting for lenders/investors; (g) project management services; (h) optimization of performance of the wind farm; (i) obtaining insurance and other professional services necessary for the wind farm, and; (j) state/federal regulatory management/reporting services for the wind project company.

b. Balance of Plant Operations and Maintenance Agreement: Under this agreement, employees of Service Corp. that provide services to Empire will provide the balance of plant O&M services to the wind project company including operations and maintenance services for the main substation and collection system and access for road maintenance.

c. Energy Services Agreement: Under this agreement, employees of Service Corp., which provide services to Empire, will provide energy management services to the wind project company including: (a) acting as the market participant; (b) daily/periodic scheduling services for the wind farm; (c) managing all hedge agreements, and; (d) representing the wind farm in SPP activities.

The signatories recommend that Empire also be granted a variance, to the extent necessary pursuant to Commission Rule 4 CSR 240-20.015(10), from Commission Rule 4 CSR 240-20.015(2)(A), and (3), as to the fixed price hedging agreement(s) with the wind project company.<sup>28</sup>

21. Granting the variance would permit the Service Corp. to provide goods and services to the new wind project company in the same manner that Service Corp. now provides such goods and services to Empire.<sup>29</sup>

22. The hedging agreement is a necessary component of the tax equity financing structure and the benefits that flow from using that structure.<sup>30</sup>

#### CSP revised by the Joint Position

23. After extensive negotiations among the parties, some of the parties signed and filed the Joint Position, which made substantial changes to the original CSP.<sup>31</sup> Some of the key provisions of the Joint Position are as follows:<sup>32</sup>

a) In contrast to its initial request to add 800 MWs of wind capacity, the signatories agreed that Empire's addition of 600 MWs of wind capacity is reasonable.

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<sup>28</sup> Joint Position, p. 13-14.

<sup>29</sup> Ex. 9, Mertens Direct, p. 20.

<sup>30</sup> Ex. 11, Mooney Direct, p. 15.

<sup>31</sup> Joint Position, p. 3-15.

<sup>32</sup> Ex. 351, Meyer Affidavit, p. 2-3.

b) The signatories agreed that, despite the upcoming need for capital expenditures associated with the Coal Combustion Residual rule, the Asbury generating unit should remain operable pending future integrated resource planning analysis. Given this, issues surrounding the quantification and recovery of a regulatory asset resulting from the retirement of Asbury are no longer of concern.

c) The signatories agreed to the implementation of certain customer protections, including, but not limited to:

- (1) a market price protection agreement;
- (2) certain provisions related to the timing of rate cases focused on the inclusion of wind project capital costs in Empire rates as well as provisions designed to ensure no customer detriments resulting from a change in Empire's regulatory capitalization or a downgrade in Empire credit rating / increase in Empire debt cost;
- (3) a rate reduction associated with recent enactment of the Tax Cuts and Jobs Act of 2017;
- (4) the implementation of a rate moratorium;
- (5) the future proposal of a program designed to provide for non-residential access to renewable energy including renewable energy credits; and
- (6) a most favored nation provision that protects Missouri ratepayers in the event that either Kansas, Oklahoma or Arkansas provide for an enhanced level of customer protections.

24. The Joint Position also included the following three provisions, which were not altered from the original CSP: 1) Empire should be authorized to record its capital investment to acquire the wind assets as utility plant in service subject to audit in its next rate case; 2) Empire should record its depreciable wind assets in FERC Account 341 through 346 and utilize a composite 3.33% depreciation rate; and 3) Empire should be granted a variance from the Commission's affiliate transaction rule, 4 CSR 240-20.015.<sup>33</sup>

25. Empire witness James McMahon testified credibly<sup>34</sup> that adding up to 600 MW of wind to Empire's portfolio as contemplated by the Joint Position is expected to generate customer savings because the levelized cost of the wind is significantly lower than the forecast price paid for energy in the Southwest Power Pool. The levelized cost reflects the average all-in per megawatt hour cost of acquiring, owning, and operating the turbines. Empire's credible analysis of the Joint Position indicates that a plan with up to 600 MW of wind will generate customer savings in the approximate amount of \$169 million over 20 years and \$295 million over 30 years, relative to Empire's current resource plan.<sup>35</sup>

26. Adding wind generation to Empire's portfolio significantly reduces financial risk for Empire customers. Wind in the portfolio mitigates the impact that rising fuel and market prices have on Empire's retail rates. In a rising market price environment, Empire would be able to sell wind output at higher prices without any incremental fuel costs. Empire's credible analysis shows that adding up to 600 MW of wind to its portfolio would

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<sup>33</sup> Joint Position, p. 5, 13-14; Ex. 4, Krygier Affidavit, p. 5-6.

<sup>34</sup> With regard to mathematical modeling, the Commission finds Empire's witnesses to be more credible than OPC's witnesses based on differences in their professional experience and the greater consistency and clarity of the testimony of Empire's witnesses at the hearing. The testimony of OPC witness Riley and any exhibits that are based on that testimony are not reliable or credible because his testimony at the hearing demonstrated that his initial and revised analyses contain material errors. See also, Tr., Vol. 5, p. 565-571, Vol. 7, p. 890-892.

<sup>35</sup> Ex. 8C, McMahon Affidavit, p. 3-4.

result in lower risk to that portfolio under three different market scenarios, relative to Empire's current resource plan.<sup>36</sup>

27. Keeping the Asbury coal plant in service may require Empire to invest approximately \$20-30 million by 2019 to comply with the federal Coal Combustion Residual rule and the Effluent Limitation Guidelines by installing a dry bottom ash conveyor and a new ash landfill. Although these capital investments will cause an increase in annual revenue requirement for about 2-3 years, keeping Asbury open may have value in the Southwest Power Pool and result in a lower annual revenue requirement in every year from 2026 to 2047. This will also provide Empire with another reliable and dispatchable generating resource as a hedge against any uncertainty in the performance of the 600 MW of new wind resources and will avoid creating a stranded asset by retiring Asbury earlier than currently planned.<sup>37</sup>

28. Since retiring Asbury would require Empire to expend \$24 million in dismantlement costs,<sup>38</sup> closing Asbury now could cost as much or more than leaving it open, even after expending the funds necessary to comply with the federal Coal Combustion Residual rule and the Effluent Limitation Guidelines.<sup>39</sup>

29. Empire has made reasonable decisions to acquire up to 600 MW of wind projects employing the financial measures set forth in the Joint Position, including use of a tax equity partner.<sup>40</sup>

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<sup>36</sup> Ex. 8C, McMahon Affidavit, p. 4-5.

<sup>37</sup> Ex. 103, Staff Affidavit, p. 6-8.

<sup>38</sup> Tr., Vol. 5, p. 406-407.

<sup>39</sup> Tr., Vol. 5, p. 636-637.

<sup>40</sup> Ex. 4C, Krygier Affidavit, p. 3-4, 6-9; Ex. 8C, McMahon Affidavit, p. 3-9; Ex. 351, Meyer Affidavit, p. 7-8; Ex. 103, Staff Affidavit, p. 1-3.



30. The Joint Position contains several provisions designed to address the risk to customer savings during the first ten years of the CSP, including:

- a) a process for the signatories and Empire to agree on in-service criteria for wind projects which are under contract for construction;
- b) an agreement that any offset received by Empire due to a decreased purchase price for the new wind projects will flow back to customers;
- c) a market price protection mechanism which calls for the possibility of Empire paying Missouri customers, through the form of reduced revenue requirements in a rate case, as much as \$35 million over the first ten years of the Customer Savings Plan. The \$35 million cap provides customer protections above the worst case modeled by Empire for the addition of 600 MWs of wind.;
- d) an agreement that Empire will not file its next general rate case until on or after April 1, 2019; and
- e) a “most favored nation” clause which requires Empire, within 10 days of receiving a final order from the public utility commissions in Arkansas, Kansas, and Oklahoma, to submit copies of those orders to the signatories. The Joint Position further provides that upon agreement of the signatories, or as ordered by the Commission, any concessions or conditions in those other states related to the CSP that are favorable to customers shall be appended to the Joint Position in this case, with certain exceptions.<sup>41</sup>

31. Regarding the reduction in the federal corporate income tax rate from the Tax Cuts and Jobs Act of 2017, the Joint Position requires Empire to file revised tariff sheets to

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<sup>41</sup> Ex. 103, Staff Affidavit, p. 4-6, 8; Ex. 351, Meyer Affidavit, p. 4-5.

reduce its base electric rates by \$17,837,022 effective October 1, 2018. The rate decrease amount represents Empire's current quantification of the electric cost of service reduction associated with the lowered federal tax rate. For excess Accumulated Deferred Income Taxes (EADIT), the signatories have agreed that Empire will defer on its books and records an estimation of the amount of the EADIT flow-back starting January 1, 2018, with such deferral to be included in Empire's base rates at the time of its next general rate case.<sup>42</sup>

32. In the Joint Position, Empire agrees to submit to the Commission any applications for a certificate of convenience and necessity or financing approval that may be required by law or Commission rule to proceed with the CSP. The signatories to the Joint Position agree not to contest the need for the wind projects and to make a good faith effort to process the applications expeditiously and to request a Commission order within 120 days of filing.<sup>43</sup>

33. The Joint Position also requires the signatories to recommend that the true-up period in Empire's next general rate proceeding end no later than five months prior to the operation-of-law date in that case; that the capital structure and debt rate values to be used in Empire's next general rate proceeding must remain within reasonable parameters; and that capital provided by outside entities (the tax equity partner(s)) in relation to the CSP will not be imputed into Empire's debt or equity capital structure components for purposes of setting customer rates.<sup>44</sup>

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<sup>42</sup> Ex. 103, Staff Affidavit, p. 8-9.

<sup>43</sup> Ex. 103, Staff Affidavit, p. 4.

<sup>44</sup> Ex. 103, Staff Affidavit, p. 4.

34. In the Joint Position, Empire agreed, as part of its next rate case, to propose tariffs to implement a program whereby non-residential customers can access renewable energy including the renewable energy credits.<sup>45</sup>

### **III. Conclusions of Law and Discussion**

Empire is an “electrical corporation”<sup>46</sup> and “public utility”<sup>47</sup> and, thus, subject to the supervision of the Commission.<sup>48</sup> In its application, as modified by the Joint Position, Empire has requested 1) approval of its accounting treatment, depreciation rate, and variances from the affiliate transaction rules; 2) a Commission determination that Empire’s decisions to acquire wind generation using a tax equity partner and to keep Asbury open at this time are reasonable; and 3) approval of a number of customer protections and other provisions that were included in the Joint Position, such as the market price protection mechanism, rate case moratorium, and a “most favored nation” provision.

#### **Accounting treatment and depreciation**

The Commission has the statutory authority to determine Empire’s accounting treatment for its investment in the proposed wind generation<sup>49</sup> and establish a depreciation rate for the wind assets.<sup>50</sup> Because Empire does not have wind depreciation rates in place and will indirectly own the wind assets it acquires under the CSP, it will need to have a

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<sup>45</sup> Ex. 351, Meyer Affidavit, p. 6-7.

<sup>46</sup> Section 386.020(15), RSMo.

<sup>47</sup> Section 386.020(43), RSMo.

<sup>48</sup> Sections 393.140(1) and 386.250(1), RSMo.

<sup>49</sup> Section 393.140(8), RSMo, states that the Commission will “[h]ave power to examine the accounts, books, contracts, records, documents and papers of any such corporation or person, and have power, after hearing, to prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited.”

<sup>50</sup> Section 393.240, RSMo, states, in pertinent part, “1. The commission shall have power, after hearing, to require any or all gas corporations, electrical corporations, water corporations and sewer corporations to carry a proper and adequate depreciation account in accordance with such rules, regulations and forms of account as the commission may prescribe. 2. The commission may, from time to time, ascertain and determine and by order fix the proper and adequate rates of depreciation of the several classes of property of such corporation, person or public utility...”

depreciation rate for these assets effective as of the date that they are placed in-service. This rate would remain in effect until Empire's next rate case is completed and a full depreciation study can be completed for the wind projects. Empire presented credible evidence that the appropriate projected life of the wind assets is 30 years and that the depreciation rate is 3.33%. The Commission will authorize Empire to record its capital investment to acquire the wind assets as utility plant in service subject to audit in Empire's next general rate case and record its depreciable wind assets in FERC Account 341 through 346 utilizing a 3.33% depreciation rate. Once the company obtains more information regarding the specific sites, manufacturer, design, and type of construction, Empire shall update and adjust these estimates in a future depreciation study.

#### Affiliate Transaction Rule Variance

The Commission has the statutory authority to grant a variance to the Commission's affiliate transaction rule to effectuate the ownership and operation of the wind generation.<sup>51</sup> In order to qualify for the variance, Empire must demonstrate good cause for its request.<sup>52</sup> Empire requests such a variance as to the asset management, balance of plant operations and maintenance, and energy services agreements described in Finding of Fact 20 above between Empire and affiliates necessary to own and operate the wind projects so that goods and services provided under these contracts may be priced in the same manner that they are currently priced by Liberty Utilities Service Corp. Empire also requests a variance as to the fixed price hedging agreement(s) with the wind project company.

The purpose clause of the affiliate transaction rule, 4 CSR 240-20.015, states the "rule is intended to prevent regulated utilities from subsidizing their non-regulated

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<sup>51</sup> Commission Rules 4 CSR 240-20.015(10) and 4 CSR 240-2.060(4); Sections 386.250, 386.410, and 393.140, RSMo.

<sup>52</sup> Commission Rule 4 CSR 240-2.060(4)(B).

operations”. If Empire implements the CSP and acquires new wind assets with a tax equity partner, Liberty Utilities Service Corp will begin providing goods and services to the wind project company, which may constitute an “affiliate transaction” under the rule. As a result, the asymmetric pricing standards in 4 CSR 24-20.015(2), which prohibit a regulated electrical corporation from providing a financial advantage to an affiliated entity, may apply unless a variance is granted by the Commission. Without that variance, the CSP could not be implemented, and Empire could not achieve the millions of dollars in customer savings that will ultimately benefit its customers. The Commission finds that Empire has demonstrated good cause to grant the variance. The Commission will grant the variance as described above and in the Joint Position.

#### Acquisition of wind generation and Asbury

Empire requests a Commission determination that Empire’s decisions to acquire wind generation using a tax equity partner and to keep Asbury open at this time are reasonable. It is the public policy of this state to diversify the energy supply through the support of renewable and alternative energy sources.<sup>53</sup> In past decisions, the Commission has stated its support in general for renewable energy generation, which provides benefits to the public.<sup>54</sup> Empire’s proposed acquisition of 600 MW of additional wind generation assets is clearly aligned with the public policy of the Commission and this state.

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<sup>53</sup> *Missouri Comprehensive State Energy Plan*, Department of Economic Development – Division of Energy, October 2015; Sections 393.1025 and 393.1030, RSMo 2016, the Renewable Energy Standard.

<sup>54</sup> Report and Order, *In the Matter of Union Electric Company d/b/a Ameren Missouri’s Voluntary Green Program/Pure Power Program Tariff Filing*, File No. EO-2013-0307, April 24, 2013, p. 14-15; Report and Order, *In the Matter of the Application of KCP&L Greater Missouri Operations Company for Permission and Approval of a Certificate of Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain and Otherwise Control and Manage Solar Generation Facilities in Western Missouri*, File No. EA-2015-0256, March 2, 2016, p. 15-16; Report and Order, *In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Permission and Approval and a Certificate of Convenience and Necessity Authorizing it to Offer a Pilot Distributed Solar Program and File Associated Tariff*, File No. EA-2016-0208, December 21, 2016, p. 19-20.

However, it is premature for this Commission to make a legal conclusion that Empire's decision to acquire wind generation using a tax equity partner is reasonable. Since Empire has not yet identified sites for the wind farms, contractors to build the wind generation assets, or tax equity partners to provide financing, there will likely be additional proceedings at the Commission related to the CSP, such as certificate cases for the wind farms<sup>55</sup>, financing approval cases<sup>56</sup>, or rate cases to consider adding the wind assets into rate base and including prudently-incurred costs into rates.<sup>57</sup> Since the Commission may be presented with these requests in the future, making a legal conclusion on reasonableness now could constitute an improper advisory opinion.<sup>58</sup>

In addition, no party is recommending that Asbury be retired at this time. Retirement of Asbury is an issue the Commission could consider in future integrated resource planning cases.<sup>59</sup> However, the timing of such a retirement could ultimately be a management decision for the utility, subject to review by the Commission in a subsequent rate case.

Empire presented credible and persuasive evidence that the CSP, if implemented as contemplated in the Joint Position, would generate customer savings in the approximate

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<sup>55</sup> The Commission applies five criteria in evaluating a CCN: 1) there must be a need for the service; 2) the applicant must be qualified to provide the proposed service; 3) the applicant must have the financial ability to provide the service; 4) the applicant's proposal must be economically feasible; and 5) the service must promote the public interest. *In re Tartan Energy*, Report and Order, 3 Mo.P.S.C. 3d 173, Case No. GA-94-127, 1994 WL 762882 (September 16, 1994).

<sup>56</sup> Section 393.200, RSMo, requires the Commission to find that the proposed issuance of debt securities is or will be reasonably required for the purposes specified in the application and that such purposes are not in whole, or in part, reasonably chargeable to operating expenses or to income. (emphasis added)

<sup>57</sup> Section 393.270.2, RSMo provides that "[a]fter a hearing and after such investigation as shall have been made by the commission...the commission within lawful limits may, by order, fix the maximum price of ...electricity...for the service to be furnished; and may order such improvement in the ...in the manufacture, transmission or supply of electricity...or in the methods employed by such persons or corporation as will in its judgment be adequate, just and reasonable. (emphasis added)

<sup>58</sup> *State ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n of State*, 392 S.W.3d 24, 38 (Mo. App. 2012), citing *State ex rel. Mo. Parks Assoc. v. Mo. Dept. of Natural Res.*, 316 S.W.3d 375, 384 (Mo.App.2010), "The Commission was restricted to determining the complaint before it, and it should not be issuing decisions with 'no practical effect and that are only advisory as to future, hypothetical situations'".

<sup>59</sup> Pursuant to Commission Rule 4 CSR 240-22.080(16)(A), the Commission makes findings whether the utility's triennial compliance filing is in substantial compliance with the requirements of Chapter 22 and whether the utility's resource acquisition strategy meets the requirements stated in 4 CSR 240-22.

amount of \$169 million over 20 years and \$295 million over 30 years, relative to Empire's current resource plan, and significantly reduce financial risk for those customers. Empire has stated that it is looking for an indication from the Commission that it is "headed in the right direction".<sup>60</sup> While the Commission cannot make the legal conclusion that Empire requests, the Commission finds that the millions of dollars in customer savings and the addition of renewable wind energy resulting from the CSP and the Joint Position could be of considerable benefit to Empire's customers and the entire state.

#### Customer protection provisions of the Joint Position

Empire and the other signatories to the Joint Position have requested approval of a number of customer protections and other provisions that were included in the Joint Position, such as the market price protection mechanism, rate case moratorium, and a "most favored nation" provision. These provisions are valuable additions to the CSP that would protect Empire's customers from risk should the CSP be implemented. However, Empire is no longer obligated to incorporate these provisions in the CSP project plans because the Joint Position was objected to, and the Commission cannot order Empire to implement these provisions without its consent. Therefore, the Commission will not require Empire to incorporate these provisions into the CSP, but may take that into consideration in future CSP proceedings.

#### Remaining unresolved issues

The parties identified a number of additional issues for the Commission's determination, including the federal Tax Cuts and Jobs Act of 2017 and the necessity of requirements for additional filings, tax equity financing, conditions on the closing of Asbury, and impacts on wildlife.

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<sup>60</sup> Tr., Vol. 3, p. 24, lines 17-18.

With regard to the reduction in federal taxes, the Joint Position calls for Empire to make a tariff filing proposing new electric rates to be effective October 1, 2018, reflecting a reduction in base rate revenue associated with the Tax Cuts and Jobs Act of 2017. The Commission will decline the opportunity to order a change in rates in this case, and will consider that issue in one of two proceedings where Empire's taxes are at issue, File No. ER-2018-0228 or File No. ER-2018-0366.

As a result of the Commission's conclusions stated in this Report and Order, the Commission finds that the remaining unresolved issues identified by the parties are moot and need not be addressed further.

Empire has also requested a waiver of Commission Rule 4 CSR 240-4.017(1), which requires that any person intending to file a case before the Commission file a notice of their intent at least 60 days before filing the case. The required notice must describe the type of case to be filed and the issues likely to be brought before the Commission. It must also summarize any contacts between the filing party and the office of the Commission within the previous 90 days. Section 4 CSR 240-4.017(4) allows the Commission to waive the 60-day notice requirement for good cause. Empire asserts that good cause for its failure to comply with the 60-day notice requirement exists because it has provided a verified declaration that it has not had any communications with the office of the Commission about any substantive issue regarding its application in the preceding 150 days. The Commission concludes that Empire has demonstrated good cause for its failure to file a 60-day notice, and the Commission will grant the requested waiver.



#### **IV. Decision**

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts to the law to reach its conclusions, the Commission determines that Empire has shown by a preponderance of the evidence that certain provisions of the Customer Savings Plan as described above should be approved. Therefore, the Commission will grant some of Empire's requests that were included in the application and Joint Position.

#### **THE COMMISSION ORDERS THAT:**

1. The Empire District Electric Company's request for waiver of the 60-day notice requirement of 4 CSR 240-4.017(1) is granted.
2. The Empire District Electric Company is authorized to record its capital investment to acquire wind generation assets as utility plant in service subject to audit in Empire's next general rate case.
3. The Empire District Electric Company shall record its depreciable wind assets in FERC Account 341 through 346 and utilize a composite 3.33% depreciation rate for all wind project asset accounts, beginning when the assets are placed in-service and continuing until such time as depreciation rates may be changed by order of the Commission.
4. The Empire District Electric Company is granted a variance from the Commission's affiliate transaction rule, 4 CSR 240-20.015, as described in the body of this order and in the Joint Position.

5. This order shall become effective on August 10, 2018.

**BY THE COMMISSION**



A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive style.

Morris L. Woodruff  
Secretary

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

Bushmann, Senior Regulatory Law Judge

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

Gene Edward Dudley,	)	
	)	
Complainant,	)	
	)	
v.	)	<b><u>File No. EC-2018-0103</u></b>
	)	
Kansas City Power & Light Company,	)	
Respondent.	)	

**REPORT AND ORDER**

**EVIDENCE, PRACTICE AND PROCEDURE**

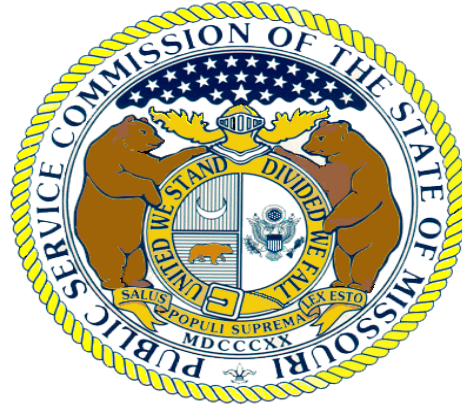
**§2 Jurisdiction and powers**

Mr. Dudley’s complaint states that the debts occurred beyond a ten year statute of limitations. The only questions before the Commission are whether KCP&L violated a law, rule or order of the Commission which are within the Commission’s statutory authority to determine. There is no law, rule or order of the Commission regarding the statute of limitation for debts. Therefore, the Commission cannot make a determination regarding this claim.

**§4 Presumption and burden of proof**

Mr. Dudley at no point in either his complaint or direct testimony denied establishing service at any of the addresses for which KCP&L has assessed an overdue balance. Additionally, Mr. Dudley never addresses the illegal reconnect at two of the addresses where he received electrical service. Mr. Dudley shoulders the burden of showing that KCP&L violated a statute, tariff, Commission regulation, or Commission order. Mr. Dudley has presented no evidence of any violation beyond stating bills were not delivered.

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



Gene Edward Dudley,	)	
Complainant,	)	
v.	)	<b>File No. EC-2018-0103</b>
	)	
Kansas City Power & Light Company,	)	
Respondent.	)	

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## REPORT AND ORDER

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**Issue Date:** July 11, 2018

**Effective Date:** August 13, 2018

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

Gene Edward Dudley,	)	
	)	
Complainant,	)	
	)	
v.	)	<b>File No. EC-2018-0103</b>
	)	
Kansas City Power & Light Company,	)	
	)	
Respondent.	)	

**REPORT AND ORDER**

**I. Procedural History**

On October 23, 2017, Gene Dudley filed a formal complaint against Kansas City Power & Light Company (“KCP&L”). After notice was issued, KCP&L filed its *Answer and Motion to Dismiss of Kansas City Power and Light Company*, on November 22, 2017. The Staff of the Missouri Public Service Commission (Staff) was directed to investigate and respond, and on December 28, 2017, Staff filed a report noting it found no violations of tariff or law by KCP&L. No responses to the *Staff Report* were received.

On February 23, 2018, the Commission issued an order setting a procedural schedule. Mr. Dudley submitted direct testimony and KCP&L filed rebuttal testimony; no surrebuttal testimony or stipulation of undisputed facts was received in this case.

An evidentiary hearing was held on June 1, 2018, at the Commission’s Kansas City office in Suite 201 of the Fletcher Daniels State Office Building, 615 E. 13<sup>th</sup> Street; the case was submitted for the Commission’s decision on that date.<sup>1</sup> During the evidentiary hearing the Commission admitted the testimony of two witnesses and received three exhibits into

evidence. Maria Lopez, Customer Relations Advisor, testified for KPC&L; and Robin Kliethermes, Rate & Tariff Examination Manager, testified for the Commission's Staff. Mr. Dudley did not appear at the hearing, though he emailed direct testimony to the other parties, which was filed on his behalf.

## **Background**

Gene Dudley filed a complaint against KCP&L alleging an amount at issue in excess of \$2000. He also alleged that billing addresses were incorrect, and bills were not delivered to the address where he resided. Mr. Dudley also states in his complaint that the debt was outside a ten year statute of limitations. KCP&L filed an answer stating that Mr. Dudley accrued \$3,285.54 in debt from service at four prior addresses from February 2010 through August 2015. The Commission's Staff submitted a report declaring the Company had not violated any applicable statutes, Commission Rules, or Commission-approved company tariffs related to the complaint. Staff concluded Mr. Dudley was responsible for \$3,746.56 in bill balances for past addresses and service provided.

## **II. Findings of Fact**

1. Kansas City Power & Light Company is a utility regulated by this Commission.
2. Mr. Dudley received electrical service at Brighton Ave, from February 4, 2010, until disconnection on April 15, 2015.<sup>2</sup>
3. Mr. Dudley received electrical service at Paseo Blvd., from November 14, 2013, until disconnection on March 30, 2015.<sup>3</sup>

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<sup>1</sup> Commission Rule 4 CSR 240-2.150(1).

<sup>2</sup> KCP&L Ex. 200, page 2.

<sup>3</sup> KCP&L Ex. 200, page 2.

4. Mr. Dudley received electrical service at Garfield Ave, from September 22, 2014, until disconnection on April 28, 2015.<sup>4</sup>

5. Mr. Dudley received electrical service at Wheeling, from April 16, 2014, until disconnection on August 31, 2015.<sup>5</sup>

6. At all of the above enumerated addresses electrical service was started by Mr. Dudley and listed in his name.<sup>6</sup>

7. No reason was provided why Mr. Dudley had several different addresses during the same time period.

8. An illegal reconnect was found at the Paseo Blvd. address on June 2, 2015, tampering fees were assessed at \$295 and unbilled usage was estimated at \$179.08.<sup>7</sup>

9. An illegal reconnect was found at the Garfield Ave. address on May 12, 2015, tampering fees were assessed at \$250.<sup>8</sup>

10. Balances totaling \$3,285.54 were transferred to Mr. Dudley's service account at Wheeling.<sup>9</sup>

11. On March 21, 2016, Mr. Dudley requested service at Agnes Ave. and was advised that past due amounts were to be paid before service could be established.<sup>10</sup>

12. On March 21, 2016, Mr. Dudley made an informal complaint to the Commission disputing past due balances from previous addresses.<sup>11</sup>

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<sup>4</sup> KCP&L Ex. 200, page 2.

<sup>5</sup> KCP&L Ex. 200, page 2.

<sup>6</sup> KCP&L Ex. 200, page 2.

<sup>7</sup> KCP&L Ex. 200, page 3.

<sup>8</sup> KCP&L Ex. 200, page 3.

<sup>9</sup> KCP&L Ex. 200, page 3.

<sup>10</sup> KCP&L Ex. 200, page 3.

<sup>11</sup> KCP&L Ex. 200, page 3.

13. Service at the Agnes Ave. address was in the name of Mr. Dudley's brother with an outstanding debt of \$463.99. Water service at the Agnes address at the time was in Mr. Dudley's name.<sup>12</sup> Mr. Dudley received substantial use and benefit of electrical service at Agnes Ave.

14. On November 3, 2017, Mr. Dudley again requested service at the Agnes Ave. address. Mr. Dudley was offered service under the Cold Weather plan with an \$800 initial payment and payments of \$306 per month.<sup>13</sup>

15. On November 6, 2017, an \$800 grant<sup>14</sup> was placed on Mr. Dudley's account and service was connected at the Agnes Ave. address in Mr. Dudley's name under the Cold Weather Rule.<sup>15</sup>

16. Other than the initial \$800 grant only three payments have been made for the Agnes Ave. address. On December 13, 2017, a payment of \$800 was made; on March 19, 2018, a payment for \$425 was made; and on April 2, 2018, a payment of \$250.07 was made.<sup>16</sup>

17. KCP&L transferred balances from other customers to Mr. Dudley's account at the Garfield Ave. address; those balances were accrued after Mr. Dudley's service was disconnected for non-payment. Those amounts were removed from Mr. Dudley's balance after a discussion between KCP&L and the Commission's Staff on December 21, 2017.<sup>17</sup>

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<sup>12</sup> KCP&L Ex. 200, page 3.

<sup>13</sup> KCP&L Ex. 200, page 4.

<sup>14</sup> The type of grant is unknown, although KCP&L Ex. 200, page 4, indicated Mr. Dudley stated he was seeking an agency grant.

<sup>15</sup> KCP&L Ex. 200, page 4.

<sup>16</sup> KCP&L Ex. 200, page 4.

<sup>17</sup> Staff Ex. 100, page 2.



### **III. Conclusions of Law**

A. KCP&L is a public utility as defined by Section 386.020(43), RSMo. Furthermore, KCP&L is an electrical corporation as defined by Section 386.020(15), RSMo. Therefore, KCP&L is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo.

B. Section 386.390 states that a person may file a complaint against a utility, regulated by this Commission, setting forth violation(s) of any law, rule or order of the Commission. Therefore, the Commission has jurisdiction over this complaint.

C. KCP&L's applicable tariff rules state:

3.04 PRIOR INDEBTEDNESS OF CUSTOMER: If, at the time of application, a Customer or any member of the Customer's household is indebted to the Company for that same class of electric service previously supplied at the same or any other premises, and the Customer received substantial use and benefit of the previous electric service, the Company shall not be required to commence supplying electric service to the Customer, or if commenced the Company may terminate such service until payment of the indebtedness has been made.

4.09 PROTECTION OF COMPANY'S PROPERTY: The Customer at all times shall protect the property of the Company on the premises of the Customer and shall permit no person other than the employees and agents of the Company and other person authorized by law to inspect, work on, open or otherwise handle the wires, meters or other facilities of the Company. In case of loss or damage to the property of the Company on account of any carelessness, neglect or misuse by the Customer, any member of his family, or his agents, servants or employees, the Customer shall, at the request of the Company, pay to the Company the cost of any necessary repairs or replacements of such facilities or the value of such facilities.

4.10 TAMPERING WITH COMPANY FACILITIES: The Company may discontinue service to a Customer and remove its facilities from the Customer's premises, without notice, in case evidence is found that any portion of the Company's facilities has been tampered with in such manner that the Customer may have received unmetered service or unauthorized use. In such event the Company may require the Customer to pay for such amount of electric service as the Company may estimate, from available

information, to have been used [but] not registered by the Company's meter and to increase the amount of his cash deposit or indemnity bond or other credit arrangement before electric service is restored; and, in addition thereto, the Customer shall be required to bear all associated costs incurred by Company, including, but not limited to, estimated labor charges, investigation and prosecution costs, material charges, and such protective equipment as, in the judgment of the Company, may be necessary.

**8.05 RECONNECTION CHARGE:** If electric service is disconnected for violation of any provision of the Customer's service agreement, the following applicable reconnection charge shall be assessed to the customer by the Company to cover its cost of disconnecting and reconnecting the Company facilities before electric service will be resumed. Also, reference General Rules and Regulations 3.14 for the terms and conditions of reconnection of electric service.

Reconnection charge at meter: \$25  
Reconnection charge at pole: \$50

Minimum reconnection charge after tampering: \$150  
(Excessive damage of Company property will result in additional charges.)

D. The burden of showing that a regulated utility has violated a law, rule or order of the Commission is with the Mr. Dudley.<sup>18</sup>

#### **IV. Decision**

After applying the facts to its conclusions of law, the Commission has reached the following decision.

The complaint against KCP&L alleges KCP&L violated a law, rule or order of the Commission, as follows:

“tariff violation: No proof that [Complainant] SSI or documentation that [Complainant] requested. Regulation Violations – incorrect billing addresses

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<sup>18</sup> In cases where a “complainant alleges that a regulated utility is violating the law, its own tariff, or is otherwise engaging in unjust or unreasonable actions,”...“the burden of proof at hearing rests with the complainant.” *State ex rel. GS Technologies Operating Co., Inc. v. Public Service Comm'n*, 116 S.W.3d 680, 693 (Mo. App. 2003).

where services rendered. KCP&L onerous behavior due to [Complainant] repeated demands led KCP&L assumed harder stance toward [Complainant]. Lived on Brighton but utility bills not delivered to Brighton Ave[.] address. Wheeling address was a business location that electrical services was not entirely installed – premises not occupied.”<sup>19</sup>

Based on the face of the complaint and Mr. Dudley’s direct testimony, Mr. Dudley is challenging the validity of the past due balances assessed at prior addresses where Mr. Dudley had received electrical service, and alleging KCP&L sent some bills to the wrong address.

Mr. Dudley at no point in either his complaint or direct testimony denied establishing service at any of the addresses for which KCP&L has assessed an overdue balance. Additionally, Mr. Dudley never addresses the illegal reconnect at two of the addresses where he received electrical service. Mr. Dudley shoulders the burden of showing that KCP&L violated a statute, tariff, Commission regulation, or Commission order. Mr. Dudley has presented no evidence of any violation beyond stating bills were not delivered to the Brighton Ave. address, and estimating an amount in dispute of \$2,000. Therefore, the only questions before the Commission are whether KCP&L violated a statute, tariff, Commission regulation, or Commission order by transferring balances from Mr. Dudley’s prior service addresses, or by charging Mr. Dudley fees for the illegal reconnects or service usage resulting therefrom.

Credible evidence presented by KCP&L shows that the unpaid balances at Brighton Ave., Paseo Blvd., Garfield Ave., and Wheeling were all established in Mr. Dudley’s name.

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<sup>19</sup> EFIS No. 1 (October 23, 2017).

KCP&L tariff rule 3.04 states in part, that if at the time of application the customer has debt to the company from prior electrical service at the same or any other premises, and the customer received substantial use and benefit of the previous electrical service, the company does not need to start service for the customer until the prior debt is paid. In this case, Mr. Dudley applied for service at the Agnes Ave. address on March 21, 2016, and was informed that the past due amounts needed to be paid before service could be established. At that time electrical service at the Agnes Ave. address was in Mr. Dudley's brother's name, but water service at Agnes Ave. was in Mr. Dudley's name. On November 3, 2017, Mr. Dudley again called for service at the Agnes address and was offered service under the Cold Weather plan with an \$800 initial payment and subsequent payments of \$307 per month toward the outstanding debt (Mr. Dudley was originally quoted \$306 per month). An \$800 initial payment was made and three subsequent payments were made. At a minimum, these payments represent an acknowledgement by Mr. Dudley that the outstanding debt was his to pay. Further, he did not dispute service being established in his name, and since service was established, it follows that he received substantial use and benefit from that service. Therefore, KCP&L violated no law or tariff provision in assessing prior unpaid balances to Mr. Dudley.

Illegal reconnects were discovered at the Paseo Blvd. address and at the Garfield Ave. address within a short period after Mr. Dudley's service at those addresses was discontinued. KCP&L tariff rule 4.09 requires a customer to protect company property, and tariff rule 4.10 states that a customer bears all costs associated with tampering with the company's facilities, including estimations of electrical service used. Staff's report indicates KCP&L's estimation of services used as a result of the illegal disconnect is reasonable.

Also, KCP&L tariff rule 8.05 states that the minimum reconnection charge after a tampering is \$150 with additional charges based upon excessive damage to company property. Based upon the submitted evidence, the charges assessed to Mr. Dudley for the illegal reconnects did not violate a law, rule or order of the Commission

Mr. Dudley's complaint states that the debts occurred beyond a ten year statute of limitations. The only questions before the Commission are whether KCP&L violated a law, rule or order of the Commission which are within the Commission's statutory authority to determine. There is no law, rule or order of the Commission regarding the statute of limitation for debts. Therefore, the Commission cannot make a determination regarding this claim.

Finally, Mr. Dudley's complaint alleges that bills were not sent to the Brighton Ave. address. However, neither Mr. Dudley's complaint nor his direct testimony point to a Commission rule, order, or tariff provision supporting a violation by KCP&L. It is to the benefit of KCP&L that bills reach customers as that is KCP&L's best way of collecting payment. If Mr. Dudley was not receiving bills but was receiving the use and benefit of electrical service he signed up for, he should have informed KCP&L he was not receiving bills.

Mr. Dudley's complaint challenged the lawfulness of his outstanding balance; it is his burden to show that the company has committed a violation. Because he has not done so, his complaint fails and the Commission must rule in favor of KCP&L.

**THE COMMISSION ORDERS THAT:**

1. Gene Dudley's complaint is denied.

2. Kansas City Power & Light Company may proceed, consistent with the law and the Commission's rules, with Gene Dudley's account as it sees fit.
3. This order shall become effective on August 13, 2018.
4. This case shall be closed on August 14, 2018.

**BY THE COMMISSION**



*Morris L. Woodruff*

Morris L. Woodruff  
Secretary

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

Clark, Regulatory Law Judge

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of Missouri-American Water Company	)	
For Certificates of Convenience and Necessity	)	
Authorizing it to Install, Own, Acquire, Construct,	)	<b><u>File No. WA-2018-0222</u></b>
Operate, Control, Manage and Maintain Water and	)	
Sewer Systems in and around the City of Lawson,	)	
Missouri	)	

**ORDER APPROVING TRANSFER OF ASSETS AND  
GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY**

**VALUATION**

**§14 For rate making purposes**

Section 393.320.5(1), RSMo states, in part, that the “lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by the large water public utility, shall constitute the ratemaking rate base for the small water utility as acquired by the acquiring large water public utility. . . .” In this case, the purchase price is equal to the appraised value. That value is \$4 million, of which \$2,630,000 is for water assets, and \$1,370,000 for sewer assets. Staff’s Recommendation concurs with MAWC’s appraisal of the Lawson water and sewer assets. Therefore, the appraised value of \$4 million, together with the reasonable and prudent transaction, closing, and transition costs incurred by MAWC, shall constitute the ratemaking rate base.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office  
in Jefferson City on the 19<sup>th</sup>  
day of July, 2018.

In the Matter of Missouri-American Water Company	)	
Application for Certificates of Convenience and	)	
Necessity Authorizing It to Install, Own, Acquire,	)	<b><u>File No. WA-2018-0222</u></b>
Construct, Operate, Control, Manage and Maintain	)	
Water and Sewer Systems in and around the City of	)	
Lawson, Missouri.	)	

**ORDER APPROVING TRANSFER OF ASSETS AND  
GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY**

Issue Date: July 19, 2018

Effective Date: July 29, 2018

**Procedural History**

Missouri-American Water Company (“MAWC”) filed an application on February 12, 2018, with the Missouri Public Service Commission (“Commission”) requesting permission to purchase all of the water and sewer assets of the City of Lawson (“Lawson”). Lawson overwhelmingly approved selling those assets to MAWC in a November 7, 2017 election.

MAWC also asks for a Certificate of Convenience and Necessity (“CCN”) to install, own, acquire, construct, operate, control, manage, and maintain those water and sewer systems in Lawson. MAWC is a “water corporation,” a “sewer corporation,” and “public utility” as those terms are defined in Section 386.020, RSMo (2016), and is subject to the jurisdiction of the Commission. If the Commission approves MAWC’s



application, MAWC would provide water service for Lawson's 933 customers, and sewer service for Lawson's 871 sewer customers.<sup>1</sup>

In addition, MAWC requests the Commission permit it to use Section 393.320 RSMo to establish the rate base of the Lawson water and sewer systems. Finally, MAWC asks the Commission to waive the 60-day notice requirement MAWC would otherwise have to give before filing this case.

The Commission issued notice and set a deadline for intervention requests, but received no requests. On May 29, 2018, the Commission's Staff filed its recommendation to approve the transfer of assets and grant a CCN, with certain conditions.

Commission Rule 4 CSR 240-2.080(13) allows parties ten days to respond to pleadings unless otherwise ordered by the Commission. The Commission issued no order to the contrary of that rule, and no party timely objected to MAWC's application or Staff's recommendation. However, on June 15, 2018, the Office of the Public Counsel ("OPC") filed an untimely request for additional time to respond to Staff's Recommendation.<sup>2</sup>

OPC does not object to MAWC receiving the CCN or request an evidentiary hearing in this matter. However, OPC raises concerns about the novel application of Section 393.320.6 RSMo in calculating the rate base of the assets MAWC wants to purchase and requests the Commission open a separate workshop case for parties to explore how to better implement Section 393.320.6 RSMo in future cases.

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<sup>1</sup> The customer counts are approximate.

<sup>2</sup> OPC's pleading failed to acknowledge its tardiness, and also failed to request leave to file its pleading out of time.

## **Discussion**

### *Certificate of convenience and necessity*

The Commission may grant a water and sewer corporation a CCN to operate after determining that the construction and operation are either “necessary or convenient for the public service.”<sup>3</sup> The Commission articulated criteria to be used when evaluating applications for utility certificates of convenience and necessity in *In Re Intercon Gas, Inc.*<sup>4</sup>

The *Intercon* case combined the standards used in several similar certificate cases, and set forth the following criteria: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.<sup>5</sup>

There is a need for the service, as the residents of Lawson currently make use of the existing water and sewer system. MAWC is qualified to provide the service, as it already provides water service to over 450,000 Missouri customers, and sewer service to over 11,000 Missouri customers. MAWC has the financial ability to provide the service because no external financing is anticipated. The proposal is economically feasible according to MAWC's feasibility study, which is realistic given its prior experience and past performance. The proposal promotes the public interest as demonstrated by Lawson's citizens voting to proceed with MAWC's Asset Purchase Agreement.

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<sup>3</sup> Section 393.170.3, RSMo.

<sup>4</sup> 30 Mo P.S.C. (N.S.) 554, 561 (1991).

<sup>5</sup> The factors have also been referred to as the “Tartan Factors” or the “Tartan Energy Criteria.” See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994).

Based on the application and Staff's recommendations, the Commission concludes that the factors for granting a certificate of convenience and necessity to MAWC have been satisfied and that it is in the public's interest for MAWC to provide water and sewer service to the customers currently served by Lawson. Further, the Commission finds that MAWC possesses adequate technical, managerial, and financial capacity to operate the water and sewer system it wishes to purchase from Lawson. Thus, the Commission will authorize the transfer of assets and grant MAWC the certificate of convenience and necessity to provide water and sewer service within the proposed service area, subject to the conditions described by Staff.

*Rate base*

MAWC seeks to establish the ratemaking rate base associated with the Lawson water and sewer assets in this matter pursuant to Section 393.320, RSMo.<sup>6</sup> That statute states, in pertinent part:

The procedures contained in this section may be chosen by a large water public utility, and if so chosen shall be used by the public service commission to establish the ratemaking rate base of a small water utility during an acquisition.

MAWC is a "large water public utility" as it is a "public utility that regularly provides water service or sewer service to more than eight thousand customer connections and that provides safe and adequate service."<sup>7</sup> Lawson is a "small water utility" as it is a "water system or sewer system owned by a municipality that regularly

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<sup>6</sup> Per the Staff Recommendation, this is the first time a utility has availed itself of this statutory method of establishing the rate base for purchased assets.

<sup>7</sup> Section 393.320.1(1) RSMo.

provides water service or sewer service to eight thousand or fewer customer connections.”<sup>8</sup>

Section 393.320.3(1), RSMo requires an appraisal to be performed by three appraisers. Such an appraisal has been performed on the Lawson water and sewer system and is attached to MAWC’s application. The appraisal contains a joint assessment of the fair market value of the water system and sewer system.

Section 393.320.5(1), RSMo states, in part, that the “lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by the large water public utility, shall constitute the ratemaking rate base for the small water utility as acquired by the acquiring large water public utility. . . .” In this case, the purchase price is equal to the appraised value. That value is \$4 million, of which \$2,630,000 is for water assets, and \$1,370,000 for sewer assets. Staff’s Recommendation concurs with MAWC’s appraisal of the Lawson water and sewer assets. Therefore, the appraised value of \$4 million, together with the reasonable and prudent transaction, closing, and transition costs incurred by MAWC, shall constitute the ratemaking rate base.

Also, the Commission appreciates OPC’s concerns about the application of Section 393.320 going forward. The Commission will address OPC’s request to open a working case in a future order.

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<sup>8</sup> Section 393.320.1(2) RSMo.

*Waiver of 60-day notice rule*

MAWC's application also asks the Commission to waive the 60-day notice requirement in 4 CSR 240-4.017(1). MAWC asserts there is good cause for granting such waiver because it did not engage in conduct that would constitute a violation of the Commission's ex parte rule, and no asset purchase agreement existed within 60 days prior to filing its application. The Commission finds good cause exists to waive the notice requirement, and a waiver of 4 CSR 240-4.017(1) will be granted.

**THE COMMISSION ORDERS THAT:**

1. Missouri-American Water Company is granted a certificate of convenience and necessity to provide water and sewer service in the City of Lawson area described in the map and legal description Missouri-American Water Company provided to Staff, subject to the conditions and requirements contained in Staff's Recommendation, including the filing of tariffs, as set out below:

- a. Missouri-American Water Company shall apply the existing inside-city water and sewer rates, and shall honor commitments made to the City of Lawson as noted herein, applicable to customers in Missouri-American Water Company's water and sewer approved service areas;
- b. Missouri-American Water Company shall submit tariff sheets, to become effective before closing on the assets, to include the Lawson water system in its 'All Missouri Service Areas Outside of St. Louis County and Outside of Mexico', to include a service area map, and service area written description to be included in its EFIS water tariff P.S.C. MO No. 13, and water rates, applicable specifically to water service in its Lawson service area;
- c. Missouri-American Water Company shall submit tariff sheets, to become effective before closing on the assets, to include the Lawson sewer system in its 'Pettis County (Maplewood, Quail Run, Brooking Park, Westlake Village), Fenton, Hickory Hills, Temple Terrace, Anna Meadows, Jaxon Estates' service areas', to include

- a service area map, and service area written description to be included in its EFIS sewer tariff P.S.C. MO No. 26, and sewer rates, applicable specifically to sewer service in its Lawson service area;
- d. The City of Lawson or Missouri-American Water Company shall notify the Commission of closing on the assets within 5 days after such closing;
  - e. If closing on the water and sewer system assets does not take place within 30 days following the effective date of the Commission's order approving such, Missouri-American Water Company shall submit a status report within 5 days after this 30-day period regarding the status of closing and additional status reports within 5 days after each additional 30-day period until closing takes place, or until Missouri-American Water Company determines that the transfer of the assets will not occur;
  - f. If Missouri-American Water Company determines that a transfer of the assets will not occur, it shall notify the Commission no later than the date of the next status report, as addressed above, after such determination is made. In addition, Missouri-American Water Company shall submit tariff sheets as appropriate that would cancel service area maps and descriptions applicable to the City of Lawson service area in its water tariff; and rate sheets applicable to customers in the City of Lawson water and sewer tariffs;
  - g. Missouri-American Water Company shall develop a plan to book all of the Lawson plant assets, with the concurrence of Staff and/or with the assistance of Staff, for original cost, depreciation reserve, and contributions (CIAC) for appropriate plant accounts, such that current rate base is broken down as \$2,630,000 for the water system, and \$1,370,000 for the sewer system, along with reasonable and prudent transaction, closing, and transition costs. This plan should be submitted to Staff for review within 60 days after closing on the assets;
  - h. Missouri-American Water Company shall book the estimated original cost of the North Highway 69 sewage lift station, and book an accompanying CIAC offset equal to the estimated original cost of this lift station prior to the next rate case;
  - i. Missouri-American Water Company shall ensure that a backup water supply arrangement is obtained following acquisition of the Lawson systems to ensure reliable service to the City of Lawson service area via the Vibbard water pump station or other prudent means.

- j. Missouri-American Water Company shall keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts;
- k. Missouri-American Water Company shall Adopt for Lawson Water and Sewer assets the depreciation rates ordered for MAWC in Case No. WR-2015-0301;
- l. Missouri-American Water Company shall provide an example of its actual communication with the Lawson service area customers regarding its acquisition and operations of the Lawson water and sewer system assets, and how customers may reach MAWC, within 10 days after closing on the assets;
- m. Missouri-American Water Company shall obtain from Lawson, as best as possible prior to or at closing, all records and documents, including but not limited to all plant-in-service original cost documentation, along with depreciation reserve balances, documentation of contribution-in-aid-of construction transactions, and any capital recovery transactions;
- n. Except as required by §393.320 RSMo, the Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the CCN to MAWC, including expenditures related to the certificated service area, in any later proceeding;
- o. Missouri-American Water Company shall include the Lawson customers in its established monthly reporting to the Customer Experience Department (“CXD”) Staff on customer service and billing issues within thirty (30) days of closing on the assets;
- p. Missouri-American Water Company shall distribute to the Lawson customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its sewer service, consistent with the requirements of Commission Rule 4 CSR 240-13, within thirty (30) days of closing on the assets;
- q. Missouri-American Water Company shall provide to the CXD Staff a sample of ten (10) billing statements from the first month’s billing within thirty (30) days of closing on the assets; and,
- r. Missouri-American Water Company shall file notice in this case once Staff Recommendations o., p., and q. above have been completed.

2. Missouri-American Water Company is authorized to acquire the City of Lawson's water and sewer assets identified in the application.

3. Missouri-American Water Company is authorized to take other actions as may be deemed necessary and appropriate to consummate the transactions proposed in the application.

4. Commission Rule 4 CSR 240-4.017(1) is waived.

5. This order shall become effective on July 29, 2018.

6. This file shall be closed on July 30, 2018.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

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

Pridgin, Deputy Chief Regulatory Law Judge



**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Summit Natural Gas of )  
 Missouri Inc., for Permission and Approval and a )  
 Certificate of Convenience and Necessity to Construct, )  
 Install, Own, Operate, Maintain, and Otherwise Control ) **File No. GA-2018-0396**  
 and Manage a Natural Gas Distribution System to Provide )  
 Gas Service to One Property in Lawrence County as an )  
 Expansion of its Existing Certificated Areas )

**ORDER GRANTING CERTIFICATE OF  
CONVENIENCE AND NECESSITY AND GRANTING WAIVERS**

**CERTIFICATES**

**§21 Grant or refusal of certificate generally**

The Commission concluded that the *In re Intercon Gas, Inc.*, 30 Mo P.S.C. (N.S.) 554, 561 (1991), criteria should be used when evaluating the application for utility certificates of convenience and necessity. The specific criteria used were: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and, (5) the service must promote the public interest. These factors are also referred to as the "Tartan Factors" or the "Tartan Energy Criteria." See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company*, for a Certificate of Convenience and Necessity, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994), 1994 WL 762882, \*3 (Mo. P.S.C.).

**§21 Grant or refusal of certificate generally**

The Commission granted Summit Natural Gas of Missouri, Inc., a certificate of convenience and necessity to provide natural gas service to the property as described in its application.

**§21 Grant or refusal of certificate generally**

The Commission concluded that it may grant a certificate of convenience or necessity to operate after determining that the operation is either "necessary or convenient for the public service." Section 393.170.3, RSMo 2000.

**§21.2 Technical qualifications of applicant**

**§21.3 Financial ability of applicant**

**§21.4 Economic feasibility of proposed service**

**§43 Gas**

The Commission found that the company possessed adequate technical, managerial, and financial capacity to operate the natural gas systems to serve one additional property in Lawrence County, Missouri. The Commission also found that the factors for granting an addition to the company's certificates of convenience or necessity has been satisfied and that it was in the public interest for the company to provide natural gas service to the subject property.

## **EVIDENCE, PRACTICE AND PROCEDURE**

### **§24 Procedures, evidence and proof**

The Commission found good cause existed to grant the requested waiver of the feasibility study requirements in 4 CSR 240-3.205(1)(A)(5) and to waive the 60-day notice requirement under 4 CSR 240-4.020(2).

## **GAS**

### **§3 Certificate of convenience and necessity**

The Commission concluded that the *In re Intercon Gas, Inc.*, 30 Mo P.S.C. (N.S.) 554, 561 (1991), criteria should be used when evaluating the application for utility certificates of convenience and necessity. The specific criteria used were: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and, (5) the service must promote the public interest. These factors are also referred to as the "Tartan Factors" or the "Tartan Energy Criteria." See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company*, for a Certificate of Convenience and Necessity, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994), 1994 WL 762882, \*3 (Mo. P.S.C.).

### **§3 Certificate of convenience and necessity**

The Commission found that the company possessed adequate technical, managerial, and financial capacity to operate the natural gas systems to serve one additional property in Lawrence County, Missouri. The Commission also found that the factors for granting an addition to the company's certificates of convenience or necessity has been satisfied and that it was in the public interest for the company to provide natural gas service to the subject property.

### **§3 Certificate of convenience and necessity**

The Commission granted Summit Natural Gas of Missouri, Inc., a certificate of convenience and necessity to provide natural gas service to the property as described in its application.

### **§3 Certificate of convenience and necessity**

The Commission concluded that it may grant a certificate of convenience or necessity to operate after determining that the operation is either "necessary or convenient for the public service." Section 393.170.3, RSMo 2000.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 15<sup>th</sup> day of August, 2018.

In the Matter of the Application of Summit Natural Gas of Missouri Inc., for Permission and Approval and a Certificate of Convenience and Necessity to Construct, Install, Own, Operate, Maintain, and Otherwise Control and Manage a Natural Gas Distribution System to Provide Gas Service to One Property in Lawrence County as an Expansion of its Existing Certificated Areas )  
)  
)  
) **File No. GA-2018-0396**  
)  
)  
)

**ORDER GRANTING CERTIFICATE OF  
CONVENIENCE AND NECESSITY AND GRANTING WAIVERS**

Issue Date: August 15, 2018

Effective Date: August 25, 2018

On June 28, 2018, Summit Natural Gas of Missouri, Inc. (Summit), a successor to Missouri Gas Utility, Inc. and Southern Missouri Gas Company, L.P. d/b/a Southern Missouri Natural Gas, filed an application with the Commission requesting a certificate of convenience and necessity (CCN) to construct, install, own, operate, maintain, and otherwise control and manage a natural gas distribution system to provide gas service to one particular property in Lawrence County, Missouri. Summit also requested a waiver from certain provisions of the Commission-approved stipulation and agreement in File No. GA-2007-0168,<sup>1</sup> the requirement to file a plat and feasibility study as set out in Commission rule 4 CSR 240-3.205(1)(A), and the requirement to give 60-days' notice prior to filing the application as required in Commission rule 4 CSR 240-4.017(1).

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<sup>1</sup> The approved stipulation and agreement is between Southern Missouri Gas Company, L.P. d/b/a Southern Missouri Natural Gas, and Missouri Gas Energy the predecessors to Summit and Spire Missouri, respectively.

The Commission provided notice and set a deadline for filing intervention requests. On July 20, 2018, Spire Missouri Inc. filed an application to intervene. As the holder of a CCN for the area covering the subject property and a party to the stipulation and agreement for which waivers are requested, Spire Missouri was determined to be a proper party and was granted intervention.

The Commission directed its Staff to file a recommendation with regard to Summit's application, which Staff filed on July 27, 2018. Although Staff would not usually support granting a CCN to serve only one residence or to serve a residence in the service territory of another natural gas local distribution company, due to the circumstances surrounding this application, Staff recommended approval. Staff also recommended the Commission grant waivers of the terms of the stipulation and agreement and the Commission's rules. Additionally, Staff noted that Spire Missouri stated in its motion to intervene that it could support Summit's request for a waiver of the terms of the approved stipulation and agreement subject to certain conditions that would encourage future compliance with the stipulation and agreement. Spire Missouri, however, did not specifically state those conditions in its motion to intervene.

On August 6, 2018, Spire Missouri responded to Staff's recommendation. Spire Missouri stated that it is generally supportive of Summit's request to serve this customer given the circumstances of the homeowners. However, Spire Missouri stated that during the course of another proceeding involving Summit, File No. GA-2017-0016, it became aware that Summit may have been serving five other customers contrary to the stipulation and agreement between Summit and Spire Missouri. Because of this, Spire Missouri requests that the Commission "defer approval of the requested variance . . . , or

condition approval of the variance on, a solution reasonably acceptable to Spire Missouri.”<sup>2</sup>

Filing this application was contemplated in the stipulation and agreement approved by the Commission on June 6, 2018, in File No. GC-2017-0199, involving the property that is the subject of the CCN. In that case, the owners of the subject property filed a complaint against Summit for failing to provide natural gas service to their newly constructed home even though Summit had run a service line to within one foot of the complainants’ home. The subject property is located in the certificated service territory of Spire Missouri.<sup>3</sup> However, Summit holds a line certificate for the area and has the authority to provide service to individuals from its pipeline (known as “farm taps”) if necessary to gain right-of-way to construct a pipeline.<sup>4</sup> The subject property is not related to pipeline construction. Thus, Summit seeks a waiver from this provision of the Commission-approved stipulation and agreement between Spire Missouri and Summit in File No. GA-2007-0168 for this single instance.

Summit will not need to install or construct any new facilities other than extending the service line in order to provide service to the subject residence. Additionally, no financing will be required. Therefore, Summit requests a waiver of Commission rule 4 CSR 240-3.205(1)(A) requiring Summit to provide a plat and a feasibility study. Summit will also not require additional franchises or permits from municipalities, counties, or other authorities. Summit attached a description of the subject property as Appendix 1 and the name and address of the property owners as Appendix 3

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<sup>2</sup> *Spire Missouri Inc.’s Response to Staff Recommendation*, (filed August 6, 2018), para. 6.

<sup>3</sup> Spire Missouri Inc. is the predecessor of Missouri Gas Energy (MGE).

<sup>4</sup> File No. GA-2007-0168, *Stipulation and Agreement of SMNG and MGE*, (filed December 4, 2007), para. 3.A.

(Confidential) to its application. The customers will be charged the current tariffed Residential Service rate for Summit's Branson division.

No party objects to Summit being granted a CCN to provide service to this residence. Additionally, no party has requested an evidentiary hearing, and no law requires one.<sup>5</sup> Therefore, this action is not a contested case,<sup>6</sup> and the Commission need not separately state its findings of fact.

The property owners began their attempt to receive natural gas service from Summit in February 2016.<sup>7</sup> Although Spire Missouri suggests the Commission "defer" or "condition" the granting of a variance from the earlier stipulation and agreement between Summit and Spire Missouri, the Commission finds no reason for further delay in granting this CCN so that the property owners can finally receive natural gas service. The Commission strongly encourages Spire Missouri and Summit to continue discussions outside the confines of this proceeding and return to the Commission with further modifications, if any, of their stipulation and agreement in File No. GA-2007-0168. Alternatively, if Spire Missouri is concerned that Summit has violated the terms of the Commission's order with regard to the stipulation and agreement, Spire Missouri can file a complaint with the Commission alleging such. However, the Commission will not further delay the grant of this authority pending those negotiations and further proceedings.

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<sup>5</sup> *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

<sup>6</sup> Section 536.010(4), RSMo.

<sup>7</sup> See File No. GC-2017-0199.

The Commission may grant a CCN to operate after determining that the operation is either “necessary or convenient for the public service.”<sup>8</sup> The Commission articulated the specific criteria to be used when evaluating applications for utility CCNs in the case *In re Intercon Gas, Inc.*, 30 Mo P.S.C. (N.S.) 554, 561 (1991). The *Intercon* case set forth the following criteria: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and, (5) the service must promote the public interest.<sup>9</sup>

Based on the verified application and Staff’s recommendation, the Commission finds that Summit possesses adequate technical, managerial, and financial capacity to operate the natural gas systems to serve one additional property in Lawrence County, Missouri.

The Commission concludes that the factors for granting an addition to Summit’s CCN has been satisfied and that it is in the public interest for Summit to provide natural gas service to the subject property. Based on the Commission’s independent and impartial review of the verified filings, the Commission will grant Summit’s CCN to provide natural gas service to the property as described in Appendix 1 to its application.

Summit also requests a waiver of the feasibility study requirements in Commission rule 4 CSR 240-3.205(1)(A)(5). This specific rule requires the submission of a feasibility study containing plans and estimates for the cost of construction for a three-year period. No objections to Summit’s request for a waiver of the feasibility

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<sup>8</sup> Section 393.170.3, RSMo 2000.

<sup>9</sup> The factors have also been referred to as the “Tartan Factors” or the “Tartan Energy Criteria.” See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994), 1994 WL 762882, \*3 (Mo. P.S.C.).

requirement were filed. The Commission finds good cause exists to grant the requested waiver of the feasibility study requirements in 4 CSR 240-3.205(1)(A)(5).

