

REPORTS
OF THE
PUBLIC SERVICE COMMISSION
OF
THE STATE OF MISSOURI

Volume 29 MPSC 3d

January 1, 2019 – December 31, 2019

Morris Woodruff
Reporter of Opinions

JEFFERSON CITY, MISSOURI

(2022)

PREFACE

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, 2019 through December 31, 2019. 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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William P. Kenney	Scott Rupp
Maida Coleman	

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**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

The Staff of the Missouri Public)	
Service Commission,)	
)	
Complainants,	)	<u>File No. EC-2015-0315</u>
v.)	
)	
Union Electric Company)	
d/b/a Ameren Missouri,)	
)	
Respondent.)	

ORDER COMPLYING WITH SUPREME COURT MANDATE

ELECTRIC

§9 Jurisdiction and powers of the State Commission

Under Subsection 393.1075.11, RSMo, the Commission has the authority to “approve corporation-specific settlements and tariff provisions . . . to ensure that electric corporations can achieve the goals of . . . [MEEIA].”

§13.1 Energy Efficiency

In accordance with the mandate of the Supreme Court of Missouri’s opinion issued July 3, 2018, and the *Revised Non-Unanimous Stipulation and Agreement Addressing Ameren Missouri’s Performance Incentive Award* and the Commission order approving that agreement, Union Electric Company d/b/a Ameren Missouri was authorized to recalculate (subject only to verification of the accuracy of the recalculation) its performance incentive award for the period of October 1, 2014 through December 31, 2015, and was authorized to include the resulting sum for recovery in the appropriate Rider EEIC adjustment filings.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 16th day of January, 2019.

The Staff of the Missouri Public Service Commission,)
)
)
Complainants,)
v.)
)
Union Electric Company)
d/b/a Ameren Missouri,)
)
Respondent.)

File No. EC-2015-0315

ORDER COMPLYING WITH SUPREME COURT MANDATE

Issue Date: January 16, 2019

Effective Date: February 15, 2019

The Commission’s *Order Granting Staff’s Motion for Summary Determination and Denying Ameren Missouri’s Motion for Summary Determination* became effective in this matter on December 18, 2015. Subsequently, on July 3, 2018, the Supreme Court of Missouri vacated the Commission’s decision and remanded this matter “to the Commission for further proceedings consistent with this opinion.”¹

The Commission directed the parties to make suggestions as to how the Commission should proceed with this matter. The Staff of the Missouri Public Service Commission (Staff) and Union Electric Company d/b/a Ameren Missouri (Ameren Missouri) responded that while the appeal was pending, the Commission issued an order on November 2, 2016, approving the stipulation and agreement of the Staff, Ameren

¹ *Missouri Pub. Serv. Comm'n v. Union Elec. Co.*, 552 S.W.3d 532, 543 (Mo. 2018).

Missouri, and the Office of the Public Counsel (Public Counsel) in File No. EO-2012-0142² that provided a method to resolve the avoided cost issue remanded to the Commission through future Missouri Energy Efficiency Investment Act³ (MEEIA) Rider Energy Efficiency Investment Charge (Rider EEIC) filings.

Under Subsection 393.1075.11, RSMo, the Commission has the authority to “approve corporation-specific settlements and tariff provisions . . . to ensure that electric corporations can achieve the goals of . . . [MEEIA].” File No. EO-2012-0142 concerned Ameren Missouri’s Performance Incentive Award resulting from Cycle 1 of its MEEIA programs. The approved agreement contained a provision resolving the avoided costs issue if the Supreme Court of Missouri ruled in Ameren Missouri’s favor in the current case. Specifically, paragraph 14 of the approved stipulation and agreement authorized Ameren Missouri “to recalculate and correct its Performance Incentive based on the revised avoided cost”⁴ in its annual MEEIA Rider Energy Efficiency Investment Charge (Rider EEIC) tariff filing.⁵

Therefore, the Commission determines that Ameren Missouri is authorized to recalculate (subject only to verification of the accuracy of the recalculation) its performance incentive award for the period of October 1, 2014, through December 31, 2015, in accordance with the Court’s opinion and paragraph 14 of the *Revised Non-Unanimous Stipulation and Agreement Addressing Ameren Missouri’s Performance*

² File No. EO-2012-0142, *Order Approving Stipulation and Agreement Regarding Performance Incentive Award*, (issued November 2, 2016). The approved stipulation and agreement was signed only by Staff, Ameren Missouri, and Public Counsel, but no other party objected.

³ Section 393.1075, RSMo 2016.

⁴ File No. EO-2012-0142, *Order Approving Stipulation and Agreement Regarding Performance Incentive Award*, (issued November 2, 2016), Attachment A, *Revised Non-Unanimous Stipulation and Agreement Addressing Ameren Missouri’s Performance Incentive Award*, para. 14.

⁵ Union Electric Company, Electric Service, MO.P.S.C. Schedule No. 6, Sheet 91.11.

Incentive Award approved in File No. EO-2012-0142. Ameren Missouri is further authorized to include the resulting sum for recovery in its appropriate Rider EEIC adjustment filings.⁶

THE COMMISSION ORDERS THAT:

1. According to the mandate of the Supreme Court of Missouri in its opinion issued July 3, 2018, and in accordance with the *Revised Non-Unanimous Stipulation and Agreement Addressing Ameren Missouri's Performance Incentive Award* and the Commission order approving that agreement, Union Electric Company d/b/a Ameren Missouri is authorized to recalculate (subject only to verification of the accuracy of the recalculation) its performance incentive award for the period of October 1, 2014 through December 31, 2015, and further authorized to include the resulting sum for recovery in the appropriate Rider EEIC adjustment filings.

2. This order shall be effective on February 15, 2019.



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

⁶ A portion of the performance incentive was included in Ameren Missouri's November 2018 Rider EEIC tariff filing in File No. ER-2019-0151. (File No. ER-2019-0151, *Order Approving Rider Energy Efficiency Investment Charge Tariff Sheet*, (issued January 3, 2019).) The remaining portion is expected to be included in the November 2019 Rider EEIC filing.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Air Link)
Rural Broadband, LLC for Designation as an)
Eligible Telecommunications Carrier in the)
State of Missouri)
File No. DA-2019-0102

**ORDER GRANTING DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER**

CERTIFICATES

§46 Telecommunications

The application process for designation as an eligible telecommunications carrier is not designed to assess a company's technology broadband speed and latency capabilities. In any event, the FCC separately evaluates a winning bidder's technology before releasing any funding. In that regard, mechanisms are in place during the FCC's funding process to test and verify whether a company is meeting service obligations.

EVIDENCE, PRACTICE AND PROCEDURE

§23 Notice and hearing

A "contested case" means "a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing." Section 536.010 (4), RSMO. The "law" referred to in this definition includes any ordinance, statute, or constitutional provision that mandates a hearing. No law "requires" that there be a hearing on the company's application for designation as an eligible telecommunications carrier, and an application for such a designation is not a "contested" case.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 23rd day of January, 2019.

In the Matter of the Application of Air Link)	
Rural Broadband, LLC for Designation as	)	<u>File No. DA-2019-0102</u>
Eligible Telecommunications Carrier)	
In the State of Missouri)	

**ORDER GRANTING DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER**

Issue Date: January 23, 2019

Effective Date: February 22, 2019

On October 12, 2018, Air Link Rural Broadband, LLC, (the “Company”) filed its application with the Missouri Public Service Commission (“Commission”) seeking designation as an eligible telecommunications carrier (“ETC”) in the state of Missouri. On November 26, 2018, the Commission issued its *Order Granting Application of Conexon, LLC, to Intervene*.¹ On January 16, 2019, the Staff of the Missouri Public Service Commission (“Staff”) filed its *Recommendation*.²

The Commission finds that the Company was a successful participant in a Connect America Fund II (“CAF II”) reverse auction held by the Federal Communications Commission (“FCC”). The CAF II program is part of the FCC’s reform and modernization of its universal service fund support programs designed to accelerate the expansion of broadband services to rural areas and any areas which presently lack the infrastructure

¹ EFIS Item No. 4.

² EFIS Item No. 12.

capable to support at least 10/1 Mbps of fixed broadband services. The FCC requires a winning company to obtain ETC designation from its respective public utilities commission prior to receiving the allocated funds.³

Commission Rule 4 CSR 240-31.130 governed the specific eligible telecommunications carrier requirements that each applicant had to meet when this application was filed. Missouri's ETC application requirements were contained in 4 CSR 240-31.130(1). This rule was rescinded on December 30, 2018. ETC application requirements are now contained in 4 CSR 240-31.016.⁴

Conexon, LLC ("Conexon") has raised the concern that the Company's technology might be incapable of meeting the speed and/or latency requirements required of the Company's auction commitments. It has also raised a concern about the Company's assumed subscription rate for voice and broadband services.⁵ Conexon asks the Commission to allow additional time for discovery and to hold a hearing regarding the Company's capabilities before ruling on the Company's Application.⁶ Thus, Conexon asks the Commission to treat the Company's application in the manner of a "contested case".

A "contested case" means "a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing." Section 536.010 (4), RSMO. The "law" referred to in this definition includes any ordinance, statute, or constitutional provision that mandates a hearing.⁷ The Commission finds that

³ Per FCC rules, the Company must receive ETC designation within 180 days of a company's being announced as a winning bidder. Staff has ascertained that the deadline is February 25, 2019. EFIS Item No. 12.

⁴ Applications must also comply with 4 CSR 240-2.060.

⁵ EFIS Items No. 3 and 10.

⁶ EFIS Item No. 10.

⁷ *State ex rel. Yarber v. McHenry*, 915 S.W.2d 325, 328 (Mo. banc 1995); *McCoy v. Caldwell County*, 145 S.W.3d 427 (Mo. 2004).

no law “requires” that there be a hearing on the Company’s application. The Commission also finds with respect to Conexon’s stated concerns that the ETC application process is simply not designed to assess a company’s technology broadband speed and latency capabilities. The Commission further finds that, in any event, the FCC will separately evaluate a winning bidder’s technology before releasing any funding. In that regard, mechanisms are in place during the FCC’s funding process to test and verify whether a company is meeting service obligations. The FCC will not release the funding until the FCC approves the Company’s plan to meet the obligations imposed by the company’s winning bid. This plan includes detailed information about the technology that the Company intends to deploy, including a requirement for a professional engineer to certify that the Company’s technology can meet the speed and latency provided for in the Company’s bid.⁸ Because this is not a “contested case” and so Conexon is not entitled to a hearing; because the ETC review process is not, in any event, designed to assess a company’s technology broadband speed and latency capabilities; and because the FCC will, in any event, monitor the Company’s technical capabilities, the Commission will deny Conexon’s request for discovery time and for a hearing.

After its own independent review of the filings of the Company, Conexon, and Staff,⁹ the Commission finds that the Company has satisfied the requirements both of rescinded rule 4 CSR 240-31.130 and new rule 4 CSR 240-31.016. The Application satisfies all of the requirements identified in 4 CSR 240-2.060 as required in 4 CSR 240-31.016(2)(A) in that has been verified by oath as to its truthfulness. The Application identifies all persons and entities, provides all information, and makes all statements and

⁸ *Staff Recommendation*, F.N. 7, EFIS Item No. 12.

⁹ EFIS Items No. 1, 3, 7, 10, 11, and 12.

declarations as required in 4 CSR 240-31.016 (B). The Commission will grant the Company's Application.

THE COMMISSION ORDERS THAT:

1. The requests of Conexon, LLC, for discovery time and for a hearing are denied.
2. The application of Air Link Rural Broadband LLC¹⁰ (the "Company") for designation as an eligible telecommunications carrier ("ETC") is granted.
3. The ETC designation shall be limited to the areas identified by census block in the Company's initial application.¹¹
4. This order shall be effective on February 22, 2019.
5. This file shall be closed on February 23, 2019.



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.

Graham, Regulatory Law Judge

¹⁰ EFIS Item No. 1.

¹¹ EFIS Item No. 1, Exhibit 1 (all within Howard County, Missouri).

**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**

REPORT AND ORDER

ACCOUNTING

§42 Accounting Authority Orders

It was in the public interest to authorize a deferral accounting mechanism or tracker.

§42 Accounting Authority Orders

The Commission only approved one of four parts of Union Electric d/b/a Ameren Missouri's pilot program upon which the evidence of expected performance was based. Further, the Commission found it was impossible to determine if a particular electric vehicle (EV) in Ameren Missouri's service territory was purchased because of the EV Charging Corridor Sub-Program. Therefore, the Commission did not order a performance based metric as part of the tracker.

§42 Accounting Authority Orders

Commission could not determine based on the evidence in the case, that seven years was an appropriate amortization period for these expenses. Therefore, the Commission did not authorize a seven-year amortization with the tracker or determine if the costs would be included in rates. The Commission stated that those determinations would be determined in a future rate case.

ELECTRIC

§9 Jurisdiction and powers of the State Commission

Under its broad regulatory power in Section 393.130, RSMo, to ensure that services provided by an electric corporation are safe and adequate, the Commission had the authority to approve or reject incentive programs or promotional practices such as the Charge Ahead program presented by Union Electric Company d/b/a Ameren Missouri. The Commission exercised this power by investigating, examining, and hearing evidence on proposed tariff changes for new rates and services of those electrical corporations.

§9 Jurisdiction and powers of the State Commission

The Commission promulgated rules to implement its supervisory powers with regard to promotional practices. Thus, the Commission concluded Union Electric Company d/b/a

Ameren's Charge Ahead programs should be evaluated under the standards set out in Chapter 14 of the Commission's rules (20 CSR 4240-14).

§43 Accounting Authority orders

It was in the public interest to authorize a deferral accounting mechanism or tracker.

EXPENSE

§10 Electric and power

§16 Ascertainment of expenses generally

§19 Future expenses

§69 Administrative expense

The Commission authorized Union Electric Company d/b/a Ameren Missouri to use a deferral accounting mechanism to track the Electric Vehicle (EV) Charging Corridor Sub-Program costs and administrative expenses for possible recovery of those prudently incurred expenses in future rate cases.

§22 Reasonableness generally

§69 Administrative expense

Union Electric Company d/b/a Ameren Missouri's \$6.88 million budgeted for its Charge Ahead Program included 44% dedicated to program administration, leaving only \$3.8 million for the actual incentives that were purported to provide the benefits to all customers. This high percentage of the budget allocated for administrative costs was unreasonable.

RATES

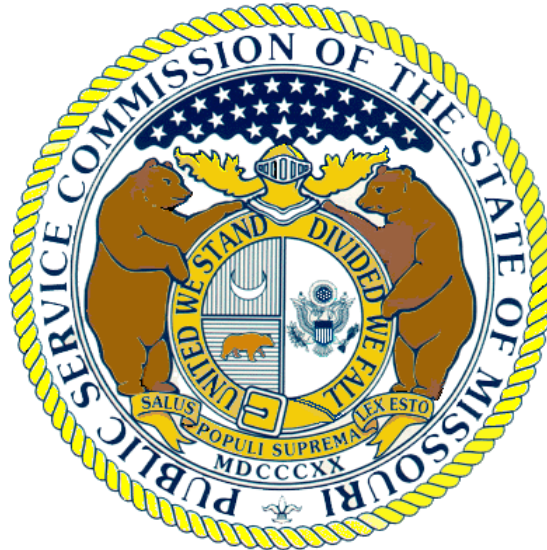
§8 Reasonableness generally

The Electric Vehicle (EV) Charging Corridor Sub-Program was "just and reasonable, reasonable as a business practice, economically feasible and compensatory, and reasonably calculated to benefit both the utility and its customers." (20 CSR 4240-14.030(1).) The EV Charging Corridor Sub-Program would "not offer or grant any undue or unreasonable preference or advantage" or "subject any person to an undue or unreasonable prejudice or disadvantage." (20 CSR 4240-14.030(2).) For those reasons, Union Electric Company d/b/a Ameren Missouri's EV Charging Corridor Sub-Program was in the public interest.

§8 Reasonableness generally

Union Electric Company d/b/a Ameren Missouri's Business Solutions Program was not reasonable or in the public interest because it included two equipment categories that did not need incentives; Ameren Missouri did not provide sufficient information in the cost-benefit analysis to demonstrate that the program would realize the benefits for which it was created or that proper controls would prevent free riders; and presented a program with very high administrative costs.

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) **File No. ET-2018-0132**
For Approval of Efficient Electrification) Tariff Tracking Nos. YE-2018-0104
Program) and YE-2018-0105

REPORT AND ORDER

Issue Date: February 6, 2019

Effective Date: February 16, 2019

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	)	<u>File No. ET-2018-0132</u>
For Approval of Efficient Electrification)	Tariff Tracking Nos. YE-2018-0104
Program)	and YE-2018-0105

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REPORT AND ORDER

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 February 22, 2018, Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or “Company”) 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 sought 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 authority to use a deferral accounting mechanism for cost recovery of the Charge Ahead program. Tariff sheets to implement the programs were submitted as separate filings as follows: line extension tariff (Tariff Tracking No. YE-2018-0103); Charge Ahead – Business Solutions (Tariff Tracking No. YE-2018-0104); and Charge Ahead – Electric Vehicles (Tariff Tracking No. YE-2018-0105). The proposed tariff sheets bore an effective date of April 23, 2018.

The Commission issued notice of the application and granted the intervention requests of the Department of Economic Development -- Division of Energy (“DE”), the

Natural Resources Defense Council (“NRDC”), Renew Missouri Advocates d/b/a Renew Missouri, the Sierra Club, Spire Missouri Inc., the Missouri Industrial Energy Consumers (“MIEC”), ChargePoint, Inc., Kansas City Power & Light Company (“KCP&L”), KCP&L Greater Missouri Operations Company (“GMO”), and The Empire District Electric Company. The Staff of the Missouri Public Service Commission (“Staff”) filed a recommendation and a request for hearing on April 3, 2018.

On April 5, 2018, the Office of the Public Counsel (“Public Counsel”) filed a motion to dismiss the application and reject the tariffs. On April 12, 2018, the Commission suspended the tariffs for 120 days from their original effective date of April 23, 2018, until August 21, 2018. Responses to the motion to dismiss were received and on May 2, 2018, the Commission denied the motion. On May 24, 2018, after receiving a proposed procedural schedule from the parties, the Commission further suspended the tariffs for an additional six months until February 21, 2019.

A nonunanimous stipulation and agreement with regard to the line extension policy was filed on October 4, 2018, and it was amended on October 12, 2018. The stipulation and agreement has been approved by a separate Commission order.

The parties filed written direct, rebuttal, and surrebuttal testimony and provided a list of remaining issues for Commission determination. An evidentiary hearing was held on December 4-5, 2018. Thereafter, the parties filed initial briefs on January 7, 2019, and reply briefs on January 17, 2019. Additionally, the Missouri Petroleum Marketers & Convenience Store Association (“MPCA”) was allowed to file an *amicus curiae* brief.

I. Jurisdiction and Standard for Decision

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 and accompanying tariff sheets on February 22, 2018, seeking approval of two new tariffed programs that are collectively referred to as the “Charge Ahead” program. The application also sought 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 authority to use a deferral accounting mechanism to recover the costs of the Charge Ahead program.

3. The Charge Ahead program as proposed consists of two separate targeted incentive offerings: the Charge Ahead – Electric Vehicles Program (Tariff Tracking No. YE-2018-0105) and the Charge Ahead – Business Solutions Program (Tariff Tracking No. YE-2018-0104).

Conclusions of Law

A. Ameren Missouri is an “electrical corporation”¹ and “public utility”² and, thus, is subject to the supervision of the Commission.³

B. The Commission has been vested, as part of its enacting statutes, with all

¹ Subsection 386.020(15), RSMo., 2016. (All statutory references are to the Revised Statutes of Missouri 2016 unless otherwise noted.)

² Subsection 386.020(43), RSMo.

³ Subsections 393.140(1) and 386.250(1), RSMo.

power and authority to carry out and fully effectuate its purpose.⁴ That authority extends to “such other and further extent, and to all such other and additional matters and things, and in such further respects as may herein appear, either expressly or impliedly.”⁵

C. The courts have affirmed the breadth of this authority⁶ finding it “referable to the police power of the state.”⁷ Moreover, the Commission’s powers are flexible “to meet changing conditions, as the commission, in its discretion, may deem to be in the public interest.”⁸

D. As part of the Commission’s general supervision of electrical corporations, Subsection 393.130.1, RSMo., provides that every electrical corporation must “furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable. . . . [A]ny service rendered or to be rendered shall be just and reasonable and not more than allowed by law or by order or decision of the commission.”

E. Subsection 393.150.1, RSMo., authorizes that whenever an electrical company files with the Commission “any schedule stating a new rate or charge, or any new form of contract or agreement, or any new rule, regulation or practice relating to any rate, charge or service or to any general privilege or facility,” the Commission may conduct an investigation and hearing to determine “the propriety of such rate, charge, form of contract or agreement, rule, regulation or practice[.]”

⁴ Section 386.040, RSMo.

⁵ Subsection 386.250(7), RSMo.

⁶ See, e.g., *State ex rel. Pitcairn v. Pub. Serv. Comm’n*, 111 S.W.2d 982, 986 (Mo. App. 1937) (“[The legislature] thereby vested the commission with certain positive powers, expressly conferred, and also vested it with all others necessary and proper to carry out fully and effectually all such powers so delegated, and necessary to give full effect to the act.”).

⁷ *State ex rel. Chicago, R. I. & P. R. Co. v. Pub. Serv. Comm’n*, 312 S.W.2d 791, 796 (Mo. 1958).

⁸ *State ex rel. Chicago, R. I. & P. R. Co. v. Pub. Serv. Comm’n*, 312 S.W.2d 791, 796 (Mo. 1958).

F. Subsection 393.140(2), RSMo., gives the Commission power to:

. . . order such reasonable improvements *as will best promote the public interest, preserve the public health and protect* those using such gas, electricity, water, or sewer system, and those employed in the manufacture and distribution thereof, and have power to order reasonable improvements and extensions of the works, wires, poles, pipes, lines, conduits, ducts and other reasonable devices, apparatus and property of gas corporations, electrical corporations, water corporations, and sewer corporations.⁹

G. In 4 CSR 240-14 (“Chapter 14”), the Commission has promulgated rules to regulate the promotional practices of a utility. The proposed Charge Ahead programs are promotional practices as defined by 4 CSR 240-14.010(6)(L). As such, a determination of whether these promotional practices should be authorized is determined by the promotional practices standards found at 4 CSR 240-14.030 as follows:

(1) All promotional practices of a public utility or its affiliate shall be just and reasonable, reasonable as a business practice, economically feasible and compensatory and reasonably calculated to benefit both the utility and its customers.

(2) No public utility or its affiliate, directly or indirectly, in any manner or by any device whatsoever, shall offer or grant to any person any form of promotional practice except as is uniformly and contemporaneously extended to all persons in a reasonable defined class. No public utility or its affiliate, in the granting of a promotional practice, shall make, offer or grant any undue or unreasonable preference or advantage to any person or subject any person to any undue or unreasonable prejudice or disadvantage. . . .

H. The parties did not clearly set out the legal standard under which the Commission should make a decision regarding the Charge Ahead programs presented by Ameren Missouri. The issues list asks merely whether the Commission should “accept, reject, or modify” the proposals. The issues list also questions whether Ameren

⁹ Emphasis added.

Missouri has shown that the programs are needed and if they are cost effective. However, the parties do not agree that a showing of need or cost-effectiveness is required.¹⁰

I. Under the Commission's broad powers to supervise and regulate public utilities, it has the authority to approve or reject incentive programs or promotional practices such as those presented by Ameren Missouri. The Commission has the power to supervise the services provided by an electrical corporation to see that those services are safe and adequate.¹¹ The Commission exercises this power by investigating, examining, and hearing evidence on proposed tariff changes for new rates and services of those electrical corporations.¹²

J. Further, the Commission has promulgated rules to implement its supervisory powers with regard to promotional practices. Thus, the Commission will evaluate the Charge Ahead programs under the standards set out in Chapter 14 of the Commission's rules.

II. Issues as Defined by the Parties¹³

1. Should the Commission approve, reject, or modify Ameren Missouri's Charge Ahead – Electric Vehicles Program?

a. Has Ameren Missouri provided sufficient evidence that there is a need for the program?

b. Has Ameren Missouri provided sufficient evidence that the program is cost effective?

¹⁰ See the position statements and briefs of the parties.

¹¹ Section 393.130, RSMo.

¹² Section 393.140, RSMo.

¹³ File No. ET-2018-0132, *List of Issues, List and Order of Witnesses, Order of Opening Statements and Order of Cross-Examination* (filed Nov. 20, 2018).

Although the parties set out the above as separate issues, they are so interrelated that the Commission will address them together below.

Findings of Fact

1. The stated purpose of the Charge Ahead – Electric Vehicles Program (“EV Charging Program”) “is to stimulate the development of infrastructure within the Company’s service territory that is needed to support widespread adoption of electric vehicles by the public.”¹⁴ The Company proposed to accomplish this by providing targeted incentive offerings to private persons or entities to overcome the initial market barriers to deployment of this charging infrastructure.¹⁵

2. The EV Charging Program consists of four independent sub-programs: corridor charging; multi-family charging; public charging (also known as “around town charging”); and workplace charging.¹⁶

3. The proposed tariff sheets set a combined incentive limit of \$11 million for all four sub-programs and set a cap for each of the four sub-programs. However, a provision for fund reallocation between sub-programs is available after two years. The EV Charging Program is also limited to a five-year duration.¹⁷

4. The Multi-Family Charging Sub-Program has a budget of \$4.4 million for providing incentives to the owners of multi-family residential premises so that the property owner can provide EV charging to its residents.¹⁸ There is a \$5,000 or 50% of the total

¹⁴ Tariff Tracking No. YE-2018-0105, Sheet No. 165.

¹⁵ Tariff Tracking No. YE-2018-0105, Sheet No. 165.

¹⁶ Tariff Tracking No. YE-2018-0105, Sheet No. 165.

¹⁷ Tariff Tracking No. YE-2018-0105, Sheet No. 165.1.

¹⁸ Tariff Tracking No. YE-2018-0105, Sheet Nos. 165.3 and 165.4.

project cost per charging port cap and up to 10 ports may be funded at a single residential property with multiple dwelling units.¹⁹

5. The Public Charging Program has a budget of \$1.1 million for providing incentives to promote the deployment of EV charging stations that are accessible to the general public. This sub-program would provide limited incentives to owners of non-residential premises that are available to the public including, retail establishments, rest areas, parks, entertainment venues, gas stations, and public parking lots.²⁰

6. The Workplace Charging Program has a budget of \$1.1 million and would provide for incentives to promote the deployment of EV charging infrastructure that is accessible in workplaces for employees, visitors, and fleet vehicles.²¹

7. The Corridor Charging Sub-Program has a budget of \$4.4 million and would provide for the development of a public minimum practical network of EV charging infrastructure, including Level 3 DCFC,²² along the highway corridors throughout the Company's service territory. The sub-program is designed with a reverse auction approach to determine the amount of incentives that would be available for each site with a cap of \$240,000 per site, or \$360,000 per site for charging ports with a capacity of 150 kW or greater. Items eligible for incentives are the line extension, demand mitigation solutions, "Make Ready"²³ costs, and the upfront cost of charging equipment.²⁴ This

¹⁹ Tariff Tracking No. YE-2018-0105, Sheet Nos. 165.3.

²⁰ Tariff Tracking No. YE-2018-0105, Sheet Nos. 165.4 and 165.5.

²¹ Tariff Tracking No. YE-2018-0105, Sheet Nos. 165.5 and 165.6.

²² Direct Current Fast Charging ("DCFC") is commonly referred to as "Level 3 charging" or "fast charging" and utilized to quickly recharge EVs, with a common power rating of 50kW or higher.

²³ "Make Ready" is defined in the tariff as "infrastructure incurring substantial costs to identify, acquire and develop sites and structures to facilitate the installation of EV Charging Infrastructure." Tariff Tracking No. YE-2018-0105, Sheet No. 165.

²⁴ Tariff Tracking No. YE-2018-0105, Sheet No. 165.2.

reverse auction allows for the competitive market to determine the amount of incentive necessary to actually build the charging station.

8. Of approximately 5.6 million vehicles registered in the state of Missouri in 2016, only about 4,450 were EVs. Even though Missouri's EV adoption rate is low compared to other states (Missouri is 34th out of 50 states),²⁵ the number is on the rise and there is a growing market trend toward purchasing EVs.²⁶

9. The Company's Integrated Resource Plan ("IRP") contemplated load growth from EV adoption. In the IRP the Company's base forecast was that there would be almost 25,000 electric vehicles in its service territory by 2028. The increased adoption rate for 2017 is in line with this forecast.²⁷

10. Even without Ameren Missouri's Charge Ahead programs, by 2030, Missouri is projected to have roughly 201,000 EVs in the state.²⁸ That level of EV adoption will require more charging infrastructure and providing incentives will likely encourage greater EV adoption in the near-term.²⁹

11. Several other states (including Ohio, Utah, California, and Massachusetts) recognize the need for utilities to facilitate EV adoption using charging infrastructure incentives.³⁰ Additionally, states with supportive EV policies have greater EV adoption rates than those without such policies.³¹

²⁵ Exhibit 2, Justis Direct, pages 10-13; and Ex. 6, Wills Direct, p. 20, Figure 3.

²⁶ Ex. 300, Kelley Rebuttal, p. 5.

²⁷ Ex. 6, Wills Direct, p. 28.

²⁸ Ex. 651, Ellis Surrebuttal, pp. 5-6, citing National Renewable Energy Laboratory. "National Plug-In Electric Vehicle Infrastructure Analysis." September 2017, p. 51.
<https://www.nrel.gov/docs/fy17osti/69031.pdf>.

²⁹ Ex. 651, Ellis Surrebuttal, pp. 5-6.

³⁰ Ex. 2, Justis Direct, pp. 15-17, Table 2; and Ex. 6, Wills Direct, pp. 41-43; Ex. 650, Ellis Rebuttal, pp. 15-16; and Ex. 651, Ellis Surrebuttal, p. 3. See also, Transcript pp. 279-280.

³¹ Ex. 2, Justis Direct, pp. 13-14.

12. Three key barriers to EV adoption are: a lack of consumer awareness and understanding of EV performance; the initial cost; and a lack of sufficient and suitable charging infrastructure.³²

13. The lack of sufficient EV charging infrastructure can make purchasing an EV in rural or suburban areas less feasible and make traveling long distances or through the state of Missouri impractical.³³ This “range anxiety” is a significant barrier to EV adoption.³⁴

14. Creating a sufficient charging network throughout Ameren Missouri’s territory and the state as a whole decreases “range anxiety” by giving consumers the confidence that they can safely travel in their EV throughout the state and be able to charge the EV as needed. Thus, decreasing “range anxiety” should increase EV adoption by removing this barrier.³⁵

15. Ameren Missouri’s market research through its “Request for Information,” along with other studies and sources, supports a finding that without financial assistance, public fast charging along Missouri’s highway corridors is not feasible for the private sector and will not be feasible anytime soon.³⁶

16. To spur EV adoption growth in the most efficient manner, a “holistic charging ecosystem” (the ability to charge at home, at work, and public, including highway corridors) is needed.³⁷

³² Ex. 2, Justis Direct, p. 20; Ex. 300, Kelley Rebuttal, p. 4; and Tr. pp. 307-309.

³³ Ex. 300, Kelley Rebuttal, pp. 4-6; and Ex. 651, Ellis Surrebuttal, p. 8.

³⁴ Tr. pp. 106 and 269.

³⁵ Ex. 2, Justis Direct, p. 14.

³⁶ Ex. 2, Justis Direct, pp. 28-29; Ex. 3, Justis Surrebuttal, p. 14; Ex. 300, Kelley Rebuttal, p. 7; and Ex. 7, Willis Surrebuttal, pp. 52-53.

³⁷ Ex. 2, Justis Direct, pp.24, 28-29; and Ex. 300, Kelley Direct, pp. 6-7.

17. The KCP&L and GMO Clean Charge Network has been effective in spurring growth in the EV adoption rate in the Kansas City area.³⁸ Statistics show that the Kansas City area was in the top two or three cities nationwide for EV growth during 2016 and had the highest EV growth rate in the United States for the 4th Quarter of 2016 and the 1st Quarter of 2017.³⁹

18. The Missouri EV Collaborative⁴⁰ identified and generally mapped out the need for 40 charging stations along Missouri's highways in order to have a minimum practical network.⁴¹

19. As a result of Volkswagen's ("VW") settlement from its diesel engine testing scandal, the entire state of Missouri may gain six of these needed highway corridor charging stations through funding from VW's Electrify America plan.⁴² The Missouri EV Collaborative recommended spending the Electrify America funds on those charging stations.⁴³ Additionally, there may be another \$6 million from the VW Trust available over the next 10 years. These VW Electrify America and VW Trust funds will be controlled by the Missouri Department of Natural Resources and are not guaranteed to be awarded for the purpose of building EV charging stations.⁴⁴

20. The most effective way to deploy EV charging stations statewide in a timely manner would be to use all funding sources in combination.⁴⁵

³⁸ Ex. 3, Justis Surrebuttal, pp. 12-14.

³⁹ Ex. 2, Justis Direct, p. 31.

⁴⁰ The Missouri EV Collaborative is an informal group of environmental advocates and utilities in Missouri led by Ameren Missouri.

⁴¹ Ex. 3, Justis Surrebuttal, pp. 6-7; specifically Fig. 3. (Figure 3 was marked as "Exhibit 8" for demonstrative purposes during Ameren Missouri's opening statement at the hearing. Thus, references in the briefs to Exhibit 8 are also references to Exhibit 3, page 7, Figure 3.)

⁴² Ex. 3, Justis Surrebuttal, pp. 6-7; and Ex. 102, Murray Rebuttal, pp. 3-4.

⁴³ Ex. 3, Justis Surrebuttal, p. 6.

⁴⁴ Ex. 3, Justis Surrebuttal, p. 6.