Further, Summit asks the Commission to waive the 60-day notice requirement under 4 CSR 240-4.020(2). Summit asserts that good cause exists for granting such waiver as it filed this application to comply with a Commission-approved stipulation and agreement in File No. GC-2017-0199. Summit also states that it did not engage in conduct that would constitute a violation of the Commission's ex parte rule. The Commission finds that good cause exists to waive the notice requirement, and a waiver of 4 CSR 240-4.020(2) is granted. Additionally, the Commission finds that good cause exists to expedite the effective date of this order so that gas service may be provided to this property without further delay.

**THE COMMISSION ORDERS THAT:**

1. Summit Natural Gas of Missouri, Inc., is granted a waiver of the provisions of the Commission-approved stipulation and agreement in File No. GA-2007-0168 in order to provide natural gas service to a single property as described in Appendix 1 to its application in this proceeding.

2. All other provisions of the Commission-approved stipulation and agreement in File No. GA-2007-0168 remain in effect.

3. Summit Natural Gas of Missouri, Inc., is granted permission, approval, and a certificate of convenience and necessity to construct, install, own, operate, maintain, control, and manage a natural gas distribution system to provide gas service to one property in Lawrence County, Missouri, as described in Appendix 1 to its application.



4. No later than September 24, 2018, Summit Natural Gas of Missouri, Inc. shall amend its tariff to add to its service area the property as described in Appendix 1 to its application.

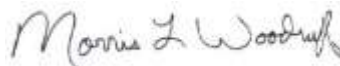
5. Nothing in the Staff Recommendation or this order shall bind the Commission on any ratemaking issue in any future rate proceeding.

6. Commission Rule 4 CSR 240-4.017(1) is hereby waived for purposes of this application.

7. Commission Rule 4 CSR 240-3.205(1)(A) is hereby waived for purposes of this application.

8. This order shall become effective on August 25, 2018.

**BY THE COMMISSION**



Morris Woodruff  
Secretary



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

Dippell, Senior Regulatory Law Judge

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of a Proceeding Under Section )  
393.137 (SB 564) to Adjust the Electric Rates of The ) **File No. ER-2018-0366**  
Empire District Electric Company )

**REPORT AND ORDER**

**ACCOUNTING**

**§38 Taxes**

Excess Accumulated Deferred Income Tax (ADIT) must be divided into two categories: protected and unprotected. The return of protected excess ADIT to ratepayers is subject to Internal Revenue Service (IRS) rules. The Commission has discretion to control the return of unprotected excess ADIT to ratepayers.

**§38 Taxes**

The inability to immediately and reliably determine protected and unprotected excess ADIT, resulting from a lack of appropriate software, is good cause to defer the effect of a tax reduction on the company's excess ADIT for consideration in its next general rate case.

**ELECTRIC**

**§20 Rates**

As used at the Commission, a "general rate proceeding" or a "general rate case" means a proceeding in which the Commission considers all relevant factors when setting a utility's rates.

**EVIDENCE, PRACTICE AND PROCEDURE**

**§1 Generally**

The Commission's Electronic Filing and Information System (EFIS) is merely an administrative tool. It cannot override an order of the Commission that a file has been closed.

**RATES**

**§62 Initiation of rates and rate changes**

As used at the Commission, a "general rate proceeding" or a "general rate case" means a proceeding in which the Commission considers all relevant factors when setting a utility's rates.

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of a Proceeding Under )  
Section 393.137 (SB 564) to Adjust the )  
Electric Rates of The Empire District )  
Electric Company )

**File No. ER-2018-0366**

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## REPORT AND ORDER

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**Issue Date: August 15, 2018**

**Effective Date: August 25, 2018**

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

In the Matter of a Proceeding Under	)	
Section 393.137 (SB 564) to Adjust the	)	<b><u>File No. ER-2018-0366</u></b>
Electric Rates of The Empire District	)	
Electric Company	)	

### APPEARANCES

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For the Staff of the Missouri Public Service Commission.

**Hampton Williams**, Public Counsel, and **Nathan Williams**, Chief Deputy Public Counsel, 200 Madison Street, Suite 650, Jefferson City, Missouri 65102-2230.

For the Office of the Public Counsel and the Public.

**David L. Woodsmall**, Attorney at Law, Woodsmall Law Office, 308 E. High St., Suite 204, Jefferson City, Missouri 65101

For the Midwest Energy Consumers Group

Chief Regulatory Law Judge: **Morris L. Woodruff**

## REPORT AND ORDER

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The Missouri Public Service Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

### **Procedural History**

The Commission opened this case on June 6, 2018<sup>1</sup>, to adjust the electric rates of The Empire District Electric Company (Empire) pursuant to Section 393.137 of Missouri's statutes, passed during the 2018 session as part of Senate Bill 564 (SB564). That statute gives the Commission one-time authority to order an adjustment to the electric rates of an electrical corporation in light of the recently enacted federal Tax Cut and Jobs Act of 2017.

As provided in the approved procedural schedule, Empire prefiled direct testimony of Christopher Krygier and Charlotte North, Staff prefiled rebuttal testimony of Sarah Lange and Mark Oligschlaeger, and Public Counsel prefiled direct testimony of John Riley. Each of these witnesses testified at the hearing, as did Steve Williams for Empire, who did not prefile testimony. Surrebuttal and additional rebuttal testimony were presented live at the hearing. Empire, Staff, Public Counsel, and the Midwest Energy Consumers Group (MECG) filed post-hearing briefs. The other parties to the case did not participate in the hearing, and have not filed briefs.<sup>2</sup>

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<sup>1</sup> All dates are 2018, unless otherwise specified.

<sup>2</sup> The parties to this case that did not participate are: The City of Joplin; Renew Missouri Advocates d/b/a Renew Missouri; and the Missouri Department of Economic Development – Division of Energy.

On June 25, Empire filed a Motion to Dismiss or for Summary Determination in which it argues that by its terms, section 393.137 (SB564) does not apply to Empire and, therefore, the Commission has no authority to proceed in this case. That motion has been thoroughly argued by the parties and is addressed in this Report and Order.

The parties were unable to agree on a list of issues before the hearing, but, after reviewing the testimony and arguments of the parties, the Commission finds that five issues must be resolved, as described below.

**I. Does Section 393.137, RSMo (SB564) apply to Empire?**

**Findings of Fact**

1. Empire is a Missouri certificated electrical corporation as defined by Section 386.020(15), RSMo 2016, and is authorized to provide electric service to portions of Missouri.

2. Section 393.137, which was enacted as part of SB564, gives the Commission one-time authority to adjust the rates of electrical corporations “that do not have a general rate proceeding pending before the commission as of the later of February 1, 2018, or June 1, 2018,” the latter of which was the date the Governor signed the bill into law. Public Counsel and MECG contend the statute applies to Empire. Empire and Staff argue it does not. This contention is also the basis for Empire’s Motion to Dismiss or for Summary Determination.

3. The basis for the disagreement is the existence of Commission File No. ER-2018-0228. Empire and Staff assert that file is a general rate proceeding that was pending on June 1, and, therefore, section 393.137, by its terms, does not apply to Empire. Public

Counsel and MECG argue both that ER-2018-0228 is not a general rate proceeding and that it was not pending on June 1. Therefore, they contend, section 393.137 applies to Empire.<sup>3</sup>

4. The Commission issued an order opening File No. ER-2018-0228 on February 21, 2018, in response to Staff's motion filed on February 16.<sup>4</sup> Although the Commission's order purported to open the file, the filing of Staff's motion previously caused the file to be shown as open in the Commission's electronic filing and information system (EFIS), an administrative tool used to manage filings in cases before the Commission, beginning on February 16.<sup>5</sup>

5. The Commission's February 21 order directed Empire to "show cause, if any, why the Commission should not order it to promptly file tariffs reducing its rates for every class and category of electric service to reflect the percentage reduction in its federal-state effective income tax rate." The order also directed Empire to quantify and track all impacts of the tax reduction from January 1, 2018, going forward, and to quantify and track its excess protected and unprotected accumulated deferred income tax (ADIT) for possible future flow back to ratepayers.<sup>6</sup>

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<sup>3</sup> Aside from Empire, Missouri's other electrical corporations are Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company (GMO), and Union Electric Company d/b/a Ameren Missouri. KCP&L (File No. ER-2018-0145) and GMO (File No. ER-2018-0146) have pending general rate cases before the Commission. Ameren Missouri did not have a pending general rate case and its rates have been adjusted pursuant to section 393.137 in File No. ER-2018-0362.

<sup>4</sup> *Order Opening Rate Case, Directing Notice, Establishing Time to Intervene, and Requiring Company to Show Cause Why Its Rates Should Not Be Adjusted*. File No. ER-2018-0228, February 21, 2018.

<sup>5</sup> *Motion to Open Rate Case and to Require Company to Show Cause*, File No. ER-2018-0228, February 16, 2018.

<sup>6</sup> *Order Opening Rate Case, Directing Notice, Establishing Time to Intervene, and Requiring Company to Show Cause Why Its Rates Should Not Be Adjusted*. File No. ER-2018-0228, February 21, 2018.



6. Empire responded to the show cause order on March 19, contending its rates could only be adjusted after due consideration of all relevant factors.<sup>7</sup>

7. On April 24, Staff, Empire, MEEG, Renew Missouri, and Division of Energy filed a non-unanimous stipulation and agreement in ER-2018-0228, in conjunction with File No. ER-2018-0092, a case established to consider Empire's proposed customer savings plan concerning its proposal to undertake additional wind-powered electrical production. As it applied to ER-2018-0228, that stipulation and agreement required Empire to adjust its rates going forward, beginning on October 1, and required it to track its excess ADIT for rate adjustments to be made in a future rate case. It did not require any adjustment of Empire's rates for the period between January 1 and October 1.<sup>8</sup>

8. Public Counsel objected to that stipulation and agreement,<sup>9</sup> but Staff and Empire continue to adhere to its provisions as the basis for their positions in this case.<sup>10</sup> The same non-unanimous stipulation and agreement was filed in this case and in ER-2018-0228 on July 17,<sup>11</sup> and Public Counsel again objected to it.

9. Staff filed a Voluntary Dismissal in ER-2018-0228 on May 17 at 9:06 a.m., following the passage of SB564 on May 16. Staff's dismissal described its concern that ER-2018-0228 might be interpreted as a general rate case that would potentially make the provisions of section 393.137 inapplicable, if it were open when the statute took effect when,

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<sup>7</sup> *Response to Show Cause Motion and Order*, File No. ER-2018-0228, March 19, 2018.

<sup>8</sup> *Non-Unanimous Stipulation and Agreement*, File No. ER-2018-0228, April 24, 2018.

<sup>9</sup> *The Office of the Public Counsel's Objection to the Non-Unanimous Stipulation and Agreement filed April 24, 2018*. File No. ER-2018-0228, April 26, 2018.

<sup>10</sup> See. North Direct, Ex. 2, Pages 3-5, and Oligschlaeger Rebuttal, Ex. 3, Page 7, Lines 16-17.

<sup>11</sup> The new non-unanimous stipulation and agreement was signed by Empire, Staff, and the City of Joplin.

and if, signed by the Governor. For that reason, Staff purported to voluntarily dismiss that case.<sup>12</sup>

10. The same day it received Staff's Voluntary Dismissal, the Commission issued a Notice Acknowledging Dismissal and Closing File.<sup>13</sup> That action caused the file to be shown as closed in EFIS.

11. Later on May 17, Staff filed a withdrawal of its voluntary dismissal,<sup>14</sup> which again caused the file to be shown as open in EFIS.

12. The Commission did not acknowledge Staff's withdrawal of its dismissal and has not issued any further orders in ER-2018-0228 since May 17. The Commission did proceed with an oral argument on May 24 in that file, as well as the other files created to address tax cut impacts on the rates of other utilities, to consider the issuance of accounting authority orders to address the effect of federal tax cuts.<sup>15</sup>

13. File No. ER-2018-0228 is currently shown as open in EFIS, as it has been since it was reopened by Staff's filing on May 17. In particular, it was shown as open in EFIS on June 1, when Governor Greitens signed SB564.

14. On June 1, another rate case involving Empire was shown as open in EFIS. As Empire noted in its June 25 motion to dismiss, Empire's last general rate case, ER-2016-

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<sup>12</sup> *Voluntary Dismissal*, File No. ER-2018-0228, May 17, 2018.

<sup>13</sup> *Notice Acknowledging Dismissal and Closing File*, File No. ER-2018-0228, May 17, 2018.

<sup>14</sup> *Withdrawal of Voluntary Dismissal*, File No. ER-2018-0228, May 17, 2018.

<sup>15</sup> *Order Scheduling Oral Argument Regarding the Issuance of Accounting Authority Orders to Address the Effect of Federal Tax Cuts*, File No. ER-2018-0228, April 18, 2018. The other cases in which that order was issued are ER-2018-0226, concerning the electric rates of Union Electric Company d/b/a Ameren Missouri; GR-2018-0227, concerning the natural gas rates of Union Electric Company d/b/a Ameren Missouri; GR-2018-0229, concerning the natural gas rates of Empire; GR-2018-0230, concerning the natural gas rates of Summit Natural Gas of Missouri, Inc.; HR-2018-0231, concerning the steam rates of KCP&L Greater Missouri Operations Company; and HR-2018-0232, concerning the steam rates of Veolia Energy Kansas City, Inc.

0023, was also shown as an open case by EFIS on June 1.<sup>16</sup> That general rate case had been resolved on August 8, 2016 when the Commission approved a stipulation and agreement, for which compliance tariffs were approved on September 6, 2016. Additional tariffs were approved by the Commission in that file on May 31, 2017, and the file was closed on June 2, 2017.<sup>17</sup> It again opened in EFIS on May 31, 2018, when Empire filed notice that it had completed a study ordered in that case.<sup>18</sup> That file was shown as open in EFIS until again closed by Commission order on June 14.<sup>19</sup>

15. The Commission's Staff has not invested significant effort to begin consideration of all relevant ratemaking factors in File No. ER-2018-0228. Mark Oligschlaeger, manager of the Commission's audit staff,<sup>20</sup> testified that he was assigned to investigate the income tax impact on Empire's revenue of the federal tax cuts.<sup>21</sup> No one else was formally assigned to work on that case.<sup>22</sup> Staff did not issue the standard data requests that it customarily issues at the start of a general rate proceeding because it was focusing on the tax cut impacts.<sup>23</sup> To date, Staff has not performed an all-relevant-factors review of Empire's rates.<sup>24</sup>

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<sup>16</sup> *Empire's Motion to Dismiss or for Summary Determination with Suggestions in Support*, File No. ER-2018-0366, Footnote 6.

<sup>17</sup> *Order Approving Demand-Side Management Tariff and Granting Motion for Expedited Treatment*, File No. ER-2016-0023, May 31, 2017.

<sup>18</sup> *Notice of Completion of PAYS Study*, File No. ER-2016-0023, May 31, 2018.

<sup>19</sup> *Order Closing Case*, File No. ER-2016-0023, June 14, 2018. The file actually opened again in EFIS on June 28, 2018, when Public Counsel filed a response to Empire's notice of completion of the study. The Commission closed the file once again later that day.

<sup>20</sup> Oligschlaeger Rebuttal, Ex. 3, Page 2, Lines 7-9.

<sup>21</sup> Transcript, Page 236, Lines 1-7.

<sup>22</sup> Transcript, Page 236, Lines 8-13.

<sup>23</sup> Transcript, Page 236, Lines 14-24.

<sup>24</sup> Transcript, Page 237, Lines 20-23.

### Conclusions of Law

A. Subsection 386.020(15), RSMo 2016, defines “electrical corporation” as including:

every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, ... owning, operating, controlling or managing any electric plant except where electricity is generated or distributed by the producer solely on or through private property for railroad, light rail or street railroad purposes or for its own use or the use of its tenants and not for sale to others;

Empire is an “electrical corporation” as defined by the statute.

B. Section 393.137 of the Missouri statutes, which became effective with an emergency clause when signed by the Governor on June 1, states that it “applies to electrical corporations that do not have a general rate proceeding pending before the commission as of the later of February 1, 2018, or June 1, 2018.”<sup>25</sup>

C. Section 393.137 does not define the term “general rate proceeding,” or its synonym “general rate case.” However, as used at this Commission, a “general rate proceeding” or a “general rate case” means a proceeding in which the Commission considers all relevant factors when setting a utility’s rates. That is the way the Commission has defined “general rate proceeding” within its regulations, as in its Electric Utility Fuel and Purchased Power Cost Recovery Mechanisms rule, 4 CSR 240-20.090, where “general rate proceeding” is defined as “a general rate increase proceeding or complaint proceeding before the commission in which all relevant factors that may affect the costs, or rates and charges of the electric utility are considered by the commission.”<sup>26</sup>

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<sup>25</sup> Section 393.137.1.

<sup>26</sup> Commission Rule 4 CSR 240-20.090(1)(D).

D. A “general rate proceeding,” or “general rate case” in which all relevant factors are considered is different than a rate case that does not consider all relevant factors. The latter would constitute single-issue ratemaking, which is forbidden, except as allowed by statute.<sup>27</sup>

E. In Missouri, single-issue rate making has been authorized by statute in certain circumstances. For example, section 386.266.1<sup>28</sup> gives the Commission authority to approve periodic rate adjustment of fuel and purchased power costs outside a general rate proceeding through what is generally known as a Fuel Adjustment Clause or an FAC. The authority granted in section 393.137 to adjust rates in response to the federal tax reduction is another example of statutorily authorized single-issue ratemaking.

### **Decision**

While Empire claims File No. ER-2018-0228 shields it from application of section 393.137, that case is not a “general rate proceeding” within the meaning of section 393.137 because it was not intended to adjust Empire’s rates after considering all relevant factors. Rather, that case was created for the narrow purpose of attempting to determine how the Commission might best deal with the impact of the federal tax cut on Missouri’s regulated utilities. It required Empire to track the impact of that tax cut and directed the company to consider whether the effect of that tax cut could be used to adjust its rates without considering all relevant factors in an extended general rate case. Empire responded to that order by asserting its rates could not be modified without considering all relevant factors. Thereafter, aside from inviting arguments about whether an accounting authority order could

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<sup>27</sup> See, *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Serv. Com’n*, 585 S.W.2d 41, (Mo banc 1979). See also, *State ex rel. Public Counsel v. Public Serv. Com’n*, 397 S.W.3d 441, 448, (Mo. App. W.D. 2013).

<sup>28</sup> RSMo (2016).

be issued, the Commission took no further steps to adjust Empire's rates through File No. ER-2018-0228.

Even if File No. ER-2018-0228 was a "general rate proceeding" within the meaning of section 393.137, it was not pending before the Commission on June 1, 2018. The Commission initially opened that file for its own purposes and issued a notice closing that file on May 17, 2018. No party had a legally or constitutionally protected interest in the continued existence of that file such that they would have a right to appeal the Commission's decision to close it. Therefore, the Commission was under no obligation to give its notice closing the file a ten-day effective date. The fact that various parties made filings in the case after it was closed, causing EFIS to automatically change the status of the case to "open," does not mean it was once again pending before the Commission.

EFIS is merely an administrative tool. It cannot override an order of the Commission. The problem with according EFIS definitive authority to determine whether a given file is pending before the Commission is amply illustrated by EFIS' treatment of Empire's last general rate case, File No. ER-2016-0023. Undeniably, EFIS showed that file, which was a general rate proceeding, to be open on June 1, 2018. Emphatically, that does not mean that ER-2016-0023 was a pending general rate proceeding within the meaning of section 393.137 so as to remove Empire from the application of that statute. To suggest otherwise would be to hand Empire the means of avoiding the application of the statute by the simple expedience of filing a pleading in an old rate case just before the Governor signed the legislation, not allowing the Commission enough time to reclose the file in EFIS before the law took effect.

After considering the facts and the applicable law, the Commission finds that Empire did not have a "general rate proceeding" within the meaning of section 393.137 pending before the Commission on June 1, 2018. For that reason, section 393.137 does apply to

Empire. Consequently, Empire's Motion to Dismiss or for Summary Determination will be denied and the Commission will consider adjustments to Empire's rates in this case.

## **II. How Should Empire's Rates be Adjusted Prospectively?**

### **Findings of Fact**

16. The reduction in the federal income tax rate from 35 percent to 21 percent has the effect of reducing the amount of Empire's going-forward revenue requirement. Empire calculated the appropriate amount for the reduction of its annual base rate revenue requirement at \$17,837,022.<sup>29</sup> Staff accepted that calculation as reasonable and acceptable for ratemaking purposes.<sup>30</sup> The Commission finds Empire's calculation to be credible and reasonable.

17. Public Counsel calculated the appropriate reduction in Empire's annual base rate revenue requirement at the slightly lower amount of \$17,469,270.<sup>31</sup>

18. The difference between the calculations resulted because Public Counsel's witness used a slightly different composite tax rate than that used by Empire's witness. Empire's witness, Charlotte North, agreed the difference was not material.<sup>32</sup>

19. Empire and Staff agree the revised rates reflecting the reduction in Empire's annual base rate revenue requirement should go into effect on October 1, 2018. That date is contained within their non-unanimous stipulation and agreement to which Public Counsel objected.<sup>33</sup> Aside from the fact that they agree that such date is reasonable, Empire and Staff do not offer any basis for the use of that date. Public Counsel and MECG argue the

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<sup>29</sup> North Direct, Ex. 2, Page 4, Lines 3-12, and Schedule 1.

<sup>30</sup> Oligschlaeger Rebuttal, Ex. 3, Lines 7-17.

<sup>31</sup> Riley Corrected Direct, Ex. 5, Page 2, Lines 13-15.

<sup>32</sup> Transcript, Page 158, Lines 5-8.

<sup>33</sup> North Direct, Ex. 2, Pages 3-4, Lines 17-23, 1-2, Oligschlaeger Rebuttal, Ex. 3, Pages 3-4, Lines 16-23, 1-15.

revised rates should go into effect on August 30, 2018, which is the date contemplated in section 393.137.3, RSMo.

### **Conclusions of Law**

F. Section 393.137.3 provides in part:

If the rates of any electrical corporation to which this section applies have not already been adjusted to reflect the effects of the federal 2017 Tax Cut and Jobs Act, Pub. L. No. 115-97, 94 Stat. 2390, the commission shall have one time authority that shall be exercised within ninety days of June 1, 2018, to adjust such an electrical corporation's rates prospectively so that the income tax component of the revenue requirement used to set such an electrical corporation's rates is based upon the provisions of such federal act without considering any other factor as otherwise required by section 393.270. ...

This statute gives the Commission authority to adjust Empire's rates on a going-forward basis.

G. Commission Rule 4 CSR 240-2.115(2)(D) states:

A nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it. All issues shall remain for determination after hearing.

Thus, although Staff and Empire may continue to support the positions they agreed to in their objected-to stipulation and agreement, the existence of that agreement is not binding on the Commission and provides no additional support for the adoption of that position.

### **Decision**

Empire's rates should be adjusted prospectively to reflect a reduction in its annual base rate revenue requirement of \$17,837,022. That reduction shall take effect on August 30, 2018, as allowed by the authority granted to the Commission in section 393.137.3.



### **III. How Should the Flow-Back of Excess ADIT be Handled?**

#### **Findings of Fact**

20. Excess Accumulated Deferred Income Tax (ADIT) occurs when there has been a change in tax rates between when the original ADIT was determined and when the ADIT will subsequently become payable taxes.<sup>34</sup> The enactment of the federal tax cut act on December 22, 2017 resulted in the creation of excess ADIT on Empire's accounts.<sup>35</sup> All parties agree excess ADIT must be returned to ratepayers in some manner.

21. Excess ADIT must be divided into two categories; protected and unprotected. The return of protected excess ADIT to ratepayers is subject to Internal Revenue Service (IRS) normalization rules. The Commission has discretion to control the return of unprotected excess ADIT to ratepayers.<sup>36</sup>

22. Empire's calculation of the amount of protected excess ADIT must be determined using the Average Rate Assumption Method (ARAM) if the taxpayer possesses the book and tax vintages of assets placed in service,<sup>37</sup> which Empire does.

23. The objective of ARAM is to match depreciation deductions for booked and tax purposes on each individual asset over the course of history. That determines when the excess deferred income taxes associated with that asset are released for refund to customers.<sup>38</sup>

24. The complex computations required to calculate the amounts of protected and unprotected excess ADIT involve matching book and tax assets, stripping out the differences in depreciation that are not related to methods and lives and then projecting those balances

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<sup>34</sup> Transcript, Page 186, Lines 17-21.

<sup>35</sup> Transcript, Page 187, Lines 3-4.

<sup>36</sup> Transcript, Page 122, Lines 7-14.

<sup>37</sup> Transcript, Page 184, Lines 20-22, see *also*, Ex. 10.

<sup>38</sup> Transcript, Pages 184-185, Lines 22-25, 1-3.

forward to see when in future years the book depreciation begins to exceed the tax depreciation. Excess ADIT must be returned over the remaining book life of the assets and, since utility asset lives may exceed 40 or 50 years, those calculations may stretch out for many years. Empire currently does not have the technological means to make those calculations.<sup>39</sup>

25. Improperly calculating the return of protected excess ADIT could result in a mismatch that could result in a normalization violation under IRS regulations.<sup>40</sup> The penalty for a normalization violation would eliminate Empire's ability to use accelerated depreciation in the future, and would require the company to pay a penalty tax.<sup>41</sup>

26. Empire is currently implementing the Deferred Income Tax module of the Power/Plan property management software suite. That software will allow the company to confirm that it is subject to ARAM, determine the amount of the protected ADIT balance, and determine a projected amortization schedule of that balance.<sup>42</sup>

27. Empire's failure to have the Deferred Income Tax module in place before the passage of the federal tax reduction is reasonable in that excess ADIT, and the need to separate protected from unprotected ADIT, will generally only result from the passage of a federal tax reduction, and such events are rare.<sup>43</sup>

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<sup>39</sup> Transcript, Pages 188-189, Lines 24-25, 1-18.

<sup>40</sup> Transcript, Page 193, Lines 8-13.

<sup>41</sup> Transcript, Page 193, Lines 2-13. In its brief, Public Counsel asked the Commission to take administrative notice of several IRS documents that it attached to its brief for the purpose of arguing that Empire's risk of incurring a normalization penalty is low. Those documents are not in evidence, nor are they something about which the Commission can take administrative notice.

<sup>42</sup> Ex. 10.

<sup>43</sup> Transcript, Pages 193-194, Lines 21-25, 1-11.

28. Empire expects to have calculated final total excess ADIT figures and separated protected and unprotected excess ADIT numbers by September 15, 2018.<sup>44</sup>

29. Public Counsel's witness, John Riley, sent a data request to Empire asking the company to estimate its total excess ADIT figures and to further break that amount into protected and unprotected categories.<sup>45</sup> He then adjusted the figures provided by Empire to make a determination of protected and unprotected ADIT,<sup>46</sup> upon which Public Counsel bases its proposal to immediately adjust Empire's rates going forward to start flowing excess ADIT back to customers.

30. The excess ADIT amounts proposed by Mr. Riley are unreliable because they are based on mere estimates prepared by Empire at Public Counsel's request. In addition, some of the adjustments made by Mr. Riley are themselves unreasonable. In particular, his estimate of excess ADIT includes both the Missouri wholesale allocations, which are subject to FERC jurisdiction, and retail allocations, thereby overstating the balances that are subject to the jurisdiction of the Commission.<sup>47</sup> When asked about this on cross-examination, Riley agreed that if the wholesale numbers are FERC jurisdictional, his calculations should be adjusted.<sup>48</sup>

31. Empire's witness, Stephen Williams, described additional errors in Mr. Riley's calculations during his testimony at the hearing that further call into question the reliability of those calculations.<sup>49</sup>

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<sup>44</sup> Transcript, Page 191, Lines 8-11.

<sup>45</sup> Ex. 6.

<sup>46</sup> Transcript, Page 295, Lines 5-17.

<sup>47</sup> Transcript, Page 195, Lines 12-17.

<sup>48</sup> Transcript, Page 310, Lines 10-18.

<sup>49</sup> Transcript, Pages 195-198.

32. Rather than make an immediate adjustment to Empire's rates to begin flowing excess ADIT back to customers, Empire and Staff propose<sup>50</sup> that Empire record a regulatory liability for the difference between the excess ADIT balances included in current rates, which is calculated using the 35 percent federal corporate income tax rate, versus the now lower federal corporate income tax rate of 21 percent. The calculation of the regulatory liability of excess ADIT is to begin as of January 1, 2018.<sup>51</sup>

33. ADIT is booked as a reduction to Empire's rate base, meaning the company earns a return on a lower amount of rate base as ADIT increases. In effect, ratepayers are earning a return on the amount booked as ADIT. Thus, the delay in returning excess ADIT to ratepayers does not require inclusion of carrying costs to make ratepayers whole.<sup>52</sup>

34. Witnesses for Empire, Staff, and Public Counsel all agree the passage of the federal tax cut act meets the Commission's standards for issuance of an accounting authority order in that it is unusual, unique, non-recurring and material.<sup>53</sup>

### Conclusions of Law

H. As previously noted, Section 393.137.3 provides in part:

If the rates of any electrical corporation to which this section applies have not already been adjusted to reflect the effects of the federal 2017 Tax Cut and Jobs Act, Pub. L. No. 115-97, 94 Stat. 2390, the commission shall have one time authority that shall be exercised within ninety days of June 1, 2018, to adjust such an electrical corporation's rates prospectively so that the income tax component of the revenue requirement used to set such an electrical corporation's rates is based upon the provisions of such federal act without considering any other factor as otherwise required by section 393.270. ...

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<sup>50</sup> MEEG accepted this recommendation in its brief.

<sup>51</sup> *Non-Unanimous Stipulation and Agreement*, File Nos. ER-2018-0228 and ER-2018-0366, July 17, 2018.

<sup>52</sup> Transcript, Pages 255-256, Lines 4-25, 1-15.

<sup>53</sup> Transcript, Page 249, Lines 7-17, Pages 172-173, and Page 316, Lines 4-21.

In the context of this issue, this provision gives the Commission authority to adjust Empire's rates for the effect of excess ADIT. The statute gives the Commission authority to make that adjustment in this case.

I. Section 393.137.4 further provides:

Upon good cause shown by the electrical corporation, the commission may, as an alternative to requiring a one-time rate change and deferral under subsection 3 of this section, allow a deferral, in whole or in part, of such federal act's financial impacts to a regulatory asset starting January 1, 2018, through the effective date of new rates in such electrical corporation's next general rate proceeding. The deferred amounts shall be included in the revenue requirement used to set the electrical corporation's rates in its subsequent general rate proceeding through an amortization over a period determined by the commission.

In the context of this issue, this provision gives the Commission authority to direct Empire to defer the effect of the tax reduction on the company's excess ADIT for consideration in its next general rate proceeding.

J. Aside from the specific authority granted by section 393.137.4, Missouri's courts have recognized the Commission's authority to defer certain costs and revenues for consideration in a future rate case through the use of an accounting authority order (AAO), if such costs (or revenues) are "unusual and nonrecurring, and therefore extraordinary."<sup>54</sup>

### **Decision**

The testimony established that Empire cannot immediately and reliably determine the amount of protected and unprotected excess ADIT that must be flowed back to its ratepayers. The Commission finds it is highly unlikely that the calculations of protected and unprotected excess ADIT, upon which Public Counsel relies for its proposed adjustments to Empire's rates, are accurate.

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<sup>54</sup> *State ex rel. Office of Public Counsel v. Public Serv. Com'n*, 858 S.W. 2d 806, 811, (Mo App. W.D. 1993).

The inability to immediately and reliably determine protected and unprotected excess ADIT, resulting from Empire's lack of appropriate software, is good cause for the Commission to utilize the provision in section 393.137.4 to direct Empire to defer the effect of the tax reduction on the company's excess ADIT for consideration in its next general rate proceeding. Doing so will not harm ratepayers, and will protect the interests of both Empire and its ratepayers in avoiding possible IRS penalties for a normalization penalty.

Even if it is found that section 393.137.4 does not apply to Empire, it would still be appropriate for the Commission to exercise its authority to order Empire to establish an accounting authority order to account for its excess ADIT.

#### **IV. What Should be Done Regarding Empire's Earnings Between January 1 and August 30, 2018?**

##### **Findings of Fact**

35. The lower federal tax rate took effect on January 1, and new rates resulting from this order will take effect on August 30. That leads to the question of what should be done for the period between January 1 and August 30. Staff and Empire contend the Commission should take no action to recover any excess earnings Empire may have gained during that period. Public Counsel and MECG contend section 393.137 requires those excess earnings be deferred for recovery by ratepayers in a future general rate proceeding.

36 Public Counsel's witness calculated the amount of excess earnings during the period between January 1 through August 30, as \$11,582,365, which he calculated as 242/365 multiplied by Public Counsel's calculated reduction of Empire's annual base rate revenue requirement of \$17,469,270. Neither Empire, nor Staff disagreed with that calculation.<sup>55</sup>

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<sup>55</sup> Transcript, Page 134, Lines 15-20.

37. August 30 is the 241<sup>st</sup> day of the year. If it is assumed that Empire's new rates will go into effect on August 30, the correct numerator in the calculation is 240. Using the reduction of Empire's annual base rate revenue requirement of \$17,837,022 as calculated by Empire and adopted in this order, the result of the calculation  $240/365 \times \$17,837,022$  is \$11,728,453.

38. Witnesses for Empire, Staff, and Public Counsel all agreed the passage of the federal tax cut act meets the Commission's standards for issuance of an accounting authority order in that it is unusual, unique, non-recurring and material.<sup>56</sup>

### Conclusions of Law

K. The relevant portion of Section 393.137.3 requires the Commission to require:

electrical corporations to which this section applies, ... to defer to a regulatory asset the financial impact of such federal act on the electrical corporation for the period of January 1, 2018, through the date the electrical corporation's rates are adjusted on a one-time basis as provided for in the immediately preceding sentence. The amounts deferred under this subsection shall be included in the revenue requirement used to set the electrical corporation's rates in its subsequent general rate proceeding through an amortization over a period determined by the commission.

In the context of this issue, this portion of the statute requires the Commission to require Empire to defer the amount of excess earnings it earned due to the impact of the federal tax cut during the period between January 1 and August 30.

L. Aside from the specific authority granted by section 393.137.3, Missouri's courts have recognized the Commission's authority to defer certain costs and revenues for consideration in a future rate case through the use of an accounting authority order, an AAO, if such costs (or revenues) are "unusual and nonrecurring, and therefore extraordinary."<sup>57</sup>

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<sup>56</sup> Transcript, Page 249, Lines 7-17, Pages 172-173, and Page 316, Lines 4-21.

<sup>57</sup> *State ex rel. Office of Public Counsel v. Public Serv. Com'n*, 858 S.W. 2d 806, 811, (Mo App. 1993).

M. Staff expresses concern that an attempt by the Commission to require Empire to return excess earnings resulting from the tax rate reductions to its ratepayers would constitute retroactive ratemaking, which is barred by the constitutions of the United States and of Missouri.<sup>58</sup> However, the issuance of an AAO is not the same as a ratemaking decision. Rather, the purpose of an AAO is to defer a final decision on current extraordinary costs until a rate case is in order.<sup>59</sup> By issuing an AAO in this case, the Commission is not making any ratemaking decision about whether Empire's excess earnings resulting from the tax rate reductions can, or should, be returned to the company's ratepayers. That decision will be made in Empire's next general rate proceeding, and a decision about the constitutionality of any ordered rate reduction also will be made at that time.

### **Decision**

Having found that section 393.137.3 applies to Empire, the Commission must comply with that statute by ordering Empire to establish a regulatory liability to account for its excess earnings during the period of January 1 through August 30, 2018. Even if section 393.137.3 does not apply to Empire, it would still be appropriate for the Commission to exercise its authority to order Empire to establish an AAO for that period.

## **V. How Should Revised Rates be Implemented?**

### **Findings of Fact**

39. Staff witness Sarah Lange proposed specific percentage adjustments to the rates for each of Empire's customer classes to allocate the going-forward rate reduction.

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<sup>58</sup> *State ex rel. Utility Consumers Council of Missouri v. Public. Serv. Com'n*, 585 S.W.2d 41, 58, (Mo. banc 1979).

<sup>59</sup> *Missouri Gas Energy v. Public Serv. Com'n*, 978 S.W.2d 434, 438 (Mo. App. 1998).



Those percentages were set forth in an appendix to the objected-to non-unanimous stipulation and agreement.<sup>60</sup>

40. Lange further proposed the rate reduction be allocated in the same manner as was employed in the stipulation and agreement that resolved a similar proceeding regarding the rates of Union Electric Company d/b/a Ameren Missouri.<sup>61</sup> That proposal provided that the revenue requirement reduction applicable to each rate class as a result of the proposed percentage adjustments should be divided by the total kilowatt-hour billing units stated for that class. The result of this calculation will be a cents-per-kilowatt-hour rate for each service classification that will be applied to all billed usage of customers taking service under those classifications (stated as a separate line item on the customer's bills) to yield separate line item bill credits. The tariff sheets for each of the above service classifications shall be updated to include reference to the cents-per-kilowatt-hour rates and resulting credits derived in the prior step. No other charges or other terms or conditions of service that are currently stated on those sheets should be modified.<sup>62</sup> The Commission finds Lange's proposal to be reasonable.

41. Public Counsel's witness, John Riley, recommends the rate reduction be made effective entirely by reducing Empire's customer charge for each rate class because doing so would best ensure that ratepayers will realize the benefits of the tax cut. Customer charges are finite and predictable, unlike volumetric rates that may vary based on consumption.<sup>63</sup>

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<sup>60</sup> Non-Unanimous Stipulation and Agreement, Appendix B, File No. ER-2018-0366, July 17, 2018.

<sup>61</sup> Commission File No. ER-2018-0362.

<sup>62</sup> Lange Rebuttal, Ex. 4, Pages 2-3, Lines 12-29, 1-10.

<sup>63</sup> Riley Corrected Direct, Ex. 5, Page 8, Lines 10-22.

Riley did not calculate the actual reduction in the various customer charges that would result from his proposal.<sup>64</sup>

42. Public Counsel's proposed reduction in the customer charge for all rate classes would not be reasonable for all customer classes, in that customer classes other than the residential class are billed in a more complicated manner, including demand charges and other facilities charges. As a result, it would not be appropriate to simply adjust the customer charge for those classes.<sup>65</sup> Further, reducing the customer charge by too great an extent could cut into the company's actual cost of providing service to its customers and create a misimpression that there is no cost to having a customer on the system in and of itself.<sup>66</sup>

### **Conclusions of Law**

There are no additional conclusions of law for this issue.

### **Decision**

The Commission finds that Staff's proposed allocation of the going-forward rate reduction as set forth in Appendix B to the non-unanimous stipulation and agreement filed on July 17, 2018, is appropriate.

### **THE COMMISSION ORDERS THAT:**

1. The Empire District Electric Company's Motion to Dismiss or for Summary Determination is denied.

2. The Empire District Electric Company shall adjust its rates prospectively, effective August 30, 2018, to reflect a reduction in its annual base rate revenue requirement of \$17,837,022.

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<sup>64</sup> Transcript, Page 320, Lines 18-20.

<sup>65</sup> Transcript, Page 276, Lines 4-13.

<sup>66</sup> Transcript, Page 275, Lines 8-25.

3. The Empire District Electric Company shall record a regulatory liability for the difference between the excess ADIT balances included in current rates, which is calculated using the 35 percent federal corporate income tax rate, versus the now lower federal corporate income tax rate of 21 percent. The calculation of the regulatory liability of excess ADIT shall begin as of January 1, 2018. Recovery of the amounts deferred through the regulatory liability shall be determined in Empire's next general rate proceeding.

4. The Empire District Electric Company shall record a regulatory liability for the financial impact of the Tax Cut and Jobs Act of 2017 on the electrical corporation for the period of January 1, 2018, through August 30, 2018. Recovery of the amounts deferred through the regulatory liability shall be determined in Empire's next general rate proceeding.

5. The Empire District Electric Company shall file a tariff, to be effective August 30, 2018, to implement the provisions of this order.

6. This report and order shall become effective on August 25, 2018.

**BY THE COMMISSION**



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

Morris L. Woodruff  
Secretary

Hall, Chm., Kenney, Rupp, Coleman, and  
Silvey, CC., concur;  
and certify compliance with the  
provisions of Section 536.080, RSMo 2016

Dated at Jefferson City, Missouri,  
on this 15<sup>th</sup> day of August, 2018.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

James Dickson and Angela Dickson, Complainants v. )  
KCP&L Greater Missouri Operations Company, )  
Respondent )

**File No. EC-2016-0230**

**REPORT AND ORDER**

**ELECTRIC**

**§32 Safety**

Complainants requested that the Commission, for health and safety reasons, require the replacement of a Smart meter at their residence with an analog meter which they purchased. The Company has an opt-out tariff which permits customers to have a digital meter installed that has no communication capabilities and transmits no radio frequency waves. Per its terms, participants of the Company's opt-out tariff incur an additional charge to have the Company send someone to read the meter and to cover the additional systems and processes which will have to be managed because of the opt-out.

The Smart meter as designed and as actually operating at the Complainants' residence did not violate Section 393.130, RSMo, requiring every electrical corporation to furnish and provide "such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable."

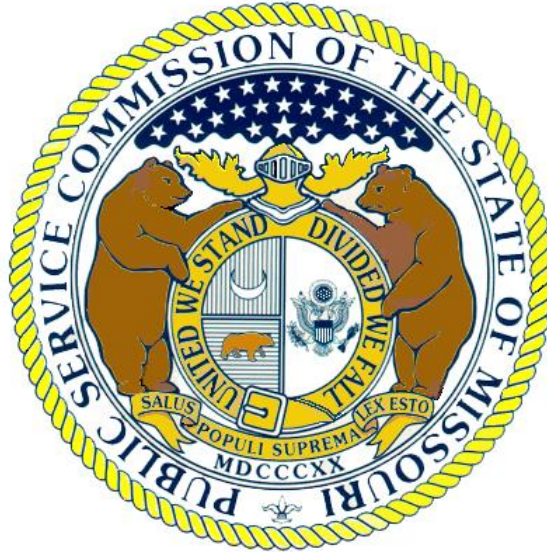
**SERVICE**

**§8 Discrimination**

Complainants requested that the Commission, for health and safety reasons, require the replacement of a Smart meter at their residence with an analog meter which they purchased. The Company has an opt-out tariff which permits customers to have a digital meter installed that has no communication capabilities and transmits no radio frequency waves. Per its terms, participants of the Company's opt-out tariff incur an additional charge to have the Company send someone to read the meter and to cover the additional systems and processes which will have to be managed because of the opt-out.

The Company's charges for its opt-out tariff were authorized by the Commission, were just and reasonable, and were no greater than charges to any other person for the service rendered for manually reading a meter in violation of Section 393.131.2, RSMo. An additional charge for the opt-out did not constitute any undue or unreasonable preference or advantage to persons with the Smart meter in violation of Section 393.131.3, RSMo.

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



James Dickson and Angela Dickson, )  
 )  
 Complainants, )  
 v. )  
 )  
 KCP&L Greater Missouri Operations )  
 )  
 Respondent. )

**File No. EC-2016-0230**

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## REPORT AND ORDER

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**Issue Date:** August 22, 2018

**Effective Date:** September 21, 2018

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

James Dickson and Angela Dickson,	)	
	)	
Complainants,	)	<b><u>File No. EC-2016-0230</u></b>
v.	)	
	)	
KCP&L Greater Missouri Operations	)	
	)	
Respondent.	)	

**APPEARANCES**

**James and Angela Dickson**

Complainants, appeared pro se

**Roger Steiner**

Attorney for KCP&L Missouri Operations Company

**Wm. Hampton Williams**

Attorney for the Staff of the Commission

**Regulatory Law Judges:** Kim Burton and Paul T. Graham

## REPORT AND ORDER

**Syllabus:** The Commission concludes that KCP&L Greater Missouri Operations Company has not violated any statute within the Commission's jurisdiction, the company's tariff, or any Commission rule or order.

### Background

James Dickson and Angela Dickson ("Complainants") have alleged that immediately after the installation of an AMI meter (hereinafter, "Smart" meter) at their residence by KCP&L Greater Missouri Operations ("the Company"), their family began experiencing health problems. Concerned about the long-term health effects of being hit by radio frequency waves ("RF") from the Smart meter and the meter's potential fire risk, Complainants requested that the Company remove the Smart meter. When the Company declined to remove the meter, Complainants filed a complaint against the Company with the Commission, asserting the Company had violated the requirements of Section 393.130.1 of the Missouri Revised Statutes by failing to provide safe and adequate service.<sup>1</sup>

Complainants requested that the Commission require the replacement of the Smart meter at their residence with an analog meter which they purchased. Complainants also requested reimbursement from the Company for all costs which they incurred for their time, expenses, equipment, the removal of the Smart meter, medical examinations, and medical treatments.<sup>2</sup>

### Findings of Fact

1. In October 2015, the Company began a process of replacing approximately 330,000 manually-read analog meters in the Company's system with

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<sup>1</sup> EFIS Item No. 1.

<sup>2</sup> EFIS Item No. 1.

Smart meters that allow the Company not only to receive information, but also to send information to the meters. Smart meters use RF technology that allows the meters and Company to communicate with each other as to outages and energy usage.<sup>3</sup>

2. A Smart meter was installed at Complainant's residence in January of 2016.<sup>4</sup>

3. The Smart meter which was installed in Complainants' residence was virtually identical to those used by the Company for 20 years. In that time period, the Company received no complaints where the Company's meters were associated with ill health effects, privacy breaches, or increased fire risks.<sup>5</sup>

4. The FCC has set limits on the maximum permissive exposure level for RF-emitting devices. As designed, the Company's Smart meters' exposure levels are within the FCC's limitations.<sup>6</sup>

5. The meter installed at Complainant's residence never emitted RF at any unsafe level.<sup>7</sup>

6. The Smart meter was not designed so as to present a fire risk, and the Smart meter installed at Complainant's residence presented no fire risk.<sup>8</sup>

7. The Company has an opt-out tariff which permits customers to have a digital meter installed that has no communication capabilities and transmits no RF

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<sup>3</sup> Tr. 70; 73-74

<sup>4</sup> Tr. 56.

<sup>5</sup> Tr. 71; 75; see also Tr. 115, the testimony of PSC engineer Poston.

<sup>6</sup> Tr. 76. The Company's Smart meters were manufactured by Landis and Gyr and use a 900-megahertz spectrum, which is the same spectrum used in cordless phones and Wi-fi. The RF power density of a smart meter in microwatts per centimeter squared ( $mW/cm^2$ ) is approximately  $0.1W/cm^2$ . In comparison, Wi-Fi or a laptop can be anywhere from 10 to  $20mW/cm^2$  and a cellphone ranges anywhere from 30 to  $10,000 wVV/cm^2$ . Id. And Tr. 108-109. The Company's Smart meters do not transmit constantly and meet FCC certification for RF interference. Tr. 74; 122-123

<sup>7</sup> Tr. 75

<sup>8</sup> Tr. 75; 77; 105.



signals.<sup>9</sup> Per its terms, participants of the Company's opt-out tariff incur an additional charge to have the Company send someone to read the meter and to cover the additional systems and processes which will have to be managed because of the opt-out.<sup>10</sup>

8. Complainants declined the Company's opt-out because of concerns that the meter could still emit signals and because they did not believe that they should pay an additional charge for meter readings. Complainants purchased an analog meter, requested that it be used by the Company at their residence and offered to read the meter themselves and document their readings for the Company.<sup>11</sup>

9. The Company's tariff gives the Company the right to provide the meter. Any meter provided by a customer will have to be tested and calibrated to meet the Company's technical expectations. The Company's meters are manufactured to the Company's specifications, so no meter provided by a customer will be compatible with the Company's billing system.<sup>12</sup>

### **Conclusions of Law**

1. Section 396.390.1, RSMO, permits any person to make a complaint setting forth any act or thing done or omitted to be done by any public utility "in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission. . . ." The Company is a "utility." Section 386.020, RSMO. Complainants have filed a complaint alleging that the Company has committed acts or

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<sup>9</sup> Tr. 78-79

<sup>10</sup> Tr. 78-79. Although not set at the time of the hearing, the anticipated charge to customers participating in the Company's opt-out tariff was \$150 for the purchase of the non-communicating meter and a \$45 per month fee to pay for the meter reading. Tr. 78.

<sup>11</sup> Tr. 10-11; 25; 61; 34.

<sup>12</sup> Tr. 80

omitted to do acts in violation of Section 393,130, RSMO. The Commission has jurisdiction in this case.

2. Missouri law provides that every electrical corporation shall furnish and provide “such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.”<sup>13</sup>

3. All charges made or demanded by an electrical corporation for electricity must be just and reasonable and not more than allowed by law or by order or decision of the Commission. No charge may be made for electricity which is unjust or unreasonable or in excess of that allowed by law or by order or decision of the Commission.<sup>14</sup>

4. Missouri law provides:

“No gas corporation, electrical corporation, water corporation or sewer corporation shall directly or indirectly by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas, electricity, water, sewer or for any service rendered or to be rendered or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.”<sup>15</sup>

5. Missouri law provides:

“No gas corporation, electrical corporation, water corporation or sewer corporation shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.”<sup>16</sup>

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<sup>13</sup> Section 393.130, RSMO

<sup>14</sup> Section 393.130.1, RSMO

<sup>15</sup> Section 393.131.2, RSMO

<sup>16</sup> Section 393.131.3, RSMO

6. Complainants have the burden of proving that the Company's alleged acts and/or omissions have violated the law or its tariff; or that the Company has otherwise engaged in unjust or unreasonable actions.<sup>17</sup>

7. No statute, rule, regulation or tariff placed any duty upon the Company to allow Complainants to install an analog meter.

8. The Commission has no authority to award damages.<sup>18</sup>

### **Decision**

The Smart meter as designed and as actually operating at the Complainants' residence did not violate Section 393.130, RSMO. The Company's charges for its opt-out tariff were authorized by the Commission, were just and reasonable, and were no greater than charges to any other person for the service rendered for manually reading a meter. An additional charge for the opt-out did not constitute any undue or unreasonable preference or advantage to persons with the Smart meter. The Company's refusal to permit the installation of an analog meter was not unreasonable and violated no statute, rule, regulation, or tariff. The evidence did not support a conclusion that the medical signs and symptoms experienced by Complainants or their children were caused by a Smart meter. The Commission has no authority to grant Complainants' request for reimbursement for various costs and expenses.

Any application for rehearing must be filed before the effective date of this Order.

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<sup>17</sup> *State ex rel GS Techs Operating Co. v. PSC of Mo.*, 116 S.W.3d 680, 696 (Mo. App. 2003).

<sup>18</sup> *Id.*

**THE COMMISSION ORDERS THAT:**

1. The Complaint of James and Angela Dickson is denied.
2. All unruled Motions are denied.
3. This Report and Order shall become effective on September 21, 2018.
4. This file shall close on September 22, 2018.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris Woodruff  
Secretary

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

Graham, Regulatory Law Judge

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

Anita Wessling,	)	
	)	
Complainant,	)	
	)	
v.	)	<b><u>File No. EC-2018-0089</u></b>
	)	
Union Electric Company,	)	
d/b/a Ameren Missouri,	)	
	)	
Respondent.	)	

**REPORT AND ORDER**

**SERVICE**

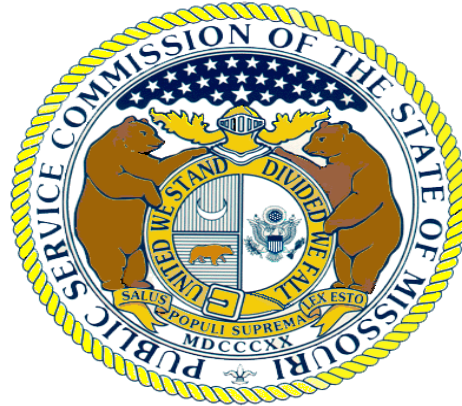
**§2 What constitutes adequate service**

Ameren Missouri presented credible evidence regarding its efforts to provide service on an adequate and continuous basis. Ameren Missouri explained the reasons why Complainant experienced more outages than other customers on the same circuit, and why those causes were reasonably beyond its control. Ameren Missouri’s tariff states the “[c]ompany will make all reasonable efforts to provide the service requested on an adequate and continuous basis, but will not be liable for service interruptions, deficiencies or imperfections which result from conditions which are beyond the reasonable control of the Company.”

**§18 Duty to render adequate service**

After numerous outages, Complainant filed a formal complaint against Ameren Missouri alleging the company violated its tariff regarding continuity of service by failing to make all reasonable efforts to provide service on an adequate and continuous basis.

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



Anita Wessling,

Complainant,

v.

Union Electric Company,  
d/b/a Ameren Missouri,

Respondent.

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) **File No. EC-2018-0089**  
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**REPORT AND ORDER**

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**Issue Date:** August 28, 2018

**Effective Date:** September 27, 2018

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

Anita Wessling,	)	
	)	
Complainant,	)	
	)	<b>File No. EC-2018-0089</b>
v.	)	
	)	
Union Electric Company,	)	
d/b/a Ameren Missouri,	)	
	)	
Respondent.	)	

**REPORT AND ORDER**

**Appearances**

**Complainant:** Anita Wessling, did not appear at the evidentiary hearing.

**Union Electric Company d/b/a Ameren Missouri:** Sarah E. Giboney, Smith Lewis LLP, 111 South Ninth Street, Suite 200, P.O. Box 918, Columbia, Missouri 65205.

**Staff of The Missouri Public Service Commission:** Alexandra Klaus, Legal Counsel, Post Office Box 360, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

**Regulatory Law Judge:** John T. Clark

**I. Procedural History**

On September 28, 2017, Anita Wessling (“Complainant”) filed a formal complaint against Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”). Ameren Missouri responded with its *Answer, Affirmative Defenses and Motion to Dismiss*, on January 23, 2018. The Commission directed its Staff to investigate and Staff filed a report on February 13, 2018, noting it found Ameren Missouri had not violated any tariff, rule, or statute, and was not negligent in its responses to Complainant’s outages. Staff’s report recommended the Commission dismiss the complaint for failure to state a claim. Ameren

Missouri filed a response supporting Staff's report, and Complainant responded to both the *Staff Report* and *Ameren Missouri's Response to Staff Report* on March 19, 2018, stating with particularity the violations that she believes justified the Commission hearing her complaint. The Commission subsequently denied Ameren Missouri's motion to dismiss.

Complainant requested that her complaint be designated as a small formal complaint on April 12, 2018. That request was granted and under the small formal complaint procedures the Commission dispensed with the need for pre-filed testimony in this case.<sup>1</sup>

An evidentiary hearing was held on June 19, 2018, at the St. Charles County Administration Building in St. Charles Missouri. Complainant failed to appear at the hearing. During the evidentiary hearing the Commission admitted the testimony of three witnesses and received 21 exhibits into evidence. Robert J. Schnell, Supervising Engineer; and Aubrey Krcmar, Regulatory Liaison, Ameren's Regulatory Affairs Department, testified for Ameren Missouri; and Cedric Cunigan, Engineering Specialist, testified for the Commission's Staff. Upon completion of the hearing the case was deemed submitted for the Commission's decision.<sup>2</sup>

## **Background**

After numerous outages, Complainant filed a formal complaint against Ameren Missouri alleging the company violated its tariff regarding continuity of service by failing to make all reasonable efforts to provide service on an adequate and continuous basis. She also alleges that the company violated Commission Rule 4 CSR 240-23.030(3)(A) regarding vegetation management by failing to perform vegetation management as necessary. She

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<sup>1</sup> 4 CSR 240-2.070(15)(F)2.



states that Ameren Missouri failed to investigate the outages and vegetation issues and take corrective measures to ensure reliable service. Complainant alleges that she was unable to turn her thermostat down on June 15, before a vacation resulting in her bill being \$100 higher than usual. Complainant asserts the amount at issue is \$300 for damages relating to her comfort, safety, and security.

## **II. Findings of Fact**

1. Union Electric Company d/b/a Ameren Missouri is a utility regulated by this Commission.

2. Complainant is a customer of Ameren Missouri for electric service.<sup>3</sup>

3. On June 12, 2015, Complainant's power was out for 12 hours and two minutes as a result of a broken tree that took down a pole and wires during a thunderstorm; 77 customers were affected.<sup>4</sup>

4. On January 4, 2016, Complainant's power was out for 48 minutes as a result of an animal on the line tripping a fuse; 99 customers were affected.<sup>5</sup>

5. On April 26, 2016, Complainant's power was out for five hours and 18 minutes as a result of a broken tree that took down a pole and wires during a major storm; 299 customers were affected.<sup>6</sup>

6. On June 14, 2016, Complainant's power was out momentarily for unknown reasons during rainy weather; 2,405 customers were affected.<sup>7</sup>

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<sup>2</sup> Commission Rule 4 CSR 240-2.150(1).

<sup>3</sup> Ameren Missouri Ex. 19C.

<sup>4</sup> Ameren Missouri Ex. 6C.

<sup>5</sup> Ameren Missouri Ex. 6C.

<sup>6</sup> Ameren Missouri Ex. 6C.

<sup>7</sup> Ameren Missouri Ex. 6C.

7. On July 27, 2016, Complainant's power was out for three hours and 14 minutes due to an overhead malfunction; 252 customers were affected.<sup>8</sup>

8. On May 3, 2017, Complainant's power was out momentarily for unknown reasons during rainy weather; 2,408 customers were affected.<sup>9</sup>

9. On May 11, 2017, Complainant's power was out momentarily for unknown reasons during a thunderstorm; 2,409 customers were affected.<sup>10</sup>

10. On May 19, 2017, Complainant's power was out for four hours 24 minutes due to an overhead malfunction during a major storm; 100 customers were affected.<sup>11</sup>

11. On June 15, 2017, Complainant's power was out for two hours 11 minutes as a result of a broken tree during rainy weather; 76 customers were affected.<sup>12</sup>

12. On July 23, 2017, Complainant's power was out for seven hours 59 minutes due to an overhead malfunction from a pole fire causing a switch to burn during a major storm; 5,539 customers were affected.<sup>13</sup>

13. On September 9, 2017, Complainant's power was out for six hours eight minutes due to an overhead malfunction during calm weather; 101 customers were affected.<sup>14</sup>

14. On October 17, 2017, Complainant's power was out for one hour 27 minutes due to a squirrel; one customer was affected.<sup>15</sup>

15. Complainant is served by the Droste subsection circuit 544-056.<sup>16</sup>

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<sup>8</sup> Ameren Missouri Ex. 6C.

<sup>9</sup> Ameren Missouri Ex. 6C.

<sup>10</sup> Ameren Missouri Ex. 6C.

<sup>11</sup> Ameren Missouri Ex. 6C.

<sup>12</sup> Ameren Missouri Ex. 6C.

<sup>13</sup> Ameren Missouri Ex. 6C.

<sup>14</sup> Ameren Missouri Ex. 6C.

16. Complainant's circuit has more than 35 customers and is therefore classified as urban.<sup>17</sup>

17. Complainant's circuit was not in the top five percent of worst performing circuits for the Gateway Division in 2017.<sup>18</sup>

18. Complainant experienced more outages than other Ameren Missouri customers in her area.<sup>19</sup>

19. One reason Complainant experiences more outages than other Ameren Missouri customers in her area is that her property is at the end of an eight mile circuit,<sup>20</sup> and any outage further up the circuit will affect her property.<sup>21</sup>

20. Complainant's property is served by a line that goes through her back yard, over creeks, and is more susceptible to damage than lines on a roadway.<sup>22</sup>

21. Service trucks cannot drive up to Complainant's power lines and must park on the road. Workers have to walk into Complainant's back yard and climb the pole to service overhead power lines.<sup>23</sup>

22. Ameren Missouri conducted overhead equipment inspections in 2010, 2014, and 2018.<sup>24</sup>

23. Ameren Missouri conducted underground equipment inspections in 2013 and 2017.<sup>25</sup>

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<sup>15</sup> Ameren Missouri Ex. 6C.

<sup>16</sup> Transcript, page 57.

<sup>17</sup> Transcript, page. 50.

<sup>18</sup> Transcript, page 86.

<sup>19</sup> Transcript, page 64.

<sup>20</sup> Transcript, page 102.

<sup>21</sup> Transcript, page 91.

<sup>22</sup> Transcript, page 64.

<sup>23</sup> Transcript, pages 78 and 80.

24. Ameren Missouri trimmed vegetation in July of 2016.<sup>26</sup>

25. Ameren Missouri has conducted vegetation management inspections and maintenance as required.<sup>27</sup>

26. Ameren Missouri typically has a troubleman on duty from 7:00 a.m. until 11:00 p.m. Monday through Friday, and 7:00 a.m. to 3:00 p.m. weekends to respond to outages.<sup>28</sup>

27. On September 1, 2017, Ameren Missouri made a vegetation patrol of Complainant's back yard and discovered a limb on a pole that serves Complainant's property. The limb was removed the following day.<sup>29</sup>

28. Ameren Missouri responded to an outage on September 9, 2017, a fuse switched was replaced; the repair took approximately six hours.<sup>30</sup>

29. Ameren Missouri completed installing animal guards in the first quarter of 2018.<sup>31</sup>

30. During the period of June 13, 2016, and July 13, 2016, Complainant used 3,569 kilowatts of electricity resulting in a bill of \$482.88.<sup>32</sup>

31. During the period of June 12, 2017, and July 12, 2017, Complainant used 2,575 kilowatts of electricity resulting in a bill of \$373.82.<sup>33</sup>

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<sup>24</sup> Ameren Missouri Ex. 2.

<sup>25</sup> Ameren Missouri Ex. 2.

<sup>26</sup> Ameren Missouri Ex. 2.

<sup>27</sup> Transcript, page 61.

<sup>28</sup> Transcript, page 103.

<sup>29</sup> Transcript, pages 72-75, also Ameren Missouri, Ex. 4.

<sup>30</sup> Transcript, pages 76-79.

<sup>31</sup> Transcript, page 87.

<sup>32</sup> Transcript, page 112.

<sup>33</sup> Transcript, page 112.

### **III. Conclusions of Law**

Ameren Missouri is a public utility as defined by Section 386.020(43), RSMo. Furthermore, Ameren Missouri is an electrical corporation as defined by Section 386.020(15), RSMo. Therefore, Ameren Missouri is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo.

Section 386.390 states that a person may file a complaint against a utility, regulated by this Commission, setting forth violation(s) of any law, rule or order of the Commission. Therefore, the Commission has jurisdiction over this complaint.

Ameren Missouri's applicable tariff rules state:

MO P.S.C. No. 6, Original Sheet 103, General Rules and Regulations,  
I. General Provisions, G. Customer Obligations:  
(7.) Be responsible for payment of all electric service used on customer's premises and for all requirements of the provisions of the Service Classification under which the electric service is provided, until such time as customer notifies Company to terminate service.

MO P.S.C. No. 6, Original Sheet 105, General Rules and Regulations,  
I. General Provisions, J. Continuity of Service:  
Company will make all reasonable efforts to provide the service requested on an adequate and continuous basis, but will not be liable for service interruptions, deficiencies or imperfections which result from conditions which are beyond the reasonable control of the Company. The Company cannot guarantee the service as to continuity, freedom from voltage and frequency variations, reversal of phase rotation or single phasing. The Company will not be responsible or liable for damages to customer's apparatus resulting from failure or imperfection of service beyond the reasonable control of the Company. In cases where such failure or imperfection of service might damage customer's apparatus, customer should install suitable protective equipment.

Applicable Commission rules state:

Commission Rule 4 CSR 240-23.030, Electrical Corporation Vegetation Management Standards and Reporting Requirements  
(3) Maintenance Cycle.  
(A) An electrical corporation shall perform a visual inspection at least once every two (2) years of all urban energized distribution conductors and at least

once every three (3) years of all rural energized distribution conductors, to determine whether vegetation management is needed. Where needed, the electrical corporation shall perform vegetation management in a timely manner. Vegetation management performed along a circuit in compliance with this rule shall meet this two (2)- or three (3)-year visual inspection requirement, accordingly.

(B) In addition to the maintenance required in subsection (3)(A) above, if an electrical corporation becomes aware either through notification or during the inspections required under subsection (3)(A) above or at any other time, of any vegetation close enough to pose a threat to its energized conductor, which is likely to affect reliability or safety prior to the next required vegetation management, the electrical corporation shall ensure that necessary vegetation management is promptly performed as required under section (4) of this rule.

The burden of showing that a regulated utility has violated a law, rule or order of the Commission is with the Complainant.<sup>34</sup>

#### **IV. Decision**

After applying the facts to its conclusions of law, the Commission has reached the following decision. Complainant failed to appear at the hearing and therefore offered no evidence onto the hearing record to support her allegations. Ameren Missouri offered sufficient evidence onto the record to substantiate that Complainant experienced power outages more frequently than many other Ameren Missouri customers.

Ameren Missouri also presented credible evidence regarding its efforts to provide service on an adequate and continuous basis. Ameren Missouri explained the reasons why Complainant experienced more outages than other customers on the same circuit, and why those causes were reasonably beyond its control. Ameren Missouri's response times to outages were prompt and its explanations with regard to outage causation were reasonable. Ameren Missouri also provided documentation and testimony substantiating its compliance

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<sup>34</sup> In cases where a "complainant alleges that a regulated utility is violating the law, its own tariff, or is otherwise (continued on next page ...)

with Commission rules regarding vegetation management and equipment inspection. Ameren Missouri's tariff states the "[c]ompany will make all reasonable efforts to provide the service requested on an adequate and continuous basis, but will not be liable for service interruptions, deficiencies or imperfections which result from conditions which are beyond the reasonable control of the Company."<sup>35</sup> This section of Ameren Missouri's tariff is also cited by Complainant in her complaint. Evidence demonstrates that Ameren Missouri made all reasonable efforts to supply adequate continuous service and that the outages were beyond the reasonable control of the company.

Finally, Complainant alleges an amount at issue of \$300. Complainant claims that this is the amount of damages that she incurred as a result of the outages. Complainant failed to substantiate these damages, and Ameren Missouri offered credible evidence to the contrary. Even if Complainant had substantiated actual damages, the Commission has no authority to enter a monetary judgment.<sup>36</sup>

Complainant has the burden to show that the Ameren Missouri has violated a law, rule, or order of the Commission. Because she has not done so, her complaint fails and the Commission must rule in favor of the company.

Any application for rehearing must be filed before the effective date of this order.

**THE COMMISSION ORDERS THAT:**

1. Anita Wessling's complaint is denied.
2. This order shall become effective on September 27, 2018.

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engaging in unjust or unreasonable actions," ... "the burden of proof at hearing rests with the complainant." *State ex rel. GS Technologies Operating Co., Inc. v. Public Service Comm'n*, 116 S.W.3d 680, 693 (Mo. App. 2003).

<sup>35</sup> MO P.S.C. No. 6, Original Sheet 105, General Rules and Regulations, I. General Provisions, J. Continuity of Service.

<sup>36</sup> See *State ex rel. GS Techs. Operating Co. v. PSC of Mo.*, 116 S.W.3d 680, 696 (Mo. App. 2003).

3. This case shall be closed on September 28, 2018.



**BY THE COMMISSION**

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

Morris L. Woodruff  
Secretary

Hall, Chm., Kenney, Rupp, Coleman, and  
Silvey, CC., concur; and certify compliance with the  
provisions of Section 536.080, RSMo.

Clark, Regulatory Law Judge



**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Union Electric )	
Company d/b/a Ameren Missouri for Permission and )	
Approval and a Certificate of Public Convenience and )	<b><u>File No. EA-2016-0207</u></b>
Necessity Authorizing It to Offer a Pilot Subscriber )	Tracking No. YE-2018-0110
Solar Program and File Associated Tariff )	

**ORDER APPROVING SECOND AMENDED STIPULATION AND AGREEMENT,  
GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY,  
REJECTING TARIFF, AND DIRECTING FILING**

**CERTIFICATES**

**§6 Jurisdiction and powers of the State Commission**

**§11 When a certificate is required generally**

**§42 Electric and power**

The Commission concluded that in accordance with subsections 393.170.1 and .2, RSMo 2016, an electrical corporation may not construct electrical plant without first obtaining the permission and approval of this Commission.

**§11 When a certificate is required generally**

The Commission approved the second amended stipulation and agreement addressing a pilot subscriber solar program for Union Electric Company d/b/a Ameren Missouri. As part of that agreement, the Commission approved a certificate of convenience and necessity to build the solar facility, rejected the tariff filed with the application, and directed a compliance tariff be filed.

**§21 Grant or refusal of certificate generally**

The Commission concluded that on August 28, 2018, the date of issuance of the order, S.B. 564 (Section 393.170, S.B. 564, 99th Gen. Assemb., 2nd Reg. Sess. (Mo. 2018).) became effective containing an exception to the need for Commission approval for “an energy generation unit that has a capacity of one megawatt or less.” Subsection 393.170.1., RSMo. The Commission determined that the solar facility being proposed may fall within that exception. However, the application was filed before the new law became effective, the parties agreed to conditions contingent on the Commission’s grant of a certificate, no party opposed the certificate, and nothing in the statute prohibited the Commission from granting a certificate. Therefore, the Commission granted a certificate even if it was not required.

**§21.1 Public interest****§21.4 Economic feasibility of proposed service**

The Commission found that Union Electric, d/b/a Ameren Missouri's pilot subscriber solar program was e feasible and was in the public interest.

**§21.2 Technical qualifications of applicant****§21.3 Financial ability of applicant**

The Commission found that the application for tariff approval demonstrated, and the parties agreed, Union Electric, d/b/a Ameren Missouri, was qualified to construct, install, own, operate, maintain, and otherwise control and manage a pilot subscriber solar program and was financially able to provide the service.

**§42 Electric and power**

The Commission concluded that granting the application for a certificate of convenience and necessity for a pilot subscriber solar program met the criteria set out in *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).

**ELECTRIC****§3 Certificate of convenience and necessity**

The Commission concluded that in accordance with subsections 393.170.1 and .2, RSMo 2016, an electrical corporation may not construct electrical plant without first obtaining the permission and approval of this Commission.

**§3 Certificate of convenience and necessity**

The Commission concluded that granting the application for a certificate of convenience and necessity for a pilot subscriber solar program met the criteria set out in *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).

**§9 Jurisdiction and powers of the State Commission**

The Commission concluded that in accordance with subsections 393.170.1 and .2, RSMo 2016, an electrical corporation may not construct electrical plant without first obtaining the permission and approval of this Commission.

**EVIDENCE, PRACTICE AND PROCEDURE****§8 Stipulation**

The Commission approved the second amended stipulation and agreement addressing a pilot subscriber solar program for Union Electric Company d/b/a Ameren Missouri. As part of that agreement, the Commission approved a certificate of convenience and necessity to build the solar facility, rejected the tariff filed with the application, and directed a compliance tariff be filed.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 28<sup>th</sup> day of August, 2018.

In the Matter of the Application of Union Electric	)	
Company d/b/a Ameren Missouri for Permission and	)	
Approval and a Certificate of Public Convenience and	)	<b>File No. EA-2016-0207</b>
Necessity Authorizing It to Offer a Pilot Subscriber	)	Tracking No. YE-2018-0110
Solar Program and File Associated Tariff	)	

**ORDER APPROVING SECOND AMENDED STIPULATION AND AGREEMENT,  
GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY,  
REJECTING TARIFF, AND DIRECTING FILING**

Issue Date: August 28, 2018

Effective Date: September 8, 2018

The Commission is approving the second amended stipulation and agreement addressing a pilot subscriber solar program for Union Electric Company d/b/a Ameren Missouri (Ameren Missouri). As part of that agreement, the Commission is approving the certificate of convenience and necessity (CCN) to build the solar facility, rejecting the currently filed Tariff No. YE-2018-0110, and directing a compliance tariff be filed.

On April 27, 2016, Ameren Missouri filed an application requesting Commission approval of a subscriber solar pilot tariff for the purpose of implementing a subscriber solar pilot program. At the time of the filing, Ameren Missouri envisioned having the tariff approved to begin the subscriptions with an application for a CCN to be filed later. The parties held multiple meetings to discuss the subscriber solar pilot program and reached an agreement with regard to implementing the program. On October 5, 2016, the Commission approved the stipulation and agreement.

In an attempt to comply with the terms of the Commission-approved stipulation and agreement, Ameren Missouri filed an application for an expedited certificate of

convenience and necessity on March 7, 2018. However, various parties objected to that application indicating that it was not consistent with certain terms of the Commission-approved stipulation and agreement.

The application for a CCN also contained Tariff No. YE-2018-0110 bearing an April 6, 2018 effective date. The tariff sheets filed with Ameren's application were suspended several times by the Commission and currently are suspended until September 13, 2018.

After additional negotiations, Ameren Missouri, the Staff of the Missouri Public Service Commission, the Missouri Department of Economic Development – Division of Energy, and Earth Island Institute d/b/a Renew Missouri (the "signatories") reached an agreement to amend the terms of the Commission-approved stipulation and agreement.

An order approving the amended stipulation and agreement was discussed by the Commission at its June 13, 2018 agenda meeting, but was withdrawn after the Commissioners identified some inconsistencies that the parties agreed to correct. On August 20, 2018, a *Second Amended Stipulation and Agreement* was filed by the same signatories. Although the Office of the Public Counsel, United for Missouri, and the Missouri Industrial Energy Consumers were not signatories, the agreement states that those parties indicated no opposition to the agreement.

Commission rule 4 CSR 240-2.115(2)(B) allows nonsignatory parties seven days to object to a nonunanimous stipulation and agreement. Seven days have passed and no objections were received. The Commission will approve the agreement and direct the parties to comply with its terms.

The second amended stipulation and agreement resolves all issues with regard to the application for a certificate of convenience and necessity and the pending tariff

sheets. The second amended stipulation and agreement contains provisions governing the facility and the program under which it will operate. The main differences between the second amended stipulation and agreement and the Commission-approved agreement is a change to the cap on the amount of capital investment Ameren Missouri can make on the project and the change to the construction of a single facility instead of two facilities. Other amendments include:

- the Commission will approve a CCN for the St. Louis Lambert International Airport location for use in the pilot program;
- as a condition of receiving the CCN, Ameren Missouri will make certain filings, which may occur after the Commission issues the CCN;
- only a single one megawatt (1 MW) facility will be built instead of two 500 kilowatt (kW) facilities;
- the facility will not be built until Ameren Missouri has received customer subscriptions totaling 1 MW;
- Ameren Missouri will require a Solar Participation Fee, as set forth in the Commission-approved stipulation and agreement, for all customers enrolling in the pilot, until Ameren Missouri has received enough subscriptions to construct the full 1 MW facility;
- Ameren Missouri's capital investment is capped at \$3 million for the facility;
- Ameren Missouri will consult with the Office of the Public Counsel and other parties in developing answers to Frequently Asked Questions as set out in the Commission-approved stipulation and agreement;

- the required reporting shall begin within 30 days of the Commission approval of the second amended stipulation and agreement and continue as set out in the Commission-approved stipulation and agreement; and
- the Commission should reject Tariff No. YE-2018-0110 and direct Ameren Missouri to file compliance tariff sheets similar to those attached to the second amended stipulation and agreement.

No evidentiary hearing is necessary to grant unopposed relief.<sup>1</sup> Based on the verified filings, the Commission independently finds and concludes that the second amended stipulation and agreement's provisions support safe and adequate service at just and reasonable rates. The Commission incorporates the provisions of the second amended stipulation and agreement into this order as if fully set forth herein.

With regard to the application for a CCN, Ameren Missouri is an "electrical corporation" and a "public utility" as defined in Subsections 386.020(15) and (43), RSMo 2016. According to Subsections 393.170.1 and .2, RSMo 2016, an electrical corporation may not construct electrical plant without first obtaining the permission and approval of this Commission. However, on August 28, 2018, the date of issuance of this order, S.B. 564<sup>2</sup> became effective containing an exception to the need for Commission approval for "an energy generation unit that has a capacity of one megawatt or less."<sup>3</sup> Thus, the solar facility being proposed may fall within the exception. The application was filed before the new law became effective and the parties have agreed to other conditions contingent on the Commission's grant of a

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<sup>1</sup> *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

<sup>2</sup> Section 393.170, S.B. 564, 99<sup>th</sup> Gen. Assemb., 2<sup>nd</sup> Reg. Sess. (Mo. 2018).

<sup>3</sup> Subsection 393.170.1.

certificate. Additionally, no party has opposed the certificate and nothing in the statute prohibits the Commission from granting a certificate. Therefore, the Commission will grant the certificate even if it is not required.

In granting a certificate, the Commission may give permission and approval when it has determined after due hearing<sup>4</sup> that the construction is “necessary or convenient for the public service.”<sup>5</sup> The Commission may also impose such conditions as it deems reasonable and necessary upon its grant of permission and approval.<sup>6</sup>

Ameren Missouri requests authority to construct, own, operate, and maintain a solar generation facility for the creation of a solar subscription pilot program. The parties to this proceeding have extensively negotiated the need for and the terms of this program and have agreed that the Commission should grant the CCN. The solar facility will be located on land owned by the City of St. Louis at the St. Louis Lambert International Airport. Ameren Missouri has secured a lease for use of this land.

The Commission has stated five criteria that it will use in determining whether construction and operation are necessary or convenient for the public service:

1. There must be a need for the service;
2. The applicant must be qualified to provide the proposed service;
3. The applicant must have the financial ability to provide the service;

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<sup>4</sup> The requirement for a hearing is met when the opportunity for hearing is provided and no proper party requests the opportunity to present evidence. No party requested a hearing in this matter; thus, no hearing is necessary. *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm’n of the State of Missouri*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

<sup>5</sup> Section 393.170.3, RSMo 2016.

<sup>6</sup> *Id.*

4. The applicant's proposal must be economically feasible; and
5. The service must promote the public interest.<sup>7</sup>

In its *Application for Approval of a Subscriber Solar Pilot Tariff*, Ameren Missouri explained that this pilot program will allow its customers to voluntarily subscribe to the program thereby supporting the development of additional solar facilities by Ameren Missouri. Ameren Missouri stated that this program would further the company's commitment to renewable generation in the state of Missouri. Additionally, Ameren Missouri stated that it has a customer base that cannot put solar panels on their homes or businesses, but desire to support the development of renewable energy, and this program will meet that need. Ameren Missouri supported these statements with the sworn testimony of Michael Harding and William Barbieri attached to its *Application for Approval of a Subscriber Solar Pilot Tariff*.

The application for tariff approval also demonstrates, and the parties have agreed, Ameren Missouri is qualified to construct, install, own, operate, maintain, and otherwise control and manage this solar project and it is financially able to provide this service. The project is economically feasible and is in the public interest. The Commission concludes that granting the application for a CCN meets the above-listed criteria.

The Commission has reviewed the verified applications and their attachments, the exemplar tariffs, the various other verified pleadings, and the multiple agreements. Based on the Commission's independent and impartial review of the record, the Commission finds that granting Ameren Missouri's application for a CCN

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<sup>7</sup> *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).



would serve the public convenience and necessity. Therefore, the application will be granted.

Since the original agreement between the parties contemplated that the CCN application procedure would be expedited and no party has opposed the current applications or stipulation and agreement, this order will be given a ten-day effective date.

**THE COMMISSION ORDERS THAT:**

1. The *Second Amended Stipulation and Agreement* filed on August 20, 2018, and attached hereto is approved. The attached stipulation and agreement is incorporated into this order as if set forth herein. The parties are ordered to comply with the provisions of the stipulation and agreement.

2. The tariff sheets filed on March 7, 2018, under Tariff File No. YE-2018-0110, are rejected.

3. Union Electric Company d/b/a Ameren Missouri shall file compliance tariffs similar to the exemplar tariff sheets attached to the *Second Amended Stipulation and Agreement*.

4. Union Electric Company d/b/a Ameren Missouri is granted a certificate of public convenience and necessity to construct, own, operate, and maintain a solar generation facility in the City of St. Louis, Missouri, at the St. Louis Lambert International Airport as described in the *Second Amended Stipulation and Agreement*.

5. Union Electric Company d/b/a Ameren Missouri shall comply with the filing requirements recommended by the Staff of the Missouri Public Service Commission and set out in the *Second Amended Stipulation and Agreement*.

6. The reporting requirements required by the stipulation and agreement shall begin no later than 30 days after the effective date of this order.

7. Nothing in this order shall be considered a finding by the Commission of the reasonableness of the expenditures herein involved, nor of the value for ratemaking purposes of the properties herein involved, nor as an acquiescence in the value placed on the property.

8. The Commission reserves the right to consider the ratemaking treatment to be afforded the expenditures and properties herein involved, and the resulting cost of capital, in any later proceeding.

9. This order shall be effective on September 8, 2018.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

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

Dippell, Senior Regulatory Law Judge

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Elm Hills Utility	)	
Operating Company, Inc. for Certificate of	)	<b><u>File No. SA-2018-0313</u></b>
Convenience and Necessity	)	

**ORDER GRANTING CERTIFICATE OF  
CONVENIENCE AND NECESSITY AND GRANTING WAIVER**

**CERTIFICATES**

**§21 Grant or refusal of certificate generally**

The Commission articulated the specific criteria to be used when evaluating applications for utility CCNs in the case *In Re Intercon Gas, Inc.*, 30 Mo P.S.C. (N.S.) 554, 561 (1991). The *Intercon* case combined the standards used in several similar certificate cases, and set forth the following criteria: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be public interest.

**EVIDENCE, PRACTICE AND PROCEDURE**

**§1 Generally**

For good cause, the Commission waived the rule 4 CSR 240-4.017(1) 60-day notice requirement for granting a certificate of convenience and necessity to operate a sewer facility where Elm Hills had had no communication with the Office of the Commission within the prior 150 days regarding any substantive issue likely to be in the case and Elm Hills stated that delay in filing the application would not be in the public interest because of the health and safety issues involved.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 12<sup>th</sup> day of September, 2018.

In the Matter of the Application of Elm Hills Utility Operating Company, Inc. for a Certificate of Convenience and Necessity

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)  
)

**File No. SA-2018-0313**

**ORDER GRANTING CERTIFICATE OF  
CONVENIENCE AND NECESSITY AND GRANTING WAIVER**

Issue Date: September 12, 2018

Effective Date: September 22, 2018

On May 1, 2018, Elm Hills Utility Operating Company, Inc. ("Elm Hills") filed an application with the Missouri Public Service Commission ("Commission") requesting that the Commission grant it a Certificate of Convenience and Necessity ("CCN") to install, own, acquire, construct, operate, control, manage and maintain sewer systems in Johnson County, Missouri. The requested CCN would allow Elm Hills to provide sewer service to existing developments known as Rainbow Acres, serving 46 existing customers, and Twin Oaks or The Preserve, which currently has approximately 53 customers. To provide service to the proposed areas, Elm Hills requests permission to purchase substantially all the sewer assets from the Rainbow Acres Homeowners Association and The Preserve Homeowners Association ("Associations").

The Commission issued notice and set a deadline for intervention requests, but no persons requested to intervene in this proceeding. On May 25, 2018, the Commission directed Elm Hills to provide notice to all properties currently being served by the

Associations. On July 30, 2018, the Commission's Staff filed its Recommendation and Memorandum to approve the transfer of assets and the granting of the CCN, subject to certain conditions. Staff advises the Commission to issue an order that would:

1. Grant Elm Hills a CCN to provide sewer service in the proposed Rainbow Acres and in the proposed Twin Oaks/Preserve service areas as described in the Application and modified in this memorandum;
2. Authorize Elm Hills to file new tariff sheets in its sewer tariff showing a service area map and written description for Rainbow Acres and for Twin Oaks/Preserve to become effective prior to Elm Hills closing on the assets;
3. Require Elm Hills to file new rate sheets in its sewer tariff, to reflect a monthly flat rate of \$15 applicable to each of the Rainbow Acres residential customers, and a flat rate of \$140 per month applicable to the homeowners association in Twin Oaks/Preserve, to become effective prior to Elm Hills closing on the assets;
4. Require Elm Hills to file a revised tariff sheet in its sewer tariff, applying existing service charges to Rainbow Acres and to Twin Oaks/Preserve;
5. Require Elm Hills to file new tariff sheets outlining rules for pressure sewers and pump units, applicable to customers in Twin Oaks/Preserve, to become effective prior to Elm Hills closing on the Twin Oaks/Preserve assets;
6. Require Elm Hills to notify the Commission of closing on the Rainbow Acres and Twin Oaks/Preserve assets within five (5) days after such closing on any of the respective assets;
7. If closing on any of the assets does not take place within thirty (30) days following the effective date of the Commission's order, require Elm Hills to submit a status report within five (5) days after this thirty (30) day period regarding the status of closing on the respective assets, and additional status reports within five (5) days after each additional thirty (30) day period, until closing takes place, or until Elm Hills determines that a sale of any of the respective assets will not occur;
8. If Elm Hills determines that a sale of any of the respective assets will not occur, require Elm Hills to notify the Commission of such, after which time the Commission may modify, cancel, or deem null and void, the CCN issued to Elm Hills for the specific service area, and require any necessary and appropriate tariff filing action;

9. Require Elm Hills to file a rate case within two (2) years of its closing date on the Twin Oaks/Preserve assets;
10. Require Elm Hills to utilize its existing sewer depreciation rates for the Rainbow Acres and Twin Oaks/Preserve utility assets;
11. Require Elm Hills to continue to keep all of its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts;
12. Require Elm Hills to provide the CXD Staff a sample of ten (10) billing statements issued to its customers. These should be submitted within thirty (30) days of the first billing sent to customers in Rainbow Acres and Twin Oaks/Preserve;
13. Require Elm Hills to distribute to all residential sewer customers in Rainbow Acres and Twin Oaks/Preserve an informational brochure detailing the rights and responsibilities of the utility and its customers, consistent with the requirements of Commission Rule 4 CSR 240-13.040(3), within ten (10) days of closing on the assets;
14. Require Elm Hills to provide an example of its communication efforts with the Rainbow Acres and Twin Oaks/Preserve customers regarding its acquisition of the systems and methods by which customers can contact Elm Hills, within ten (10) days after closing on the assets. The version of the communication sent to customers in the Twin Oaks/Preserve service area should also state that when Elm Hills seeks a rate increase with the Commission, which could happen within two (2) years, it intends to propose a new rate applicable to individual customers. And if and when such a rate is approved, then instead of their homeowners association paying sewer system expenses, customers would individually receive sewer bills similar to bills that other sewer customers receive, and they will be responsible for payment of such bills;
15. Require Elm Hills to submit a notice in the case file regarding completion of sending the above-recommended bill examples, customer informational brochure, and revised contact information, resulting from these transfers of assets; and,
16. Make no finding of the value of this transaction for ratemaking purposes, and make no finding that would preclude the Commission from considering the ratemaking treatment to be afforded these financing transactions or any other matters pertaining to approval of this transfer of assets and the granting of a CCN to Elm Hills, including expenditures incurred related to sewer systems in the certificated service areas, in any later proceeding.

On August 20, 2018, Elm Hills filed its response, stating that it has no objection to the conditions in the Staff Recommendation. The Office of the Public Counsel (“OPC”) proposed several conditions in addition to Staff’s recommended conditions, all but one of which were subsequently withdrawn by OPC. OPC continues to suggest that the Commission add a phrase to Staff’s Condition No. 16 to state that the Commission makes no finding of prudence of the Elm Hills transaction. Since the Commission always has the authority to consider prudence in a future Elm Hills rate proceeding, the proposed language is unnecessary and will not be adopted.

No party has objected to the Staff recommendation within the time set by the Commission. Thus, the Commission will rule upon the unopposed application. No party has requested an evidentiary hearing, and no law requires one.<sup>1</sup> Therefore, this action is not a contested case,<sup>2</sup> and the Commission need not separately state its findings of fact.

The Commission may grant a sewer corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either “necessary or convenient for the public service.”<sup>3</sup> The Commission articulated the specific criteria to be used when evaluating applications for utility CCNs in the case *In Re Intercon Gas, Inc.*, 30 Mo P.S.C. (N.S.) 554, 561 (1991). The *Intercon* case combined the standards used in several similar certificate cases, and set forth the following criteria: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the

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<sup>1</sup> *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm’n*, 776 S.W.2d 494, 496 (Mo. App. 1989).

<sup>2</sup> Section 536.010(4), RSMo 2016.

<sup>3</sup> Section 393.170.3, RSMo 2016.

public interest.<sup>4</sup> The Commission finds that Elm Hills possesses adequate technical, managerial, and financial capacity to operate the sewer systems it wishes to purchase from the Associations. The Commission concludes that the factors for granting a certificate of convenience and necessity to Elm Hills have been satisfied and that it is in the public interest for Elm Hills to provide sewer service to the customers currently being served by the Associations. Consequently, based on the Commission's independent and impartial review of the verified filings, the Commission will authorize the transfer of assets and grant Elm Hills the certificate of convenience and necessity to provide sewer service within the proposed service areas, subject to the conditions described above.

The application also asked the Commission to waive the 60-day notice requirement under 4 CSR 240-4.017(1). Elm Hills asserts that good cause exists in this case for granting such waiver because it has had no communication with the Office of the Commission within the prior 150 days regarding any substantive issue likely to be in this case. In addition, Elm Hills states that delay in filing the application would not be in the public interest because of the health and safety issues involved. The Commission finds that good cause exists to waive the notice requirement, and a waiver of 4 CSR 240-4.017(1) will be granted. Since any delay in completing the proposed transactions could impact the health and safety of customers, the Commission will make this order effective in ten days.

**THE COMMISSION ORDERS THAT:**

1. Elm Hills Utility Operating Company, Inc.'s request for a waiver of the notice requirement under Commission Rule 4 CSR 240-4.017(1) is granted.

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<sup>4</sup> The factors have also been referred to as the "Tartan Factors" or the "Tartan Energy Criteria." See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994), 1994 WL 762882, \*3 (Mo. P.S.C.).



2. Elm Hills Utility Operating Company, Inc. is granted the certificate of convenience and necessity to provide sewer service within the authorized service areas as more particularly described in the application, subject to the conditions and requirements contained in Staff's Recommendation, including those conditions described in the body of this order.

3. Elm Hills Utility Operating Company, Inc. is authorized to acquire the assets of the Rainbow Acres Homeowners Association and The Preserve Homeowners Association identified in the application.

4. Elm Hills Utility Operating Company, Inc. is authorized to take such other actions as may be deemed necessary and appropriate to consummate the transactions proposed in the application.

5. This order shall become effective on September 22, 2018.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

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

Bushmann, Senior Regulatory Law Judge

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Laclede Gas )  
 Company to Change its Infrastructure System ) **File No. GO-2016-0332**  
 Replacement Surcharge in its Missouri Gas )  
 Energy Service Territory )

In the Matter of the Application of Laclede Gas )  
 Company to Change its Infrastructure System ) **File No. GO-2016-0333**  
 Replacement Surcharge in its Laclede Gas )  
 Service Territory )

**REPORT AND ORDER ON REMAND**

Affirmed in part, reversed in part, and remanded: *Matter of the Application of Laclede Gas Company to Change Its Infrastructure System Replacement Surcharge in Its Missouri Gas Energy Service Territory*, 593 S.W.3d 582 (Mo. App. W.D. 2019)

**EVIDENCE, PRACTICE AND PROCEDURE**

**§11 Best and secondary evidence**

The Commission found that Spire Missouri's analysis of ten work orders out of hundreds was too small of a sample size from which to extrapolate its finding that 9 of 10 work orders decreased ISRS costs. The best evidence for calculating the costs of ineligible plastic pipe replacements was provided by Staff. Staff's methodology was to review all work order authorizations to determine the feet of main and service lines replaced and retired by the type of pipe, and apply the actual individual plastic main and services line percentages to the work order cost to determine the value of the replacement of plastic pipe for the work order.

**EXPENSE**

**§79 Infrastructure system replacement surcharge (ISRS) eligible expense**

There are two requirements for eligibility of cost recovery: 1) the replaced components must be installed to comply with state or federal safety requirements; and 2) the existing facilities being replaced must be worn out or in a deteriorated condition. The Commission found that Spire Missouri did not demonstrate that its replacement of plastic pipe components complied with the ISRS statutory requirements.

**§79 Infrastructure system replacement surcharge (ISRS) eligible expense**

Replacement of plastic pipes was not an expense whose cost could be recovered with the infrastructure system replacement surcharge (ISRS) due to a lack of evidence as to

their being worn out or deteriorated, and lack of evidence that replacement of plastic pipe was incidental to the replacement of other worn out or deteriorated components.

### **§79 Infrastructure system replacement surcharge (ISRS) eligible expense**

Although the previously recovered plastic pipe replacement costs were found ineligible for ISRS cost recovery, the Commission does not have statutory authority to order a refund of those costs because the ISRS tariff at issue was already incorporated into Spire Missouri's rate base, which reset the ISRS to zero. After a general rate case, the Commission cannot correct those previous tariffs retroactively by applying a refund prospectively in future ISRS cases.

## **GAS**

### **§7 Jurisdiction and powers of the State Commission**

Although the previously recovered plastic pipe replacement costs were found ineligible for ISRS cost recovery, the Commission does not have statutory authority to order a refund of those costs because the ISRS tariff at issue was already incorporated into Spire Missouri's rate base, which reset the ISRS to zero. After a general rate case, the Commission cannot correct those previous tariffs retroactively by applying a refund prospectively in future ISRS cases.

## **RATES**

### **§6 Limitations on jurisdiction and power**

### **§65 Refunds**

### **§68 Establishment of rate base**

### **§74 Retroactive rates**

### **§81 Surcharges**

Although the previously recovered plastic pipe replacement costs were found ineligible for ISRS cost recovery, the Commission does not have statutory authority to order a refund of those costs because the ISRS tariff at issue was already incorporated into Spire Missouri's rate base, which reset the ISRS to zero. After a general rate case, the Commission cannot correct those previous tariffs retroactively by applying a refund prospectively in future ISRS cases.

### **§81 Surcharges**

Replacement of plastic pipes was not an expense whose cost could be recovered with the infrastructure system replacement surcharge (ISRS) due to a lack of evidence as to their being worn out or deteriorated, and lack of evidence that replacement of plastic pipe was incidental to the replacement of other worn out or deteriorated components.

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Application of Laclede Gas )  
 Company to Change its Infrastructure System )  
 Replacement Surcharge in its Missouri Gas )  
 Energy Service Territory )

**File No. GO-2016-0332**

In the Matter of the Application of Laclede Gas )  
 Company to Change its Infrastructure System )  
 Replacement Surcharge in its Laclede Gas )  
 Service Territory )

**File No. GO-2016-0333**

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## REPORT AND ORDER ON REMAND

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**Issue Date:** September 20, 2018

**Effective Date:** October 1, 2018

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

In the Matter of the Application of Laclede Gas )  
Company to Change its Infrastructure System ) **File No. GO-2016-0332**  
Replacement Surcharge in its Missouri Gas )  
Energy Service Territory )

In the Matter of the Application of Laclede Gas )  
Company to Change its Infrastructure System ) **File No. GO-2016-0333**  
Replacement Surcharge in its Laclede Gas )  
Service Territory )

**APPEARANCES**

Appearing for **SPIRE MISSOURI, INC.:**

**Michael C. Pendergast**, Fischer & Dority, P.C., 101 Madison, Ste. 400,  
Jefferson City, Missouri, 65101.

**Rick Zucker**, Zucker Law LLC, 423 (R) South Main St., St. Charles, Missouri,  
63301

Appearing for **OFFICE OF THE PUBLIC COUNSEL:**

**Lera Shemwell**, Senior Public Counsel, and **John Clizer**, Associate Public Counsel,  
PO Box 2230, 200 Madison St., Ste. 650, Jefferson City, Missouri, 65102-2230.

Appearing for the **STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:**

**Jeffrey A. Keevil**, Deputy Staff Counsel, **Mark Johnson**, Senior Counsel, and  
**Whitney Payne**, Associate Counsel, PO Box 360, 200 Madison Street,  
Jefferson City, Missouri 65102.

**SENIOR REGULATORY LAW JUDGE:** Michael Bushmann

## REPORT AND ORDER ON REMAND

### I. Procedural History

On September 30, 2016, Laclede Gas Company filed applications and petitions with the Missouri Public Service Commission (“Commission”) to change its Infrastructure System Replacement Surcharge (“ISRS”) in its Missouri Gas Energy and Laclede Gas Service territories (collectively, “Spire Missouri”)<sup>1</sup>. Spire Missouri requested an adjustment to its ISRS rate schedule to recover costs incurred in connection with infrastructure system replacements made during the period March 1, 2016 through October 31, 2016. The Office of the Public Counsel (“OPC”) filed a motion requesting that the Commission reject the petition or schedule an evidentiary hearing. The Commission held an evidentiary hearing on January 3, 2017 (“1<sup>st</sup> hearing”).

On January 18, 2017, the Commission issued a Report and Order permitting Spire Missouri to file new tariffs to recover certain ISRS revenues, including plastic pipe replacements. That Report and Order is attached hereto as Attachment A. OPC appealed the Report and Order to the Missouri Western District Court of Appeals (WD80544), challenging the Commission’s decision that certain plastic pipe replacements were eligible ISRS costs.

On November 21, 2017, the Court of Appeals issued an opinion (WD80544) which held that recovery of costs for replacement of plastic components that are not worn out or in a deteriorated condition is not available under ISRS. The Court reversed the Commission’s Report and Order “as it relates to the inclusion of the replacement costs of the plastic components in the ISRS rate schedules, and the case is remanded for further

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<sup>1</sup> The company subsequently underwent a corporate reorganization and changed its name to Spire Missouri, Inc. with East and West service territories.

proceedings consistent with this opinion”.<sup>2</sup> The Court’s opinion is attached hereto as Attachment B. On March 7, 2018, the Court of Appeals issued the mandate in the appeal after the Supreme Court of Missouri denied transfer.

In compliance with the Court of Appeals’ opinion remanding these cases back to the Commission for further proceedings, the Commission conducted oral arguments and an evidentiary hearing to receive additional evidence.<sup>3</sup> In total, the Commission admitted the testimony of ten witnesses and 29 exhibits into evidence and took official notice of several documents. Post-hearing briefs were filed on September 6, 2018, and the case was deemed submitted for the Commission’s decision on that date when the Commission closed the record.<sup>4</sup>

## **II. Findings of Fact**

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. Laclede Gas Company changed its name to Spire Missouri, Inc. on August 30, 2017. Spire Missouri is an investor-owned gas utility providing retail gas service to large portions of Missouri through its two operating units or divisions, Spire Missouri East (f/k/a Laclede Gas Company) and Spire Missouri West (f/k/a Missouri Gas Energy).<sup>5</sup>

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<sup>2</sup> *Matter of Application of Laclede Gas Co. to Change Its Infrastructure Sys. Replacement Surcharge in Its Missouri Gas Energy Serv. Territory v. Office of Pub. Counsel*, 539 S.W.3d 835, 841 (Mo. App. 2017), *reh’g and/or transfer denied* (Dec. 14, 2017), *transfer denied* (Mar. 6, 2018).

<sup>3</sup> Transcript (“Tr.”), Volume 3.

<sup>4</sup> “The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument.” Commission Rule 4 CSR 240-2.150(1).

<sup>5</sup> Amended Report and Order, *In the Matter of the Laclede Gas Company’s Request to Increase Its Revenues for Gas Service*, issued March 7, 2018, File No. GR-2017-0215, p. 5, 11.

2. Spire Missouri is a “gas corporation” and a “public utility”, as each of those phrases is defined in Section 386.020, RSMo 2016.

3. The Office of the Public Counsel (“OPC”) “may represent and protect the interests of the public in any proceeding before or appeal from the public service commission.”<sup>6</sup> OPC “shall have discretion to represent or refrain from representing the public in any proceeding.”<sup>7</sup> OPC did participate in this matter.

4. The Staff of the Missouri Public Service Commission (“Staff”) is a party in all Commission investigations, contested cases and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.<sup>8</sup>

5. An ISRS is a statutorily authorized rate adjustment mechanism tool utilized by eligible gas corporations to recover the cost of certain infrastructure replacements by establishing and updating a surcharge on a customer’s bill.<sup>9</sup> A qualifying gas corporation files an ISRS petition with the Commission seeking authority to recover the depreciation expense and return associated with eligible net plant additions, as well as amounts associated with property taxes for those additions, outside of a general rate case.<sup>10</sup>

6. Staff performs an ISRS audit when a petition to change an ISRS is filed.<sup>11</sup> By statute, Staff may file a report of its audit within 60 days from the time an ISRS petition is filed.<sup>12</sup>

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<sup>6</sup> Section 386.710(2), RSMo 2016; Commission Rules 4 CSR 240-2.010(10) and (15) and 2.040(2).

<sup>7</sup> Section 386.710(3), RSMo 2016; Commission Rules 4 CSR 240-2.010(10) and (15) and 2.040(2).

<sup>8</sup> Commission Rules 4 CSR 240-2.010(10) and (21) and 2.040(1).

<sup>9</sup> Staff Ex. 6 (1<sup>st</sup> hearing), Oligschlaeger Rebuttal, p. 3.

<sup>10</sup> *Id.*

<sup>11</sup> Staff Ex. 3 (1<sup>st</sup> hearing), Sommerer Direct, Schedule DMS-d2.

<sup>12</sup> Section 393.1015.2(2), RSMo 2016.



7. On September 30, 2016, Spire Missouri filed applications and petitions (“Petitions”) seeking an adjustment to its ISRS rate schedule for its East and West service territories to recover costs incurred in connection with eligible infrastructure system replacements made during the period March 1, 2016 through October 31, 2016.<sup>13</sup>

8. Spire Missouri attached supporting documentation to its Petitions for the plant additions completed since the last approved ISRS change. This included documentation identifying the type of addition, utility account, work order description, month of completion, addition amount, depreciation rate, accumulated depreciation, and depreciation expense.<sup>14</sup> The company also provided estimates of capital expenditures for projects completed through October 2016<sup>15</sup>, which were subsequently replaced with updated actual cost information and provided to Staff and OPC.<sup>16</sup>

9. Spire Missouri also attached tables to its Petitions identifying the state or federal safety requirement, with a citation to a state statute or Commission rule, mandating each work order.<sup>17</sup>

10. The Commission conducted an evidentiary hearing on January 3, 2017, and the Commission issued its Report and Order on January 18, 2017, concluding that the plastic pipe was an integral component of the worn out and deteriorated cast iron and steel pipe, so Spire Missouri could recover the cost of replacing the plastic pipe.<sup>18</sup>

11. OPC filed a notice of appeal, challenging the Commission’s decision that certain plastic pipe replacements were eligible ISRS costs.

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<sup>13</sup> Laclede Ex. 4 and 5 (1st hearing), p. 2.

<sup>14</sup> Laclede Ex. 4 and 5 (1st hearing), Appendix A and B.

<sup>15</sup> *Id.*

<sup>16</sup> Staff Ex. 2 (1st hearing), Schedule JKG-d1, p. 4.

<sup>17</sup> Laclede Ex. 4 and 5 (1<sup>st</sup> hearing), Appendix C.

<sup>18</sup> Report and Order, File Nos. GO-2016-0332 and GO-2016-0333, p. 20.

12. In its briefs on appeal, OPC requested three times that the Court of Appeals remand the case back to the Commission with instructions to approve temporary rate adjustments designed to flow through to Spire Missouri's customers the excess amounts that were collected by Spire Missouri, plus interest, pursuant to Section 386.520.2(2), RSMo.<sup>19</sup>

13. The Missouri Western District Court of Appeals issued an opinion (WD80544) on November 21, 2017, which held that recovery of costs for replacement of plastic components that are not worn out or in a deteriorated condition is not available under ISRS. The Court reversed the Commission's Report and Order "as it relates to the inclusion of the replacement costs of the plastic components in the ISRS rate schedules, and the case is remanded for further proceedings consistent with this opinion".<sup>20</sup> The Court's order did not include instructions regarding a temporary rate adjustment. Spire Missouri and the Commission applied for rehearing and transfer to the Supreme Court, which were denied, and the Court of Appeals issued its mandate on March 7, 2018.

14. On December 13, 2017, several parties in Spire Missouri's then-pending general rate cases, GR-2017-0215 and GR-2017-0216 ("rate cases") filed a Partial Stipulation and Agreement to resolve certain issues, including ISRS. The entire text of the ISRS section states "As required by Commission rules, the Company's current ISRS shall be reset to zero upon the effective date of new rates in this proceeding. Plant in service

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<sup>19</sup> Commission Ex. A, Initial Brief of the Office of the Public Counsel, p. 5-6, 36-37; Commission Ex. B, Reply Brief of the Office of the Public Counsel, p. 27.

<sup>20</sup> *Matter of Application of Laclede Gas Co. to Change Its Infrastructure Sys. Replacement Surcharge in Its Missouri Gas Energy Serv. Territory v. Office of Pub. Counsel*, 539 S.W.3d 835, 841 (Mo. App. 2017), *reh'g and/or transfer denied* (Dec. 14, 2017), *transfer denied* (Mar. 6, 2018).

additions for inclusion in a future ISRS shall be limited to additions subsequent to September 30, 2017.”<sup>21</sup>

15. On March 7, 2018, the Commission issued an Amended Report and Order in the rate cases stating that the Partial Stipulation and Agreement was not objected to, so it became unanimous. The Commission approved the partial stipulation and ordered the parties to comply with those terms. The Amended Report and Order was ordered to become effective on March 17, 2018.<sup>22</sup>

16. On April 19, 2018, new rates for Spire Missouri became effective in the rate cases, which incorporated into base rates eligible costs previously reflected in Spire Missouri’s ISRS.<sup>23</sup> The existing ISRS was reset to zero.<sup>24</sup>

17. After these cases were remanded, Spire Missouri provided all work order authorizations for projects totaling over \$25,000, except for open blanket work orders. A blanket work order is a work order related to ongoing projects that will not close in a certain period of time.<sup>25</sup>

18. Staff reviewed all of the work order authorizations provided by the company to determine the feet of main and service lines replaced and retired by the type of pipe (plastic, cast iron, steel, etc.). Staff applied the actual individual plastic main and services line percentages to the work order cost to determine the value of the replacement of plastic pipe for the work order. Staff did not remove any amounts for work orders that were

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<sup>21</sup> Partial Stipulation and Agreement, *In the Matter of Laclede Gas Company’s Request to Increase Its Revenues for Gas Service*, GR-2017-0215, and *In the Matter of Laclede Gas Company d/b/a Missouri Gas Energy’s Request to Increase Its Revenues for Gas Service*, GR-2017-0216, p. 6.

<sup>22</sup> Amended Report and Order, *In the Matter of Laclede Gas Company’s Request to Increase Its Revenues for Gas Service*, GR-2017-0215, and *In the Matter of Laclede Gas Company d/b/a Missouri Gas Energy’s Request to Increase Its Revenues for Gas Service*, GR-2017-0216, March 7, 2018.

<sup>23</sup> Order Approving Tariff in Compliance with Commission Order, *In the Matter of Laclede Gas Company’s Request to Increase Its Revenues for Gas Service*, GR-2017-0215, and *In the Matter of Laclede Gas Company d/b/a Missouri Gas Energy’s Request to Increase Its Revenues for Gas Service*, GR-2017-0216, issued April 4, 2018.

<sup>24</sup> Section 393.1015.6, RSMo 2016.

<sup>25</sup> Ex. 101, Bolin Direct, p. 3-4.

associated with relocations required by a governmental authority, encapsulation work orders, and meter and regulator replacement work orders.<sup>26</sup>

19. For work order authorizations that Spire Missouri did not provide, i.e., those less than \$25,000 and blanket work orders, Staff calculated an average of plastic mains and service lines replaced for the work order authorizations that had actual information provided and applied that percentage to work order authorizations that were not provided.<sup>27</sup>

20. Using this methodology to calculate the replacement costs for plastic pipes, Staff determined that Spire Missouri collected ineligible replacement costs through its ISRS in the amounts of \$827,159 for Spire Missouri West and \$2,283,628 for Spire Missouri East.<sup>28</sup>

21. In evaluating Spire Missouri's work orders, Staff did not consider any cost savings resulting from Spire Missouri's replacement program. Staff only looked at the percentage of plastic pipe replaced.<sup>29</sup>

22. Staff's witnesses provided credible testimony on the correct methodology for determining the costs of ineligible plastic pipe replacements, and Staff's evidence on this issue was the best evidence presented at the hearing. OPC also presented evidence of the replacement costs for plastic pipes, but Staff's calculations were based on more work orders and are more accurate.<sup>30</sup>

23. Some of the plastic pipes that Spire Missouri replaced or retired in place are not worn out or in a deteriorated condition.<sup>31</sup> Spire Missouri did not conduct a review to

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<sup>26</sup> Ex. 101, Bolin Direct, p. 4.

<sup>27</sup> Ex. 101, Bolin Direct, p. 4.

<sup>28</sup> Ex. 101, Bolin Direct, Schedule KKB-d8.

<sup>29</sup> Tr. Vol. 3, p. 451.

<sup>30</sup> Tr. Vol. 3, p. 452.

<sup>31</sup> Tr. Vol. 3, p. 368.

determine if that plastic pipe was worn out or deteriorated before replacing it.<sup>32</sup> The polyethylene plastic pipe that Spire Missouri uses should last indefinitely.<sup>33</sup>

24. Spire Missouri's work order authorization sheets did not explain if a main or service line being replaced was worn out or deteriorated.<sup>34</sup>

25. Spire Missouri did not provide sufficient information for Staff to determine whether any plastic pipe being replaced was incidental to and required to be replaced in conjunction with the replacement of other worn out or deteriorated components.<sup>35</sup>

26. Spire Missouri has not attempted to calculate the amount of plastic pipe replaced that was worn out or in a deteriorated condition.<sup>36</sup>

27. Spire Missouri presented an analysis of ten work orders purporting to show that in nine of those work orders the company reduced, rather than increased, its replacement costs by retiring plastic facilities where it was not operationally or economically feasible to reuse them.<sup>37</sup>

### **III. Conclusions of Law and Discussion**

Spire Missouri is a "gas corporation" and "public utility" as those terms are defined by Section 386.020, RSMo 2016.<sup>38</sup> Spire Missouri is subject to the Commission's jurisdiction, supervision, control, and regulation as provided in Chapters 386 and 393, RSMo. The Commission has the authority under Sections 393.1009 through 393.1015, RSMo, to consider and approve ISRS requests such as the one proposed in the Petitions. Since

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<sup>32</sup> Tr. Vol. 3, p. 369.

<sup>33</sup> Tr. Vol. 3, p. 375.

<sup>34</sup> Tr. Vol. 3, p. 449.

<sup>35</sup> Tr. Vol. 3, p. 466.

<sup>36</sup> Tr. Vol. 3, p. 483.

<sup>37</sup> Ex. 3, Hoferlin Direct, p. 3-5, Schedule CRH-D1.

<sup>38</sup> Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.

Spire Missouri brought the Petitions, it bears the burden of proof.<sup>39</sup> The burden of proof is the preponderance of the evidence standard.<sup>40</sup> In order to meet this standard, Spire Missouri must convince the Commission it is “more likely than not” that its allegations are true.<sup>41</sup> Section 393.1015.2(4), RSMo, states that “[i]f the commission finds that a petition complies with the requirements of sections 393.1009 to 393.1015, the commission shall enter an order authorizing the corporation to impose an ISRS that is sufficient to recover appropriate pretax revenue, as determined by the commission pursuant to the provisions of sections 393.1009 to 393.1015”.

The issues for determination in this remand proceeding are 1) what costs, if any, were recovered through Spire Missouri East and West’s 2016 ISRS for the replacement of ineligible plastic components not in a worn out or in a deteriorated condition, and 2) whether Spire Missouri should be required to refund any of those costs?

### **Ineligible expenses**

Section 393.1012.1, RSMo, provides that a gas corporation may petition the Commission to change its ISRS rate schedule to recover costs for “eligible infrastructure system replacements”, which is defined in Section 393.1009(3), RSMo.<sup>42</sup> In order to be

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<sup>39</sup> “The burden of proof, meaning the obligation to establish the truth of the claim by preponderance of the evidence, rests throughout upon the party asserting the affirmative of the issue”. *Clapper v. Lakin*, 343 Mo. 710, 723, 123 S.W.2d 27, 33 (1938).

<sup>40</sup> *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996).

<sup>41</sup> *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez*, 936 S.W.2d at 109 -111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

<sup>42</sup> “Eligible infrastructure system replacements”, gas utility plant projects that:

- (a) Do not increase revenues by directly connecting the infrastructure replacement to new customers;
- (b) Are in service and used and useful;
- (c) Were not included in the gas corporation's rate base in its most recent general rate case; and
- (d) Replace or extend the useful life of an existing infrastructure.

eligible, the project must meet the definition of a “gas utility plant project” in Section 393.1009(5), RSMo.<sup>43</sup>

The issue presented in these cases is whether certain plastic main and service line replacements installed by Spire Missouri are eligible for ISRS recovery. Spire Missouri’s position is that it should be able to collect all of the ISRS charges it requested in the Petitions, since all the projects and work orders included are ISRS-eligible. Staff and OPC recommend that the Commission issue an order that excludes all plastic pipe replacements from the amounts Spire Missouri is permitted to recover, although they differ somewhat on the method for calculating those ineligible expenses.

In its review of the Commission’s previous Report and Order, the Missouri Western District Court of Appeals stated that Section 393.1009(5)(a) “sets forth two requirements for component replacements to be eligible for cost recovery under ISRS: (1) the replaced components must be installed to comply with state or federal safety requirements and (2) the existing facilities being replaced must be worn out or in a deteriorated condition.”<sup>44</sup> The Court found that there was no evidence of a state or federal safety requirement that mandated the replacement of plastic mains and service lines, and that Spire Missouri’s “plastic mains and service lines were not in a worn out or deteriorated condition”.<sup>45</sup> The

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<sup>43</sup> “Gas utility plant projects” may consist only of the following:

(a) Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to comply with state or federal safety requirements as replacements for existing facilities that have worn out or are in deteriorated condition;

(b) Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects extending the useful life or enhancing the integrity of pipeline system components undertaken to comply with state or federal safety requirements; and

(c) Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state, or another entity having the power of eminent domain provided that the costs related to such projects have not been reimbursed to the gas corporation.

<sup>44</sup> *Matter of Application of Laclede Gas Co. to Change Its Infrastructure Sys. Replacement Surcharge in Its Missouri Gas Energy Serv. Territory v. Office of Pub. Counsel*, 539 S.W.3d 835, 839 (Mo. Ct. App. 2017), *reh’g and/or transfer denied* (Dec. 14, 2017), *transfer denied* (Mar. 6, 2018)

<sup>45</sup> *Id.* at p. 839-840.

Court concluded “that recovery of the costs for replacement of plastic components that are not worn out or in a deteriorated condition is not available under ISRS”, so the Commission’s Report and Order was reversed and “remanded for further proceedings consistent with this opinion”.<sup>46</sup>

After conducting a hearing on remand to take further evidence, that evidence showed that Spire Missouri’s plastic pipe replacements were not worn out or deteriorated. The polyethylene plastic pipe that Spire Missouri uses should last indefinitely, but Spire Missouri did not conduct a review to determine if that plastic pipe was worn out or deteriorated before replacing it. Spire Missouri’s work order authorization sheets did not explain if a main or service line being replaced was worn out or deteriorated, and the company made no attempt to calculate the amount of plastic pipe replaced that was worn out or in a deteriorated condition. In addition, Spire Missouri did not provide sufficient information to determine whether any plastic pipe being replaced was incidental to and required to be replaced in conjunction with the replacement of other worn out or deteriorated components.

Spire Missouri argues that no adjustment to the company’s ISRS charges should be made in connection with plastic pipe replacements because those replacements resulted in no incremental increase in ISRS costs, but instead decreased them. Thus, there are no ineligible costs to exclude. In support of this argument, Spire Missouri presented an analysis of ten work orders purporting to show that in nine of those work orders the company reduced, rather than increased, its replacement costs by retiring plastic facilities where it was not operationally or economically feasible to reuse them. Spire Missouri asks the Commission to extrapolate from those nine work orders and reach a similar result in the

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<sup>46</sup> *Id.* at p. 841.



hundreds of work orders that Spire Missouri did not analyze. However, Spire Missouri's analysis is based on far too few work orders for such a conclusion to be reasonable. Spire also argues that no adjustment to its ISRS revenues or costs is appropriate under ratemaking and cost allocation principles. This argument improperly intermixes the issue of prudence, which is determined in a general rate proceeding, with eligibility, which is the appropriate determination in an ISRS proceeding. So, Spire Missouri's arguments regarding prudence, cost avoidance, and economic efficiency are irrelevant to the Commission's conclusion in these cases.

In the future, if Spire Missouri wishes to renew its argument that plastic pipe replacements result in no cost or a decreased cost of ISRS, it should submit supporting evidence to be considered, such as, but not limited to, a separate cost analysis for each project claimed, evidence that each patch was worn out or deteriorated, or evidence regarding the argument that any plastic pipe replaced was incidental to and required to be replaced in conjunction with the replacement of other worn out or deteriorated components.

Here, Staff provided the best evidence of a methodology to calculate the costs of those ineligible plastic pipe replacements. Staff reviewed all of the work order authorizations provided by the company to determine the feet of main and service lines replaced and retired by the type of pipe, and then applied the actual individual plastic main and services line percentages to the work order cost to determine the value of the replacement of plastic pipe for the work order.

Based on Staff's adjustments to exclude the ineligible costs related to plastic pipe replacements, Spire Missouri collected ineligible replacement costs through its ISRS in the amounts of \$827,159 for Spire Missouri West and \$2,283,628 for Spire Missouri East.

## **Refunds**

In general, the Commission does not have the authority to issue an order requiring a pecuniary reparation or refund.<sup>47</sup> The Commission lacks authority to retroactively correct rates or take into account overpayments when fashioning prospective rates.<sup>48</sup> If the Commission were to determine that a refund of ISRS costs is appropriate, it would need specific statutory authority to order those refunds. Two potential sources of authority for refunds of ISRS revenues are the ISRS statutes relating to gas utilities, Sections 393.1009-393.1015, and the general statute regarding temporary rate adjustments following the appeal of a Commission order establishing new rates or charges, Section 386.520.2.

In the ISRS statutes, refunds are authorized in two provisions of Section 393.1015.<sup>49</sup> Subsection 5 of that statute allows annual adjustments of ISRS charges after a reconciliation process to recover or refund the difference between ISRS revenues actually collected and appropriate ISRS revenues as ordered by the Commission. Subsection 8 permits the Commission to offset a utility's future ISRS revenues to account for any eligible ISRS costs previously included in an ISRS that were disallowed during a general rate proceeding. None of these situations are similar to the current situation, where the Commission is being asked to determine if ISRS costs should be classified as ineligible after those costs were already considered in a general rate case and found to be prudent. Section 393.1015 does not provide a specific legal basis for refunds in the cases now before the Commission.

In addition, the ISRS statutes do not allow superseded ISRS tariffs to be corrected retroactively after a general rate case includes those infrastructure costs in base rates. In a

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<sup>47</sup> *DeMaranville v. Fee Fee Trunk Sewer, Inc.*, 573 S.W.2d 674, 676 (Mo. App. 1978); *State ex rel. & to Use of Kansas City Power & Light Co. v. Buzard*, 168 S.W.2d 1044 (Mo. 1943).

<sup>48</sup> *State ex rel. City of Joplin v. Pub. Serv. Comm'n of State of Mo.*, 186 S.W.3d 290, 297 (Mo. App. 2005).

<sup>49</sup> See also Section 393.1012.1, RSMo.

recent Missouri Supreme Court case involving Missouri-American Water Company<sup>50</sup>, the court stated:

Under section 393.1000(3), when a utility company seeks to recover costs of an infrastructure system replacement project by a surcharge, those costs cannot also be recovered as part of the company's general base rate. After the company has its next general rate case, however, those costs must be incorporated in the utility's base rate and can no longer provide the basis for a surcharge. § 393.1006.6(1). The surcharge then must be reset to zero.

That is what has occurred here. After the surcharge that is the subject of this proceeding was approved, and while that approval was on appeal, MAWC filed for and was granted a general base rate increase that included the infrastructure costs that had been the subject of the surcharge at issue here. At that point, the amounts that were previously part of the disputed surcharges were included in the new base rate.

This appeal involves only Public Counsel's challenge to the surcharge. Because the costs that formed the basis of the disputed surcharge have been incorporated into MAWC's base rate, the base rate supersedes the surcharge. The surcharge has been reset to zero, and superseded tariffs cannot be corrected retroactively.<sup>51</sup> (emphasis added)

Applying the reasoning of the Court to the cases now before the Commission, the Spire ISRS tariffs that the Commission previously approved were no longer effective when those ISRS costs were incorporated into base rates and reset to zero during Spire's most recent general rate case pursuant to Section 393.1015.6(1). The tariffs approved as part of that general rate case are now effective and supersede the ISRS surcharge from those previous ISRS cases. Even where the Commission now determines that some of those prior costs were improperly classified as ISRS-eligible, after a general rate case the Commission cannot correct those previous tariffs retroactively by applying a refund prospectively in future ISRS cases.<sup>52</sup>

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<sup>50</sup> The statutes governing ISRS for water utilities, Sections 393.1000-393.1006, are substantially similar to the ISRS statutes for gas utilities for purposes of the issue being discussed here.

<sup>51</sup> *Matter of Missouri-Am. Water Co.*, 516 S.W.3d 823, 828 (Mo. 2017), *transfer denied* (May 30, 2017), *reh'g denied* (May 30, 2017).

<sup>52</sup> This determination should not be considered as a restriction to the normal reconciliation process required in Section 393.1015, subsections 5 and 6.

Section 386.520, RSMo, does not provide an independent legal basis for ordering a refund of any ISRS surcharges in these cases. Subsection 2(2) of that statute says that in the event a court determines that a Commission order was improperly decided on an issue affecting rates, then the Commission “shall be instructed on remand to approve temporary rate adjustments” to return to customers any excess amounts that had been collected by the utility, plus interest. However, the opinion of the Court of Appeals did not include such a specific instruction, even though OPC had requested such an instruction three times in its briefs before the Court. Since the Court of Appeals did not include that instruction in its opinion, it did not invoke the statutory provisions of Section 386.520 to grant the Commission the authority to order such a refund.

The Commission concludes that it does not have the statutory authority to order a refund of any ineligible costs for plastic pipe replacements from Spire Missouri’s previous ISRS cases.

#### **IV. Decision**

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts to the law to reach its conclusions, the Commission concludes that the substantial and competent evidence in the record supports the conclusion that Spire Missouri has not met, by a preponderance of the evidence, its burden of proof to demonstrate that the portion of work orders described in the Petitions and supporting documentation relating to the replacement of plastic pipe components comply with the requirements of Sections 393.1009 to 393.1015, RSMo. Although those plastic pipe replacement costs are ineligible for ISRS cost recovery, the Commission also concludes it does not have the statutory authority to order a refund of those costs.

Since the Commission is issuing orders in related Spire Missouri ISRS cases concurrently with these cases, the Commission will, consistent with those other orders, make this order effective on October 1, 2018.

**THE COMMISSION ORDERS THAT:**

1. In compliance with the opinion of the Missouri Western District Court Appeals, the Commission has determined that Spire Missouri, Inc.'s Petitions in these cases included ineligible costs related to the replacement of plastic pipe components, and that the Commission lacks statutory authority to refund those ineligible costs. As a result of its conclusions in these cases, the Commission will take no further action.

2. This order shall become effective on October 1, 2018.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Silvey, Chm., Kenney, Hall, and  
Coleman, CC., concur.  
Rupp, C., dissents.

Bushmann, Senior Regulatory Law Judge

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Spire Missouri )  
 Inc. to Establish an Infrastructure System ) **File No. GO-2018-0309**  
 Replacement Surcharge in its Spire Missouri )  
 East Service Territory )

In the Matter of the Application of Spire Missouri )  
 Inc. to Establish an Infrastructure System ) **File No. GO-2018-0310**  
 Replacement Surcharge in its Spire Missouri )  
 West Service Territory )

**REPORT AND ORDER**

Reversed and remanded: *Matter of Spire Missouri Inc.*, 593 S.W.3d 546 (Mo. App. W.D. 2019)

**EVIDENCE, PRACTICE AND PROCEDURE**

**§6 Weight, effect and sufficiency**

A motion to dismiss for failure to state a claim where an applicant supplements its application after the initial finding fails, so long as such late supplementation does not prevent a full and thorough review of the applications.