⁴⁵ Ex. 301, Kelley Surrebuttal, p. 5

21. At least one state agency, the Missouri Department of Economic Development - Division of Energy, has recognized the benefits of increasing the number of charging stations in Missouri and increasing the number of EVs as published in the Missouri Comprehensive State Energy Plan in October 2015. The plan also acknowledges that electric utilities are in a position to support EV infrastructure because of the interrelation of EV charging stations with the electric grid.⁴⁶

22. The electric service needs of Ameren Missouri's customers are evolving as demonstrated by the trend toward EV adoption in the state and nationally and the growing number of automakers that are aggressively ramping up EV production.⁴⁷

23. Having more EVs on Missouri highways has local environmental and health benefits including cleaner local air because of no exhaust emissions or petroleum spills or leaks.⁴⁸ Additionally, EVs can have other environmental benefits from the use of renewable sources to produce the electricity.⁴⁹

24. Incentives for EV charging hardware and installation represent an efficient, low-risk model that will encourage long-term electric vehicle adoption.⁵⁰

25. Incentive-based programs can provide fast deployments of charging stations, competitive choice for customers, and low administrative burdens to utilities and customers.⁵¹

26. Financial benefits from an EV charging network accrue to both the utility and the ratepayers. Utilities and ratepayers benefit economically from the improved

⁴⁶ Ex. 2, Justis Direct, p. 9; citing the Missouri Comprehensive State Energy Plan at p. 104.

⁴⁷ Ex. 2, Justis Direct, p. 22; and Ex. 6, Wills Direct, pp. 19 and 31-33.

⁴⁸ Ex. 2, Justis Direct, pp. 6-7; Ex. 4, Pickles Direct, p. 7, and Tr. p. 114.

⁴⁹ Ex. 300, Kelley Rebuttal, p. 8.

⁵⁰ Ex. 650, Ellis Rebuttal, pp. 3-4.

⁵¹ Ex. 650, Ellis Rebuttal, p. 14.

utilization of fixed assets when charging is done in off-peak times. EVs are considered to be a flexible load that can charge during periods when demand is low.⁵²

27. The financial benefits to the utility and to the ratepayer from an EV charging network are not merely from the additional electricity sales at the charging stations, but are also obtained through additional electric sales from charging at home and creating more efficient utilization of the electric grid.⁵³ All ratepayers ultimately will receive those benefits from the spreading of fixed costs over a greater amount of usage creating rates that are lower than if there was less usage.⁵⁴

28. Ameren Missouri estimated the gross revenues for charging one EV at an incremental margin of \$259 per year. This calculation was made using the rate schedule for the residential class of customers.⁵⁵

29. Ameren Missouri performed a ratepayer impact measure (“RIM”) test to determine the cost effectiveness of the EV Charging Program. The result was a RIM of 1.19, meaning that for every \$1.00 spent on program incentives, the utility would produce \$1.19 in revenue.⁵⁶

30. Staff, through its witness Sarah L. K. Lange, calculated various scenarios to show what the margin per EV might be and how it would change depending on the assumptions used and on which rate class (residential, small general services (SGS), or large general services (LGS)) the electricity was sold.⁵⁷ Ms. Lange’s calculations were not meant to reflect the exact value that Staff thought was the appropriate margin to use,

⁵² Ex. 6, Wills Direct, p. 21; Ex. 300, Kelley Rebuttal, p. 8; and Tr. p. 283.

⁵³ Ex. 7, Wills Surrebuttal, p. 13-14.

⁵⁴ Ex. 3, Justis Surrebuttal, pp. 13-14; and Ex. 7, Wills Surrebuttal, p. 13-14.

⁵⁵ Ex. 6, Wills Direct, pp. 25-26; and Ex. 101, Lange Rebuttal, p. 5.

⁵⁶ Ex. 6, Wills Direct, p. 34.

⁵⁷ Ex. 101, Lange Rebuttal, pp. 6-7.

but rather to demonstrate that Ameren Missouri's estimate of the impact to ratepayers is not reasonable because of its assumptions.⁵⁸

31. Ameren Missouri provided no break down per sub-program of the estimated margin per EV.⁵⁹ This lack of detail in the margin calculation is not a reasonable assumption given the great fluctuations in the margin per EV if the calculation is done using different rate classes. Further, it is not reasonable to assume in the calculation that charging for the public and workplace sub-programs (and possibly the multi-family sub-program) will take place in a residential rate class.⁶⁰

32. Additionally, Ameren Missouri's assumption used in the calculation of the margin per EV that each EV will be driven 40 miles per day and that charging will not be split between workplace and home has no support.⁶¹

33. Ameren Missouri also assumed that only 20% of EVs will be charging during system peak conditions, which is inconsistent with the avoided costs projected in its 2019 Missouri Energy Efficiency Investment Act ("MEEIA") application and may not be a reasonable assumption for all programs.⁶²

34. Further, in its margin calculations, Ameren Missouri gave no consideration for the possibility of Time of Use ("TOU") rates, the timing of future rate cases in determining how quickly net revenues generated by EV charging will benefit other ratepayers, or any consideration for the cost to comply with the Renewable Energy Standard associated with the associated load growth.⁶³

⁵⁸ Ex. 101, Lange Rebuttal.

⁵⁹ Ex. 101, Lange Rebuttal. p. 11-12; and Tr. p. 457.

⁶⁰ Ex. 101, Lange Rebuttal, pp. 6-9.

⁶¹ Ex. 101, Lange Rebuttal, pp. 8-9.

⁶² Ex. 101, Lange Rebuttal, pp. 9-10.

⁶³ Ex. 6, Wills Direct, p. 35; and Ex. 101, Lange Rebuttal, pp. 2-4.

35. Because so many inputs and assumptions in Ameren Missouri's calculations are unreasonable, unsupported, or unknown, the Commission cannot find that the Public Charging Program, Workplace Charging Program, or Multi-Family Charging Sub-Program are reasonable or in the public interest.

36. Even accepting Ameren Missouri's RIM test results for the EV program as a whole, 80-90% of the charging, and therefore the revenue from the electricity sales, is expected to occur at the EV owner's home.⁶⁴ Thus, if only the electricity sales from the corridor charging stations were considered the RIM test result would be negative indicating less revenue than the cost. This means it is unlikely that the electricity sales from the corridor charging stations themselves will produce a "cost effective" program when measuring only revenue from electric sales of the corridor charging stations.

37. The goal of the program, however, is to transform the EV market by removing as many barriers to EV adoption as possible in order to increase the number of EVs that will ultimately be doing most of their charging at home during off-peak hours.⁶⁵ It is not the goal to make a profit off sales of electricity from each individual charger.⁶⁶ Thus, the program need not be financially cost effective to be successful. In this type of pilot program, even if the sales of electricity from the corridor charging stations do not completely compensate for the entire cost of the program, the other benefits, such as decreasing "range anxiety" and, thereby, increasing EV adoption, can justify the expense.

⁶⁴ Ex. 651, Ellis Surrebuttal, p.7, citing, Department of Energy. "Charging at Home." <https://www.energy.gov/eere/electricvehicles/charging-home>; and Ex. 2, Justis Direct, p. 29.

⁶⁵ Ex. 7, Wills Surrebuttal, pp. 14-15.

⁶⁶ Ex. 3, Justis Surrebuttal, p. 16.

Conclusions of Law

A. Section 393.130, RSMo., prohibits an electrical corporation from granting “any undue or unreasonable preference or advantage” or causing “any undue or unreasonable prejudice or disadvantage”

B. Pursuant to Section 393.140, RSMo., and 4 CSR 240-14.0303(3), Ameren Missouri must include in its tariffs incentive programs such as the proposed Charge Ahead programs.

C. The Commission has promulgated regulations at Chapter 14 to govern promotional practices by utilities. That regulation requires that all promotional practices, such as the Charge Ahead programs “be just and reasonable, reasonable as a business practice, economically feasible and compensatory and reasonably calculated to benefit both the utility and its customers.”⁶⁷ Additionally, that regulation requires that the programs be offered or granted “uniformly and contemporaneously . . . to all persons in a reasonable defined class”⁶⁸ and must not “offer or grant any undue or unreasonable preference or advantage to any person or subject any person to any undue or unreasonable prejudice or disadvantage. . . .”⁶⁹

Decision

Ameren Missouri has presented the Charge Ahead – EV Program in order to provide incentives to private persons or entities to develop EV charging stations within its service territory. Ameren Missouri argued that the Charge Ahead - EV Program is needed because the free market alone will not develop the holistic charging infrastructure that is

⁶⁷ 4 CSR 240-14.0303(1).

⁶⁸ 4 CSR 240-14.0303(2).

⁶⁹ 4 CSR 240-14.0303(2).

needed to spur widespread EV adoption and meet the electric service needs of those that have been adopted. The Commission agrees, in part, but finds that the evidence supports finding that only the EV Charging Corridor Sub-Program meets all the criteria needed for approval and is in the public interest.⁷⁰ The other Charge Ahead sub-programs (public, workplace, and multi-family) may be needed and may provide some benefits, but that does not necessarily lead to the conclusion that incentive payments to select customers to implement those programs is an appropriate use of ratepayer funds.

The goal of each of the EV charging sub-programs is a good one. It was shown that if a sufficient number of EVs are adopted, there could be substantial benefits for the utility, ratepayers, and possibly even the environment, especially if those EVs are charged at times when the electric grid is underutilized. However, because so many inputs and assumptions in Ameren Missouri's calculations were unreasonable, unsupported, or unknown, the Commission cannot determine how many EVs would be supported, at what cost, and whether the same vehicle would be counted multiple times because it is charging at home and at work.

While it is acceptable to make assumptions and the numbers do not have to be 100% certain for the Commission to approve a small pilot program, the evidence presented leaves too many questions about the margin per EV, the numbers of EVs the program will encourage, and how many EVs the incentivized chargers would be able to serve for the Commission to find that the Public Charging Program, Workplace Charging Program, or Multi-Family Charging Sub-Program are appropriate promotional practices, even on a relatively small scale program. Without confidence that these sub-programs

⁷⁰ See, 4 CSR 240-14.030(1) and (2).

will increase EV adoption rates, the Commission cannot find they are reasonable or in the public interest.

With regard to the EV Charging Corridor, however, other benefits besides the addition of load in off-peak hours will accrue to ratepayers, the Company, and to the general public by encouraging a more rapid build out of an EV charging corridor along Missouri's highways. The evidence shows that there are already a number of EVs in the state of Missouri and that the number is expected to grow. However, the evidence also showed that there is significant "range anxiety" as there is not a reliable network on the main travel corridors in Missouri to support EV travel to all parts of the state. This is one of the key deterrents to purchasing an EV. Once that "range anxiety" is diminished, it is very likely that more people will adopt this technology. Greater adoption will likely contribute to home charging during off-peak hours on a regular basis and provide a more efficient grid utilization to the benefit of both the Company and the ratepayers.

The evidence showed that without financial incentives, it is not feasible at this time for the private sector to implement public fast charging stations along Missouri's highway corridors anytime soon. Significantly, the Clean Charge Network has increased the EV adoption rate in the Kansas City area by providing a greater charging network. Additionally, providing these utility incentives now so that they can work in conjunction with the other statewide plans that may be forthcoming (such as VW Electrify America) encourages a more efficient and coordinated statewide EV charging network. It is worthwhile that Ameren Missouri is involved in planning for a statewide placement of these charging stations because such placement could affect the utilization of the grid as

a whole, but especially within Ameren Missouri's service territory with its very diverse populations.

The EV Charging Corridor Sub-Program is also reasonable and economically feasible because it is limited in cost at \$4.4 million, it is limited to five years, and it is limited in the amount of incentive payment per site. Further, while the immediate benefit of this incentive program will be to the people that can afford and desire to purchase an EV in Ameren Missouri's service territory, it is in the public interest to allow this pilot program to go forward as it will not create an undue prejudice or disadvantage to other ratepayers given its relatively small size.

The Commission finds that the EV Charging Corridor Sub-Program is "just and reasonable, reasonable as a business practice, economically feasible and compensatory, and reasonably calculated to benefit both the utility and its customers."⁷¹ The Commission also finds that the EV Charging Corridor Sub-Program will "not offer or grant any undue or unreasonable preference or advantage" or "subject any person to an undue or unreasonable prejudice or disadvantage."⁷² For these reasons, the Commission finds the EV Charging Corridor Sub-Program to be in the public interest.

c. If the program is approved, what is the appropriate cost recovery mechanism?

Having approved the EV Charging Corridor Sub-Program above, the Commission will address the appropriate cost recovery mechanism as it relates only to that sub-program.

⁷¹ 4 CSR 240-14.030(1).

⁷² 4 CSR 240-14.030(2).

Findings of Fact

1. Three cost recovery options for the EV Charging Corridor Sub-Program were presented to the Commission.

2. Staff proposed that if the EV Charging Program was approved, the appropriate cost recovery mechanism was to incorporate the appropriate amount of expenses for the program in rates in Ameren Missouri's next rate case like any other traditional expense item.⁷³

3. Ameren Missouri requested that the Commission defer the program incentives and certain associated administrative costs to a regulatory asset so that the Company could request inclusion of an amortization of the deferred sums in revenue requirement over a seven-year period in future rate proceedings.⁷⁴ Ameren Missouri specifically did not want to include the unamortized balance of the regulatory asset in rate base in future rate cases.⁷⁵

4. Under Ameren Missouri's cost recovery proposal, Ameren Missouri would provide the funds for the program between rate cases and would offset the carrying costs for those funds by retaining the revenues from any additional electricity sales.⁷⁶

5. By not seeking rate base treatment of the regulatory asset, Ameren's proposal would align the interests of the Company and its customers because the Company has no incentive to pay program incentives to charging station owners unless

⁷³ Ex. 103, Oligschlaeger Rebuttal, p. 5.

⁷⁴ Ex. 6, Wills Direct, pp. 40-54.

⁷⁵ Ex. 6, Wills Direct, p. 44.

⁷⁶ Ex. 6, Wills Direct, pp. 44-45 and 48.

the resulting charging stations will create more widespread EV adoption and, in turn, produce incremental electricity sales.⁷⁷

6. Public Counsel proposed that if the Commission approved Ameren Missouri's EV Charging Program, the appropriate cost recovery method would be the one laid out in Ameren Missouri's application but with the incorporation of a "performance based recovery" mechanism.⁷⁸

7. Public Counsel's proposal focuses on the metric of how many EVs are sold in Ameren Missouri's service territory as compared to the baseline number included in Ameren Missouri's forecast.⁷⁹ In this performance metric, Ameren Missouri would not recover any of its costs until that baseline number was exceeded.⁸⁰

8. Ameren Missouri's baseline forecast of the number of additional EVs that would be purchased as a result of the Charge Ahead Program in its service territory was based on the assumption of approval of its entire Charge Ahead – EV Program. This estimate was not broken down by sub-program and it cannot be determined whether a particular EV was purchased as a result of the charging stations being deployed in the one sub-program that is being approved.⁸¹

9. Other states including Utah, Ohio, and Massachusetts allow utilities to recover EV incentive program costs through rider-like mechanisms (essentially on a single-issue basis).⁸² This provides the utility its costs returned more contemporaneously

⁷⁷ Ex. 6, Wills Direct, pp. 44-46.

⁷⁸ Ex. 200, Marke Rebuttal, pp. 20-22.

⁷⁹ Ex. 200, Marke Rebuttal, pp. 20-22.

⁸⁰ Ex. 7, Wills Surrebuttal, p. 69.

⁸¹ Ex. 6, Wills Direct, pp. 30-34.

⁸² Ex. 6, Wills Direct, p. 43.

with the expenditure.⁸³ However, because of Missouri's prohibition on single-issue ratemaking, Ameren Missouri will not be able to recover the costs of the program between rate cases without a deferral mechanism.

10. Under Ameren Missouri's proposal, deferring the program cost recovery also serves to "sync up" the costs of the program with the benefits or revenues of the added load and provides "a smoother pattern of rate impacts to" ratepayers.⁸⁴ This is a benefit to the ratepayers.⁸⁵

11. As explained by Staff's witness Mark Oligschlaeger:

Deferral accounting is the practice of treating certain financial impacts as a "deferred asset/liability" or "regulatory asset/liability" on a utility's balance sheet in lieu of charging the cost as a period revenue or expense item on the utility's income statement as would normally be required under the Uniform System of Accounts (USOA) adopted by the Commission for accounting purposes. For purposes of utility ratemaking, deferral treatment is often employed to allow a utility the opportunity to obtain full rate recovery of particular costs at a later time even though the cost was not incurred within an ordered test year, update period or true-up period in a general rate case.⁸⁶

12. Typically the Commission finds that an "extraordinary event" (one that is unique, unusual, and non-recurring) has occurred before authorizing deferred accounting treatment. The classic example of extraordinary events giving rise to deferral requests are natural disasters.⁸⁷ This type of deferral mechanism, usually concerning a past event, is often referred to as an "accounting authority order" or "AAO."⁸⁸

⁸³ Ex. 6, Wills Direct, p. 54. See also, the description of the other states' recovery mechanisms at pp. 42-43.

⁸⁴ Ex. 6, Wills Direct, pp. 52-53.

⁸⁵ Ex. 6, Wills Direct, p. 52.

⁸⁶ Ex. 103, Oligschlaeger Rebuttal, pp. 3-4.

⁸⁷ Ex. 103, Oligschlaeger Rebuttal, p. 4.

⁸⁸ Tr. p. 479.

13. The Commission also uses another type of deferral accounting mechanism referred to as a “tracker.” Unlike AAOs, trackers tend to concern ongoing costs for which there is a public policy interest. The criteria that the Commission has utilized for approving trackers has differed from the criteria it follows for an AAO.⁸⁹

14. The Commission has approved deferral accounting on many occasions without a finding of an “extraordinary event.”⁹⁰ The Commission has often authorized a deferral mechanism when it is authorizing a new program that is beneficial to customers, but where without the deferral mechanism in place, it could be financially detrimental to the utility to pursue.⁹¹

15. If the Commission uses normal accounting procedures for the EV Charging Corridor Sub-Program, the costs of the program will be charged as an expense in the year that they occur. The only way for this type of cost to be included in the Company’s revenue requirement for ratemaking would be for the expense to occur in the test year. If Ameren Missouri files a rate case in 2019, these expenses are not likely to fall within the test year.⁹²

16. Without a deferred accounting mechanism, Ameren Missouri would “lose” the opportunity to request recovery of a portion of the program costs if it chose to implement that program before it files a rate case.⁹³ Thus, the loss of this portion of the

⁸⁹ Tr. pp. 479-480.

⁹⁰ Ex. 7, Wills Surrebuttal, pp. 55-56. (Citing numerous occasions when the Commission has authorized a “tracker” without making a finding of an “extraordinary event.” See for example, File Nos. ET-2018-0063, ER-2012-0166, and ER-2014-0351.)

⁹¹ Ex. 7, Wills Surrebuttal, p. 56.

⁹² Tr. pp. 480-482.

⁹³ Tr. p. 482.

program costs may cause Ameren Missouri to delay innovative ideas and new programs until rate case proceedings. This will slow innovation and further complicate rate cases.⁹⁴

17. Given the need for and benefits of the EV Charging Corridor Sub-Program (both financial and public interest benefits) and Ameren Missouri providing the financing costs associated with the incentive costs, it is reasonable to authorize a tracker.

18. Ameren Missouri calculated the positive regulatory lag amounts and the proposed amortization period based on implementing the entire EV Charging Program.⁹⁵ However, the Commission has only approved the EV Charging Corridor Sub-Program consisting of \$4.4 million of the \$11 million proposed.

19. Since the Commission did not approve the entire program and the calculations are not broken down by sub-program, the Commission cannot determine from the evidence presented what the appropriate amortization period would be if this expense is allowed to be amortized in the next rate case.

Conclusions of Law

A. It is well settled in Missouri law that there is a prohibition against “single-issue ratemaking.” That is, the Commission may not allow a public utility to change an existing rate without consideration of all relevant factors such as operating expenses, revenues, and rates of return.⁹⁶

B. The Commission may “prescribe uniform methods of keeping accounts, records and books to be observed by electrical corporations[.]”⁹⁷ Additionally, the

⁹⁴ Ex. 7, Wills Surrebuttal, p. 57.

⁹⁵ Ex. 6, Wills Direct, pp. 46-51.

⁹⁶ *State ex rel. Mo. Water Co.*, 308 S.W.2d at 718-19; *State ex rel. Util. Consumers Council of Mo., Inc. v. Pub. Serv. Comm'n*, 585 S.W.2d 41, 56-58 (Mo. 1979).

⁹⁷ Subsection 393.140(4), RSMo.

Commission may “prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited.”⁹⁸

Decision

The Commission has determined that the EV Charging Corridor Sub-Program is just, reasonable, and in the public interest. Synchronizing the program costs paid by the ratepayers with the revenues and the benefits produced is a benefit to the ratepayers in that it provides “a smoother pattern of rate impacts.”⁹⁹ Other states accomplish this cost recovery in a more contemporary manner with the provision of the programs through riders. However, Missouri has legal barriers to allowing recovery for these costs outside of a rate case.

The Commission found that it is in the public interest for the EV Charging Corridor Sub-Program to be implemented soon, so that it can be coordinated with other charging corridor funds available to the state of Missouri. Depending on the timing of future rate cases, without a deferral accounting mechanism, Ameren Missouri may not be able to recover in rates the expenses of this program. Additionally, if Ameren Missouri is uncertain about its opportunity to request recovery of these expenses, it may determine that it should wait to implement a program at a later date, which would slow the EV growth in the state that the Commission has found to be desirable and in the public interest. Further, by allowing the opportunity for Ameren to request the non-rate base treatment in a future rate case and retain any electricity sales revenues between rate cases, Ameren Missouri and the customers’ interests in the program become aligned. Thus, it is in the public interest to authorize a deferral accounting mechanism or tracker.

⁹⁸ Subsection 393.140(8), RSMo.

⁹⁹ Ex. 6, Wills Direct, p. 52, Ins.18-19.

The Commission cannot make a ratemaking determination outside of a rate case. Ratemaking decisions must be made based on all the relevant factors, including whether costs and expenses were prudently incurred. Additionally, because the Commission has approved only one of the four sub-programs of the proposed EV Charging Program, the Commission cannot determine based on the evidence in this case, that seven years is an appropriate amortization period for these expenses. Therefore, the Commission will not authorize a seven-year amortization with this tracker or determine if these costs will be included in rates. Those determinations will instead be determined in a future rate case.

One benefit of a pilot program is that the Company and the Commission can get real-time experience and real data about the charging stations, how much electricity is actually sold, and whether such incentive programs are effective. In order to gain the most benefit from this program, in addition to the tracker of accounting information, the Commission will direct Ameren Missouri to separately track the amount of any additional electricity sales from the corridor charging stations.

Public Counsel has proposed that a performance based metric be included in any tracking mechanism and cost recovery approved by the Commission. However, the Commission only approved one of four parts of the program upon which the evidence of expected performance is based. Further, it is impossible to determine if a particular EV in Ameren Missouri's service territory was purchased because of the EV Charging Corridor Sub-Program. Therefore, the Commission will not order a performance based metric as part of the tracker.

The Commission has authority to allow Ameren Missouri to use a tracker to track the EV Charging Corridor Sub-Program costs and administrative expenses to be

considered for recovery in future rate cases. Because it is reasonable and in the public interest to do so, given the considerations stated above, the Commission authorizes Ameren Missouri to use a deferral accounting mechanism to track the EV Charging Corridor Sub-Program costs and administrative expenses for possible recovery of those prudently incurred expenses in future rate cases.

d. If the program is approved, what conditions, if any, should be imposed by the Commission?

Findings of Fact

1. The Staff of the Commission did not recommend approval of any of the Charge Ahead programs. Instead, Staff recommended the Commission order Ameren Missouri to enter into a stakeholder process to develop and file a “Make Ready” tariff to facilitate installation of customer-owned electric vehicle charging stations.¹⁰⁰ Under such a tariff, Ameren Missouri would not require line extension charges from a customer seeking a line extension for separately metered EV charging that meets public policy considerations and are developed with stakeholder input and included in the tariff.¹⁰¹ The subsidies under this approach would be limited to the line extension costs otherwise payable by the entity seeking to install the charger.¹⁰²

2. Staff also recommended that if the Commission approved the EV Charging Corridor Sub-Program, the approval should be conditioned on the charging stations being placed in accordance with the charging stations represented as red dots (in Ameren Missouri’s service territory) in the *EV Collaborative Vision for Statewide Public Minimum*

¹⁰⁰ Tr. p. 442.

¹⁰¹ Ex. 100, *Staff Report on the Estimated Costs and Benefits of a Make Ready Tariff for Separately Metered EV Charging*, p. 1.

¹⁰² Ex. 100, *Staff Report on the Estimated Costs and Benefits of a Make Ready Tariff for Separately Metered EV Charging*, p. 1.

Practical Corridor Charging Network map.¹⁰³

3. The proposed EV Charging Program tariff states that to be considered in the program the charging station sites will be “located within one (1) mile of interstate or highway interchange”¹⁰⁴ The tariff also establishes a bidding process for the incentives which requires the Company to evaluate the merits of the bids and site locations proposed by the competitive marketplace.¹⁰⁵

4. DE recommended allocating 10% of the total program budget towards charging deployment in underserved and low-income communities within Ameren Missouri’s service area. This allocation supports equitable access to charging stations for residents of these communities and those drivers traveling to or through these communities.¹⁰⁶

5. ChargePoint requested that the Company be required to provide thorough reporting on the incentives provided, customers engaged, and buildout of EV charging infrastructure achieved.¹⁰⁷ Ameren Missouri has no objection to this condition.

6. The Sierra Club and NRDC also requested that Ameren be required to report metrics including: station utilization; prices paid by EV drivers; site host pricing models/strategies; equipment providers selected; installation costs by equipment provider; and outage incidents by equipment provider. The Sierra Club and NRDC recommended that the collected data should be reported annually to the Commission and made public for review by any interested party.¹⁰⁸ Ameren Missouri did not object to this

¹⁰³ Ex. 3, Justis Surrebuttal, p. 7, Figure 3.

¹⁰⁴ Tariff Tracking No. YE-2018-0105, Sheet No. 165.2.

¹⁰⁵ Tariff Tracking No. YE-2018-0105, Sheet No. 165.2.

¹⁰⁶ Ex. 300, Kelley Rebuttal, pp. 10-11; and Ex. 301, Kelley Surrebuttal, pp. 4-6.

¹⁰⁷ Ex. 6, Wills Direct, p. 40.

¹⁰⁸ *Initial Brief of Sierra Club & Natural Resources Defense Council*, (filed January 7, 2019), pp. 9-10.

reporting requirement so long as it is required to only report the data that it actually obtains. Ameren Missouri noted that not all of the data requested will be available to the Company since the data will belong to the charging station owner.¹⁰⁹

Conclusions of Law

There are no additional conclusions of law for this issue.

Decision

The Commission has considered the proposed conditions and modifications and determines the following.

Working Group

The Commission agrees with Staff that a stakeholder process is an appropriate avenue to evaluate potential mechanisms for facilitating installation of EV charging stations. Accordingly, the Commission will, by separate order, open a working group file wherein Staff, Ameren Missouri, and all other interested parties may evaluate such mechanisms. The Commission will further order its Staff to file a report summarizing the findings resulting from that process. Although the participants in the workshop process may consider and evaluate any additional mechanism they choose, the Commission will direct them to evaluate the following three mechanisms:

- 1) The model stipulated to by the parties and approved by the Commission in Kansas City Power & Light Company's last rate case,¹¹⁰ where the company can own the charging stations and seek cost recovery through rates.
- 2) A "Make Ready" tariff proposal that includes an option to waive line extension charges from a customer seeking a line extension for separately metered EV charging that meets specific public policy considerations.

¹⁰⁹ Ameren Missouri's Reply Brief, (filed January 17, 2019), pp. 65-66.

¹¹⁰ File No. ER-2018-0145, In the Matter of Kansas City Power & Light Company's Request for Authority to Implement A General Rate Increase for Electric Service Non-unanimous Partial Stipulation and Agreement, *Order Approving Stipulations and Agreements*, (issued October 31, 2018), pp. 3-4.

3) An alternate incentive program where program parameters, implementation, and cost recovery would be evaluated and defined in the context of a future rate proceeding.

Placement of Corridor Charging Stations

Staff has recommended the Commission limit charging station sites under the EV Corridor Charging Sub-Program to the locations specified in the EV Collaborative's map. The tariff language requires a charging station in the EV Charging Corridor Sub-Program to be located within one mile of an interstate or highway interchange. The tariff also establishes a bidding process by which Ameren Missouri will award the incentives to private entities based on the merits of the bids, including site location.

The Commission will not specify precise locations for the charging stations placement as this is a business decision that needs to be made by the Company. Ameren Missouri has every reason to allocate the incentives in a prudent manner. Failure to do so would limit its ability to recover the incentive costs in a future rate case and it would limit the success of the program both financially and with regard to the goal of establishing an EV charging corridor in the state of Missouri. Therefore, the Commission denies Staff's request.

Equitable Access

DE recommended allocating 10% of the total program budget toward deploying charging stations in underserved and low-income communities within Ameren Missouri's service area to support equitable access to charging stations for residents of these communities and those drivers traveling to or through these communities. The Commission finds that equitable access is a desirable goal. However, the Commission only approved the highway corridor portion of the charging program. Thus, there are

already constraints on where the chargers can reasonably and prudently be placed to promote the goals of the program. The Commission will not add further constraints on the program at this time.

Data Collection and Reporting

ChargePoint, the Sierra Club, and NRDC requested the Commission condition the approval of the programs on Ameren Missouri being required to collect and report information about the program's implementation including: incentives provided; customers engaged; buildout of EV charging infrastructure achieved; station utilization; prices paid by EV drivers; site host pricing models/strategies; equipment providers selected; installation costs by equipment provider; and outage incidents by equipment provider. The Sierra Club and NRDC recommended that the collected data should be reported annually to the Commission and made public for review by any interested party. Ameren Missouri did not object to these reporting requirements so long as it is required to only report the data that it actually obtains, as it will not be the charging station owner. The Commission finds that requiring this type of annual report for the life of the program plus one year after its completion is reasonable and will provide valuable information on the success of the incentive program.

Therefore, the Commission will direct Ameren Missouri to provide an annual report on the incentive program by filing it in the current case file. Every attempt should be made to make the report a public document. However, if the report contains confidential information it may be filed in accordance with the Commission's rule regarding confidential information.¹¹¹ Ameren Missouri shall also include the amount of any

¹¹¹ 4 CSR 240-2.135.

additional electricity sales from the corridor charging stations in this annual compliance filing.

2. Should the Commission approve, reject, or modify Ameren Missouri's Charge Ahead – Business Solutions Program?

a. Has Ameren Missouri provided sufficient evidence that there is a need for the program?

b. Has Ameren Missouri provided sufficient evidence that the program is cost effective?

c. If the program is approved, what is the appropriate cost recovery mechanism?

d. If the program is approved, what conditions, if any, should be imposed by the Commission?

Although the parties set out issues 2., 2.a., and 2.b. as separate issues, they are so interrelated that the Commission will address them together below. Additionally, as the Charge Ahead - Business Solutions (Business Solutions) program was not approved, the Commission has not addressed a cost recovery mechanism or suggested conditions for the program. The parties may include issues related to the Business Solutions program in its discussions in the Working Group ordered in this case.

Findings of Fact

1. Ameren Missouri's proposed Business Solutions program, is a pilot-program intended to allocate approximately \$7 million over five years¹¹² to encourage the adoption of certain qualifying electric-powered vehicles and equipment in place of technologies that would otherwise be powered by gasoline, diesel, or propane fuel

¹¹² Ex. 4, Pickles Direct, Sch. DP-D2-31 (\$6.882 million); and Tariff Tracking No. YE-2018-0104, Sheet No. 166.

(internal combustion engines).¹¹³

2. Ameren Missouri conducted cost-effectiveness studies and a study of the market potential for various electric technologies in its service territory.¹¹⁴ Thirteen different technologies were evaluated,¹¹⁵ seven of which (forklifts, electric standby truck refrigeration units, truck stop electrification, pushback tugs, tugs/tow tractors, belt loaders, and ground power units (“GPUs”)) were selected for the Business Solutions program.¹¹⁶ These types of equipment were selected in order to “test customer acceptance of the program and build the infrastructure necessary” to manage it.¹¹⁷

3. Utilities in other states are operating with incentive programs for these same kinds of electric-powered equipment and other state utility commissions have recognized the benefits of such programs.¹¹⁸

4. In support of the program, Ameren Missouri claimed it would provide benefits for both participants and nonparticipants. Ameren Missouri indicated that the benefits of the Business Solutions program include: reduced electric rates for all customers,¹¹⁹ lower emissions,¹²⁰ lower total energy consumption and costs across fuels

¹¹³ Ex. 4, Pickles Direct, pp. 3-5; and Tariff Tracking No. YE-2018-0104, Sheet No. 166.

¹¹⁴ Ex. 4, Pickles Direct, p. 10; and Schedule DP-D2.

¹¹⁵ Ex. 4, Pickles Direct, pp. 11-13.

¹¹⁶ Tariff Tracking No. YE-2018-0104, Sheet No. 166.1.

¹¹⁷ Ex. 4, Pickles Direct, p. 17, Ins. 1-2.

¹¹⁸ Ex. 4, Pickles Direct, p. 9 and Sch. DP-D2-8; and Ex. 5, Pickles Surrebuttal, pp. 6-8.

¹¹⁹ Ex. 4, Pickles Direct, p. 5 and p. 8; Ex. 4, p. 5, l. 19; p. 8, ll. 14-18 (showing a positive RIM test cost-benefit ratio of 1.81 (\$1.81 of benefits for each dollar of program cost); Ex. 10, Table 2 (showing net benefits for each measure) and Schedule DP-D2-31 to Ex. 4 (showing net benefits using the RIM test of \$11.447 million, which equates to a 1.63 cost-benefit ratio using the RIM test; the net benefits are actually higher than \$11.447 million as evidenced by the revised 1.81 RIM cost-benefit ratio reported by Mr. Pickles in Ex. 4 at p. 6, l. 6-8). As Mr. Pickles explained, the originally-reported 1.63 was somewhat too low due to some transcription and copy/paste errors in the original spreadsheet that produced the numbers. Tr. p. 147, ll. 15-23.

¹²⁰ Ex. 4, Pickles Direct, p. 7.

for participants,¹²¹ reduced operations and maintenance expenses,¹²² and improved customer satisfaction.¹²³

5. Ameren Missouri's own market assessment showed that in regard to forklifts there was already an adoption rate for electric equipment of 54%.¹²⁴

6. With regard to GPUs, Ameren Missouri's market assessment showed 16 of 33 or 47% of the market equipment is already electric.¹²⁵

7. "Free ridership" in the context of this program occurs when absent the incentive, the purchasing entity would have purchased an electric vehicle anyway.¹²⁶ This is concerning, because it means that the incentive was not needed. In a market that already has more than or close to 50% adoption of the technology "free ridership" is a concern.¹²⁷

8. The other five electric equipment types do not have as significant market saturation. The market assessment showed the following number of electric units out of the total in the market: electric standby truck refrigeration units – 291 of 3,360 (8.6%); truck stop electrification – 39 of 1,237 (3%); pushback tugs – 0 of 31 (0%); tugs/tow tractors – 0 of 74 (0%), and belt loaders – 6 of 54 (11%).¹²⁸

9. Ameren Missouri has not shown that it has sufficient procedures in place to determine before the incentives would be paid, that the incentives will not go to free

¹²¹ Ex. 4, Pickles Direct, p. 6. This is also demonstrated by the modified total resource cost (mTRC) results presented in Mr. Pickles' testimony. Ex. 4, Pickles Direct, pp. 8-9.

¹²² Ex. 4, Pickles Direct, p. 5.

¹²³ Ex. 4, Pickles Direct, p. 5.

¹²⁴ Ex. 4, Pickles Direct, Schedule DP-D2-12.

¹²⁵ Ex. 4, Pickles Direct, Schedule DP-D2-14; and Ex. 102, Byron Murray Rebuttal, p. 5.

¹²⁶ Tr. p. 325.

¹²⁷ Ex. 200, Marke Rebuttal, pp. 7-10.

¹²⁸ Ex. 4, Pickles Direct, Schedule DP-D2-12 through DP-D2-15.

riders.¹²⁹ Ameren Missouri attempted to make changes to its tariff language by adding some of these checks and balances with language presented in its initial and reply briefs.¹³⁰ However, these proposals did not have the benefits of being fully vetted during the hearing process.

10. Based on its study results, Ameren Missouri would expect pay incentives for 2,465 eligible pieces of electric equipment over five years.¹³¹

11. Ameren presented a cost benefit analysis with its RIM test result of 1.81.¹³² This means that for every \$1.00 spent on the program, Ameren Missouri expects to create \$1.81 in benefits.

12. The results of that RIM analysis hinge on assumptions regarding the number of pieces of electric equipment installed under various incentive types.¹³³ Specifically, the assumptions are 991 conventional forklifts, 498 truck stop electrification measures, 11 belt loaders, and 11 GPUs will be incentivized over five years.¹³⁴ The kilowatt hours (kWh) vary greatly from one type of equipment to another.¹³⁵

13. The tariff provides that the program funds can be used on any of the equipment types and does not limit the amount of incentives that can be spent on any one type of equipment. No analysis was provided showing what the RIM result would be if a different number of each of these equipment types is installed.¹³⁶ Since the amount of power consumed varies greatly with each type of equipment and the entire program

¹²⁹ Ex. 102, Byron Murray Rebuttal, p. 5.

¹³⁰ *Ameren Missouri's Initial Post-Hearing Brief* (filed January 7, 2019), pp. 42 and 43; and *Ameren Missouri's Reply Brief*, (filed January 17, 2019), p. 66 and attached exemplar tariff sheets.

¹³¹ Ex. 4, Pickles Direct, p. 18.

¹³² Ex. 4, Pickles Direct, p. 8 and Schedule DP-D2-31; Ex. 6, Wills Direct, p. 37; and Tr. p. 147.

¹³³ Ex. 102, Byron Murray Rebuttal, p. 5.

¹³⁴ Ex. 4, Pickles Direct, Schedule DP-D2-35.

¹³⁵ Ex. 4, Pickles Direct, Schedule DP-D2-50.

¹³⁶ Ex. 102, Byron Murray Rebuttal, p. 5.

budget could be spent on one type of equipment, it is unreasonable to rely on the limited cost benefit analysis to determine if the benefits of electrification will be realized.

14. Of the budgeted \$6.88 million for the program, 44% is dedicated to program administration. This leaves only \$3.8 million for the actual incentives that are purported to provide the benefits to all customers.¹³⁷

Conclusions of Law

A. Section 393.130, RSMo., prohibits an electrical corporation from granting “any undue or unreasonable preference or advantage” or causing “any undue or unreasonable prejudice or disadvantage”

B. Pursuant to Section 393.140, RSMo., and 4 CSR 240-14.0303(3), Ameren Missouri must include in its tariffs incentive programs such as the proposed Charge Ahead programs.

C. The Commission has promulgated regulations at Chapter 14 to govern promotional practices by utilities. That regulation requires that all promotional practices, such as the Charge Ahead programs “be just and reasonable, reasonable as a business practice, economically feasible and compensatory and reasonably calculated to benefit both the utility and its customers.”¹³⁸ Additionally, that regulation requires that the programs be offered or granted “uniformly and contemporaneously . . . to all persons in a reasonable defined class”¹³⁹ and must not “offer or grant any undue or unreasonable preference or advantage to any person or subject any person to any undue or unreasonable prejudice or disadvantage. . . .”¹⁴⁰

¹³⁷ Ex. 102, Byron Murray Rebuttal, p. 5.

¹³⁸ 4 CSR 240-14.0303(1).

¹³⁹ 4 CSR 240-14.0303(2).

¹⁴⁰ 4 CSR 240-14.0303(2).

Decision

Ameren Missouri has proposed a program to give incentives to private companies for the purpose of incentivizing those companies to purchase electric equipment instead of equipment with internal combustion engines. The Commission determines that Ameren Missouri's Charge Ahead-Business Solutions Program is not just and reasonable or in the public interest.

The program has seven different types of equipment which can qualify for incentives. Five of those electric equipment types do not have a significant market share. However, at least with regard to electric forklifts and GPUs, the market seems to be fully aware of the benefits of electrification. This is evidenced by electric forklifts already consisting of 54% of the market and electric GPUs consisting of 47%. It is not reasonable to assume in a market that saturated that there will not be a significant problem with free riders. Ameren Missouri has not shown the forklifts or GPU incentives would be an appropriate promotional practice for the Company.

Ameren Missouri has not shown that it has sufficient procedures in place to determine that the incentives will not go to free riders. Ameren attempted to make changes to its tariff language to add some of these checks and balances with language presented in its initial and reply briefs. However, these proposals did not have the benefits of being fully vetted during the hearing process and were submitted after the close of the evidence. Therefore, the Commission will not adopt those proposals and makes no ruling on their reasonableness here.

There are other issues with the Business Solutions program that make it unreasonable and not in the public interest. Ameren Missouri produced evidence of a

positive cost benefit analysis. However, because the analysis hinged on assumptions regarding the number of pieces of electric equipment installed under various incentive types and the evidence shows that the incentive costs and kWh saved vary greatly depending on which measure is utilized, the Commission finds it is not reasonable to rely on this analysis. Thus, whether the program would truly produce the benefits alleged cannot be determined.

Finally, the budgeted \$6.88 million includes 44% dedicated to program administration, leaving only \$3.8 million for the actual incentives that are purported to provide the benefits to all customers. The Commission determines that this high percentage of the budget allocated for administrative costs is unreasonable in this instance.

After considering Ameren Missouri's Business Solutions Program, the Commission determines that while there may be beneficial electrification programs that are worthwhile, as demonstrated by other states adopting such measures, Ameren Missouri has not presented the Commission with such a program in this case. Instead, Ameren Missouri presented a program that includes two equipment categories that do not need incentives, did not provide sufficient information in the cost-benefit analysis to demonstrate that the program would realize the benefits for which it was created or that proper controls would prevent free riders, and presented a program with very high administrative costs. Therefore, the Commission determines that Ameren Missouri has not shown that its Business Solutions Program is reasonable or in the public interest. The Commission will not approve this program.

3. Should the Commission grant the variances requested by Ameren Missouri?

Findings of Fact

1. Along with its application for approval of the Charge Ahead programs, Ameren Missouri asked for a variance from all of Chapter 14¹⁴¹ of the Commission's regulations regarding promotional practices.¹⁴² Ameren Missouri later qualified its request to a variance from subsections 4 CSR 240-14.020(1)(B) and (1)(D), though it continued to note that there may be other Chapter 14 provisions that "a creative practitioner" could argue would be violated by these programs.¹⁴³

2. The Commission has found above that the Corridor Charging Sub-Program meets the standards of an appropriate promotional practice as set out in Chapter 14.

3. The Charging Corridor Sub-Program approved above will include incentives for the installation and use of equipment including line extensions, demand mitigation solutions, costs for "Make Ready" activities, and the costs of charging equipment.¹⁴⁴

4. No other utility is providing the same or competing utility service in all or any portion of Ameren Missouri's service area with regard to the EV charging stations to be implemented in the corridor subprogram.

Conclusions of Law

A. Subsection 4 CSR 240-14.020(1)(B) prohibits any public utility from "furnishing . . . consideration to any architect, builder, engineer, subdivider, developer or other person for work done or to be done on property not owned or otherwise possessed

¹⁴¹ 4 CSR 240-14, Prohibited Promotional Practices.

¹⁴² *Application, Request for Variance, and Request for Accounting Authority*, (filed February 22, 2018), paras. 8-10.

¹⁴³ File No. ET-2018-0132, *Ameren Missouri's Response to OPC's Motion to Dismiss*, (filed April 20, 2018), p. 6.

¹⁴⁴ Tariff Tracking No. YE-2018-0105, Sheet No. 165.2.

by the utility or its affiliate, except for studies to determine comparative capital costs and expenses to show the desirability or feasibility of selecting one (1) form of energy over another[.]”

B. Subsection 4 CSR 240-14.020(1)(D) prohibits any public utility from “furnishing . . . consideration to any dealer, architect, builder, engineer, subdivider, developer or other person for the sale, installation or use of appliances or equipment[.]”

C. Subsection 4 CSR 240-14.020 (1)(E) prohibits any public utility from providing “free, or less than cost or value, wiring, piping, appliances or equipment to any other person[.]”

D. Commission Rule 4 CSR 240-14.010(2) provides that the Commission may grant a variance from the provisions of Chapter 14 “for good cause shown.” That section also requires that “[t]he utility filing the application shall show proof of service of a copy of the application on each public utility providing the same or competing utility service in all or any portion of the service area[.]”

Decision

Ameren Missouri has requested a variance from 4 CSR 240-14.020(1)(B) and (1)(D) of the Commission’s promotional practices rules. Under the Charging Corridor Sub-Program, Ameren Missouri would offer incentives for the installation and use of equipment. Therefore, without a variance from the rule, Ameren Missouri would be in violation of 4 CSR 240-14.020(1)(B) and (1)(D). Additionally, the Commission notes that under a strict reading of the rule, these incentives may provide “free, or less than cost or value, wiring, piping, appliances or equipment” in violation of 4 CSR 240-14.020(1)(E).

Thus, the Commission finds that Ameren Missouri is also requesting a variance from subsection (1)(E) of 4 CSR 240-14.020.

The variance rule also requires that Ameren Missouri show proof of service upon public utilities providing the “same or competing utility service in all or any portion of the service area.”¹⁴⁵ There was no evidence presented that there was any other utility in Ameren Missouri’s service area that would be providing the same or a competing service. Thus, the Commission finds that no service could have been made upon any other public utility.

The Commission has determined herein that Ameren Missouri has demonstrated the Charging Corridor Sub-Program should be implemented. Those findings and conclusions that Ameren Missouri has shown a need for, and the benefits to the public from, implementing this limited Charging Corridor Sub-Program, also support finding good cause to grant a limited variance of the Commission’s rule. Therefore, the Commission will grant a variance of subsections 4 CSR 240-14.020(1)(B), (1)(D), and (1)(E) only as those subsections are applied to the Charging Corridor Sub-Program as described in any approved compliance tariff resulting from this case.

¹⁴⁵ 4 CSR 240-14.010(2).

THE COMMISSION ORDERS THAT:

1. The tariff submitted under Tariff Tracking No. YE-2018-0104 on February 22, 2018, is rejected.

2. The tariff submitted under Tariff Tracking No. YE-2018-0105 on February 22, 2018, is rejected.

3. Union Electric Company d/b/a Ameren Missouri may file a tariff in compliance with this Report and Order to implement an electric vehicle charging corridor program similar to the Charge Ahead – EV Charging Corridor Subprogram set out in Tariff Tracking No. YE-2018-0105.

4. Union Electric Company d/b/a Ameren Missouri is granted a variance of subsections 4 CSR 240-14.020(1)(B), (1)(D), and (1)(E) only as those subsections are applied to the Charging Corridor Sub-Program as described in any approved compliance tariff resulting from this case.

5. Ameren Missouri is authorized to use a deferral accounting mechanism to track the EV Charging Corridor Sub-Program costs and its administrative expenses for possible recovery of those prudently incurred expenses in future rate cases.

6. As set out in the body of this Report and Order, Ameren Missouri shall provide an annual report on the incentive program by filing it in the current case file no later than 30 days after the anniversary date of the tariff effective date of any tariff implementing the EV charging corridor program authorized herein. A report shall be filed every year for the life of the program plus one year after its completion.

7. By separate order, a working file shall be opened wherein Staff, Ameren, and all other interested parties may evaluate potential mechanisms for facilitating installation of EV charging stations as set out above.

8. This report and order shall become effective on February 16, 2019.



BY THE COMMISSION

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

Morris Woodruff
Secretary

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

Dippell, Senior Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Application for Designation)
as an Eligible Telecommunications Carrier for)
Purposes of Receiving Federal Universal) **File No. CA-2019-0196**
Service Support from the FCC Connect)
America Fund - Phase II)

**ORDER GRANTING DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER**

Affirmed on appeal: *Matter of Wisper ISP Inc.*, 596 S.W.3d 635 (Mo. App. W.D. 2020)

TELECOMMUNICATIONS

§1 Generally

The Commission granted Wisper ISP Inc. designation as an eligible telecommunications carrier in Missouri.

§7 Jurisdiction and powers of the State Commission

Wisper was a successful participant in a Connect America Fund II reverse auction held by the Federal Communications Commission to support programs designed to accelerate the expansion of broadband services to rural areas and any areas which presently lack sufficient broadband infrastructure. Intervenors asserted that Wisper’s technology was incapable of meeting federal performance requirements. The Commission determined that eligible telecommunications carrier applications are not designed to evaluate a company’s technology or broadband capabilities, and that the Federal Communications Commission will separately evaluate Wisper’s technology prior to releasing federal funding.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 14th day of February, 2019.

In the Matter of the Application for Designation)
as an Eligible Telecommunications Carrier for)
Purposes of Receiving Federal Universal) **File No. CA-2019-0196**
Service Support from the FCC Connect)
America Fund - Phase II)

**ORDER GRANTING DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER**

Issue Date: February 14, 2019

Effective Date: February 24, 2019

On December 21, 2018, Wisper ISP Inc. (“Wisper”) filed an application with the Missouri Public Service Commission (“Commission”) seeking designation as an eligible telecommunications carrier (“ETC”) in the state of Missouri. On January 28, 2019, the Commission issued an order permitting Callabyte Technology, LLC; Conexon, LLC; and GoSEMO, LLC (“Intervenors”) to intervene.

On January 31, 2019, the Staff of the Missouri Public Service Commission (“Staff”) filed a recommendation regarding Wisper’s application. Staff believes Wisper has met the requirements of 4 CSR 240-31-016 and 4 CSR 240-31.130 and should receive ETC designation. Staff recommends that Wisper’s ETC designation be limited to the area identified by census blocks in Wisper’s initial application.

Wisper was a successful participant in a Connect America Fund II (“CAF II”) reverse auction held by the Federal Communications Commission (“FCC”). The CAF II program is part of the FCC’s reform and modernization of its universal service fund

support programs designed to accelerate the expansion of broadband services to rural areas and any areas which presently lack the infrastructure capable of supporting at least 10/1 Mbps of fixed broadband services. The FCC requires a winning company to obtain ETC designation from its respective public utilities commission prior to receiving the allocated funds. Wisper is required to obtain ETC designation in all relevant states by February 25, 2019.

Commission Rule 4 CSR 240-31.130 governed the eligible telecommunications carrier application requirements at the time the application was filed. This rule was rescinded on December 30, 2018. ETC application requirements are now contained in 4 CSR 240-31.016.

On February 8, 2019, the Intervenors filed their *Preliminary Response to Staff Recommendation and Motion for Additional Time to Respond*. Intervenors state that many of their concerns are contained in their application to intervene and data requests. Intervenors believe that Wisper's technology might be incapable of meeting the performance requirements of its auction commitments. Intervenors state in part:

"The materials presented thus far by Wisper in its ETC application proceeding are insufficient to demonstrate that Wisper has network diagrams, spectrum, fiber assets, or even plans to meet its 100/20 Mbps broadband performance obligations that must be made available to at least 95% of the locations in its CAF-II winning areas using a network capable of delivering 100/20 Mbps speeds to at least 70% of the locations at peak hours, or to even meet its 25/3 Mbps broadband performance obligation in limited areas of Missouri. In addition, Wisper appears unable to comply with certain other obligations as an ETC (e.g., provision of E911 services)."

Also on February 8, 2019, Wisper filed a response to Staff's recommendation and Intervenors' preliminary response. Wisper states that it provided adequate information in

application exhibits H (public) and I (confidential) to sufficiently detail Wisper's technical plans; the Commission agrees. Further, Wisper states that the Intervenors were also competitors in the CAF II bidding process and are seeking to sabotage Wisper's application for their benefit.

On February 11, 2019, Intervenors filed a motion to shorten the time for responses to data requests. Wisper filed a response opposing the motion to shorten time. Wisper's response states that the Intervenors seek Wisper's confidential information regarding: financial statements, network design exhibits filed at the FCC, business assumptions and technical detail for the network deployment schedule, and customer data for Wisper's highest speed packages. The Intervenors have not filed a motion to compel or otherwise attempted to compel responses to data requests.

It is clear that Intervenors are treating Wisper's application as a contested case. A "contested case" means "a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing" Section 536.010 (4), RSMO. The "law" referred to in this definition includes any ordinance, statute, or constitutional provision that mandates a hearing. The Commission finds that no law "requires" that there be a hearing on the Company's application.

The Commission also finds with respect to Intervenors' stated concerns, that the ETC application process is not designed to assess a company's technology or broadband speed and latency capabilities. The Commission further finds that the FCC will separately evaluate a winning bidder's technology before releasing any funding. In that regard, mechanisms are in place during the FCC's funding process to test and verify whether a company is meeting service obligations. The FCC will not release the funding until the

FCC approves the Company's plan to meet the obligations imposed by the company's winning bid.

Wisper's plan includes detailed information about the technology that the Company intends to deploy, including a requirement for a professional engineer to certify that the Company's technology can meet the speed and latency provided for in the Company's bid. Because this is not a contested case and the ETC review process is not designed to assess a company's technology broadband speed and latency capabilities, the Commission will deny Intervenors' request for additional time.

In their *Joint Motion to Shorten Time* the Intervenors ask the Commission to shorten the time for data request responses from 20 to 15 days, making data request responses due by February 22, 2019. However, the Commission is issuing this order regarding Wisper's application prior to February 22, 2019; therefore, the Intervenors' motion to shorten time will be denied.

The Commission finds that the Company has satisfied the requirements both of rescinded rule 4 CSR 240-31.130 and new rule 4 CSR 240-31.016. The Application satisfies all of the requirements identified in 4 CSR 240-2.060 as required in 4 CSR 240-31.016(2)(A) in that has been verified by oath as to its truthfulness. The Application identifies all persons and entities, provides all information, and makes all statements and declarations as required in 4 CSR 240-31.016(B). Therefore, the Commission will grant Wisper's Application.

The Commission finds good cause exists to shorten the time for this order to become effective to less than 30 days because of the February 25, 2019, federal deadline for Wisper to obtain ETC designation in all relevant states.

THE COMMISSION ORDERS THAT:

1. The Intervenors' request for additional time is denied.
2. The Intervenors' request to shorten the time for data request responses is denied.
3. Wisper ISP Inc.'s application for designation as an eligible telecommunications carrier is granted as to the area identified by census blocks in Wisper's initial application.
4. The ETC designation shall be limited to the areas identified by census block in the Wisper ISP Inc.'s application.
5. This order shall be effective on February 24, 2019.
6. This file shall be closed on February 25, 2019.

BY THE COMMISSION

A handwritten signature in cursive script that reads "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 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. WM-2018-0116

**ORDER APPROVING STIPULATION AND AGREEMENT AND
GRANTING CERTIFICATES OF CONVENIENCE AND NECESSITY**

CERTIFICATES

§21 Grant or refusal of certificate generally

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.” 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.), 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 public interest. The factors have also been referred to as the “Tartan Factors” or the “Tartan Energy Criteria.” See *Report and Ord, 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).

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 14th day of
February, 2019

In the Matter of the Application of Confluence)	
Rivers Utility Operating Company, Inc. to)	
to Acquire Certain Water and Sewer Assets,	)	<u>File No. WM-2018-0116</u> ¹
For a Certificate of Convenience and)	
Necessity, and, in Connection therewith,)	
to Issue Indebtedness and Encumber Assets)	

**ORDER APPROVING STIPULATION AND AGREEMENT AND
GRANTING CERTIFICATES OF CONVENIENCE AND NECESSITY**

Issue Date: February 14, 2019

Effective Date: February 24, 2019

On November 2, 2017, Confluence Rivers Utility Operating Company, Inc. (“Confluence” or the “Company”) filed an application (the “Application”) seeking approval from the Missouri Public Service Commission (the “Commission”) to acquire certain water and sewer assets and the certificates of convenience and necessity (“CCN”) held by Smithview H2O Company (“Smithview”), M.P.B., Inc. (“MPB”), Mill Creek Sewers, Inc. (“Mill Creek”), Roy-L Utilities, Inc., (“Roy-L”), Port Perry Service Company (“Port Perry”), Gladlo Water & Sewer Company, Inc. (“Gladlo”), the Willows Utility Company (“Willows”), Evergreen Lakes Water Supply Co. (“Evergreen”) and Majestic Lakes Homeowners Association, Inc. (“Majestic Lakes”) (the “Selling Companies”). The Application asked leave to acquire the existing CCNs for the Selling Companies and to grant the Company new ones for the areas now served by the Selling Companies that had none. The Application

¹ This case has been consolidated with SM-2018-0117. *Order Consolidating Actions*, November 26, 2018.

also asked leave to incur up to \$2,600,000.00 indebtedness and to lien the Company's property with that debt.

On July 17, 2018, the Commission granted the Company leave to amend its application,² and the amendment added to the list of assets that the Company wished to acquire. The added assets were substantially all of the water and/or sewer assets providing service to Eugene, Missouri ("Eugene"); providing service to Wolf Creek Crossing ("Wolf Creek Crossing Sewer"); operated by Calvey Brook Water, Inc. and Calvey Brook Sewer, Inc. ("Calvey Brook Water and Sewer"); and designed to provide service to Auburn Lake Estates, (hereinafter, included in "Selling Companies"). Subsequently, the Company withdrew its application as to Wolf Creek Crossing.

On December 14, 2018, all parties filed a *Unanimous Stipulation and Agreement* ("Stipulation"). In the Stipulation,³ Confluence withdrew its requests to purchase the assets of Port Perry and to incur indebtedness. On January 24, 2019, the Commission conducted a hearing on the Stipulation.

FINDINGS

A

Findings of Fact

Confluence is a Missouri corporation active and in good standing.⁴ The Selling Companies are water and/or sewer corporations doing business in the State of Missouri. Smithview is a water utility that was administratively dissolved. Staff filed a complaint against

² *Confluence Rivers Amendment to Application*, July 3, 2018; *Commission's Application and Order Directing Supplemental Notice*, July 17, 2018.

³ The parties' *Unanimous Stipulation and Agreement*, December 14, 2018.

Smithview for its failure to file annual reports, pay required Commission assessments, and provide safe and adequate service. Smithview has essentially abandoned the system.⁵ MPB is a sewer utility that was administratively dissolved, is in receivership, and has been a troubled company for at least 10 years.⁶ Its systems are not meeting their effluent limits, have major infiltration and inflow issues, and are actively discharging sludge into a receiving stream via discharge pipe or leaking berms. The owners have effectively abandoned the system.⁷ Mill Creek is a sewer utility. It has been placed in receivership, and the system is not meeting its effluent limits, does not have basic disinfection, and is discharging sludge into a creek.⁸

Roy-L is a water and sewer utility. Its wastewater operations are under a Department of Natural Resources (DNR) schedule of compliance for ammonia removal and disinfection. The water system is out of compliance for basic drinking water security, physical separation of chlorine disinfection systems, monitoring of residual chlorine, emergency redundant chlorine pump, and corresponding operational management.⁹ Roy-L will be financially unable to meet DNR's water quality standards, which are necessary to provide safe and adequate service in the future.¹⁰ Evergreen is a water utility. Its owner is elderly and would like to retire from the business.¹¹ The system is out of compliance for basic drinking water security, physical separation of chlorine disinfection systems, monitoring of residual

⁴ Confluence's *Application and Motion for Waiver*, November 2, 2017. page 1.

⁵ *Id.*, p. 3.

⁶ Tr. 4-42.

⁷ *Application*, pp. 4-5; Tr. 41-42.

⁸ *Application*, page 6; Tr. 42.

⁹ *Application*, pp. 6-7.

¹⁰ Tr. p. 42-43.

¹¹ Tr. p. 43.

chlorine, emergency redundant chlorine pump, and corresponding operational management.¹²

Majestic Lakes provides water and sewer service. The wastewater system is under a Missouri Attorney General enforcement action due to a failing concrete tankage system. DNR issued a building moratorium. The system is not meeting its effluent limits and is in danger of physical collapse.¹³ Gladlo is a water and sewer utility that is in receivership. Gladlo's wastewater system is under a DNR schedule of compliance for ammonia removal. The system needs a new wastewater treatment plant biological reactor to process waste for nutrient removal. The water system is out of compliance for basic 24-hour storage and emergency service backup.¹⁴

Willows is a water and sewer utility. The wastewater and water systems are under a Missouri Attorney General enforcement action due to allegations of ongoing wastewater receiving stream water pollution, sanitary storm overflow pollution events, a lack of emergency wastewater system redundancy, potential public drinking water health hazards due to unreported low-pressure events, and a lack of emergency procedures for drinking water outages.¹⁵

The Commission finds that with respect to the problems of the Selling Companies and to future rates, the Stipulation commits the Company to consulting with DNR to develop a plan and a timeframe for implementing any proposed repairs, renovations, or improvements to the acquired systems with the goal of mitigating to the extent reasonably possible (given health, safety, service reliability, environmental rules and regulations,

¹² *Application*, pp. 7-8.

¹³ *Application*, p. 8.

¹⁴ *Application*, p. 10.

ultimate rate design, and other factors beyond the Company's control), the future increases to customer rates that may occur in any one given rate case.¹⁶

The Commission finds that Josiah Cox is the President of Central States Water Resources, which is the managing entity of First Round CSWR, LLC, which is the holding company of other water and sewer companies.¹⁷ He will be the person managing the utilities.¹⁸ The Commission finds that he has a good track record of acquiring and improving existing systems in Missouri to the benefit of the ratepayers.¹⁹

The Commission finds that the Company's ownership restructuring, as set forth at page 2, paragraph 5 of the Stipulation, has improved the Company's financial status. Its new ownership structure should facilitate (i) a move toward a 50-50 mix of equity and debt for its capital structure in a future rate case; (ii) obtaining debt financing that will result in a lower cost of debt than the rate contained in the Company's initial financing application; and (iii) obtaining debt financing that will result in a debt instrument that does not contain a make whole penalty.²⁰

The Company, however, has withdrawn its request for authority to incur indebtedness and to lien the Company's property with that debt. The Commission finds on the basis of the testimony adduced at the hearing of January 24, 2019, that the Company understands and agrees that approval of the Stipulation is limited exclusively to approval of its terms, does not authorize financing or liening property, is not a rate-making order, and does not affect the Company's continuing obligation to seek authority in the future from the

¹⁵ *Application*, p. 10.

¹⁶ *Stipulation*, pp. 3-4.

¹⁷ Tr. p. 20.

¹⁸ Tr. pp. 20-21.

¹⁹ Tr. p. 29; 38 - 39.

Commission with respect to rate making, financing, debt incurrence or the pledging of assets.²¹

B

Conclusions of Law/Decision

The Commission has jurisdiction to rule on the application because Missouri law requires that “[n]o gas corporation, electrical corporation, water corporation or sewer corporation shall hereafter sell. . .its. . .works or system. . . without having first secured from the commission an order authorizing it so to do.”²²

With respect to the proposed sale of assets, the question presented is whether the sale will be “detrimental to the public interest”.²³ The Commission finds that the proposed sale is not detrimental to the public interest. Considering the present troubled nature of the systems at issue, the Company’s sound track record in rehabilitating similarly situated systems, the Company’s ability to acquire, maintain, and operate the systems, and the statutory obligation of the Commission to ensure safe and adequate service, allowing the Company to acquire the Selling Companies’ assets per the terms and conditions of the Stipulation will not be detrimental to the public.

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.”²⁴ The Commission articulated the specific criteria to be used when

²⁰ Tr. p. 21- 22; 28-29.

²¹ Tr. 23-24; 30.

²² Section 393.190.1, RSMO.

²³ See *City of St. Louis v. Public Service Commission*, 73 S.W.2d 393 (Mo. 1934); reaffirmed in *State ex rel. AG Processing, Inc. v. Public Service Commission*, 120 S.W.3d 732, 735 (Mo.banc 2003). This standard, although not expressly set out in Section 393.190.1, RSMO, was codified by the Commission in 4 CSR 240-3.110 (1)(D).

²⁴ Section 393.170.3, RSMO.

evaluating applications for utility CCNs in the case *In re Intercon Gas, Inc.*, 30 Mo. P.S.C. (N.S.), 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 public interest.²⁵

The Commission finds that the five criteria for granting a CCN are satisfied. The continued operation of water and sewer systems is a manifest necessity. The Company possesses adequate technical, managerial, and financial capacity to operate the water and sewer systems it wishes to purchase. The Commission concludes that it is in the public interest for the Company to provide water and sewer service to the customers currently being served by the Selling Companies. Consequently, based on the Commission's independent and impartial review of the verified filings and the evidence, the Commission will authorize the transfer of assets and grant the CCNs as specifically described hereinafter in the order, subject to the conditions described therein.

Finally, the Commission finds that the following rates, currently being charged without an authorizing tariff by the named companies, are just and reasonable,²⁶ based on the evidence:

- Eugene Water - \$26.00 for the first 1,999 gallons per month, plus \$6.00 per 1,000 gallons for all usage above 1,999 gallons.

²⁵ The factors have been referred to as the "Tartan Factors" or the "Tartan Energy Criteria." See Report and Ord, *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.W.C.).

²⁶ Section 393.150.1, RSMO.

- Auburn Lake Estates - \$37.50 per month flat rate for water service, and \$37.50 per month flat rate for sewer service.
- Majestic Lakes - \$37.50 per month flat rate for water service, and \$37.50 per month flat rate for sewer service.

The Commission will grant the application and approve the Stipulation, subject to the conditions agreed upon by the parties. No party now objecting and no useful purpose to be served by denying the Motion, the Commission will also sustain the Company's Motion to waive the 60-day notice requirement of Rule 4 CSR 240-4.017(1). Section 386.490, RSMO, states: "Every order or decision of the commission shall of its own force take effect and become operative thirty days after the service thereof, except as otherwise provided." The Commission finds good cause for the order to take effect before thirty days' notice because the parties have unanimously agreed to the Stipulation and the Stipulation was filed on December 14, 2018. Accordingly, the Commission will make this Order effective on February 24, 2019.

THE COMMISSION ORDERS THAT:

1. Confluence's Motion to waive the 60-day notice requirement of Rule 4 CSR 240-4.017(1) is sustained.
2. The *Unanimous Stipulation and Agreement*, including its Appendices A, B, and C, (collectively, the "Stipulation") filed on December 14, 2018,²⁷ is approved as a resolution of all issues. The signatory parties are ordered to comply with the terms of the Stipulation. A copy of the Stipulation is attached to this order.

²⁷ Parties' *Unanimous Stipulation and Agreement*, December 14, 2018.

3. Each of the regulated Selling Companies is authorized to sell and transfer utility assets to Confluence and to transfer the CCNs currently held by the regulated Selling Companies²⁸ to Confluence upon closing on any respective systems.

4. Upon closing on each of the water and sewer systems, each respective Selling Company is authorized to cease service and Confluence is simultaneously authorized to begin service.