**§6 Weight, effect and sufficiency**

A motion to dismiss due to the application's inclusion of costs that the Court of Appeals has previously determined do not qualify fails due to the standard of review applied to failure to state a claim, which assumes all facts in the application are true. Since the basis for the motion to dismiss disagrees with the premise, a hearing is the appropriate remedy, not dismissal.

**§11 Best and secondary evidence**

The Commission found that the best evidence for calculating the costs of ineligible plastic pipe replacements was provided by Staff employing a previously used methodology. That methodology was to review all work order authorizations to determine the feel of main and service lines replaced and retired by the type of pipe, and apply the actual individual plastic main and services line percentages to the work order cost to determine the value of the replacement of plastic pipe for the work order.

**EXPENSE****§79 Infrastructure system replacement surcharge (ISRS) eligible expense**

There are two requirements for eligibility of cost recovery: 1) the replaced components must be installed to comply with state or federal safety requirements; and 2) the existing facilities being replaced must be worn out or in a deteriorated condition. The Commission found that evidence showed that cast iron pipes are unsafe as they are subject to cracking and leaking. The Commission also found that steel pipes that are bare and not cathodically-protected corrode relatively quickly.

**§79 Infrastructure system replacement surcharge (ISRS) eligible expense**

Replacement of plastic pipes was not an expense whose cost could be recovered with the infrastructure system replacement surcharge (ISRS) due to a lack of evidence as to their being worn out or deteriorated, and lack of evidence that replacement of plastic pipe was incidental to the replacement of other worn out or deteriorated components.

**§79 Infrastructure system replacement surcharge (ISRS) eligible expense**

The Commission found that evidence adduced from a verified petition to recover costs via an infrastructure system replacement surcharge (ISRS), objected to, but not contested by opposing evidence, is sufficient evidence when it satisfies the statutory requirements.

**RATES****§81 Surcharges**

Replacement of plastic pipes was not an expense whose cost could be recovered with the infrastructure system replacement surcharge (ISRS) due to a lack of evidence as to their being worn out or deteriorated, and lack of evidence that replacement of plastic pipe was incidental to the replacement of other worn out or deteriorated components.

**§81 Surcharges**

The Commission found that evidence adduced from a verified petition to recover costs via an infrastructure system replacement surcharge (ISRS), objected to, but not contested by opposing evidence, is sufficient evidence when it satisfies the statutory requirements.

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Application of Spire Missouri )  
 Inc. to Change its Infrastructure System )  
 Replacement Surcharge in its Spire Missouri )  
 East Service Territory )

**File No. GO-2018-0309**

In the Matter of the Application of Spire Missouri )  
 Inc. to Change its Infrastructure System )  
 Replacement Surcharge in its Spire Missouri )  
 West Service Territory )

**File No. GO-2018-0310**

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## REPORT AND ORDER

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**Issue Date:** September 20, 2018

**Effective Date:** October 1, 2018



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

In the Matter of the Application of Spire Missouri )  
 Inc. to Change its Infrastructure System ) **File No. GO-2018-0309**  
 Replacement Surcharge in its Spire Missouri )  
 East Service Territory )

In the Matter of the Application of Spire Missouri )  
 Inc. to Change its Infrastructure System ) **File No. GO-2018-0310**  
 Replacement Surcharge in its Spire Missouri )  
 West Service Territory )

**APPEARANCES**

Appearing for **SPIRE MISSOURI, INC.:**

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 Jefferson City, Missouri, 65101.

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 63301

Appearing for **OFFICE OF THE PUBLIC COUNSEL:**

**Lera Shemwell**, Senior Public Counsel, and **John Clizer**, Associate Public Counsel,  
 PO Box 2230, 200 Madison St., Ste. 650, Jefferson City, Missouri, 65102-2230.

Appearing for the **STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:**

**Jeffrey A. Keevil**, Deputy Staff Counsel, **Mark Johnson**, Senior Counsel, and  
**Whitney Payne**, Associate Counsel, PO Box 360, 200 Madison Street,  
 Jefferson City, Missouri 65102.

**SENIOR REGULATORY LAW JUDGE:** Michael Bushmann

## REPORT AND ORDER

### I. Procedural History

On June 7, 2018, Spire Missouri, Inc. (“Spire Missouri”) filed applications and petitions with the Missouri Public Service Commission (“Commission”) to change its Infrastructure System Replacement Surcharge (“ISRS”) in its East and West service territories. Spire Missouri requests an adjustment to its ISRS rate schedules to recover costs incurred in connection with infrastructure system replacements made during the period October 1, 2017 through April 30, 2018, with pro forma ISRS costs updated through June 30, 2018. The Commission issued notice of the applications and provided an opportunity for interested persons to intervene, but no intervention requests were submitted. The Commission also suspended the filed tariffs until October 5, 2018.

On August 6, 2018, the Staff of the Commission filed its reports proposing a number of corrections and adjustments to Spire Missouri’s calculations. Staff recommended that the Commission reject the original tariff sheets and approve ISRS adjustments for Spire Missouri based on Staff’s determination of the appropriate amount of ISRS revenues. Staff updated its reports in direct testimony, providing corrections and information for the update months of May and June 2018.

On August 16, 2018, Spire Missouri filed a motion objecting to the Staff recommendations and requesting that the Commission schedule an evidentiary hearing. The Office of the Public Counsel filed a motion to dismiss Spire Missouri’s applications. The Commission held an evidentiary hearing on August 27, 2018 in response to the Spire Missouri request for hearing.<sup>1</sup> In total, the Commission admitted the testimony of ten witnesses and 29 exhibits into evidence and took official notice of several documents.

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<sup>1</sup> Transcript (“Tr.”), Volume 3.

Post-hearing briefs were filed on September 6, 2018, and the case was deemed submitted for the Commission's decision on that date when the Commission closed the record.<sup>2</sup>

## **II. Findings of Fact**

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. Spire Missouri is an investor-owned gas utility providing retail gas service to large portions of Missouri through its two operating units or divisions, Spire Missouri East and Spire Missouri West.<sup>3</sup>

2. Spire Missouri is a "gas corporation" and a "public utility", as each of those phrases is defined in Section 386.020, RSMo 2016.

3. The Office of the Public Counsel ("OPC" or "Public Counsel") "may represent and protect the interests of the public in any proceeding before or appeal from the public service commission."<sup>4</sup> Public Counsel "shall have discretion to represent or refrain from representing the public in any proceeding."<sup>5</sup> Public Counsel did participate in this matter.

4. The Staff of the Missouri Public Service Commission ("Staff") is a party in all Commission investigations, contested cases and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.<sup>6</sup>

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<sup>2</sup> "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 4 CSR 240-2.150(1).

<sup>3</sup> Ex.1 and 2, p. 2.

<sup>4</sup> Section 386.710(2), RSMo 2016; Commission Rules 4 CSR 240-2.010(10) and (15) and 2.040(2).

<sup>5</sup> Section 386.710(3), RSMo 2016; Commission Rules 4 CSR 240-2.010(10) and (15) and 2.040(2).

<sup>6</sup> Commission Rules 4 CSR 240-2.010(10) and (21) and 2.040(1).

5. The last general rate cases applicable to Spire Missouri are File Nos. GR-2017-0215 and GR-2017-0216, which were decided by the Commission by order issued on March 7, 2018 and effective on March 17, 2018, with new rates effective on April 19, 2018.<sup>7</sup> As part of those general rate cases, Spire Missouri's existing ISRS were reset to zero.<sup>8</sup>

6. Spire Missouri filed verified applications and petitions ("Petitions") with the Commission on June 7, 2018 for its East and West service territories, requesting an ISRS to recover eligible costs incurred with infrastructure system replacements made during the period October 1, 2017 through April 30, 2018, with pro forma ISRS costs updated through June 30, 2018.<sup>9</sup> These Petitions are Spire Missouri's first ISRS filings since the rate cases described above.<sup>10</sup>

7. Sections 393.1009 through 393.1015, RSMo 2016, permit gas corporations to recover certain infrastructure system replacement costs outside of a formal rate case through a surcharge on its customers' bills. In conjunction with its Petitions, Spire Missouri filed tariff sheets that would generate a total annual revenue requirement for Spire Missouri East in the amount of \$4,807,507 and for Spire Missouri West in the amount of \$7,085,762.<sup>11</sup>

8. The ISRS requests in the Petitions exceed one-half of one percent of Spire Missouri's base revenue levels approved by the Commission in Spire Missouri's most recent general rate case proceedings, and Spire Missouri's cumulative ISRS revenues,

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<sup>7</sup> Amended Report and Order, *In the Matter of Laclede Gas Company's Request to Increase Its Revenues for Gas Service*, GR-2017-0215, and *In the Matter of Laclede Gas Company d/b/a Missouri Gas Energy's Request to Increase Its Revenues for Gas Service*, GR-2017-0216, March 7, 2018; Order Approving Tariff in Compliance with Commission Order, *In the Matter of Laclede Gas Company's Request to Increase Its Revenues for Gas Service*, GR-2017-0215, and *In the Matter of Laclede Gas Company d/b/a Missouri Gas Energy's Request to Increase Its Revenues for Gas Service*, GR-2017-0216, issued April 4, 2018.

<sup>8</sup> Section 393.1015.6, RSMo 2016.

<sup>9</sup> Ex. 1 and 2.

<sup>10</sup> Ex. 102, Newkirk Direct, Schedule CNN-d1, p. 7; Ex. 104, Arabian Direct, Schedule AA-d1, p. 7.

<sup>11</sup> Ex. 102, Newkirk Direct, Schedule CNN-d1, p. 6; Ex. 104, Arabian Direct, Schedule AA-d1, p. 6.

including the Petitions, do not exceed ten percent of the base revenue levels approved by the Commission in the last Spire Missouri rate cases.<sup>12</sup>

9. Spire Missouri attached supporting documentation to its Petitions for completed plant additions. This included documentation identifying the type of addition, utility account, work order description, month of completion, addition amount, depreciation rate, accumulated depreciation, and depreciation expense.<sup>13</sup> The company also provided estimates of capital expenditures for projects completed through June 2018, which were subsequently replaced with updated actual cost information and provided to Staff.<sup>14</sup>

10. Spire Missouri also attached tables to its Petitions identifying the state or federal safety requirement, with a citation to a state statute or Commission rule, mandating each work order.<sup>15</sup> Spire Missouri is required to implement a program to replace cast iron and steel pipes.<sup>16</sup>

11. Historically, Spire Missouri had used a piecemeal approach to pipe replacement by replacing pipes when they were failing or about to fail. After careful analysis, in approximately 2010 the company changed to a more systemic and economical approach where it retires pipes in place and installs new plastic pipes often in a different location. The new location is more accessible and efficient to maintain than the location of the old pipes which were often under a street.<sup>17</sup>

12. Spire Missouri's current neighborhood replacement program replaces, or retires in place and no longer uses, cast iron, steel, and plastic pipes.<sup>18</sup>

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<sup>12</sup> Ex. 102, Newkirk Direct, Schedule CNN-d1, p. 8; Ex. 104, Arabian Direct, Schedule AA-d1, p. 8. See, Section 393.1012.1, RSMo.

<sup>13</sup> Ex. 1 and 2, Appendix A, Schedules 1 and 2.

<sup>14</sup> Ex. 102, Newkirk Direct, p. 2; Ex. 104, Arabian Direct, p. 2.

<sup>15</sup> Ex. 1 and 2, Appendix A, Schedule 3.

<sup>16</sup> Tr. Vol. 3, p. 413.

<sup>17</sup> Tr. Vol. 3, p. 388-391; Ex. 103, Sommerer Direct, p. 5.

<sup>18</sup> Tr. Vol. 3, p. 368.

13. Most of the cast iron pipes being replaced are over a hundred years old. Cast iron pipes are unsafe to use because they undergo a process called graphitization, in which the iron leaches out making the pipe subject to cracking and leaking. The steel pipe being replaced is bare and not cathodically-protected, so those pipes corrode relatively quickly and need to be replaced.<sup>19</sup>

14. Some of the plastic pipes that Spire Missouri replaced or retired in place are not worn out or in a deteriorated condition.<sup>20</sup> Spire Missouri did not conduct a review to determine if that plastic pipe was worn out or deteriorated before replacing it.<sup>21</sup> The polyethylene plastic pipe that Spire Missouri uses should last indefinitely.<sup>22</sup>

15. Spire Missouri's work order authorization sheets did not explain if a main or service line being replaced was worn out or deteriorated.<sup>23</sup>

16. Spire Missouri did not provide sufficient information for Staff to determine whether any plastic pipe being replaced was incidental to and required to be replaced in conjunction with the replacement of other worn out or deteriorated components.<sup>24</sup>

17. Spire Missouri has not attempted to calculate the amount of plastic pipe replaced that was worn out or in a deteriorated condition.<sup>25</sup>

18. Staff reviewed more than 100 work orders provided by Spire Missouri, which excluded work orders for projects totaling less than \$25,000, some blanket work orders, and some estimates.<sup>26</sup>

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<sup>19</sup> Tr. Vol. 3, p. 373-374.

<sup>20</sup> Tr. Vol. 3, p. 368.

<sup>21</sup> Tr. Vol. 3, p. 369.

<sup>22</sup> Tr. Vol. 3, p. 375.

<sup>23</sup> Tr. Vol. 3, p. 449.

<sup>24</sup> Tr. Vol. 3, p. 466.

<sup>25</sup> Tr. Vol. 3, p. 483.

<sup>26</sup> Tr. Vol. 3, p. 473-474, 502.

19. Blanket work orders are not designed for a specific project and do not have a specific end date.<sup>27</sup> Some of the blanket work orders involved replacing or repairing plastic pipes that were not worn out or deteriorated.<sup>28</sup>

20. Staff reviewed the work orders provided by Spire Missouri and developed a recommendation for the Commission, also based on the opinion of the Western District Court of Appeals in previous Spire Missouri ISRS cases, File Nos. GO-2016-0332 and GO-2016-0333 (“2016 cases”), which were considered by the Commission on remand from the Court concurrently with the present cases.<sup>29</sup>

21. In these present cases, Staff followed the methodology used in the remand 2016 cases to remove the cost of the replacement of ineligible plastic mains and service lines from Spire Missouri’s ISRS cost recovery. Staff reviewed all of the work order authorizations provided by the company to determine the feet of main and service lines replaced and retired by the type of pipe (plastic, cast iron, steel, etc.). Staff applied the actual individual plastic main and services line percentages to the work order cost to determine the value of the replacement of plastic pipe for the work order. Staff did not remove any amounts for work orders that were associated with relocations required by a governmental authority, encapsulation work orders, and meter and regulator replacement work orders.<sup>30</sup>

22. For work order authorizations that Spire Missouri did not provide, or that included estimations, Staff calculated an average of plastic mains and service lines

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<sup>27</sup> Tr. Vol. 3, p. 379, 446.

<sup>28</sup> Tr. Vol. 3, p. 377-378.

<sup>29</sup> Ex. 100, Bolin Direct, p. 2. See, *Matter of Application of Laclede Gas Co. to Change Its Infrastructure Sys. Replacement Surcharge in Its Missouri Gas Energy Serv. Territory v. Office of Pub. Counsel*, 539 S.W.3d 835, 841 (Mo. App. 2017), *reh'g and/or transfer denied* (Dec. 14, 2017), *transfer denied* (Mar. 6, 2018).

<sup>30</sup> Ex. 100, Bolin Direct, p. 2-3.

replaced for the work order authorizations that had actual information provided and applied that percentage to work order authorizations that were not provided or estimated.<sup>31</sup>

23. In evaluating Spire Missouri's work orders, Staff did not consider any cost savings resulting from Spire Missouri's replacement program. Staff only looked at the percentage of plastic pipe replaced.<sup>32</sup>

24. Staff's witnesses provided credible testimony on the correct methodology for determining the costs of ineligible plastic pipe replacements, and Staff's evidence on this issue was the best evidence presented at the hearing.

25. Staff made appropriate adjustments to Spire Missouri's ISRS request based on the plastic pipe replaced and calculated a revised ISRS revenue requirement (the "Adjusted ISRS").<sup>33</sup> The Adjusted ISRS as recommended by Staff results in Spire Missouri collecting ISRS revenues in the amount of \$2,607,610 for its East service territory and \$5,411,793 for its West service territory.<sup>34</sup>

26. The Adjusted ISRS does not include any refunds or credits for ineligible ISRS amounts from Spire Missouri's previous ISRS cases, File Nos. GO-2016-0332, GO-2016-0333, GO-2017-0201, or GO-2017-0202.<sup>35</sup> The submitted calculation regarding refunds or credits is calculated separately.<sup>36</sup>

27. Staff also recommended an updated rate design based on the billing determinants from Spire Missouri's most recent rate cases, GR-2017-0215 and GR-2017-

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<sup>31</sup> Ex. 100, Bolin Direct, p. 3.

<sup>32</sup> Tr. Vol. 3, p. 451.

<sup>33</sup> These adjustments do not include any refunds related to over-collections from previous ISRS cases.

<sup>34</sup> Ex. 102, Newkirk Direct, Schedule CNN-d2; Ex. 104, Arabian Direct, Schedule AA-d2; Ex. 108; Ex. 109.

<sup>35</sup> Ex. 108 and 109.

<sup>36</sup> *Id.*



0216. The updated rate design included an adjustment to return to customers the credit recommended by Staff in the previous 2016 and 2017 Spire Missouri ISRS cases.<sup>37</sup>

28. Neither OPC nor Spire Missouri provided a calculation of the amount of ineligible plastic pipe included in Spire Missouri's work orders in these cases.<sup>38</sup>

29. The verified Petitions of Spire Missouri state that any relocation projects listed in the appendix to the Petition are eligible for ISRS cost recovery because they are "unreimbursed infrastructure facility relocations due to the construction or improvement of a highway, road, street, public way or other public work required by or on behalf of the United States, the State of Missouri, a political subdivision of the State of Missouri, or another entity having the power of eminent domain."<sup>39</sup>

### **III. Conclusions of Law and Discussion**

Spire Missouri is a "gas corporation" and "public utility" as those terms are defined by Section 386.020, RSMo 2016.<sup>40</sup> Spire Missouri is subject to the Commission's jurisdiction, supervision, control, and regulation as provided in Chapters 386 and 393, RSMo. The Commission has the authority under Sections 393.1009 through 393.1015, RSMo, to consider and approve ISRS requests such as the one proposed in the Petitions. Since Spire Missouri brought the Petitions, it bears the burden of proof.<sup>41</sup> The burden of proof is the preponderance of the evidence standard.<sup>42</sup> In order to meet this standard, Spire Missouri must convince the Commission it is "more likely than not" that its allegations are

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<sup>37</sup> Ex. 103, Sommerer Direct, p. 3, Schedule DMS-d3; Ex. 105, Sommerer Direct, p. 3, Schedule DMS-d3.

<sup>38</sup> Tr. Vol. 3, p. 483, 560, 569.

<sup>39</sup> Ex. 1, p. 4; Ex. 2, p. 4.

<sup>40</sup> Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.

<sup>41</sup> "The burden of proof, meaning the obligation to establish the truth of the claim by preponderance of the evidence, rests throughout upon the party asserting the affirmative of the issue". *Clapper v. Lakin*, 343 Mo. 710, 723, 123 S.W.2d 27, 33 (1938).

<sup>42</sup> *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996).

true.<sup>43</sup> Section 393.1015.2(4), RSMo, states that “[i]f the commission finds that a petition complies with the requirements of sections 393.1009 to 393.1015, the commission shall enter an order authorizing the corporation to impose an ISRS that is sufficient to recover appropriate pretax revenue, as determined by the commission pursuant to the provisions of sections 393.1009 to 393.1015”.

### **OPC Motion to Dismiss**

The first issue for determination is whether the Commission should dismiss Spire Missouri’s ISRS Petitions. OPC alleges that Spire Missouri’s Petitions should be dismissed because (1) Spire Missouri failed to submit sufficient supporting documentation at the time the Petitions were first filed, and (2) included claims for the cost of infrastructure replacements that the Western Dist. Court of Appeals has determined do not qualify for ISRS recovery.

The standard for review for consideration of a motion to dismiss for failure to state a claim has been clearly established by Missouri’s courts as follows:

A motion to dismiss for failure to state a cause of action is solely a test of the adequacy of the plaintiff’s petition. It assumes that all of plaintiff’s averments are true, and liberally grants to plaintiff all reasonable inferences therefrom. No attempt is made to weigh any facts alleged as to whether they are credible or persuasive. Instead, the petition is reviewed in an almost academic manner to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case.<sup>44</sup>

By that standard, the Commission must consider OPC’s motion to dismiss based on the facts alleged in Spire Missouri’s Petitions.

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<sup>43</sup> *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez*, 936 S.W.2d at 109 -111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

<sup>44</sup> *Eastwood v. North Central Missouri Drug Task Force*, 15 S.W.3d 65, 67 (Mo. App. 2000).

With regard to OPC's first allegation, the Court of Appeals has stated in two prior Spire Missouri ISRS cases that Spire Missouri's supplementation of ISRS applications with supporting documentation after they were filed is not unlawful or unreasonable, so long as such late supplementation does not prevent a full and thorough review of the applications.<sup>45</sup> In this case, Staff had sufficient time to review a much larger sample of work orders than were reviewed in prior cases even though some documentation was provided after the Petitions were filed. The Commission concludes that Spire Missouri's late filing of some supporting documentation did not prevent Staff or OPC from conducting a thorough review of the Petitions or impede the fair resolution of these cases, so dismissal on those grounds is not appropriate.

Regarding OPC's second allegation, for purposes of ruling on a motion to dismiss for failure to state a claim, the Commission must accept the allegations made in the Petitions as true. The Petitions allege that the infrastructure system replacements included in the Petitions and submitted for ISRS cost recovery are eligible under the ISRS statutes. If that fact is accepted as true, then Spire Missouri has successfully stated a claim that can only be resolved through the hearing process. Therefore, dismissing the Petitions without considering the evidence in the record is not appropriate, and OPC's motion to dismiss will be denied.

### **Eligible Expenses**

Section 393.1012.1, RSMo, provides that a gas corporation may petition the Commission to change its ISRS rate schedule to recover costs for "eligible infrastructure

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<sup>45</sup> *Matter of Verified Application & Petition of Laclede Gas Co.*, 504 S.W.3d 852, 860 (Mo. App. 2016); *Laclede Gas Co. to Change its Infrastructure Sys. Replacement Surcharge in its Laclede Gas Serv. Territory v. Office of the Pub. Counsel*, 523 S.W.3d 27, 33-34 (Mo. App. 2017).

system replacements”, which is defined in Section 393.1009(3), RSMo.<sup>46</sup> In order to be eligible, the project must meet the definition of a “gas utility plant project” in Section 393.1009(5), RSMo.<sup>47</sup>

The issue presented in these cases is whether certain main and service line replacements installed by Spire Missouri are eligible for ISRS recovery. Spire Missouri’s position is that it should be able to collect all of the ISRS charges it requested in the Petitions, since all the projects and work orders included are ISRS-eligible. Staff argues that the plastic pipe that Spire Missouri replaced was not worn out or deteriorated and recommends that the Commission issue an order that excludes all plastic pipe replacements from the amounts Spire Missouri is permitted to recover. OPC argues that Spire Missouri’s ISRS Petitions should be denied in their entirety because 1) Spire Missouri has failed to present any evidence showing that any of the pipes (plastic, cast-iron, and steel) it was replacing were worn out or deteriorated, and 2) Spire Missouri has failed to present any evidence showing that the relocations it is claiming as ISRS-eligible meet the requirements of section 393.1009(5)(c).

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<sup>46</sup> “Eligible infrastructure system replacements”, gas utility plant projects that:

- (a) Do not increase revenues by directly connecting the infrastructure replacement to new customers;
- (b) Are in service and used and useful;
- (c) Were not included in the gas corporation's rate base in its most recent general rate case; and
- (d) Replace or extend the useful life of an existing infrastructure.

<sup>47</sup> “Gas utility plant projects” may consist only of the following:

- (a) Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to comply with state or federal safety requirements as replacements for existing facilities that have worn out or are in deteriorated condition;
- (b) Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects extending the useful life or enhancing the integrity of pipeline system components undertaken to comply with state or federal safety requirements; and
- (c) Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state, or another entity having the power of eminent domain provided that the costs related to such projects have not been reimbursed to the gas corporation.

In its review of the Commission's Report and Order in the 2016 Spire Missouri ISRS cases, the Missouri Western District Court of Appeals stated that Section 393.1009(5)(a) "sets forth two requirements for component replacements to be eligible for cost recovery under ISRS: (1) the replaced components must be installed to comply with state or federal safety requirements and (2) the existing facilities being replaced must be worn out or in a deteriorated condition."<sup>48</sup>

With regard to replacements of cast iron and steel pipes, the evidence showed that Spire Missouri is required to implement a program to replace cast iron and steel pipes and identified the state or federal safety requirement, with a citation to a state statute or Commission rule, mandating each work order. The evidence also showed that cast iron pipes are unsafe to use because they are subject to cracking and leaking, and the steel pipe being replaced is bare and not cathodically-protected, so those pipes corrode relatively quickly and need to be replaced. The Commission concludes that the cast iron and steel pipes were replaced to comply with state or federal safety requirements and were worn out or in a deteriorated condition, so they are eligible for cost recovery under ISRS.

The primary dispute in these cases is whether the plastic pipe replaced by Spire Missouri is also eligible for ISRS cost recovery. The Court of Appeals addressed this identical issue in the 2016 ISRS cases, finding that there was no evidence in those cases of a state or federal safety requirement that mandated the replacement of plastic mains and service lines, and that the plastic mains and service lines at issue in those cases "were not in a worn out or deteriorated condition".<sup>49</sup> The Court concluded "that recovery of the costs for replacement of plastic components that are not worn out or in a deteriorated condition is

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<sup>48</sup> *Matter of Application of Laclede Gas Co. to Change Its Infrastructure Sys. Replacement Surcharge in Its Missouri Gas Energy Serv. Territory v. Office of Pub. Counsel*, 539 S.W.3d 835, 839 (Mo. Ct. App. 2017), *reh'g and/or transfer denied* (Dec. 14, 2017), *transfer denied* (Mar. 6, 2018)

<sup>49</sup> *Id.* at p. 839-840.

not available under ISRS”, so the Commission’s Report and Order was reversed and “remanded for further proceedings consistent with this opinion”.<sup>50</sup>

On remand, the Commission concluded that Spire Missouri’s plastic pipe replacements were not worn out or deteriorated, and therefore not eligible for ISRS recovery.<sup>51</sup> The Commission also found that Staff’s methodology for calculating the cost of those ineligible pipe replacements was reasonable.<sup>52</sup> Although the Commission found Spire Missouri’s plastic pipe replacements to be ineligible, it also concluded that it did not have statutory authority to refund those ineligible costs to customers, including in these present cases.<sup>53</sup> The Commission found that neither the ISRS statute, Section 393.1015, in light of the intervening general rate case, nor the general statute regarding temporary rate adjustments following appeal of a Commission order, Section 386.520, provide any legal authority for the Commission to order refunds to return ineligible costs from the 2016 or 2017 cases.<sup>54</sup>

As with the 2016 cases, in these present cases the evidence showed that Spire Missouri’s plastic pipe replacements were not worn out or deteriorated. The polyethylene plastic pipe that Spire Missouri uses should last indefinitely, but Spire Missouri did not conduct a review to determine if that plastic pipe was worn out or deteriorated before replacing it. Spire Missouri’s work order authorization sheets did not explain if a main or service line being replaced was worn out or deteriorated, and the company made no

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<sup>50</sup> *Id.* at p. 841.

<sup>51</sup> Report and Order on Remand, *In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory*, File No. GO-2016-0332 and *In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory*, File No. GO-2016-0333, issued September 20, 2018.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> This determination should not be considered as a restriction to the normal reconciliation process required in Section 393.1015, subsections 5 and 6.

attempt to calculate the amount of plastic pipe replaced that was worn out or in a deteriorated condition. In addition, Spire Missouri did not provide sufficient information to determine whether any plastic pipe being replaced was incidental to and required to be replaced in conjunction with the replacement of other worn out or deteriorated components.

Spire Missouri argues that no adjustment to the company's ISRS charges should be made in connection with plastic pipe replacements because those replacements resulted in no incremental increase in ISRS costs, but instead decreased them. Thus, there are no ineligible costs to exclude. In support of this argument, Spire Missouri presented an analysis of ten work orders from the 2016 cases purporting to show that in nine of those work orders the company reduced, rather than increased, its replacement costs by retiring plastic facilities where it was not operationally or economically feasible to reuse them. Spire Missouri asks the Commission to extrapolate from those nine work orders and reach a similar result in the hundreds of work orders that Spire Missouri did not analyze. However, Spire Missouri's analysis is based on far too few work orders for such a conclusion to be reasonable. Spire also argues that no adjustment to its ISRS revenues or costs is appropriate under ratemaking and cost allocation principles. This argument improperly intermixes the issue of prudence, which is determined in a general rate proceeding, with eligibility, which is the appropriate determination in an ISRS proceeding. So, Spire Missouri's arguments regarding prudence, cost avoidance, and economic efficiency are irrelevant to the Commission's conclusion in these cases.

In the future, if Spire Missouri wishes to renew its argument that plastic pipe replacements result in no cost or a decreased cost of ISRS, it should submit supporting evidence to be considered, such as, but not limited to, a separate cost analysis for each project claimed, evidence that each patch was worn out or deteriorated, or evidence

regarding the argument that any plastic pipe replaced was incidental to and required to be replaced in conjunction with the replacement of other worn out or deteriorated components.

Here, Staff provided the best evidence of a methodology to calculate the costs of those ineligible plastic pipe replacements, which is consistent with Staff's methodology that the Commission approved in the 2016 cases. Staff reviewed all of the work order authorizations provided by the company to determine the feet of main and service lines replaced and retired by the type of pipe, and then applied the actual individual plastic main and services line percentages to the work order cost to determine the value of the replacement of plastic pipe for the work order.

Based on Staff's adjustments to exclude the ineligible costs related to plastic pipe replacements, those corrected ISRS calculations result in Spire Missouri collecting ISRS revenues in the amount of \$2,607,610 for its East service territory and \$5,411,793 for its West service territory. The Commission also concludes that the appropriate rate design is that provided by Staff based on the most recent rate case billing units and allocated using the traditional ISRS rate design, but revised to utilize the ISRS revenues recommended by Staff and approved in this Report and Order.

In its brief, OPC argues that the Commission should exclude from Spire Missouri's ISRS any costs for relocations, alleging that Spire Missouri failed to present sufficient evidence that the relocations meet the requirements for eligibility in Section 393.1009(5)(c) (see footnote 47 above). The only evidence in the record relating to this issue are the Petitions of Spire Missouri, verified under oath, which first state that any relocation projects listed in the appendix to the Petition are eligible for ISRS cost recovery because they are "unreimbursed infrastructure facility relocations due to the construction or improvement of a highway, road, street, public way or other public work required by or on behalf of the United



States, the State of Missouri, a political subdivision of the State of Missouri, or another entity having the power of eminent domain”, and second, identify in the attached tables to its Petitions the state or federal safety requirement, with a citation to a state statute or Commission rule, mandating each work order. OPC did not present any evidence in support of its contention. Since Spire Missouri’s uncontroverted evidence satisfies the eligibility requirements of Section 393.1009(5)(c), the Commission concludes that Spire Missouri has provided sufficient evidence to demonstrate that the relocation projects are ISRS-eligible.

#### **IV. Decision**

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts to the law to reach its conclusions, the Commission concludes that the substantial and competent evidence in the record supports the conclusion that that Spire Missouri has met, by a preponderance of the evidence, its burden of proof to demonstrate that the Petitions and supporting documentation comply with the requirements of Sections 393.1009 to 393.1015, RSMo, subject to the adjustments recommended by Staff. The Commission concludes that Spire Missouri shall be permitted to establish an ISRS to recover ISRS surcharges for these cases in the amount of \$2,607,610 for its East service territory and \$5,411,793 for its West service territory. Since the revenues and rates authorized in this order differ from those contained in the tariffs the company first submitted, the Commission will reject those tariffs. The Commission will allow Spire Missouri an opportunity to submit new tariffs consistent with this order.

Section 393.1015.2(3), RSMo, requires the Commission to issue an order to become effective not later than 120 days after the petition is filed. That deadline is October 5, 2018, so the Commission will make this order effective on October 1, 2018.

**THE COMMISSION ORDERS THAT:**

1. The Office of Public Counsel's Motion to Dismiss Spire Missouri, Inc.'s Infrastructure System Replacement Surcharge Applications for its Spire Missouri East and Spire Missouri West Service Territories filed on August 21, 2018, is denied.

2. Spire Missouri, Inc. is authorized to establish Infrastructure System Replacement Surcharges sufficient to recover ISRS revenues in the amount of \$2,607,610 for its East service territory and \$5,411,793 for its West service territory. Spire Missouri, Inc. is authorized to file an ISRS rate for each customer class as described in the body of this order.

3. The tariff sheets filed by Spire Missouri, Inc. on June 7, 2018, and assigned Tariff Tracking Nos. YG-2018-0163 and YG-2018-0164, are rejected.

4. Spire Missouri, Inc. is authorized to file new tariffs to recover the revenue authorized in this Report and Order.

5. This order shall become effective on October 1, 2018.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Silvey, Chm., Kenney, Hall, and  
Coleman, CC., concur.  
Rupp, C., dissents.

Bushmann, Senior Regulatory Law Judge

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Joint Application of Rogue )  
Creek Utilities, Inc. and Missouri-American )  
Water Company, for MAWC to Acquire ) **File No. WM-2019-0018**  
Certain Water and Sewer Assets of Rogue )  
Creek Utilities, Inc. )

**ORDER APPROVING TRANSFER OF ASSETS AND GRANTING  
CERTIFICATES OF CONVENIENCE AND NECESSITY**

**CERTIFICATES**

**§4 Jurisdiction and powers generally**

The Commission found it had jurisdiction to rule on the application because Missouri law requires that before selling or transferring its assets, a water corporation or sewer corporation must first obtain an order from the Commission authorizing the sale or transfer.

**§21 Grant or refusal of certificate generally**

The Commission granted Missouri-American Water Company certificates of service for the Rogue Creek service area.

**§21 Grant or refusal of certificate generally**

The Commission found that it will only deny an application for a certificate of convenience or necessity if approval would be detrimental to the public interest.

**§45 Water**

The Commission determined it may approve Missouri-American Water Company's (MAWC) request for the Rogue Creek customers to become part of an existing MAWC service area if in its opinion those were the rates best suited for the customers due to operational or other factors. After considering all the factors, the Commission found that MAWC's proposed rates were the rates best suited for Rogue Creek's ratepayers.

**§52 Transfer, mortgage or lease generally**

The Commission found it had jurisdiction to rule on the application because Missouri law requires that before selling or transferring its assets, a water corporation or sewer corporation must first obtain an order from the Commission authorizing the sale or transfer.

**§52 Transfer, mortgage or lease generally**

The Commission found that the proposed transfer of assets was not detrimental to the public interest and should be approved, subject to the conditions and actions recommended by Staff.

**EVIDENCE, PRACTICE AND PROCEDURE****§24 Procedures, evidence and proof**

Because Missouri-American Water Company had no communication with the office of the Commission within the prior 150 days regarding any substantive issue likely to be in this case other than pleadings filed as a matter of record. The Commission found that good cause existed to waive the notice requirement, and a waiver of 4 CSR 240-4.017(1) was granted.

**RATES****§1 Jurisdiction and powers generally****§111 Water**

The Commission determined it may approve Missouri-American Water Company's (MAWC) request for the Rogue Creek customers to become part of an existing MAWC service area if in its opinion those were the rates best suited for the customers due to operational or other factors. After considering all the factors, the Commission found that MAWC's proposed rates were the rates best suited for Rogue Creek's ratepayers.

**§8 Reasonableness generally****§111 Water**

Considering all the factors, the Commission determined that the current Rogue Creek rates are not the best suited rates. Under the proposed rates, depending on usage, typical customers would have a \$4.63 to \$9.35 per month combined increase in their monthly bills, which was reasonable under the circumstances.

**§16 Comparisons****§111 Water**

The Commission found that the City of Lawson rates were not appropriate because Missouri-American Water Company's acquisition of the system had very little in common with its acquisition of the City of Lawson system in Commission File No. WM-2018-0222. Considering those factors, the Commission found the rates proposed by Missouri-American Water Company and recommended by Staff were reasonable and in the public interest.

**WATER****§2 Certificate of convenience and necessity**

The Commission found it had jurisdiction to rule on the application because Missouri law requires that before selling or transferring its assets, a water corporation or sewer corporation must first obtain an order from the Commission authorizing the sale or transfer.

**§2 Certificate of convenience and necessity**

The Commission granted Missouri-American Water Company certificates of service for the Rogue Creek service area.

**§2 Certificate of convenience and necessity**

The Commission found that it will only deny an application for a certificate of convenience or necessity if approval would be detrimental to the public interest.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 20<sup>th</sup> day of September, 2018.

In the Matter of the Joint Application of Rogue )  
Creek Utilities, Inc. and Missouri-American )  
Water Company, for MAWC to Acquire )  
Certain Water and Sewer Assets of Rogue )  
Creek Utilities, Inc. )

**File No. WM-2019-0018**

**ORDER APPROVING TRANSFER OF ASSETS AND GRANTING  
CERTIFICATES OF CONVENIENCE AND NECESSITY**

Issue Date: September 20, 2018

Effective Date: September 30, 2018

On July 24, 2018, Missouri-American Water Company (“MAWC”) and Rogue Creek Utilities Inc. (“Rogue Creek” or “RCU”) filed joint applications<sup>1</sup> pursuant to Sections 393.170 and 393.190, RSMo 2016, and Commission Rules 4 CSR 240-2.060, 3.305, 3.310, 3.600, and 4.017 seeking authority for Rogue Creek to sell its water and sewer assets to MAWC. MAWC also requests certificates of convenience and necessity to provide service to Rogue Creek’s customers and a waiver from Commission administrative rule 4 CSR 240-4.017(1).

MAWC is an existing regulated water and sewer utility currently providing water service to more than 450,000 customers and sewer service to more than 4,700 customers in several service areas throughout Missouri. Rogue Creek is the holder of certificates of convenience and necessity to provide water and sewer service in

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<sup>1</sup> Separate but identical applications were filed for the water and sewer utilities in Commission File Nos. WM-2019-0018 and SM-2019-0019. Those files were consolidated for all purposes in File No. WM-2019-0018.

Washington County, Missouri. Rogue Creek provides both water and sewer service to approximately 82 customers.

Rogue Creek is a water corporation, a sewer corporation, and a public utility, as those terms are defined in Section 386.020, RSMo. Rogue Creek was a Missouri corporation that was administratively dissolved by the Corporation Division of the Missouri Secretary of State on December 30, 2004. Environmental H2O, LLC, was appointed as Receiver for Rogue Creek on January 28, 2018.<sup>2</sup> The Cole County Circuit Court (“the Court”) directed the Receiver to transfer by sale or liquidate the assets of Rogue Creek as provided by law.

On May 14, 2018, the Court authorized the Receiver to execute an Asset Purchase Agreement (“Agreement”) providing for the purchase of substantially all of the water and sewer assets of Rogue Creek by MAWC. A copy of the Agreement was attached to the joint application.

On July 25, 2018, the Commission issued notice and set an intervention deadline. The timely application to intervene of the Missouri Department of Natural Resources (“DNR”) was granted. DNR supported the application and stated that it believed good cause exists to waive the 60-day notice requirement of 4 CSR 240-4.017(1) as requested in the application. DNR stated that it had found various points of non-compliance in the drinking water and waste water systems of Rogue Creek since at least 2011. DNR supported MAWC assuming ownership of the assets as soon as possible so that actions to obtain and maintain environmental compliance could begin.

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<sup>2</sup> *In the matter of Public Service Commission of the State of Missouri v. Rogue Creek Utilities Inc.*, Cole County Circuit Court Case No. 07AC-CC00682.

Staff of the Missouri Public Service Commission (“Staff”) filed a recommendation on August 24, 2018. Staff recommended that the transfer of assets be approved with certain conditions. Staff recommends that the Commission do the following:

1. Authorize RCU to sell and transfer water and sewer utility assets, including its certificates of convenience and necessity (CCNs) to provide water and sewer service, to MAWC, and for MAWC to provide water service and sewer service in the Rogue Creek service area, as requested;
2. Authorize MAWC to apply its existing water tariff rules and “All Missouri Service Areas Outside of St. Louis County and Outside of Mexico” water rates, in MAWC’s water tariff PSC MO No. 13, to the Rogue Creek service area;
3. Authorize MAWC to apply its existing sewer tariff rules and its “Cedar Hill” sewer rates, in MAWC’s PSC MO No. 26, to the Rogue Creek service area;
4. Require MAWC to submit new and revised tariff sheets showing the Rogue Creek service area, water rates, sewer rates, and index sheets, for its PSC MO No. 13 water tariff and PSC MO No. 26 sewer tariff, as necessary and as described in detail herein, prior to closing on the assets;
5. Approve MAWC’s existing depreciation rates for water and sewer utility plant accounts to apply to the Rogue Creek service area assets;
6. Require MAWC to submit notice to the Commission within five (5) business days after closing on the asset occurs;
7. Cancel RUC’s existing tariffs for water and sewer service after closing on the assets and the transfer of the CCNs occurs;
8. Require MAWC to, along with notice to the Commission regarding closing on the assets, provide a report regarding resolution of real estate acquisition, easement rights, the cost of real estate and easement acquisition and resolutions, and a statement stating that MAWC has complete access to all utility assets necessary for providing water and sewer service;
9. If closing on the water system assets and/or resolution of the real estate issue does not take place within thirty (30) days following the effective date of the Commission’s order approving such sale and transfer of the assets, require MAWC and/or RCU to submit a status report within five (5) days after this thirty (30) day period regarding the status of closing, and additional status reports within five (5) days after each additional thirty (30)



day period, until closing takes place, or until MAWC determines that the transfer of the assets will not occur;

10. If MAWC or RCU determines that a transfer of the assets will not occur, require MAWC and/or RCU to notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and require MAWC to submit tariff sheets as appropriate that would cancel tariff sheets and changes filed and becoming effective, if any, applicable to the Rogue Creek service area;

11. Require RCU to provide to MAWC and for MAWC, as best as possible prior to or at closing, to take physical possession of and maintain all records and documents with respect to regulated operations, and any and all books and financial records of RCU, including but not limited to all plant-in-service original cost documentation, along with depreciation reserve balances and records, invoices and purchase orders and purchase agreements, documentation of contribution-in-aid-of construction transactions, and any capital recovery transactions, all customer billing records and customer deposit records to the extent the Company has customer deposits;

12. Require MAWC to provide, in its next general rate case, an analysis documenting rate base values for RCU utility assets, including an appropriate offset for associated CIAC, and including real estate assets obtained in the context of the RCU transaction;

13. Make no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to MAWC, including expenditures related to the Rogue Creek certificated service area and capacity adjustments, in any later proceeding;

14. Require MAWC to provide an example of its actual communication with the RCU service area customers regarding its acquisition and operations of the RCU water system assets, and how customers may reach MAWC regarding water matters, within ten (10) days after closing on the assets;

15. Require MAWC to include the RCU customers in its established monthly reporting to the Customer Experience Department Staff on customer service and billing issues;

16. Require MAWC to distribute to the RCU customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its water service, consistent with the requirements of Commission Rule 4 CSR 240-13.040(2)(A-L), within ten (10) days of closing on the assets;

17. Require MAWC to provide adequate training for the correct application of rates and rules to all customer service representatives prior to RCU customers receiving their first bill from MAWC;

18. Require MAWC to provide to the Customer Experience Department Staff a sample of ten (10) billing statements from the first month's billing within thirty (30) days of such billing; and,

19. Require MAWC to file notice in this case once Staff Recommendations regarding customer communications and customer billing, above, have been completed.

The Office of the Public Counsel ("OPC") responded to Staff's recommendation on September 4, 2018. OPC indicated its support for MAWC acquiring Rogue Creek's assets, but disagreed with the recommendation to apply MAWC's existing water tariff rules and rates for its "All Missouri Service Areas Outside of St. Louis County and Outside of Mexico" and MAWC's existing sewer tariff rules and rates for its "Cedar Hill" sewer rates to Rogue Creek's customers.

Under MAWC rates, Rogue Creek's customers will receive a decrease in water rates and an increase in sewer rates for an overall net increase in rates for the typical customer as shown in the combined monthly bill comparison below:

COMBINED BILL COMPARISON -- MONTHLY USAGE

	<u>2,000 gal</u>	<u>3,000 gal</u>	<u>4,000 gal</u>
Rogue Creek	\$ 75.00	\$ 78.89	\$ 82.78
MAWC	<u>\$ 79.63</u>	<u>\$ 85.88</u>	<u>\$ 92.13</u>
	increase \$ 4.63	\$ 6.99	\$ 9.35
	percent increase 6.2%	8.9%	11.3%

Staff stated these rates are reasonable because of the capital improvements that MAWC will need to undertake for the Rogue Creek customers and because it will be less cumbersome to use these rates for billing and customer inquiries on billing issues.

OPC argues that the Commission should be consistent with its ruling in Commission File No. WA-2018-0222, regarding the transfer of assets of the City of Lawson, so that Rogue Creek customers continue to use existing rates, or that the Commission should order Rogue Creek customers to be under the tariff for the City of Lawson customers. OPC states that these are more “just” outcomes because the former option would be consistent across Commission cases and the latter option uses a better proxy, the City of Lawson rates, since that is the only other system that has been acquired since the MAWC’s most recent general rate case. OPC did not ask for a hearing.

MAWC responded to OPC thoroughly reiterating the history of this troubled system and the effort and expense that MAWC has expended to decrease lead levels in the water and make other necessary improvements since it began working closely with the Rogue Creek Homeowners Association over two years ago. MAWC also argued that the City of Lawson system was not similarly situated to the Rogue Creek system.<sup>3</sup> MAWC argued there should be no further delay in approving the acquisition.

No party requested an evidentiary hearing in this matter and no law requires one, so the Commission may grant the request based upon the verified application and Staff’s verified recommendation.<sup>4</sup> This action is not a contested case,<sup>5</sup> and the Commission need not separately state its findings of fact.

MAWC and Rogue Creek are water and sewer corporations under Missouri law,<sup>6</sup> subject to the regulation, supervision and control of the Commission with regard to

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<sup>3</sup> See MAWC’s comparison chart at page 3 of its *MAWC Reply to OPC Response*, (filed September 9, 2018).

<sup>4</sup> See, *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

<sup>5</sup> Section 536.010(4), RSMo 2016.

<sup>6</sup> Subsections 386.020(49) and (59), RSMo 2016.

providing water and sewer service to the public. The Commission has jurisdiction to rule on the application because Missouri law requires that before selling or transferring its assets, a water corporation or sewer corporation must first obtain an order from the Commission authorizing the sale or transfer.<sup>7</sup> The Commission will only deny the application if approval would be detrimental to the public interest.<sup>8</sup>

The parties agree that the acquisition of Rogue Creek by MAWC will not be detrimental to the public interest. OPC, however, disagrees with the rates proposed by MAWC and recommended by Staff. If the proposed sale and transfer is approved, those customers currently being served by Rogue Creek will receive their water and sewer service from MAWC, which is fully qualified to own and operate the Rogue Creek system and to provide safe and reliable water and sewer service. MAWC's proposal to apply its existing water tariff and existing Cedar Hill sewer rates to customers in the Rogue Creek service area is reasonable. Those rates will result in Rogue Creek customers having decreased water rates and increased sewer rates for a net rate increase. The transaction will not have any impact on the tax revenues of any political subdivision where the water or sewer facilities are located.

Based on the information provided in the verified joint application and upon the verified recommendation and memorandum of Staff, the Commission finds that the proposed transfer of assets is not detrimental to the public interest and should be approved, subject to the conditions and actions recommended by Staff. Additionally, the Commission will grant MAWC certificates of service for the Rogue Creek service area.

The Commission has also reviewed the arguments of the parties with regard to the appropriate rates. MAWC's arguments in favor of its proposed rates for Rogue

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<sup>7</sup> Section 393.190.1, RSMo 2016.

<sup>8</sup> *State ex rel. City of St. Louis v. Public Service Comm'n of Missouri*, 73 S.W.2d 393, 400 (Mo. 1934).

Creek are sound and persuasive. Rogue Creek is a troubled system in receivership that needs a capable system owner and operator as soon as possible in order to obtain and maintain safety and environmental compliance. MAWC is fully capable of owning and operating the system and providing safe and adequate service. MAWC has been working closely with the Rogue Creek Homeowners Association for over two years, has been operating the systems since March 2017, has incurred more than \$160,000 in expenses to bring about improvements to the system since that time, and will need to make additional investments in the system to maintain compliance with all the relevant safety and environmental standards.<sup>9</sup> Considering these factors, the current Rogue Creek rates are not the best suited rates. Under the proposed rates, depending on usage, typical customers will have a \$4.63 to \$9.35 per month combined increase in their monthly bills, which is reasonable in these circumstances. Additionally, the City of Lawson rates are not appropriate because MAWC's acquisition of this system has very little in common with its acquisition of the City of Lawson system in Commission File No. WM-2018-0222. Considering these factors, the Commission finds the rates proposed by MAWC and recommended by Staff are reasonable and in the public interest.

The Commission may approve MAWC's request for the Rogue Creek customers to become part of an existing MAWC service area if in its opinion those are the rates best suited for the customers due to operational or other factors.<sup>10</sup> After considering all the above factors, the Commission finds that MAWC's proposed rates are the rates best suited for Rogue Creek's ratepayers. The application also asked the Commission to waive the 60-day notice requirement under 4 CSR 240-4.017(1), if necessary. MAWC and Rogue Creek asserted that good cause exists in this case for granting such waiver

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<sup>9</sup> *Joint Application and Motion for Waiver*, (filed July 24, 2018), paras. 11 and 12.

<sup>10</sup> Subsection 393.320.6, RSMo. 2016.

because MAWC has had no communication with the office of the Commission within the prior 150 days regarding any substantive issue likely to be in this case other than pleadings filed as a matter of record. The Commission finds that good cause exists to waive the notice requirement, and a waiver of 4 CSR 240-4.017(1) will be granted.

Additionally, because of the need to transfer these assets as quickly as possible so that MAWC may begin officially providing safe and adequate water and sewer service, the Commission also finds good cause exists to make this order effective in less than 30 days.

**THE COMMISSION ORDERS THAT:**

1. The request for waiver of the notice requirement under Commission Rule 4 CSR 240-4.017(1) is granted.
2. Missouri-American Water Company and Rogue Creek Utilities, Inc.'s joint application for approval of the transfer of the assets to Missouri-American Water Company is granted, subject to the conditions recommended by the Commission's Staff which are delineated in the body of this order.
3. Rogue Creek Utilities, Inc. is authorized to sell and transfer to Missouri-American Water Company the water and sewer assets described in the joint application and the Asset Purchase Agreement entered into between those parties.
4. Missouri-American Water Company and Rogue Creek Utilities, Inc. are authorized to enter into, execute, and perform in accordance with the terms described in the Asset Purchase Agreement attached to its joint application and to take any and all other actions which may be reasonably necessary and incidental to the performance of the acquisition.

5. Missouri-American Water Company is granted certificates of convenience and necessity to provide water and sewer service within the Rogue Creek Utilities, Inc. service area as more particularly described in the application, subject to the conditions and requirements contained in Staff's recommendation and set out above, effective upon the date of closing of the purchase transaction.

6. Missouri-American Water Company shall apply its existing water tariff rules and its "All Missouri Service Areas Outside of St. Louis County and Outside of Mexico" water rates to the Rogue Creek Utilities, Inc. service area.

7. Missouri-American Water Company shall apply its existing sewer tariff rules and its "Cedar Hill" sewer rates to the Rogue Creek Utilities, Inc. service area.

8. Missouri-American Water Company shall submit new tariff sheets in compliance with this order prior to closing on the assets.

9. Missouri-American Water Company's existing depreciation rates for water and sewer utility plant accounts are approved to apply to the Rogue Creek Utilities, Inc. service area assets.

10. Missouri-American Water Company shall submit notice to the Commission within five business days after closing on the assets occurs.

11. Within five business days after closing on the assets occurs, Missouri-American Water Company shall provide a report regarding resolution of the real estate acquisition, easement rights, the cost of real estate and easement acquisition and resolutions, and a statement that it has complete access to all utility assets necessary for providing water and sewer service.

12. After receiving notice of the closing, the Commission will cancel Rogue Creek Utilities' existing certificates of convenience and necessity and tariffs for water and sewer service.

13. If the closing on the water system assets and/or resolution of the real estate issues has not occurred by October 30, 2018, Missouri-American Water Company shall file a status report no later than November 5, 2018, and every 30 days thereafter, until closing takes place, or until Missouri-American Water Company determines that the transfer of the assets will not occur.

14. If Missouri-American Water Company or Rogue Creek Utilities, Inc. determines that a transfer of the assets will not occur, either or both utilities shall notify the Commission of that determination no later than the date the next status report is due after the determination was made, and Missouri-American Water Company shall submit tariff sheets as appropriate that would cancel the tariff sheets and changes filed, if any, applicable to the Rogue Creek service area.

15. Rogue Creek Utilities, Inc. shall provide as best as possible prior to or at closing, for Missouri-American Water Company to take physical possession of and maintain all records and documents with respect to regulated operations and any and all books and financial records of Rogue Creek Utilities, Inc., including, but not limited to, all plant-in-service original cost documentation, along with depreciation reserve balances and records, invoices and purchase orders and purchase agreements, documentation of contribution-in-aid-of construction transactions, and any capital recovery transactions, all customer billing records and customer deposit records to the extent the company has customer deposits.



16. In its next general rate case, Missouri-American Water Company shall provide an analysis documenting rate base values for Rogue Creek Utilities, Inc.'s utility assets, including an appropriate offset for associated contributions-in-aid-of-construction, and including real estate assets obtained in the context of the Rogue Creek Utilities, Inc. transaction.

17. The Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to Missouri-American Water Company, including expenditures related to the Rogue Creek Utilities, Inc. certificated service area and capacity adjustments, in any later proceeding.

18. Within ten days after closing on the assets, Missouri-American Water Company shall provide to the Commission's Customer Experience Department Staff an example of its actual communication with the Rogue Creek Utilities, Inc. service area customers regarding its acquisition and operations of the Rogue Creek Utilities, Inc. water system assets, and how customers may reach Missouri-American Water Company regarding water matters.

19. Missouri-American Water Company shall include the Rogue Creek Utilities, Inc. customers in its established monthly reporting to the Customer Experience Department Staff on customer service and billing issues.

20. No later than ten days after the closing on the assets, Missouri-American Water Company shall distribute to the Rogue Creek Utilities, Inc. customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its water service, consistent with the requirements of Commission Rule 4 CSR 240-13.040(2)(A-L).

21. Missouri-American Water Company shall provide adequate training for the correct application of rates and rules to all customer service representatives prior to Rogue Creek Utilities, Inc.'s customers receiving their first bill from Missouri-American Water Company.

22. Missouri-American Water Company shall provide to the Customer Experience Department Staff a sample of ten billing statements from the first month's billing within 30 days of such billing.

23. Missouri-American Water Company shall file notice in this file within ten days of the above requirements regarding customer communications and customer billing being completed.

24. This order shall become effective on September 30, 2018.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

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

Dippell, Senior Regulatory Law Judge

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of Timber Creek Sewer Company for a )  
Certificates of Convenience and Necessity )  
Authorizing it to Construct, Install, Own, Operate, ) **File No. SA-2019-0006**  
Maintain, Control and Manage a Sewer System in )  
Clay County, Missouri as an expansion of its )  
Existing Certificated Areas. )

**ORDER GRANTING CERTIFICATE OF  
CONVENIENCE AND NECESSITY AND GRANTING WAIVER**

**CERTIFICATES**

**§47 Sewers**

Granting a certificate of convenience and necessity requires a showing of necessity or convenience for the public service, and the Commission applies a five factor analysis to determine whether an application is necessary or convenient.

**SEWER**

**§2 Certificate of convenience and necessity**

Granting a certificate of convenience and necessity requires a showing of necessity or convenience for the public service, and the Commission applies a five factor analysis to determine whether an application is necessary or convenient.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 27<sup>th</sup> day of September, 2018.

In the Matter of Timber Creek Sewer Company for a )  
Certificate of Convenience and Necessity Authorizing it )  
To Construct, Install, Own, Operate, Maintain, Control )  
And Manage a Sewer System in Clay County, Missouri )  
As an Expansion of its Existing Certificated Areas )

**File No. SA-2019-0006**

**ORDER GRANTING CERTIFICATE OF  
CONVENIENCE AND NECESSITY AND GRANTING WAIVER**

Issue Date: September 27, 2018

Effective Date: October 27, 2018

On July 10, 2018, Timber Creek Sewer Company (“Timber Creek”) filed an application with the Missouri Public Service Commission (“Commission”) requesting that the Commission grant it a Certificate of Convenience and Necessity (“CCN”) to install, own, acquire, construct, operate, control, manage and maintain a sewer system in Clay County, Missouri. The requested CCN would allow Timber Creek to provide sewer service to a new service area adjacent to one of Timber Creek’s existing service areas. The new service area is the site of a proposed residential subdivision named Oakridge, which consists of 18 lots.

The Commission issued notice and set a deadline for intervention requests, but no persons requested to intervene in this proceeding. On July 26, 2018, the Commission directed Timber Creek to provide notice to Star Development Company, which is the only entity affected by the requested certificate. On September 7, 2018, the Commission’s Staff

filed its corrected Recommendation and Memorandum to approve the granting of the CCN, subject to certain conditions. Staff advises the Commission to issue an order that would:

1. Approve a new CCN, as requested in the Application;
2. Require Timber Creek to file new and/or replacement tariff sheets, as 30-day filings, within ten (10) days after the effective date of an order from the Commission approving the CCN, with a metes and bounds description similar to Attachment A included with the memorandum, and a map depicting the new service area; and,
3. Make no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to utility plant constructed within the new service area, or providing service in the new service area, in any later proceeding.

On September 12, 2018, Timber Creek filed its response, stating that it has no objection to the conditions in the Staff Recommendation. No party has objected to the Staff recommendation within the time set by the Commission. Thus, the Commission will rule upon the unopposed application. No party has requested an evidentiary hearing, and no law requires one.<sup>1</sup> Therefore, this action is not a contested case,<sup>2</sup> and the Commission need not separately state its findings of fact.

The Commission may grant a sewer corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either “necessary or convenient for the public service.”<sup>3</sup> The Commission articulated the specific criteria to be used when evaluating applications for utility CCNs in the case *In Re Intercon Gas, Inc.*, 30 Mo P.S.C. (N.S.) 554, 561 (1991). The *Intercon* case combined the standards

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<sup>1</sup> *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App. 1989).

<sup>2</sup> Section 536.010(4), RSMo 2016.

used in several similar certificate cases, and set forth the following criteria: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.<sup>4</sup> The Commission finds that Timber Creek possesses adequate technical, managerial, and financial capacity to operate a sewer system in the new service area. The Commission concludes that the factors for granting a certificate of convenience and necessity to Timber Creek have been satisfied and that it is in the public interest for Timber Creek to expand its certificated service area to the Oakridge subdivision. Consequently, based on the Commission's independent and impartial review of the verified filings, the Commission will grant Timber Creek a certificate of convenience and necessity to provide sewer service within the proposed service area, subject to the conditions described above.

The application also asks the Commission to waive the 60-day notice requirement under 4 CSR 240-4.017(1). Timber Creek asserts that good cause exists in this case for granting such waiver because it has had no communication with the Office of the Commission within the prior 150 days regarding any substantive issue likely to be in this case. The Commission finds that good cause exists to waive the notice requirement, and a waiver of 4 CSR 240-4.017(1) will be granted.

**THE COMMISSION ORDERS THAT:**

1. Timber Creek Sewer Company's request for a waiver of the notice requirement under Commission Rule 4 CSR 240-4.017(1) is granted.

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<sup>3</sup> Section 393.170.3, RSMo 2016.

<sup>4</sup> The factors have also been referred to as the "Tartan Factors" or the "Tartan Energy Criteria." See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a*

2. Timber Creek Sewer Company is granted the certificate of convenience and necessity to provide sewer service within the authorized service area as more particularly described in the application, subject to the conditions and requirements contained in Staff's Recommendation, including those conditions described in the body of this order.

3. This order shall become effective on October 27, 2018.



**BY THE COMMISSION**

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

Morris L. Woodruff  
Secretary

Silvey, Chm., Hall, Rupp, and  
Coleman, CC., concur.  
Kenney, C., absent.

Bushmann, Senior Regulatory Law Judge

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Rate                    )  
Increase Request for Liberty Utilities                    )  
(Missouri Water), LLC d/b/a Liberty Utilities            )        **File No. WR-2018-0170**

**REPORT AND ORDER**

Affirmed on appeal: *Matter of Rate Increase Request for Liberty Utilities (Missouri Water), LLC*, 392 S.W.3d 82 (Mo. App. W.D. 2019)

**EVIDENCE, PRACTICE AND PROCEDURE**

**§1 Generally**

Counsel for Silverleaf filed a *Motion to Strike the Surrebutal Testimony of Keith Magee and Motion for Expedited Treatment*. Liberty Utilities' response observes that Keith Magee's testimony is responsive to other witnesses, and no rule prohibits the filing of surrebuttal testimony by a witness that has not filed either direct or rebuttal testimony.