5. Confluence is authorized to provide service by applying, on an interim basis, the existing rates, rules and regulations as outlined in the tariff document(s) of the respective regulated Selling Companies upon closing on each of the water and sewer systems, until the effective date of respective adoption notice tariff sheets to be filed as stated elsewhere herein. The existing rates are as follows:

- a. Smithview H2O Company: Water – \$5.31 monthly minimum; Commodity Charge per 1,000 gallons, \$3.36;
- b. M.P.B., Inc.: Sewer - Villa Ridge Regular Monthly Service Charge - \$24.24; Lake Virginia Regular Monthly Service Charge - \$13.33;
- c. Mill Creek Sewers, Inc.: Sewer – Regular Monthly Service Charge, \$30.11;
- d. Roy-L Utilities: Water Non-Metered Full-time Monthly - \$50.16; Part-time Monthly - \$32.99; Metered Full-time Monthly - \$33.24, Part-time Monthly - \$29.92, Commodity Charge per 1,000 gal \$3.08; Sewer – Full-time

²⁸ Smithview H2O Company – Case No. 17,652; M.P.B., Inc. Case No. SM-86-72 and SM-87-52; Mill Creek Sewers, Inc. – Case No. 17,666; Roy-L Utilities, Inc. – Case Nos. 16,379 and 16,380; Evergreen – Case No. 16,916; Gladio Water & Sewer Company, Inc. – Case Nos. 17, 458 and 17,459; The Willows Utility Company – Case No. WA-80-86; Calvey Brook Water, Inc. – Case No. WA-2004-0280; Calvey Brook Sewer, Inc. – SA-2004-0279

Monthly Service Charge - \$36.04, Part-time Monthly Service Charge \$32.58;

- e. Evergreen Lake Water Company: Residential – Customer Charge \$7.71, Commodity Charge per 1,000 gal \$2.054; Commercial – Customer Charge \$7.71, Commodity Charge per 1,000 gal \$2.054;
- f. Gladio Water & Sewer Company, Inc.: Water Monthly \$17.25, Commodity Charge per 1,000 gal \$2.15; Sewer – Monthly Service Charge \$37.67;
- g. Willows Utility Company: Water – Monthly \$5.23 (includes 1,000 gallons), Commodity Charge per 1,000 gal \$1.21; Sewer – Residential Monthly Service Charge \$15, Commercial Monthly Service Charge \$15 plus \$1 per 1,000 gallons; and
- h. Calvey Brook Water and Sewer: Water - \$36.36 per month for up to 3,000 gallons, plus \$2.05 for each additional 1,000 gallons over 3,000 gallons usage; Sewer - \$33.78 per month.

6. With respect to future rate-making applications to the Commission, Confluence Rivers shall consult with the Missouri Department of Natural Resources to develop a plan and a timeframe for implementing any proposed repairs, renovations, or improvements to the systems which Confluence is acquiring per this Order with the goal of mitigation, to the extent reasonably possible (given health, safety, service reliability, environmental rules and regulations, ultimate rate design, and other factors beyond the Company's control), the increases to customer rates that may occur in any one given rate case.

7. Confluence shall file adoption notice tariff sheets for each tariff currently in effect for the regulated Selling Companies, as 30-day filings, within ten (10) days of closing on the respective assets.

8. Confluence is granted new CCN's to provide water and sewer service in the proposed Majestic Lakes service area, as depicted in Staff's Recommendation,²⁹ with Confluence to begin providing such service upon closing on the assets.

9. Confluence shall charge rates of \$35 per month for water service, and \$35 per month for sewer service to customers in the Majestic Lakes service area.³⁰

10. Confluence is granted a new CCN to provide water and sewer service in the Auburn Lake Estates service area, as requested in the Amended Application, with Confluence to begin providing such service upon closing on the assets.

11. Confluence shall charge rates of \$37.50 per month flat rate for water service, and \$37.50 per month flat rate for sewer service in the Auburn Lake Estates service area.³¹

12. Confluence is granted a new CCN to provide water service in the proposed Eugene service area, as requested in the Amended Application, with Confluence to begin providing such service upon closing on the assets.

13. Confluence shall charge rates of \$26.00 for the first 1,999 gallons per month, plus \$6.00 per 1,000 gallons for all usage above 1,999 gallons, for water service for customers in the Eugene service area.³²

14. Confluence is authorized to provide water and sewer service in the Majestic Lakes service area and Auburn Lake Estates service area and water service in the Eugene

²⁹ *Staff's Recommendation*, September 17, 2018.

³⁰ This order allows the current rate.

³¹ This order allows the current rate.

service area, in accordance with the rules and regulations within the water and sewer tariffs applicable to Roy-L upon closing on any of those assets.

15. Confluence shall submit new tariff sheets reflecting the maps and written descriptions of the Majestic Lakes service area, the Auburn Lake Estates service area and the Eugene service area, with the appropriate respective information for each service area as described in the Stipulation herein, as well as sheets reflecting the proposed rates for the Majestic Lakes service area, the Auburn Lake Estates service area and the Eugene service area prior to closing on any of these assets, with these or similar replacement tariff sheets to ultimately become a part of the adopted Roy-L water and sewer tariff documents.

16. Confluence shall submit to Staff the confidential post-closing rate base information within sixty (60) days following closing on the Mill Creek assets.

17. Confluence shall submit to Staff the confidential, actual-purchase price of the Auburn Lake Estates systems, within ten (10) days after closing on those assets.

18. The Commission approves the depreciation schedules set out in Appendix B of the Stipulation and orders Confluence to depreciate its plant accounts for the appropriate systems as specified by the depreciation schedules.

19. Confluence shall provide an example of its actual communication with each of the Selling Company's service areas regarding its acquisition and operations of the Confluence system assets, and how customers may reach Confluence regarding water and sewer matters, within ten (10) days after closing on the assets.

20. Confluence shall distribute to the Sellers' customers prior to the first billing from CRU an informational brochure detailing the rights and responsibilities of the utility and

³² This order allows the current rate.

customers regarding its water and/or sewer service, consistent with the requirements of Commission Rule 4 CSR 240-13.040(2)(A-L) within ten (10) days after closing on the assets.

21. Confluence shall provide adequate training for the correct application of rates and rules to all customer service representatives including those employed by contractors prior to the Seller's customers receiving their first bill from Confluence.

22. Confluence shall provide to the Customer Experience Department staff a sample of five (5) billing statements issued to the Sellers' customers (from each service area acquired) within thirty (30) days of such billing.

23. Confluence shall file notice in this case once requirements regarding customer communications and customer billing, above, have been completed.

24. The Commission makes no finding that would preclude it from considering the ratemaking treatment to be afforded any matters pertaining to the transfers or granting of the CCNs to Confluence, including past expenditures or future expenditures related to providing service in any of the applicable service areas, in any later proceeding.

25. This order shall be effective on February 24, 2019.

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.

Graham, Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Propriety of the)
Rate Schedules for Gas Service of) **File No. GR-2018-0229**
Empire District Gas Company)

ORDER APPROVING STIPULATION AND AGREEMENT

EXPENSE

§67 Taxes

The Commission approved a stipulation and agreement that required Empire to establish a regulatory liability to account for tax savings associated with excess ADIT resulting from a tax rate reduction.

GAS

§18 Rates

§84 Taxes

The Commission approved a stipulation and agreement that required Empire to establish a regulatory liability to account for tax savings associated with excess ADIT resulting from a tax rate reduction.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its Office in Jefferson City on the 14th day of February, 2019.

In the Matter of the Propriety of the
Rate Schedules for Gas Service of
Empire District Gas Company

)
)
)

File No. GR-2018-0229

ORDER APPROVING STIPULATION AND AGREEMENT

Issue Date: February 14, 2019

Effective Date: February 24, 2019

The Commission opened this file on February 21, 2018 to consider the effect of the Tax Cuts and Jobs Act of 2017 on the rates charged by The Empire District Gas Company for natural gas service. On September 24, Empire filed tariffs to reduce its base rate revenue by \$773,566 to reflect the effect of the federal tax cuts on a going-forward basis. The Commission allowed those tariffs to take effect by operation of law on October 24.

Those tariffs reduced Empire's rates on a going-forward basis in light of the reduced federal tax rates, but did not resolve the issue of how to adjust Empire's rates to reflect the revenue effect of the reduced tax rates between January 1 and October 24. The tariffs also did not resolve the issue of how to adjust Empire's rates to reflect savings associated with the company's excess Accumulated Deferred Income Taxes (ADIT). On December 14, The Empire District Gas Company and the Staff of the Commission filed a stipulation and agreement resolving those remaining issues.

The stipulation and agreement was not signed by all parties, but it represented that the Office of the Public Counsel, Midwest Energy Consumers Group (MECG), Renew

Missouri Advocates, and the Missouri School Boards' Association, the only parties that did not sign the stipulation and agreement, would not oppose it. 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 can treat it as unanimous. More than seven days have passed since the stipulation and agreement was filed, and no party has objected to it. Therefore, the Commission will treat the stipulation and agreement as unanimous.

The stipulation and agreement requires Empire to establish a regulatory liability to account for the tax savings associated with excess ADIT, with calculation of the regulatory liability of excess ADIT to begin as of January 1, 2018. In recognition of the fact that the revenue requirement reduction related to the tax rate reduction did not take effect until October 24, 2018 and that revenue collected by Empire between January 1, 2018 and October 24, 2018 will not be refunded to customers or taken into account in the setting of future rates, the stipulation and agreement provides that Empire will not file a rate case until January 1, 2020.

To gather more information, the Commission scheduled an on-the-record proceeding on February 6, 2019, at which the parties were questioned about the stipulation and agreement. Empire, Staff, Public Counsel, and MCEG all indicated that Empire's agreement to not file a new general rate proceeding until January 1, 2020 was reasonable consideration for allowing Empire to retain any "excess" earnings resulting from the reduced tax rates during the period between January 1, 2018 and October 24, 2018.

After reviewing the stipulation and agreement, as well as the argument and testimony presented at the on-the-record presentation, the Commission finds and concludes that the stipulation and agreement is a reasonable resolution of the issues it

addresses and should be approved. Because the stipulation and agreement is unopposed, the Commission will make this order effective in ten days.

THE COMMISSION ORDERS THAT:

1. The Stipulation and Agreement filed on December 14, 2018, is approved. 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 and incorporated by reference.
2. This order shall be effective on February 24, 2019.

BY THE COMMISSION



Morris L. Woodruff

Morris L. Woodruff
Secretary

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

Woodruff, Chief Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Spire Missouri, Inc.)
d/b/a Spire for a Certificate of Convenience and)
Necessity to Construct, Install, Own, Operate,)
Maintain, and Otherwise Control and Manage a) **File No. GA-2019-0226**
Natural Gas Distribution System to Provide Gas)
Service to a Single Customer in Barton County as an)
Expansion of its Existing Certificated Areas)

**ORDER GRANTING CERTIFICATE
OF CONVENIENCE AND NECESSITY**

CERTIFICATES

§43 Gas

The Commission may grant a gas 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 20th day of February, 2019.

In the Matter of the Application of Spire Missouri, Inc.)
d/b/a Spire for 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 a Single Customer in Barton County as an)
Expansion of its Existing Certificated Area)

File No. GA-2019-0226

**ORDER GRANTING CERTIFICATE
OF CONVENIENCE AND NECESSITY**

Issue Date: February 20, 2019

Effective Date: March 2, 2019

Procedural History

On February 5, 2019¹, Spire Missouri, Inc. (“Spire”) applied for a certificate of convenience and necessity (“CCN”) to serve a single customer in Barton County, Missouri. This customer only recently became aware that Spire serves Barton County. On behalf of this customer, Spire requests an order by February 11, 2019, or as soon thereafter as possible, so this customer may know when he can order irrigation equipment. Spire further requested a waiver of the Commission’s 60-day notice requirement found in Commission Rule 4 CSR 240-4.017.

¹ Calendar references are to 2019.

The Staff of the Commission filed its Recommendation on February 15. Staff recommends that the Commission grant the certificate, subject to three conditions. The conditions are that the Commission should:

- reserve all rate making determinations regarding the revenue requirement impact of this service area extension request until the Company's next general rate making proceeding.
- require Spire to update Tariff Sheet No. 20.1 incorporating the requested Sections for Barton County provided above.
- require Spire to file a certified copy of the document granting it the necessary consent or franchise or an updated affidavit by Spire attesting that it has received the necessary county consent for the requested service territory expansion, consistent with Commission Rule 4 CSR 240-3.205(1)(D) and 240-3.205(2).

The Office of the Public Counsel responded on February 15, concurring in Staff's Recommendation.

Decision

Spire is a gas corporation and a public utility subject to Commission jurisdiction.² The Commission may grant a gas 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."³ 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.⁴

² Section 386.020(18), (43) RSMo 2016.

³ Section 393.170, RSMo.

⁴ *In re Tartan Energy Company*, 3 Mo. P.S.C. 173, 177 (1994).

Based on the verified pleadings, the Commission finds the application for a certificate of convenience and necessity to provide gas service meets the above listed criteria.⁵ 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. Spire 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.
2. Commission Rule 4 CSR 240-4.017(1) is waived.
3. Spire Missouri, Inc. is granted permission, approval, and a certificate of convenience and necessity to construct, install, own, operate, control, manage, and maintain gas plant as more particularly described in its application and Staff Recommendation.
4. The certificate of convenience and necessity is subject to the condition that the Commission will reserve all ratemaking determinations regarding the revenue impact

⁵ 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).

of this service area extension request until Spire Missouri, Inc.'s next general ratemaking proceeding.

5. Spire Missouri, Inc. shall update Tariff Sheet No. 20.1 incorporating the requested sections for Barton County.

6. Spire Missouri, Inc. shall file a certified copy of the document granting it the necessary consent or franchise or an updated affidavit attesting that it has received the necessary county consent for the requested service territory expansion, consistent with Commission Rule 4 CSR 240-3.205(1)(D) and 240-3.205(2).

7. This order shall become effective on March 2, 2019.

8. This file shall be closed on March 3, 2019.



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

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

David Apted)	
)	
Petitioner,)	
v.	)	<u>File No. GC-2017-0348</u>
)	
Spire Missouri, Inc. f/k/a)	
Laclede Gas Company,)	
)	
Respondent.)	

REPORT AND ORDER

EVIDENCE, PRACTICE AND PROCEDURE

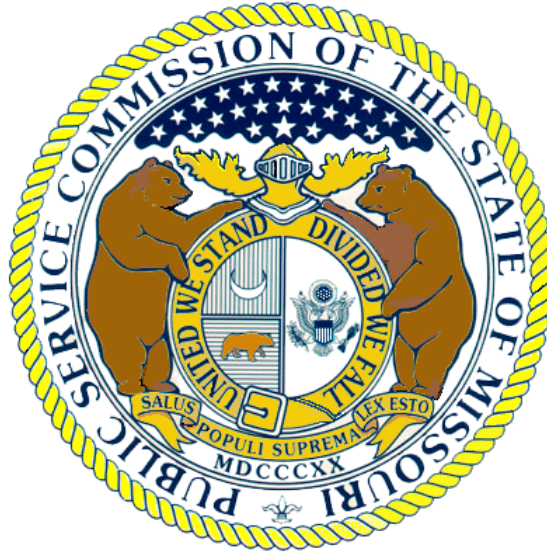
§2 Jurisdiction and powers

The Commission is an administrative body of limited jurisdiction, having only the powers expressly granted by statutes and reasonably incidental thereto. The Commission has no authority to require reparation or refund, cannot declare or enforce any principle of law or equity, and cannot determine damages. The Commission cannot grant equitable relief or abate a nuisance.

§4 Presumption and burden of proof

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. *State ex rel GS Techs Operating Co. v. PSC of Mo.*, 116 S.W.3d 680, 696 (Mo. App. 2003)

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



David Apted,)	
)	
Petitioner,)	
v.	)	<u>File No. GC-2017-0348</u>
)	
Spire Missouri, Inc., f/k/a)	
Laclede Gas Company,)	
)	
Respondent.)	

REPORT AND ORDER

Issue Date: March 6, 2019

Effective Date: April 5, 2019

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

David Apted,)	
)	
Petitioner,)	
v.	)	<u>File No. GC-2017-0348</u>
)	
Spire Missouri, Inc., f/k/a)	
Laclede Gas Company,)	
)	
Respondent.)	

APPEARANCES

David Apted

Complainant, appeared pro se

Michael C. Pendergast

For Respondent, Spire Missouri, Inc., f/k/a
Laclede Gas Company

Whitney Payne

For Staff of the Missouri Public Service Commission

Regulatory Law Judge: Paul T. Graham

REPORT AND ORDER

On December 10, 2018, the Missouri Public Service Commission (the “Commission”) conducted an evidentiary hearing on the Complaint of David Apted (“Mr. Apted” or “Complainant”) against Spire Missouri, Inc., f/k/a Laclede Gas Company (“Spire” or “the Company”). At the conclusion of the hearing, the Commission took the case under advisement. On January 28, 2019, the Regulatory Law Judge issued notice of his recommended report and order per 4 CSR 240-2.070 (15)(H). On January 30, 2019, Mr. Apted filed a *Post-Hearing Brief*. The Commission will accept Mr. Apted’s brief as a comment on the recommended report and order. The Commission will now issue its Report and Order.

Syllabus

The Commission concludes that Spire has not violated any statute within the Commission’s jurisdiction, the company’s tariff, or any Commission rule or order, and no other matter subject to the Commission’s jurisdiction requires decision.

Background

Mr. Apted filed a Complaint disputing a bill in the amount of \$1950.94.¹ The Complaint asked the Commission to require Spire to perform a formal high bill investigation, order that his gas meters be tested, and require a spreadsheet and review of Spire’s bills for his address from the previous 10 years. Additionally, he requested an explanation as to how three separate apartments with different floor plans and different appliances could run the exact number of therms in a month.

¹ Complaint, filed on June 23, 2017.

Findings of Fact

1. Mr. Apted bought the property in question in this case in December of 2016.² The property is located at 1736 Nicholson Place, Saint Louis, Missouri, and includes three separate apartment units in the same building.³ Mr. Apted's second bill from Spire, dated February 10, 2017, ("February Bill") contained identical charges of \$132.12 for Apartments A and C.⁴ Apartments A and C had different floor plans.⁵ Mr. Apted contended that the charges were, therefore, likely in error. He also thought that the bills for the units were extraordinarily high.⁶

2. The total average bill for the six-month period following the February bill for each of the two Apartments A and C was about \$650.⁷ Although at the hearing he testified that he thought the six-month averages were high, he also stated that that he did not think they were "abnormally" high.⁸ At the hearing, Mr. Apted narrowed his support for his contention that his bills were not accurate reflections of his gas usage to the fact that two apartment units had identical bills:⁹

"No, Mike. I do think that is high [\$600 for six months in the winter for each apartment]. My problem and the reason we're all here right now is because of Exhibit 110, February the 10th, 2017, Apartment A and Apartment C were identical in usage."¹⁰

² Transcript (hereinafter, "Tr."), p. 33.

³ Exhibit 110; Tr. 34. The three units may be referred to as A, B, and C.

⁴ Exhibit 110; Tr. 34.

⁵ Exhibits 111 and 112.

⁶ Tr. 33-34.

⁷ Tr. 46.

⁸ Tr. 46.

⁹ Tr. 45-46.

¹⁰ Tr. 46.

3. Each of the three units was two-stories.¹¹ Apartments A, B, and C contained, respectively, about 1150, 900, and 1000 square feet.¹² Other than the furnace(s) and water heater(s), no other appliances were served by gas in Apartments A and C.¹³ Spire's investigation showed that one of the apartment units' furnaces was not working at the time of the inspection per report dated February 17, 2017.¹⁴ Commencing in January of 2017, Mr. Apted had been rehabbing the three apartments described on the February Bill.¹⁵ The rehab was a full rehabilitation, and the contractors had to bring things in and take things out of the units.¹⁶ While doing so, doors were opened and shut or left opened.¹⁷ Mr. Apted was sure that the contractors left the doors "open more than [he] would approve of."¹⁸ During the rehab period, Mr. Apted kept the thermostats at 55 degrees in Apartments B and C.¹⁹ He checked them about once a week.²⁰

4. Spire conducted what was characterized as a "high bill investigation meter change."²¹ Spire's investigation showed that there were different quantities of gas usage for the three units when looked at on a daily or hourly basis.²²

5. Spire has a protocol for high bill complaints and followed it in response to Mr. Apted's complaint.²³ This protocol includes sending someone to the premises to find

¹¹ Tr. 56.

¹² Tr. 56-57.

¹³ Tr. 57. The water heater in B was heated by electricity.

¹⁴ Tr. p. 90, 91.

¹⁵ Tr. 47.

¹⁶ Tr. 48.

¹⁷ Tr. 48-49.

¹⁸ Tr. 49.

¹⁹ Tr. 58.

²⁰ Tr. 59.

²¹ Tr. 73; 105.

²² Tr. 69; 105.

²³ Tr. p. 83 et seq.

out what kind of construction work might be going on and to question construction workers.²⁴ Spire's witness, Danielle Holland, testified:

"Just in my opinion I've seen other properties and stuff doing the billing in the work that I do that the billing has increased when the property is being rehabbed due to the traffic and sometimes the contractors may turn the heat up to be a lot more comfortable while they're working inside. That's my opinion and things that I've noticed over the time working for the gas company."²⁵

6. In response to Mr. Apted's high bill complaint, in addition to testing and inspecting the AMR ("automatic meter reading"), the Company replaced the meters.²⁶ Spire tested the replaced meters. Two of the three demonstrated no problems.²⁷ The third could not be tested because water was found in it during transportation.²⁸ Spire also checked the AMR devices, and they showed no problems.²⁹

7. The actual monthly bills for Apartments A, B, and C, were as follows for January through June of 2017:³⁰

- Apartment A
 - January 13, 2017 - \$178.06
 - February 10, 2017 - \$132.11
 - March 13, 2017 - \$108.39
 - April 12, 2017 - \$90.58
 - May 11, 2017 - \$54.80

²⁴ Tr. p. 84.

²⁵ Tr. p. 74. No objection to her opinion was made. She was a company employee who handled customer complaints. Tr. 74. She testified that she was generally familiar with the various causes and factors that affect energy usage at a particular location and stated that her opinion was based upon a knowledge of those factors. Tr. 73.

²⁶ Tr. p. 74-75.

²⁷ Tr. p. 75.

²⁸ Tr. p. 75.

²⁹ Tr. p. 76; 90-91.

³⁰ Tr. pp. 81-82.

- Apartment B
 - January 13, 2017 - \$249.54
 - February 10, 2017 - \$161.99
 - March 13, 2017 - \$70.83
 - April 12, 2017 - \$35.60
 - May 11, 2017 - \$27.41

- Apartment C
 - January 13, 2017 - \$199.49
 - February 10, 2017 - \$132.12
 - March 13, 2017 - \$71.98
 - April 12, 2017 - \$74.85
 - May 11, 2017 - \$33.43.

The Commission finds, on the basis of the testimony of Danielle Holland, that the aforementioned bill amounts were not unusual for similar residential structures in the neighborhood of Apartments A, B and C.³¹

8. There was testimony at the hearing concerning a service disconnection. Mr. Apted testified that his service was disconnected without notice in May of 2018.³² Spire presented evidence showing that the service had been properly terminated for non-payment the prior year, on June 12, 2017, but that unauthorized usage had, for some reason, continued all the way to April 30, 2018, when the gas was finally physically turned off.³³ Mr. Apted's complaint does not allege wrongful disconnection of service.³⁴ The

³¹ Tr. pp. 75-76.

³² Tr. 54.

³³ Tr. pp. 80-81.

³⁴ See Complaint and Mr. Apted's Response to Order Directing Filing, August 25, 2017.

parties' *List of Issues and Identification of Witnesses and Position Statements*³⁵ did not identify disconnection of service as an issue and, accordingly, cannot be construed as a consent to have the issue decided; and Mr. Apted has never requested relief or an order concerning a wrongful service disconnection. As a result, the Staff of the Missouri Public Service Commission has conducted no investigation and provided the Commission with no report on the alleged wrongful service disconnection.

9. The Commission finds that the Company has substantially performed the investigation that Mr. Apted requested in his *Complaint*.³⁶ The Company performed a meter test (on two of the meters) on February 17, 2017, and found that they were working properly.³⁷ The Company provided four (4) years of historical usage on the three apartments and tested its AMR devices. Spire tested the meters at 100% (open rate) and 20% (check rate) of the meter capacity. This is called a two-point check since Spire was looking at two different flow rates. The meters were tested with equipment that was traceable to the National Bureau of Standards and Testing and in a climate controlled room. To test the meters, Spire removed the old meters and replaced them with different meters on February 17, 2017.³⁸ The meters had to be accurate within +/-2% accuracy of each other to pass the tests. The meters for Apartment Units B and C passed.³⁹ The meter for Unit A could not be tested because of excessive water in the meter.⁴⁰

10. The Commission finds that in response to Mr. Apted's request for a "high bill investigation," Spire also provided historical winter season usage data from December

³⁵ List of Issues, Position Statements and Identification of Witnesses, December 4, 2018; Amended List of Issues, Position Statements and Identification of Witnesses.

³⁶ Exhibit 100 (Staff's Report); Tr. p. 37.

³⁷ Exhibit 100, p. 5.

³⁸ Exhibit 100, p. 2.

³⁹ Exhibit 100, p. 2.

⁴⁰ Exhibit 100, p. 2.

of 2013 through April of 2017 for the three apartment units.⁴¹ A graph plotting usage against average daily temperature for the time period from December of 2013 through April of 2017 illustrated that as the temperatures increased, the average daily usages decreased all the way to zero.⁴²

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. Complainant has filed a Complaint alleging that the Company has committed acts or omitted to do acts in violation of Section 393.130, RSMO. The Commission has jurisdiction in this case.

2. Commission Rule 4 CSR 240-2.070 provides that a formal complaint shall set “forth any act or thing done or omitted to be done by any person, corporation, or public utility, including any rule or charge established or fixed by or for any person, corporation, 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.” The rule requires the complaint to state the relief requested.

3. 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.⁴³

⁴¹ Exhibit 100, p. 3.

⁴² Exhibit 100, p. 4.

⁴³ *State ex rel GS Techs Operating Co. v. PSC of Mo.*, 116 S.W.3d 680, 696 (Mo. App. 2003).

4. Missouri law provides that every gas corporation shall furnish and provide “such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.”⁴⁴

5. Tariff Sheet No. R-8 of Spire’s currently effective tariffs and Commission Rule 4 CSR 240-10.030 requires the Company to provide a meter test free of charge at the request of the customer, provided that only one such test must be conducted within a 12-month time frame absent an order by the Commission. Tariff Sheet No. 31-a provides that a customer will pay \$75 per meter for additional meter tests within the 12-month time frames unless the additional testing proves an inaccuracy by a factor of more than 2%.⁴⁵

6. The Commission is an administrative body of limited jurisdiction, having only the powers expressly granted by statutes and reasonably incidental thereto.⁴⁶ The Commission has no authority to require reparation or refund, cannot declare or enforce any principle of law or equity, and cannot determine damages.⁴⁷ The Commission cannot grant equitable relief or abate a nuisance.⁴⁸

Decision

It is the decision of the Commission that Mr. Apted’s evidence was insufficient to establish that Spire billed him in error at any time. Facially, the bills contained no charge that was extraordinary as compared with other bills on the apartments in question. Again

⁴⁴ Section 393.130, RSMO.

⁴⁵ Exhibit 100, Footnote 1.

⁴⁶ See, e.g., *State ex. rel. City of St. Louis v. Missouri Public Service Comm’n*, 73 S.W.2d 393, 399 (Mo. banc 1934); *State ex. rel. Kansas City Transit, Inc. v. Public Service Comm’n*, 406 S.W.2d 5, 8 (Mo. 1966).

⁴⁷ See, e.g., *Straube v. Bowling Green Gas Co.*, 227 S.W.2d 666, 668-669 (Mo. 1950).

⁴⁸ See, e.g., *State ex. rel. GS Technologies Operating Co., Inc. v. Public Service Comm’n*, 116 S.W.3d 680, 695 (Mo. App. 2003); *American Petroleum Exchange v. Public Service Comm’n*, 172 S.W.2d 952, 955 (Mo. 1943).

facially, although identical bills on different units with different floor plans might be an infrequent occurrence, such an occurrence does not alone prove an error or even support an inference of an error. Looking beyond the face of things to the results of investigations, no evidence supported a conclusion that the Company's service instrumentalities and facilities were inadequate or faulty. Finally, no evidence supported a conclusion that the Company ever charged Mr. Apted an unjust or unreasonable rate. The Commission, accordingly, finds that Mr. Apted failed to sustain his burden to establish that the Company violated any tariff or any Commission rule or order.

With respect to the Company's investigation and response to Mr. Apted's complaints, the Commission finds that the Company had no legal duty per any statute, tariff, regulation or Commission rule to perform the kind of "high bill investigation" described in Mr. Apted's *Complaint*.⁴⁹ The Commission finds that the Company, nevertheless, substantially performed the investigation requested by Mr. Apted. The Commission, accordingly, finds that Mr. Apted failed to sustain his burden to establish that the Company's investigation and response to Mr. Apted's complaints violated its tariff or any Commission rule or order.

Finally, with respect to hearing testimony concerning a wrongful service disconnection, the Commission finds that because no wrongful disconnection allegations were stated in Mr. Apted's *Complaint*, *Amended Complaint*, or in the parties' *List of Issues* or *Amended List of Issues*⁵⁰, and because at no time has Mr. Apted ever requested any

⁴⁹ Complaint, Paragraphs 5 and 6.

⁵⁰ Complaint; Response to Order Directing Filing, August 25, 2017; List of Issues, Position Statements and Identification of Witnesses, December 4, 2018; Amended List of Issues, Position Statements and Identification of Witnesses.

order or relief with respect to an alleged wrongful disconnection,⁵¹ no such question is at issue in the Complaint.

Any application for rehearing must be filed before the effective date of this Order.

THE COMMISSION ORDERS THAT:

1. The Complaint of David Apted is denied.
2. The Report and Order shall become effective on April 5, 2019.
3. This file shall close on April 6, 2019.



BY THE COMMISSION

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

Morris Woodruff
Secretary

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

Graham, Regulatory Law Judge

⁵¹ See 4 CSR 240-2.070(4), generally, and subsection (E) thereof requiring a formal complaint to state the "relief requested".

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

The Office of the Public Counsel and)	
The Midwest Energy Consumers Group,)	
)	
Complainants,)	
v.	)	<u>File No. EC-2019-0200</u>
)	
KCP&L Greater Missouri Operations)	
Company)	
)	
Respondent.)	

ORDER DENYING MOTION TO DISMISS

ACCOUNTING

§4 Jurisdiction and powers of the State Commission

The Commission is granted jurisdiction by Section 393.140(8) RSMo to prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited.

EVIDENCE, PRACTICE AND PROCEDURE

§24 Procedures, evidence and proof

In considering a motion to dismiss on the pleadings for failure to state a claim upon which relief may be granted, the Commission is only testing the adequacy of the petition and must assume all averments in the petition are true.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public
Service Commission held at its
office in Jefferson City on the
6th day of March, 2019.

The Office of the Public Counsel and)	
The Midwest Energy Consumers Group,)	
)	
Complainants,)	
)	
v.	)	<u>File No. EC-2019-0200</u>
)	
KCP&L Greater Missouri Operations)	
Company)	
)	
Respondent.)	

ORDER DENYING MOTION TO DISMISS

Issue Date: March 6, 2019

Effective Date: March 6, 2019

On December 28, 2018, the Office of the Public Counsel and the Midwest Energy Consumers Group (MECG) filed what they denominated as a Petition for an Accounting Order. That petition asked the Commission to order KCP&L Greater Missouri Operations Company (GMO) to record as a regulatory liability in Account 254 the revenue and the return on the Sibley unit investments collected in rates for non-fuel operations and maintenance costs, taxes including accumulated deferred income taxes, and all other costs associated with Sibley units 1, 2, 3, and common plant.

The petition explains that GMO would be retiring units 1, 2, and 3 of its Sibley coal-fired electric production facility at the end of 2018. GMO's rates were recently established by the Commission in a general rate case, ER-2018-0146, and the operation and

maintenance costs associated with those units, as well as a return on the company's investment in these units, was included in those newly established rates. The petition contends that the retirement of the units will reduce GMO's costs below the amounts considered when its rates were established, resulting in a windfall for GMO. Thus, the petition asks the Commission to establish an accounting authority order to require GMO to defer that windfall for possible adjustment in the company's next general rate case.

The petitioners filed their Petition for an Accounting Order as a petition, not a complaint, and it was assigned File No. EU-2019-0197 in the Commission's Electronic Filing and Information System (EFIS). The Commission, acting on its own motion, determined that the Petition could best be considered using complaint-type procedures, closed File No. EU-2019-0197, and reassigned the Petition to File No. EC-2019-0200, which is a complaint designation within EFIS. The Commission then issued a Notice of Complaint to provide notice of the filing to GMO. The Commission also directed GMO to file an answer to the "complaint" by February 1, 2019.

GMO filed its answer on February 1, and on February 5, filed a motion to dismiss the complaint for failure to state a claim upon which relief can be granted. Public Counsel and MECG replied to that motion on February 22.

GMO's motion to dismiss asserts three reasons why the "complaint" should be dismissed. First, the motion to dismiss alleges the "complaint" is fatally defective under Section 386.390.1, RSMo, in that it does not allege that GMO is violating its tariff, any Commission order or rule, or any other provision of law. Second, it alleges that GMO's retirement of the Sibley coal-fired units is neither unusual nor extraordinary and thus does not justify the issuance of an accounting order. Finally, it alleges the "complaint" is an

improper collateral attack on the Commission's order approving the stipulation and agreement that resolved GMO's 2018 rate case.

Before addressing those arguments, it is important to note that GMO's motion is a motion to dismiss on the pleadings for failure to state a claim upon which relief can be granted. In considering GMO's challenge to the petition, the Commission is only testing "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."¹ As the movant, GMO has the burden of establishing that the elements pled by Public Counsel and MECG fail to state a cause of action.²

The Requirements of Section 386.390, RSMo

GMO correctly points out that Section 386.390, RSMo, gives the Commission authority to hear complaints regarding alleged violations of law, rule, order, or decision of the Commission. Public Counsel and MECG's petition does not make such an allegation. Indeed, the petition never describes itself as a complaint, and never invokes section 386.390, RSMo, as the basis for its claims against GMO. Instead, the petition asserts that the Commission should exercise the authority it is given under Section 393.140(8), RSMo to "prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited." In fact, Public Counsel and MECG's petition is not a complaint under Section 386.390 and the fact that the Commission chose to assign that petition an EC file designation in EFIS does not transform it into a complaint under that statute.

¹ *City of O'Fallon v. Union Electric Co.* 462 S.W.3d 438, 441 (Mo. App. 2015), quoting *State ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n*, 392 S.W.3d 24, 28 (Mo. App. 2012).

² *Weicht v. Suburban Newspapers of Greater St. Louis, Inc.*, 32 S.W.3d 592, 598 (Mo. App 2000).