**RATES**

**§8 Reasonableness generally**

The Commission concludes that it is more likely than not that the increase will result in just and reasonable rates. Liberty Utilities has not come to the Commission for a rate increase for any of its water or sewer systems in more than seven years, and during that time, the ratepayers have enjoyed low rates that have not changed in more than half a decade. Silverleaf's rates have not changed in more than a decade. Meanwhile, Liberty Utilities has made necessary improvements to the system in excess of 2.5 million dollars. Additionally it has experienced higher costs of service with increasing operation and management expenses.

**§12 Capitalization and security prices**

The issue for determination is whether to apply a capital structure based upon the mean ratio of a set of proxy gas companies that Liberty Utilities' witness Keith Magee believes closely resembles the risk characteristics of Liberty Utilities, a hypothetical capital structure, or whether to apply a capital structure based upon Liberty Utilities' parent holding company, LUCo.

Applying LUCo's capital structure is appropriate because LUCo's capital structure is used to finance LUCo's United States' regulated utility assets. It is logical to apply the actual capital structure of the company providing the financing for Liberty Utilities because Liberty Utilities issues none of its own debt.



**§21 Discrimination, partiality, or unfairness**

If Silverleaf is proposing that the phase-in rates apply only to Silverleaf service areas, then the Commission would be treating one group of Liberty Utilities' customers different than others without a compelling reason. The result would be inequitable for ratepayers, with some service areas paying their full cost of service while the Silverleaf service area does not during the first two years of the phase-in. This shortfall of revenue from the phase-in service area could result in a detriment across the whole system due to less money being available for customer service or maintenance.

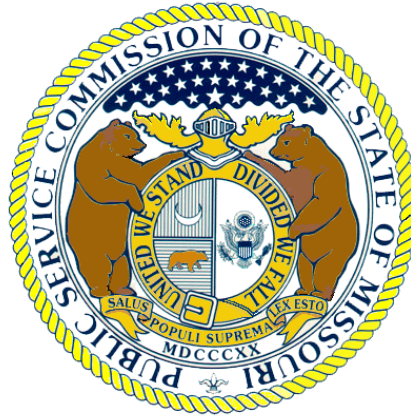
**§21 Discrimination, partiality, or unfairness**

An increase in rates that does not apply to one system burdens the other systems with the cost of shared services and management. Likewise, if some customers are excluded from review, those customers in the excluded service area will not be recognized in rates, and the utility could collect revenues above those authorized. An effective rate case requires that all relevant factors are reviewed in order to set just and reasonable rates.

**SERVICE****§3 Obligation of the utility**

Ozark Mountain Condominium Association intervened in this case largely because it was concerned that Liberty Utilities was requesting, and would receive, a rate increase for the Ozark Mountain service area without addressing what it felt were numerous instances of inadequate service. While this is not a formal complaint case, the Commission has the responsibility to examine all relevant factors when determining rates.

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



In the Matter of the Application of Rate )  
Increase Request for Liberty Utilities )  
(Missouri Water), LLC d/b/a Liberty Utilities )

**File No. WR-2018-0170**

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**REPORT AND ORDER**

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**Issue Date:                      October 24, 2018**

**Effective Date:                  November 3, 2018**

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

In the Matter of the Application of Rate )  
Increase Request for Liberty Utilities ) **File No. WR-2018-0170**  
(Missouri Water), LLC d/b/a Liberty Utilities )

**REPORT AND ORDER**

**APPEARANCES**

**LIBERTY UTILITIES (MISSOURI WATER), LLC d/b/a LIBERTY UTILITIES:**

**Paul A. Boudreau**, Brydon, Swearingen & England, P.C., 312 East Capitol Avenue, P.O. Box 456, Jefferson City, Missouri 65102

**THE STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:**

**Jacob Westen**, Deputy Counsel, **Alexandra Klaus**, Legal Counsel, P.O. Box 360, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102

**THE OFFICE OF THE PUBLIC COUNSEL:**

**Lera Shemwell**, Senior Public Counsel, **Caleb Hall**, Counsel, P.O. Box 2230, Jefferson City, Missouri, 65102

**ORANGE LAKE COUNTRY CLUB, INC. AND SILVERLEAF RESORTS, INC.:**

**Joshua Harden**, Stinson Leonard Street, 1201 Walnut St., Suite 2900 Kansas City, Missouri 64106

**OZARK MOUNTAIN CONDOMINIUM ASSOCIATION:**

**Sarah E. Giboney**, Smith Lewis, P.O. Box 918, 111 South Ninth Street, Suite 200 Columbia MO 65205

**REGULATORY LAW JUDGE:** John T. Clark

## I. Procedural History

### A. Case Filing and Consolidation

Liberty Utilities (Missouri Water), LLC d/b/a Liberty Utilities (“Liberty Utilities” or “Liberty”) provides water service to approximately 1,954 connections in Cape Girardeau, Franklin, Jefferson, McDonald, Stone and Taney Counties in Missouri.<sup>1</sup> Liberty Utilities provides sewer service to approximately 416 connections in Cape Girardeau, Franklin, Jefferson, Stone and Taney Counties in Missouri.<sup>2</sup> Liberty Utilities is a public utility,<sup>3</sup> and water corporation,<sup>4</sup> and a sewer corporation,<sup>5</sup> and a regulated utility under the Missouri Public Service Commission’s jurisdiction

On December 15, 2017, Liberty Utilities filed a letter with the Missouri Public Service Commission (“Commission”) requesting that the Commission approve increases in its annual water and sewer operating revenues, which resulted in the Commission opening two cases, File Nos. WR-2018-0170 and SR-2018-0171. Liberty Utilities requested an increase of \$995,844 in its annual water system operating revenues and an increase of \$196,617 in its annual sewer system operating revenues.<sup>6</sup> The case was initiated under Commission Rule 4 CSR 240-3.050, Small Utility Rate Case Procedure, which describes the procedures by which small utilities, such as Liberty Utilities, may request increases in their overall annual operating revenues. This rule, while now rescinded and replaced with Commission Rule 4 CSR 240-10.75

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<sup>1</sup> Exhibit No. 1, Schwartz Direct, Page 3.

<sup>2</sup> Exhibit No. 105, Harrison Direct, Schedule PRH-d2, Page 1.

<sup>3</sup> Section 386.020(43).

<sup>4</sup> Section 386.020(59).

<sup>5</sup> Section 386.020(49).

<sup>6</sup> EFIS No. 1, Request for Increase

(effective starting May 30, 2018), was effective when Liberty Utilities requested an increase and was used in this case. Under the Small Utility Rate Case Procedure a water or sewer company serving 8,000 or fewer customers may initiate a rate case by filing a letter requesting an increase with the secretary of the Commission.

On January 13, 2018, Liberty Utilities filed a *Motion to Consolidate*, which requested that the Commission consolidate the two cases because they involved related questions of law and fact under Commission Rule 4 CSR 240-2.110(3). The Commission granted the motion, consolidating both cases under File No. WR-2018-0170.<sup>7</sup>

## **B. Intervention**

Orange Lake Country Club, Inc. and Silverleaf Resorts, Inc. (collectively “Silverleaf”) and Ozark Mountain Condominium Association (“OMCA”) filed motions to intervene pursuant to Commission Rule 4 CSR 240-2.075. Both Silverleaf and OMCA were granted intervention.<sup>8</sup>

## **C. The Partial Disposition Agreement**

On May 24, 2018, the Staff of the Missouri Public Service Commission (“Staff”), filed a *Partial Disposition Agreement and Request for Evidentiary Hearing* (“Partial Disposition Agreement”). Staff, Liberty, and the Office of the Public Counsel (“OPC”) reached agreement on some of the issues related to Liberty Utilities’ rate increase request. The Partial Disposition Agreement was a partial resolution of Liberty Utilities water and sewer rate requests but left unresolved certain other issues for determination

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<sup>7</sup> EFIS No. 7, Order Consolidating Cases.

<sup>8</sup> EFIS Nos. 8 and 12, Order Granting Applications to Intervene.

after an evidentiary hearing. The Partial Disposition Agreement states that the unresolved issues include: “(a) revenue requirement, (b) return on equity, (c) capital structure, (d) rate base, (e) rate case expense, (f) rate design and rate consolidation, and (g) compliance with § 393.140(4) RSMo, 4 CSR 240-50.030(1) and 4 CSR 204-61.020(1), the use of The Uniform System of Accounts.” Among the issues resolved in the Partial Disposition Agreement were some customer service issues, and depreciation issues. No objections to the Partial Disposition Agreement were received and the Commission finds reasonable and adopts the resolution of the issues contained therein.

#### **D. Local Public Hearings**

The Commission conducted local public hearings in Pineville and Branson Missouri on July 23, 2018, and in Pacific Missouri on July 25, 2018. At the conclusion of the local public hearings, the Commission had received the sworn testimony of nine witnesses, and admitted two exhibits onto the record. All of the parties were given the opportunity to cross-examine the witnesses.

#### **E. The Non-Unanimous Stipulation and Agreement**

On August 3, 2018, Liberty Utilities and Staff filed a *Non-Unanimous Stipulation and Agreement*.<sup>9</sup> The agreement resolved most of the remaining issues between Liberty and Staff including revenue requirement, return on equity, and rate design. It left unresolved rate case expense and certain customer service issues.

Commission Rule 4 CSR 240-2.115(2) allows a party seven days from the filing of a non-unanimous stipulation and agreement to file an objection to it. Any party failing to file a timely objection waives its right to a hearing. Additionally if no party timely

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<sup>9</sup> EFIS No. 72, Non-Unanimous Stipulation and Agreement.

objects, the Commission may treat the non-unanimous stipulation and agreement as unanimous. Objections to the *Non-Unanimous Stipulation and Agreement* were due by August 10, 2018.

On August 13, 2018, Staff filed a *Notice of no Objections to Non-unanimous Stipulation and Agreement, Request to Modify Hearing Schedule, and Motion for Expedited Treatment*.<sup>10</sup> Staff asked to modify the evidentiary hearing schedule to include only three issues: rate case expense, customer service issues, and adoption of the stipulation and agreement.

On August 13, 2018, OPC filed a response to Staff's notice of no objections, and later a clarification, stating that it did not oppose but does not support the *Non-Unanimous Stipulation and Agreement*. OPC did not oppose the overall revenue requirement, but was concerned that the information in the stipulation was incomplete, in that it contained a stated return on equity without an associated capital structure.

Also on August 13, 2018, Silverleaf filed a response to Staff's notice of no objections, stating that it did not support the return on equity or the lack of a capital structure, and therefore did not support the stipulation and agreement. It did not, however, specifically object to the *Non-Unanimous Stipulation and Agreement*.

Also on August 13, 2018, OMCA filed its *Objection to Non-Unanimous Stipulation and Agreement and Request for Leave to Late file Same*, stating that the public interest would be better served by deciding the case after a hearing on the merits.

Liberty Utilities filed objections to OMCA's request and a motion to strike OPC's response. The motion to strike OPC's response is denied.

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<sup>10</sup> EFIS No. 90, Notice of No Objections to Non-Unanimous Stipulation and Agreement, Request to Modify Procedural Schedule, and Motion for Expedited Treatment.



No party objected within seven days; therefore, no party timely objected to the Non-Unanimous Stipulation and Agreement. Nevertheless, the Commission agrees that given the late objections to the *Non-Unanimous Stipulation and Agreement* by multiple interveners and the concerns of OPC, the public interest would be best served by issuing a decision on the merits. The Commission is treating the *Non-Unanimous Stipulation and Agreement* as non-unanimous.

At the evidentiary hearing on August 16, 2018, objections and arguments regarding the *Non-Unanimous Stipulation and Agreement* were taken under advisement. Counsel for Liberty Utilities indicated that he was operating under the assumption that the *Non-Unanimous Stipulation and Agreement* was a joint recommendation of the signatories,<sup>11</sup> and counsel for Staff indicated that Staff viewed it a joint position statement of Staff and the company.<sup>12</sup> Accordingly, the Commission is treating the *Non-Unanimous Stipulation and Agreement* as the position statement of both Staff and Liberty Utilities

#### **F. Test Year**

The test year is a central component in the ratemaking process. Rates are usually established based upon a historical test year, which focuses on four factors: (1) the rate of return the utility has an opportunity to earn; (2) the rate base upon which a return may be earned; (3) the depreciation costs of plant and equipment; and (4) allowable operating expenses.<sup>13</sup> From these four factors is calculated the “revenue requirement,” which is the amount of revenue ratepayers must generate to pay the

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<sup>11</sup> Transcript, Page 44.

<sup>12</sup> Transcript, Page 51.

<sup>13</sup> *State ex rel. Union Electric Company v. Public Service Comm'n*, 765 S.W.2d 618, 622 (Mo. App. 1988).

costs of producing the utility service they receive while yielding a reasonable rate of return to the investors.<sup>14</sup> A historical test year is used because the past expenses of a utility can be used as a basis for determining what rate is reasonable to be charged in the future.<sup>15</sup> Staff used a test year of the twelve months ending June 30 2017, with an update period through November 30, 2017, to annualize the available revenue and expense information and develop its revenue requirement recommendation.<sup>16</sup>

### **G. Motion to Strike Testimony of Keith Magee**

On August 8, 2018, Counsel for Silverleaf filed a *Motion to Strike the Surrebutal Testimony of Keith Magee and Motion for Expedited Treatment*.<sup>17</sup>

On August 9, 2018, Liberty Utilities filed its *Response of Liberty Utilities to Motion to Strike the Surrebutal Testimony of Keith Magee*.<sup>18</sup> Liberty observes that Keith Magee's testimony is responsive to other witnesses, and no rule prohibits the filing of surrebutal testimony by a witness that has not filed either direct or rebuttal testimony. Liberty states that Silverleaf filed no direct testimony, and only after Silverleaf filed rebuttal testimony was Liberty aware that a witness regarding the particular subject matter would be necessary. Additionally, Keith Magee's testimony from a Liberty Utilities gas rate case, GR-2018-0013, was attached to the filed direct testimony of Jill Schwartz.

On August 9, 2018, the Commission issued its *Order Denying Motion for*

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<sup>14</sup> *State ex rel. Capital City Water Co. v. Public Service Comm'n*, 850 S.W.2d 903, 916 n. 1 (Mo. App. 1993).

<sup>15</sup> *See, State ex rel. Utility Consumers' Council of Missouri, Inc. v. Public Service Comm'n*, 585 S.W.2d 41, 59 (Mo. Banc 1979).

<sup>16</sup> Exhibit No. 105, Harrison Direct, Page 4.

<sup>17</sup> EFIS No. 82, Motion to Strike the Surrebutal Testimony of Keith Magee and Motion for Expedited Treatment

<sup>18</sup> EFIS No. 83, Response of Liberty Utilities to Motion to Strike the Surrebutal Testimony of Keith Magee

*Expedited Treatment*, indicating the Commission would consider Silverleaf's motion in its report and order.<sup>19</sup>

Liberty Utilities complied with the Commission's discovery deadline. Silverleaf had notice of Keith Magee as a potential witness, and also the content of his testimony, from Jill Schwartz's direct testimony and the accompanying Keith Magee direct testimony from GR-2018-0013. Silverleaf's motion to strike Keith Magee's surrebuttal testimony is denied.

#### **H. Evidentiary Hearing**

The evidentiary hearing was held at the Commission's offices in Jefferson City, Missouri on August 16, 2018.<sup>20</sup> All parties (Liberty Utilities, Staff, OPC, Silverleaf, and OMCA) participated.<sup>21</sup> During the hearing, the parties presented evidence relating to the unresolved issues previously identified by the parties. Those issues are: the revenue requirement including return on equity, capital structure, and rate case expense; Rate design including phase-in rates, customer charge, and commodity charge; the Silverleaf exemption; and customer service issues.<sup>22</sup> The Commission admitted the testimony of twelve witnesses and received twenty-seven exhibits into evidence.

#### **I. Case Submission**

Post-hearing briefs were filed according to the post-hearing procedural schedule. The final post-hearing briefs were filed on September 11, 2018. Several of the parties offered testimony at the evidentiary hearing regarding the *Non-Unanimous Stipulation*

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<sup>19</sup> EFIS No. 84, Order Denying Motion for Expedited Treatment

<sup>20</sup> Transcript Volume 5.

<sup>21</sup> Transcript, Page 26.

<sup>22</sup> EFIS No. 86, List of Issues, Order of Witnesses, Order of Cross-Examination and Order of Opening Statements.

*and Agreement*. To better assist the Commission in making its decision, the Commission admitted the *Non-Unanimous Stipulation and Agreement* and its attachments onto the record as Commission Exhibit No. 1. The case was deemed submitted for the Commission's decision on September 25, 2018.<sup>23</sup>

## **II. General Matters**

### **A. General Findings of Fact**

1. Liberty Utilities which holds the water and sewer utility assets, is a subsidiary of Liberty Utilities Company ("LUCo"), an intermediate holding company, which is an indirect wholly owned subsidiary of Algonquin Power & Utilities Corp.<sup>24</sup> Liberty Utilities provides water service in Cape Girardeau, Franklin, Jefferson, McDonald, Stone and Taney Counties in Missouri. Liberty Utilities provides sewer service in Cape Girardeau, Franklin, Jefferson, Stone and Taney Counties in Missouri.<sup>25</sup>

2. Liberty Utilities currently provides service to approximately 1,954 water customers and approximately 416 sewer customers in 14 certificated service areas with 11 different sets of tariffed rates.<sup>26</sup>

3. The Office of the Public Counsel is a party to this case pursuant to Section 386.710(2), RSMo<sup>27</sup> and Commission Rule 4 CSR 240-2.010(10).

4. Staff is a party to this case pursuant to Section 386.071, RSMo, and Commission Rule 4 CSR 240-2.010(10).

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<sup>23</sup> "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 4 CSR 240-2.150(1).

<sup>24</sup> Exhibit No. 4, Magee Surrebuttal, Pages 1, 7-8.

<sup>25</sup> Exhibit No. 1, Schwartz Direct, Page 3

<sup>26</sup> Exhibit No. 105 – Direct Testimony of Paul Harrison, Schedule PRH-d2, Page 1.

<sup>27</sup> Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016 and subsequently revised or supplemented.

5. Liberty Utilities' KMB water systems include seven systems: Cedar Hills, Crestview, High Ridge Manor, Hillshine Community, Lakeview Hills, Town of Scotsdale, and Warren Woods. Each of these systems has its own tariffed rates for water service. Liberty Utilities' KMB sewer system includes Cape Rock Village, which has its own sewer tariffed rates.<sup>28</sup>

6. Liberty Utilities' Silverleaf water systems include Holiday Hills, Ozark Mountain, and TimberCreek. All three Silverleaf water systems have the same water tariffed rate. Liberty Utilities' Silverleaf sewer systems include Ozark Mountain and Timber Creek. Both of these sewer systems are under one sewer tariffed rate.<sup>29</sup>

7. Liberty Utilities' Noel water system has its own tariffed rates for the water services it provides to its customers.<sup>30</sup>

8. The Commission last approved a rate increase for Liberty Utilities' KMB properties in File Nos. WR-2010-0345 and SR-2010-0346, effective February 1, 2011. The Commission last approved a rate increase for Liberty Utilities' Silverleaf properties in File Nos. WR-2006-0425 and SR-2006-0426, effective April 2, 2007. The Commission last approved a rate increase for Liberty Utilities' Noel properties in File No. WR-2009-0395, effective November 12, 2009.<sup>31</sup>

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<sup>28</sup> Exhibit No. 105, Harrison Direct, Schedule PRH-d2, Page 1.

<sup>29</sup> Exhibit No. 105, Harrison Direct, Schedule PRH-d2, Page 1.

<sup>30</sup> Exhibit No. 105, Harrison Direct, Schedule PRH-d2, Page 1.

<sup>31</sup> Exhibit No. 105, Harrison Direct, Schedule PRH-d2, Page 1.

9. In its original rate request letter, Liberty Utilities requested an increase of \$995,844 in its annual water system operating revenues and an increase of \$196,617 in its annual sewer system operating revenues.<sup>32</sup>

10. Staff used a test year of the twelve months ending June 30 2017, with an update period through November 30, 2017, to annualize the available revenue and expense information and develop its revenue requirement recommendation.<sup>33</sup>

11. On May 24, 2018, Staff filed a *Partial Disposition Agreement and Request for Evidentiary Hearing* on behalf of itself, Liberty Utilities, and OPC. The agreement was a partial resolution of Liberty Utilities' water and sewer rate requests but left unresolved certain other issues for which the signatories requested an evidentiary hearing. The agreement is attached hereto as Attachment A and incorporated herein by reference as if fully set forth.

12. The Commission finds that any given witness' qualifications and overall credibility are not dispositive as to each and every portion of that witness' testimony. The Commission gives each item or portion of a witness' testimony individual weight based upon the detail, depth, knowledge, expertise, and credibility demonstrated with regard to that specific testimony. Consequently, the Commission will make additional specific weight and credibility decisions throughout this order as to specific items of testimony as is necessary.<sup>34</sup>

13. Any finding of fact reflecting that the Commission has made a

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<sup>32</sup> EFIS No. 1, Request for Increase.

<sup>33</sup> Exhibit No. 105, Harrison Direct, Page 4.

<sup>34</sup> Witness credibility is solely a matter for the fact-finder, "which is free to believe none, part, or all of the testimony". *State ex rel. Public Counsel v. Missouri Public Service Comm'n*, 289 S.W.3d 240, 247 (Mo. App. 2009).

determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.<sup>35</sup>

## **B. General Conclusions of Law**

1. Liberty Utilities is a “water corporation”, a “sewer corporation”, and a “public utility” as defined in Sections 386.020(59), 386.020(49), and 386.020(43), RSMo, respectively, and as such is subject to the supervision, control and regulation of the Commission under Chapters 386 and 393 of the Missouri Revised Statutes. The Commission’s statutory authority over Liberty Utilities’ rate increase request is established under Section 393.150, RSMo.

2. The Commission has exclusive authority to establish public utility rates,<sup>36</sup> and the tariffs it approves have the force and effect of law when they become effective.<sup>37</sup> A public utility has no right to fix its own rates and cannot charge or collect rates that have not been approved by the Commission;<sup>38</sup> neither can a public utility change its rates without first seeking authority from the Commission.<sup>39</sup> A public utility may submit rate schedules or “tariffs,” and thereby suggest to the Commission rates and classifications which it believes are just and reasonable, but the final decision is the Commission's.<sup>40</sup>

3. Sections 393.130 and 393.140, RSMo, mandate that the Commission

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<sup>35</sup> An administrative agency, as fact finder, also receives deference when choosing between conflicting evidence. *State ex rel. Missouri Office of Public Counsel v. Public Service Comm'n of State*, 293 S.W.3d 63, 80 (Mo. App. 2009).

<sup>36</sup> *May Dep't Stores Co. v. Union E.L.P. Co.*, *supra*, 107 S.W.2d 41 57 (Mo. 1937)

<sup>37</sup> *State Ex Rel. Utility Consumers Council v. Pub. Serv. Comm'n*, *supra*, 585 S.W.2d 41 49 (Mo. 1979).

<sup>38</sup> *State Ex Rel. Utility Consumers Council v. Pub. Serv. Comm'n*, *supra*, 585 S.W.2d 41 49 (Mo. 1979).

<sup>39</sup> *Deaconess Manor Ass'n v. Pub. Serv. Comm'n*, 994 S.W.2d 602, 610 (Mo. App., W.D. 1999).

<sup>40</sup> *May Dep't Stores Co. v. Union E.L.P. Co.*, *supra*, 107 S.W.2d 41 50 (Mo. 1937)

ensure that all utilities are providing safe and adequate service and that all rates set by the Commission are just and reasonable. Section 393.150.2, RSMo, makes clear that at any hearing involving a requested rate increase, the burden of proof to show the proposed increase is just and reasonable rests on the corporation seeking the rate increase. As the party requesting the rate increase, Liberty Utilities bears the burden of proving that its proposed rate increase is just and reasonable.<sup>41</sup> In order to carry its burden of proof, Liberty Utilities must meet the preponderance of the evidence standard.<sup>42</sup>

4. In determining whether the rates proposed by Liberty are just and reasonable, the Commission must balance the interests of the investor and the consumer.<sup>43</sup> In discussing the need for a regulatory body to institute just and reasonable rates, the United States Supreme Court has held as follows:

Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the services are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment.<sup>44</sup>

In the same case, the Supreme Court provided the following guidance on what is a just and reasonable rate:

What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the

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<sup>41</sup> 393.150.2, RSMo

<sup>42</sup> *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996), citing to, *Addington v. Texas*, 441 U.S. 418, 423, 99 S.Ct. 1804, 1808, 60 L.Ed.2d 323, 329 (1979).

<sup>43</sup> *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603, (1944).

<sup>44</sup> *Bluefield Water Works & Improvement Co. v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 690 (1923).



property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.<sup>45</sup>

The Supreme Court has further indicated:

‘[R]egulation does not insure that the business shall produce net revenues.’ But such considerations aside, the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.<sup>46</sup>

In undertaking the balancing required by the Constitution, the Commission is not bound to apply any particular formula or combination of formulas. Instead, the Supreme Court has said:

Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances.<sup>47</sup>

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<sup>45</sup> *Bluefield Water Works & Improvement Co. v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 692-93 (1923).

<sup>46</sup> *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (citations omitted).

<sup>47</sup> *Federal Power Commission v. Natural Gas Pipeline Co.* 315 U.S. 575, 586 (1942).

Furthermore, in quoting the United States Supreme Court in *Federal Power Commission v. Hope Natural Gas Co.*, the Missouri Court of Appeals said:

[T]he Commission [is] not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of ‘pragmatic adjustments.’ ... Under the statutory standard of ‘just and reasonable’ it is the result reached, not the method employed which is controlling. It is not theory but the impact of the rate order which counts.<sup>48</sup>

### **III. The Issues**

#### **A. Revenue Requirement**

- ***What is the revenue requirement for Liberty Utilities water and sewer services?***

The Commission is tasked with determining the revenue requirement for Liberty Utilities. The revenue requirement is how much it costs Liberty Utilities, in operating expenses (“expenses”) and for a return on its capital assets (“rate base”), to provide safe and adequate service, and includes a return sufficient to service debt and equity and continue attracting capital.<sup>49</sup> Liberty Utilities has requested an increase in rates to compensate it for necessary investments made in its systems and to address increases in operation and maintenance expenses that have increased since the company’s last rate case.

#### **Findings of Fact:**

1. On December 15, 2017, Liberty Utilities filed a request for an increase of \$995,844 in annual water system operating revenues, and \$196,617 in annual sewer

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<sup>48</sup> *State ex rel. Associated Natural Gas Co. v. Public Service Commission*, 706 S.W. 2d 870, 873 (Mo. App. W.D. 1985).

<sup>49</sup> *Fed. Power Comm’n v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944).

system operating revenues.<sup>50</sup> These requests totaled a combined increase of \$1,192,461. Liberty Utilities presented no evidence in its case in chief that substantiated those particular increase amounts.

2. Staff changed its recommended revenue requirement for the company several times during the course of the case. Staff's initial recommended revenue requirement was \$810,886 for water operations and \$179,323 for sewer operations.<sup>51</sup> These totaled a combined increase of \$990,209. Staff filed accounting schedules in support of this specific increase.<sup>52</sup>

3. On July 20, 2018, Staff updated its revenue increase recommendation from \$990,209 to \$978,569, to reconcile a difference in the amount of contribution in aid of construction rate base that the company was including in its cost of service.<sup>53</sup>

4. Staff again updated the revenue requirement recommendation on August 7, 2018, to reflect rate case expense incurred as of April 2018 from \$978,569 to \$984,581.<sup>54</sup>

5. Liberty Utilities did not keep the KMB operating books separate for the seven KMB systems. In order to determine the cost of service revenue requirement for the seven KMB systems Staff had to develop an allocation process to separate the seven systems.<sup>55</sup>

6. Liberty Utilities has made significant improvements in the system since the last Liberty Utilities water and sewer rate cases. Liberty has invested approximately

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<sup>50</sup> Exhibit No. 1, Schwartz Direct, Page 4.

<sup>51</sup> Exhibit No. 105, Harrison Direct, Page 5.

<sup>52</sup> Exhibit No. 105, Harrison Direct, Schedule PRH-d3.

<sup>53</sup> Exhibit No. 106, Harrison Rebuttal, Page 2.

<sup>54</sup> Exhibit No. 107, Harrison Surrebuttal, Page 2.

<sup>55</sup> Exhibit No. 105, Harrison Direct, Schedule PRH-d2, Pages 3-4.

\$1,952,614 for water improvements and \$621,830 for sewer improvements.<sup>56</sup> No party challenged the necessity of those improvements.

7. Liberty Utilities' operation and maintenance expenses have increased since its last rate case.<sup>57</sup>

8. James Busch is the Staff witness supporting the *Non-Unanimous Stipulation and Agreement*.<sup>58</sup>

9. The *Non-Unanimous Stipulation and Agreement* specifies, exclusive of rate case expense, that the annual revenue requirement increase for Liberty Utilities should be \$818,800 for water operations and \$196,792 for sewer operations.<sup>59</sup> These represent a total overall annual revenue requirement for Liberty Utilities' water system operations of \$1,690,117 and a total overall annual revenue requirement for Liberty Utilities' sewer system operations of \$455,163.

10. Silverleaf's witness, William Stannard, challenged the revenue requirements proposed by Staff due to an error he states would cause over-recovery. He also challenged Liberty Utilities' proposed revenue requirement for over-recovery based on commodity charges and meter size.<sup>60</sup>

11. Staff witness Matthew Barnes filed testimony indicating that the error Stannard discovered in Staff's rate design recommendation involved application of the

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<sup>56</sup> Exhibit No. 105, Harrison Direct, Pages 5-6, and Schedule PRH-d4.

<sup>57</sup> Exhibit No. 1, Schwartz Direct, Page 10.

<sup>58</sup> Exhibit No. 103, Busch Surrebuttal, Page 15.

<sup>59</sup> Commission Exhibit No. 1, Page 1.

<sup>60</sup> Exhibit No. 302, Stannard Refined Rebuttal, Pages 10-14.

wrong charge for the  $\frac{3}{4}$  inch meter, which caused the commodity charges to be higher than appropriate. Barnes noted that the error has since been corrected.<sup>61</sup>

12. William Stannard noted that the *Non-unanimous Stipulation and Agreement* included a return on equity, but not a capital structure. Stannard is concerned because capital structure impacts the revenue requirement. Stannard states that if the Commission were to approve the 9.75 percent return on equity, it should be accompanied by a stated capital structure of 42.83 percent equity and 57.17 percent debt.<sup>62</sup>

13. The revenue requirement amounts contained in the *Non-Unanimous Stipulation and Agreement* are numerically supported by the billing determinates attached to it, including the Rate Making Income Statements that establish a cost of service for each tariffed area.<sup>63</sup>

14. No party other than Staff and Liberty Utilities has proposed a revenue requirement other than the one agreed to in Liberty Utilities' and Staff's position statement.

### **Conclusions of Law and Decision:**

Sections 393.130 and 393.140, RSMo, mandate that utilities provide safe and adequate service and at rates set by the Commission that are just and reasonable. The United States Supreme Court advises that "the fixing of 'just and reasonable' rates, involves a balancing of the investor and the consumer interests."<sup>64</sup> Furthermore, "Rates

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<sup>61</sup> Exhibit No. 101, Barnes Rebuttal, Page 2.

<sup>62</sup> Exhibit No. 302, Stannard Surrebuttal, Page 7.

<sup>63</sup> Commission Exhibit No. 1, Attachment A.

<sup>64</sup> *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 603, 64 S.Ct. 281, 88 L.Ed. 333 (1944) (*Hope*).

which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the services are unjust, unreasonable and confiscatory.”<sup>65</sup>

Liberty Utilities did not put forth sufficient evidence to sustain its burden that its originally requested increase of \$995,844 in annual water system operating revenues and \$196,617 in annual sewer revenues are just and reasonable. However, Liberty Utilities produced sufficient evidence to support that its requested rate increase of \$818,800 for water operations and \$196,782 for sewer operations in its joint position statement is just and reasonable. The standard of proof, as stated above in general conclusions of law, is preponderance of the evidence. The question before the commission is: balancing the interests of investors and ratepayers, is it more likely than not that the proposed increase of \$818,800 for water operations and \$196,782 for sewer operations will result in just and reasonable rates?

The Commission concludes that it is more likely than not that the increase will result in just and reasonable rates. Liberty Utilities has not come to the Commission for a rate increase for any of its water or sewer systems in more than seven years, and during that time, the ratepayers have enjoyed low rates that have not changed in more than half a decade. Silverleaf’s rates have not changed in more than a decade. Meanwhile, Liberty Utilities has made necessary improvements to the system in excess of 2.5 million dollars. Additionally it has experienced higher costs of service with increasing operation and management expenses.

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<sup>65</sup> *Bluefield Water Works & Improvement Co. v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 690 (1923).

For the reasons discussed above, the Commission is ordering an annual revenue requirement for Liberty Utilities' water system operations of \$1,690,117 and an annual revenue requirement for Liberty Utilities' sewer system operations of \$455,163.

## 1. Return on Equity

- ***What is the appropriate return on equity for Liberty Utilities?***

The Commission must determine an appropriate return on equity for Liberty Utilities. Staff filed testimony with the Commission supporting a return on equity of 10 percent.<sup>66</sup> Liberty Utilities filed testimony with the Commission supporting a return on equity of 10.25 percent.<sup>67</sup> Silverleaf filed testimony supporting a return on equity within a range of 8 percent to 9 percent.<sup>68</sup>

Staff and Liberty Utilities later filed with the Commission the *Non-Unanimous Stipulation and Agreement* of which they were both signatories. As part of that agreement, which the Commission is treating as a joint position statement of the signatories, Staff and Liberty both support a return on equity of 9.75 percent.

### Findings of Fact:

1. James Busch is the Staff witness supporting the *Non-Unanimous Stipulation and Agreement*.<sup>69</sup>

2. Liberty Utilities believes that the *Non-Unanimous Stipulation and Agreement* represents a reasonable compromise of all revenue requirement issues but

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<sup>66</sup> Exhibit No. 109, Murray Substitute Rebuttal, Page 3.

<sup>67</sup> Exhibit No. 4, Magee Surrebuttal, Page 3.

<sup>68</sup> Exhibit No. 302, Stannard Refined Rebuttal, Page 10.

<sup>69</sup> Exhibit No. 103, Busch Surrebuttal, Page 15.

one.<sup>70</sup> A return on equity of 9.75 percent is one of the resolved revenue requirement issues in the *Non-Unanimous Stipulation and Agreement*.<sup>71</sup>

3. The Commission accepts that the proposed return on equity of 9.75 percent is just and reasonable. This return on equity is close to the return on equity proposals separately made by Staff and Liberty Utilities in their direct testimony.<sup>72</sup>

4. Staff witness David Murray filed testimony in support of a 10 percent return on equity which was derived by adding 20 basis points to Spire Missouri's most recent Commission approved return on equity of 9.8 percent. The reason for this adjustment was because Liberty Utilities capital structure is more leveraged than Spire Missouri's.<sup>73</sup> Staff quantified the recommended 20 basis point increase by evaluating spreads between 'BBB' rated bonds and 'A' rates bonds.<sup>74</sup> Staff does not explain why either the reason or quantification substantiates the addition of 20 basis points.

5. Silverleaf witness William Stannard filed testimony in support of a return on equity range of 8 percent to 9 percent. Stannard added the Duff & Phelps equity risk premium of 5 percent to the 2.97 percent 30-year treasury rate for a return on equity of 7.97 percent, which supports his proposed return on equity range.<sup>75</sup>

6. Staff finds Duff & Phelps to be an authoritative source for estimating cost of capital and relies on it for purposes of testing the reasonableness of Staff's cost of equity estimates.<sup>76</sup>

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<sup>70</sup> Exhibit No. 3, Schwartz Surrebuttal, Page 7.

<sup>71</sup> Commission Exhibit No. 1, Page 2, Cost of Service/Revenue Requirement, C. Return on Equity.

<sup>72</sup> Exhibit No. 105, Harrison Direct, Page 5, and Exhibit No. 1, Schwartz Direct, Page 6.

<sup>73</sup> Exhibit No. 110, Murray Surrebuttal, Page 3.

<sup>74</sup> Exhibit No. 110, Murray Surrebuttal, Page 3.

<sup>75</sup> Exhibit No. 302, Stannard Refined Rebuttal, Pages 9-10.

<sup>76</sup> Exhibit No. 110, Murray Surrebuttal, Page 2.



7. David Murray credibly testified that William Stannard did not apply Duff & Phelps' risk premium as Duff & Phelps intended by not adjusting the equity risk premium to reflect that utility stocks are less volatile than the broader markets. Applying Duff & Phelps' risk premium correctly yields a return on equity of 7 percent.<sup>77</sup>

8. Staff does not use a 7 percent return on equity because David Murray used previous Commission decisions as guidance for a just and reasonable return on equity, giving the 9.8 percent return on equity in Spire Missouri's gas rate cases, GR-2017-0216 and GR-2017-0217, the most weight.<sup>78</sup>

9. Keith Magee credibly testified for Liberty that Duff & Phelps understates the risk premium authorized for gas utilities and that the risk factors between natural gas companies are similar.<sup>79</sup> Magee testified that the method used by William Stannard to calculate return on equity has consistently produced return on equity estimates more than 100 basis points below average authorized returns since 2012.<sup>80</sup>

10. Liberty Utilities proposes a 10.25 percent return on equity, within a range of 9.9 percent to 10.35 percent<sup>81</sup> Keith Magee used a proxy group of comparable companies to arrive at an appropriate return on equity range.<sup>82</sup>

11. In May 2018, the Commission approved a stipulation and agreement specifying a return on equity range of 9.5 percent to 10 percent for Missouri American Water Company.<sup>83</sup>

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<sup>77</sup> Exhibit No. 110, Murray Surrebuttal, Page 3.

<sup>78</sup> Exhibit No. 110, Murray Surrebuttal, Page 3.

<sup>79</sup> Transcript, Page 95.

<sup>80</sup> Exhibit No. 4, Magee Surrebuttal, Page 5.

<sup>81</sup> Exhibit No. 4, Magee Surrebuttal, Page 3.

<sup>82</sup> Exhibit No. 4, Magee Surrebuttal, Schedule KM-S13, Page 4.

<sup>83</sup> Exhibit No. 4, Magee Surrebuttal, Page 17.

12. Average authorized return on equity from January 2018 to June 2018 for Illinois, California, New Jersey, Missouri, and North Carolina encompass a return on equity range of 9.05 percent to 10.5 percent with an average return on equity of 9.69 percent.<sup>84</sup>

### **Conclusions of Law and Decision:**

A disputed issue in this case is the estimated cost of common equity, or the return on equity. Estimating the cost of common equity capital is a difficult task, as academic commentators have recognized.<sup>85</sup> Determining a rate of return on equity is imprecise and involves balancing a utility's need to compensate investors against its need to keep prices low for consumers.<sup>86</sup> Accordingly, the Commission cannot simply find a rate of return on equity that is unquestionably scientifically, mathematically, or legally correct. Such a "correct" rate does not exist. Missouri court decisions recognize that the Commission has flexibility in fixing the rate of return, subject to existing economic conditions.<sup>87</sup>

Liberty Utilities has proposed the Commission authorize a return on equity of 10.25 percent, which is on the upper end of its proposed range of 9.9 percent to 10.35 percent. 10.25 percent is outside of the range of 9.5 percent to 10 percent recently approved by the Commission for a water utility. Liberty Utilities notes that the Commission authorized a return on equity of 12 percent for Indian Hills in February

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<sup>84</sup> Exhibit No. 4, Magee Surrebuttal, Table 7: Average Authorized Water Utility Returns by State, Page 17.

<sup>85</sup> See Phillips, *The Regulation of Public Utilities*, Public Utilities Reports, Inc., p. 394 (1993).

<sup>86</sup> *State ex rel. Public Counsel v. Public Service Commission*, 274 S.W.3d 569, 574 (Mo. Ct. App. 2009).

<sup>87</sup> *State ex rel. Laclede Gas Co. v. Public Service Commission*, 535 S.W.2d 561, 570-571 (Mo. App. 1976).

2018.<sup>88</sup> However, Indian Hills was an extremely distressed water system with an extremely high cost of debt.

Silverleaf's proposed range of 8 percent to 9 percent starts outside the Commission's recently approved range of 9.5 percent to 10 percent. William Stannard calculated the return on equity using Duff & Phelps equity risk premium at 7.97 percent. David Murray credibly testified that Stannard miscalculated and that the correct return on equity using Duff & Phelps would be 7 percent. Keith Magee testified at the evidentiary hearing that Duff & Phelps underestimates the risk premium authorized for gas utilities.<sup>89</sup> Keith Magee also points out that Silverleaf's return on equity recommendation is based on a single model.

Staff's 10 percent return on equity, based upon the Commission's recently approved return on equity for Spire Missouri of 9.8 percent, seeks to add 20 basis points due to Liberty Utilities more leveraged capital structure. Staff states that the 20 basis point adjustment is quantified by evaluating the spreads between 'BBB' rated bonds, and 'A' rated bonds, but offers no explanation as to how that difference produces an additional 20 basis points. The Commission finds the addition of 20 basis points to the return on equity of 9.8 percent authorized for Spire Missouri to be unwarranted absent an explanation. The 9.8 percent return on equity recently authorized for Spire Missouri is not unreasonable and is within the range of 9.5 percent to 10 percent the Commission recently authorized for a water utility.

The evidence shows that both Liberty Utilities and Staff' agree that an appropriate return on equity is 9.75 percent. 9.75 percent is within a range of 9.5

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<sup>88</sup> Exhibit No. 4, Magee Surrebuttal, Page 18.

<sup>89</sup> Transcript, Page 95.

percent to 10 percent that would be a reasonable and accurate estimate of the current market cost of capital for Liberty Utilities. Based on the competent and substantial evidence in the record and on its balancing of the interests of the company's ratepayers and shareholders, the Commission concludes that 9.75 percent is a fair and reasonable return on equity for Liberty Utilities.

## 2. Capital Structure

- ***What is the appropriate capital structure to apply to Liberty Utilities?***

The Commission is tasked with determining the appropriate capital structure to apply to Liberty Utilities. Capital structure is expressed as a debt-to-equity ratio that indicates how a company finances its operations and provides an overview of a company's risk. Only two capital structures were presented by the parties: Liberty Utilities position is that the capital structure should consist of 53 percent common equity and 47 percent long term debt.<sup>90</sup> Staff's position is that Liberty Utilities' capital structure should consist of 42.83 percent common equity and 57.17 percent long term debt.<sup>91</sup> No alternative capital structures were proposed by any party.

### Findings of Fact:

1. Liberty Utilities proposes applying the same capital structure Liberty Utilities' witness Keith Magee recommended for Liberty Midstates in GR-2018-0013.<sup>92</sup>
2. A 53 percent equity and 47 percent debt capital structure was approved by the Commission as part of the settlement agreement in Liberty Midstates gas rate case

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<sup>90</sup> Exhibit No. 4, Magee Surrebuttal, Page 3,4.

<sup>91</sup> Exhibit No. 109, Murray Substitute Rebuttal, Page 3

<sup>92</sup> Exhibit No. 4, Magee Surrebuttal, Page 3, Liberty Midstates is an affiliated natural gas utility.

(GR-2018-0013) for the limited purpose of calculating an infrastructure investment surcharge.<sup>93</sup>

3. Liberty Utilities' witness Keith Magee's recommendation for capital structure is based on the mean equity ratio of several proxy gas companies with similar risk characteristics to Liberty Utilities, which he updated for this rate case to the eight quarters ending Q1 2018.<sup>94</sup>

4. Staff witness David Murray disagrees with Liberty Utilities' capital structure because it assumes that Liberty Utilities is capitalized with more equity than what Algonquin Power and Utilities Corp. considers appropriate for its low-risk regulated utility assets.<sup>95</sup>

5. David Murray also disagrees with Liberty Utilities capital structure recommendation because it is not consistent with its parent company, LUCo's corporate strategy of using a higher proportion of debt to finance its regulated utility assets.<sup>96</sup>

6. David Murray's recommendation for capital structure is based on the actual capital structure of LUCo as of December 31, 2017.<sup>97</sup>

7. LUCo is the intermediate holding company which supplies the debt financing for Algonquin's United States regulated utility assets, including Liberty Midstates and Liberty Utilities, through Liberty Utilities Finance GP1.<sup>98</sup>

8. Liberty Utilities issues no independent debt.<sup>99</sup>

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<sup>93</sup> Transcript, Page 100.

<sup>94</sup> Exhibit No. 4, Magee Surrebuttal, Pages 9-10.

<sup>95</sup> Exhibit No. 109, Murray Substitute Rebuttal, Page 3.

<sup>96</sup> Exhibit No. 109, Murray Substitute Rebuttal, Page 4.

<sup>97</sup> Exhibit No. 109, Murray Substitute Rebuttal, Page 2.

<sup>98</sup> Exhibit No. 109, Murray Substitute Rebuttal, Page 2.

<sup>99</sup> Exhibit No. 109, Murray Subditute Rebuttal, Page 3.

9. LUCo's capital structure is used to finance LUCo's United States' regulated utility assets, including Liberty Midstates and Liberty Utilities. LUCo's capital structure contains 42.83 percent common equity.<sup>100</sup>

10. The Commission has previously adopted Staff's recommended capital structure by using LUCo's capital structure in GR-2014-0152 for Liberty Midstates.<sup>101</sup>

11. LUCo is composed of over 30 water, gas, and electric utilities and Liberty Utilities' customers are less than 1 percent of the 762,000 customers served by LUCo.<sup>102</sup>

12. Silverleaf witness William Stannard supports Staff's proposed capital structure as reasonable.<sup>103</sup> Stannard, states that if the Commission approves a 9.75 percent return on equity it should be accompanied by a stated capital structure of 42.83 percent equity and 57.17 percent debt.<sup>104</sup>

13. OPC agrees with Staff's proposed capital structure.<sup>105</sup>

### **Conclusions of Law and Decision:**

The issue for determination is whether to apply a capital structure based upon the mean ratio of a set of proxy gas companies that Liberty Utilities' witness Keith Magee believes closely resembles the risk characteristics of Liberty Utilities, a hypothetical capital structure, or whether to apply a capital structure based upon Liberty Utilities' parent holding company, LUCo. Staff notes that its method of determining

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<sup>100</sup> Exhibit No. 109, Murray Subdstitute Rebuttal, Page 3.

<sup>101</sup> Exhibit No. 109, Murray Substitute Rebuttal, Page 3.

<sup>102</sup> Exhibit No. 4, Magee Surrebuttal, Pages 11-12.

<sup>103</sup> Exhibit No. 302, Stannard Refiled Rebuttal, Page 9.

<sup>104</sup> Exhibit No. 303, Stannard Surrebuttal, Page 7.

<sup>105</sup> Transcript, Page 78.

capital structure using LUCo has been used by the Commission before for Liberty Utilities' affiliate company, Liberty Midstates, in GR-2014-0152.

Liberty Utilities argues that it is inappropriate to base its capital structure on a parent company that has grown significantly since 2014. Liberty argues that a sizable portion of the debt in LUCo's capital structure is not related to Liberty Utilities and should not be used to set Liberty Utilities capital structure.<sup>106</sup> Liberty also argues that LUCo's characteristics and circumstances are not the same as they were at the time of the company's last rate case as the company has been growing. However, Staff's recommendation is based on the more recent capital structure of LUCo on December 31, 2017, which takes into account the time elapsed since 2014.

Staff's witness, David Murray, testified that it is the intention of the company to do all its financing with third-party investors at the LUCo level.<sup>107</sup> Applying LUCo's capital structure is appropriate because LUCo's capital structure is used to finance LUCo's United States' regulated utility assets. Staff's approach to base Liberty Utilities' authorized capital structure on its parent intermediate holding company is more reasonable for the reason that LUCo is the company which provides all corporate debt financing both Liberty Utilities and Liberty Midstates.<sup>108</sup> It is logical to apply the actual capital structure of the company providing the financing for Liberty Utilities because Liberty Utilities issues none of its own debt.

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<sup>106</sup> Exhibit No. 4, Magee Surrebuttal, Page 9.

<sup>107</sup> Transcript, Page 121-122

<sup>108</sup> Exhibit No. 109, Murray Substitute Rebuttal, Page 2.

The Commission concludes that the appropriate capital structure to apply to Liberty Utilities consists of 42.83 percent common equity and 57.17 percent long term debt.

### 3. Rate Case Expense

- *What is the appropriate amount of rate case expense to allow Liberty Utilities to recover in its rates for expenses incurred presenting its case to the Commission?*
- *What is the appropriate recovery period for rate case expense?*

The Commission will determine what amount of rate case expense, if any, that Liberty Utilities is allowed to recover in rates for expenses incurred in the preparation and presentation of its case to the Commission. Staff and Liberty Utilities agree that the company should be allowed to recover reasonable expenses through the end of the case. The parties disagree on the time period for recovery of rate case expense.

#### Findings of Fact:

1. Utility companies incur various expenses in the preparation and presentation of a rate case before the Commission. Included in these costs are expenses for outside counsel, expert witnesses, and miscellaneous expenses for items such as travel expenses and copying costs.<sup>109</sup>

2. Jill Schwartz credibly testified that Liberty has incurred attorney and expert witness fees associated with processing this case.<sup>110</sup> Jill Schwartz additionally testified that, “The Company is mindful of the costs of rate cases and has worked hard to keep rate case expenses low given the small customer base in this case.”<sup>111</sup>

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<sup>109</sup> Exhibit No. 105, Harrison Direct, Page 6.

<sup>110</sup> Exhibit No. 1, Schwartz Direct, Page 7.

<sup>111</sup> Exhibit No. 2, Schwartz Rebuttal, Page 2.



3. Liberty proposes that rate case expense be normalized over two years.<sup>112</sup> Liberty asks for the shorter period of time because it expects that another rate case will be filed in several years due to the acquisition of additional water systems.<sup>113</sup>

4. Staff originally recommended normalizing rate case expense over five years. Staff based its initial recommendation on how often Liberty Utilities has filed for a rate increase in the past. It has been seven to eleven years since any Liberty Utilities water or sewer system has had a rate increase.<sup>114</sup> Staff, using the Non-Unanimous Stipulation and Agreement as its current position statement, recommends amortizing rate case expense over three years.<sup>115</sup> Normalizing takes an ongoing expense and builds it into cost of service, whereas amortizing takes a lump sum amount and spreads it over a select number of years to allow full recovery.<sup>116</sup>

5. Silverleaf supports a five year recovery period for rate case expense and notes that any amounts included in base rates will continue to be recovered until new rates are implemented in a future rate case.<sup>117</sup>

### **Conclusions of Law and Decision:**

Liberty Utilities, in its brief, has requested to recover rate case expenses through at least September 11, 2018, when reply briefs are due. Staff witness Paul Harrison also affirmed September 11, 2018, as a period of time in which rate case expenses could continue to accrue.<sup>118</sup> Counsel for Liberty noted that the revenue requirement to

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<sup>112</sup> Exhibit No. 1, Schwartz Direct, Page 7.

<sup>113</sup> Exhibit No. 1, Schwartz Direct, Page 8.

<sup>114</sup> Exhibit No. 106, Harrison Rebuttal, Page 3.

<sup>115</sup> Transcript, Pages 142-143.

<sup>116</sup> Transcript, Pages 145-146

<sup>117</sup> Exhibit No. 303, Stannard Surrebuttal, Pages 2-3.

<sup>118</sup> Transcript, Page 149.

cover rate case expense is unknown at the time because rate case expense was still accruing.<sup>119</sup> The Commission understands that Commission allowed rate case expenses will be an addition to the revenue requirement determined in this report and order. There are incentives for Liberty Utilities to file another rate case in the next few years due to potential acquisitions. However, the company has not filed a rate case for any of its water or sewer systems within the last five years, and the Commission is not in this order setting a time in which Liberty Utilities must file another rate case.

The Commission concludes that the company should be allowed to recover in rates prudently incurred rate case expense through September 11, 2018. Rate case expenses are to be amortized over a five year period with any over or under recovery to be placed in a regulatory asset or regulatory liability account to be considered in Liberty Utilities' next rate case.

## **B. Rate Design.**

### **1. Customer Charge**

- ***What is the appropriate customer charge for Liberty Utilities service areas?***
- ***What is the appropriate commodity charge for Liberty Utilities service areas?***
- ***Should any of Liberty Utilities' water systems be consolidated?***

The Commission will determine the appropriate rates to charge Liberty Utilities customers by service area. The Commission will determine whether any of Liberty Utilities' systems should be consolidated. Because rate case expense has not been calculated yet, any rate calculated is subject to change based upon the final allowable rate case expense.

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<sup>119</sup> Transcript, Page 41.

**Findings of Fact:**

1. The rate structure consists of a fixed monthly customer charge and a commodity (usage) charge. The customer charge is developed by comparing certain costs that are generally considered fixed. Commodity charges are generally developed by comparing the remaining costs and the usage characteristics of each system.<sup>120</sup>

2. Most of the Liberty Utilities' water and sewer tariffs specify a monthly minimum base rate and a usage charge per 1,000 gallons of usage for each additional 1,000 gallons of usage thereafter. In addition, some of Liberty Utilities' customers' water and sewer rates are unmetered and are charged a flat monthly rate.<sup>121</sup>

3. Liberty is made up of 11 water and three sewer systems that compose nine water tariff districts and two sewer tariff districts. Liberty acquired these systems by purchasing KMB's water and sewer operations, Silverleaf's water and sewer operations, and Noel's water operations.<sup>122</sup>

4. Silverleaf proposes applying the overall percentage increase in rate revenues needed for each system to each charge equally for water and sewer.<sup>123</sup>

5. Silverleaf is opposed to Staff's rate design placing much of the increase in rates within the fixed customer charge. Silverleaf's witness testified that this method shifts much of the cost of the increase onto low volume users, impeding their ability to control their monthly bill.<sup>124</sup>

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<sup>120</sup> Exhibit No. 100, Barnes Direct, Page 3.

<sup>121</sup> Exhibit No. 105, Harrison Direct, Schedule PRH-d2, Page 1.

<sup>122</sup> Exhibit No. 100, Barnes Direct, Page 2.

<sup>123</sup> Exhibit No. 302, Stannard Refiled Rebuttal, Pages 22-23.

<sup>124</sup> Exhibit No. 302, Stannard Refiled Rebuttal, Pages 24-25.

6. Staff witness Matthew Barnes found that Silverleaf analyzed data from roughly 7,000 monthly bills. Two accountholders account for over 3,000 of those monthly bills. Of those two accountholders, 1,300 monthly bills have zero usage, but those same two accountholders also have the highest number (2,100) of monthly bills. Those accountholders put a tremendous strain on the system. The system has to be built to meet peak demand, and the users who are causing the highest stress on the system should be the ones paying for that system. Even if a substantial amount of the accountholders' monthly bills are for zero usage, the system has to be built to support the one or two months when usage is maxed. This means that the fixed costs for having a properly sized system should be collected from those customers every month through the customer charge.<sup>125</sup>

7. Staff calculated the following customer charge amounts: \$23.88 for a 5/8" meter at the Noel water system, \$30.04 for a 5/8" meter at the consolidated KMB water system, and \$26.65 for the smallest meters (both 5/8" and 3/4") at the Silverleaf water systems.<sup>126</sup>

8. The appropriate amounts for the sewer system customer charges are \$45.67 for the Cape Rock Village sewer system and \$37.07 for the Timber Creek and Ozark Mountain sewer system.<sup>127</sup>

9. The appropriate amount for commodity charge, per thousand gallons, is \$3.04 for the Noel water service system, \$6.65 for the KMB water service system, and \$6.73 for the Silverleaf water service system. The appropriate amount for the

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<sup>125</sup> Exhibit No. 102, Barnes Surrebuttal, Pages 2-3.

<sup>126</sup> Commission Exhibit No. 1, Attachment A.

<sup>127</sup> Commission Exhibit No. 1, Attachment A.

commodity charge is \$26.97 for the Timber Creek and Ozark Mountain sewer system.<sup>128</sup>

10. Staff notes that because rate case expense has not been calculated yet, the proposed rates will change. Staff asks the Commission to approve the methodology used to reach the rates.<sup>129</sup>

11. On January 13, 2018, Liberty Utilities formally requested that Staff and OPC consider the consolidation of customer rates, charges and fees, and rules and regulations.<sup>130</sup>

12. Liberty Utilities agreed to consolidate rules and regulations for all of its water systems in the Partial Disposition Agreement. Liberty is requesting that the Commission approve consolidation of customer rates for its KMB and Noel water customers and KMB sewer customers.<sup>131</sup>

13. Liberty Utilities acquired the KMB water systems in 2010 and did not keep books and records separate for each of the seven different KMB properties. Liberty consolidated all the rate base and expenses for the KMB properties but kept the rates charged for each property separate according to the appropriate tariffs.<sup>132</sup>

14. Liberty cites a joint publication by the United States Environmental Protection Agency and National Association of Regulatory Utility Commissioners titled Consolidated Water Rates: Issues and Practices in Single-Tariff Pricing in support of its

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<sup>128</sup> Commission Exhibit No. 1, Attachment A.

<sup>129</sup> EFIS No. 133, Staff's Initial Brief, Page 25.

<sup>130</sup> Exhibit No. 105, Harrison Direct, Schedule PRH-d2, Page 4.

<sup>131</sup> Exhibit No. 1, Schwartz Direct, Page 8.

<sup>132</sup> Exhibit No. 105, Harrison Direct, Schedule PRH-d2, Page 3.

position for consolidation and lists the following reasons from that publication for consolidating its system rates:<sup>133</sup>

- a. Mitigation of the impact of large rate increases
- b. Lower administrative costs to utilities and regulatory commissions
- c. Addresses small-system viability issues
- d. Improves service affordability for customers
- e. Facilitates compliance with drinking water standards
- f. Encourages investment in water supply infrastructure
- g. Promotes regional economic development

15. Staff proposed two rate design plans for Liberty Utilities. One plan involved district specific pricing where each currently tariffed service area would maintain its own rate structure based on its particular cost of service.<sup>134</sup> The Commission's Staff also proposed an alternative plan to consolidate the KMB service areas into one tariffed area.<sup>135</sup>

16. Liberty is agreeable to the alternative rate design proposal that consolidates seven sets of rates for the KMB water system.<sup>136</sup>

### **Conclusions of Law and Decision:**

Rate design is how Liberty Utilities collects its revenue requirement. The Commission is keeping the current rate design in regard to each service area having a fixed customer charge regardless of usage and a commodity charge based upon usage.

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<sup>133</sup> Exhibit No. 1, Schwartz Direct, Page 9, citing Consolidated Water Rates: Issues and Practices in Single-Tariff Pricing, by Jancie A. Beecher Ph.D., September 1999.

<sup>134</sup> Exhibit No. 100, Barnes Direct, Page 5.

<sup>135</sup> Exhibit No. 100, Barnes Direct, Page 7.

<sup>136</sup> Exhibit No. 2, Schwartz Rebuttal, Page 6.

The Commission finds that this creates just and reasonable rates by charging customers not only for the amount of water actually used, but also for use of the system, to assist in maintaining system integrity and readiness. The Commission rejects the notion that merely distributing any increase equally across all systems will result in just rates in this case. As Staff witness Barnes notes, when a low number of account holders have the highest and lowest usage, the stress on the system is severe. Placing a portion of the increase in the fixed charge helps balance seasonal and non-seasonal usage. The Commission is therefore adopting Staff's proposed rate methodology, with adjustments in the final amount to accommodate approved rate case expenses.

Liberty has proposed consolidating its rates for the KMB and Noel systems into one single-tariff rate. The Commission's Staff has proposed maintaining district specific pricing, or, in the alternative, just consolidating KMB properties. There are advantages to each. With district specific pricing, those who cause an expense bear the cost of that expense, while single-tariff pricing can mitigate large capital expenditures made in a particular district.<sup>137</sup> No party proposed consolidating the Silverleaf service at this time, and no party opposed consolidating the KMB properties.

The Commission concludes that the KMB system should be consolidated, but not the Noel system, which is a much larger system with 665 customers, most of which are permanent residents.<sup>138</sup>

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<sup>137</sup> Exhibit No. 100, Barnes Direct, Page 4.

<sup>138</sup> Exhibit No. 101, Barnes Rebuttal, Page 4.

## 2. Phase-in Rates

- ***Should rates for Holiday Hills, Ozark Mountain, and Timber Creek be phased-in over a period of five years?***
- ***Should carrying costs be allowed to be recovered if rates are phased-in?***

Silverleaf is requesting that the Commission order phase-in rates to mitigate the size of any increase on the Silverleaf system customers. The Commission will determine whether to order phase-in rates for Silverleaf or any other Liberty Utilities system.

### **Findings of Fact:**

1. A phase-in rate design is an approach to rate design that allows for rates to be increased on an incremental basis to reach the ultimate Commission approved revenue requirement.<sup>139</sup>

2. Staff does not generally oppose the use of phased-in rates when the magnitude of the rate increase when compared to existing rates makes a slower approach to increasing rates a better option for the customers.<sup>140</sup> Staff is opposed to phase-in rates in this case.<sup>141</sup>

3. Silverleaf proposes using phase-in rates for customers in the Silverleaf water and sewer systems as a way of mitigating rate shock.<sup>142</sup> The phase-in approach would “stair step” any increase in rates such that only 1/4 of the increase is felt in year 1 and customers have time to adjust their budgets to take into account this new, unavoidable expense.”<sup>143</sup>

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<sup>139</sup> Exhibit No. 103, Busch Surrebuttal, Page 3.

<sup>140</sup> Exhibit No. 103, Busch Surrebuttal, Pages 3-4.

<sup>141</sup> Transcript, Page 56.

<sup>142</sup> Exhibit No. 302 – Stannard Refiled Rebuttal, Pages 25-27.

<sup>143</sup> Exhibit No. 302, Stannard Refiled Rebuttal, Page 28.