Whether their pleading is called a petition or a complaint does not control the determination of whether Public Counsel and MECG have stated a cause of action. Instead, the question is whether that pleading has properly invoked the jurisdiction of the Commission.³ Section 386.390, RSMo, gives the Commission jurisdiction to hear complaints about violations of a utility's tariff, any Commission order or rule, or any other provision of law, but that is not the only basis for the Commission's jurisdiction. The Commission is also granted jurisdiction by Section 393.140(8) to "prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited." Whether it is called a complaint or a petition, Public Counsel and MECG's pleading properly invokes the Commission's statutory jurisdiction and should not be dismissed on that basis.

Unusual or Extraordinary

GMO's second argument asserts that its retirement of the Sibley units is not unusual or extraordinary and thus does not meet the usual qualification for the Commission to issue an accounting authority order. This argument is based on factual contentions and, as previously indicated, in deciding whether a petition states a cause of action, the Commission cannot weigh the facts and must instead assume that the petitioner's factual assertions are true. GMO's argument is, therefore, inappropriate for purposes of this motion.

Collateral Attack

GMO's third argument is that Public Counsel and MECG's petition for the issuance of an accounting authority order is an improper collateral attack on the Commission's prior

³ *State ex rel. Ozark Border Elec. Co-op v. Public Service Com'n of Mo.* 924 S.W.2d 597 (Mo. App. 1996). See also, *Staff of Mo. Pub. Serv. Com'n v. Consolidated Pub. Water Supply Dist. C-1 of Jefferson Co., Mo.* 474 S.W.3d 643 (Mo. App. 2015).

order approving the stipulation and agreement that resolved GMO's 2018 rate case. GMO contends one of the stipulations approved in the rate case specifically required GMO to "create a regulatory liability to capture the amount of depreciation expense included in the Company's revenue requirement ..." beginning when the Sibley units were retired. The stipulation and agreement also provided that the signatories agreed "that the rates established in this case include O & M (operations and maintenance expenses) associated with the Sibley units." The stipulation and agreement further provided that it did not "preclude any Signatory from proposing an accounting authority order ("AAO"), or any other ratemaking treatment, for the recovery of any other costs associated with the [Sibley unit retirements]". However, the stipulation and agreement did not specifically reserve any rights regarding an AAO related to any revenue and return on investments associated with the Sibley units.

GMO contends the inclusion of these provisions in the approved stipulation and agreement makes Public Counsel and MCEG's request for an AAO an improper collateral attack on the Commission's order that approved the stipulation and agreement. The Commission believes that the provisions of the approved stipulation and agreement, including the acknowledgement of the fact that operations and maintenance expenses associated with the Sibley units are included in the rates established in that case, do not, on their face, preclude Public Counsel and MCEG's petition for an AAO related to the retirement of the Sibley units after the true-up date used for the establishment of those rates and after those rates took effect. GMO may present more facts to support its argument during the hearing process, but its argument does not sufficiently support its motion to dismiss on the pleadings.

Conclusion

The Commission concludes that GMO has not carried its burden of establishing that Public Counsel and MECG have failed to state a claim upon which relief can be granted. This means that this matter will proceed to hearing where Public Counsel and MECG will shoulder the burden of establishing that the Commission should exercise its discretion to establish an AAO.

THE COMMISSION ORDERS THAT:

1. KCP&L Greater Missouri Operations Company's Motion to Dismiss the Complaint of the Office of the Public Counsel and Midwest Energy Consumers Group 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

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

Woodruff, Chief Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Grain Belt)
Express Clean Line LLC for a Certificate of)
Convenience and Necessity Authorizing it to)
Construct, Own, Operate, Control, Manage and) **File No. EA-2016-0358**
Maintain a High Voltage, Direct Current)
Transmission Line and an Associated Converter)
Station Providing an Interconnection on the)
Maywood-Montgomery 345kV Transmission Line)

REPORT AND ORDER ON REMAND

Affirmed on appeal: *Missouri Landowners Alliance v. Public Service Commission*, 593 S.W.3d 632 (Mo. App. E.D. 2019)

CERTIFICATES

§4 Jurisdiction and powers generally

§42 Electric and power

Grain Belt committed to establish a decommissioning fund to pay for wind-up activities to retire the project facilities and restore landowner property. Such a fund would be the first of its kind in the country.

§5 Jurisdiction and powers of Federal Commissions

§6 Jurisdiction and powers of the State Commission

The Commission's authority to grant a certificate of convenience and necessity exists alongside federal regulatory authority.

§42 Electric and power

Demand for renewably-generated electricity meets the definition of a need for service. Specifically, wind power transmitted to Missouri is of interest to commercial, manufacturing, consumer companies, and industrial customers.

§42 Electric and power

The use of Grain Belt transmission service would save approximately \$10 million per year for one party's wholesale customers in transmission charges alone, compared to Southwest Power Pool (SPP) and Midcontinent Independent System Operator (MISO) transmission rates.

§42 Electric and power

The Grain Belt interregional transmission line produces consumer benefits by providing an alternate pathway for electricity between and within transmission region across regional seams. Use of the Grain Belt line can also avoid pancaking transmission rates when crossing regional seams into adjoining electric transmission regions.

§42 Electric and power

The Grain Belt Project will employ a shipper pays model. None of the costs will be recovered through the cost allocation process of Midcontinent Independent System Operator (MISO), PJM Interconnection, or Southwest Power Pool (SPP). Accordingly, none of the Grain Belt Project costs will be passed through to Missouri ratepayers, unless and only to the extent that their local utility voluntarily chooses to purchase capacity or power on the Grain Belt interregional transmission line.

§42 Electric and power

Wind energy from Kansas delivered to Missouri by the Grain Belt interregional transmission line is substantially less expensive than wind energy generated within the Midcontinent Independent System Operator (MISO) region and delivered to Missouri due primarily to transmission congestion costs.

§42 Electric and power

Because wind power varies proportionally to wind velocity by the third power, a Kansas wind site with an average wind velocity of 8.8 meters/second produces almost double the power of a site in Missouri with a 7.0 meter/second average. This exponential effect substantially reduces the cost of wind energy produced by facilities located in areas with higher average wind speeds.

§42 Electric and power

No more than nine acres of land would be taken out of agricultural production as a result of the structures installed for the Grain Belt transmission line. Further, much of the land traversed by the transmission line is not suited for center pivot irrigation, which is the primary agricultural concern when constructing transmission lines because of the permanent nature of such irrigation systems.

ELECTRIC**§3 Certificate of convenience and necessity**

Demand for renewably-generated electricity meets the definition of a need for service. Specifically, wind power transmitted to Missouri is of interest to commercial, manufacturing, consumer companies, and industrial customers.

§3 Certificate of convenience and necessity

The use of Grain Belt transmission service would save approximately \$10 million per year for one party's wholesale customers in transmission charges alone, compared to

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§3 Certificate of convenience and necessity

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§3 Certificate of convenience and necessity

§8 Jurisdiction and powers of Federal Commissions

§9 Jurisdiction and powers of the State Commission

The Commission's authority to grant a certificate of convenience and necessity exists alongside federal regulatory authority.

§3 Certificate of convenience and necessity**§9 Jurisdiction and powers of the State Commission**

Real estate easements qualify as real estate, and cash on hand for project development is personal property, when meeting the statutory definition of an electrical corporation.

§3 Certificate of convenience and necessity**§9 Jurisdiction and powers of the State Commission****§36 Local service**

Indiscriminate transmission service provided by an entity that constructs and operates a transmission line bringing electrical energy from electrical power generators to public utilities that serve consumers meets the statutory definition of a public utility.

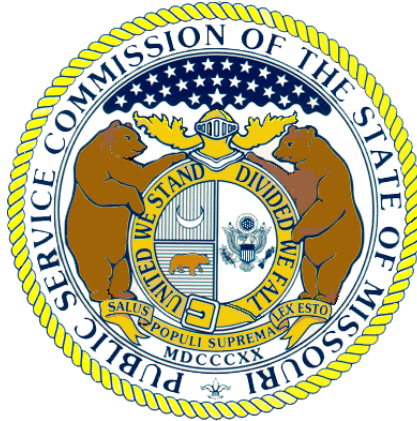
§3 Certificate of convenience and necessity**§45 Decommissioning costs**

Grain Belt committed to establish a decommissioning fund to pay for wind-up activities to retire the project facilities and restore landowner property. Such a fund would be the first of its kind in the country.

PUBLIC UTILITIES**§10 Tests in general****§17 Restrictions on service, extent of use**

Indiscriminate transmission service provided by an entity that constructs and operates a transmission line bringing electrical energy from electrical power generators to public utilities that serve consumers meets the statutory definition of a public utility.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Application of Grain Belt Express)
Clean Line LLC for a Certificate of Convenience and)
Necessity Authorizing It to Construct, Own, Operate,)
Control, Manage, and Maintain a High Voltage, Direct)
Current Transmission Line and an Associated Converter)
Station Providing an Interconnection on the Maywood –)
Montgomery 345kV Transmission Line)

File No. EA-2016-0358

REPORT AND ORDER ON REMAND

Issue Date: March 20, 2019

Effective Date: April 19, 2019

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

In the Matter of the Application of Grain Belt Express)
 Clean Line LLC for a Certificate of Convenience and)
 Necessity Authorizing It to Construct, Own, Operate,)
 Control, Manage, and Maintain a High Voltage, Direct) **File No. EA-2016-0358**
 Current Transmission Line and an Associated Converter)
 Station Providing an Interconnection on the Maywood –)
 Montgomery 345kV Transmission Line)

REPORT AND ORDER ON REMAND

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MISSOURI LANDOWNERS ALLIANCE, EASTERN MISSOURI LANDOWNERS ALLIANCE d/b/a SHOW ME CONCERNED LANDOWNERS, CHARLES AND ROBYN HENKE, R. KENNETH HUTCHINSON, MATTHEW AND CHRISTINA REICHERT and RANDALL AND ROSEANNE MEYER:

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SIERRA CLUB AND NATURAL RESOURCES DEFENSE COUNCIL:

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CLEAN GRID ALLIANCE AND THE WIND COALITION:

Sean R. Brady, Senior Counsel & Regional Policy Manager, PO Box 4072, Wheaton, Illinois 60189-4072.

¹ The following parties did not participate in the remand evidentiary hearing or file a brief: Walmart Stores, Inc., Missouri Industrial Energy Consumers, IBEW Unions Local 2 and 53, Missouri AFL-CIO, and the Missouri Retailers Association.

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CONSUMERS COUNCIL OF MISSOURI:

John B. Coffman, 871 Tuxedo Boulevard, St. Louis, Missouri 63119.

SENIOR REGULATORY LAW JUDGE: Michael Bushmann

REPORT AND ORDER ON REMAND

I. Procedural History

On August 30, 2016, Grain Belt Express Clean Line LLC (“Grain Belt”) filed an application with the Missouri Public Service Commission (“Commission”), pursuant to Section 393.170.1, RSMo², 4 CSR 240-2.060 and 4 CSR 240-3.105(1)(B), for a certificate of convenience and necessity (“CCN”) to construct, own, operate, control, manage and maintain a high voltage, direct current transmission line and associated facilities within Buchanan, Clinton, Caldwell, Carroll, Chariton, Randolph, Monroe and Ralls Counties, Missouri, as well as an associated converter station in Ralls County.

The Commission issued notice of the application and provided an opportunity for interested persons to intervene. The Commission granted intervention to the following parties: Missouri Landowners Alliance and Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners (collectively, “Landowners”); Missouri Joint Municipal Electric Utility Commission (“MJMEUC”); Missouri Farm Bureau Federation; Missouri Department of Economic Development; Matthew and Christina Reichert; Randall and Roseanne Meyer; Charles and Robyn Henke; R. Kenneth Hutchinson; Rockies Express Pipeline LLC; Sierra Club; Natural Resources Defense Council; The Wind Coalition; Clean Grid Alliance (f/k/a Wind on the Wires); Infinity Wind Power³; Walmart Stores, Inc.; Missouri Industrial Energy Consumers; Renew Missouri Advocates; International Brotherhood of Electrical Workers Locals 2 and 53; Consumers Council of Missouri; Missouri Retailers Association; and Missouri AFL-CIO. The Commission granted the petitions of Energy for Generations, LLC and SSM Health Care Corporation to file amicus curiae briefs.

² All statutory references are to the Missouri Revised Statutes (2016), as revised, unless otherwise noted.

³ On November 20, 2018, the Commission granted a motion to substitute ENGIE North America, Inc. (“ENGIE”) as a party in this proceeding for Infinity Wind Power.

The Commission conducted local public hearings for members of the general public in each of the eight counties where the proposed transmission line would be located.⁴ The Commission held an evidentiary hearing on March 20-24, 2017.⁵ The parties submitted initial, reply, and supplemental post-hearing briefs. After the filing of two post-hearing motions⁶, oral arguments were conducted on August 3, 2017.⁷ On August 16, 2017, the Commission issued a Report and Order denying Grain Belt's application for a CCN after concluding that the Commission lacked the statutory authority to issue the CCN based on a decision by the Missouri Court of Appeals for the Western District ("ATXI")⁸ because Grain Belt had not obtained the necessary county assents under Section 229.100, RSMo. However, four Commissioners also signed a concurring opinion stating that they would have granted Grain Belt's application had it not been for the Western District's ATXI decision, which the Commission found compelled denial of the application based on lack of statutory authority.

On appeal, the Missouri Court of Appeals for the Eastern District determined that the Commission erred in finding it could not lawfully grant a line CCN to Grain Belt under Section 393.170.1, RSMo, due to Grain Belt's lack of county assents, but transferred the case to the Supreme Court of Missouri.⁹ The Supreme Court of Missouri concluded that the Commission had erred in finding it could not lawfully grant a CCN to Grain Belt,

⁴ Transcript, Vols. 2-9. The public hearings were conducted in Buchanan, Clinton, Caldwell, Carroll, Chariton, Randolph, Monroe, and Ralls counties.

⁵ Transcript, Vols. 10-19. The Commission admitted the testimony of 54 witnesses and 135 exhibits into evidence during the evidentiary hearing.

⁶ Missouri Landowner Alliance's Motion to Dismiss Application filed on July 4, 2017 and Grain Belt's Motion for Waiver or Variance of Filing Requirements filed on June 29, 2017.

⁷ Transcript, Vol. 20. At the oral arguments, the Commission admitted four additional exhibits into the record and took official notice of Section 393.170, RSMo 1949.

⁸ *Matter of Ameren Transmission Co. of Illinois*, 523 S.W.3d 21, 27 (Mo. Ct. App. 2017), *reh'g denied* (Apr. 27, 2017), *transfer denied* (Apr. 27, 2017), *transfer denied* (June 27, 2017), and *abrogated by Grain Belt Express Clean Line, LLC v. Pub. Serv. Comm'n*, 555 S.W.3d 469 (Mo. 2018).

⁹ *Grain Belt Express Clean Line, LLC v. Pub. Serv. Comm'n*, No. ED 105932, 2018 WL 1055858, at *5 (Mo. Ct. App. Feb. 27, 2018).

abrogating that portion of the ATXI opinion regarding county assents, and remanded this case back to the Commission to determine whether Grain Belt's proposed transmission line project is necessary or convenient for the public service.¹⁰

During the remand evidentiary hearing held on December 18-19, 2018¹¹, the parties presented evidence relating to the following unresolved issues previously identified by the parties:

1. Does the evidence establish that the Commission may lawfully issue to Grain Belt the certificate of convenience and necessity it is seeking for the high-voltage direct current transmission line and converter station with an associated AC switching station and other AC interconnecting facilities?
2. Does the evidence establish that the high-voltage direct current transmission line and converter station for which Grain Belt is seeking a certificate of convenience and necessity are necessary or convenient for the public service, within the meaning of that phrase in Section 393.170, RSMo?
3. If the Commission grants the CCN, what conditions, if any, should the Commission impose?
4. If the Commission grants the CCN, should the Commission exempt Grain Belt from complying with the reporting requirements of Commission rules 4 CSR 240-3.145, 4 CSR 240-3.165, 4 CSR 240-3.175, and 4 CSR 240-3.190(1), (2) and (3) (A)-(D)?

¹⁰ *Grain Belt Express Clean Line, LLC v. Pub. Serv. Comm'n*, 555 S.W.3d 469, 474 (Mo. 2018), *reh'g denied* (Aug. 21, 2018).

¹¹ Transcript ("Tr."), Vols. 22-24. The Commission admitted the testimony of 12 witnesses and 16 exhibits into evidence during the remand evidentiary hearing.

The parties submitted initial and reply post-hearing briefs following the remand evidentiary hearing, and the case was deemed submitted for the Commission's decision after the filing of briefs when the Commission closed the record.¹² On February 15, 2019, the Landowners filed a motion to offer an additional exhibit into the record of the case, and this motion is discussed below.

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.

A. Project Description

1. Grain Belt is a limited liability company organized under the laws of the State of Indiana. Grain Belt is a wholly-owned subsidiary of Grain Belt Express Holding LLC, a Delaware limited liability company, which is a wholly-owned subsidiary of Clean Line Energy Partners LLC ("Clean Line").¹³

2. Grain Belt filed its application for a CCN pursuant to Section 393.170.1, RSMo, and Commission administrative rules.¹⁴

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

¹² "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).

¹³ Ex.100, Skelly Direct, p. 3.

¹⁴ Ex. 100, Skelly Direct, p. 4.

notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.¹⁵ Staff participated in this proceeding.

4. The transmission line proposed to be constructed by Grain Belt in the application is an approximately 780-mile, overhead, multi-terminal +600 kilovolt (“kV”) high-voltage, direct current (“HVDC”) transmission line and associated facilities (collectively, the “Project”).¹⁶

5. The Project would traverse the states of Kansas, Missouri, Illinois and Indiana, including approximately 206 miles in Missouri.¹⁷ The Project would deliver 500 megawatts (“MW”) of wind-generated electricity from western Kansas to customers in Missouri, and another 3,500 MW to states further east.¹⁸

6. The Missouri portion of the Project would be located in the Missouri counties of Buchanan, Clinton, Caldwell, Carroll, Chariton, Randolph, Monroe, and Ralls.¹⁹

7. The Project would have three converter stations. One converter station would be located in western Kansas, where wind generating facilities would connect to the Project via alternating current (“AC”) lines. The two other converter stations in eastern Missouri and eastern Illinois would deliver electricity to the AC grid through interconnections with transmission owners in the systems of Midcontinent Independent System Operator, Inc. (“MISO”) and PJM Interconnection, LLC (“PJM”), respectively.²⁰ Power delivered at the PJM interconnection could be delivered to all the states along the Eastern coast.²¹

¹⁵ Commission Rules 4 CSR 240-2.010(10) and (21) and 2.040(1).

¹⁶ Ex. 100, Skelly Direct, p. 3.

¹⁷ Ex. 100, Skelly Direct, p. 4.

¹⁸ Ex. 108, Galli Direct, p. 4.

¹⁹ Ex. 100, Skelly Direct, p. 4.

²⁰ Ex. 108, Galli Direct, p. 4-7; Ex. 104, Berry Direct, p. 4-5.

²¹ Tr. Vol. 12, p. 481.

8. Grain Belt proposes to construct the Missouri converter station and associated AC interconnecting facilities in Ralls County. This converter station will be located near Union Electric Company d/b/a Ameren Missouri's Montgomery-Maywood 345 kV transmission line, which will facilitate the interconnection to the energy market operated by MISO in eastern Missouri and other Midwestern and southern states.²²

9. The Missouri converter station will have bi-directional functionality, allowing Missouri utilities an additional means to earn revenue from off-system sales of up to 500 MW of excess power into the PJM energy markets.²³ Energy injected at the Missouri converter station will be regulated by MISO to ensure reliability.²⁴

10. The HVDC technology of the Project is the most cost-effective and efficient way to move large amounts of electric power over long distances and can transfer significantly more power with lower line losses over longer distances than comparable AV lines.²⁵ The HVDC design will provide a congestion-free delivery source of power, unlike using an interconnected AC system to move power.²⁶

11. The Project's development, construction, and operations costs would be borne by the investors in Grain Belt and the transmission customers. The Project's costs would not be recovered through the cost allocation process of any regional transmission organization approved by the Federal Energy Regulatory Commission ("FERC").²⁷

²² Ex. 100, Skelly Direct, p. 4; Ex. 108, Galli Direct, p. 4, 6; Ex. 119, Puckett Direct, p. 14.

²³ Ex. 100, Skelly Direct, p. 8.

²⁴ Tr. Vol. 12, p. 509.

²⁵ Ex. 108, Galli Direct, p. 7-8.

²⁶ Ex. 108, Galli Direct, p. 9.

²⁷ Ex. 100, Skelly Direct, p. 7; Ex. 104, Berry Direct, p. 8.

12. The Project is a participant-funded, “shipper pays” transmission line. Grain Belt would recover its capital costs by entering into voluntary, market-driven contracts with entities that want to become transmission customers of the Project.²⁸

13. Grain Belt would offer transmission service through an open access transmission tariff that would be filed with and subject to the jurisdiction of FERC under the Federal Power Act and FERC regulations. Grain Belt customers would consist principally of wind energy producers in western Kansas and wholesale buyers of electricity, such as utilities, competitive retail energy suppliers, brokers, and marketers.²⁹

14. The Project would not provide service to end-use customers or provide retail service in Missouri, so the Project would be rate-regulated by FERC and not by the Commission.³⁰

15. Under FERC requirements, Grain Belt must broadly solicit interest in the Project, the rates negotiated must be just and reasonable and without undue discrimination or preference, and the service must not impair regional reliability and operational efficiency.³¹

16. FERC has specifically found Grain Belt’s process to select customers and allocate capacity to be “not unduly discriminatory”.³²

17. The Project will cross the property of approximately 570 landowners in Missouri.³³

²⁸ Ex. 100, Skelly Direct, p. 12; Ex. 104, Berry Direct, p. 8; Ex. 111, Kelly Direct, p. 4.

²⁹ Ex. 100, Skelly Direct, p. 23-24; Ex. 104, Berry Direct, p. 6; Ex. 111, Kelly Direct, p. 4-5.

³⁰ Ex. 100, Skelly Direct, p. 24; Ex. 322.

³¹ Transcript, Vol. 22, p. 2039-40.

³² Ex. 322, 147 F.E.R.C. ¶61,098, p.10, paragraph 23 (May 8, 2014).

³³ Tr. Vol. 12, p. 438.

18. Grain Belt has acquired 39 easements for the transmission line from Missouri landowners.³⁴

19. Grain Belt uses a standard form of agreement when acquiring easement rights from Missouri landowners. The agreement includes the right to construct, operate, repair, maintain, and remove an overhead transmission line and related facilities, along with rights of access to the right-of-way for the transmission line.³⁵

20. The easement agreement limits the landowner's legal rights and use of the easement property, including prohibiting any landowner activity that would interfere with Grain Belt's use of the easement.³⁶

B. Need for the Project

21. MJMEUC is a joint action agency and a public and corporate body of the State of Missouri authorized by legislation to: (1) construct, operate, and maintain transmission and generation facilities for the production and transmission of electric power for its members, (2) purchase and sell electric power and energy, and (3) enter into agreements with any person for the transmission of electric power. It is organized to promote efficient wheeling, pooling, generation, and transmission arrangements to meet the power and energy requirements of municipal utilities.³⁷

22. MJMEUC has 68 Missouri municipal utility members, and Citizens Electric Corporation, a rural electric cooperative with more than 21,000 customers, is an advisory

³⁴ Tr. Vol. 24, p. 2143, 2145.

³⁵ Ex. 113, Lanz Direct, p. 15-16, Schedule DKL-4.

³⁶ Ex. 113, Lanz Direct, Schedule DKL-4, Sections 4, 9, and 13.

³⁷ Ex. 475, Kincheloe Rebuttal, p. 3.

member of MJMEUC. Together, MJMEUC's members serve some 347,000 retail electric customers in Missouri, and their combined peak load is approximately 2,600 MW.³⁸

23. The Missouri Public Energy Pool ("MoPEP") is a group of 35 Missouri cities for which MJMEUC provides full requirements for wholesale energy, capacity, and ancillary services.³⁹

24. MJMEUC's wholesale customers, including MoPEP, have a demand for affordable renewable energy, as some are leaders within Missouri in providing renewable energy to their customers.⁴⁰

25. MoPEP is oversubscribed in its ability to offer renewable energy and cannot meet the needs of its city members until it adds additional renewable resources.⁴¹

26. While MJMEUC owns generation that supplies some of its members' energy needs, MJMEUC has primarily used purchase power agreements and transmission service agreements with other utilities to provide energy to its members.⁴²

27. On June 2, 2016, MJMEUC entered into a transmission service agreement with Grain Belt. Under the agreement, MJMEUC agreed to purchase a minimum of 100 MW and up to 200 MW of firm transmission capacity rights on the Project from Grain Belt's western converter station in Ford County, Kansas to the converter station in Missouri for the benefit of its existing full-requirements pool members and other members. In addition, MJMEUC agreed to purchase 25 MW of capacity (with the option to purchase another 25 MW) from the Missouri converter station to the Sullivan Substation in PJM. This allows

³⁸ Ex. 475, Kincheloe Rebuttal, p. 3.

³⁹ Ex. 475, Kincheloe Rebuttal, p. 4; Schedule DK-1.

⁴⁰ Ex. 475, Kincheloe Rebuttal, p. 5; Tr. p. 1113.

⁴¹ Tr. Vol. 16, p. 1112.

⁴² Ex. 475, Kincheloe Rebuttal, p. 2.

MJMEUC utilizes the ability to directly make off-system sales into the PJM market and derive additional financial benefits.⁴³

28. MJMEUC subsequently executed a power purchase agreement with Iron Star Wind Project, LLC (“Iron Star”) which would allow Kansas wind energy to flow across Grain Belt’s transmission line and into MISO where MoPEP and individual MJMEUC members can deliver that renewable energy to their customers.⁴⁴ On February 20, 2018, Iron Star was acquired from Infinity Wind Power by ENGIE North America, Inc., but that transaction did not change any of the terms or conditions of the power purchase agreement with MJMEUC.⁴⁵

29. In 2021, MoPEP’s contract with Illinois Power Marketing Company providing 100 MW of coal energy and capacity to MoPEP will expire.⁴⁶ MJMEUC’s agreements with Grain Belt and Iron Star would help MoPEP to replace the energy from Illinois Power Marketing Company with more affordable renewable energy.⁴⁷

30. In December 2016, MoPEP committed to purchase 60 MW of wind energy over the Grain Belt transmission line.⁴⁸

31. The following Missouri cities have also contracted to purchase Kansas wind energy delivered over the Grain Belt transmission line: City of Kirkwood-25MW; City of Hannibal-15MW; City of Columbia-35MW; and City of Centralia-1MW. These contracts, when combined with the MoPEP agreement, commit at least 136 MW of wind energy available to MJMEUC through its transmission service agreement with Grain Belt.⁴⁹

⁴³ Ex. 115, Lawlor Direct, p. 2-3; Schedule MOL-1.

⁴⁴ Ex. 475, Kincheloe Rebuttal, p. 2; Ex. 476, Grotzinger Rebuttal, Schedule JG-4HC.

⁴⁵ Ex. 878, Riley Supp. Direct, p. 2-3.

⁴⁶ Ex. 475, Kincheloe Rebuttal, p. 4.

⁴⁷ Ex. 475, Kincheloe Rebuttal, p. 4-5.

⁴⁸ Tr. Vol. 16, p. 995-996, 1004-1005; Ex. 478.

⁴⁹ Tr. Vol. 16, p. 990-991, 995-996; Ex. 479; Tr. Vol. 24, p. 2114.

32. MJMEUC is contractually obligated under the power purchase agreement with Iron Star to take electric power and pay for it, assuming the Project is built and available for service.⁵⁰

33. On November 12, 2018, MJMEUC and Grain Belt entered into an Interim Agreement and Amendment to their transmission service agreement. The amendment reduced the transmission price for MJMEUC of the second tranche of electric energy to the same price as the first 100 MW of electric energy. This means that the entire 200 MW transmission service agreement price is \$1,167/Mw-month, which is a 30% decrease in the price of the second 100 MW tranche (previously \$1,667/Mw-month), and a 17.6% decrease in the overall cost of the full 200 MW transmission service agreement.⁵¹

34. MJMEUC witness John Grotzinger testified credibly that with regard to MoPEP's 60 MW of energy contracted to be generated by Iron Star and delivered to MoPEP through the transmission service agreement with Grain Belt, MoPEP cities will save over \$11 million annually compared to its existing contract for Illinois coal resources.⁵²

35. Mr. Grotzinger testified credibly that under the original Grain Belt transmission service agreement with MJMEUC, if MJMEUC were to use the entire 200 MW of energy it would save approximately \$10 million per year for MJMEUC's wholesale customers in transmission charges alone, compared to SPP to MISO transmission rates.⁵³

36. Considering the entire 200 MW of energy provided to MJMEUC through the amended Grain Belt transmission service agreement, the transmission cost savings from the Grain Belt Project versus a traditional SPP to MISO point-to-point service agreement

⁵⁰ Tr. Vol. 16, p. 1001-1002.

⁵¹ Ex. 480, Grotzinger Supp. Direct, p. 1-2, Schedule JG-9; Tr. Vol. 24, p. 2115.

⁵² Ex. 480, Grotzinger Supp. Direct, p. 3, Schedule JG-13.

⁵³ Ex. 476, Grotzinger Rebuttal-HC, p. 4-5, Schedule JG-3; Tr. Vol. 16, p. 1108.

are approximately an additional \$2.8 million annually. Those additional savings are derived from (1) the additional decrease in costs of the amended Grain Belt transmission service agreement, and (2) the costs of SPP to MISO point-to-point transmission service having risen from \$2,880/Mw-month to the current rate of \$3,800/Mw-month, which is more than three times as much as the Grain Belt transmission service agreement.⁵⁴

37. The annual cost savings to MJMEUC member cities that participate in the Project will be dollar for dollar and will likely be passed through to their residential and industrial customers in the form of rate relief or invested in deferred maintenance to their electrical distribution systems.⁵⁵

38. Grain Belt has a transmission service agreement with an Illinois load-serving entity called Realgy, which has agreed to buy 25 MW of transmission service for delivery to Missouri and 25 MW to PJM.⁵⁶

39. Grain Belt held an open solicitation process in 2015 and 2016 to gauge the demand from energy generators in western Kansas to fill the Project's line capacity to deliver wind energy to both MISO and PJM. The total capacity requested by the energy generators to both MISO and PJM delivery points of the Project was 20,825 MW, almost five times the total available capacity of the Project.⁵⁷

40. Wal-Mart Stores, Inc. operates 158 retail units and four distribution centers and employs 44,356 associates in Missouri. In fiscal year ending 2016, Wal-Mart Stores,

⁵⁴ Ex. 480, Grotzinger Supp. Direct, p. 2, Schedule JG-10.

⁵⁵ Tr. Vol. 16, p. 1000-1001.

⁵⁶ Tr. Vol. 14, p. 914, 965.

⁵⁷ Ex. 104, Berry Direct, p. 24-25.

Inc. purchased \$7.3 billion worth of goods and services from Missouri-based suppliers, supporting 59,953 supplier jobs.⁵⁸

41. Wal-Mart Stores, Inc. has established aggressive and significant renewable energy goals, including: (1) to be supplied 100 percent by renewable energy, and (2) by 2025, to be supplied by 50 percent renewable energy. Additionally, Wal-Mart Stores, Inc. has set a science-based target to reduce emissions in its operations by 18 percent by 2025 through the deployment of energy efficiency and consumption of renewable energy.⁵⁹

42. Wal-Mart Stores, Inc. has a demand for the additional renewable power that would be delivered by the Grain Belt Project into Missouri and PJM. In Missouri, Wal-Mart Stores, Inc. would work with Missouri utilities to develop programs to purchase significant quantities of grid-connected renewable energy. In the competitive retail markets east of Missouri, Wal-Mart Stores, Inc. would be able to directly contract for renewable power delivered by Grain Belt's Project to serve Wal-Mart Stores, Inc.'s facilities in those markets.⁶⁰

43. Wind power transmitted to Missouri would be of interest to commercial and industrial customers, such as Missouri Industrial Energy Consumers and the Missouri Retailers Association.⁶¹

44. A number of large industrial, manufacturing, and consumer companies, such as General Mills, Target, General Motors, Proctor & Gamble, and Owens Corning, require

⁵⁸ Ex. 900, Chriss Rebuttal, p. 3.

⁵⁹ Ex. 900, Chriss Rebuttal, p. 3.

⁶⁰ Ex. 900, Chriss Rebuttal, p. 6-7.

⁶¹ Ex. 800, Dauphinais Rebuttal, p. 4-5.

access to renewable energy as part of their corporate energy strategies and support the Grain Belt Project for that purpose.⁶²

C. Applicant's Qualifications and Financial Ability

45. Grain Belt currently has no employees.⁶³

46. Jonathan Abebe is a former employee of Clean Line and now is responsible for Grain Belt's transmission, engineering, and interconnection activities.⁶⁴ Mr. Abebe has over 14 years of experience in the electric transmission industry, ranging from power system planning, power system outage planning, asset management, and project development.⁶⁵

47. Hans Detweiler is not now employed by Clean Line, but is currently acting as the lead developer of the Grain Belt Project.⁶⁶ While previously working for Clean Line, Mr. Detweiler led or advised on the development of all of Clean Line's electric transmission projects. In this role he was responsible for permitting, land acquisition, routing, and numerous other project development activities.⁶⁷

48. Grain Belt has cash on hand, but not enough to complete either the development phase or construction of the Project.⁶⁸

49. On November 9, 2018, Grain Belt Express Holding LLC entered into a Membership Interest Purchase Agreement ("Purchase Agreement") with Invenergy

⁶² Tr. Vol. 10, p. 255-259; Ex. 100, Skelly Direct, Schedule MPS-3; Tr. Vol. 22, p. 1962-1963.

⁶³ Tr. Vol. 22, p. 1836, 1838, 1921.

⁶⁴ Ex. 143, Abebe Supp. Direct, p. 1; Tr. Vol. 22, p. 1887, 1890.

⁶⁵ Ex. 143, Abebe Supp. Direct, p. 2.

⁶⁶ Tr. Vol. 22, p. 1965, 1970.

⁶⁷ Ex. 144, Detweiler Supp. Direct, p. 1.

⁶⁸ Tr. Vol. 22, p. 1921-1922.

Transmission LLC (“Invenergy”), an affiliate of Invenergy, LLC, in which Invenergy will purchase Grain Belt.⁶⁹

50. Also on November 9, 2018, Grain Belt Express Holding LLC and Invenergy entered into a Development Management Agreement (“Development Agreement”) for Invenergy to provide development funding for the Project through the projected closing date of the Purchase Agreement.⁷⁰

51. Invenergy (and its affiliate) is a U.S.-based company founded in 2001 and is North America’s largest privately held company that develops, owns, and operates large-scale renewable and other clean energy generation, energy storage facilities, and electric transmission facilities across North America, Latin America, Japan and Europe. Invenergy’s expertise includes a complete range of fully integrated in-house capabilities, including: project development, permitting, transmission, interconnection, energy marketing, finance, engineering, project construction, operations and maintenance. To date, Invenergy has developed more than 20,046 MW of large-scale wind, solar, natural gas, and energy storage facilities. This includes more than 10,896 MW of projects in operation, with more than 9,150 MW contracted or in construction.⁷¹

52. Following the closing of the Purchase Agreement, Invenergy will fund the development costs of the Project as its owner. At the end of the development phase of the Project, Invenergy will use project funding to construct the Project.⁷²

53. Construction of the Project will not begin until all the financing necessary to build the Project has been obtained.⁷³

⁶⁹ Ex. 142, Berry Supp. Direct, p. 3; Ex. 145, Zadlo Supp. Direct, p. 3-4, Schedule KZ-3C; Tr. Vol. 22, p. 1906-1907.

⁷⁰ Ex. 142, Berry Supp. Direct, p. 3; Ex. 145, Zadlo Supp. Direct, p. 3-4, Schedule KZ-4C.

⁷¹ Ex. 145, Zadlo Supp. Direct, p. 6.

⁷² Ex. 142, Berry Supp. Direct, p. 4.

54. Invenergy is not obligated to close on the Purchase Agreement unless (1) this Commission has approved the transaction proposed in the Purchase Agreement and has granted Grain Belt a certificate of convenience and necessity for the Project, and (2) the Kansas Corporation Commission has granted at least a 5 year extension of its certificate to Grain Belt and approved the change in ownership in the Purchase Agreement.⁷⁴

55. Under the Development Agreement, Invenergy is contractually obligated to manage the business and affairs of the Project, and shall perform all services related to the development, ownership, and maintenance of the Project. Invenergy has care, custody, and control over the Project in all day-to-day activities, and has authorization to execute documents and act on behalf of Grain Belt.⁷⁵

56. Invenergy is spending money now on development of the Project, and expects to spend up to \$2 million over the next nine months on regulatory matters.⁷⁶ Invenergy projects that it will spend approximately \$50 to \$100 million on development of the Project before it can obtain funding from institutional investors.⁷⁷

57. Invenergy's senior management executives, each with more than 25 years of experience in the energy generation industry, have worked together for more than two decades. Invenergy's project management team has extensive experience in construction of energy generation projects, contract negotiation, material procurement, right-of-way issues, utility interconnections, and construction of electrical transmission and substations.⁷⁸

⁷³ Tr. Vol. 10, p. 279.

⁷⁴ Ex. 145, Zadlo Supp. Direct, p. 3-4, Schedule KZ-3C.

⁷⁵ Ex. 145, Zadlo Supp. Direct, Schedule KZ-4C.

⁷⁶ Tr. Vol. 22, p. 2072-2074.

⁷⁷ Tr. Vol. 22, p. 2067.

⁷⁸ Ex. 145, Zadlo Supp. Direct, Schedule KZ-5.

58. Since 2001, Invenergy has built all required transmission and distribution lines, generator step-up transformers, and substations for its facilities in numerous regions, including within the regions managed by SPP, MISO and PJM. Invenergy developed, permitted and constructed this infrastructure across various terrains, state and local jurisdictions, and in vastly differing environmental and regulatory conditions. This experience has resulted in over 392 miles of high-voltage transmission lines, over 1,748 miles of distribution lines, 59 substations, and 73 generator step-up transformers.⁷⁹

59. Invenergy and its affiliates have in excess of \$9 billion in total assets and \$3 billion in total equity on a consolidated basis (as of December 31, 2017).⁸⁰

60. Over the last 17 years, Invenergy has raised more than \$30 billion of financing in connection with the successful development of more than 20,046 MW in projects in the United States, Canada, Europe, Central America, and Japan. Invenergy maintains strong relationships with more than 60 financial institutions worldwide, including international and domestic banks, multilateral development banks, export credit agencies and pension funds. In the U.S. alone, Invenergy has financed and executed on projects in 23 states.⁸¹

61. Invenergy will fund the Project's capital needs during the development stage by using its cash on hand, and possibly equity capital from other investors. Invenergy's cash balance as of December 31, 2017, was approximately six times greater than Clean Line's cash balance as of the same date, and the book value of its equity is twenty times greater than Clean Line's equity.⁸²

⁷⁹ Ex. 145, Zadlo Supp. Direct, p. 9.

⁸⁰ Ex. 146, Hoffman Supp. Direct, p. 3.

⁸¹ Ex. 146, Hoffman Supp. Direct, p. 3.

⁸² Ex. 211, Staff Revised Supp. Rebuttal Report, p. 7; Tr. Vol. 24, p. 2096-2097.

62. Invenergy plans to fund construction of the Project through credit agreements with lenders for debt financing obligations and equity contribution agreements with investors for equity commitments.⁸³

63. Invenergy has demonstrated that it has the ability to raise capital for large energy projects through access to its vast network of private debt and equity investors.⁸⁴

D. Economic Feasibility of the Project

64. The American transmission grid is divided into regional transmission systems for operational and rate-making purposes. Generally speaking, each region corresponds to the footprint of a utility or regional transmission organization, such as MISO, SPP, and PJM, that operates the regional transmission system. Electricity is transmitted at the same flat rate, called a “postage stamp rate,” between all locations within a regional transmission system, regardless of how far the electrons have actually traveled. Within each transmission region, the transmission system operator is responsible for maintaining a balance between power and load by dispatching resources to meet demand.⁸⁵

65. When the boundary of one regional transmission system abuts the boundary of another regional transmission system, this is called a “seam.” Because there are usually a limited number of transmission connections across a seam boundary, regional seams can create congestion, limit the efficient use of electric infrastructure near the seam boundary, and cut off utilities from cost-effective generation resources, even those located geographically nearby, but on the other side of the seam. Transmitting energy across seams usually results in additive transmission costs, i.e. rate pancaking, where the transmission customer pays the postage stamp rate for both regions. The presence of

⁸³ Ex. 211, Staff Revised Supp. Rebuttal Report, p. 7-8.

⁸⁴ Ex. 211, Staff Revised Supp. Rebuttal Report, p. 10-11.

⁸⁵ Ex. 111, Kelly Direct, p. 15.

multiple transmission seams within Missouri has resulted in increased costs to consumers.⁸⁶

66. The Grain Belt Project is an interregional transmission line because it will extend from Kansas to Indiana and cross the seams of three regions, SPP, MISO, and PJM.⁸⁷

67. An interregional transmission line allows for low cost energy to be imported from a region with an excess of generation resources to a region with higher demand. The Grain Belt Project provides this benefit by moving wind power from Kansas (where there is an abundance of wind) into Missouri, MISO, and PJM, which will increase the supply of low-cost power in those markets.⁸⁸

68. The interregional transmission line itself produces consumer benefits by providing an alternate pathway for electricity between and within regions. This additional path can reduce transmission congestion, which leads to lower congestion costs for utilities and reduces these utilities' cost to serve their load.⁸⁹

69. Transmission customers can import or export power on the Project without incurring a "pancaked" transmission rate. Rate pancaking happens when power is transmitted across a regional seam using ordinary transmission. In that case, the customer has to pay the transmission charge in region one (region one's postage stamp rate), and the transmission charge in region two (region two's postage stamp rate). With a dedicated interregional line, however, the customer simply pays the transmission rate for that line, rather than each region's postage stamp rates. Avoiding pancaked rates decreases the

⁸⁶ Ex. 111, Kelly Direct, p. 15-16.

⁸⁷ Ex. 111, Kelly Direct, p. 16.

⁸⁸ Ex. 111, Kelly Direct, p. 16.

⁸⁹ Ex. 111, Kelly Direct, p. 18.

costs of importing and exporting power, which enables more, and more economically efficient, import and export of electricity between regions.⁹⁰

70. The total cost of the Project will be approximately \$2.35 billion, with the portion to be located in Missouri projected to cost \$525 million.⁹¹ These amounts do not include the \$550 million cost of network upgrades required to interconnect the Project to the electric transmission grid, of which \$21 million is estimated for upgrade costs in Missouri.⁹²

71. Grain Belt and Invenergy will pay for the costs of the development, construction, and operation of the Project, and will recover these costs by selling transmission service to wind generators and load-serving entities that use the line.⁹³

72. Since the Project will employ a participant-funded or “shipper pays” model under which the costs of the Project are imposed on shippers who use the Project, none of those costs will be recovered through the cost allocation process of MISO, PJM, or SPP. Accordingly, none of these costs will be passed through to Missouri ratepayers and will not result in an increase in the transmission component of their retail rates. Missouri retail customers will only incur costs related to the Project to the extent that their local utility voluntarily chooses to purchase transmission capacity on the Project or purchases power transmitted on the Project by a third party.⁹⁴

⁹⁰ Ex. 111, Kelly Direct, p. 19.

⁹¹ Ex. 100, Skelly Direct, p. 19; Tr. Vol. 22, p. 2006-2007.

⁹² Ex. 100, Skelly Direct, p. 19; Ex. 143, Abebe Supp. Direct, p. 5.

⁹³ Ex. 104, Berry Direct, p. 3, 8; Ex. 100, Skelly Direct, p. 31-32; Ex. 145, Zadlo Supp. Direct, p. 7-11.

⁹⁴ Ex. 104, Berry Direct, p. 8; Ex. 100, Skelly Direct, p. 17; Ex. 111, Kelly Direct, p. 4-5.

73. Compared to wind energy from Kansas delivered to Missouri with the Grain Belt Project, wind energy generated in MISO and delivered to Missouri is substantially more expensive due primarily to transmission congestion costs.⁹⁵

74. PJM operates the largest wholesale energy market in the world with 71 million customers.⁹⁶

75. Power prices in PJM are generally \$10.00/MWh higher than prices that would be paid for the 500 MW of energy sold over the Project into the MISO market in Missouri.⁹⁷

76. There is a very strong corporate demand for renewable energy in PJM, which contributes to Grain Belt being able to charge higher prices for that energy in PJM.⁹⁸

77. Western Kansas has some of the highest wind speeds in the country, routinely reaching between 8.5-9.0 meters per second at 80 meters above the ground, a typical hub height for wind turbines. Wind speeds in western Kansas are substantially higher than states to the east, such as Missouri, Illinois, and Indiana. Higher wind speeds lead to a higher capacity factor, meaning that the wind generator runs at a higher average percentage of its maximum power output.⁹⁹

78. Because wind power varies proportionally to wind velocity by the third power, a Kansas wind site with an average of 8.8 meters/second produces almost double the power of a site in Missouri with a 7.0 meter/second average. This exponential effect substantially reduces the cost of wind energy produced by facilities located in areas with higher average wind speeds.¹⁰⁰

⁹⁵ Tr. Vol. 14, p. 929-933.

⁹⁶ Tr. Vol. 14, p. 938.

⁹⁷ Tr. Vol. 14, p. 915, 963.

⁹⁸ Tr. Vol. 14, p. 915-916.

⁹⁹ Ex. 104, Berry Direct, p. 25-26, Schedule DAB-4.

¹⁰⁰ Ex. 104, Berry Direct, p. 26.

79. The State of Kansas offers two tax incentives, a ten-year property tax exemption and a sales tax exemption, that reduce the tax burden on generators in western Kansas and allow them to produce energy at lower cost.¹⁰¹ Further, construction costs in Kansas are lower than in many other regions of the country, and continue to drop.¹⁰² Because of these advantages, western Kansas wind farms can generate electricity at a lower cost than wind farms located farther east in Missouri, Illinois, Indiana, and other target markets for the Grain Belt Project.¹⁰³

80. Grain Belt witness David Berry compared the Project's delivered cost of wind energy to Missouri to the cost of other energy alternatives by performing a levelized cost of energy analysis, which is the best financial technique to compare different energy generation sources.¹⁰⁴

81. Mr. Berry testified credibly that the Project's total delivered cost of energy is less than other renewable or conventional energy alternatives, such as Missouri wind energy, Missouri utility-scale solar energy, and combined-cycle gas energy generation.¹⁰⁵ This result remained true after Mr. Berry tested the analysis using a range of assumptions for natural gas prices and the cost of carbon dioxide emissions.¹⁰⁶

82. By building a single transmission project of 4,000 MW that serves the renewable energy needs of wholesale customers in both MISO and PJM, the Grain Belt Project would achieve an economy of scale that is significantly less expensive than a project that served the needs of Missouri alone.¹⁰⁷

¹⁰¹ Ex. 104, Berry Direct, p. 27.

¹⁰² Ex. 142, Berry Supp. Direct, p. 4-6.

¹⁰³ Ex. 104, Berry Direct, p. 27.

¹⁰⁴ Ex. 104, Berry Direct, p. 27.

¹⁰⁵ Ex. 104, Berry Direct, p. 28-30; Tr. Vol. 22, p. 1956-1958.

¹⁰⁶ Ex. 104, Berry Direct, p. 30-31.

¹⁰⁷ Ex. 104, Berry Direct, p. 34.

83. Michael Goggin testified credibly that Mr. Berry's assumption of a capacity factor of 55% for western Kansas wind in Berry's analysis was reasonable due to larger and taller wind turbines from technology improvements resulting in higher energy capture.¹⁰⁸

84. Landowners' witness Joseph Jaskulsky's analysis and conclusions relating to economic feasibility were not as credible as those of David Berry because Mr. Jaskulsky's testimony contained errors, and he did not conduct an analysis of either the levelized cost of energy, levelized avoided cost of energy, loss of load expectation, or production cost model.¹⁰⁹

85. Landowners' witness Paul G. Justis' analysis and conclusions relating to economic feasibility were not as credible as those of David Berry because Mr. Justis' testimony contained numerous errors and incorrect assumptions.¹¹⁰

86. With regard to the interconnection process of the Project with SPP, the western terminus of the Project will interconnect to the ITC Great Plains ("ITC") 345 kV system in SPP in Ford County in southwestern Kansas, near Dodge City. On September 6, 2013, the SPP's Transmission Working Group approved the Criteria 3.5 studies inclusive of additional analysis that assessed the Project at the tap of the ITC 345 kV line. Following the completion of Criteria 3.5 studies, Grain Belt and ITC entered into a Facilities Study Agreement on September 30, 2014. On March 19, 2015, ITC completed the Facilities Study, which identified the required attachment facilities, as well as about \$21 million of improvements needed to physically interconnect the Project's Kansas converter station to ITC's 345 kV system in Ford County, Kansas. On October 17, 2016, an Interconnection

¹⁰⁸ Tr. Vol. 16, p. 1141, 1150-1151, 1172-1173.

¹⁰⁹ Tr. Vol. 18, p. 1451, 1468-1469.

¹¹⁰ Tr. Vol. 18, p. 1431-1436, 1594-1596; 1604-1607; Ex. 420; Ex. 105, Berry Surrebuttal-HC, p. 4-27.

Agreement was executed by ITC, SPP, and Grain Belt for the Project's Kansas converter station. Grain Belt and ITC are currently in the process of updating the Interconnection Agreement.¹¹¹

87. Regarding the interconnection process of the Project with PJM, PJM is engaged in performing a supplemental System Impact Study, but at the present time there has been no increase in the estimated costs that will be required to upgrade the transmission system to accommodate the 3,500 MW injection in PJM at the Illinois/Indiana border. On December 8, 2017, PJM released an updated study estimating the costs of network upgrades at \$464 million for a new 765 kV transmission line and \$1 million for a wavetrapp at a substation.¹¹²

88. Regarding the interconnection process of the Project with MISO, at the present time there has been no increase in the estimated costs that will be required to upgrade the transmission system to accommodate the 500 MW injection in MISO at the converter station planned for Ralls County, Missouri. Grain Belt estimates that approximately \$21 million will be allocated to Missouri upgrades in MISO.¹¹³

89. Grain Belt has withdrawn from the MISO generator interconnection queue to await the proper time to refile when the PJM studies have been completed. Although Grain Belt is not currently active in the MISO interconnection process, it plans to enter the final study stage of MISO's interconnection process (known as the Definitive Planning Phase or "DPP") after (1) the PJM interconnection studies have sufficiently progressed and (2) Grain Belt is able to meet the readiness milestones for the MISO interconnection process.

¹¹¹ Ex. 143, Abebe Supp. Direct, p. 3-4.

¹¹² Ex. 143, Abebe Supp. Direct, p. 4-5.

¹¹³ Ex. 143, Abebe Supp. Direct, p. 5.

Coordination of the MISO study process with that of PJM will allow for the results of the PJM studies to be incorporated into the scope of the DPP.¹¹⁴

90. Invenenergy has extensive experience with the MISO queue, having developed 23 projects totaling approximately 5,160 MWs in MISO.¹¹⁵

91. On October 12, 2018, FERC approved MISO's proposed set of connection procedures and a connection agreement for Merchant High Voltage Direct Current ("MHVDC") transmission projects. MISO's proposal to revise its Generator Interconnection Procedures in Attachment X of its tariff to include an injection rights construct for the use of MHVDC connection customers was also approved. Under this new tariff MISO is now able to grant injection rights to generation facilities connecting to the Project's Kansas converter station. This development provides additional commercial certainty for the Grain Belt converter station in Ralls County, Missouri.¹¹⁶

92. Invenenergy's internal studies estimate that MISO upgrade costs to integrate Grain Belt's Missouri converter station to be in the range of \$20-40 million, which, even at the high end, are not expected to significantly impact the economic feasibility of the Project.¹¹⁷

93. When Grain Belt conducted its open solicitation, it offered a price that was higher than both the MJMEUC "first-mover" price and the normal Missouri rate, and it received bids that were 6½ times the capacity available on the project.¹¹⁸

94. The wind industry will not need the federal production tax credit after 2023 because of continuing technology improvements.¹¹⁹

¹¹⁴ Ex. 143, Abebe Supp. Direct, p. 5-6; Tr. Vol. 22, p. 1898-1899.

¹¹⁵ Ex. 147, Zadlo Supp. Surrebuttal, p. 5.

¹¹⁶ Ex. 143, Abebe Supp. Direct, p. 5-6.

¹¹⁷ Ex. 147, Zadlo Supp. Surrebuttal, p. 5; Ex. 100, Skelly Direct, p. 261-262.

¹¹⁸ Tr. Vol. 14, p. 940-941.

E. Public Interest

95. Grain Belt identified the proposed route of the transmission line Project through Missouri by performing a routing study, which was conducted by an interdisciplinary team of experts in transmission line route planning and selection, impact assessment for natural resources, land use assessment and planning, cultural resource identification and assessment, impact mitigation, and transmission engineering, design, and construction.¹²⁰

96. In determining a proposed route from a variety of alternatives, Grain Belt obtained information and input from the general public, local officials, and government agencies.¹²¹

97. The alternative routes were assessed and compared with respect to their potential impacts on natural resources (water resources, wildlife and habitats, special status species, and geology and soils), human uses (agricultural use, populated areas and community facilities, recreational and aesthetic resources, and cultural resources), and with respect to any noted engineering or construction challenges (transportation, existing utility corridors, other existing infrastructure, and the Mississippi River crossings).¹²²

98. The final proposed route of the Project represents the best route to minimize the overall effect of the Project on the natural and human environment while avoiding unreasonable and circuitous routes, unreasonable costs, and special design requirements.¹²³

¹¹⁹ Tr. Vol. 10, p. 264-265; Tr. Vol. 22, p. 1877-1878.

¹²⁰ Ex. 119, Puckett Direct, p. 2-3.

¹²¹ Ex. 119, Puckett Direct, p. 5-7.

¹²² Ex. 119, Puckett Direct, p. 8.

¹²³ Ex. 119 Puckett Direct, p. 10.

99. Grain Belt subsequently updated and adjusted the proposed route by making 16 revisions to accommodate affected landowners.¹²⁴

100. The Grain Belt Project would lower adjusted energy production costs in Missouri under future energy scenarios developed by MISO. Adjusted production cost is a metric to estimate the cost for load-serving entities to supply power to their end-use customers.¹²⁵

101. The generation of electricity from wind energy results in no emissions, in contrast to traditional fossil fuel-fired generation. Grain Belt's Project will provide an additional option for utilities to reduce their emissions of criteria air pollutants (e.g., sulfur dioxide), hazardous air pollutants (e.g., mercury), and carbon dioxide by purchasing cleaner renewable power for delivery on the transmission line in lieu of using existing or constructing new fossil fuel-fired generation assets.¹²⁶

102. The renewable energy delivered by the Project will reduce emissions in the Eastern Interconnection by displacing thermal generation, which emits sulfur dioxide, nitrogen oxides, and carbon dioxide, and will decrease water usage, all to the benefit Missouri's environmental and public health.¹²⁷

103. The Project would have a substantial and favorable effect on the reliability of electric service in Missouri.¹²⁸

104. The construction phase of the Project will support 1,527 total jobs over the three years of construction and create \$246 million in personal income, \$476 million in

¹²⁴ Ex. 119, Puckett Direct, p. 10-13, Schedule JGP-2.

¹²⁵ Ex. 106, Copeland Direct, p. 4, 18, Schedule JNC-2.

¹²⁶ Ex. 525, Meisenheimer Rebuttal, p. 9.

¹²⁷ Ex. 106, Copeland Direct, p. 4; Ex. 675, Goggin Rebuttal, p. 27-28; Ex. 100, Skelly direct, p. 7.

¹²⁸ Ex. 117, Pfeiffer Direct, p. 5; Ex. 118, Pfeiffer Surrebuttal, p. 12.

gross domestic product, and \$9.6 million in state general revenue for the state of Missouri.¹²⁹

105. The economic impact of the Project in its first year of operation will support 91 total jobs and create \$17.9 million in personal income, \$9.1 million in gross domestic product, and \$720,000 in state general revenue for the state of Missouri.¹³⁰ Approximately \$14.97 million in easement payments will be made in the first year of Project operation.¹³¹

106. In subsequent years of operation, the economic impact of the Project will support 28 total jobs and create \$2.6 million in personal income, \$4.2 million in gross domestic product, and \$111,000 in state general revenue on an annual basis.¹³²

107. Grain Belt estimates that it will pay approximately \$7.2 million annually in total county property taxes to the eight Missouri counties through which the transmission line crosses.¹³³ Randolph County alone would receive more than approximately \$720,000 in new tax revenue in the first year of operation of the Project.¹³⁴

108. Grain Belt has signed preferred supplier agreements to purchase materials or components from three Missouri businesses.¹³⁵ Invenergy has agreed, upon acquisition of the Project, to evaluate any existing contracts that Grain Belt has in place and determine how they align with its plan to advance the Project.¹³⁶

109. Grain Belt developed the Missouri Landowner Protocol as part of its approach to right-of-way acquisition for the Project. The Landowner Protocol is a comprehensive policy of how Grain Belt Express interacts, communicates, and negotiates with affected

¹²⁹ Ex. 526, Spell Rebuttal, p. 3.

¹³⁰ Ex. 526, Spell Rebuttal, p. 3.

¹³¹ Ex. 115, Lawlor Direct, Schedule MOL-7, p. 2.

¹³² Ex. 526, Spell Rebuttal, p. 3.

¹³³ Ex. 526, Spell Rebuttal, p. 3; Ex. 115, Lawlor Direct, p. 15, Schedule MOL-7.

¹³⁴ Ex. 123, Tregnago Direct, p. 4.

¹³⁵ Ex. 115, Lawlor Direct, p. 16-17.

¹³⁶ Ex. 145, Zadlo Supp. Direct, p. 11-12.

landowners and includes: the establishment of a code of conduct, its approach to landowner and easement agreement negotiations, a compensation package, updating of land values with regional market studies, tracking of obligations to landowners, the availability of arbitration to landowners, the Missouri Agricultural Impact Mitigation Protocol, and a proposed decommissioning fund.¹³⁷

110. For those landowners whose property the Project will cross, Grain Belt will offer three types of compensation: an easement payment, structure payments, and crop or damages payments.¹³⁸ Grain Belt's compensation package is superior to that of most utility companies.¹³⁹

111. If Grain Belt obtains an easement from a landowner, the property will still belong to the landowner and can be utilized for activities such as farming, recreation, and other activities that do not interfere with the operation of the transmission line. After construction of the facilities, the landowner will retain the ability to continue agricultural production on the entirety of the easement area except for the relatively small footprint of the structures, which typically occupy less than 1% of the total easement area.¹⁴⁰

112. If Grain Belt and a landowner have reached agreement on the form of easement but are unable to reach agreement on the appropriate compensation, then at the landowner's request, Grain Belt will submit the issue of landowner compensation to binding arbitration under Missouri law. The option of binding arbitration typically costs less, has

¹³⁷ Ex. 113, Lanz Direct, p. 3-4, Schedules DKL-1 through DKL-4.

¹³⁸ Ex. 113, Lanz Direct, p. 6-8.

¹³⁹ Tr. Vol. 12, p. 440.

¹⁴⁰ Ex. 113, Lanz Direct, p. 8-9.

more simplified procedures, and results in a final decision more quickly than circuit court litigation.¹⁴¹

113. If the Project should be retired from service, Grain Belt has committed to establish a decommissioning fund to pay for the following wind-up activities: 1) dismantling, demolishing and removing all equipment, facilities and structures; 2) terminating all transmission line easements and filing a release of such easements in the real property records of the county in which the property is located; 3) securing, maintaining and disposing of debris with respect to the Project facilities; and 4) performing any activities necessary to comply with applicable laws, contractual obligations, and that are otherwise prudent to retire the Project facilities and restore any landowner property within the easements to its original condition.¹⁴² Such a fund would be the first of its kind in the country.¹⁴³

114. Out of the 206 miles that the Project will traverse in Missouri, no more than nine acres of land would be taken out of agricultural production as a result of the structures installed for the Project in cultivated lands.¹⁴⁴

115. Much of the land in Missouri the Project will traverse is not suited for center pivot irrigation, which is the primary agricultural concern when constructing transmission lines because of the permanent nature of such irrigation systems. The proposed route for the Project does not directly impact the operation of any existing center pivot irrigation systems.¹⁴⁵

¹⁴¹ Ex. 113, Lanz Direct, p. 11-12.

¹⁴² Ex. 113, Lanz Direct, p. 12-13.

¹⁴³ Tr. Vol. 12, p. 452.

¹⁴⁴ Ex. 101, Arndt Direct, p. 14.

¹⁴⁵ Ex. 101, Arndt Direct, p. 15; Ex. 102, Arndt Surrebuttal, p. 17.

116. While there are no federal or Missouri requirements regarding agricultural impact mitigation practices for constructing overhead transmission lines, Grain Belt has created the Missouri Agricultural Impact Mitigation Protocol, which establishes standards and policies to avoid, minimize, or mitigate any negative agricultural impacts that may result due to transmission line and converter facilities construction and operation.¹⁴⁶

117. Grain Belt witness Richard J. Roddewig testified credibly that based on published research and Mr. Roddewig's own research, transmission lines do not have a significant adverse impact on farmland prices and values.¹⁴⁷

118. The scientific weight of evidence does not support the conclusion that electric and magnetic fields cause any long-term adverse health effects, and the levels of electric and magnetic fields associated with the Project do not pose any known risk to human health.¹⁴⁸

F. Conditions and Waivers

119. Grain Belt and Staff agreed to seven categories of conditions to a CCN issued by the Commission.¹⁴⁹

120. Grain Belt and Rockies Express Pipeline LLC agreed to a number of conditions that are reflected in Grain Belt's responses to Rockies Express' data requests.¹⁵⁰

121. Grain Belt has agreed to incorporate the Missouri Landowner Protocol into the easement agreements with landowners and follow the protocol as a condition to the CCN.¹⁵¹

¹⁴⁶ Ex. 101, Arndt Direct, p. 7; Schedule JLA-2, p. 3.

¹⁴⁷ Ex. 120, Roddewig Surrebuttal, p. 9, Schedule RJR-1, p. 12; Tr. Vol. 14, p. 696-697, 700-701.

¹⁴⁸ Ex. 103, Bailey Direct, p. 24.

¹⁴⁹ Ex. 206; Tr. Vol. 12, p. 466.

¹⁵⁰ Ex. 205.

¹⁵¹ Ex. 114, Lanz Surrebuttal, p. 5; Tr. Vol. 12, p. 411; Tr. Vol. 10, p. 158.

122. Grain Belt and Invenergy agreed that Invenergy Transmission, LLC and Invenergy Investment Company, LLC shall cooperate with Staff in providing reasonable access to Invenergy's un-redacted consolidated financial records (including *in camera* review of notes to financial statements) until completion or official abandonment of the Project.¹⁵²

123. Grain Belt and Staff agreed that if Grain Belt acquires any involuntary easements in Missouri by means of eminent domain and does not obtain the necessary financial commitments within five years of the date such easement rights are recorded, Grain Belt agrees to return possession of the easement to the landowner within 60 days and record the dissolution of the easement without requiring any reimbursement of payments by the landowner.¹⁵³

124. Grain Belt and Invenergy agreed that if there are any material changes in the design and engineering of the Project from what is contained in the application, Grain Belt will file an updated application subject to further review and determination by the Commission.¹⁵⁴

125. Grain Belt and Invenergy agreed that if outstanding regional transmission organization studies raise any new issues, then the Commission must be satisfied with how Grain Belt resolves the issues.¹⁵⁵

126. Grain Belt agreed in paragraph 76 of its application to file with the Commission a copy of its annual report that is filed with FERC.

¹⁵² Tr. Vol. 22, p. 1964, 2024.

¹⁵³ Initial Post-Hearing Brief on Remand of Applicant Grain Belt Express Clean Line LLC, p. 30.

¹⁵⁴ Tr. Vol. 22, p. 2025-2026.

¹⁵⁵ Tr. Vol. 22, p. 2025.

III. Conclusions of Law and Discussion

A. Statutory Authority

The first issue is whether the Commission may lawfully issue a CCN to Grain Belt. Grain Belt has applied for a line certificate under Section 393.170.1, RSMo.¹⁵⁶ The Landowners assert that the Commission does not have the statutory authority to issue such a CCN because Grain Belt is not an electrical corporation or a public utility providing a public use or service.

Section 386.020(15), RSMo, defines an “electrical corporation” as “...every corporation, [or] company...owning, operating, controlling or managing any electric plant...” Electric plant is defined in Section 386.020(14), RSMo, as “all real estate... and personal property...used or to be used for or in connection with or to facilitate the...transmission...of electricity for...power...”. Grain Belt’s 39 easements that it has signed with Missouri landowners are interests in real estate¹⁵⁷, and its cash on hand for project development is personal property.¹⁵⁸ The words “to be used for or in connection with” in the statutory definition mean that the electric plant in question may be future or intended electric plant. That real estate and personal property are to be used for or in connection with Grain Belt’s Project, so the Commission concludes that they meet the definition of electric plant. Grain Belt owns its cash on hand and controls or manages the easement property under the easement agreement it executes with landowners, because those agreements grant Grain Belt certain rights to use the property and limit the landowner’s use. Therefore, the

¹⁵⁶ Section 393.170.1, RSMo, states that “No gas corporation, electrical corporation, water corporation or sewer corporation shall begin construction of a gas plant, electric plant, water system or sewer system, other than an energy generation unit that has a capacity of one megawatt or less, without first having obtained the permission and approval of the commission..”

¹⁵⁷ *Kansas City Power & Light Co. v. Riss*, 312 S.W.2d 846, 847 (Mo. 1958); *Beery v. Shinkle*, 193 S.W.3d 435, 440 (Mo. Ct. App. 2006).

¹⁵⁸ *In re Armistead*, 362 Mo. 960, 964, 245 S.W.2d 145, 147 (1952); *State ex rel. Reid v. Barrett*, 234 Mo. App. 684, 118 S.W.2d 33, 37 (1938)..

Commission determines that Grain Belt is an “electrical corporation” within the meaning of Section 386.020(15), RSMo, and subject to the jurisdiction of the Commission.

Missouri courts have stated that for a company to qualify as a public utility, the company must be devoted to a public use for the general public.¹⁵⁹ The evidence showed that when the Project is constructed and begins operation, it will transmit energy from wind farms in Kansas to wholesale customers in Missouri. In the case of MJMEUC, those customers are Missouri cities and towns that serve as electric providers to approximately 347,000 Missouri citizens. The hallmark of a public utility is the offering of utility service to the public without discrimination. Grain Belt will offer indiscriminate transmission service through an open access transmission tariff that will be filed and subject to the jurisdiction of FERC. While the Commission only has authority over facilities that are devoted to public use, an entity that constructs and operates a transmission line bringing electrical energy from electrical power generators to public utilities that serve consumers is a necessary and important link in the distribution of electricity and qualifies as a public utility.¹⁶⁰ The Commission concludes that Grain Belt’s Project will serve the public use, and Grain Belt qualifies as a public utility.

Landowners also argue that this Commission does not have jurisdiction because Grain Belt will only provide wholesale transmission service in Missouri, not retail service, and those customers may pay different rates for capacity, as Grain Belt will be subject to regulation by FERC and not subject to rate regulation by this Commission. Landowners

¹⁵⁹ *State ex rel. M.O. Danciger & Co. v. Pub. Serv. Commission of Missouri*, 275 Mo. 483, 205 S.W. 36, 39 (1918); *State ex rel. Buchanan County Power Transmission Co. v. Baker*, 320 Mo. 1146, 1153, 9 S.W.2d 589, 591 (1928).

¹⁶⁰ *State ex rel. Buchanan County Power Transmission Co. v. Baker*, 9 S.W.2d at 592. While the Buchanan County transmission company was determined not to be a public utility because it transmitted electricity to a private company for private use, the court clearly implied that if the electricity had been transmitted to a public utility for public use the transmission company would also be considered to be a public utility.

also state that Grain Belt is not subject to this Commission's jurisdiction because it will be engaged in the interstate transmission of electricity, citing Sections 386.250(1)¹⁶¹ and 386.030¹⁶², RSMo.