4. Rate shock is the financial harm caused to customers from a sudden, significant increase in customer utility bills caused by an increase in utility rates.<sup>144</sup>

5. Silverleaf considers Liberty Utilities' time lapse between rate cases a management decision and the cause of any resulting harm done to customers from rate shock.<sup>145</sup> Its witness said: "The decision to wait nine years before filing a rate case did not lie with those customers. It was the choice of Liberty Utilities. These customers should not be penalized for Liberty Utilities' failure to file for timely rate adjustments over the years."<sup>146</sup>

6. Silverleaf's phase-in proposal is that rates be phased in over a period of four years with the company earning its authorized rate in year five.<sup>147</sup>

7. Silverleaf's proposed phase-in rates would have Liberty Utilities under-recovering in years one and two, and over-recovering in years three and four<sup>148</sup> with, "an adjustment to reflect the under-recovery during the phase-in period."<sup>149</sup>

8. Staff is not familiar with a phase-in approach that does not compensate a utility for receiving its Commission approved revenue requirement, or that would result in recovery above the revenue requirement.

9. The plan proposed by Silverleaf does not promote rate stability. "Ultimately, under Mr. Stannards's plan, rates in years three and four will have to be

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<sup>144</sup> Exhibit No. 302, Stannard Refiled Rebuttal, Page 16.

<sup>145</sup> Transcript, Page 66.

<sup>146</sup> Exhibit No. 302, Stannard Refiled Rebuttal, Page 25.

<sup>147</sup> Exhibit No. 302, Stannard Refiled Rebuttal, Page 26.

<sup>148</sup> Exhibit No. 302, Stannard Refiled Rebuttal, Page 26-27, Tables 14 and 15.

<sup>149</sup> Exhibit No. 302, Stannard Refiled Rebuttal, Page 26.

higher than they would have been if the entire revenue requirement was put into the initial rates under a normal rate design.”<sup>150</sup>

10. Carrying costs are the interest the utility could have earned on the revenue it received; if the utility received its full Commission approved rate rather than a lesser amount. Carry costs occur when, during the phase-in, the utility’s rates are not designed to collect the Commission approved revenue requirement during the initial years of the phase-in.<sup>151</sup>

11. Silverleaf is not supportive of allowing carrying costs for Liberty Utilities, as its witness said: “The purpose of the phase-in is to mitigate the impact of a large rate increase, the magnitude of which is principally driven by Liberty Utilities failure to file for periodic rate adjustments... Accordingly, the carrying cost of a phase-in should be borne by Liberty Utilities.”<sup>152</sup>

12. Customers are not being penalized by the utility waiting nine years to file a rate case. The Commission agrees with Staff’s witness that, “although the rate increase being proposed is high, the customers did have the advantage of paying lower rates over the past few years rather than paying the higher rates sooner... Customers are advantaged by paying a lower rate between actual rate cases than they otherwise would have paid if Liberty had received a rate increase prior to this rate case.”<sup>153</sup>

13. Phasing-in rates for just the Silverleaf service areas would result in an undue and unreasonable preference.

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<sup>150</sup> Exhibit No. 103, Busch Surrebuttal, Page 5.

<sup>151</sup> Exhibit No. 103, Busch Surrebuttal, Page 5.

<sup>152</sup> Exhibit No. 302, Stannard Refiled Rebuttal, Page 27.

<sup>153</sup> Exhibit No. 103, Busch Surrebuttal, Page 8.

**Conclusions of Law and Decision:**

Silverleaf proposes that the Commission require Liberty Utilities to phase-in its new rates for the Silverleaf service area.<sup>154</sup> It is unclear from William Stannard's testimony whether he is proposing phase-in rates for Silverleaf's service area only or for all of Liberty Utilities service areas. Phase-in rates should not be applied in this rate case under either proposition.

The rate increase for Liberty Utilities' service areas is significant compared to what its customers had previously been paying. The Commission's last approved rate increases for Liberty Utilities' water and sewer systems was in 2011 for the KMB properties, 2007 for the Silverleaf properties, and 2009 for the Noel properties.<sup>155</sup> The Commission does not agree that Liberty Utilities' decision to not come to the Commission for a rate increase earlier was merely a management decision devoid of other factors. Liberty Utilities has invested \$1,952,614 for water and \$621,830 for sewer improvements to meet Department of Natural Resource standards and improve the quality of service.<sup>156</sup> Additionally, because Liberty Utilities has not come to the Commission for a rate case in several years, its customers have benefited from having low, stable rates for a significant time. Silverleaf's argument that Liberty Utilities' customers are being "punished" for the "management decision" of not applying for a rate case sooner is unpersuasive.

Phase-in rates for Liberty Utilities' service areas are not appropriate. Silverleaf's proposed phase-in rate plan is not a gradual increase in rates toward earning a

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<sup>154</sup> Exhibit No. 302, Stannard Refiled Rebuttal, Page 25.

<sup>155</sup> Exhibit No. 105, Harrison Direct, Page 5.

<sup>156</sup> Exhibit No. 105, Harrison Direct, Pages 5-6.

Commission approved revenue requirement, but a period of under-earning followed by a period of over-earning, followed by a reduction to a Commission approved revenue requirement. This does not conform to predictability or stability of rates for customers; customer rates would go up every year for four years before going down to a Commission approved revenue requirement. Under the proposed phase-in, if Liberty Utilities were to have a rate case within the next six years, customers would not see the same rates yearly for more than half a decade.

If Silverleaf is proposing that the phase-in rates apply only to Silverleaf service areas, then the Commission would be treating one group of Liberty Utilities' customers different than others without a compelling reason. The result would be inequitable for rate payers, with some service areas paying their full cost of service while the Silverleaf service area does not during the first two years of the phase-in. This shortfall of revenue from the phase-in service area could result in a detriment across the whole system due to less money being available for customer service or maintenance.<sup>157</sup>

Likewise, not allowing carrying costs from the revenue shortfall places an undue burden on the utility. Silverleaf suggests that carrying costs should be disallowed because of the time lapse in Liberty Utilities filing a rate case. As stated earlier, customers benefited from low rates for a longer period of time due to the company not requesting a rate increase. Not allowing carrying costs would punish the company without wrongdoing and potentially incentivize more frequent rate case filings and rate case expense, some of which would ultimately be borne by the rate payers.

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<sup>157</sup> Exhibit No. 103, Busch Surrebuttal, Page 7.

The Commission concludes that any change in rates for Liberty Utilities should be applied at one time and not phased-in over time. Carrying cost treatment does not need to be determined as the Commission is not applying any phase-in of rates.

**C. Future Rate Case Exemption**

- ***Should Silverleaf service areas be exempt from consideration in a subsequent rate case?***

Silverleaf has requested that they be exempted from consideration in any future rate case based upon a system acquisition by Liberty Utilities. The Commission will determine whether to exempt Silverleaf from any future Liberty Utilities rate cases.

**Findings of Fact:**

1. Silverleaf has proposed that the Silverleaf systems should not be included in any future rate cases solely related to Liberty Utilities acquisition of another system.<sup>158</sup>
2. The water and sewer systems that serve Silverleaf are separate and detached from Liberty Utilities' other systems.<sup>159</sup>
3. Liberty Utilities was approved to acquire seven additional water systems (including Ozark International, Inc.) in Case No. WM-2018-0023, potentially adding 900 customers to its system.<sup>160</sup>
4. The Commission's Staff recommends that a utility come in for a rate case or rate review recommendation within 18-24 months after completing acquisition of a new system if there are anticipated major capital improvements, material changes in the

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<sup>158</sup> Exhibit No. 302, Stannard Refiled Rebuttal, Page 6.

<sup>159</sup> Exhibit No. 302, Stannard Refiled Rebuttal, Page 7.

<sup>160</sup> Exhibit No. 105, Harrison Direct, Page 8.

composition of the acquiring utility customer base, or if the operational characteristics of the acquiring utility may change.<sup>161</sup>

5. The Commission's Staff has recommended that Liberty Utilities file another rate case within two years.<sup>162</sup>

6. Another reason the Commission's Staff recommends that Liberty Utilities file a rate case within the next two years is that the company's books and records were not being kept in accordance with Commission rules. A review in 18-24 months will ensure books are being kept appropriately and rates set accordingly.<sup>163</sup>

7. Silverleaf is concerned that it is unfair for Silverleaf systems to be punished by additional rate case costs and other "substantial burdens" based upon Liberty Utilities acquisition of an unrelated system.<sup>164</sup>

8. Liberty Utilities expects to file a rate case within the next few years, due to its recent acquisition of a number of additional water systems from Ozark International, Inc., and its desire to address, among other things, the issues of overhead allocations and shared services and, also, to pursue tariff and rate consolidations.<sup>165</sup>

9. While Liberty Utilities has received approval to acquire the Ozark International, Inc. systems, closing on the sale and transfer has not yet occurred.<sup>166</sup>

10. Liberty Utilities' acquisition of additional systems has the potential to benefit Silverleaf customers.<sup>167</sup>

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<sup>161</sup> Exhibit No. 103, Busch Surrebuttal, Page 9.

<sup>162</sup> Exhibit No. 105, Gateley Direct, Page 5.

<sup>163</sup> Exhibit No. 103, Busch Surrebuttal, Page 9.

<sup>164</sup> Exhibit No. 302, Stannard Refiled Rebuttal, Page 5.

<sup>165</sup> Exhibit No. 1, Schwartz Direct, Page 8.

<sup>166</sup> Exhibit No. 103, Busch Surrebuttal, Page 9.

<sup>167</sup> Exhibit No. 103, Busch Surrebuttal, Pages 10-11.

11. Liberty Utilities has three full time employees that work out of its Noel office.<sup>168</sup> According to the company, all employees providing services to Liberty Utilities are employed by Liberty Utilities Service Corp.<sup>169</sup> The Company uses outside contractors to perform water and wastewater operator functions, meter reading, maintenance, and operations for all of Liberty Utilities systems except for Noel.<sup>170</sup>

12. One of the Commission's Staff's recommendations to Liberty Utilities is that it perform a cost benefit analysis prior to any future rate case to determine if use of in-house employees would be more cost effective than paying outside contractors.<sup>171</sup>

13. Although Silverleaf is currently served by a separate rate schedule, it is part of Liberty Utilities. In order for the Company to achieve fair and reasonable rates for all of its customers, all of its revenues, expenses and investments need to be reviewed as part of a rate case. This is particularly important to ensure the proper allocation of the costs of shared services and corporate overhead allocations.<sup>172</sup>

### **Conclusions of Law and Decision:**

Silverleaf's proposition that the Silverleaf system be excluded from a future rate proceeding is premised on two assertions: 1) Systems acquired by Liberty Utilities are unrelated to Silverleaf's cost of service, and 2) Systems acquired by Liberty Utilities will negatively impact the rates of the Silverleaf system.

The first assertion is incorrect because while Silverleaf is a separate system from the other Liberty Utilities systems, and while it is not being consolidated like the KMB

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<sup>168</sup> Exhibit No. 105, Harrison Direct, Schedule PRH-d2, Page 8.

<sup>169</sup> Exhibit NO. 1, Schwartz Direct, Page 3.

<sup>170</sup> Exhibit No. 105, Harrison Direct, Page 7.

<sup>171</sup> Exhibit No. 105, Harrison Direct, Page 8.

<sup>172</sup> Exhibit No. 3, Schwartz Surrebuttal, Page 3.

system, it still shares the same management and corporate structure. Any change in that management or corporate structure will necessarily change the cost of service for the Silverleaf system. Additionally Liberty Utilities currently uses outside contractors to service and maintain the Silverleaf and some other Liberty Utilities systems. Should that change, it would also impact Silverleaf's cost of service.

The second assertion is incorrect because the effect of any change to corporate structure or management is speculative and not necessarily negative. Many of the suggestions the Commission's Staff has made, such as cost analysis of contractors and using continuous chlorine monitoring equipment in the KMB system,<sup>173</sup> have the potential to reduce cost of service. The acquisition of the Ozark International, Inc. system and 900 additional customers has not closed yet, and the impact of such an addition is speculative as to overall rates. However, as Staff witness James Busch points out, an addition of 37 percent more customers will likely lower Silverleaf's cost of service through depreciation alone. Also, adding customers under shared corporate management, coupled with other shared services, is likely to positively affect Silverleaf's cost of service in subsequent rate proceeding.

Section 393.130.2, RSMo addresses preferential treatment:

No ... water corporation or sewer corporation ... shall directly or indirectly by any special rate, rebate, drawback or other device or method, charge, demand collect or receive from any person or corporation a greater or less compensation for ... water, sewer [service] ..., except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

Subsection 3 adds:

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<sup>173</sup> Exhibit No. 105, Gateley Direct, Pages 2-3.



No ... water corporation or sewer corporation shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

The statute says that utilities cannot give any “undue or unreasonable” preference or disadvantage to any particular customer, or class of customers, or locality.

As stated above regarding phase-in rates, separating out one system for exclusion from a future rate case creates both an undue and unreasonable preference and an advantage to the Silverleaf system over other systems. An increase in rates that does not apply to one system burdens the other systems with the cost of shared services and management. Likewise, if some customers are excluded from review, those customers in the excluded service area will not be recognized in rates, and the utility could collect revenues above those authorized. An effective rate case requires that all relevant factors are reviewed in order to set just and reasonable rates.<sup>174</sup>

The Commission concludes that the Silverleaf systems should not be exempted from any future rate case. The Commission is not ordering that Liberty Utilities file a rate case within two years.

#### **D. Customer Service**

- ***Has Liberty Utilities adequately responded to customer service issues?***
- ***Does the Commission wish to take any action regarding customer service issues?***

OMCA intervened in this rate case because of concerns it had about what it considered inadequate service by Liberty Utilities in providing water service. The

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<sup>174</sup> Exhibit No. 103, Busch Surrebuttal, Page 12.

Commission will determine what, if any, service issues exist, and decide if any action needs to be taken to resolve or improve service.

**Findings of Fact:**

1. OMCA's concerns in this case are specifically whether the service provided by Liberty Utilities is safe and adequate, and whether the rates the company proposes are just if service is not consistently safe and adequate.<sup>175</sup>

2. Don Allsbury, the property manager employed by OMCA testified as to water and sewer issues he recorded between 2009 and 2018 at the condominiums in Ozark Mountain Resort.<sup>176</sup> The issues recorded by Don Allsbury are summarized as follows:

- a. 2009 – Five water main breaks
- b. 2010 – Several water main freezes
- c. 2011 – One valve malfunction
- d. 2012 – One loss of water pressure
- e. 2015 – Several frozen water meters
- f. 2015 – Over 42 days of high, low, and no water pressure
- g. 2018 – Two frozen water meters<sup>177</sup>

3. In April 2018, Liberty Utilities terminated its contract with outside contractor R K Water Operations LLC after experiencing several issues involving quality of service provided. Before that time, the Ozark Mountain system was primarily

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<sup>175</sup> Transcript, Page 71.

<sup>176</sup> Exhibit No. 401, Allsbury Direct, Pages 1-2.

<sup>177</sup> Exhibit No. 112, Roos Rebuttal, Page 2.

operated by R K Water Operations LLC.<sup>178</sup> Ozark Mountain was purchased from Silverleaf Resorts Inc. in 2005 and is part of the Silverleaf system.<sup>179</sup>

4. Liberty Utilities is planning to remedy the issues and concerns raised by OMCA. Its witness explained:

“[T]he fact that the issues identified and included in Mr. Allsbury’s direct testimony do not extend beyond January 2018, that the Company has already made significant improvements in the quality of service provided and is preparing a list and plan to remedy the issues and concerns raised by OMCA. Specifically, Mr. Allsbury identified multiple issues and reports of water pressure issues. As a result, the Company is currently installing generators in Ozark Mountain’s pressurized water system so that customers will continue to have water during power outages. The Company anticipates that the installation of these generators will be complete by the end of August 2018.”<sup>180</sup>

5. Staff met with Paul Carson, Liberty Utilities’ Operations Manager, on February 9, 2018. From that meeting Staff determined that the water pressure problems in 2015 were a combination of equipment failure and operator error. Staff determined that the incidents recounted in Don Allsbury’s testimony have been resolved. According to Staff’s witness, “The water system has been repaired and is currently a reliable source of water. Staff is not aware of any current operational issues with the Ozark Mountain Resort’s water system.”<sup>181</sup>

6. Liberty has agreed to make changes to bring it into compliance with Commission Rule 4 CSR 240-13.040 as part of the Partial Disposition Agreement adopted by the Commission in this case. Staff’s witness testified, “Liberty has stated it is modifying contract procedures, and referring all customer inquiries to its call center so

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<sup>178</sup> Exhibit No. 2, Schwartz Rebuttal, Page 3.

<sup>179</sup> Exhibit No. 302, Stannard Refiled Rebuttal, Page 3.

<sup>180</sup> Exhibit No. 2, Schwartz Rebuttal, Pages 7-8.

<sup>181</sup> Exhibit No. 112, Roos Rebuttal Pages 2-3.

that all customer inquiries are logged and properly responded to in a timely manner. In Staff's opinion, replacement of the PRV [pressure release valve], the new contract operator, and Liberty's recent customer service changes have led to more reliable service."<sup>182</sup>

7. Some service issues have not been resolved. Rotting meter boxes reported to Liberty Utilities in 2015<sup>183</sup> have still not been repaired.<sup>184</sup> Don Allsbury described multiple occasions where calling Liberty to report customer service problems failed to produce satisfactory results because either the company offices were closed, or the company would not act without information unavailable to Allsbury.<sup>185</sup>

### **Conclusion:**

OMCA intervened in this case largely because it was concerned that Liberty Utilities was requesting, and would receive, a rate increase for the Ozark Mountain service area without addressing what it felt were numerous instances of inadequate service. While this is not a formal complaint case, the Commission has the responsibility to examine all relevant factors when determining rates.<sup>186</sup> During the hearing, the Commission inquired of OMCA as to what it would like the Commission to do when it comes to customer service.<sup>187</sup> OMCA answered simply, "Better customer service, use of in-house employees, prompter reporting not a month later[.]"<sup>188</sup>

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<sup>182</sup> Exhibit No. 112, Roos Rebuttal, Pages 3-4.

<sup>183</sup> Exhibit No. 401, Allsbury Direct, Page 4.

<sup>184</sup> Exhibit No. 401, Allsbury Direct, Page 8.

<sup>185</sup> Exhibit No. 401, Allsbury Direct, Pages 175, 178.

<sup>186</sup> *State ex rel. Util. Consumers' Council of Missouri, Inc. v. Pub. Serv. Comm'n*, 585 S.W.2d 41, 56 (Mo. banc 1979).

<sup>187</sup> Transcript, Pages 75, 77.

<sup>188</sup> Transcript, Page 77.

The Commission recognizes that Liberty Utilities has already made some changes such as terminating its contract with unsatisfactory third party contractors. Liberty Utilities has also agreed to other changes related to customer service that are contained in the Partial Disposition Agreement. OMCA in its brief asked the Commission to order Liberty Utilities to do six things:

- 1) Record all customer inquiries *and service-related complaints* received by Company personnel, as well as all customer inquiries and service-related complaints received and reported by the Company's contractors, in the customer's account records in the customer information system.
- 2) Require Liberty to require all its contractors to report all customer inquiries and service-related complaints to Company personnel, at or near the time the inquiry is received, but no later than one business day thereafter.
- 3) Require Liberty to use local employees for normal, day to day operations.
- 4) Require Liberty to use local employees or local contractors to provide all on-site water system repairs, and where local contractors are utilized, require a local employee to either provide direct, on-site supervision while the work is performed, or to inspect and document the contractor's work no later than one business day after the work is performed.
- 5) Require Liberty's operations manager to make an on-site visit at the Silverleaf water system with Mr. Allsbury within 30 days of issuance of the Commission's Report and Order in this Rate Case, and to document all issues of concern reported to him by Mr. Allsbury.
- 6) Require Liberty to include with specificity, in its 5-year capital improvements plan, how it will resolve issues of concern at the Silverleaf water system reported by Mr. Allsbury, and to specify firm deadlines by which it resolve them.

OMCA also asks that the Commission take into consideration Liberty Utilities' customer service history in determining what rate increase would be just and reasonable to both Liberty Utilities and its customers.<sup>189</sup>

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<sup>189</sup> EFIS No. 135, Ozark Mountain Condominium Association, Inc.'s Post Hearing Brief.

**Decision:**

The Commission concludes that based upon the evidence offered in relation to customer service issues, and in consideration of progress made in addressing customer service issues, Liberty Utilities shall do the following:

- 1) Record all service-related complaints received by Company personnel, and service-related complaints received and reported by the Company's contractors, in the customer's account records in the customer information system.
- 2) Require all its contractors to report all service-related complaints to Company personnel, at or near the time the inquiry is received, but no later than one business day thereafter.
- 3) Require Liberty's operations manager to make an on-site visit at the Silverleaf (Ozark Mountain is in the Silverleaf system) water system with Mr. Allsbury within 90 days of issuance of the Commission's Report and Order in this Rate Case, and to document all issues of concern reported to him by Mr. Allsbury.
- 4) Include with specificity, in its 5-year capital improvements plan, how it will resolve issues of concern at the Silverleaf water system (Ozark Mountain is in the Silverleaf system) reported by Mr. Allsbury, and to specify firm deadlines by which it will resolve them.

The Commission is not changing or reducing the rates it is authorizing due to any customer service issues.

**THE COMMISSION ORDERS THAT:**

1. Liberty Utilities' motion to strike OPC's response to *Notice of no Objections to Non-unanimous Stipulation and Agreement, Request to Modify Hearing Schedule, and Motion for Expedited Treatment* is denied.
2. Silverleaf's motion to strike the testimony of Keith Magee is denied.

3. No party timely objected to the *Non-Unanimous Stipulation and Agreement*. The Commission is treating the *Non-Unanimous Stipulation and Agreement* as non-unanimous. The Commission is not adopting the *Non-Unanimous Stipulation and Agreement*.

4. The Commission adopts the provisions, other than those issues disputed at the evidentiary hearing, of the *Partial Disposition Agreement and Request for Evidentiary Hearing* filed on May 24, 2018, including attachments. The signatories are ordered to comply with the terms of these partial disposition agreements, which are attached hereto as Attachment A and incorporated herein by reference as if fully set forth.

5. Liberty Utilities is authorized to file tariff sheets sufficient to recover revenues approved in compliance with this order. Liberty Utilities shall file its compliance tariff sheets no later than November 5, 2018.

6. Liberty Utilities shall file the information required by Section 393.275.1, RSMo 2016, and Commission Rule 4 CSR 240-10.060 no later than November 8, 2018.

7. The Staff of the Missouri Public Service Commission shall file its recommendation concerning approval of Liberty Utilities' compliance tariff sheets no later than November 8, 2018.

8. Any other party wishing to respond or comment regarding Liberty Utilities' compliance tariff sheets shall file its response or comment no later than November 8, 2018.

9. This Report and Order shall become effective on November 3, 2018.

**BY THE COMMISSION**



*Morris L Woodruff*

Morris L. Woodruff  
Secretary

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

Clark, Regulatory Law Judge



**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of a Request for a Rate Increase By Branson Cedars Resort Utility Company LLC )  
 ) **File No. WR-2018-0356**  
 )

**ORDER APPROVING UNANIMOUS DISPOSITION AGREEMENT  
AND SMALL COMPANY RATE INCREASE**

**RATES**

**§8 Reasonableness generally**

The Commission found that the proposed rates set out in the tariff sheets were just and reasonable.

**§69 Approval or rejection by the Commission**

The Commission found that the unanimous disposition agreement and the proposed tariff sheets were reasonable and should be approved.

**§111 Water**

The Commission found that the proposed rates set out in the tariff sheets were just and reasonable.

**WATER**

**§16 Rates and revenues**

The Commission found that the unanimous disposition agreement and the proposed tariff sheets were reasonable and should be approved.

**§16 Rates and revenues**

The Commission found that the proposed rates set out in the tariff sheets were just and reasonable.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 15<sup>th</sup> day of November, 2018.

In the Matter of a Request for a Rate Increase By Branson Cedars Resort Utility Company LLC	)	
	)	<b>File No. WR-2018-0356</b>
	)	

**ORDER APPROVING UNANIMOUS DISPOSITION AGREEMENT  
AND SMALL COMPANY RATE INCREASE**

Issue Date: November 15, 2018

Effective Date: December 3, 2018

On May 31, 2018, Branson Cedars Resort Utility Company LLC (Branson Cedars) submitted a letter in accordance with the Commission's Staff Assisted Rate Case Procedure in Commission Rule 4 CSR 240-10.075. Branson Cedars sought an increase in its annual water rate revenues. On July 17, 2018, Branson Cedars filed an amended request clarifying that its request was for both a water rate increase and a sewer rate increase.

Branson Cedars is certificated to provide water and sewer utility services in Taney County, Missouri. Branson Cedars serves approximately 64 water and 60 sewer customers. A majority of the customers are 17 individuals or entities owning 54 resort units. These units are used personally or as resort rentals and are not occupied full-time. The owners are responsible for paying the units' utilities.

The Staff of the Missouri Public Service Commission (Staff) conducted a full and complete audit of Branson Cedars' books and records for January 2015 through May 2018. Based upon this audit and examination of Branson Cedars' activities, Staff provided a cost of service calculation reflecting the need for water and sewer rate increases. On October 9, 2018, Branson Cedars, Staff, and the Office of the Public

Counsel filed a unanimous disposition agreement purporting to resolve all the issues in this matter and agreeing to annual water and sewer revenue increases.

The major terms of the disposition agreement provide for an annual water rate revenue increase of \$7,368<sup>1</sup> (16.33%) and annual sewer rate revenue increase of \$9,666 (27.36%). The total agreed upon water utility revenue requirement is \$52,282 with an agreed upon net rate base of \$53,277. The total agreed upon sewer utility revenue requirement is \$44,992 with an agreed upon net rate base of \$88,069. The parties also agreed to a 100% debt and 0% equity capital structure and a 6.75% rate of return. Schedules of depreciation rates for both water and sewer plant are also attached to the disposition agreement. Additionally, Branson Cedars agreed to implement several recommendations made by the Commission's Customer Experience Department, Auditing Department, and Water and Sewer Department. The utility also agreed to provide notice to its customers and all the parties agree to abide by the terms of the agreement. The parties state in the disposition agreement that the agreed to rates are just and reasonable.

The parties agreed that Branson Cedars would file a new tariff to comply with the disposition agreement. That tariff was filed on November 1, 2018, and substituted on November 8, 2018, and bears a December 3, 2018 effective date. Staff filed its recommendation regarding the tariff on November 9, 2018. Staff stated that the

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<sup>1</sup> The parties filed a *Joint Clarification of Unanimous Disposition Agreement* on November 14, 2018, stating that an error had been made in the body of the agreement when stating that the previous water utility service revenues were \$45,114, instead of \$44,914, the correct amount. However, the parties noted that Attachment A to their agreement contained the correct figures and shows the \$200 discrepancy in the numbers is due to "miscellaneous revenues." In addition to that correction, the body of the agreement also contains an additional scrivener's error when stating that the water revenue requirement increase is \$7,366. According to Attachment A to the agreement, the correct revenue requirement increase is \$7,368.

substitute tariff filed on November 8, 2018, complies with the disposition agreement and should be approved.

The requirement for a hearing is met when the opportunity for a hearing has been provided.<sup>2</sup> The parties agree that their disposition agreement resolves all issues and no party requests a hearing.

The Commission has reviewed the unanimous disposition agreement including its attachments and Staff's recommendation. The Commission independently finds and concludes that the unanimous disposition agreement and the proposed tariff sheets, Tariff Nos. YW-2019-0073 and YS-2019-0086, as substituted, are reasonable and should be approved. Furthermore, the proposed rates set out in the tariff sheets are just and reasonable. Because this tariff has been filed in accordance with the unanimous disposition agreement of the parties and has been filed with the Commission for at least 30 days, the Commission finds good cause for this order to become effective in less than 30 days.

**THE COMMISSION ORDERS THAT:**

1. The unanimous disposition agreement filed on October 29, 2018, and attached to this order is approved and its terms and conditions are incorporated herein.
2. Branson Cedars Resort Utility Company, the Commission's Staff, and the Office of the Public Counsel shall comply with the terms of the unanimous disposition agreement.
3. The tariff sheets filed in Tariff Tracking Nos. YW-2019-0073 and YS-2019-0086, as substituted, are approved to become effective on December 3, 2018.

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<sup>2</sup> *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

4. This order shall become effective on December 3, 2018.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff  
Secretary

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

Dippell, Senior Regulatory Law Judge

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Petition of Missouri-American     )  
Water Company for Approval to Establish an             )  
Infrastructure System Replacement Surcharge            )  
(ISRS)                                                                    )     **File No. WO-2018-0373**

**REPORT AND ORDER**

Affirmed on appeal: *Missouri-American Water Company v. Public Service Commission of Missouri*, 591 S.W.3d 465 (Mo. App. W.D. 2019)

**EXPENSE**

**§79 Infrastructure system replacement surcharge (ISRS) eligible expense**

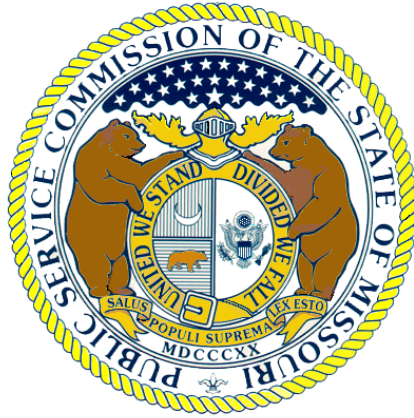
The Commission found that the water utility did not show that a claimed net operating loss was generated during the time frame of the ISRS, thus could not include it in the surcharge calculation.

**WATER**

**§16 Rates and revenues**

The Commission found that the water utility did not show that a claimed net operating loss was generated during the time frame of the ISRS, thus could not include it in the surcharge calculation.

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of Petition of Missouri-American  
 Water Company for Approval to Establish an  
 Infrastructure System Replacement Surcharge  
 (ISRS).

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)  
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**File No. WO-2018-0373**  
 Tariff No. YW-2019-0018

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## REPORT AND ORDER

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**Issue Date:** December 5, 2018

**Effective Date:** December 15, 2018

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

In the Matter of Petition of Missouri-American	)	
Water Company for Approval to Establish an	)	<b><u>File No. WO-2018-0373</u></b>
Infrastructure System Replacement Surcharge	)	Tariff No. YW-2019-0018
(ISRS).	)	

**APPEARANCES**

**Missouri-American Water Company:**

**Dean L. Cooper**, Brydon, Swearingen & England, PO Box 456, Jefferson City, Missouri 65102.

**Staff of the Missouri Public Service Commission:**

**Mark Johnson**, Deputy Counsel, and **Ron Irving**, Legal Counsel, PO Box 360, 200 Madison Street, Jefferson City, Missouri 65102.

**Office of the Public Counsel:**

**Lera Shemwell**, Senior Public Counsel, and **John Clizer**, Associate Public Counsel, PO Box 2230, 200 Madison St., Ste. 650, Jefferson City, Missouri, 65102-2230.

**Regulatory Law Judge:** Charles Hatcher

**REPORT AND ORDER**

**I. Procedural History**

On August 20, 2018, Missouri-American Water Company (“MAWC”) filed an application and petition with the Missouri Public Service Commission (“Commission”) to establish an Infrastructure System Replacement Surcharge (“ISRS”).



MAWC requests to establish an ISRS rate to recover costs incurred in connection with infrastructure system replacements made during the period January 1, 2018, through September 30, 2018. The Commission issued notice of the application and provided an opportunity for interested persons to intervene. The Empire District Electric Company filed a *Motion to Intervene*, which it subsequently withdrew. No other parties sought to intervene. The Commission suspended the filed tariffs until December 18, 2018.

On October 19, the Staff of the Commission (“Staff”) filed its Recommendation and Memorandum proposing a number of corrections and adjustments to MAWC’s calculations. Staff recommended that the Commission reject the original tariff sheet and approve an ISRS rate for MAWC based on Staff’s determination of the appropriate amount of ISRS revenues.

On October 29, MAWC filed a motion objecting to Staff’s recommendations. Also on October 29, the Office of the Public Counsel (“OPC” or “Public Counsel”) filed its response in support of the Staff Recommendation. The Commission held an evidentiary hearing on November 20. In total, the Commission admitted the testimony of six witnesses and 10 exhibits into evidence and took notice of a select prior Commission decision. Post-hearing briefs were filed on November 27, and the case was deemed submitted for the Commission’s decision on that date.<sup>1</sup>

## **II. Findings of Fact**

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed

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<sup>1</sup> “The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument.” Commission Rule 4 CSR 240-2.150(1).

greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. MAWC is an investor-owned water utility providing retail water service to large portions of Missouri, and specific to this case, most of St. Louis County.<sup>2</sup>

2. MAWC is a “water corporation” and a “public utility”, as defined in Sections 386.020(59) and (43), and 393.1000(7), RSMo 2016.<sup>3</sup>

3. OPC “may represent and protect the interests of the public in any proceeding before or appeal from the public service commission.”<sup>4</sup> The Public Counsel participated in this matter.

4. Staff is a party in all Commission investigations, contested cases and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.<sup>5</sup>

5. On August 20, 2018, MAWC filed a petition (“Petition”) for its St. Louis County service territory, requesting an ISRS to recover eligible costs incurred for infrastructure system replacements made during the period January 1, 2018, through July 30, 2018, initially filed with pro forma ISRS costs for August 1 through September 30 (“2018 ISRS Period”).<sup>6</sup>

6. The ISRS request exceeds one million dollars, but is not in excess of ten percent of the base revenue levels approved by the Commission in the last MAWC rate case.<sup>7</sup>

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<sup>2</sup> MAWC’s Petition to Establish an Infrastructure System Replacement Surcharge & Motion For Approval of Customer Notice, p. 2.

<sup>3</sup> *Id.*

<sup>4</sup> Section 386.710(2), RSMo 2016; Commission Rules 4 CSR 240-2.010(10) and (15) and 2.040(2).

<sup>5</sup> MAWC’s Petition to Establish an Infrastructure System Replacement Surcharge & Motion For Approval of Customer Notice; Commission Rules 4 CSR 240-2.010(10) and (21) and 2.040(1).

<sup>6</sup> Staff Recommendation, Appendix A, p. 1.

<sup>7</sup> Section 393.1003.1, RSMo 2016; Staff Recommendation, Appendix A, p. 2.

7. This is MAWC's first ISRS filing since their most recent general rate case, File Number WR-2017-0285, *Report and Order* issued May 2, 2018, and *Order Approving Tariffs* issued May 15, 2018.<sup>8</sup> As part of that general rate case, MAWC's existing ISRS was reset to zero.<sup>9</sup>

8. Water corporations are permitted to recover certain infrastructure system replacement costs outside of a formal rate case through a surcharge on its customers' bills.<sup>10</sup> In conjunction with its Petition, MAWC filed a tariff sheet that would generate a total revenue requirement for MAWC's ISRS.<sup>11</sup> MAWC's proposed ISRS revenue requirement was later updated by MAWC to \$7,264,876.<sup>12</sup>

9. MAWC attached supporting documentation to its Petition for completed plant additions. This included documentation identifying the type of addition, utility account, work order description, addition amount, depreciation rate, accumulated depreciation, and depreciation expense.<sup>13</sup> The company also provided estimates of capital expenditures for projects completed through September 2018, which were subsequently replaced with updated actual cost information and provided to Staff.<sup>14</sup>

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<sup>8</sup> Report and Order, *In the Matter of Missouri-American Water Company's Request for Authority to Implement General Rate Increase for Water and Sewer Service Provided in Missouri Service Areas, WR-2017-0285*, issued May 2, 2018; Order Approving Tariffs, *In the Matter of Missouri-American Water Company's Request for Authority to Implement General Rate Increase for Water and Sewer Service Provided in Missouri Service Areas, WR-2017-0285, et al.*, issued May 15, 2018.

<sup>9</sup> Section 393.1006.6, RSMo 2016.

<sup>10</sup> Sections 393.1000 to 393.1006, RSMo 2016.

<sup>11</sup> MAWC's Petition to Establish an Infrastructure System Replacement Surcharge & Motion For Approval of Customer Notice, Appendix B.<sup>12</sup> Staff Recommendation, Appendix A, p 3; Staff's Post-Hearing Brief, p. 4.

<sup>12</sup> Staff Recommendation, Appendix A, p 3; Staff's Post-Hearing Brief, p. 4.

<sup>13</sup> MAWC's Petition to Establish an Infrastructure System Replacement Surcharge & Motion For Approval of Customer Notice, Appendices D, E, and F.

<sup>14</sup> Staff Recommendation, Appendix A, p. 2; Direct Testimony of Brian W. LaGrand, p. 5.

10. MAWC's updated filing removed such items as: repairs to customer owned appliances and equipment; duplicate charges; installation of new service lines; and customer owned lead service line replacement costs.<sup>15</sup>

11. MAWC's supporting documents included an amount for Accumulated Deferred Income Taxes (ADIT).<sup>16</sup> MAWC also included a proposed calculation for a Deferred Tax Asset relating to an assumed net operating loss ("NOL") for 2018 in the amount of \$9,577,697.<sup>17</sup>

12. An NOL results when a utility does not have enough taxable income to utilize all of the tax deductions to which it would otherwise be entitled. The amount of unused deductions is the NOL.<sup>18</sup> An NOL is a tax return adjustment and not a regulatory item.<sup>19</sup>

13. On October 19, Staff submitted its *Staff Recommendation*. Staff's recommended revenue requirement is \$6,377,959.<sup>20</sup>

14. Staff and MAWC are in agreement with the *Staff Recommendation* except on one issue, specifically whether there is an NOL, and, if so, what impact it may have on the ISRS.<sup>21</sup>

15. Staff recommended removing approximately \$9.3 million in Deferred Tax Asset<sup>22</sup> from MAWC's ISRS calculations because it was not an NOL resulting from the

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<sup>15</sup> Staff Recommendation, Appendix A, p. 4.

<sup>16</sup> MAWC's Petition to Establish an Infrastructure System Replacement Surcharge & Motion For Approval of Customer Notice, Appendix C.

<sup>17</sup> MAWC's Petition to Establish an Infrastructure System Replacement Surcharge & Motion For Approval of Customer Notice, Appendix C. See also Direct Testimony of Lisa Ferguson at p. 3.

<sup>18</sup> Ex. 3, Oligschlaeger Direct, p. 5.

<sup>19</sup> Hearing Transcript, p. 78 (John Riley); Direct Testimony of John S. Riley, p. 2.

<sup>20</sup> Staff's Post-Hearing Brief, p. 4.

<sup>21</sup> MAWC's Response to Staff's Recommendation, p.1-2. Staff's Post-Hearing Brief, p. 2 and footnote 2 (noting that \$9,272 removed by Staff should remain included).

<sup>22</sup> The \$9.3 million figure is derived from the Net Operating Loss/Taxable Income of \$36.7 million as shown on Schedule BWL-1, p. 2 of the Direct Testimony of Brian W. LaGrand.

2018 ISRS Period.<sup>23</sup> This removal results in an \$866,917 reduction in recoverable ISRS costs.<sup>24</sup>

16. Only costs directly associated with qualifying ISRS plant that became in-service during the nine months of the 2018 ISRS Period should be reflected in ISRS rates.<sup>25</sup>

17. MAWC has an NOL carryover from prior years.<sup>26</sup>

18. No net amount of net operating loss has actually been generated for income tax purposes by MAWC on an aggregate basis since January 1, 2018, the beginning of the 2018 ISRS Period.<sup>27</sup>

19. The Internal Revenue Service (“IRS”) Private Letter Rulings cited by MAWC to support its position<sup>28</sup> address time periods in which the utility in question was generating NOL amounts.<sup>29</sup>

20. MAWC did not generate any NOL in the 2018 ISRS Period.<sup>30</sup>

21. MAWC projects that it will be able to reflect all of its net accelerated depreciation benefits associated with ISRS plant additions on its books during the next two years without the need to record any new offsetting NOL amount.<sup>31</sup>

22. MAWC’s NOL as of December 31, 2017, are currently reflected in MAWC’s base rates as a result of MAWC’s last general rate case, File Number WR-2017-0285, *Report and Order* issued May 2, 2018, and *Order Approving Tariffs* issued May 15, 2018.<sup>32</sup>

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<sup>23</sup> Staff Recommendation, Appendix A, p. 4.

<sup>24</sup> Staff’s Post-Hearing Brief, p. 4.

<sup>25</sup> Direct Testimony of Mark L. Oligschlaeger, p. 6; Direct Testimony of Lisa M. Ferguson, p. 6

<sup>26</sup> Hearing Transcript, p 48 (Brian LaGrand); Direct Testimony of John R. Wilde, p. 12; Direct Testimony of Lisa M. Ferguson, p. 5.

<sup>27</sup> Hearing Transcript, p. 90 (Mark Oligschlaeger); Direct Testimony of Lisa M. Ferguson, p. 6; Direct Testimony of John S. Riley, p. 3.

<sup>28</sup> Direct Testimony of John R. Wilde, Schedule JRW-2 through JRW-6, ; Private Letter Ruling are issued by the IRS to the taxpayer who requested it.

<sup>29</sup> Hearing Transcript, p. 90 (Mark Oligschlaeger).

<sup>30</sup> Hearing Transcript, p. 40 (John Riley); Direct Testimony of John Riley, p. 3; Direct Testimony of Lisa M. Ferguson, p. 7.

<sup>31</sup> Direct Testimony of Mark L. Oligschlaeger, p. 7; Direct Testimony of Lisa M. Ferguson, p. 5-6; Direct Testimony of John R. Wilde, p. 13.

23. A taxpayer cannot utilize an NOL carryforward amount from a prior tax year without first exhausting all of the deductions available to it for the current tax year.<sup>33</sup>

### **III. Conclusions of Law**

MAWC is a “water corporation” and “public utility” as those terms are defined by Section 386.020, RSMo 2016.<sup>34</sup> MAWC is subject to the Commission’s jurisdiction, supervision, control, and regulation as provided in Chapters 386 and 393, RSMo. The Commission has the authority under Sections 393.1000 through 393.1006, RSMo, to consider and approve ISRS requests such as the one proposed in the Petition. Since MAWC brought the Petition, it bears the burden of proof.<sup>35</sup> The burden of proof is the preponderance of the evidence standard.<sup>36</sup> In order to meet this standard, MAWC must convince the Commission it is “more likely than not” that its allegations are true.<sup>37</sup>

Section 393.1006.2(4) provides that where the Commission finds that a petition complies with the statutory requirements, the Commission “shall enter an order authorizing the water corporation to impose an ISRS that is sufficient to recover “appropriate pretax revenues.” Section 393.1000(1) defines “appropriate pretax revenues” to include “recognition of accumulated deferred income taxes and accumulated depreciation associated with eligible infrastructure system replacements which are included in a currently effective ISRS.”

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<sup>32</sup> Hearing Transcript, p. 87 (Mark Oligschlaeger); Direct Testimony of Lisa M. Ferguson, p. 5 and 7.

<sup>33</sup> Hearing Transcript, p. 68-69 (John Wilde).

<sup>34</sup> Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri 2016.

<sup>35</sup> “The burden of proof, meaning the obligation to establish the truth of the claim by preponderance of the evidence, rests throughout upon the party asserting the affirmative of the issue”. *Clapper v. Lakin*, 343 Mo. 710, 723, 123 S.W.2d 27, 33 (1938); see also Section 393.150.2.

<sup>36</sup> *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996).

<sup>37</sup> *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez*, 936 S.W.2d at 109 -111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

#### **IV. Decision**

The issue presented in this case is whether MAWC should be allowed to reduce its ADIT to reflect an NOL. To address this issue, we must answer two questions: 1) is MAWC generating an NOL in the applicable 2018 ISRS recovery period; and 2) if it is generating an NOL, is that NOL associated with the replacements included in the proposed ISRS.

#### **Is there an NOL for MAWC in 2018?**

MAWC has not provided evidence to support that it will in fact have an NOL in 2018. On the contrary, the evidence indicates MAWC is generating more revenue for 2018 than it is generating expenses that qualify for deductions. Thus, MAWC is expected to utilize prior NOL carryovers to offset its taxable income in 2018 and 2019, but will not generate a new NOL. Since the IRS Private Letter Rulings only address periods where an NOL is generated, there is no legal support for MAWC's position that an exclusion of an NOL would violate normalization requirements of the IRS Code.<sup>38</sup>

Because MAWC is expected to have taxable income in 2018, it is reasonable to conclude that MAWC is not generating an NOL during the 2018 ISRS Period at issue, either. And in fact, there was no evidence of an NOL being generated during the 2018 ISRS Period. In short, although the ISRS statute requires recognition of ADIT, which might include reflection of an NOL, we cannot allow MAWC to reduce its ADIT balance to reflect an NOL that does not exist.

#### **If there is an NOL, is it associated with the replacements included in the currently effective ISRS?**

Since there is not an NOL in the 2018 ISRS Period, the question of whether an NOL is associated with the proposed ISRS is moot.

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<sup>38</sup> Hearing Transcript, p. 87, 89, 90, and 92. (Mark Oligschlaeger).

Based on Staff's adjustments to exclude the ineligible costs, the corrected ISRS calculation will result in MAWC collecting ISRS revenues in the amount of \$6,377,959. The Commission also concludes that the appropriate rate design is that which was testified to by Matthew J. Barnes and to which there were no objections.

MAWC has complied with the requirements of the applicable ISRS statutes to authorize its use of an ISRS, however, for the reasons previously stated, the recovery should not include NOL. The Commission concludes that MAWC shall be permitted to establish an ISRS to recover ISRS surcharges for these cases in the amount of \$6,377,959. Since the revenues and rates authorized in this order differ from those contained in the tariffs the company first submitted, the Commission will reject those tariffs. The Commission will allow MAWC an opportunity to submit new tariffs consistent with this order.

Section 393.1015.2(3), RSMo, requires the Commission to issue an order to become effective not later than 120 days after the petition is filed. That deadline is December 18, 2018, so the Commission will make this order effective on December 15, 2018.

**THE COMMISSION ORDERS THAT:**

1. Missouri-American Water Company is authorized to establish an Infrastructure System Replacement Surcharge ("ISRS") sufficient to recover ISRS revenues in the amount of \$6,377,959. Missouri-American Water Company is authorized to file an ISRS rate for each customer class as described in the body of this order.

2. The tariff sheet filed by Missouri-American Water Company on August 20, 2018, and assigned Tariff Tracking No. YW-2019-0018, is rejected.

3. Missouri-American Water Company is authorized to file new tariffs to recover



the revenue authorized in this Report and Order.

4. This order shall become effective on December 15, 2018.

**BY THE COMMISSION**



A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

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

Hatcher, Regulatory Law Judge

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Union Electric            )  
 Company d/b/a Ameren Missouri for Permission and        )  
 Approval and a Certificate of Public Convenience        )  
 and Necessity Authorizing it to Construct a Wind        )  
 Generation Facility                                                    )

**File No. EA-2018-0202**

**REPORT AND ORDER**

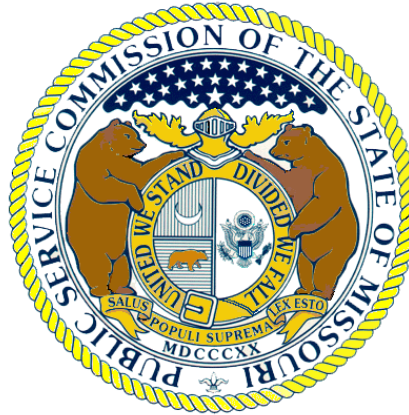
Affirmed on appeal: *Union Electric Company v. Missouri Public Service Commission*,  
 591 S.W.3d 478 (Mo. App. W.D. 2019)

**ELECTRIC**

**§13.1 Energy Efficiency**

A utility's Renewable Energy Standard Rate Adjustment Mechanism (RESRAM) allowed the utility to recover depreciation expense and return associated with a wind energy project recorded to plant-in-service on the utility's books as it was permitted to do by the Renewable Energy Standard statute, exclusive of the eighty-five percent of that expense and return deferred for future recovery pursuant to the Plant in Service Accounting (PISA) statute.

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Application of Union Electric )  
Company d/b/a Ameren Missouri for Permission and )  
Approval and a Certificate of Convenience and )  
Necessity Authorizing it to Construct a Wind )  
Generation Facility )

**File No. EA-2018-0202**

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## REPORT AND ORDER

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**Issue Date: December 12, 2018**

**Effective Date: December 22, 2018**

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Union Electric )  
 Company d/b/a Ameren Missouri for Permission and )  
 Approval and a Certificate of Convenience and ) **File No. EA-2018-0202**  
 Necessity Authorizing it to Construct a Wind )  
 Generation Facility )

## APPEARANCES

**James B. Lowery**, Attorney at Law, SMITH LEWIS, LLP, P.O. Box 918, Columbia, Missouri 65205-0918, and

**Wendy K. Tatro**, Director and Assistant General Counsel, Ameren Missouri, 1901 Chouteau Ave. St. Louis, Missouri 63103

For Union Electric Company d/b/a Ameren Missouri.

**Nicole Mers**, Deputy Staff Counsel, 200 Madison Street, Suite. 800, Jefferson City, Missouri 65102-0360.

For the Staff of the Missouri Public Service Commission.

**Caleb Hall**, Senior Counsel, and **Ryan Smith**, Senior Counsel, Office of the Public Counsel, 200 Madison Street, Suite 650, Jefferson City, Missouri 65102-2230.

For the Office of the Public Counsel and the Public.

Chief Regulatory Law Judge: **Morris L. Woodruff**

## REPORT AND ORDER

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The Missouri Public Service Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

**Procedural History**

Union Electric Company d/b/a Ameren Missouri filed an application on May 21, 2018, seeking a certificate of convenience and necessity (a CCN) to construct and operate a wind generation facility in Schuyler and Adair Counties in Missouri. That application also sought leave to establish a Renewable Energy Standard Cost Recovery Mechanism (RESRAM) related to the cost of the wind generation project. At the same time, Ameren Missouri filed a tariff designed to implement the RESRAM. That tariff carried a January 1, 2019 effective date. The Commission granted applications to intervene filed by the Natural Resources Defense Council (NRDC); the Missouri Department of Conservation; the Missouri Department of Economic Development – Division of Energy; the Missouri Industrial Energy Consumers (MIEC); Renew Missouri Advocates, d/b/a Renew Missouri; and Sierra Club.

On October 12, Ameren Missouri, Staff, Public Counsel, Renew Missouri, MIEC, Department of Conservation, Division of Energy, and the NRDC filed a Third Stipulation and Agreement<sup>1</sup> that resolved all issues regarding the requested CCN, and resolved all but one

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<sup>1</sup> Various parties filed two earlier stipulations and agreements that were opposed by one or more

issue regarding the requested RESRAM. The Commission approved that stipulation and agreement in an order issued on October 24.

By approving the stipulation and agreement, the Commission granted Ameren Missouri's request for a CCN to construct and own a wind generation facility to be constructed in Schuyler and Adair Counties under terms of a Build Transfer Agreement with TG High Prairie Holdings, LLC. Further, Ameren Missouri was given authority to merge TG High Prairie, LLC, into Ameren Missouri, with Ameren Missouri to be the surviving entity. Ameren Missouri was also required to comply with various provisions intended to mitigate the impact of the wind project on the environment and Missouri wildlife.

The one remaining unresolved issue concerns the requested RESRAM. While the signatories agree the Commission should grant Ameren Missouri's request to establish a RESRAM, subject to the conditions contained in the stipulation and agreement, the stipulation and agreement provides that if the Commission accepts Ameren Missouri's position on the unresolved issue, it should approve an Ameren Missouri tariff in the form attached to the stipulation and agreement as Appendix B. If the Commission accepts Public Counsel's position on that issue, it should approve an Ameren Missouri tariff in the form attached to the stipulation and agreement as Appendix C. The Commission's determination of which RESRAM tariff should be approved will be made in this Report and Order. The pending RESRAM tariff, which was filed along with Ameren Missouri's application on May 21, was rejected in the order approving the stipulation and agreement.

An evidentiary hearing was held on October 31. Thereafter, the parties filed initial briefs on November 13, and reply briefs on November 20.

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parties. The third stipulation and agreement superseded the two previous filings.

### **Findings of Fact**

1. Ameren Missouri is a Missouri certificated electrical corporation as defined by Subsection 386.020(15), RSMo 2016, and is authorized to provide electric service to portions of Missouri.

2. Ameren Missouri filed an application on May 21, 2018, seeking a certificate of convenience and necessity (a CCN) to construct and operate a wind generation facility in Schuyler and Adair Counties in Missouri. That wind generation facility will be referred to as the High Prairie project.

3. As part of its May 21, 2018 Application, Ameren Missouri requested that it be allowed to establish a Renewable Energy Standard Cost Recovery Mechanism, which is frequently referred to by its acronym, RESRAM.<sup>2</sup>

4. The purpose of the RESRAM is to allow the electric utility an opportunity to recover its prudently incurred costs, and to pass through to its customers any benefits of savings achieved, resulting from the utility's compliance with the renewable energy mandates imposed by Missouri's Renewable Energy Standards law.<sup>3</sup>

5. The wind generation project for which Ameren Missouri has been granted a CCN in this case is intended to comply with the renewable energy mandates of the law.<sup>4</sup>

6. The operation of the RESRAM allows the electric utility to recover its investment in renewable energy production more quickly than it would be able to recover those costs if it had to wait to recover those costs in a general rate case. The use of the RESRAM also allows the electric utility to avoid the effects of regulatory lag, which would otherwise prevent the utility from recovering RES compliance costs associated with the

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<sup>2</sup> Application, Page 9.

<sup>3</sup> Section 393.1030, RSMo 2016.

<sup>4</sup> Wills Direct, Ex. 119, Page 3, Lines 8-22.

investment during the period between when the asset goes into service until the completion of a general rate case that included the in-service assets within the true-up period.<sup>5</sup>

7. Missouri's General Assembly passed Senate Bill 564 during the 2018 legislative session.<sup>6</sup> That bill included a provision, codified at Section 393.1400 RSMo, that requires an electric utility that elects to come under this provision to "defer to a regulatory asset eighty-five percent of all depreciation expense and return associated with all qualifying electric plant recorded to plant-in-service on the utility's books commencing on or after the effective date of this section."<sup>7</sup> This is referred to as "plant in service accounting" or PISA.

8. When Senate Bill 564 was initially introduced, it required all depreciation expense and associated return to be deferred. The eighty-five percent limitation was added to the legislation by the General Assembly during the legislative process.<sup>8</sup>

9. Ameren Missouri elected to make the deferrals required under the terms of Section 393.1400, and to be subject to the terms of Senate Bill 564, through a notice filed with the Commission on September 1, 2018.<sup>9</sup>

### **Conclusions of Law**

A. Subsection 386.020(15), RSMo 2016 defines "electrical corporation" as including:

every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, ... owning, operating, controlling or managing any electric plant except where electricity is generated or distributed by the producer solely on or through private property for railroad, light rail or street railroad purposes or for its own use or the use of its tenants and not for sale to others;

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<sup>5</sup> Wills Direct, Ex. 119, Pages 4-5, Lines 16-23, 1-12.

<sup>6</sup> Ex. 127.

<sup>7</sup> Section 393.1400.2.(1), RSMo.

<sup>8</sup> Ex. 127.

<sup>9</sup> Notice, File No. EO-2019-0044, September 1, 2018.



By the terms of the statute, Ameren Missouri is an electrical corporation and is subject to regulation by the Commission pursuant to Section 393.140, RSMo 2016.

B. Missouri's "Renewable Energy Standard" portfolio requirements are found in Subsection 393.1030.1, RSMo. That statute requires electric utilities to provide electricity from renewable energy resources at set percentages increasing from year to year. For 2018-2020, no less than ten percent of electricity sold must be from renewable resources. That percentage increases to no less than fifteen percent for each year beginning in 2021. Subsection 393.1030.2 gives the Commission authority to "make whatever rules are necessary to enforce the renewable energy standard." Subdivision 393.1030.2.(4) requires that the rules to be promulgated by the Commission make "[p]rovision for recovery outside the context of a regular rate case of prudently incurred costs and the pass-through of benefits to customers of any savings achieved by an electrical corporation in meeting the requirements of this section."

C. Commission Rule 4 CSR 240-20.100 is the regulation promulgated by the Commission to implement the Renewable Energy Standard. That regulation allows for the establishment of a Renewable Energy Standard Rate Adjustment Mechanism, a RESRAM, which is defined by 4 CSR 240-20.100(1)(P) as "a mechanism that allows periodic rate adjustments to recover prudently incurred RES compliance costs and pass-through to customers the benefits of any savings achieved in meeting the requirements of the Renewable Energy Standard."

D. For both the statute and the implementing regulation, the only limitation on the amount of RES costs that the electric utility may recover through the RESRAM is that those costs be "prudently incurred." In other words, the electric utility will be allowed to recover 100 percent of its "prudently incurred" RES costs.

E. Subdivision 393.1400.2.(1), RSMo, which will be referred to as the Plant in Service Accounting (PISA) statute, states:

Notwithstanding any other provision of this chapter to the contrary, electrical corporations shall defer to a regulatory asset eighty-five percent of all depreciation expense and return associated with all qualifying electric plant recorded to plant-in-service on the utility's books commencing on or after August 28, 2018, if the electrical corporation has made the election provided for by subsection 5 of this section by that date, or on the date such election is made if the election is made after August 28, 2018. In each general rate proceeding concluded after August 28, 2018, the balance of the regulatory asset as of the rate-base cutoff date shall be included in the electrical corporation's rate base without any offset, reduction, or adjustment based upon consideration of any other factor, other than as provided for in subdivision (2) of this subsection, with the regulatory asset balance arising from deferrals associated with qualifying electric plant placed in service after the rate-base cutoff date to be included in rate base in the next general rate proceeding. The expiration of this section shall not affect the continued inclusion in rate base and the amortization of regulatory asset balances that arose under this section prior to such expiration.

Subdivision 393.1400.2.(2), which is referenced in subdivision 393.1400.2.(1), states:

The regulatory asset balances arising under this section shall be adjusted to reflect any prudence disallowances ordered by the commission. The provisions of this section shall not be construed to affect existing law respecting the burdens of production and persuasion in general rate proceedings for rate-base additions.

F. Unlike the RESRAM, which allows an electric utility to immediately recover RES costs from its ratepayers through the RESRAM, the PISA statute does not allow for immediate recovery of depreciation expense and return. Instead, those amounts are to be deferred in a regulatory asset for recovery in rates that will be established in a subsequent general rate case. Further, unlike the RESRAM, which applies only to RES costs and benefits related to the generation and provision of renewable energy, the PISA statute applies to all depreciation expense and return associated with qualifying electric plant, not limited to costs associated with renewable energy.

G. Subsection 393.1400.5, which is also referenced in subdivision 393.1400.2.(1), indicates the PISA statute applies only to an electrical corporation that files notice with the Commission of its intent to be subject to that statute. As the Commission found in Finding of Fact No. 9, Ameren Missouri has chosen to be subject to the PISA statute.

H. In interpreting a statute, the Commission must determine the intent of the legislature, giving the language used its plain and ordinary meaning.<sup>10</sup> Here the language of the PISA statute and the RES statute are clear and unambiguous and not subject to further construction.

I. In interpreting a statute, a “notwithstanding clause” does not create a conflict, but eliminates the conflict that would have occurred in the absence of the clause.<sup>11</sup> In this case, there is no conflict between the PISA statute and the RES statute so the “notwithstanding clause” has no effect.

J. If the legislature intends to repeal or amend a statute it must do so explicitly.<sup>12</sup> The Commission will not infer that the legislature intended to amend the RES statute by implication because amendments by implication are not favored.<sup>13</sup>

### **Decision**

Ameren Missouri proposes to use the PISA statute to defer 85 percent of the depreciation expense and return associated with the High Prairie wind project for recovery in a future rate case. All parties agree it can do that. Indeed, by the terms of the PISA

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<sup>10</sup> *Lane v. Lensmeyer*, 158 S.W.3d 218, 226, (Mo. banc 2005).

<sup>11</sup> *Earth Island Institute v. Union Electric Co.* 456 S.W.3d 27, 34, (Mo. banc 2015)

<sup>12</sup> Missouri Constitution, Art. 3, Section 28.

<sup>13</sup> *Fisher v. Waste Management of Missouri*, 58 S.W.3d 523, 525 (Mo. banc 2001). See also, *Sours v. State*, 603 S.W.2d 592, 599 (Mo. banc 1980).

statute, it must do that. The issue before the Commission concerns the other 15 percent of the depreciation expense and return associated with the High Prairie project.

Ameren Missouri proposes to use the RES statute and the RESRAM to recover that 15 percent of the depreciation expense and return from its ratepayers. Staff agrees that Ameren Missouri can do so. Public Counsel argues that when Ameren Missouri elected to be subject to the PISA statute, it was precluded, by the terms of that statute, from recovering that 15 percent from its ratepayers through the RES statute and its RESRAM.

This disagreement is a legal issue founded on the language of the PISA statute. The first clause of the first sentence of that statute says “[n]otwithstanding any other provision of this chapter to the contrary.” Public Counsel contends the RES statute is contrary to the PISA statute and argues that the “notwithstanding” clause in the PISA statute precludes application of the RES statute and the associated RESRAM, which are also a part of Chapter 393. The flaw in Public Counsel’s argument is that the RES statute is not contrary to the PISA statute, and therefore the “notwithstanding” clause does not come into play in this situation.

The PISA statute requires the subject electric utility to “defer to a regulatory asset eighty-five percent of all depreciation expense and return associated with all qualifying electric plant recorded to plant-in-service on the utility’s books. ...” By deferring those amounts into a regulatory asset, the electric utility is allowed to avoid some of the financial effect of regulatory lag that results from the time gap between when an item of electric plant is put in service and when it is added to the utility’s rate base as part of a general rate proceeding. As Public Counsel contends, the eighty-five percent limitation on the utility’s ability to defer costs is likely a legislative compromise intended to maintain some regulatory lag to protect ratepayer interests. The PISA statute is silent about what is to be done with the other fifteen percent of those costs.

For most utility “depreciation expense and return associated with all qualifying electric plant recorded to plant-in-service on the utility’s books,” the silence of the PISA statute means the fifteen percent cannot be deferred for future recovery and remains subject to regulatory lag. However, the subset of the fifteen percent associated with renewable energy and thus eligible for recovery under the RES statute falls within the terms of the RES statute and thus can be recovered through the RESRAM.