The fact that FERC regulates wholesale electric rates does not mean that this Commission lacks the authority to issue a CCN for construction of the Grain Belt Project. The basic division of regulatory authority between the federal government and the states has existed since the Federal Power Act was enacted in 1935.¹⁶³ This law established authority for the federal government to regulate wholesale sales and transmission of electricity in interstate commerce, but also left the states with authority to regulate other matters not specifically granted to the federal government.¹⁶⁴ States retain the authority to regulate such matters as retail sales of electricity, electric generation, and facilities used for transmission of electricity in the state.¹⁶⁵ Since the Grain Belt Project will transmit energy to a converter station located in Missouri to provide that energy to Missouri citizens, neither FERC regulations nor Sections 386.250(1) and 386.030, RSMo, operate to deprive this Commission of the jurisdiction to decide this CCN case. In the Supreme Court of Missouri's opinion remanding this case, the Court noted that the Grain Belt project was an interstate transmission line, but then remanded the case to determine if the Grain Belt project meets

¹⁶¹ Section 386.250(1), RSMo, states that "The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter: (1) To the manufacture, sale or distribution of gas, natural and artificial, and electricity for light, heat and power, within the state, and to persons or corporations owning, leasing, operating or controlling the same; and to gas and electric plants, and to persons or corporations owning, leasing, operating or controlling the same;..."

¹⁶² Section 386.030, RSMo, states that "Neither this chapter, nor any provision of this chapter, except when specifically so stated, shall apply to or be construed to apply to commerce with foreign nations or commerce among the several states of this union, except insofar as the same may be permitted under the provisions of the Constitution of the United States and the acts of Congress."

¹⁶³ 16 U.S.C. §§791a – 824w; Jeffery S. Dennis, *et al.*, *Federal/State Jurisdictional Split: Implications for Emerging Electricity Technologies*, Energy Analysis and Environmental Impacts Division, Lawrence Berkeley National Laboratory, p. 3 (December 2016).

¹⁶⁴ 16 U.S.C. §824(a).

¹⁶⁵ 16 U.S.C. §824(b)(1).

the criteria for granting a CCN, suggesting that, if so, the Commission has the authority to issue it. The Commission concludes that it has the legal authority to issue a CCN to Grain Belt for the construction of the Project.

Since Grain Belt brought the application, it bears the burden of proof.¹⁶⁶ The burden of proof is the preponderance of the evidence standard.¹⁶⁷ In order to meet this standard, Grain Belt must convince the Commission it is “more likely than not” that its allegations are true.¹⁶⁸

B. Need for the Project

When making a determination of whether an applicant or project is convenient or necessary, the Commission has traditionally applied five criteria, commonly known as the Tartan factors, which are as follows:

- a) There must be a need for the service;
- b) The applicant must be qualified to provide the proposed service;
- c) The applicant must have the financial ability to provide the service;
- d) The applicant’s proposal must be economically feasible; and
- e) The service must promote the public interest.¹⁶⁹

¹⁶⁶ “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).

¹⁶⁷ *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).

¹⁶⁸ *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).

¹⁶⁹ *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).

When determining whether the project is necessary or convenient for the public service, the “term ‘necessity’ does not mean ‘essential’ or ‘absolutely indispensable’, but that an additional service would be an improvement justifying its cost”.¹⁷⁰

The Project is needed primarily because of the benefits to MJMEUC and its customers, who have committed to purchase 136 MW of wind power utilizing transmission service purchased from Grain Belt. The transmission service agreement between Grain Belt and MJMEUC allows MJMEUC to purchase up to 200 MW of transmission capacity from the Grain Belt project. MJMEUC plans to use cheaper wind power from Grain Belt to replace the 100 MW of energy and capacity it currently purchases from Illinois Power Marketing, which contract will expire in 2021. MJMEUC calculates that their MoPEP members will save over \$11 million annually under the transmission service agreement with Grain Belt compared to its existing contract for those Illinois coal resources. These annual cost savings to MJMEUC member cities that participate in the Project will likely be passed through to their residential and industrial customers in the form of rate relief or invested in deferred maintenance to their electrical distribution systems.

The transmission service agreement has recently been amended to lower the price of the second 100 MW tranche to that of the first 100 MW tranche, resulting in additional annual savings (for 200 MW) to MJMEUC of approximately \$2.8 million compared to a traditional SPP to MISO point-to-point service agreement. Evidently, the elected decision makers for MJMEUC’s member cities recognized a need for these savings, and there was also evidence that wind power transmitted to Missouri would have been of interest to

¹⁷⁰ *State ex rel. Intercon Gas, Inc. v. Pub. Serv. Commission of Missouri*, 848 S.W.2d 593, 597 (Mo. Ct. App. 1993).

commercial and industrial customers, such as Walmart, Missouri Industrial Energy Consumers, the Missouri Retailers Association, and other national companies.

Of course, MJMEUC and Missouri industrial customers are not the only energy customers we must consider in this analysis. In a state whose regulated utilities participate in two regional transmission organizations, it is appropriate to consider the Project's effect on other market participants. There was substantial evidence of demand for this project, both on the production and delivery side, within the relevant regional markets. For instance, Grain Belt presented evidence of a commitment by an Illinois load-serving entity to purchase 50 MW of the project's transmission service. On the production side, during open solicitations in 2015 and 2016, transmission service requests for the line far exceeded the total available capacity of the project. Clearly, there is a demonstrable need for the service the Grain Belt Project offered both in Missouri and in the regions that affect Missouri energy markets.

C. Applicant's Qualifications and Financial Ability

Grain Belt currently has no employees and does not have sufficient cash on hand to complete either the development phase or construction of the Project. However, Invenergy entered into a Membership Interest Purchase Agreement with Grain Belt Holding to acquire all of the assets comprising the Grain Belt Project, and a Development Management Agreement that provides development funding by Invenergy through the projected closing date of the sale. Invenergy is spending money now on development of the Project, and expects that it will spend \$50 to \$100 million on development before it can obtain funding from institutional investors. Under the Development Agreement, Invenergy is contractually obligated to manage the business and affairs of the Project, and performs all services

related to the development, ownership, and maintenance of the Project. Invenergy has care, custody, and control over the Project in all day-to-day activities, and has authorization to execute documents and act on behalf of Grain Belt. Due to these contractual obligations, it is proper and necessary for the Commission to consider Grain Belt and Invenergy together in evaluating the Tartan factors.

Invenergy's management team has extensive experience in developing, constructing and operating transmission and energy infrastructure projects. Invenergy has an impressive record of development and construction of energy projects, including hundreds of miles of transmission lines, substations and transformers. Invenergy's financial condition is very strong, as Invenergy and its affiliates have in excess of \$9 billion in total assets and \$3 billion in total equity on a consolidated basis. Invenergy has demonstrated that it has the ability to raise capital for large energy projects through access to its vast network of private debt and equity investors, having raised more than \$30 billion of financing in connection with the successful development of more than 20,046 MW in projects in the United States, Canada, Europe, Central America, and Japan. The Commission concludes that Grain Belt and Invenergy together have the qualifications and financial ability to develop, construct, and operate the Project.

D. Economic Feasibility of the Project

Grain Belt's Project is economically feasible because it links customers in Missouri who desire to purchase low-cost wind power from western Kansas with wind generation companies like Iron Star who propose to supply that energy, all under a business model under which Grain Belt assumes the financial risk of building and operating the

transmission line. Moreover, the cost of the project will not be recovered from Missouri ratepayers through either SPP or MISO regional cost allocation tariffs.

Grain Belt also presented a credible levelized cost of energy analysis from witness David Berry to show that the cost to bring wind energy from western Kansas to Missouri and eastward using the Grain Belt project is the lowest-cost resource option compared to Missouri wind, combined cycle gas, and Missouri utility-scale solar generation. While the MJMEUC and Iron Star contract demonstrates the economic feasibility of the Project compared to MISO wind, it is the 3500 MW portion of the project to be sold in PJM that demonstrates the financial viability of the project overall, since power prices for PJM are generally \$10/MWh higher than prices paid for the energy sold into the MISO market in Missouri. When Grain Belt conducted its open solicitation, it offered a price that was higher than both the MJMEUC “first-mover” price and the normal Missouri rate, and it received bids that were 6½ times the capacity available on the project, which is a substantial indication of economic feasibility.

The economic feasibility of the Grain Belt Project is also demonstrated by (a) a very strong corporate demand for renewable energy in PJM where users will pay a higher price; (b) the cost of generating wind energy in western Kansas continues to drop; (c) wind speeds in western Kansas are substantially higher than Missouri, Illinois, Indiana, and Iowa; (d) Kansas wind generators can produce energy at a lower cost because of two Kansas tax incentives and the low cost to construct wind farms; and (e) the wind industry will not be dependent on the federal production tax credit after 2023 because of continuing technology improvements. For all of the reasons stated above, the Commission concludes that the Grain Belt Project is economically feasible.

E. Public Interest

Public policy must be found in a constitutional provision, a statute, regulation promulgated pursuant to statute, or a rule created by a governmental body. The public interest is a matter of policy to be determined by the Commission.¹⁷¹ It is within the discretion of the Commission to determine when the evidence indicates the public interest would be served.¹⁷² Determining what is in the interest of the public is a balancing process.¹⁷³ In making such a determination, the total interests of the public served must be assessed.¹⁷⁴ In Missouri, state energy policy can be found in laws such as the Renewable Energy Standard¹⁷⁵, established by vote of the Missouri public in 2008, and the Energy Efficiency Investment Act¹⁷⁶, promulgated by the Missouri legislature in 2013, as well as the Comprehensive State Energy Plan, an initiative implemented by the Missouri Division of Energy in 2015. Consistent with these state policies, this Commission has in the past expressed strong support for the “development of economical renewable energy sources to provide safe, reliable, and affordable service while improving the environment and reducing the amount of carbon dioxide released into the atmosphere”.¹⁷⁷

¹⁷¹ *State ex rel. Public Water Supply District v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980). The dominant purpose in creation of the Commission is public welfare. *State ex rel. Mo. Pac. Freight Transport Co. v. Public Service Commission*, 288 S.W.2d 679, 682 (Mo. App. 1956).

¹⁷² *State ex rel. Intercon Gas, Inc. v. Public Service Com'n of Missouri*, 848 S.W.2d 593, 597-598 (Mo. App. 1993). That discretion and the exercise, however, are not absolute and are subject to a review by the courts for determining whether orders of the P.S.C. are lawful and reasonable. *State ex rel. Public Water Supply Dist. No. 8 of Jefferson County v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980).

¹⁷³ *In the Matter of Sho-Me Power Electric Cooperative's Conversion from a Chapter 351 Corporation to a Chapter 394 Rural Electric Cooperative*, Case No. EO-93-0259, Report and Order issued September 17, 1993, 1993 WL 719871 (Mo. P.S.C.).

¹⁷⁴ *Id.*

¹⁷⁵ Section 393.1030, RSMo.

¹⁷⁶ Section 393.1075, RSMo.

¹⁷⁷ *In the Matter of the Application of KPC&L Greater Missouri Operations Company for Permission and Approval of a Certificate of Public 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, Report and Order issued March 2, 2016, p. 15. See also, *In the Matter of the Application of The Empire District Electric Company for Approval of Its Customer Savings Plan*, File No. EO-2018-0092,

The Grain Belt Project will lower energy production costs in Missouri under future energy scenarios developed by MISO and will have a substantial and favorable effect on the reliability of electric service in Missouri, particularly through its effect on wind diversity in the region. Geographic diversity in wind resources inevitably helps to reduce system variability and uncertainty in regional energy systems. In addition, the Project will provide positive environmental impacts, since displacement of fossil fuels for wind power will reduce emissions of carbon dioxide, sulfur dioxide, and nitrogen oxide, and reduce water usage in Missouri.

The construction phase of the Project will support 1,527 total jobs over three years, and create \$246 million in personal income, \$476 million in gross domestic product, and \$9.6 million in state general revenue for the state of Missouri. The Project will also result in significant property tax benefits to affected counties, a total of approximately \$7.2 million in the first year of operation. In that first year, Randolph County alone will receive more than \$720,000 in additional tax revenue. In the first year of operation, the project will result in approximately \$14.97 million in easement payments to landowners and create 91 jobs, \$17.9 million worth of personal income, and \$9.1 million in gross domestic product.

Any negative impacts of the Project on the land and landowners will be mitigated by (a) a landowner protocol to protect landowners; (b) superior compensation payments; (c) a binding arbitration option for easement negotiations; (d) a decommissioning fund; and (e) an agricultural impact mitigation protocol to avoid or minimize negative agricultural impacts. Agricultural impacts will also be reduced because no more than nine acres of land in Missouri will be taken out of agricultural production as a result of Project structures, and the

Report and Order issued July 11, 2018, p. 20; *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, Report and Order issued April 24, 2013, p. 14.

proposed route does not directly impact the operation of any existing center pivot irrigation systems.

It is the Commission's responsibility to balance the interests of all stakeholders, including the affected landowners, to determine what is in the best interest of the general public as a whole. The evidence in the case demonstrated that the Grain Belt Project will create both short-term and long-term benefits to ratepayers and all the citizens of the state. In the Commission's view, the broad economic, environmental, and other benefits of the Project to the entire state of Missouri outweigh the interests of the individual landowners. Many of the landowners' concerns will be addressed through carefully considered conditions placed on the CCN.

There can be no debate that our energy future will require more diversity in energy resources, particularly renewable resources. We are witnessing a worldwide, long-term and comprehensive movement towards renewable energy in general and wind energy specifically. Wind energy provides great promise as a source for affordable, reliable, safe, and environmentally-friendly energy. The Grain Belt Project will facilitate this movement in Missouri, will thereby benefit Missouri citizens, and is, therefore, in the public interest.

F. Conditions and Waivers

Section 393.170.3, RSMo, states that "[t]he commission may by its order impose such condition or conditions as it may deem reasonable and necessary". The parties have proposed numerous conditions should the Commission decide to grant Grain Belt a CCN. The Commission finds that those conditions to which Grain Belt has agreed are reasonable and necessary, so those conditions will be imposed below. The Commission concludes that

the remaining proposed conditions are unreasonable, unnecessary, or moot, so those will not be adopted.

One condition to which Grain Belt agreed relates to a decommissioning fund to pay for wind-up activities in the unlikely circumstance that the transmission line is retired from service. Grain Belt proposed that the fund be established beginning on the 20th anniversary of the completion of the Project. The Commission finds that this establishment date is insufficient to protect affected landowners should the transmission line be abandoned after construction begins or retired before the 20th year of operation. So, the Commission concludes that the decommissioning fund should be established at the outset of construction and increased during construction in an amount needed to perform necessary wind-up activities for any facilities that have been constructed and installed. Another condition that protects affected landowners is the requirement that if Grain Belt fails to obtain the necessary financial commitments for the Project within 5 years of obtaining an easement through eminent domain proceedings, Grain Belt must dissolve the easement and return possession of it to the landowner without any reimbursement of payments to the landowner for that easement.

For all of the conditions that the Commission includes as part of the CCN, if Grain Belt does not comply with such conditions the company may be subject to penalties in a subsequent complaint proceeding. If the Commission and a court find that the company fails to comply, then it is subject to penalties ranging from \$100 to \$2,000 per day of noncompliance, pursuant to Section 386.570, RSMo. Also, unless Grain Belt exercises the authority conferred by the CCN within two years, the CCN becomes null and void under Section 393.170.3, RSMo.

The rules for which a waiver is requested - Commission rules 4 CSR 240-3.145, 4 CSR 240-10.145¹⁷⁸, 4 CSR 240-3.175, and 4 CSR 240-3.190(1), (2) and (3) (A)-(D) -relate to the filing of rate schedules, annual reports, depreciation studies, and reports regarding various safety, accident and other events. Commission Rule 4 CSR 240-3.015 provides that waivers or variances from Chapter 3 filing requirements are the same as in Commission Rule 4 CSR 240-2.015, which requires a showing of good cause for the waiver or variance. Good cause means a good faith request for reasonable relief.¹⁷⁹ Grain Belt alleges that good cause exists for the waiver because the proposed facilities will not provide retail service to customers and will not be rate-regulated by the Commission. Staff agrees with the waivers as long as Grain Belt is required to file with the Commission the annual report that it files with FERC, and Grain Belt has agreed to comply. The Commission finds that good cause exists for the waivers, so they will be granted, subject to Staff's condition.

G. Motion for Additional Exhibit

On February 15, 2019, after the record in this case had closed, Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners ("Show Me") filed a motion to offer an additional exhibit for the record and submit additional argument regarding that exhibit. The offered exhibit is an affidavit alleging that Grain Belt's option to purchase land in Ralls County, Missouri for purposes of constructing a converter station has now expired. Show Me states that good cause exists for granting the motion, in that without the additional exhibit the Commission would be "left in the dark" concerning a significant

¹⁷⁸ The Grain Belt request was for a waiver of Commission rule 4 CSR 240-3.165. That rule was rescinded by the Commission effective January 30, 2019, and the requirements of that rule were moved to 4 CSR 240-10.145.

¹⁷⁹ *American Family Ins. Co. v. Hilden*, 936 S.W.2d 207 (Mo. App. W.D. 1996).

change of fact. Grain Belt opposed the motion, arguing that expiration of the purchase option has no impact on the issue of Grain Belt's CCN, there is no good cause to accept the exhibit, accepting the exhibit would violate due process, and Show Me should not be permitted to reverse its prior position with post-hoc arguments.

Information relating to the expiration of the option agreement was already in the record of this case prior to Show Me's motion.¹⁸⁰ Show Me had every opportunity to make arguments and present further evidence relating to this option agreement at the remand evidentiary hearing and while the record of the case was open. Accepting this untimely exhibit now would deprive the parties of an opportunity to cross-examine witnesses or offer additional arguments regarding the exhibit. The Commission concludes that Show Me has failed to demonstrate good cause for including the additional exhibit in the record of the hearing, so Show Me's motion will be denied.

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 Grain Belt has met, by a preponderance of the evidence, its burden of proof to demonstrate that it is qualified for a certificate of convenience and necessity under Section 393.170.1, RSMo. Therefore, the Commission will grant the Grain Belt application, subject to the conditions ordered below.

¹⁸⁰ Ex. 116, Lawlor Surrebuttal, Schedule MOL-14.

THE COMMISSION ORDERS THAT:

1. Grain Belt Express Clean Line LLC's application for a certificate of convenience and necessity filed on August 30, 2016, is granted.

2. The conditions to which Grain Belt Express Clean Line LLC and the Commission's Staff agreed in Exhibit 206 are approved and adopted. Exhibit 206 is attached as Attachment 1 and incorporated herein by reference as if fully set forth. Grain Belt Express Clean Line LLC is ordered to comply with the conditions in Exhibit 206.

3. The conditions to which Grain Belt Express Clean Line LLC and Rockies Express Pipeline LLC agreed in Exhibit 205 are approved and adopted. Exhibit 205 is attached as Attachment 2 and incorporated herein by reference as if fully set forth. Grain Belt Express Clean Line LLC is ordered to comply with the conditions in Exhibit 205.

4. Grain Belt Express Clean Line LLC's owners, including, but not limited to, Invenergy Transmission LLC, Invenergy Investment Company LLC, and any related subsidiaries, shall cooperate with the Commission's Staff in providing reasonable access to its un-redacted financial records until the completion or official abandonment of the Grain Belt Project.

5. If Grain Belt Express Clean Line LLC acquires any involuntary easement in Missouri by means of eminent domain proceedings ("easement") and does not obtain the financial commitments referred to in Section I(1) and Section I(1)(a) of the Conditions Agreed to by Grain Belt Express and Staff (Exhibit 206) within five years of the date that such easement rights are recorded with the appropriate county recorder of deeds, Grain Belt Express Clean Line LLC shall return possession of the easement to the fee simple title holder ("title holder") within 60 days and cause the dissolution of the easement to be

recorded with the county recorder of deeds. In the event of such a return of the easement to the title holder, no reimbursement of any payment made by Grain Belt Express Clean Line LLC to the title holder shall be due.

6. If the design and engineering of the project is materially different from how the Project is presented in Grain Belt Express Clean Line LLC's Application, Grain Belt Express Clean Line LLC must file an updated application with the Commission for further Commission review and determination.

7. If any outstanding studies included as conditions raise any new issue(s), then the Commission must be satisfied with how Grain Belt Express Clean Line LLC resolves the issue(s).

8. Grain Belt Express Clean Line LLC shall comply with the Missouri Landowner Protocol, including, but not limited to, a code of conduct and the Missouri Agricultural Mitigation Impact Protocol, and incorporate the terms and obligations of the Missouri Landowner Protocol into any easement agreements with Missouri landowners.

9. Grain Belt Express Clean Line LLC shall modify the Missouri Landowner Protocol relating to a decommissioning fund as directed herein. At the commencement of construction of the Project, Grain Belt Express Clean Line LLC shall establish a decommissioning fund in an amount reasonably necessary to perform the wind-up activities described below, at Grain Belt Express Clean Line LLC's sole cost and expense, for any portion of the Project that has been constructed and installed. The amount of the decommissioning fund shall be increased as construction of the Project progresses sufficient to cover wind-up activities for any Project facilities that have been constructed and installed. The decommissioning fund may be collateralized with a letter of credit or

cash, or any combination thereof. In any circumstance in which the Project is retired from service or abandoned prior to service, Grain Belt Express Clean Line LLC shall promptly perform the following wind-up activities:

- dismantling, demolishing and removing all equipment, facilities and structures;
- terminating all transmission line easements and filing a release of such easements in the real property records of the county in which the property is located;
- securing, maintaining and disposing of debris with respect to the Project facilities; and
- performing any activities necessary to comply with applicable laws, contractual obligations, and that are otherwise prudent to retire the Project facilities and restore any landowner property.

10. Grain Belt Express Clean Line LLC shall construct the proposed Missouri converter station to be capable of the actual delivery of 500 MW of wind power to the converter station.

11. Grain Belt Express Clean Line LLC is granted a waiver of the requirements in the following Commission rules: 4 CSR 240-3.145, 4 CSR 240-10.145, 4 CSR 240-3.175, and 4 CSR 240-3.190(1), (2) and (3) (A)-(D). Grain Belt Express Clean Line LLC shall promptly file with the Commission a copy of each annual report that Grain Belt Express Clean Line LLC files with FERC.

12. Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners' motion to offer an additional exhibit for the record in this case and to submit additional argument regarding said exhibit, filed on February 15, 2019, is denied.

13. This order shall become effective on April 19, 2019.



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.

Bushmann, Senior Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Spire)	
Missouri Inc. for an Accounting Authority	)	<u>File No. GU-2019-0011</u>
Order Concerning Its Commission)	
Assessment for the 2019 Fiscal Year)	

REPORT AND ORDER

ACCOUNTING

§8 Uniform accounts and rules

Having determined that the assessment cost was not extraordinary under the first part of the Uniform Standard of Accounts (USOA) definition, the Commission need not reach the question of whether the cost is “material.”

§42 Accounting Authority Orders

Trackers have traditionally been used in the context of a rate case to track future expenses and have been used for a particular policy reason. Whereas, accounting authority orders (AAOs) have traditionally been implemented to account for a past expense that would not otherwise be possible to be recovered in rates. Therefore, the Commission determined that because the request for a tracker was the same as a request for an AAO, the Commission should apply the same analysis to either deferral mechanism.

§42 Accounting Authority Orders

The use of deferral accounting mechanisms “should be limited because they violate the matching principle, tend to unreasonably skew ratemaking results, and dull the incentives a utility has to operate efficiently and productively under the rate regulation approach employed in Missouri.” *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, 769 (Mo. Ct. App. 2016).

EVIDENCE, PRACTICE AND PROCEDURE

§4 Presumption and burden of proof

Spire Missouri Inc. did not meet its burden of proof to demonstrate that its increased assessment cost was extraordinary. Therefore, the Commission denied Spire Missouri Inc.’s request for an accounting deferral mechanism.

EXPENSE

§17 Extraordinary and unusual expenses

Commission assessments are not extraordinary, unusual and unique, or nonrecurring. Rather, Commission found that assessments have been calculated and assessed to utilities according to statute for many years on a set schedule. The Commission further found that it is not unusual for assessments to increase substantially in the year following a rate case. And, Spire Missouri Inc. could have anticipated a larger increase in assessment amounts in the year following the large and contentious rate cases.

§76 Matching revenue/expense/rate base

The use of deferral accounting mechanisms “should be limited because they violate the matching principle, tend to unreasonably skew ratemaking results, and dull the incentives a utility has to operate efficiently and productively under the rate regulation approach employed in Missouri.” *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, 769 (Mo. Ct. App. 2016).

§76 Matching revenue/expense/rate base

The evidence presented showed that Spire Missouri Inc.'s Commission assessment costs, while having increased 52% in FY 2019 over the FY 2018 assessment, was a normal, ordinary, and recurring cost. This recurring cost was not abnormal or significantly different from the ordinary and typical activities of the company, so it is not extraordinary and, therefore, not subject to deferral under the Uniform Standard of Accounts (USOA).

GAS

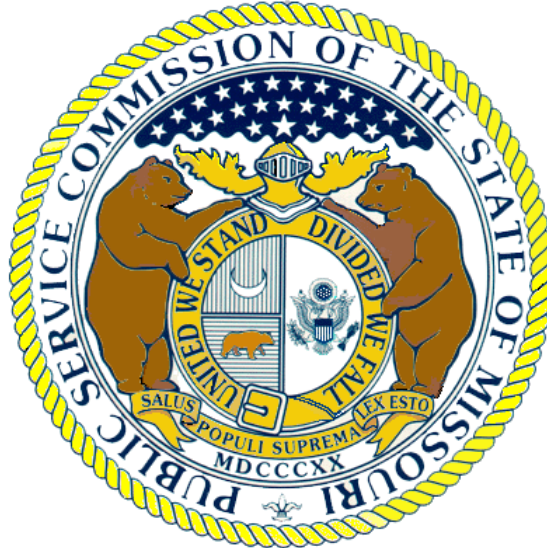
§34 Accounting Authority orders

Trackers have traditionally been used in the context of a rate case to track future expenses and have been used for a particular policy reason, whereas, accounting authority orders (AAOs) have traditionally been implemented to account for a past expense that would not otherwise be possible to be recovered in rates. Therefore, because the request for a tracker was the same as a request for an AAO, the Commission should apply the same analysis to either deferral mechanism.

§34 Accounting Authority orders

The use of deferral accounting mechanisms “should be limited because they violate the matching principle, tend to unreasonably skew ratemaking results, and dull the incentives a utility has to operate efficiently and productively under the rate regulation approach employed in Missouri.” *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, 769 (Mo. Ct. App. 2016).

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Application of Spire)
 Missouri Inc. for an Accounting Authority)
 Order Concerning Its Commission)
 Assessment for the 2019 Fiscal Year)

File No. GU-2019-0011

REPORT AND ORDER

Issue Date: March 20, 2019

Effective Date: April 19, 2019

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

In the Matter of the Application of Spire)
Missouri Inc. for an Accounting Authority) **File No. GU-2019-0011**
Order Concerning Its Commission)
Assessment for the 2019 Fiscal Year)

APPEARANCES

SPIRE MISSOURI, INC.:

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MIDWEST ENERGY CONSUMERS GROUP:

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STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:

Jeffrey A. Keevil, Staff Counsel, PO Box 360, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

SENIOR REGULATORY LAW JUDGE: Nancy Dippell

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REPORT AND ORDER

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 July 13, 2018, Spire Missouri Inc. (“Spire Missouri” or “the Company”) filed an application seeking an accounting authority order (“AAO”) authorizing it to defer as a regulatory asset any increases from its Fiscal Year (“FY”) 2018 assessment.¹ Specifically, Spire Missouri requests to defer as a regulatory asset the increase assessed in FY 2019. Spire Missouri also proposes to defer as a regulatory liability any decreases from the FY 2018 assessments for each year from FY 2019 through Spire Missouri’s next general rate case.² The Commission provided notice of the Application and granted the application to intervene of Midwest Energy Consumers Group (“MECG”).

An evidentiary hearing was held on December 11, 2018. Initial post-hearing briefs were filed on December 28, 2018, with reply briefs submitted on January 11, 2019.

¹ *Application for an Accounting Authority Order and Motion for Waiver*, (filed July 13, 2018).

² *Spire Missouri’s Initial Brief*, (filed December 28, 2018), p. 4.

Findings of Fact

1. Spire Missouri is a “gas corporation” and a “public utility.”³
2. Spire Missouri is primarily engaged in the business of distributing and transporting natural gas to customers in both the eastern and western portions of the State of Missouri.⁴
3. Spire Missouri serves customers in the City of St. Louis and ten counties in Eastern Missouri through its Spire East operating unit.⁵ The Spire East operating unit was formerly known as Laclede Gas Company.
4. Spire Missouri serves customers in the City of Kansas City and thirty counties in Western Missouri through its Spire West operating unit.⁶ The Spire West operating unit was formerly known as Missouri Gas Energy.
5. The Commission assesses each public utility it regulates an amount each year to recover the costs of the Commission to regulate utilities under its jurisdiction.⁷ The Commission also collects an assessment for Public Counsel.⁸
6. Commission assessments have been billed to and paid by Spire Missouri and its predecessors, Laclede Gas Company and Missouri Gas Energy, for many years on a set schedule.⁹

³ *Application for an Accounting Authority Order and Motion for Waiver*, (filed July 13, 2018), paras. 1 and 3. See Section 386.020, RSMo. 2016. All statutory references are to the Revised Statutes of Missouri 2016 unless otherwise noted.

⁴ *Application for an Accounting Authority Order and Motion for Waiver*, (filed July 13, 2018), para. 3.

⁵ *Application for an Accounting Authority Order and Motion for Waiver*, (filed July 13, 2018), para. 3.

⁶ *Application for an Accounting Authority Order and Motion for Waiver*, (filed July 13, 2018), para. 3.

⁷ Ex. 100, Mark L. Oligschlaeger Rebuttal, p. 5; Ex. 200, Kerri Roth Rebuttal, pp. 5-6; and section 386.370, RSMo.

⁸ Ex. 200, Kerri Roth, pp. 5-6.

⁹ Ex. 100, Oligschlaeger Rebuttal, p. 8; and section 386.370, RSMo.

7. The Commission formulates its budget for the coming fiscal year (July 1 through June 30) and then determines which portion of that budget should be assigned to each of its regulated industries based on the amount of “direct costs”¹⁰ incurred by the Commission for each type of utility during the preceding fiscal year.¹¹ Additionally, the Commission apportions the “common costs”¹² to each utility industry based on that industry’s share of total Missouri-jurisdictional utility revenues during the preceding fiscal year.¹³ The assessment costs are then divided among each individual utility within an industry (electric, natural gas, water and sewer, steam heat, and telecommunications) based on that utility’s proportional share of Missouri-jurisdictional revenues during the preceding calendar year.¹⁴

8. The assessment amounts fluctuate from year-to-year because of the statutory process for calculating Commission assessments.¹⁵

9. In June 2018, the Commission’s letter advising Spire Missouri of its FY 2019 assessment was issued.¹⁶

10. The FY 2019 assessment for Spire Missouri was \$4,904,390.63, an increase of \$1,661,778.53 from the FY 2018 assessment.¹⁷

11. In the past, the percentage change in assessment amounts for the entities that now make up Spire Missouri (Missouri Gas Energy and Laclede Gas Company) has

¹⁰ “Direct costs’ are costs incurred by the Commission in relation to a specific type of utility industry.” (Ex. 100, Oligschlaeger Rebuttal, p. 5, fn. 1.)

¹¹ Ex. 100, Oligschlaeger Rebuttal, p. 5.

¹² “Common costs’ are costs incurred by the Commission that are not specific to any particular utility industry.” (Ex. 100, Oligschlaeger Rebuttal, p. 6, fn. 2.)

¹³ Ex. 100, Oligschlaeger Rebuttal, p. 6; and Ex. 200, Roth Rebuttal, Schedule KNR-5.

¹⁴ Ex. 100, Oligschlaeger Rebuttal, p. 7; *See also*, section 386.370, RSMo.

¹⁵ Ex. 100, Oligschlaeger Rebuttal, p. 6.

¹⁶ Ex. 1, Scott A. Weitzel Direct, p. 3.

¹⁷ Ex. 1, Weitzel Direct, p. 3.

varied from a decrease of 14.9% to an increase of 16.9% in one year.¹⁸ The following chart shows the changes over the last ten years:¹⁹

Fiscal Year	Combined Annual Assessment (Spire Missouri East and Spire Missouri West)	Percent Change from the Previous Year
2008	\$4,147,693.60	
2009	\$3,980,583.92	-4.00%
2010	\$3,585,137.41	-9.90%
2011	\$4,041,676.12	12.70%
2012	\$3,463,112.65	-14.30%
2013	\$3,384,578.19	-2.30%
2014	\$3,384,369.51	0.00%
2015	\$3,954,922.54	16.90%
2016	\$3,364,459.91	-14.90%
2017	\$2,916,945.74	-13.30%
2018	\$3,242,612.10	11.20%
2019	\$4,904,390.63	51.20%

12. The FY 2017 and FY 2018 assessments were the lowest assessments in the eleven years prior to the FY 2019 assessments.²⁰

13. Spire Missouri's current rates became effective on April 19, 2018, as a result of the Commission's *Amended Report and Order* in File Nos. GR-2017-0215 and GR-2017-0216 ("rate cases").²¹

¹⁸ Ex. 1, Weitzel Direct, p. 6.

¹⁹ Ex. 1, Weitzel Direct, p. 6.

²⁰ Ex. 100, Oligschlaeger Rebuttal, p. 11.

²¹ Ex. 1, Weitzel Direct, p. 3.