This interpretation of the two statutes as consistent with each other allows both to be harmonized as fully effective, in compliance with the rule of statutory interpretation that presumes that to be the intent of the legislature. Certainly, the legislature could have written a provision into the PISA statute to forbid recovery of any portion of the fifteen percent by other means, but it did not do so. Similarly, it could have explicitly amended the RES statute, but it did not do so and the Commission will not presume that it amended the RES statute by implication.

The Commission finds and concludes that Ameren Missouri may recover depreciation expense and return associated with the High Prairie project recorded to plant-in-service on the utility’s books as it is permitted to do by the RES statute, exclusive of the eighty-five percent of that expense and return deferred for future recovery pursuant to the PISA statute.

So that Ameren Missouri can proceed with the High Prairie project as soon as possible, and because only a single, narrow issue has been decided, the Commission will make this report and order effective in ten days.

**THE COMMISSION ORDERS THAT:**

1. Union Electric Company d/b/a Ameren Missouri shall file a RESRAM tariff on the terms reflected in the tariff sheets attached to the approved Third Stipulation and Agreement as Appendix B.
2. This report and order shall become effective on December 22, 2018.

**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Silvey, Chm., Kenney, Hall, Rupp, and  
Coleman, CC., concur;  
and certify compliance with the  
provisions of Section 536.080, RSMo 2016

Dated at Jefferson City, Missouri,  
on this 12<sup>th</sup> day of December, 2018.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of GridLiance High Plains LLC for a Certificate of Convenience and Necessity to Construct, Own, Install, and Maintain Certain Southwest Power Pool, Inc.-Mandated Network Upgrades to a 69kV Electric Transmission Line Located in Christian and Greene Counties, Missouri )  
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**File No. EA-2019-0112**

**ORDER GRANTING CERTIFICATE OF  
CONVENIENCE AND NECESSITY**

**CERTIFICATES**

**§42 Electric and power**

The Commission may grant an electrical corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either necessary or convenient for the public service.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 19<sup>th</sup> day of December, 2018.

In the Matter of the Application of GridLiance High Plains )  
 LLC for a Certificate of Public Convenience and )  
 Necessity to Construct, Own, Install, and Maintain ) **File No. EA-2019-0112**  
 Certain Southwest Power Pool, Inc.-Mandated Network )  
 Upgrades to a 69kV Electric Transmission Line Located )  
 In Christian and Greene Counties, Missouri. )

**ORDER GRANTING CERTIFICATE OF  
CONVENIENCE AND NECESSITY**

Issue Date: December 19, 2018

Effective Date: December 29, 2018

**Procedural History**

On October 25, 2018<sup>1</sup>, GridLiance High Plains LLC, f/k/a South Central MCH LLC (“GridLiance”) filed an application describing its plans to construct, own, install, and maintain certain Southwest Power Pool (“SPP”) mandated network upgrades to 1.25 miles of a 69kV electric transmission line location in Christian County, Missouri. GridLiance asked the Commission to either find that it does not have jurisdiction over this project or, in the alternative, to grant GridLiance a certificate of convenience and necessity to build it.

GridLiance requests an order no later than 60 days from the date of this Application to better enable it to meet the SPP schedule and thereby ensure continued reliability of service for SPP consumers served by these facilities. GridLiance further requests a waiver

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<sup>1</sup> Calendar references are to 2018.



of the Commission rule requiring applicants to file a 60-day notice prior to filing a case at the Commission.<sup>2</sup>

The Commission provided notice and set a deadline for applications to intervene. The Commission received no intervention requests.

The Staff of the Commission filed its Recommendation on December 5. Staff recommends that the Commission grant the certificate, subject to the condition that GridLiance will file plans and specifications for the complete construction project with the Commission before the authority to construct under the CCN is exercised. Staff further recommends the Commission grant a rule waiver to GridLiance, as requested in the application.

Unless otherwise ordered, parties have ten days to respond to pleadings.<sup>3</sup> The Commission issued no order contrary to the pertinent rule, and no party has responded to the Staff Recommendation. Thus, the Commission will rule upon the unopposed application.

### **Decision**

GridLiance is an electrical corporation and a public utility subject to Commission jurisdiction. GridLiance's Missouri facilities, according to its application, are electric plant that will be used for the transmission of electricity that will be used for light, heat or power.<sup>4</sup>

The Commission may grant an electrical corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either

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<sup>2</sup> Commission Rule 4 CSR 240-4.017.

<sup>3</sup> Commission Rule 4 CSR 240-2.080(13).

<sup>4</sup> Section 386.020(14), (15), (43).

“necessary or convenient for the public service.”<sup>5</sup> The Commission has stated five criteria that it will use to make this determination:

- 1) There must be a need for the service;
- 2) The applicant must be qualified to provide the proposed service;
- 3) The applicant must have the financial ability to provide the service;
- 4) The applicant’s proposal must be economically feasible; and
- 5) The service must promote the public interest.<sup>6</sup>

Based on the verified application and the verified recommendation of Staff, the Commission finds the application for a certificate of convenience and necessity to provide electrical service meets the above listed criteria.<sup>7</sup> The application will be granted. This order will be given a ten-day effective date because the application is unopposed, and the Commission does not wish to cause undue delay.

Commission Rule 4 CSR 240-4.017(1)(D) states that a waiver may be granted for good cause. Good cause exists in this case. GridLiance has had no communication with the office of the Commission within the prior 150 days regarding any substantive issue likely to be in this case, other than those pleadings filed for record. Accordingly, for good cause shown, the Commission waives the 60-day notice requirement of Commission Rule 4 CSR 240-4.017(1).

**THE COMMISSION ORDERS THAT:**

1. The Motion for Expedited Consideration is granted.

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<sup>5</sup> Section 393.170, RSMo.

<sup>6</sup> *In re Tartan Energy Company*, 3 Mo. P.S.C. 173, 177 (1994).

<sup>7</sup> The requirement for a hearing is met when the opportunity for hearing is provided and no proper party requests the opportunity to present evidence. No party requested a hearing in this matter; thus, no hearing is necessary. *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm’n of the State of Missouri*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

2. Commission Rule 4 CSR 240-4.017(1) is waived.
3. GridLiance High Plains LLC, f/k/a South Central MCH LLC is granted permission, approval, and a certificate of convenience and necessity to construct, install, own, operate, control, manage, and maintain electrical plant for its existing facilities in Missouri, as more particularly described in its application and Staff Recommendation.
4. The certificate of convenience and necessity is subject to the condition that GridLiance High Plains LLC, f/k/a South Central MCH LLC will file plans and specifications for the complete construction project with the Commission before the authority to construct under the certificate of convenience and necessity is exercised.
5. This order shall become effective on December 29, 2018.
6. This file shall be closed on December 30, 2018.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

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

Pridgin, Deputy Chief Regulatory Law Judge

**DIGEST OF REPORTS**  
**OF THE**  
**PUBLIC SERVICE COMMISSION**  
**OF THE**  
**STATE OF MISSOURI**

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## ACCOUNTING

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## ACCOUNTING

### **§4. Jurisdiction and powers of the State Commission**

The Commission has the statutory authority to determine Empire's accounting treatment for its investment in the proposed wind generation and establish a depreciation rate for the wind assets.

EO-2018-0092 **28 MPSC 3d 502**

### **§9. Methods of accounting generally**

The Commission found that the parties were using a cash contribution method, and not Federal Accounting Standards (FAS) 87 or FAS 88 accrual accounting prior to September 1, 1994, the effective date of File No. GR-94-220.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 135**

### **§9. Methods of accounting generally**

Investor-owned natural gas utilities under this Commission's jurisdiction are obligated to use the Uniform System of Accounts (USOA) prescribed by the Federal Energy Regulatory Commission (FERC).

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 135**

### **§13. Contributions by utility**

The Commission found that the parties were using a cash contribution method, and not Federal Accounting Standards (FAS) 87 or FAS 88 accrual accounting prior to September 1, 1994, the effective date of File No. GR-94-220.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 135**

**§13. Contributions by utility**

The Commission previously approved a Stipulation and Agreement for Laclede Gas Company, in File No. GR-2013-0171, allowing rate recovery for contributions Laclede would make to avoid benefit restrictions specified by the Pension Protection Act of 2006 (PPA). The Commission determined that Laclede contributed funds sufficient to avoid the restrictions outlined in the PPA.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 135**

**§17. Depreciation reserve account**

The Commission ordered Spire Missouri East, f/k/a Laclede Gas Company, to account for the sale of the Forest Park buildings transaction in accordance with the FERC Uniform System of Accounts by increasing its accumulated depreciation reserve by the \$1.8 million loss on the retirement of the Forest Park buildings.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 135**

**§17. Depreciation reserve account**

The Commission found that with regard to Spire Missouri East, f/k/a Laclede Gas Company's, accounting for the sale of its Forest Park buildings, neither a return on the \$1.8 million undepreciated value of the Forest Park buildings, nor any return of the \$1.8 million should be included in rates going forward. The Commission found the remainder of the \$5.8 million gain properly belonged to the shareholders.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 136**

**§23.1. Employee compensation**

The Commission found that Spire Missouri's earnings based and equity based incentive compensation was primarily for the benefit of the shareholders and not for the benefit of the ratepayers. Therefore, the Commission determined that Spire Missouri did not meet its burden of proving that its proposed increase in rates for earnings based and equity



based incentive compensation plans was just and reasonable. Therefore, the Commission determined that Spire Missouri shall not recover earnings based or equity based employee incentive compensation amounts in rates.  
GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 136**

**§23.1. Employee compensation**

The Commission found that the individual performance component (50 percent of the nonunion, nonexecutive and director incentive compensation) of Spire Missouri's employee incentive compensation plan encouraged, motivated, and retained talented employees to the benefit of ratepayers and, therefore, should be included in revenue requirement.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 136**

**§23.1. Employee compensation**

The Commission determined that 50 percent (the earnings based and equity based portions) of Spire Missouri's nonunion, non-executive or director employee incentive compensation plans should be disallowed from rates. Further, the Commission found the executive and director incentive compensation plan, which is 100 percent earnings and equity based, should also be disallowed. The Commission determined, however, that incentive compensation for union employees, is appropriately included in rates because this is the result of collective bargaining agreements. Therefore, Spire Missouri's proposed revenue requirement was reduced by 100 percent of the executive and director's incentive compensation plan and 50 percent of the other nonunion employee incentive compensation plan.  
GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 136**

**§23.1. Employee compensation**

The Commission determined that because previous stipulation and agreements settled all issues but did not

specifically address the capitalization of incentive compensation, the Commission would not reach back to those settled cases and remove capitalized earnings based and equity based incentive compensation from rate base.  
GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 136**

**§23.1. Employee compensation**

The Commission determined Spire Missouri had not met its burden to show that any upward adjustment to base salaries is just and reasonable to include in rates. Therefore, no adjustment in compensation expense was made due to the Commission disallowing portions of Spire Missouri's incentive compensation plans expense.  
GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 137**

**§23.1. Employee compensation**

The Commission concluded there is no statutory authorization or prohibition for the implementation of incentives related to performance metrics.  
GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 137**

**§23.1. Employee compensation**

The Commission concludes Gascony's computation of Mr. Hoesch's salary is too high as it is based upon insufficient evidence. Mr. Hoesch failed to maintain accurate ongoing records of his time for operational and managerial duties performed.  
WR-2017-0343 **28 MPSC 3d 407**

**§25. Maintenance, repairs and depreciation**

The Commission found that any replacement of the automated meter reading (AMR) device or battery is not maintenance, but is a capital expenditure that the company would have an opportunity to recoup in its next rate case. However, because of the benefits to the ratepayers presented by the purchase and renegotiation of the AMR

contract, and because of the uncertainty as to what actual maintenance expense Spire Missouri will incur related to the AMR devices, the Commission ordered a maintenance tracker be established to ascertain Spire Missouri's actual maintenance expense on the AMR devices not covered by the contract and not including replacement of the devices or their batteries for possible recovery in Spire Missouri's next rate case.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 137**

#### **§27. Plant adjustment amount**

The Commission found that it had not previously had an opportunity to address how Spire Missouri should handle the accounting for its Forest Park property transaction because the issue was not presented to the Commission for authorization of the transactions. The Commission found that the ratepayers should not continue to pay for property that was necessary for the provision of utility service and was replaced with a more expensive property. The Commission ordered Spire Missouri to account for the sale of the Forest Park buildings transaction in accordance with the FERC Uniform System of Accounts by increasing its accumulated depreciation reserve by the \$1.8 million loss on the retirement of the Forest Park buildings.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 137**

#### **§27. Plant adjustment amount**

The FERC Uniform System of Accounts for gas utilities prescribes specific treatment for the sale of utility assets that constitute an operating unit or system.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 137**

#### **§38. Taxes**

The Commission found that actual property tax expense paid in 2017 was known and measurable even though it fell outside the test year. The Commission determined that

coupled with the extraordinary event of decreased income tax expense due to the Tax Cuts and Jobs Act (TCJA), it would not be just to exclude the known and measurable taxes from increasing property tax expense. Therefore, as an offset to the reduction in current income tax expense, the Commission included the actual 2017 property taxes as an expense for the new rates. However, as 2018 property taxes were still not known and measurable, the Commission established a tracker to account for any amounts of property tax expense over or under the amounts set out in rates for possible inclusion in Spire Missouri's next rate proceeding.  
GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 137**

### **§38. Taxes**

The Commission excluded FIN 48 liability from accumulated deferred income tax (ADIT) finding that both ratepayers and shareholders benefit when the company takes an uncertain tax position with the IRS, because saving money on taxes benefits the company's bottom line and it also reduces the amount of tax expense for the ratepayers. The Commission determined that the best way to encourage the company to pursue these tax savings, and thus ultimately benefit both shareholders and ratepayers, was to exclude the FIN 48 liability from ADIT.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 138**

### **§38. Taxes**

The Commission found that while the specific income tax expense reduction due to the Tax Cuts and Jobs Act (TCJA) could not be calculated until the other decisions from this Report and Order are incorporated, it was a known and measurable expense. Therefore, the Commission found that based on the extraordinary event of the passage of the TCJA happening at the latter stages of the rate case, it was just and reasonable to reduce income tax expense using the TCJA effective composite income tax rate of 25.4483

percent.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 138**

### **§38. Taxes**

The Commission recognized that not all of the effects of the Tax Cuts and Jobs Act (TCJA) were known at the time because the IRS had not yet promulgated rules or issued guidance on all the aspects of the TCJA. Therefore, the Commission ordered that a tracker be established to account for any other effects (either over- or under-collection in rates) of the TCJA not captured by the current reduction in income tax expense for possible inclusion in rates at Spire Missouri's next rate case.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 138**

### **§38. Taxes**

The estimates of the percentage of "protected" versus "unprotected" accumulated deferred income taxes (ADIT) and the lack of evidence surrounding the appropriate amortization periods for each category, convinces the Commission that effects of the Tax Cuts and Jobs Act (TCJA) on ADIT were not sufficiently known and measurable to be included in the rate case. Thus, the Commission ordered a tracker be established to defer any amounts in excess ADIT over or under the \$11.5 million amount refunded in rates, from the effective date of rates resulting from the case, forward, for possible inclusion in a later rate case. Further, the determination of the actual split between protected and unprotected ADIT and the appropriate amortization periods was ordered to be determined in Spire Missouri's next rate case.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 138**

### **§38. Taxes**

The Commission found that the automated meter reading (AMR) device property taxes will not be due to be paid until

December 31, 2018. Thus, these property taxes were beyond the test year and true-up period for the current case. Additionally, the Commission found that normally the property taxes could not be included because they were not known and measurable. However, given the specific circumstances of this case, including the inclusion of a large income tax reduction to expenses due to the Tax Cuts and Jobs Act (TCJA) being incorporated in this case even though outside the test year and true-up period, the Commission determined that the property tax for AMR devices should be included in the property tax tracker.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 138**

### **§38. Taxes**

Excess Accumulated Deferred Income Tax (ADIT) must be divided into two categories: protected and unprotected. The return of protected excess ADIT to ratepayers is subject to Internal Revenue Service (IRS) rules. The Commission has discretion to control the return of unprotected excess ADIT to ratepayers.

ER-2018-0366 **28 MPSC 3d 561**

### **§38. Taxes**

The inability to immediately and reliably determine protected and unprotected excess ADIT, resulting from a lack of appropriate software, is good cause to defer the effect of a tax reduction on the company's excess ADIT for consideration in its next general rate case.

ER-2018-0366 **28 MPSC 3d 561**

### **§39.1. OPEBS, Postretirement benefits other than pensions**

In balancing the needs of the ratepayers to keep rates from increasing, with the need of Spire Missouri to fulfill its pension obligations, the Commission determined that an 80 percent ERISA funding level was the most just and

reasonable level.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 139**

**§39.1. OPEBS, Postretirement benefits other than pensions**

The Commission was not persuaded that a strategic financing review of the pension and benefit plans as requested by the Office of the Public Counsel was necessary since Spire Missouri's pension and benefit plans already receive scrutiny and utilize investment advisory and actuarial firms to assist in planning.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 139**

**§39.1. OPEBS, Postretirement benefits other than pensions**

The Commission previously approved a Stipulation and Agreement for Laclede Gas Company, File No. GR-2013-0171, allowing rate recovery for contributions Laclede would make to avoid benefit restrictions specified by the Pension Protection Act of 2006 (PPA). The Commission determined that Laclede contributed funds sufficient to avoid the restrictions outlined in the PPA.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 139**

**§39.1. OPEBS, Postretirement benefits other than pensions**

The Commission found that the approved Stipulation and Agreement in File No. GR-2013-0171, stated that Laclede Gas Company could include in the pension asset, contributions in excess of Employee Retirement Income Security Act (ERISA) minimums as they were made to avoid variable premiums from the Pension Benefit Guarantee Premiums. (*Order Approving Unanimous Stipulation and Agreement*, File No. GR-2013-0171 (issued June 26, 2013), attachment Stipulation and Agreement, para. 7.)

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 139**

**§39.1. OPEBS, Postretirement benefits other than pensions**

The Commission concluded that in order to avoid the restriction on offering a lump sum payment option to retirees, the pension fund must be funded by at least 80 percent of Employee Retirement Income Security Act (ERISA) minimums.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 139**

**§39.1. OPEBS, Postretirement benefits other than pensions**

The Commission found that the parties were using a cash contribution method, and not Federal Accounting Standards (FAS) 87 or FAS 88 accrual accounting prior to September 1, 1994, the effective date of File No. GR-94-220.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 139**

**§39.1. OPEBS, Postretirement benefits other than pensions**

The Commission found historical data showed that with regard to Spire Missouri's Supplemental Executive Retirement Plan (SERP) expense, lump sum payments could be reasonably expected to recur and that when considering the historical averages, and excluding the one anomaly of an especially high payment, the size of the lump sum SERP payments was not volatile and was known and measurable. Thus, the Commission concluded that in accordance with the Missouri Court of Appeals decision in *State ex rel. GTE North, Inc. v. Mo. Pub. Serv. Com'n*, 835 S.W.2d 356, 368 (Mo App. W.D. 1992), the appropriate amount of SERP expense was \$468,731 as calculated by Staff.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 140**



**§40. Working capital and current assets**

The Commission determined that like other assets, the prepaid pension asset is appropriately included in rate base and is properly funded at the normal weighted average cost of capital.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 140**

**§41. Expenses generally**

The Commission found the actual expenses incurred to relocate Forest Park employees could not be determined from the evidence presented, but the \$200,000 lease expense and the \$1.95 million capital contributions should be deducted from the \$5.7 million total before the remainder is used to offset the construction cost of the new Manchester facility. The Commission ordered Spire Missouri to create a regulatory liability to record the rate base offset of the relocation expense to be amortized over five years beginning with the date the rates became effective.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 140**

**§42. Accounting Authority Orders**

Elective replacement of lead service line performed for the purposes of providing safe and adequate service by avoiding the risks of partial lead service line replacement was found as a reason the Commission continued to allow of a water utility to defer and book the costs of customer-owned lead service line replacements under a previously approved Accounting Authority order. The Commission determined that public policy supports a full, as opposed to a partial, lead service line replacement as partial lead service line replacements have the potential to disrupt lead in service lines, presenting a serious health risk.

WR-2017-0285 **28 MPSC 3d 365**

**§42. Accounting Authority Orders**

Extending the normal AAO amortization time period of 3-5

years to a 10 year amortization was justified due to the extraordinary nature and extent of a water utility's lead service line replacement program.

WR-2017-0285 **28 MPSC 3d 365**

**§43. Financial Accounting Standards Board requirements**

The Commission found that the parties were using a cash contribution method, and not Federal Accounting Standards (FAS) 87 or FAS 88 accrual accounting prior to September 1, 1994, the effective date of File No. GR-94-220.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 140**

**§43. Financial Accounting Standards Board requirements**

The Commission concluded that Federal Accounting Standards (FAS) 87 allows for the capitalization of the service cost component of FAS 87 Supplemental Executive Retirement Plan (SERP) expense.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 140**

**§43. Financial Accounting Standards Board requirements**

The Commission acknowledged that Spire Missouri could have waited to terminate its lease and purchase the automated meter reading (AMR) assets until after the true-up period and have taken advantage of any regulatory lag to retain the savings for its shareholders. Because the purchase occurred outside the test year but before September 30, 2017, it is appropriately a true-up issue. The Commission determined that Spire Missouri should be allowed to recover the \$16.6 million cost of the AMR devices. The Commission ordered Spire Missouri to establish Account 397.2 – AMR Devices as a new plant sub-account. Additionally, because of the planned obsolescence of these devices, the Commission found it was reasonable

under these specific facts to authorize the amortization of these assets over 7.5 years.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 140**

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## **CERTIFICATES**

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- 

**CERTIFICATES****§4. Jurisdiction and powers generally**

The Commission found it had jurisdiction to rule on the application because Missouri law requires that before selling or transferring its assets, a water corporation or sewer corporation must first obtain an order from the Commission authorizing the sale or transfer.

WM-2019-0018 **28 MPSC 3d 666**

**§6. Jurisdiction and powers of the State Commission**

The Commission concluded that in accordance with subsections 393.170.1 and .2, RSMo 2016, an electrical corporation may not construct electrical plant without first obtaining the permission and approval of this Commission.

EA-2016-0207 **28 MPSC 3d 608**

**§11. When a certificate is required generally**

Operating as a public utility requires the Commission's prior permission and approval. Such permission and approval depend on whether the proposed service "is required by the public convenience and necessity [;]" and "necessary or convenient for the public service [.]" "Necessary" and "necessity" relate to the regulation of competition, cost justification, and safe and adequate service. On finding convenience and necessity, the Commission embodies its permission and approval in a certificate, which the regulations call a certificate of convenience and necessity.

EO-2018-0169 **28 MPSC 3d 329**

**§11. When a certificate is required generally**

The Commission concluded that in accordance with subsections 393.170.1 and .2, RSMo 2016, an electrical corporation may not construct electrical plant without first obtaining the permission and approval of this Commission.  
EA-2016-0207 **28 MPSC 3d 608**

**§11. When a certificate is required generally**

The Commission approved the second amended stipulation and agreement addressing a pilot subscriber solar program for Union Electric Company d/b/a Ameren Missouri. As part of that agreement, the Commission approved a certificate of convenience and necessity to build the solar facility, rejected the tariff filed with the application, and directed a compliance tariff be filed.  
EA-2016-0207 **28 MPSC 3d 608**

**§18. Substitution or replacement of facilities**

Operating as a public utility requires the Commission's prior permission and approval. Such permission and approval depend on whether the proposed service "is required by the public convenience and necessity [;]" and "necessary or convenient for the public service [.]" "Necessary" and "necessity" relate to the regulation of competition, cost justification, and safe and adequate service. On finding convenience and necessity, the Commission embodies its permission and approval in a certificate, which the regulations call a certificate of convenience and necessity.  
EO-2018-0169 **28 MPSC 3d 329**

**§21. Grant or refusal of certificate generally**

Operating as a public utility requires the Commission's prior permission and approval. Such permission and approval depend on whether the proposed service "is required by the public convenience and necessity [;]" and "necessary or convenient for the public service [.]" "Necessary" and

“necessity” relate to the regulation of competition, cost justification, and safe and adequate service. On finding convenience and necessity, the Commission embodies its permission and approval in a certificate, which the regulations call a certificate of convenience and necessity.  
EO-2018-0169 **28 MPSC 3d 329**

**§21. Grant or refusal of certificate generally**

The Commission concluded that the *In re Intercon Gas, Inc.*, 30 Mo P.S.C. (N.S.) 554, 561 (1991), criteria should be used when evaluating the application for utility certificates of convenience and necessity. The specific criteria used were: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and, (5) the service must promote the public interest. These factors are also referred to as the “Tartan Factors” or the “Tartan Energy Criteria.” See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company*, for a Certificate of Convenience and Necessity, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994), 1994 WL 762882, \*3 (Mo. P.S.C.).  
GA-2018-0396 **28 MPSC 3d 552**

**§21. Grant or refusal of certificate generally**

The Commission granted Summit Natural Gas of Missouri, Inc., a certificate of convenience and necessity to provide natural gas service to the property as described in its application.  
GA-2018-0396 **28 MPSC 3d 552**

**§21. Grant or refusal of certificate generally**

The Commission concluded that it may grant a certificate of convenience or necessity to operate after determining that

the operation is either “necessary or convenient for the public service.” Section 393.170.3, RSMo 2000.

GA-2018-0396 **28 MPSC 3d 552**

**§21. Grant or refusal of certificate generally**

The Commission concluded that on August 28, 2018, the date of issuance of the order, S.B. 564 (Section 393.170, S.B. 564, 99th Gen. Assemb., 2nd Reg. Sess. (Mo. 2018).) became effective containing an exception to the need for Commission approval for “an energy generation unit that has a capacity of one megawatt or less.” Subsection 393.170.1., RSMo. The Commission determined that the solar facility being proposed may fall within that exception. However, the application was filed before the new law became effective, the parties agreed to conditions contingent on the Commission’s grant of a certificate, no party opposed the certificate, and nothing in the statute prohibited the Commission from granting a certificate. Therefore, the Commission granted a certificate even if it was not required.

EA-2016-0207 **28 MPSC 3d 608**

**§21. Grant or refusal of certificate generally**

The Commission articulated the specific criteria to be used when evaluating applications for utility CCNs in the case *In Re Intercon Gas, Inc.*, 30 Mo P.S.C. (N.S.) 554, 561 (1991). The *Intercon* case combined the standards used in several similar certificate cases, and set forth the following criteria: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant’s proposal must be public interest.

SA-2018-0313 **28 MPSC 3d 618**

**§21. Grant or refusal of certificate generally**

The Commission granted Missouri-American Water Company certificates of service for the Rogue Creek service



area.

WM-2019-0018 **28 MPSC 3d 666**

**§21. Grant or refusal of certificate generally**

The Commission found that it will only deny an application for a certificate of convenience or necessity if approval would be detrimental to the public interest.

WM-2019-0018 **28 MPSC 3d 666**

**§21.1. Public interest**

The Project is needed to integrate wind energy in Missouri and to assist Missouri public utilities in complying with Missouri's Renewable Energy Standard. ATXI is qualified and financially able to build the Project. The Project is economically feasible because Ameren Missouri customers should receive benefits in excess of transmission charges. The Project will likely lead to reductions in Missourians' ultimate electric rates as compared to rates that would be paid without the Project. Further, the Project will generate significant property tax revenues for the counties through which the Project will be built, and will promote economic development in the region. As such, the Project is in the public interest. Accordingly, the Project is necessary and convenient for the public service, and ATXI has satisfied the *Tartan* criteria.

EA-2017-0345 **28 MPSC 3d 001**

**§21.1. Public interest**

The Commission found that Union Electric, d/b/a Ameren Missouri's pilot subscriber solar program was e feasible and was in the public interest.

EA-2016-0207 **28 MPSC 3d 609**

**§21.2. Technical qualifications of applicant**

The Commission found that the company possessed adequate technical, managerial, and financial capacity to

operate the natural gas systems to serve one additional property in Lawrence County, Missouri. The Commission also found that the factors for granting an addition to the company's certificates of convenience or necessity has been satisfied and that it was in the public interest for the company to provide natural gas service to the subject property.

GA-2018-0396 **28 MPSC 3d 552**

### **§21.2. Technical qualifications of applicant**

The Commission found that the application for tariff approval demonstrated, and the parties agreed, Union Electric, d/b/a Ameren Missouri, was qualified to construct, install, own, operate, maintain, and otherwise control and manage a pilot subscriber solar program and was financially able to provide the service.

EA-2016-0207 **28 MPSC 3d 609**

### **§21.3. Financial ability of applicant**

The Commission found that the company possessed adequate technical, managerial, and financial capacity to operate the natural gas systems to serve one additional property in Lawrence County, Missouri. The Commission also found that the factors for granting an addition to the company's certificates of convenience or necessity has been satisfied and that it was in the public interest for the company to provide natural gas service to the subject property.

GA-2018-0396 **28 MPSC 3d 552**

### **§21.3. Financial ability of applicant**

The Commission found that the application for tariff approval demonstrated, and the parties agreed, Union Electric, d/b/a Ameren Missouri, was qualified to construct, install, own, operate, maintain, and otherwise control and manage a pilot

subscriber solar program and was financially able to provide the service.

EA-2016-0207 **28 MPSC 3d 609**

**§21.4. Economic feasibility of proposed service**

The Commission found that the company possessed adequate technical, managerial, and financial capacity to operate the natural gas systems to serve one additional property in Lawrence County, Missouri. The Commission also found that the factors for granting an addition to the company's certificates of convenience or necessity has been satisfied and that it was in the public interest for the company to provide natural gas service to the subject property.

GA-2018-0396 **28 MPSC 3d 552**

**§21.4. Economic feasibility of proposed service**

The Commission found that Union Electric, d/b/a Ameren Missouri's pilot subscriber solar program was e feasible and was in the public interest.

EA-2016-0207 **28 MPSC 3d 609**

**§42. Electric and power**

The Commission may grant an electrical corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either necessary or convenient for the public service.

EA-2017-0345 **28 MPSC 3d 001**

**§42. Electric and power**

The Commission concluded that in accordance with subsections 393.170.1 and .2, RSMo 2016, an electrical corporation may not construct electrical plant without first obtaining the permission and approval of this Commission.

EA-2016-0207 **28 MPSC 3d 608**

**§42. Electric and power**

The Commission may grant an electrical corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either necessary or convenient for the public service.

EA-2019-0112 **28 MPSC 3d 774**

**§43. Gas**

The Commission found that the company possessed adequate technical, managerial, and financial capacity to operate the natural gas systems to serve one additional property in Lawrence County, Missouri. The Commission also found that the factors for granting an addition to the company's certificates of convenience or necessity has been satisfied and that it was in the public interest for the company to provide natural gas service to the subject property. GA-2018-0396 **28 MPSC 3d 552**

**§45. Water**

The Commission determined it may approve Missouri-American Water Company's (MAWC) request for the Rogue Creek customers to become part of an existing MAWC service area if in its opinion those were the rates best suited for the customers due to operational or other factors. After considering all the factors, the Commission found that MAWC's proposed rates were the rates best suited for Rogue Creek's ratepayers. WM-2019-0018 **28 MPSC 3d 666**

**§47. Sewers**

Granting a certificate of convenience and necessity requires a showing of necessity or convenience for the public service, and the Commission applies a five factor analysis to determine whether an application is necessary or convenient. SA-2019-0006 **28 MPSC 3d 682**

**§52. Transfer, mortgage or lease generally**

The Commission approved a transfer of water and sewer assets from Highway H Utilities to the City of Waynesville. SM-2018-0095 **28 MPSC 3d 309**

**§52. Transfer, mortgage or lease generally**

Carl Mills' transfer of water assets to Carriage Oaks LLC, and any subsequent transfers are void under Section 393.190(1), RSMo. Carl Mills shall apply to the Missouri Public Service Commission for a Certificate of Convenience and Necessity. WC-2017-0037 **28 MPSC 3d 337**

**§52. Transfer, mortgage or lease generally**

The Commission found it had jurisdiction to rule on the application because Missouri law requires that before selling or transferring its assets, a water corporation or sewer corporation must first obtain an order from the Commission authorizing the sale or transfer. WM-2019-0018 **28 MPSC 3d 666**

**§52. Transfer, mortgage or lease generally**

The Commission found that the proposed transfer of assets was not detrimental to the public interest and should be approved, subject to the conditions and actions recommended by Staff. WM-2019-0018 **28 MPSC 3d 667**

**§54. Dissolution**

After receiving notice of closing on the sale of Highway H Utilities' water and sewer assets its respective certificate of convenience and necessity and the tariff authorizing Highway H to provide water or sewer service shall be cancelled. SM-2018-0095 **28 MPSC 3d 309**

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## DEPRECIATION

### I. IN GENERAL

- §1. Generally
- §2. Right to allowance for depreciation
- §3. Reports, records and statements
- §4. Obligation of the utility

### II. JURISDICTION AND POWERS

- §5. Jurisdiction and powers generally
- §6. Jurisdiction and powers of the State Commission
- §7. Jurisdiction and powers of the Federal Commission
- §8. Jurisdiction and powers of local authorities

### III. BASIS FOR CALCULATION

- §9. Generally
- §10. Cost or value
- §11. Property subject to depreciation
- §12. Methods of calculation
- §13. Depreciation rates to be allowed
- §14. Rates or charges for service

### IV. FACTORS AFFECTING ANNUAL ALLOWANCE

- §15. Factors affecting annual allowance generally
- §16. Life of enterprise
- §17. Life of property
- §18. Past depreciation
- §19. Charges to maintenance and other accounts
- §20. Particular methods and theories
- §21. Experience
- §22. Life of property and salvage
- §23. Sinking fund and straight line
- §24. Combination of methods

### V. RESERVES

- §25. Necessity
- §26. Separation between plant units
- §27. Amount
- §28. Ownership of fund
- §29. Investment and use
- §30. Earnings on reserve

### VI. DEPRECIATION OF PARTICULAR UTILITIES

- §31. Electric and power
- §32. Gas
- §33. Heating
- §34. Telecommunications

§35. Water

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**DEPRECIATION**

**§17. Life of property**

The Commission ordered Spire Missouri to establish Account 397.2 – AMR Devices as a new plant sub-account. Additionally, because of the planned obsolescence of these automated meter reading (AMR) devices, the Commission found it was reasonable under these specific facts to authorize the amortization of the assets over 7.5 years.  
GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 141**

**§17. Life of property**

While Staff and OPC both agree that the in-service date for the UTV is 2007, Mr. Hoesch credibly testified that he purchased a second UTV for Gascony's exclusive use. The appropriate in-service date for the UTV to start depreciation is when it was placed into Gascony's service in 2015.  
WR-2017-0343 **28 MPSC 3d 407**

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**DISCRIMINATION**

**I. IN GENERAL**

- §1. Generally
- §2. Obligation of the utility
- §3. Recovery of damages for discrimination
- §4. Recovery of discriminatory undercharge
- §5. Reports, records and statements

**II. JURISDICTION AND POWERS**

- §6. Jurisdiction and powers of the State Commission
- §7. Jurisdiction and powers of the Federal Commissions
- §8. Jurisdiction and powers of the local authorities

**III. RATES**

- §9. Competitor's right to equal treatment

- §10. Free service
- §11. Inequality of rates
- §12. Methods of eliminating discrimination
- §13. Optional rates
- §14. Rebates
- §15. Service charge, meter rental or minimum charge
- §16. Special rates
- §17. Rates between localities
- §18. Concessions

#### **IV. RATES BETWEEN CLASSES**

- §19. Bases for classification and differences
- §20. Right of the utility to classify
- §21. Reasonableness of classification

#### **V. RATES AND CHARGES OF PARTICULAR UTILITIES**

- §22. Electric and power
- §23. Gas
- §24. Heating
- §25. Telecommunications
- §26. Sewer
- §27. Water

#### **VI. SERVICE IN GENERAL**

- §28. Service generally
- §29. Abandonment and discontinuance
- §30. Discrimination against competitor
- §31. Equipment, meters and instruments
- §32. Extensions
- §33. Preference during shortage of supply
- §34. Preferences to particular classes or persons

#### **VII. SERVICE BY PARTICULAR UTILITIES**

- §35. Electric and power
  - §36. Gas
  - §37. Heating
  - §38. Sewer
  - §39. Telecommunications
  - §40. Water
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## DISCRIMINATION

### **§2. Obligation of the utility**

The Commission found that subsection 393.130.3, RSMo, forbids a gas corporation from giving an “undue or unreasonable preference or advantage” to any “person, corporation or locality.” The Commission concluded that the statute implied that not every preference or advantage is “undue” or “unreasonable.”

GR-2017-0215 & GR-2017-0216    **28 MPSC 3d 141**

### **§11. Inequality of rates**

The Commission found it was reasonable to allow Spire Missouri to recover fees resulting from the use of credit and debit cards to pay bills from all customers rather than from just those customers who use the credit or debit cards to pay their bills. The Commission determined that the policy would not result in an undue or unreasonable preference among customers because all customers can use the convenience of a credit or debit card if that tool is available to them.

GR-2017-0215 & GR-2017-0216    **28 MPSC 3d 141**

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## ELECTRIC

### **I. IN GENERAL**

- §1.     **Generally**
- §2.     **Obligation of the utility**
- §3.     **Certificate of convenience and necessity**
- §4.     **Transfer, lease and sale**
- §4.1.   **Change of suppliers**
- §5.     **Charters and franchise**
- §6.     **Territorial agreements**

### **II. JURISDICTION AND POWERS**

- §7.     **Jurisdiction and powers generally**
- §8.     **Jurisdiction and powers of Federal Commissions**
- §9.     **Jurisdiction and powers of the State Commission**
- §10.    **Jurisdiction and powers of the local authorities**

- §11. Territorial agreements
- §12. Unregulated service agreements

### **III. OPERATIONS**

- §13. Operations generally
- §13.1 Energy Efficiency
- §14. Rules and regulations
- §15. Cooperatives
- §16. Public corporations
- §17. Abandonment and discontinuance
- §18. Depreciation
- §19. Discrimination
- §20. Rates
- §21. Refunds
- §22. Revenue
- §23. Return
- §24. Services generally
- §25. Competition
- §26. Valuation
- §27. Accounting
- §28. Apportionment
- §29. Rate of return
- §30. Construction
- §31. Equipment
- §31.1. Generation planning
- §32. Safety
- §33. Maintenance
- §34. Additions and betterments
- §35. Extensions
- §36. Local service
- §37. Liability for damage
- §38. Financing practices
- §39. Costs and expenses
- §40. Reports, records and statements
- §41. Billing practices
- §42. Planning and management
- §43. Accounting Authority orders
- §44. Safety
- §45. Decommissioning costs
- §45.1. Electric vehicle charging stations

### **IV. RELATIONS BETWEEN CONNECTING COMPANIES**

- §46. Relations between connecting companies generally
  - §47. Physical connection
  - §48. Contracts
  - §48.1 Qualifying facilities
  - §49. Records and statements
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## ELECTRIC

### **§3. Certificate of convenience and necessity**

The Commission concluded that in accordance with subsections 393.170.1 and .2, RSMo 2016, an electrical corporation may not construct electrical plant without first obtaining the permission and approval of this Commission.  
EA-2016-0207 **28 MPSC 3d 609**

### **§3. Certificate of convenience and necessity**

The Commission concluded that granting the application for a certificate of convenience and necessity for a pilot subscriber solar program met the criteria set out in *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).  
EA-2016-0207 **28 MPSC 3d 609**

### **§4. Transfer, lease and sale**

Where no statute sets a standard specifically for granting a proposed corporate reorganization and transfer of assets, the Missouri courts apply the standard of “no public detriment” and will grant the application unless detrimental to the public. The Commission concluded that transferring the provision of wholesale electric service from EAI to Entergy Arkansas, LLC (EAL) would cause no public determinant where EAL would provide the same service with the same personnel and resources, EAL’s regulated activity—electrical transmission—would be further separated from the unregulated generation and nuclear decommissioning activities of entities related to EAI, and financing would be easier for EAL.  
EO-2018-0169 **28 MPSC 3d 329**

### **§4. Transfer, lease and sale**

Approval of a proposed merger of electric service providers requires a Commission finding that the transaction is not

detrimental to the public. The presence of detriments may be offset by potential benefits.

EM-2018-0012 **28 MPSC 3d 445**

#### **§6. Territorial agreements**

Sections 394.312 and 416.041, RSMo, give the Commission jurisdiction over territorial agreements between electric utilities and municipally owned electric utilities.

EO-2018-0205 **28 MPSC 3d 304**

#### **§8. Jurisdiction and powers of Federal Commissions**

Energy Arkansas Inc. (EAI) argued the Commission had no jurisdiction over EAI or its proposed corporate reorganization and transfer of assets because EAI had no retail customers in Missouri and the Commission did not set EAI's terms of service. In support of this argument, EAI cited the authority of the Federal Energy Regulatory Commission (FERC) to approve the transactions and set its terms of service.

However, EAI cited no law which made FERC's authority preclusive of the Commission's authority in this case, and assuming without deciding that FERC's authority effectively reduced this action to a mere registration, that much authority remained and the Commission still has a duty to rule on the application. Moreover, the statutes specifically required Commission authorization for a public utility to "exercise[e] any franchise," undertake a corporate reorganization, and transfer necessary or useful plant or certain amounts of stock.

EO-2018-0169 **28 MPSC 3d 329**

#### **§9. Jurisdiction and powers of the State Commission**

The statutes provide that the Commission's jurisdiction, supervision, powers, and duties generally extend throughout Missouri to any electric plant; to any entity that owns, leases, operates, or controls electric plant; and to any entity that manufactures or distributes electricity.

EO-2018-0169 **28 MPSC 3d 330**

**§9. Jurisdiction and powers of the State Commission**

The Commission found that it had jurisdiction to review and authorize various incentive and energy efficiency programs and line extension tariffs.

ET-2018-0132 **28 MPSC 3d 359**

**§9. Jurisdiction and powers of the State Commission**

The Commission concluded that in accordance with subsections 393.170.1 and .2, RSMo 2016, an electrical corporation may not construct electrical plant without first obtaining the permission and approval of this Commission.

EA-2016-0207 **28 MPSC 3d 609**

**§11. Territorial agreements**

The Commission approved an addendum to a territorial agreement as being not detrimental to the public interest.

EO-2018-0278 **28 MPSC 3d 482**

**§13.1. Energy Efficiency**

The Commission found that the pilot program proposed by the Division of Energy lacked sufficient details, as it does not contain specific recommendations or formulas relating to the Missouri Energy Efficiency Investment Act (MEEIA), does not state a time period for the program or how it would be evaluated, and lacks specificity regarding on-bill financing, line extension policies, and interaction with MEEIA. Because of the lack of detail, the Commission could not determine if and to what extent the pilot program might affect the sales and revenues of electric utilities that are not participating as intervenors in this case, might be a prohibited promotional practice, and might be inconsistent with MEEIA requirements.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 141**

**§13.1. Energy Efficiency**

The Commission found that the proposed line-extension tariffs were not an issue that would violate the policy against single-issue ratemaking if the Commission were to approve them. Thus, the denied Staff's motion to reject the line extension tariff.

ET-2018-0132 **28 MPSC 3d 359**

**§13.1. Energy Efficiency**

The Commission concluded that the risks and benefits of the particular various incentive and energy efficiency programs were factual issues to be heard by the Commission and were not reason for dismissal without an opportunity for a hearing.

ET-2018-0132 **28 MPSC 3d 359**

**§13.1. Energy Efficiency**

A utility's Renewable Energy Standard Rate Adjustment Mechanism (RESRAM) allowed the utility to recover depreciation expense and return associated with a wind energy project recorded to plant-in-service on the utility's books as it was permitted to do by the Renewable Energy Standard statute, exclusive of the eighty-five percent of that expense and return deferred for future recovery pursuant to the Plant in Service Accounting (PISA) statute.

EA-2018-0202 **28 MPSC 3d 761**

**§20. Rates**

As used at the Commission, a "general rate proceeding" or a "general rate case" means a proceeding in which the Commission considers all relevant factors when setting a utility's rates.

ER-2018-0366 **28 MPSC 3d 561**

**§32. Safety**

Complainants requested that the Commission, for health and

safety reasons, require the replacement of a Smart meter at their residence with an analog meter which they purchased. The Company has an opt-out tariff which permits customers to have a digital meter installed that has no communication capabilities and transmits no radio frequency waves. Per its terms, participants of the Company's opt-out tariff incur an additional charge to have the Company send someone to read the meter and to cover the additional systems and processes which will have to be managed because of the opt-out.

The Smart meter as designed and as actually operating at the Complainants' residence did not violate Section 393.130, RSMo, requiring every electrical corporation to furnish and provide "such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable."

EC-2016-0230 **28 MPSC 3d 587**

#### **§35. Extensions**

The Commission found that it had jurisdiction to review and authorize various incentive and energy efficiency programs and line extension tariffs.

ET-2018-0132 **28 MPSC 3d 359**

#### **§42. Planning and management**

Nothing in the Commission's rules or in Missouri statutes requires an electric utility to hedge its natural gas supply. The decision to do so is a management decision for the company.

EO-2017-0065 **28 MPSC 3d 099**

#### **§42. Planning and management**

The purpose of a hedging program is not to "beat" the market, nor is the purpose of a hedging program to always

attempt to obtain the lowest price for natural gas. Rather, the purpose is to provide predictable fuel and purchased power costs over a multi-year period by reducing market risk.

EO-2017-0065 **28 MPSC 3d 099**

**§42. Planning and management**

A hedging program may still provide value to a utility and its customers by reducing risk even if the adverse outcomes hedged against do not come to pass.

EO-2017-0065 **28 MPSC 3d 099**

**§45. Decommissioning costs**

The Commission approved a stipulation and agreement that maintained KCP&L's Missouri retail jurisdiction annual decommissioning expense accruals and trust fund payments for Wolf Creek Generating Station at current levels.

EO-2018-0062 **28 MPSC 3d 009**

**§45. Decommissioning costs**

The Commission approved a stipulation and agreement that maintained Ameren Missouri's annual decommissioning expense accruals and trust fund payments for Callaway Energy Center at current levels.

EA-2017-0345 **28 MPSC 3d 014**

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**EVIDENCE, PRACTICE AND PROCEDURE**

**I. IN GENERAL**

- §1. Generally**
- §2. Jurisdiction and powers**
- §3. Judicial notice; matters outside the record**
- §4. Presumption and burden of proof**
- §5. Admissibility**
- §6. Weight, effect and sufficiency**
- §7. Competency**
- §8. Stipulation**



**II. PARTICULAR KINDS OF EVIDENCE**

- §9. Particular kinds of evidence generally
- §10. Admissions
- §11. Best and secondary evidence
- §12. Depositions
- §13. Documentary evidence
- §14. Evidence by Commission witnesses
- §15. Opinions and conclusions; evidence by experts
- §16. Petitions, questionnaires and resolutions
- §17. Photographs
- §18. Record and evidence in other proceedings
- §19. Records and books of utilities
- §20. Reports by utilities
- §21. Views

**III. PRACTICE AND PROCEDURE**

- §22. Parties
- §23. Notice and hearing
- §24. Procedures, evidence and proof
- §25. Pleadings and exhibits
- §26. Burden of proof
- §27. Finality and conclusiveness
- §28. Arbitration
- §29. Discovery
- §30. Settlement procedures
- §31. Mediator
- §32. Confidential evidence
- §33. Defaults

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**EVIDENCE, PRACTICE AND PROCEDURE****§1. Generally**

The General Assembly has instructed the Commission to construe the statutes “liberally . . . with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities.”

WR-2017-0259 **28 MPSC 3d 021**

**§1. Generally**

Findings of fact do not include summaries of the evidence, summaries of parties’ arguments, ultimate facts, and

conclusions of law. Findings of fact resolve disputes of material fact—the facts that guide the Commission's conclusions of law.

WR-2017-0259 **28 MPSC 3d 021**

**§1. Generally**

A chart in party's brief that illustrates data that is in evidence, is not itself evidence, and need not be struck from the brief. The Commission will determine whether the chart accurately illustrates the record evidence.

EO-2017-0065 **28 MPSC 3d 099**

**§1. Generally**

The Commission's Electronic Filing and Information System (EFIS) is merely an administrative tool. It cannot override an order of the Commission that a file has been closed.

ER-2018-0366 **28 MPSC 3d 561**

**§1. Generally**

For good cause, the Commission waived the rule 4 CSR 240-4.017(1) 60-day notice requirement for granting a certificate of convenience and necessity to operate a sewer facility where Elm Hills had had no communication with the Office of the Commission within the prior 150 days regarding any substantive issue likely to be in the case and Elm Hills stated that delay in filing the application would not be in the public interest because of the health and safety issues involved.

SA-2018-0313 **28 MPSC 3d 618**

**§1. Generally**

Counsel for Silverleaf filed a *Motion to Strike the Surrebutal Testimony of Keith Magee and Motion for Expedited Treatment*. Liberty Utilities' response observes that Keith Magee's testimony is responsive to other witnesses, and no

rule prohibits the filing of surrebuttal testimony by a witness that has not filed either direct or rebuttal testimony.

WR-2018-0170 **28 MPSC 3d 687**

**§2. Jurisdiction and powers**

The Commission found that it had jurisdiction to review and authorize various incentive and energy efficiency programs and line extension tariffs.

ET-2018-0132 **28 MPSC 3d 359**

**§2. Jurisdiction and powers**

While rejecting a party's motion for a pilot project to gather information as duplicative of existing efforts, the Commission expressed its approval for gathering further information concerning the company's lead service line replacement program, and thus set up a separate working group that would not be a contested case to assist interested parties in discussing various aspects of the program.

WR-2017-0285 **28 MPSC 3d 365**

**§2. Jurisdiction and powers**

Empire asked for a determination, prior to acquisition, that its decisions to acquire wind generation using a tax equity partner and to keep a coal plant open were reasonable. Although it is the public policy of this state to diversify the energy supply through the support of renewable and alternative energy sources, it is premature to make a legal conclusion that the decision to acquire wind generation is reasonable where Empire has not yet identified sites for the wind farms, contractors to build the wind generation assets, or tax equity partners to provide financing; and where there will likely be additional proceedings before the Commission related to a consumer savings plan, such as certificate cases for the wind farms, financing approval cases, or rate cases to consider adding the wind assets into the rate base, including prudently-incurred costs into rates. It is also premature to

determine whether keeping the coal plant open is prudent where no one is recommending it be closed and where a later retirement could ultimately be a management decision subject to review by the Commission in a subsequent rate case.

EO-2018-0092 **28 MPSC 3d 502**

#### **§2. Jurisdiction and powers**

Mr. Dudley's complaint states that the debts occurred beyond a ten year statute of limitations. The only questions before the Commission are whether KCP&L violated a law, rule or order of the Commission which are within the Commission's statutory authority to determine. There is no law, rule or order of the Commission regarding the statute of limitation for debts. Therefore, the Commission cannot make a determination regarding this claim.

EC-2018-0103 **28 MPSC 3d 530**

#### **§4. Presumption and burden of proof**

Leaks and properly functioning meters are objectively determinable. A leak on Complainant's side of the meter will register on the meter. Here Complainant testified that when he turned all the items using water in the house off, there was no movement on the meter. Also, if the meter is not properly functioning, MAWC's testing would have revealed this fact.

It is Complainant's burden to show that the company has violated the law. Because he has not done so, his complaint fails and the Commission must rule in favor of the company.

WC-2018-0099 **28 MPSC 3d 488**

#### **§4. Presumption and burden of proof**

Mr. Dudley at no point in either his complaint or direct testimony denied establishing service at any of the addresses for which KCP&L has assessed an overdue

balance. Additionally, Mr. Dudley never addresses the illegal reconnect at two of the addresses where he received electrical service. Mr. Dudley shoulders the burden of showing that KCP&L violated a statute, tariff, Commission regulation, or Commission order. Mr. Dudley has presented no evidence of any violation beyond stating bills were not delivered.

EC-2018-0103 **28 MPSC 3d 530**

**§6. Weight, effect and sufficiency**

Where the evidence conflicts, the Commission determines which evidence is the most credible. Credibility determinations are implicit in the Commission's findings of fact, and no law requires the Commission to expound upon which portions of the record the Commission accepted or rejected. When any evidence or argument is not discussed in this report and order, that does not indicate that the Commission has failed to consider such evidence or argument, it indicates that the evidence or argument is not dispositive of any issue.

WR-2017-0259 **28 MPSC 3d 021**

**§6. Weight, effect and sufficiency**

The quantum of proof necessary to carry a burden of proof in an administrative action is a preponderance. Preponderance means greater weight in persuasive value. That means that a claimant must show that the claimant's evidence and reasonable inferences from the evidence weigh more in favor of the claimant's position than against claimant's position.

WR-2017-0259 **28 MPSC 3d 021**

**§6. Weight, effect and sufficiency**

The Commission found there was insufficient evidence to establish that Spire Missouri East, f/k/a Laclede Gas Company, or Spire Missouri West, f/k/a Missouri Gas

Energy, earned an actual return on equity that was significantly higher than necessary to attract necessary capital, to provide safe and reliable service, or significantly higher than commensurate returns by enterprises having corresponding risks indicating that their ordered rates were not just and reasonable.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 141**

**§6. Weight, effect and sufficiency**

The Commission found the actual expenses incurred to relocate Forest Park employees could not be determined from the evidence presented, but the \$200,000 lease expense and the \$1.95 million capital contributions should be deducted from the \$5.7 million total before the remainder is used to offset the construction cost of the new Manchester facility.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 142**

**§6. Weight, effect and sufficiency**

The Commission found the sworn testimony of Laclede Gas Company and Staff witnesses that were knowledgeable of the issue during the era in question to be more persuasive than the conclusions drawn by Laclede Gas Company more than 20 years later, even those conclusions drawn by its witness that was involved in some of the earlier cases. Further, the Commission found that Public Counsel's evidence quantifying excess contributions was not reliable. Therefore, the Commission denied Public Counsel's adjustment for pension contributions over the Employee Retirement Income Security Act (ERISA) minimums.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 142**

**§6. Weight, effect and sufficiency**

The Commission found that the pilot program proposed by the Division of Energy lacked sufficient details, as it does not contain specific recommendations or formulas relating to the

Missouri Energy Efficiency Investment Act (MEEIA), does not state a time period for the program or how it would be evaluated, and lacks specificity regarding on-bill financing, line extension policies, and interaction with MEEIA. Because of the lack of detail, the Commission could not determine if and to what extent the pilot program might affect the sales and revenues of electric utilities that are not participating as intervenors in this case, might be a prohibited promotional practice, and might be inconsistent with MEEIA requirements.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 142**

**§6. Weight, effect and sufficiency**

A party's request for conditions to be imposed on a transaction without supporting testimony or evidence allows no basis in the record to approve the proposed conditions.

EM-2018-0012 **28 MPSC 3d 445**

**§6. Weight, effect and sufficiency**

The complaint against MAWC is based on the assumption that the high water bill for the third quarter of 2017 could only be the result of a defective water meter. Complainant did not, however, present any evidence to establish that the water meter was in fact defective. Testing of the water meter by MAWC revealed that it was not defective at the time it was tested. MAWC inspected the system and the area around the meter for leaks and found none. Additionally, MAWC presented evidence that Complainant's water use for prior years was reasonably consistent with current water usage.

WC-2018-0099 **28 MPSC 3d 488**

**§6. Weight, effect and sufficiency**

A motion to dismiss for failure to state a claim where an applicant supplements its application after the initial finding

fails, so long as such late supplementation does not prevent a full and thorough review of the applications.

GO-2018-0309 & GO-2018-0310 **28 MPSC 3d 645**

**§6. Weight, effect and sufficiency**

A motion to dismiss due to the application's inclusion of costs that the Court of Appeals has previously determined do not qualify fails due to the standard of review applied to failure to state a claim, which assumes all facts in the application are true. Since the basis for the motion to dismiss disagrees with the premise, a hearing is the appropriate remedy, not dismissal.

GO-2018-0309 & GO-2018-0310 **28 MPSC 3d 645**

**§8. Stipulation**

OPC filed an objection to the *Non-Unanimous Stipulation and Agreement*, so the *Non-Unanimous Stipulation and Agreement* did not resolve any issues, but constitutes the joint amended position statement of Indian Hills and Staff.

The entire issues list remains in dispute, as framed between the Indian Hills and Staff and the OPC position statement.

WR-2017-0259 **28 MPSC 3d 021**

**§8. Stipulation**

On matters not informally resolved, including positions raised for the first time in the *Non-Unanimous Stipulation and Agreement*, the Commission must separately state its findings of fact.

WR-2017-0259 **28 MPSC 3d 022**

**§8. Stipulation**

Where some parties enter into a stipulation and agreement, but other parties object, the stipulation and agreement becomes a joint position statement of the signatory parties.

EO-2018-0092 **28 MPSC 3d 502**



**§8. Stipulation**

The Commission approved the second amended stipulation and agreement addressing a pilot subscriber solar program for Union Electric Company d/b/a Ameren Missouri. As part of that agreement, the Commission approved a certificate of convenience and necessity to build the solar facility, rejected the tariff filed with the application, and directed a compliance tariff be filed.

EA-2016-0207    **28 MPSC 3d 609**

**§11. Best and secondary evidence**

The Commission found that Spire Missouri's analysis of ten work orders out of hundreds was too small of a sample size from which to extrapolate its finding that 9 of 10 work orders decreased ISRS costs. The best evidence for calculating the costs of ineligible plastic pipe replacements was provided by Staff. Staff's methodology was to review all work order authorizations to determine the feet of main and service lines replaced and retired by the type of pipe, and apply the actual individual plastic main and services line percentages to the work order cost to determine the value of the replacement of plastic pipe for the work order.

GO-2016-0332 & GO-2016-0333    **28 MPSC 3d 625**

**§11. Best and secondary evidence**

The Commission found that the best evidence for calculating the costs of ineligible plastic pipe replacements was provided by Staff employing a previously used methodology. That methodology was to review all work order authorizations to determine the feel of main and service lines replaced and retired by the type of pipe, and apply the actual individual plastic main and services line percentages to the work order cost to determine the value of the replacement of plastic pipe for the work order.

GO-2018-0309 & GO-2018-0310    **28 MPSC 3d 645**

**§22. Parties**

The Commission denied an application to intervene very late in a general rate case because the applicant failed to demonstrate good cause for the late intervention.

GR-2018-0013 **28 MPSC 3d 301**

**§22. Parties**

Section 393.190.1, RSMo does not require the seller of a public utility to be joined as a party to an application for authority to acquire the assets of the public utility to be sold.

WM-2018-0116 & SM-2018-0117 **28 MPSC 3d 356**

**§23. Notice and hearing**

The Commission must hold an evidentiary hearing to determine if a territorial agreement should be approved, except when the matter is resolved by a stipulation and agreement and all parties agree to waive their right to a hearing. Even though no formal agreement to waive the hearing was submitted, the Commission need not hold a hearing since the opportunity for a hearing was provided and no party requested an opportunity to present evidence.

EO-2018-0205 **28 MPSC 3d 304**

**§24. Procedures, evidence and proof**

Where no party requests an evidentiary hearing and no law otherwise requires one, the Commission may grant an applicant's request to transfer assets based upon the application and Staff's recommendation. Where the action is not a contested case, the Commission need not separately state its findings of fact.

WM-2018-0104 **28 MPSC 3d 124**

**§24. Procedures, evidence and proof**

While rejecting a party's motion for a pilot project to gather information as duplicative of existing efforts, the Commission

expressed its approval for gathering further information concerning the company's lead service line replacement program, and thus set up a separate working group that would not be a contested case to assist interested parties in discussing various aspects of the program.

WR-2017-0285 **28 MPSC 3d 365**

**§24. Procedures, evidence and proof**

The Commission concluded that 4 CSR 240-4.017(1) did not require the company to foretell issues that would be raised by other parties' objections. Thus, the Commission found good cause existed to grant the company the requested waiver of 4 CSR 240-4.017(1).

GO-2018-0309 & GO-2018-0310 **28 MPSC 3d 439**

**§24. Procedures, evidence and proof**

A party's request relating to renewable energy and energy efficiency conditions to be imposed on a merger transaction are not necessary where the proposed conditions are commitments by the utility and those commitments are either already completed or the utility's continued commitment is shown by evidence without a condition being imposed. The appropriate process for the Commission to consider policies relating to renewable energy and energy efficiency is through other Commission proceedings such as integrated resource planning and rate cases.

EM-2018-0012 **28 MPSC 3d 445**

**§24. Procedures, evidence and proof**

A case is deemed submitted for the Commission's decision when reply briefs are filed.

EO-2018-0092 **28 MPSC 3d 502**

**§24. Procedures, evidence and proof**

The Commission found good cause existed to grant the requested waiver of the feasibility study requirements in 4

CSR 240-3.205(1)(A)(5) and to waive the 60-day notice requirement under 4 CSR 240-4.020(2).

GA-2018-0396 **28 MPSC 3d 553**

**§24. Procedures, evidence and proof**

Because Missouri-American Water Company had no communication with the office of the Commission within the prior 150 days regarding any substantive issue likely to be in this case other than pleadings filed as a matter of record.

The Commission found that good cause existed to waive the notice requirement, and a waiver of 4 CSR 240-4.017(1) was granted.

WM-2019-0018 **28 MPSC 3d 667**

**§25. Pleadings and exhibits**

The Commission declined to dismiss the application for vagueness since Ameren Missouri clarified its request for waiver and it was limited to 4 CSR 240-14.020(1)(B) and (D).

ET-2018-0132 **28 MPSC 3d 359**

**§26. Burden of proof**

The Commission concluded that Spire Missouri had the burden of proof to show that the proposed increased rate was just and reasonable. Citing, subsection 393.150.2, RSMo.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 142**

**§26. Burden of proof**

The Commission concluded that because Spire Missouri seeks an increase in rates for merger synergies, Spire Missouri has the burden to prove that such an increase is just and reasonable and that burden does not shift. Citing, Section 393.150.2, RSMo; and *Been v. Jolly*, 247 S.W.2d 840, 854 (Mo. 1952).

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 142**

**§30. Settlement procedures**

On matters not informally resolved, including positions raised for the first time in the *Non-Unanimous Stipulation and Agreement*, the Commission must separately state its findings of fact.

WR-2017-0259 **28 MPSC 3d 022**

**§30. Settlement procedures**

OPC filed an objection to the *Non-Unanimous Stipulation and Agreement*, so the *Non-Unanimous Stipulation and Agreement* did not resolve any issues, but constitutes the joint amended position statement of Indian Hills and Staff ("Indian Hills and Staff"). The entire issues list remains in dispute, as framed between the Indian Hills and Staff and the OPC position statement.

WR-2017-0259 **28 MPSC 3d 022**

**§30. Settlement procedures**

Where some parties enter into a stipulation and agreement, but other parties object, the stipulation and agreement becomes a joint position statement of the signatory parties.

EO-2018-0092 **28 MPSC 3d 502**

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**EXPENSE**

**I. IN GENERAL**

- §1. **Generally**
- §2. **Obligation of the utility**
- §3. **Financing practices**
- §4. **Apportionment**
- §5. **Valuation**
- §6. **Accounting**

**II. JURISDICTION AND POWERS**

- §7. Jurisdiction and powers of the State Commission
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### III. EXPENSES OF PARTICULAR UTILITIES

- §10. Electric and power
- §11. Gas
- §12. Heating
- §13. Telecommunications
- §14. Water
- §15. Sewer

### IV. ASCERTAINMENT OF EXPENSES

- §16. Ascertainment of expenses generally
- §17. Extraordinary and unusual expenses
- §18. Comparisons in absence of evidence
- §19. Future expenses
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- §21. Intercorporate costs or dealings

### V. REASONABLENESS OF EXPENSE

- §22. Reasonableness generally
- §23. Comparisons to test reasonableness
- §24. Test year and true up

### VI. PARTICULAR KIND OF EXPENSE

- §25. Particular kinds of expenses generally
- §26. Accidents and damages
- §27. Additions and betterments
- §28. Advertising, promotion and publicity
- §29. Appraisal expense
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- §32. Casualty losses and expenses
- §33. Capital amortization
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- §36. Consolidation expense
- §37. Depreciation
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- §39. Donations
- §40. Dues
- §41. Employee's pension and welfare
- §42. Expenses relating to property not owned
- §43. Expenses and losses of subsidiaries or other departments
- §44. Expenses of non-utility business
- §45. Expenses relating to unused property
- §46. Expenses of rate proceedings

- §47. Extensions
- §48. Financing costs and interest
- §49. Franchise and license expense
- §50. Insurance and surety premiums
- §51. Legal expense
- §52. Loss from unprofitable business
- §53. Losses in distribution
- §54. Maintenance and depreciation; repairs and replacements
- §55. Management, administration and financing fees
- §56. Materials and supplies
- §57. Purchases under contract
- §58. Office expense
- §59. Officers' expenses
- §60. Political and lobbying expenditures
- §61. Payments to affiliated interests
- §62. Rentals
- §63. Research
- §64. Salaries and wages
- §65. Savings in operation
- §66. Securities redemption or amortization
- §67. Taxes
- §68. Uncollectible accounts
- §69. Administrative expense
- §70. Engineering and superintendence expense
- §71. Interest expense
- §72. Preliminary and organization expense
- §73. Expenses incurred in acquisition of property
- §74. Demand charges
- §75. Expenses incidental to refunds for overcharges
- §76. Matching revenue/expense/rate base
- §77. Adjustments to test year levels
- §78. Isolated adjustments
- §79. Infrastructure system replacement surcharge (ISRS) eligible expense

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## EXPENSE

### §6. Accounting

The Commission found the actual expenses incurred to relocate Forest Park employees could not be determined from the evidence presented, but the \$200,000 lease expense and the \$1.95 million capital contributions should be deducted from the \$5.7 million total before the remainder is used to offset the construction cost of the new Manchester facility. The Commission ordered Spire Missouri to create a

regulatory liability to record the rate base offset of the relocation expense to be amortized over five years beginning with the date the rates became effective.  
GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 142**

**§20. Methods of estimating**

The Commission found that the cost Spire Missouri would incur in future years resulting from the change in how costs are recovered for the use of credit or debit cards by customers to pay their bills are not yet known and measurable. The Commission found that the level of costs calculated by Staff should be utilized because it was based on actual costs incurred during the test year.  
GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 143**

**§20. Methods of estimating**

The Commission found that a five-year average of bad debt expenses was the most appropriate method to calculate the amount of bad debt to include in rates. The Commission also found that Spire Missouri's normalization calculation provided an accurate estimate of future bad debt expense.  
GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 143**

**§22. Reasonableness generally**

A utility's management decision is judged by what the utility knew at the time it made the decision. If a utility has exercised prudence in reaching a decision an adverse result does not make the decision imprudent.  
EO-2017-0065 **28 MPSC 3d 099**

**§22. Reasonableness generally**

The presumption of prudence means utilities seeking a rate increase are not required to demonstrate in their case in chief that all expenditures are prudent. Rather, where some other participant in the proceeding creates a serious doubt as to the prudence of the expenditure, the applicant has the



burden of dispelling those doubts and proving the questioned expenditure to have been prudent.

EO-2017-0065 **28 MPSC 3d 100**

#### **§24. Test year and true up**

The Commission concluded that accounting costs paid outside the test year would be included in Indian Hill's cost of service. The Commission had not issued an order that set a test year, update period, or true-up dates for this case. Even if the Commission had ordered a test year, such an order does not inflexibly exclude costs paid outside the test year if the amounts support safe and adequate service, are known, and are measurable. Just and reasonable rates include such amounts. The Commission concludes that paying the accounting services outside Staff's test year does not require excluding the accounting costs from Indian Hills' rates and charges.

WR-2017-0259 **28 MPSC 3d 022**

#### **§27. Additions and betterments**

To serve a three-phase power connection, Crawford Electrical Cooperative required Indian Hills to pay a non-refundable payment in the sum of \$23,000 for an electrical extension. The three-phase power connection was a practical necessity. The company sought to capitalize this cost. Based on USoA Account 101 Utility Plant in Service the Commission held that the Company could not capitalize an electric line extension where another utility, not the Company, owned the line extension. Per Section 393.140(4). RSMo, USoA Account 101 must "be observed by . . . water corporations." Thus, "[t]he Company has no right to earn a return on the electric plant of another utility." In reaching this conclusion, the Commission considered USoA Account 325, Electrical Pumping Equipment: "[T]his account shall include the cost installed of pumping equipment driven by electric power. . . . (6) Electric power lines and switching."

The Commission held that these words did not “negate[] Account 101’s basic requirement of ownership.”

WR-2017-0259 **28 MPSC 3d 022**

**§41. Employee’s pension and welfare**

In balancing the needs of the ratepayers to keep rates from increasing, with the need of Spire Missouri to fulfill its pension obligations, the Commission determined that an 80 percent ERISA funding level was the most just and reasonable level.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 143**

**§42. Expenses relating to property not owned**

To serve a three-phase power connection, Crawford Electrical Cooperative required Indian Hills to pay a non-refundable payment in the sum of \$23,000 for an electrical extension. The three-phase power connection was a practical necessity. The company sought to capitalize this cost. Based on USoA Account 101 Utility Plant in Service the Commission held that the Company could not capitalize an electric line extension where another utility, not the Company, owned the line extension. Per Section 393.140(4). RSMo, USoA Account 101 must “be observed by . . . water corporations.” Thus, “[t]he Company has no right to earn a return on the electric plant of another utility.” In reaching this conclusion, the Commission considered USoA Account 325, Electrical Pumping Equipment: “[T]his account shall include the cost installed of pumping equipment driven by electric power. . . . (6) Electric power lines and switching.” The Commission held that these words did not “negate[] Account 101’s basic requirement of ownership.”

WR-2017-0259 **28 MPSC 3d 022**

**§42. Expenses relating to property not owned**

There is a lack of evidence that the St. Louis office is actually used. The fact that the company’s documents were

located at the Gascony Village office demonstrates that the St. Louis office was not often used for company business. While it may be convenient for Mr. Hoesch to conduct some of Gascony's business from his St. Louis residence, Gascony has failed to meet its burden of proof to demonstrate that use of a second office in St. Louis is necessary or reasonable.

WR-2017-0343 **28 MPSC 3d 407**

**§46. Expenses of rate proceedings**

The Commission determined that it was reasonable for shareholders and ratepayers to share most of the rate case expenses in these cases. However, the Commission recognized that certain expenses, such as the customer notices and the depreciation study, were required by Commission rule or order and should not be part of the shared rate case expense.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 143**

**§46. Expenses of rate proceedings**

The Commission determined that it was just and reasonable for ratepayers and shareholders to share rate case expense because the shareholders who ultimately controlled 50 percent of the rate case issues should share 50 percent of the rate case expense with the exception of the customer notice cost and the depreciation study which were done because of Commission order and rule requirements.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 143**

**§51. Legal expense**

The Commission finds Staff's proposal for rate case expense recovered over a ten-year period to be the most reasonable and to have the least rate impact on Gascony's small number of customers.

WR-2017-0343 **28 MPSC 3d 407**

**§61. Payments to affiliated interests**

The Commission determined it was not necessary or appropriate to order Spire Missouri to hire an outside auditor to examine the company's affiliate transactions and allocations.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 143**

**§65. Savings in operation**

The Commission found that public utilities are largely motivated to merge with and acquire one another for purposes of benefitting shareholders with some benefits to the ratepayers which are difficult to quantify.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 143**

**§65. Savings in operation**

The Commission determined that Spire Missouri presented insufficient credible evidence for the Commission to make a finding of the exact savings achieved or of an amount that would be just and reasonable to include in rates.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 144**

**§67. Taxes**

The Commission found that actual property tax expense paid in 2017 was known and measurable even though it fell outside the test year. The Commission determined that coupled with the extraordinary event of decreased income tax expense due to the Tax Cuts and Jobs Act (TCJA), it would not be just to exclude the known and measurable taxes from increasing property tax expense. Therefore, as an offset to the reduction in current income tax expense, the Commission included the actual 2017 property taxes as an expense for the new rates. However, as 2018 property taxes were still not known and measurable, the Commission established a tracker to account for any amounts of property tax expense over or under the amounts set out in rates for

possible inclusion in Spire Missouri's next rate proceeding.  
GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 144**

**§67. Taxes**

The Commission excluded FIN 48 liability from accumulated deferred income tax (ADIT) finding that both ratepayers and shareholders benefit when the company takes an uncertain tax position with the IRS, because saving money on taxes benefits the company's bottom line and it also reduces the amount of tax expense for the ratepayers. The Commission determined that the best way to encourage the company to pursue these tax savings, and thus ultimately benefit both shareholders and ratepayers, was to exclude the FIN 48 liability from ADIT.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 144**

**§67. Taxes**

The Commission found that while the specific income tax expense reduction due to the Tax Cuts and Jobs Act (TCJA) could not be calculated until the other decisions from this Report and Order are incorporated, it was a known and measurable expense. Therefore, the Commission found that based on the extraordinary event of the passage of the TCJA happening at the latter stages of the rate case, it was just and reasonable to reduce income tax expense using the TCJA effective composite income tax rate of 25.4483 percent.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 144**

**§67. Taxes**

The Commission recognized that not all of the effects of the Tax Cuts and Jobs Act (TCJA) were known at the time because the IRS had not yet promulgated rules or issued guidance on all the aspects of the TCJA. Therefore, the Commission ordered that a tracker be established to account for any other effects (either over- or under-collection in rates)

of the TCJA not captured by the current reduction in income tax expense for possible inclusion in rates at Spire Missouri's next rate case.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 144**

#### **§67. Taxes**

The estimates of the percentage of “protected” versus “unprotected” accumulated deferred income taxes (ADIT) and the lack of evidence surrounding the appropriate amortization periods for each category, convinces the Commission that effects of the Tax Cuts and Jobs Act (TCJA) on ADIT were not sufficiently known and measurable to be included in the rate case. Thus, the Commission ordered a tracker be established to defer any amounts in excess ADIT over or under the \$11.5 million amount refunded in rates, from the effective date of rates resulting from the case, forward, for possible inclusion in a later rate case. Further, the determination of the actual split between protected and unprotected ADIT and the appropriate amortization periods was ordered to be determined in Spire Missouri's next rate case.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 145**

#### **§68. Uncollectible accounts**

The Commission found that a five-year average of bad debt expenses was the most appropriate method to calculate the amount of bad debt to include in rates. The Commission also found that Spire Missouri's normalization calculation provided an accurate estimate of future bad debt expense.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 145**

#### **§73. Expenses incurred in acquisition of property**

To serve a three-phase power connection, Crawford Electrical Cooperative required Indian Hills to pay a non-refundable payment in the sum of \$23,000 for an electrical extension. The three-phase power connection was a

practical necessity. The company sought to capitalize this cost. Based on USoA Account 101 Utility Plant in Service the Commission held that the Company could not capitalize an electric line extension where another utility, not the Company, owned the line extension. Per Section 393.140(4). RSMo, USoA Account 101 must “be observed by. . . water corporations.” Thus, “[t]he Company has no right to earn a return on the electric plant of another utility.” In reaching this conclusion, the Commission considered USoA Account 325, Electrical Pumping Equipment: “[T]his account shall include the cost installed of pumping equipment driven by electric power. . . . (6) Electric power lines and switching.” The Commission held that these words did not “negate[] Account 101’s basic requirement of ownership.”

WR-2017-0259 **28 MPSC 3d 022**

**§79. Infrastructure system replacement surcharge (ISRS) eligible expense**

There are two requirements for eligibility of cost recovery: 1) the replaced components must be installed to comply with state or federal safety requirements; and 2) the existing facilities being replaced must be worn out or in a deteriorated condition. The Commission found that Spire Missouri did not demonstrate that its replacement of plastic pipe components complied with the ISRS statutory requirements.

GO-2016-0332 & GO-2016-0333 **28 MPSC 3d 625**

**§79. Infrastructure system replacement surcharge (ISRS) eligible expense**

Replacement of plastic pipes was not an expense whose cost could be recovered with the infrastructure system replacement surcharge (ISRS) due to a lack of evidence as to their being worn out or deteriorated, and lack of evidence that replacement of plastic pipe was incidental to the

replacement of other worn out or deteriorated components.  
GO-2016-0332 & GO-2016-0333 **28 MPSC 3d 625**

**§79. Infrastructure system replacement surcharge (ISRS) eligible expense**

Although the previously recovered plastic pipe replacement costs were found ineligible for ISRS cost recovery, the Commission does not have statutory authority to order a refund of those costs because the ISRS tariff at issue was already incorporated into Spire Missouri's rate base, which reset the ISRS to zero. After a general rate case, the Commission cannot correct those previous tariffs retroactively by applying a refund prospectively in future ISRS cases.

GO-2016-0332 & GO-2016-0333 **28 MPSC 3d 626**

**§79. Infrastructure system replacement surcharge (ISRS) eligible expense**

There are two requirements for eligibility of cost recovery: 1) the replaced components must be installed to comply with state or federal safety requirements; and 2) the existing facilities being replaced must be worn out or in a deteriorated condition. The Commission found that evidence showed that cast iron pipes are unsafe as they are subject to cracking and leaking. The Commission also found that steel pipes that are bare and not cathodically-protected corrode relatively quickly.

GO-2018-0309 & GO-2018-0310 **28 MPSC 3d 646**

**§79. Infrastructure system replacement surcharge (ISRS) eligible expense**

Replacement of plastic pipes was not an expense whose cost could be recovered with the infrastructure system replacement surcharge (ISRS) due to a lack of evidence as to their being worn out or deteriorated, and lack of evidence that replacement of plastic pipe was incidental to the



replacement of other worn out or deteriorated components.  
GO-2018-0309 & GO-2018-0310 **28 MPSC 3d 646**

**§79. Infrastructure system replacement surcharge (ISRS) eligible expense**

The Commission found that evidence adduced from a verified petition to recover costs via an infrastructure system replacement surcharge (ISRS), objected to, but not contested by opposing evidence, is sufficient evidence when it satisfies the statutory requirements.

GO-2018-0309 & GO-2018-0310 **28 MPSC 3d 646**

**§79. Infrastructure system replacement surcharge (ISRS) eligible expense**

The Commission found that the water utility did not show that a claimed net operating loss was generated during the time frame of the ISRS, thus could not include it in the surcharge calculation.

WO-2018-0373 **28 MPSC 3d 749**

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**GAS**

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- §91. Demand charges
- §92. Expenses incidental to refunds for overcharges

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## GAS

### §1. Generally

The Commission rejected the request of the Missouri Industrial Energy Consumers for the company to provide

surveillance reports to the non-regulatory parties to this case. The Commission found that unlike the Staff of the Commission and the Office of the Public Counsel, the other parties, specifically the industrial consumers, are not obligated to provide any regulatory function relating to Spire Missouri. Further, the non-regulatory parties were not subject to the same statutory prohibitions on the disclosure of sensitive business information that may be contained in those reports.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 145**

### **§3. Certificate of convenience and necessity**

The Commission concluded that the *In re Intercon Gas, Inc.*, 30 Mo P.S.C. (N.S.) 554, 561 (1991), criteria should be used when evaluating the application for utility certificates of convenience and necessity. The specific criteria used were: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and, (5) the service must promote the public interest. These factors are also referred to as the "Tartan Factors" or the "Tartan Energy Criteria." See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company*, for a Certificate of Convenience and Necessity, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994), 1994 WL 762882, \*3 (Mo. P.S.C.).

GA-2018-0396 **28 MPSC 3d 553**

### **§3. Certificate of convenience and necessity**

The Commission found that the company possessed adequate technical, managerial, and financial capacity to operate the natural gas systems to serve one additional property in Lawrence County, Missouri. The Commission also found that the factors for granting an addition to the

company's certificates of convenience or necessity has been satisfied and that it was in the public interest for the company to provide natural gas service to the subject property.

GA-2018-0396 **28 MPSC 3d 553**

**§3. Certificate of convenience and necessity**

The Commission granted Summit Natural Gas of Missouri, Inc., a certificate of convenience and necessity to provide natural gas service to the property as described in its application.

GA-2018-0396 **28 MPSC 3d 553**

**§3. Certificate of convenience and necessity**

The Commission concluded that it may grant a certificate of convenience or necessity to operate after determining that the operation is either “necessary or convenient for the public service.” Section 393.170.3, RSMo 2000.

GA-2018-0396 **28 MPSC 3d 553**

**§6. Transfer, lease and sale**

The Commission found, in accordance with Subsection 393.190.1, RSMo, a company is required to obtain Commission authorization prior to the sale of any part of its system that is necessary or useful in the performance of its duties to the public.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 145**

**§7. Jurisdiction and powers of the State Commission**

Although the previously recovered plastic pipe replacement costs were found ineligible for ISRS cost recovery, the Commission does not have statutory authority to order a refund of those costs because the ISRS tariff at issue was already incorporated into Spire Missouri’s rate base, which reset the ISRS to zero. After a general rate case, the Commission cannot correct those previous tariffs

retroactively by applying a refund prospectively in future ISRS cases.

GO-2016-0332 & GO-2016-0333 **28 MPSC 3d 626**

#### **§17.1. Purchased Gas Adjustment (PGA)**

In balancing the interests of the ratepayers and of the company, the Commission determined it was just and reasonable to move Spire Missouri East, f/k/a Laclede Gas Company's gas storage costs out of the purchased gas adjustment (PGA) tariff and back into base rates.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 145**

#### **§17.1. Purchased Gas Adjustment (PGA)**

The Commission determined the approximately \$4.1 million of carrying costs and associated line of credit fees currently included in the purchased gas adjustment (PGA) mechanism should be removed from the PGA to maintain consistency.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 145**

#### **§18. Rates**

The Commission set Spire Missouri's customer charges including an inclining block rate in the summer and a level block rate in the winter. The Commission determined that an inclining block rate in the summer would incentivize conservation when customers have the most control over usage not necessary to heat their homes. Additionally, the Commission found that the level block in the winter would provide stabilization for customers during the winter months when they have more difficulty paying increased bills to heat their homes. The Commission directed rates be calculated based on the agreed to billing determinants and the revenue requirement set out in the order with no transition rates.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 146**

**§19. Revenue**

The Commission concluded that subsection 386.266.3, RSMo, authorizes a revenue stabilization mechanism (RSM) that allows adjustments for variations due to weather, conservation, or both. The Commission determined it could not approve Spire Missouri's proposed RSM because the RSM would make adjustments for all variations in average usage per customer (such as, fuel switching, rate class switching, new customers with non-average usage, and economic factors) and not just those limited to weather or conservation.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 146**

**§20. Return**

The Commission found there was insufficient evidence to establish that Spire Missouri East, f/k/a Laclede Gas Company, or Spire Missouri West, f/k/a Missouri Gas Energy, earned an actual return on equity that was significantly higher than necessary to attract necessary capital, to provide safe and reliable service, or significantly higher than commensurate returns by enterprises having corresponding risks indicating that their ordered rates were not just and reasonable.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 146**

**§20. Return**

The Commission found that with regard to Spire Missouri East, f/k/a Laclede Gas Company's, accounting for the sale of its Forest Park buildings, neither a return on the \$1.8 million undepreciated value of the Forest Park buildings, nor any return of the \$1.8 million should be included in rates going forward. The Commission found the remainder of the \$5.8 million gain properly belonged to the shareholders.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 146**

**§20. Return**

After considering the expert testimony and balancing the interests of the company's ratepayers and shareholders, the Commission found that 9.8 percent was a fair and reasonable return on equity for Spire Missouri.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 146**

**§40. Transportation**

The Commission concluded Missouri law did not require, or authorize, the Commission to preapprove Spire Missouri's management decision to enter into a transportation agreement with a natural gas pipeline.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 146**

**§41. Pipelines**

The Commission concluded Missouri law did not require, or authorize, the Commission to preapprove Spire Missouri's management decision to enter into a transportation agreement with a natural gas pipeline.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 146**

**§47. Auditing and bookkeeping**

The Commission determined it was not necessary or appropriate to order Spire Missouri to hire an outside auditor to examine the company's affiliate transactions and allocations.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 147**

**§58. Employee's pension and welfare**

In balancing the needs of the ratepayers to keep rates from increasing, with the need of Spire Missouri to fulfill its pension obligations, the Commission determined that an 80 percent ERISA funding level was the most just and reasonable level.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 147**



**§65. Financing costs and interest**

The Commission found that the capital structure of Spire Missouri without short-term debt is the reasonable capital structure for ratemaking purposes in this case. Similarly, the Commission determines that the cost of debt should be Spire Missouri's cost of long-term debt.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 147**

**§78. Payments to affiliated interests**

The Commission determined it was not necessary or appropriate to order Spire Missouri to hire an outside auditor to examine the company's affiliate transactions and allocations.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 147**

**§78. Payments to affiliated interests**

The purpose of the affiliate transaction rule, 4 CSR 240 240-20.015, is to prevent regulated utilities from subsidizing their non-regulated operations. The Commission has the statutory authority to grant a variance to the Commission's affiliate transaction rule to effectuate the ownership and operation of the wind generation. In order to qualify for the variance, Empire must demonstrate good cause for its request.

The Commission waived the affiliate transaction rule where, without a waiver, the company could not implement a customer savings plan that would achieve millions of dollars in customer saving that would ultimately benefit its customers.

EO-2018-0092 **28 MPSC 3d 503**

**§81. Savings in operation**

The Commission found that public utilities are largely motivated to merge with and acquire one another for purposes of benefitting shareholders with some benefits to

the ratepayers which are difficult to quantify.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 147**

### **§81. Savings in operation**

The Commission determined that Spire Missouri presented insufficient credible evidence for the Commission to make a finding of the exact savings achieved or of an amount that would be just and reasonable to include in rates.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 147**

### **§85. Uncollectible accounts**

The Commission found that a five-year average of bad debt expenses was the most appropriate method to calculate the amount of bad debt to include in rates. The Commission also found that Spire Missouri's normalization calculation provided an accurate estimate of future bad debt expense.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 147**

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## **MANUFACTURED HOUSING**

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- §19. Penalties

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## **MANUFACTURED HOUSING**

No headnotes in this volume involved the question of Manufactured Housing.

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## **PUBLIC UTILITIES**

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- §28. Foreign corporations or companies
- §29. Unincorporated companies
- §30. State or federally owned or operated utility
- §31. Trustees

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## PUBLIC UTILITIES

### §1. Generally

The Commission established the assessment amount for fiscal year 2019.

AO-2018-0379 **28 MPSC 3d 497**

### §7. Jurisdiction and powers of the State Commission

Where a rural cooperative provided service for four structures in an industrial park within and owned by a City, one tenant wanted to upgrade to a three-phase line to expand its business, and the City could provide the upgrade more economically than the coop could without regard to any rate differential, the Commission could change the customer's supplier from the rural cooperative to the City.

EO-2018-0276 **28 MPSC 3d 442**

### §16. Property sold or leased to a public utility

The Commission acknowledged that Spire Missouri could have waited to terminate its lease and purchase the automated meter reading (AMR) assets until after the true-up period and have taken advantage of any regulatory lag to retain the savings for its shareholders. Because the purchase occurred outside the test year but before September 30, 2017, it is appropriately a true-up issue. The Commission determined that Spire Missouri should be allowed to recover the \$16.6 million cost of the AMR devices. The Commission ordered Spire Missouri to establish Account 397.2 – AMR Devices as a new plant sub-

account. Additionally, because of the planned obsolescence of these devices, the Commission found it was reasonable under these specific facts to authorize the amortization of these assets over 7.5 years.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 147**

### **§26. Mutual companies; cooperatives**

Where a rural cooperative provided service for four structures in an industrial park within and owned by a City, one tenant wanted to upgrade to a three-phase line to expand its business, and the City could provide the upgrade more economically than the coop could without regard to any rate differential, the Commission could change the customer's supplier from the rural cooperative to the City.

EO-2018-0276 **28 MPSC 3d 442**

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## **RATES**

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- §6. Limitations on jurisdiction and power
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- §123. Rate design, class cost of service for telecommunications utilities
- §124. Rate design, class cost of service for heating utilities

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## RATES

### §1. Jurisdiction and powers generally

The Commission determined it may approve Missouri-American Water Company's (MAWC) request for the Rogue Creek customers to become part of an existing MAWC service area if in its opinion those were the rates best suited for the customers due to operational or other factors. After considering all the factors, the Commission found that MAWC's proposed rates were the rates best suited for Rogue Creek's ratepayers.

WM-2019-0018 **28 MPSC 3d 667**

### §6. Limitations on jurisdiction and power

Although the previously recovered plastic pipe replacement costs were found ineligible for ISRS cost recovery, the Commission does not have statutory authority to order a refund of those costs because the ISRS tariff at issue was



already incorporated into Spire Missouri's rate base, which reset the ISRS to zero. After a general rate case, the Commission cannot correct those previous tariffs retroactively by applying a refund prospectively in future ISRS cases.

GO-2016-0332 & GO-2016-0333 **28 MPSC 3d 626**

**§8. Reasonableness generally**

The Commission must order tariffs that provide safe and adequate service at rates that are just and reasonable. The "just and reasonable" standard codifies constitutional provisions that protect interests of Indian Hills. Indian Hills' rates must also be as "just and reasonable" to consumers as they are to the utility.

WR-2017-0259 **28 MPSC 3d 022**

**§8. Reasonableness generally**

The balance of investor interests and consumer interests does not appear in any single statute or judicially-made formula, but in the pragmatic adjustments that are the Commission's means to establish just and reasonable rates that ensure safe and adequate service. The Commission must decide this action on consideration of "all facts which in its judgment have any bearing" (sometimes called "all relevant factors").

WR-2017-0259 **28 MPSC 3d 023**

**§8. Reasonableness generally**

As to any one issue, more than one party's position may support safe and adequate service at just and reasonable rates. When that happens, the Commission must determine which position, or parts of positions, best support safe and adequate service at just and reasonable rates.

WR-2017-0259 **28 MPSC 3d 023**

**§8. Reasonableness generally**

The Commission found that Spire Missouri's earnings based and equity based incentive compensation was primarily for the benefit of the shareholders and not for the benefit of the ratepayers. Therefore, the Commission determined that Spire Missouri did not meet its burden of proving that its proposed increase in rates for earnings based and equity based incentive compensation plans was just and reasonable. Therefore, the Commission determined that Spire Missouri shall not recover earnings based or equity based employee incentive compensation amounts in rates.  
GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 148**

**§8. Reasonableness generally**

The Commission determined Spire Missouri had not met its burden to show that any upward adjustment to base salaries is just and reasonable to include in rates. Therefore, no adjustment in compensation expense was made due to the Commission disallowing portions of Spire Missouri's incentive compensation plans expense.  
GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 148**

**§8. Reasonableness generally**

The Commission concluded there is no statutory authorization or prohibition for the implementation of incentives related to performance metrics.  
GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 148**

**§8. Reasonableness generally**

The Commission found that it was not reasonable to fund low-income energy affordability programs at the full level of need because ultimately, ratepayers will be paying for these programs.  
GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 148**

**§8. Reasonableness generally**

Considering all the factors, the Commission determined that the current Rogue Creek rates are not the best suited rates. Under the proposed rates, depending on usage, typical customers would have a \$4.63 to \$9.35 per month combined increase in their monthly bills, which was reasonable under the circumstances.

WM-2019-0018 **28 MPSC 3d 667**

**§8. Reasonableness generally**

The Commission concludes that it is more likely than not that the increase will result in just and reasonable rates. Liberty Utilities has not come to the Commission for a rate increase for any of its water or sewer systems in more than seven years, and during that time, the ratepayers have enjoyed low rates that have not changed in more than half a decade. Silverleaf's rates have not changed in more than a decade. Meanwhile, Liberty Utilities has made necessary improvements to the system in excess of 2.5 million dollars. Additionally it has experienced higher costs of service with increasing operation and management expenses.

WR-2018-0170 **28 MPSC 3d 687**

**§8. Reasonableness generally**

The Commission found that the proposed rates set out in the tariff sheets were just and reasonable.

WR-2018-0356 **28 MPSC 3d 744**

**§12. Capitalization and security prices**

The Commission found that the capital structure of Spire Missouri without short-term debt is the reasonable capital structure for ratemaking purposes in this case. Similarly, the Commission determines that the cost of debt should be the cost of Spire Missouri's cost of long-term debt.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 148**

**§12. Capitalization and security prices**

The Commission determined that because previous stipulation and agreements settled all issues but did not specifically address the capitalization of incentive compensation, the Commission would not reach back to those settled cases and remove capitalized earnings based and equity based incentive compensation from rate base.  
GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 148**

**§12. Capitalization and security prices**

The issue for determination is whether to apply a capital structure based upon the mean ratio of a set of proxy gas companies that Liberty Utilities' witness Keith Magee believes closely resembles the risk characteristics of Liberty Utilities, a hypothetical capital structure, or whether to apply a capital structure based upon Liberty Utilities' parent holding company, LUCo.

Applying LUCo's capital structure is appropriate because LUCo's capital structure is used to finance LUCo's United States' regulated utility assets. It is logical to apply the actual capital structure of the company providing the financing for Liberty Utilities because Liberty Utilities issues none of its own debt.

WR-2018-0170 **28 MPSC 3d 687**

**§16. Comparisons**

The Commission found that the City of Lawson rates were not appropriate because Missouri-American Water Company's acquisition of the system had very little in common with its acquisition of the City of Lawson system in Commission File No. WM-2018-0222. Considering those factors, the Commission found the rates proposed by Missouri-American Water Company and recommended by Staff were reasonable and in the public interest.

WM-2019-0018 **28 MPSC 3d 667**

**§18. Consolidation or sale**

The Commission considers many characteristics when deciding a request for single tariff pricing. Items considered include: centralization of workforce; local versus tariff-area-wide management; financing sources; support for acquisition of small, underperforming systems; corporate costs; distribution of customers; and applicability of infrastructure system replacement surcharges among other considerations.

WR-2017-0285 **28 MPSC 3d 366**

**§18. Consolidation or sale**

The Commission determined that the benefits of consolidation presented did not outweigh the unique circumstance of St. Louis County being the sole county in the company's service area to qualify for infrastructure system replacement surcharges. Combining the water utility's three districts into one would disadvantage customers in St. Louis County by being the only customers paying the additional surcharge, while still contributing to improvements in other areas.

WR-2017-0285 **28 MPSC 3d 366**

**§20. Costs and expenses**

The Commission determined that 50 percent (the earnings based and equity based portions) of Spire Missouri's nonunion, non-executive or director employee incentive compensation plans should be disallowed from rates. Further, the Commission found the executive and director incentive compensation plan, which is 100 percent earnings and equity based, should also be disallowed. The Commission determined, however, that incentive compensation for union employees, is appropriately included in rates because this is the result of collective bargaining agreements. Therefore, Spire Missouri's proposed revenue

requirement was reduced by 100 percent of the executive and director's incentive compensation plan and 50 percent of the other nonunion employee incentive compensation plan.  
GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 148**

**§20. Costs and expenses**

A water utility's program to replace lead service lines, when not based on a legal requirement, requires the utility be made whole for the effort, but the utility is not entitled to a profit from the initiative. The Commission determined the distinction while noting the utility should be commended for its efforts.

WR-2017-0285 **28 MPSC 3d 366**

**§21. Discrimination, partiality, or unfairness**

If Silverleaf is proposing that the phase-in rates apply only to Silverleaf service areas, then the Commission would be treating one group of Liberty Utilities' customers different than others without a compelling reason. The result would be inequitable for ratepayers, with some service areas paying their full cost of service while the Silverleaf service area does not during the first two years of the phase-in. This shortfall of revenue from the phase-in service area could result in a detriment across the whole system due to less money being available for customer service or maintenance.

WR-2018-0170 **28 MPSC 3d 688**

**§21. Discrimination, partiality, or unfairness**

An increase in rates that does not apply to one system burdens the other systems with the cost of shared services and management. Likewise, if some customers are excluded from review, those customers in the excluded service area will not be recognized in rates, and the utility could collect revenues above those authorized. An effective rate case requires that all relevant factors are reviewed in order to set just and reasonable rates.

WR-2018-0170 **28 MPSC 3d 688**

**§40. Revenues**

The Commission concluded that subsection 386.266.3, RSMo, authorizes a revenue stabilization mechanism (RSM) that allows adjustments for variations due to weather, conservation, or both. The Commission determined it could not approve Spire Missouri's proposed RSM because the RSM would make adjustments for all variations in average usage per customer (such as, fuel switching, rate class switching, new customers with non-average usage, and economic factors) and not just those limited to weather or conservation.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 149**

**§41. Return**

After considering the expert testimony and balancing the interests of the company's ratepayers and shareholders, the Commission found that 9.8 percent was a fair and reasonable return on equity for Spire Missouri.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 149**

**§57. Rates after expiration of franchise**

Customers will experience a relatively substantial rate impact after the transfer of water and sewer assets from Highway H Utilities to the City of Waynesville. However, even if Highway H Utilities were to remain in business, or if any other utility were to step on to own and operate these water and sewer assets, then substantial funds would need to be expended for maintenance and improvements similar to what the City of Waynesville is proposing.

SM-2018-0095 **28 MPSC 3d 309**

**§62. Initiation of rates and rate changes**

As used at the Commission, a "general rate proceeding" or a "general rate case" means a proceeding in which the

Commission considers all relevant factors when setting a utility's rates.

ER-2018-0366 **28 MPSC 3d 561**

**§65. Refunds**

Although the previously recovered plastic pipe replacement costs were found ineligible for ISRS cost recovery, the Commission does not have statutory authority to order a refund of those costs because the ISRS tariff at issue was already incorporated into Spire Missouri's rate base, which reset the ISRS to zero. After a general rate case, the Commission cannot correct those previous tariffs retroactively by applying a refund prospectively in future ISRS cases.

GO-2016-0332 & GO-2016-0333 **28 MPSC 3d 626**

**§68. Establishment of rate base**

Although the previously recovered plastic pipe replacement costs were found ineligible for ISRS cost recovery, the Commission does not have statutory authority to order a refund of those costs because the ISRS tariff at issue was already incorporated into Spire Missouri's rate base, which reset the ISRS to zero. After a general rate case, the Commission cannot correct those previous tariffs retroactively by applying a refund prospectively in future ISRS cases.

GO-2016-0332 & GO-2016-0333 **28 MPSC 3d 626**

**§69. Approval or rejection by the Commission**

The Commission found that the unanimous disposition agreement and the proposed tariff sheets were reasonable and should be approved.

WR-2018-0356 **28 MPSC 3d 744**



**§74. Retroactive rates**

Although the previously recovered plastic pipe replacement costs were found ineligible for ISRS cost recovery, the Commission does not have statutory authority to order a refund of those costs because the ISRS tariff at issue was already incorporated into Spire Missouri's rate base, which reset the ISRS to zero. After a general rate case, the Commission cannot correct those previous tariffs retroactively by applying a refund prospectively in future ISRS cases.

GO-2016-0332 & GO-2016-0333 **28 MPSC 3d 626**

**§77. Billing methods and practices**

The Commission found that new automated meter technology, along with the benefits of monthly billing, were appropriate reasons to move quarterly billed customers to monthly billing. Monthly billing helps customers evaluate their usage and avoids prolonged water leaks.

WR-2017-0285 **28 MPSC 3d 366**

**§80. Kinds and forms of rates and charges in general**

The Commission set Spire Missouri's customer charges including an inclining block rate in the summer and a level block rate in the winter. The Commission determined that an inclining block rate in the summer would incentivize conservation when customers have the most control over usage not necessary to heat their homes. Additionally, the Commission found that the level block in the winter would provide stabilization for customers during the winter months when they have more difficulty paying increased bills to heat their homes. The Commission directed rates be calculated based on the agreed to billing determinants and the revenue requirement set out in the order with no transition rates.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 149**

**§80. Kinds and forms of rates and charges in general**

The Commission determined that like other assets, the prepaid pension asset is appropriately included in rate base and is properly funded at the normal weighted average cost of capital.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 149**

**§81. Surcharges**

The Commission concluded that Section 393.1012, RSMo, does not require the company to file a rate case every three years. Instead, that statute permits the company to continue collecting its authorized infrastructure replacement surcharge (ISRS) so long as it files a rate case every three years. The Commission determined the company could choose to cease collections of the ISRS rather than file a rate case.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 149**

**§81. Surcharges**

Although the previously recovered plastic pipe replacement costs were found ineligible for ISRS cost recovery, the Commission does not have statutory authority to order a refund of those costs because the ISRS tariff at issue was already incorporated into Spire Missouri's rate base, which reset the ISRS to zero. After a general rate case, the Commission cannot correct those previous tariffs retroactively by applying a refund prospectively in future ISRS cases.

GO-2016-0332 & GO-2016-0333 **28 MPSC 3d 626**

**§81. Surcharges**

Replacement of plastic pipes was not an expense whose cost could be recovered with the infrastructure system replacement surcharge (ISRS) due to a lack of evidence as to their being worn out or deteriorated, and lack of evidence that replacement of plastic pipe was incidental to the

replacement of other worn out or deteriorated components.  
GO-2016-0332 & GO-2016-0333 **28 MPSC 3d 626**

**§81. Surcharges**

Replacement of plastic pipes was not an expense whose cost could be recovered with the infrastructure system replacement surcharge (ISRS) due to a lack of evidence as to their being worn out or deteriorated, and lack of evidence that replacement of plastic pipe was incidental to the replacement of other worn out or deteriorated components.  
GO-2018-0309 & GO-2018-0310 **28 MPSC 3d 646**

**§81. Surcharges**

The Commission found that evidence adduced from a verified petition to recover costs via an infrastructure system replacement surcharge (ISRS), objected to, but not contested by opposing evidence, is sufficient evidence when it satisfies the statutory requirements.  
GO-2018-0309 & GO-2018-0310 **28 MPSC 3d 646**

**§83. Cost elements involved**

The Commission considers that an important goal of rate design is to allow the utility to recover costs from those who cause the costs to be incurred while still allowing customers control over their bills through efficiency. Customer-related costs are generally recovered through the customer charge, which serves to prevent higher usage customers from subsidizing lower usage customers, sends all customers more accurate pricing signals, and provides more stable and predictable funding for utilities' fixed costs.  
WR-2017-0285 **28 MPSC 3d 366**

**§83. Cost elements involved**

Where feasible, direct assignment of costs to the responsible customer class is the preferred method of allocation.  
WR-2017-0285 **28 MPSC 3d 366**

**§89. Straight, block or step-generally**

The Commission set Spire Missouri's customer charges including an inclining block rate in the summer and a level block rate in the winter. The Commission determined that an inclining block rate in the summer would incentivize conservation when customers have the most control over usage not necessary to heat their homes. Additionally, the Commission found that the level block in the winter would provide stabilization for customers during the winter months when they have more difficulty paying increased bills to heat their homes. The Commission directed rates be calculated based on the agreed to billing determinants and the revenue requirement set out in the order with no transition rates.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 149**

**§104. Electric and power**

The Commission found that the proposed line-extension tariffs were not an issue that would violate the policy against single-issue ratemaking if the Commission were to approve them. Thus, it denied Staff's motion to reject the line extension tariff.

ET-2018-0132 **28 MPSC 3d 359**

**§111. Water**

The Commission determined it may approve Missouri-American Water Company's (MAWC) request for the Rogue Creek customers to become part of an existing MAWC service area if in its opinion those were the rates best suited for the customers due to operational or other factors. After considering all the factors, the Commission found that MAWC's proposed rates were the rates best suited for Rogue Creek's ratepayers.

WM-2019-0018 **28 MPSC 3d 667**

**§111. Water**

Considering all the factors, the Commission determined that the current Rogue Creek rates are not the best suited rates. Under the proposed rates, depending on usage, typical customers would have a \$4.63 to \$9.35 per month combined increase in their monthly bills, which was reasonable under the circumstances.

WM-2019-0018 **28 MPSC 3d 667**

**§111. Water**

The Commission found that the City of Lawson rates were not appropriate because Missouri-American Water Company's acquisition of the system had very little in common with its acquisition of the City of Lawson system in Commission File No. WM-2018-0222. Considering those factors, the Commission found the rates proposed by Missouri-American Water Company and recommended by Staff were reasonable and in the public interest.

WM-2019-0018 **28 MPSC 3d 667**

**§111. Water**

The Commission found that the proposed rates set out in the tariff sheets were just and reasonable.

WR-2018-0356 **28 MPSC 3d 744**

**§118. Method of allocating costs**

Cost-of-service rate-making determines Indian Hills' rates by calculating Indian Hills' revenue requirement. The revenue requirement is how much it costs Indian Hills, in operating expenses ("expenses"), and for a return on its capital assets ("rate base"), to provide safe and adequate service, and includes a return sufficient to service debt and equity and continue attracting capital.

WR-2017-0259 **28 MPSC 3d 023**

**§118. Method of allocating costs**

The Commission considers that an important goal of rate design is to allow the utility to recover costs from those who cause the costs to be incurred while still allowing customers control over their bills through efficiency. Customer-related costs are generally recovered through the customer charge, which serves to prevent higher usage customers from subsidizing lower usage customers, sends all customers more accurate pricing signals, and provides more stable and predictable funding for utilities' fixed costs.

WR-2017-0285 **28 MPSC 3d 366**

**§118. Method of allocating costs**

Where feasible, direct assignment of costs to the responsible customer class is the preferred method of allocation.

WR-2017-0285 **28 MPSC 3d 366**

**§119. Rate design, class cost of service for electric utilities**

Where feasible, direct assignment of costs to the responsible customer class is the preferred method of allocation.

WR-2017-0285 **28 MPSC 3d 366**

**§121. Rate design, class cost of service for water utilities**

Cost-of-service rate-making determines Indian Hills' rates by calculating Indian Hills' revenue requirement. The revenue requirement is how much it costs Indian Hills, in operating expenses ("expenses"), and for a return on its capital assets ("rate base"), to provide safe and adequate service, and includes a return sufficient to service debt and equity and continue attracting capital.

WR-2017-0259 **28 MPSC 3d 023**

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- §4. Conversion, redemption and purchase by a corporation
- §5. Decrease of capitalization
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- §31. Intercorporate relations
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- §63. Sale price and interest rates generally
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- §76. Telecommunications
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**SECURITY ISSUES****§2. Obligation of the utility**

Where the utility's cost of debt was significantly above the market cost of debt and resulted from the dealings among entities closely inter-related with the utility by common ownership on both sides of the transaction, the Commission imputed 5.75% as a reasonable imputed cost of debt. Here the financing agreement involved affiliate relationships raising the risk of self-dealing; and furthermore, the financing agreement contained a high interest rate and prevented refinancing. These conditions were not beneficial to ratepayers. A public utility should pay to its lenders, and pass along to its customers on rates and charges, the market price for the public utility's debt. Because debt has priority over equity, equity must compensate with a better return than debt. Therefore, when return on equity is at 12 percent, debt at 14 percent must be above the market rate. An interest rate of 14 percent is significantly above the market rate. Indian Hills' business for profit is a State-granted monopoly. Those facts bring the loan within one of the Commission's primary functions—to substitute reasonable regulation for the missing marketplace.

WR-2017-0259 **28 MPSC 3d 023**

**§30. Improper practices and irregularities**

Where the utility's cost of debt was significantly above the market cost of debt and resulted from the dealings among entities closely inter-related with the utility by common

ownership on both sides of the transaction, the Commission imputed 5.75% as a reasonable imputed cost of debt. Here the financing agreement involved affiliate relationships raising the risk of self-dealing; and furthermore, the financing agreement contained a high interest rate and prevented refinancing. These conditions were not beneficial to ratepayers. A public utility should pay to its lenders, and pass along to its customers on rates and charges, the market price for the public utility's debt. Because debt has priority over equity, equity must compensate with a better return than debt. Therefore, when return on equity is at 12 percent, debt at 14 percent must be above the market rate. An interest rate of 14 percent is significantly above the market rate. Indian Hills' business for profit is a State-granted monopoly. Those facts bring the loan within one of the Commission's primary functions—to substitute reasonable regulation for the missing marketplace.

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#### **§50. Loans to affiliated interests**

Where the utility's cost of debt was significantly above the market cost of debt and resulted from the dealings among entities closely inter-related with the utility by common ownership on both sides of the transaction, the Commission imputed 5.75% as a reasonable imputed cost of debt. Here the financing agreement involved affiliate relationships raising the risk of self-dealing; and furthermore, the financing agreement contained a high interest rate and prevented refinancing. These conditions were not beneficial to ratepayers. A public utility should pay to its lenders, and pass along to its customers on rates and charges, the market price for the public utility's debt. Because debt has priority over equity, equity must compensate with a better return than debt. Therefore, when return on equity is at 12 percent, debt at 14 percent must be above the market rate. An interest rate of 14 percent is significantly above the

market rate. Indian Hills' business for profit is a State-granted monopoly. Those facts bring the loan within one of the Commission's primary functions—to substitute reasonable regulation for the missing marketplace.

WR-2017-0259 **28 MPSC 3d 023**

#### **§62. Proportion of debt to net plant**

The Commission found that a five-year average of bad debt expenses was the most appropriate method to calculate the amount of bad debt to include in rates. The Commission also found that Spire Missouri's normalization calculation provided an accurate estimate of future bad debt expense.

GR-2017-0215 & GR-2017-0216 **28 MPSC 3d 150**

#### **§69. Financing methods and practices generally**

Where the utility's cost of debt was significantly above the market cost of debt and resulted from the dealings among entities closely inter-related with the utility by common ownership on both sides of the transaction, the Commission imputed 5.75% as a reasonable imputed cost of debt. Here the financing agreement involved affiliate relationships raising the risk of self-dealing; and furthermore, the financing agreement contained a high interest rate and prevented refinancing. These conditions were not beneficial to ratepayers. A public utility should pay to its lenders, and pass along to its customers on rates and charges, the market price for the public utility's debt. Because debt has priority over equity, equity must compensate with a better return than debt. Therefore, when return on equity is at 12 percent, debt at 14 percent must be above the market rate. An interest rate of 14 percent is significantly above the market rate. Indian Hills' business for profit is a State-granted monopoly. Those facts bring the loan within one of the Commission's primary functions—to substitute reasonable regulation for the missing marketplace.

WR-2017-0259 **28 MPSC 3d 023**

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- §47. Duty to install, own and maintain
- §48. Protection, location and liability for damage
- §49. Restriction and control of connections, instruments and equipment

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## SERVICE

### §2. What constitutes adequate service

Ameren Missouri presented credible evidence regarding its efforts to provide service on an adequate and continuous basis. Ameren Missouri explained the reasons why Complainant experienced more outages than other customers on the same circuit, and why those causes were reasonably beyond its control. Ameren Missouri's tariff states the "[c]ompany will make all reasonable efforts to provide the service requested on an adequate and continuous basis, but will not be liable for service interruptions, deficiencies or imperfections which result from conditions which are beyond the reasonable control of the Company."

EC-2018-0089 **28 MPSC 3d 596**

**§3. Obligation of the utility**

Ozark Mountain Condominium Association intervened in this case largely because it was concerned that Liberty Utilities was requesting, and would receive, a rate increase for the Ozark Mountain service area without addressing what it felt were numerous instances of inadequate service. While this is not a formal complaint case, the Commission has the responsibility to examine all relevant factors when determining rates.

WR-2018-0170 **28 MPSC 3d 688**

**§8. Discrimination**

Complainants requested that the Commission, for health and safety reasons, require the replacement of a Smart meter at their residence with an analog meter which they purchased. The Company has an opt-out tariff which permits customers to have a digital meter installed that has no communication capabilities and transmits no radio frequency waves. Per its terms, participants of the Company's opt-out tariff incur an additional charge to have the Company send someone to read the meter and to cover the additional systems and processes which will have to be managed because of the opt-out.

The Company's charges for its opt-out tariff were authorized by the Commission, were just and reasonable, and were no greater than charges to any other person for the service rendered for manually reading a meter in violation of Section 393.131.2, RSMo. An additional charge for the opt-out did not constitute any undue or unreasonable preference or advantage to persons with the Smart meter in violation of Section 393.131.3, RSMo.

EC-2016-0230 **28 MPSC 3d 587**

**§18. Duty to render adequate service**

After numerous outages, Complainant filed a formal

complaint against Ameren Missouri alleging the company violated its tariff regarding continuity of service by failing to make all reasonable efforts to provide service on an adequate and continuous basis.

EC-2018-0089 **28 MPSC 3d 596**

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## **SEWER**

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- §1. **Generally**
- §2. **Certificate of convenience and necessity**
- §3. **Obligation of the utility**
- §4. **Transfer, lease and sale**

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- §28. **Rules and regulations**
- §29. **Billing practices**
- §30. **Eminent domain**
- §31. **Accounting Authority orders**

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## SEWER

### **§2. Certificate of convenience and necessity**

Granting a certificate of convenience and necessity requires a showing of necessity or convenience for the public service, and the Commission applies a five factor analysis to determine whether an application is necessary or convenient.

SA-2019-0006 **28 MPSC 3d 682**

### **§4. Transfer, lease and sale**

Section 393.190.1, RSMo does not require the seller of a public utility to be joined as a party to an application for authority to acquire the assets of the public utility to be sold.

WM-2018-0116 & SM-2018-0117 **28 MPSC 3d 356**

### **§5. Jurisdiction and powers generally**

The Commission has no jurisdiction over the sewer system. Section 386.020(49) RSMo creates an exemption to the definition of sewer corporation. It states that, “except that the term shall not include sewer systems with fewer than twenty-five outlets[.]” Without a service sewer line there is no “service sewer connection to the collecting sewer.” Under that analysis there are seven sewer outlets, and the sewer system is outside the Commissions jurisdiction.

WC-2017-0037 **28 MPSC 3d 337**

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## STEAM

### **I. IN GENERAL**

- §1. Generally**
- §2. Obligation of the utility**
- §3. Certificate of convenience and necessity**
- §4. Transfer, lease and sale**
  - §4.1. Change of suppliers**



- §5. Charters and franchise
- §6. Territorial agreements

## **II. JURISDICTION AND POWERS**

- §7. Jurisdiction and powers generally
- §8. Jurisdiction and powers of Federal Commissions
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## **IV. RELATIONS BETWEEN CONNECTING COMPANIES**

- §46. Relations between connecting companies generally

- §47. Physical connection
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## STEAM

No headnotes in this volume involved the question of Steam.

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## **TELECOMMUNICATIONS**

No headnotes in this volume involved the question of Telecommunications.

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## **VALUATION**

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## VALUATION

### **§14. For rate making purposes**

Section 393.320.5(1), RSMo states, in part, that the “lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by the large water public utility, shall constitute the ratemaking rate base for the small water utility as acquired by the acquiring large water public utility. . . .” In this case, the purchase price is equal to the appraised value. That value is \$4 million, of which \$2,630,000 is for water assets, and \$1,370,000 for sewer assets. Staff’s Recommendation concurs with MAWC’s appraisal of the Lawson water and sewer assets. Therefore, the appraised value of \$4 million, together with the reasonable and prudent transaction, closing, and transition costs incurred by MAWC, shall constitute the ratemaking rate base.

WA-2018-0222 **28 MPSC 3d 542**

### **§17. Factors affecting value or cost generally**

Lot 27 existed at the time Gascony applied for its CCN, at which time it already had a well and storage tank and was existing plant. Likewise, the Storage Building Lot also existed at the time and would have been presumably used to house utility equipment and parts. While the properties should be included in rate base, they are offset by any Contribution in Aid of Construction. Because the developer has recovered his investment, the property is deemed “contributed” at no cost.

WR-2017-0343 **28 MPSC 3d 407**

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## WATER

### **I. IN GENERAL**

- §1. Generally**
- §2. Certificate of convenience and necessity**

- §3. Obligation of the utility
- §4. Transfer, lease and sale
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- §6. Jurisdiction and powers generally
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- §16. Rates and revenues
- §17. Return
- §18. Costs and expenses
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- §20. Depreciation
- §21. Discrimination
- §22. Apportionment
- §23. Accounting
- §24. Valuation
- §25. Extensions
- §26. Abandonment or discontinuance
- §27. Reports, records and statements
- §28. Financing practices
- §29. Security issues
- §30. Rules and regulations
- §31. Billing practices
- §32. Accounting Authority Orders

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## WATER

### §2. Certificate of convenience and necessity

The Commission found it had jurisdiction to rule on the application because Missouri law requires that before selling or transferring its assets, a water corporation or sewer corporation must first obtain an order from the Commission authorizing the sale or transfer.

WM-2019-0018 **28 MPSC 3d 667**

**§2. Certificate of convenience and necessity**

The Commission granted Missouri-American Water Company certificates of service for the Rogue Creek service area.

WM-2019-0018 **28 MPSC 3d 668**

**§2. Certificate of convenience and necessity**

The Commission found that it will only deny an application for a certificate of convenience or necessity if approval would be detrimental to the public interest.

WM-2019-0018 **28 MPSC 3d 668**

**§4. Transfer, lease and sale**

The Commission will only deny a water corporation's application to sell its works or system if approval would be detrimental to the public interest.

WM-2018-0104 **28 MPSC 3d 124**

**§4. Transfer, lease and sale**

The Commission approved the transfer of several small water systems to a larger water provider.

WM-2018-0023 **28 MPSC 3d 322**

**§4. Transfer, lease and sale**

Carl Mills did not seek the Commission's approval before transferring the water assets. Carl Mills transferred the water and sewer assets several times and for various purposes. Having established that Carl Mills was under the jurisdiction of the Commission at the time he was providing water services to the subdivision for compensation; the Commission's approval was required before the water assets could have been transferred or sold.

WC-2017-0037 **28 MPSC 3d 337**



**§4. Transfer, lease and sale**

Section 393.190.1, RSMo does not require the seller of a public utility to be joined as a party to an application for authority to acquire the assets of the public utility to be sold. WM-2018-0116 & SM-2018-0117 **28 MPSC 3d 356**

**§6. Jurisdiction and powers generally**

The public utility is exchanging services for the customers' acceptance of financial responsibility; any other reading misses the rules plain meaning: That the customer is directly financially responsible to the utility. Movants frame themselves as an intermediary, but they are the customer. Given that Silverleaf did not object to the classification of them having fewer than 1000 customers at the time of the sale of assets, it appears that Silverleaf did not then consider timeshare owners as utility customers. WR-2018-0170 **28 MPSC 3d 314**

**§6. Jurisdiction and powers generally**

Movants imply that they would rather tolerate potentially greater rate case expense for what they view as greater due process in a general rate case. Most of what Movants are classifying as a deprivation of due process is the procedural content of the Small Rate Procedure rule. As specified before, Liberty meets the minimal requirements to avail itself of the Small Rate Procedure. WR-2018-0170 **28 MPSC 3d 314**

**§6. Jurisdiction and powers generally**

Carl Mills is a person who owns a utility devoted to the public use, and operated for gain. Therefore, Carl Mills is a water corporation as defined by Section 386.020(59) RSMo. and is subject to the Commission's jurisdiction. WC-2017-0037 **28 MPSC 3d 338**

**§6. Jurisdiction and powers generally**

What brings Carl Mills within the Commission's jurisdiction for regulation is the fact that water corporations are required to obtain a certificate of convenience and necessity to provide water service to customers. The protections afforded the community by regulation are not just from actual abuse, but from potential abuse. Carl Mills started serving customers under an initial structure that should have been regulated so no service or transfers can occur without Commission approval.

WC-2017-0037 **28 MPSC 3d 338**

**§13. Construction and equipment**

The Commission determined that public policy supports a full, as opposed to a partial, lead service line replacement as partial lead service line replacements have the potential to disrupt lead in service lines, presenting a serious health risk.

WR-2017-0285 **28 MPSC 3d 367**

**§14. Maintenance**

The Commission determined that public policy supports a full, as opposed to a partial, lead service line replacement as partial lead service line replacements have the potential to disrupt lead in service lines, presenting a serious health risk.

WR-2017-0285 **28 MPSC 3d 367**

**§14. Maintenance**

Tariff language specifying the customer's responsibility for their portion of the service line was determined by the Commission to not be a prohibition of the company's efforts to enter into mutual agreements with each customer to replace the customer's lead service lines. The customer still owns the line, is not required to consent to the replacement, and the company is not obligated to replace the customer-owned portion.

WR-2017-0285 **28 MPSC 3d 367**

**§15. Additions and betterments**

The Commission determined that public policy supports a full, as opposed to a partial, lead service line replacement as partial lead service line replacements have the potential to disrupt lead in service lines, presenting a serious health risk.  
WR-2017-0285 **28 MPSC 3d 367**

**§15. Additions and betterments**

Tariff language specifying the customer's responsibility for their portion of the service line was determined by the Commission to not be a prohibition of the company's efforts to enter into mutual agreements with each customer to replace the customer's lead service lines. The customer still owns the line, is not required to consent to the replacement, and the company is not obligated to replace the customer-owned portion.  
WR-2017-0285 **28 MPSC 3d 367**

**§16. Rates and revenues**

The Commission considers many characteristics when deciding a request for single tariff pricing. Items considered include: centralization of workforce; local versus tariff-area-wide management; financing sources; support for acquisition of small, underperforming systems; corporate costs; distribution of customers; and applicability of infrastructure system replacement surcharges among other considerations.  
WR-2017-0285 **28 MPSC 3d 367**

**§16. Rates and revenues**

The Commission determined that the benefits of consolidation presented did not outweigh the unique circumstance of St. Louis County being the sole county in the company's service area to qualify for infrastructure system replacement surcharges. Combining the water utility's three districts into one would disadvantage

customers in St. Louis County by being the only customers paying the additional surcharge, while still contributing to improvements in other areas.

WR-2017-0285 **28 MPSC 3d 367**

**§16. Rates and revenues**

Where feasible, direct assignment of costs to the responsible customer class is the preferred method of allocation.

WR-2017-0285 **28 MPSC 3d 367**

**§16. Rates and revenues**

A water utility's program to replace lead service lines, when not based on a legal requirement, requires the utility be made whole for the effort, but the utility is not entitled to a profit from the initiative. The Commission determined the distinction while noting the utility should be commended for its efforts.

WR-2017-0285 **28 MPSC 3d 367**

**§16. Rates and revenues**

The Commission found that the unanimous disposition agreement and the proposed tariff sheets were reasonable and should be approved.

WR-2018-0356 **28 MPSC 3d 744**

**§16. Rates and revenues**

The Commission found that the proposed rates set out in the tariff sheets were just and reasonable.

WR-2018-0356 **28 MPSC 3d 744**

**§16. Rates and revenues**

The Commission found that the water utility did not show that a claimed net operating loss was generated during the time frame of the ISRS, thus could not include it in the surcharge calculation.

WO-2018-0373 **28 MPSC 3d 749**

**§17. Return**

A water utility's program to replace lead service lines, when not based on a legal requirement, requires the utility be made whole for the effort, but the utility is not entitled to a profit from the initiative. The Commission determined the distinction while noting the utility should be commended for its efforts.

WR-2017-0285 **28 MPSC 3d 367**

**§31. Billing practices**

The Commission found that new automated meter technology, along with the benefits of monthly billing, were appropriate reasons to move quarterly billed customers to monthly billing. Monthly billing helps customers evaluate their usage and avoids prolonged water leaks.

WR-2017-0285 **28 MPSC 3d 368**

**§32. Accounting Authority Orders**

Elective replacement of lead service line performed for the purposes of providing safe and adequate service by avoiding the risks of partial lead service line replacement was found as a reason the Commission continued to allow of a water utility to defer and book the costs of customer-owned lead service line replacements under a previously approved Accounting Authority order. The Commission determined that public policy supports a full, as opposed to a partial, lead service line replacement as partial lead service line replacements has the potential to disrupt lead in service lines, presenting a serious health risk.

WR-2017-0285 **28 MPSC 3d 368**

**§32. Accounting Authority Orders**

Extending the normal AAO amortization time period of 3-5 years to a 10 year amortization was justified due to the extraordinary nature and extent of a water utility's lead

service line replacement program.  
WR-2017-0285 **28 MPSC 3d 368**

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