14. The revenue requirements in the rate cases included Spire Missouri's FY 2018 assessment.²²

15. The revenue requirements also reflected an amount for the rate case expense of Spire Missouri. However, in the recent rate cases, the Commission determined that rate case expense of Spire Missouri should be shared between the customers and the shareholders. This caused a decrease of almost \$1,000,000 to revenue requirement that Spire Missouri shareholders were not able to recover in rates.²³

16. There was an increase in natural gas regulatory activity at the Commission in 2017 and 2018, which caused the FY 2019 natural gas assessments to increase.²⁴

17. The increase in Spire Missouri's FY 2019 assessment was largely attributable to the amount of time and resources that Staff and Public Counsel spent in FY 2018 working on the Spire Missouri rate cases.²⁵

18. The proceedings in the rate cases were particularly complex in that there was a large number of issues and almost none of those issues settled prior to the hearing.²⁶

19. The Spire Missouri rate cases significantly increased the time spent on gas-related cases for the Commission, Staff, and Public Counsel, which in turn caused the assessment on all gas companies to increase in FY 2019.²⁷

20. The Commission assessments were not a contested issue in the rate cases.²⁸

²² Ex. 1, Weitzel Direct, p. 3.

²³ Ex. 1, Weitzel Direct, p. 3.

²⁴ Ex. 100, Oligschlaeger Rebuttal, p. 8.

²⁵ Tr. p. 61; and Ex. 100, Oligschlaeger Rebuttal, pp. 8-9; and Ex. 200, Roth Rebuttal, pp. 6 and 8-9.

²⁶ Ex. 100, Oligschlaeger Rebuttal, p. 9.

²⁷ Ex. 100, Oligschlaeger Rebuttal, pp. 8-9; and Ex. 200, Roth Rebuttal, pp. 6, and 8-9.

²⁸ Transcript, pp. 65-66.

21. Laclede Gas Company and Missouri Gas Energy (now Spire Missouri East and Spire Missouri West, respectively) each had rate cases processed in FY 2007.²⁹ The combined assessment amounts for Spire East and Spire West in FY 2008 was over \$4 million.³⁰

22. Laclede Gas Company and Missouri Gas Energy (now Spire Missouri East and Spire Missouri West, respectively) each had rate cases processed in FY 2010.³¹ The combined assessment amounts for Spire East and Spire West in FY 2011 was over \$4 million.³²

23. Laclede Gas Company and Missouri Gas Energy (now Spire Missouri East and Spire Missouri West, respectively) each had rate cases processed in FY 2014.³³ The combined assessment amounts for Spire East and Spire West in FY 2015 was approximately \$3.95 million.³⁴

24. The above figures show that Spire Missouri's assessments have a pattern of increasing to near or above \$4 million in every year following the combined rate cases for

²⁹ File No. GR-2006-0422, *In the Matter of Missouri Gas Energy's Tariff Sheets Designed to Increase Rates for Gas Service in the Company's Missouri Service Area*; and File No. GR-2007-0208, *In the Matter of Laclede Gas Company's Tariff to Revise Natural Gas Rate Schedules*.

³⁰ Ex. 1, Weitzel Direct, p. 6.

³¹ File No. GR-2009-0355, *In the Matter of Missouri Gas Energy and Its Tariff Filing to Implement a General Rate Increase for Natural Gas Service*; and File No. GR-2010-0171, *In the Matter of Laclede Gas Company's Tariff to Increase Its Annual Revenues for Natural Gas Service*.

³² Ex. 1, Weitzel Direct, p. 6.

³³ File No. GR-2013-0171, *In the Matter of Laclede Gas Company's Filing of Revised Tariffs to Increase its Annual Revenues for Natural Gas* (Although Public Counsel cited to an *Order Approving Stipulation and Agreement* issued April 23, 2014, at footnote 22 of *Public Counsel's Initial Brief*, an examination of the Commission's Electronic Information and Filing System (EFIS) shows that no such order was issued on that date in File No. GR-2013-0171. This case was partially processed in FY 2014, but was mostly processed in FY 2013.); File No. GR-2014-0007, *In the Matter of Missouri Gas Energy, Inc.'s Filing of Revised Tariffs to Increase its Annual Revenues for Natural Gas* (Again, Public Counsel's citation in footnote 22 of *Public Counsel's Initial Brief* incorrectly cites the date of the *Order Approving Stipulation and Agreement*. The correct date was April 23, 2014.); and Ex. 200, Roth Rebuttal, p.11.

³⁴ Ex. 1, Weitzel Direct, p. 6.

the last ten years.³⁵ Increases in Commission assessments are not unusual or nonrecurring, especially in a year following the processing of multiple rate cases.

25. Spire Missouri's gross operating revenues were approximately \$1.1 billion for calendar year 2017, which was approximately 85% of all Missouri-jurisdictional regulated gas utility operating revenues for that year.³⁶

26. Spire Missouri's Missouri-jurisdictional operating revenues increased approximately \$76 million from calendar year 2016 through calendar year 2017.³⁷ All other regulated gas companies in Missouri experienced revenue losses for that same period.³⁸ This discrepancy in revenues caused Spire Missouri's portion of the FY 2019 assessment allocation for gas companies to increase.³⁹

27. An AAO is an order from the Commission authorizing a utility to report an item differently than prescribed in the uniform system of accounts (USOA) adopted by the Commission for utility accounting purposes.⁴⁰ AAO applications generally seek deferral of costs as a "deferred asset" or "regulatory asset" on the utility's income statement, to be considered in a later rate case for inclusion in rates.⁴¹ Spire Missouri's application seeks this type of accounting treatment.⁴²

28. "Extraordinary events are events that are unusual, unique and not-recurring. The classic example of an extraordinary event impacting utility operations and costs are

³⁵ Ex. 1, Weitzel Direct, p. 6.

³⁶ Ex. 202, Portions of the 2016 and 2017 Annual Reports filed by Missouri's Regulated Gas Companies.

³⁷ Ex. 202, Portions of the 2016 and 2017 Annual Reports filed by Missouri's Regulated Gas Companies.

³⁸ Ex. 202, Portions of the 2016 and 2017 Annual Reports filed by Missouri's Regulated Gas Companies.

³⁹ Ex. 202, Portions of the 2016 and 2017 Annual Reports filed by Missouri's Regulated Gas Companies.

⁴⁰ Ex. 100, Oligschlaeger Rebuttal, p. 3.

⁴¹ Ex. 100, Oligschlaeger Rebuttal, p. 3.

⁴² *Application for an Accounting Authority Order and Motion for Waiver*, (filed July 13, 2018).

the occurrence of natural disasters, or so-called ‘acts of God,’ such as severe wind and ice storms, and major flooding.”⁴³

29. “The ‘yardstick’ generally used by the Commission to measure materiality of a cost proposed for deferral treatment is whether the cost in question is at least equal to 5.0% of the utility’s net income.”⁴⁴

30. Spire Missouri’s total income for the twelve months ending June 2018 was approximately \$141.8 million. Thus, the increase of \$1.66 million in the FY 2019 assessment was approximately 1% of income.⁴⁵

31. While Spire Missouri’s FY 2019 assessment expense increased since the rate cases, other costs (such as the cost of debt) may have decreased since the rate cases.⁴⁶

32. Typically, the Commission has used an AAO for situations that are so rare and infrequent that no rate allowance is included in its rates to recover the costs.⁴⁷ The Commission typically uses “tracker mechanisms . . . to measure ongoing differences between the amount of a utility’s actual incurred costs and the amount of rate recovery for that cost. That difference is then eligible for possible subsequent inclusion in customer rates.”⁴⁸

⁴³ Ex. 100, Oligschlaeger Rebuttal, p. 3, Ins. 16-19.

⁴⁴ Ex. 100, Oligschlaeger Rebuttal, p. 11, Ins. 4-6. See *a/so*, 18 C.F.R. § Pt. 201, General Instruction No. 7.

⁴⁵ Ex. 200, Roth Rebuttal, p. 6-7. See *a/so*, Weitzel Direct, p. 8, In. 31 – p. 9, In. 1, where Mr. Weitzel admits that the FY 2019 assessment increase does not meet the 5% of income threshold.

⁴⁶ Tr. pp. 46 and 51.

⁴⁷ Ex. 100, Oligschlaeger Rebuttal, p. 13.

⁴⁸ Ex. 100, Oligschlaeger Rebuttal, p. 13, Ins. 6-8.

Conclusions of Law

A. Spire Missouri is a “gas corporation” and “public utility” subject to the jurisdiction of the Commission.⁴⁹

B. It is well settled in Missouri law that there is a prohibition against “single-issue ratemaking.” That is, the Commission may not allow a public utility to change an existing rate without consideration of all relevant factors such as operating expenses, revenues, and rates of return.⁵⁰

C. The Commission may “prescribe uniform methods of keeping accounts, records and books to be observed by gas corporations”⁵¹ Additionally, the Commission may “prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited.”⁵²

D. Commission rule 4 CSR 240-40.040 requires Missouri regulated gas corporations to keep all accounts in conformity with the Uniform System of Accounts . . . as prescribed by the Federal Energy Regulatory Commission (FERC) and published at 18 CFR part 201 (1992) and 2 FERC Stat. & Regs. Paragraph 20,001 and following (1992), except as otherwise provided in this rule.”⁵³ However, after a hearing, the Commission can change the prescribed accounts in which particular outlays and receipts shall be entered, charged, or credited.⁵⁴

⁴⁹ Section 386.020, RSMo.

⁵⁰ *State ex rel. Mo. Water Co.*, 308 S.W.2d at 718-19; *State ex rel. Util. Consumers Council of Mo., Inc. v. Pub. Serv. Comm'n*, 585 S.W.2d 41, 56-58 (Mo. 1979).

⁵¹ Subsection 393.140(4), RSMo.

⁵² Subsection 393.140(8), RSMo.

⁵³ 4 CSR 240-40.040(1).

⁵⁴ Section 393.140(8), RSMo.

E. Missouri courts have recognized the Commission's regulatory authority to grant a form of relief to a utility in the form of an AAO "which allows the utility to defer and capitalize certain expenses until the time it files its next rate case."⁵⁵

F. An AAO is a deferral mechanism that allows a utility to "defer and capitalize certain expenses until it files its next rate case."⁵⁶ The courts have stated that an AAO allows the deferral of a final decision on current *extraordinary* costs until a rate case and therefore is not retroactive ratemaking.⁵⁷ Although an AAO allows a cost to be placed in a separate account for future consideration, it does not create an expectation of recovery, nor does it bind the Commission to any particular ratemaking treatment.⁵⁸

G. When evaluating whether an event should be considered extraordinary, the Commission will look to the appropriate USOA for guidance.⁵⁹ However, for accounting purposes, the consistent meaning of an extraordinary item is an event that is considered unique, unusual and nonrecurring.

H. The Missouri Court of Appeals has also said that a request for a tracker is "the same as a request for an AAO, as it seeks to book a particular cost, normally charged as an expense on a utility's income statement in the current period, to the utility's balance sheet as a regulatory asset or regulatory liability."⁶⁰

⁵⁵ *State ex rel. Aquila, Inc. v. Public Service Comm'n of State*, 326 S.W.3d 20, 27 (Mo. App. 2010). See also, Section 393.140, RSMo.

⁵⁶ *Mo. Gas Energy v. Pub. Serv. Comm'n*, 978 S.W.2d 436 (Mo.App W.D. 1998).

⁵⁷ *State ex rel. Mo. Gas Energy v. Pub. Serv. Comm'n*, 301 S.W.3d 556 at 569-570 (Mo.App.2009).

⁵⁸ *Id.*

⁵⁹ *Kan. City Power & Light Co.'s Request for Auth. To Implement a General Rate Increase for Elec. Serv. v. Pub. Serv. Comm'n*, 509 S.W.3d 757, 769-770 (Mo.App. W.D. 2016).

⁶⁰ *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, 769 (Mo. Ct. App. 2016).

I. The Commission previously determined, and the Missouri Court of Appeals, Western District affirmed, that the “use of trackers should be limited because they violate the matching principle, tend to unreasonably skew ratemaking results, and dull the incentives a utility has to operate efficiently and productively under the rate regulation approach employed in Missouri.”⁶¹

J. The USOA, allows for deferral for “extraordinary items.” General Instruction No. 7, states:

Extraordinary items. It is the intent that net income shall reflect all items of profit and loss during the period with the exception of prior period adjustments Those items related to the effects of events and transactions which have occurred during the current period and which are of **unusual nature and infrequent occurrence** shall be extraordinary items. Accordingly, they will be events and transactions of significant effect which are **abnormal and significantly different from the ordinary and typical activities of the company, and which would not reasonably be expected to recur in the foreseeable future.** (In determining significance, items should be considered individually and not in the aggregate. However, the effects of a series of related transactions arising from a single specific and identifiable event or plan of action should be considered in the aggregate.) To be considered as extraordinary under the above guidelines, an item should be more than approximately 5 percent of income, computed before extraordinary items. Commission approval must be obtained to treat an item of less than 5 percent, as extraordinary.⁶²

K. Consistent with the language in General Instruction No. 7, the Commission has evaluated the increase in assessment costs for which Spire Missouri seeks an AAO to determine if it is an unusual and infrequent occurrence. The Commission concludes it is not. Therefore, the increase in assessment costs is not extraordinary.

⁶¹ *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, 769 (Mo. Ct. App. 2016), quoting File No. ER-2014-0370, *In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service, Report and Order* (issued September 2, 2015).

⁶² 18 C.F.R. § Pt. 201, General Instruction No. 7. (Emphasis added.)

L. The Commission calculates the annual assessment for Spire Missouri and every other utility under its jurisdiction according to section 386.370, RSMo. This statutory provision has been in effect since 1947.⁶³

Decision

Spire Missouri has requested that the Commission approve the use of a deferral accounting mechanism to defer expenses incurred as a result of an increase of approximately \$1.66 million in its FY 2019 assessment from the Commission. Spire Missouri's request is more similar to a request for a tracker than for a traditional AAO.⁶⁴ However, because a request for a tracker is the same as a request for an AAO, the Commission applies the same analysis to either deferral mechanism.

The Commission has the statutory authority to prescribe methods for gas corporations to keep their accounts, records, and books.⁶⁵ The Commission has set forth in its rules that gas corporations must keep their accounts in conformity with the USOA as prescribed by FERC. The USOA provides for deferral accounting for "extraordinary items" which are defined as:

Those items related to the effects of events and transactions which have occurred during the current period and which are of unusual nature and infrequent occurrence shall be extraordinary items. Accordingly, they will be events and transactions of significant effect which are abnormal and

⁶³ Section 386.370, RSMo.

⁶⁴ An AAO is an authorization from the Commission to authorizing a utility to report an item differently than prescribed in the USOA. Spire Missouri also indicates that it would be willing to have a mechanism more in the nature of a "tracker" whereby the increases in assessment values over the FY 2018 amount (which is the amount incorporated into rates through the recent rate cases) would receive deferred accounting treatment as a regulatory asset, and any decreases in that assessment amount would receive deferred accounting treatment as a regulatory liability. That asset or liability could then be considered in the next rate case for possible inclusion in rates. Trackers have traditionally been used in the context of a rate case to track future expenses and have been used for a particular policy reason. Whereas, AAOs have traditionally been implemented to account for a past expense that would not otherwise be possible to be recovered in rates.

⁶⁵ Section 393.140(4), RSMo.

significantly different from the ordinary and typical activities of the company, and which would not reasonably be expected to recur in the foreseeable future.⁶⁶

However, the Commission has previously found (and the Court has agreed) that the use of these deferral accounting mechanisms “should be limited because they violate the matching principle, tend to unreasonably skew ratemaking results, and dull the incentives a utility has to operate efficiently and productively under the rate regulation approach employed in Missouri.”⁶⁷

The evidence showed that the Commission assessments are not extraordinary, unusual and unique, or nonrecurring. Rather, Commission assessments have been calculated and assessed to utilities according to statute for many years on a set schedule.

Spire Missouri argues that the rate cases were a unique event because these were the first ever combined rate cases of the former Laclede Gas Company and Missouri Gas Energy. Additionally, Spire Missouri argues that it was the large increase in the assessment, not the assessment itself that makes this an extraordinary event. However, the evidence showed that it is not unusual for assessments to increase substantially in the year following a rate case. The combined assessments of Spire Missouri’s predecessors increased to more than \$4 million in 2008 and 2011 and to nearly \$4 million in 2015, each of the years following rate cases, even though those cases were largely settled. Therefore, Spire Missouri could have anticipated a larger increase in assessment amounts in the year following the large and contentious rate cases.

⁶⁶ 18 C.F.R. § Pt. 201, General Instruction No. 7.

⁶⁷ *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, 769 (Mo. Ct. App. 2016).

Further, even though the increase over the previous year seems very large (52%), the percentage of increase was exacerbated by two circumstances. First, the preceding two years had the lowest assessments of the previous eleven years, making any increase for the rate cases appear greater than it would have ten years earlier. Second, because Spire Missouri had a substantial income increase in 2017 when all the other regulated gas utilities in Missouri had decreased incomes, Spire Missouri's apportionment percentage of the total Commission assessment was greater. Neither of these two circumstances are "abnormal and significantly different from the ordinary and typical activities of the company." Rather, the assessment, even though greater than the previous assessments, was a normal and ordinary company expense.

Spire Missouri also argued that this increased assessment amount should be deferred because it is essentially the rate case expenses of Staff and Public Counsel, and the Commission determined in the rate cases that the ratepayers and the shareholders should share rate case expenses 50/50. Spire Missouri argued that without the deferral, there is no way that ratepayers and shareholders will be able to "share" the rate case expenses of Staff and Public Counsel, because there will be no opportunity to include the increased assessment value in revenue requirement and, therefore, in rates. Spire Missouri's argument is not persuasive.

In setting just and reasonable rates during the rate cases, Spire Missouri was allowed to include in its revenue requirement an amount to cover the Commission assessment. The assessment expense was not a contested issue in those rate cases. Now Spire Missouri is requesting the Commission single out one increased expense for special deferred treatment without consideration for other items of profit or loss. The

Commission denied similar requests by Kansas City Power & Light Company and Missouri-American Water Company in recent decisions.⁶⁸ The Court upheld the Commission's determination in the Kansas City Power & Light Company that under the USOA deferral accounting mechanisms should be limited since they violate the matching principle, tend to unreasonably skew ratemaking results, and dull the incentive for a utility to operate efficiently.⁶⁹

The evidence presented in this case showed that Spire Missouri's Commission assessment costs, while having increased 52% in FY 2019 over the FY 2018 assessment, was a normal, ordinary, and recurring cost. This recurring cost was not abnormal or significantly different from the ordinary and typical activities of the company, so it is not extraordinary and, therefore, not subject to deferral under the USOA. Having determined the assessment cost is not extraordinary under the first part of the USOA definition, the Commission need not reach the question of whether the cost is "material."

The Commission concludes that Spire Missouri has not met its burden of proof to demonstrate that the increased assessment cost was extraordinary. Therefore, Spire Missouri's request for an accounting deferral mechanism is denied.

THE COMMISSION ORDERS THAT:

1. The application for an Accounting Authority Order filed by Spire Missouri Inc. is denied.

⁶⁸ *In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service*, File No. ER-2014-0370, *Report and Order* (issued September 2, 2015) (affirmed in *Kansas City Power & Light Co.'s Request for Auth. To Implement a General Rate Increase for Elec. Serv. v. Pub. Serv. Comm'n*, 509, S.W.3d 757 (Mo.App. W.D. 2016)); and *In the Matter of the Application of Missouri-American Water Company for an Accounting Authority Order Related to Property Taxes in St. Louis County and Platte County*, File No. WU-2017-0351, *Report and Order* (issued December 20, 2017).

⁶⁹ *Kansas City Power & Light Co.'s Request for Auth. To Implement a General Rate Increase for Elec. Serv. v. Pub. Serv. Comm'n*, 509, S.W.3d 757 (Mo.App. W.D. 2016)

2. This order shall become effective on April 19, 2019.



BY THE COMMISSION

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

Morris 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 Spire Missouri, Inc. d/b/a)
Spire's Request to Decrease WNAR) **File No. GO-2019-0058**

In the Matter of Spire Missouri, Inc. d/b/a)
Spire's Request to Increase WNAR) **File No. GO-2019-0059**

REPORT AND ORDER

EVIDENCE, PRACTICE AND PROCEDURE

§1 Generally

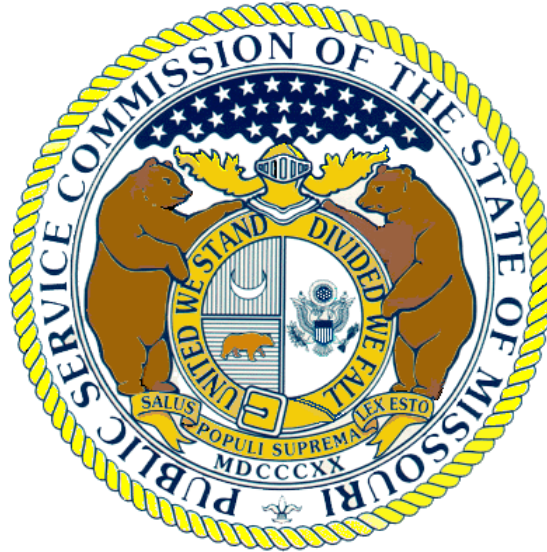
§6 Weight, effect and sufficiency

The determination of witness credibility is left to the Commission, "which is free to believe none, part or all the testimony." *In Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service*, 509 S.W.3d 757, 764 (Mo. App. W.D. 2016), quoting internal quotations from *State ex rel Pub Counsel v. Mo. Pub. Serv. Com'n*, 289 S.W.3d 240, 246-247 (Mo. App. W.D. 2009).

§2 Jurisdiction and powers

A tariff has the same force and effect as a statute, and it becomes state law. *State ex rel. Missouri Pipeline Co. v. Missouri Public Service Com'n*, 307 S.W.3d 162 (Mo. App. W.D. 2009). The Commission has the authority to interpret a tariff and apply its terms. 45 *State ex rel. Mo. Pipeline Co. v. Pub. Service Com'n*, 307 S.W.3d 162, 177 (Mo. App. W.D. 2009). See *State ex rel Union Elec. Co. v. Public Service Com'n of State*, 399 S.W.3d 467 (Mo. App. W.D. 2013).

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of Spire Missouri, Inc. d/b/a)
Spire's Request to Decrease WNAR) **File No. GO-2019-0058**

In the Matter of Spire Missouri, Inc. d/b/a)
Spire's Request to Increase Its WNAR) **File No. GO-2019-0059**

REPORT AND ORDER

Issue Date: March 20, 2019

Effective Date: March 31, 2019

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Spire Missouri, Inc. d/b/a)
Spire's Request to Decrease WNAR) **File No. GO-2019-0058**

In the Matter of Spire Missouri, Inc. d/b/a)
Spire's Request to Increase Its WNAR) **File No. GO-2019-0059**

Appearances

Michael C. Pendergast
Attorney for Spire Missouri, Inc.

Jeffrey A. Keevil
Attorney for the Staff of the Commission

Lera Shemwell
Attorney for Office of Public Counsel

Regulatory Law Judge: Paul T. Graham

REPORT AND ORDER

Procedural History

On August 31, 2018, Spire Missouri, Inc. ("Spire" or the "Company") filed with the Missouri Public Service Commission ("Commission") tariff sheets to adjust the Weather Normalization Adjustment Rider ("WNAR") in each of its two operating divisions, Spire Missouri East and Spire Missouri West. Each tariff sheet bore a proposed effective date of October 1, 2018. Tariff Tracking No. YG-2019-0039 would adjust Spire Missouri East's WNAR to \$(0.00032) and resulted in the opening of File No. GO-2019-0058. Tariff Tracking No. YG-2019-0049 would adjust Spire Missouri West's WNAR to \$0.00114 and resulted in the opening of File No. GO-2019-0059. Thereafter, Spire filed substitute tariffs

in both files. The two files, although not consolidated, will be considered together due to a commonality of material facts and law,¹ and wherever the singular term “tariff” is used, the term will refer to the tariffs proposed in both cases unless otherwise specified.

On September 14, 2018, the Staff of the Commission (“Staff”) filed its Recommendations. In File No. GO-2019-0058, with respect to Spire East, Staff recommended that the Commission reject the proposed tariff sheets and order Spire to file P.S.C. MO. No. 7 Tariff Sheet No. 13.2 with a WNAR rate of \$(0.00050). Similarly, in File No. GO-2019-0059, with respect to Spire West, Staff recommended that the Commission reject the proposed tariff sheets and order Spire to file P.S.C. MO. No. 8 Tariff Sheet No. 13.2 with a WNAR rate of \$0.00084.² On September 20, 2018, the Commission suspended Spire’s tariff sheets until April 1, 2019. On October 19, 2018, the Commission entered its Order Adopting Procedural Schedule. In compliance with that procedural schedule, the parties pre-filed direct and rebuttal testimony. The Commission conducted a hearing on January 15, 2019. Thereafter, Spire, Staff, and the Office of the Public Counsel (“OPC”) filed post-hearing briefs.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The 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 the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or

¹ “When pending actions involve related questions of law or fact, the commission may order a joint hearing of any or all the matters at issue, and may make other orders concerning cases before it to avoid unnecessary costs or delay.” 4 CSR 240-2.110 (3).

² Staff’s proposed Spire East adjustment increases the customer’s refund. Staff’s Spire West adjustment decreases the additional charge to the customer.

argument of any party does not indicate that the Commission has failed to consider such evidence, position or argument, but indicates that the omitted material was not discussed because it is not dispositive in this decision.

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. 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.

Findings of Fact

1. Spire 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).³

2. Spire is a "gas corporation" and a "public utility" as each of those phrases are defined in Section 386.020, RSMo 2016.

3. The OPC may represent and protect the interests of the public in any proceeding before the Commission.⁴ OPC participated in this matter.

³ File Nos. GR-2017-0215 and GR-2017-0216, Amended Report and Order, p. 11, Finding of Fact No. 1.

⁴ Section 386.710(2), RSMo 2016; Commission Rules 4 CSR 240-2.010(10) and (15) and 2.040(2).

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.⁵ Staff did participate in this matter.

5. Spire's most recent general rate cases were File No. GR-2017-0215 for Spire Missouri East and File No. GR-2017-0216 for Spire Missouri West.⁶ These may be referred to together as the "most recent rate cases" or the "2016 cases." As part of the most recent rate cases, the Commission authorized a WNAR pursuant to Section 386.266.3, RSMo (2016).⁷

6. In its Amended Report and Order issued in the 2016 cases, the Commission found that weather variations cause the greatest variations in revenue for the Company.⁸ A WNAR is a mechanism that adjusts outside of a rate case the current revenue, due to variations from normalized weather. Revenue for any given accumulation period is decided by gas usage in the period.⁹

7. Weather normalized energy sales were calculated in the most recent rate cases using Heating Degree Days ("HDD"), which were originally developed as a weather measure to determine the relationship between temperature and gas usage.¹⁰ HDD are based on the difference of mean daily temperature ("MDT")¹¹ from 65° F., when MDT is

⁵ Commission Rules 4 CSR 240-2.010(10) and (21) and 2.040(1).

⁶ File Nos. GO-2019-0058 and GO-2019-0059, Staff Recommendation, Memorandum, filed September 14, 2018.

⁷ File Nos. GR-2017-0215 and GR-2017-0216, Amended Report and Order, issued March 7, 2018, pp 83-86.

⁸ Id at p 80, para 12.

⁹ Exhibit 201, Won Rebuttal, pg. 3.

¹⁰ Exhibit 200, Won Direct, pg. 2. Exhibit 201, Won Rebuttal, pg 3-5.

¹¹ See Exhibit 200, Won Direct, pg. 2 Ftnt 1. By National Climatic Data Center convention, MDT is the average of daily maximum temperature and daily minimum temperature.

below 65° F.¹² MDT and HDD “...are the measures of weather used in adjusting test year natural gas sales.”¹³

8. For purposes of normalizing the test year gas usage and revenues in the most recent rate cases, Staff used the actual daily maximum and daily minimum temperature series for the 30-year period of 1987 through 2016.¹⁴ Staff then used a ranked average method to calculate daily normal temperature values, ranging from the temperature that is “normally” the hottest to the temperature that is “normally” the coldest for each month.¹⁵ Staff calculated a set of normal daily HDD values (“NDD”)¹⁶ reflecting actual daily and seasonal variability, which allowed Staff to develop adjustments to NDD for gas usage.¹⁷

9. Customer gas usage increases when actual heating degree days (“ADD”)¹⁸ increase because of cold weather.¹⁹ The purpose of the WNAR tariff is to adjust revenues for differences between ADD and NDD.²⁰

10. Since annual natural gas usage is 95 percent correlated with annual HDD, the Commission determined in the most recent rate cases that using Staff’s climatic normal and weather normalization in the form of the WNAR tariff would more accurately

¹² Exhibit 200, Won Direct, pg. 2. The HDD equals zero when MDT is above 65 degrees F.

¹³ Exhibit 200, Won Direct, pp. 2, lns 13-15.

¹⁴ Exhibit 200, Won Direct, pg. 3. Staff obtained weather data from St. Louis Lambert International Airport (“STL”) and the Kansas City International Airport (“MCI”) for the Spire East or the Spire West service territories.

¹⁵ Exhibit 201, Won Rebuttal, pp. 6-7.

¹⁶ Although NHDD and NDD are separately used in the testimony, they both refer to normal heating degree days.

¹⁷ Exhibit 200, Won Direct, pp. 4-5.

¹⁸ Although ADD and AHDD are separately used in the evidence, both acronyms refer to actual heating degree days.

¹⁹ Exhibit 201, Won Rebuttal, pg 3.

²⁰ Staff Recommendation, Appendix A.

resolve a revenue stabilization issue because it was specifically linked to weather fluctuations.²¹

11. On April 4, 2018, the Commission issued an order in the most recent rate cases approving Spire's compliance tariffs. This approval included the WNAR tariff with the formula described in this Report and Order.²² The WNAR tariff states that NDD is "based upon Staff's daily normal weather as determined in the most recent rate case."²³

12. In the cases now before the Commission, Spire submitted tariff sheets to decrease its WNAR rate to (\$0.00032) for Spire East and increase its WNAR rate to \$0.00114 for Spire West. Both tariff sheets cover the accumulation period of April through July 2018.²⁴

13. The following formula ("tariff formula"), together with the definitions, as set out in Appendix 1 and fully incorporated in this Report and Order, are a part of Spire's WNAR tariff approved by the Commission in Spire's most recent rate cases:²⁵

$$WNA_t = \sum_{j=1}^{18} \left((NDD_{ij} - ADD_{ij}) \cdot C_{ij} \right) \cdot \beta$$

14. Spire has 18 billing cycles in a given calendar month. For example, the May 2018 billing month includes billing cycle 1 that started on April 1, 2018, and billing cycle 18, which started on April 26, 2018.²⁶ In the WNAR formula, "i" refers to the applicable

²¹ File Nos. GR-2017-0215 and GR-2017-0216, Amended Report and Order, pg 84.

²² File Nos. GR-2017-0215 and GR-2017-0216, *Order Approving Tariff in Compliance with Commission Order*, issued April 4, 2018 and Appendix 1. File Nos. GR-2017-0215 and GR-2017-0216, Amended Report and Order, pp 84-85, and p 85 fnt 298.

²³ Exhibit 205, pg. 1, and Exhibit 206, pg. 1.

²⁴ Exhibit 201, Won Rebuttal, pg. 2.

²⁵ Exhibit 205, pg. 1 and Exhibit pg. 1206.

²⁶ Exhibit 204, Kliethermes Rebuttal, pp 2-4.

billing cycle month and “j” refers to the billing cycle. The “ij” expression in the tariff formula refers to the 18 billing cycles that apply to a billing month.²⁷

15. When calculating the WNAR rate to be used in the adjustment tariff sheets, Spire interpreted the tariff language as requiring the Company to use the specific NDD determined by Staff in the most recent rate cases to calculate its WNAR adjustment. Specifically, Spire concluded that the phrase, “as determined in the most recent rate case” meant that the 30-year NDD outputs determined in the 2016 rate case, including the days of the month on which those occurred, were to be used for making the calculations.²⁸

16. In comparison, Staff disputes that the tariff language requires the Company use the same outputs from the ranking used in the 2016 rate case when calculating the NDD. Staff interprets the tariff language as specifying that the normal weather is to be ranked consistent with the proper rankings of the associated actual weather of the accumulation period.²⁹

17. Staff also explained that this ranking process is how it calculated daily normal weather in the last rate case.³⁰

18. Under Staff’s ranking method, the NDD per day, as determined in the most recent rate cases, are apportioned to the days of each month by aligning the highest level of NDD to occur in that month with the day that had the highest level of AHDD occurring in the month.³¹ This is done by matching the highest level of historic 30-year NDDs to occur in a month to match the coldest day that actually occurred in the current year’s

²⁷ See Exhibit 204, Kliethermes, Rebuttal Testimony, pp. 2-6.

²⁸ Exhibit 100 Weitzel Direct, pgs. 5-6. This was based on the 30-year adjusted average of NOAA data.

²⁹ Exhibit 202 Stahlman Direct, pg. 2.

³⁰ Exhibit 201, Won Rebuttal, pp. 6-7.

³¹ Staff’s Recommendation, Appendix A, pg. 2.

month. While this method still maintains the same total number of NDDs determined in the 2016 rate case, these NDDs now occur on different days of the month than what was determined in the most recent rate case.³²

19. The Beta coefficient, or β in the tariff formula, is a regression model coefficient that is specific to the tariff.³³ It is a mathematical expression of the relationship between weather and a customer's gas usage.³⁴ The Beta coefficients are different for Spire East and Spire West,³⁵ and were developed in the weather normalization procedure in the most recent rate cases.³⁶ The Beta coefficients were developed using a series of billing cycle dates, not on an annual basis.³⁷ Since the basis for the coefficient β used in the WNAR tariff was the 30-year normal period established in the most recent rate cases, changing the period would change the relationship between the calculated normal weather and natural gas usage.³⁸

20. Applying Spire's method will cause the Beta coefficient to no longer be relevant to the calculations.³⁹

21. The start and end dates of the billing cycles for Spire's billing month of May 2018 do not line up with the start and end dates of the billing cycles that were the basis for the determinants and revenues agreed to in the most recent rate cases. If an improper

³² Exhibit 100 Weitzel Direct., pgs. 3-4.

³³ Tr. 111.

³⁴ See Won's testimony, Tr. 113 et seq.

³⁵ Tr. 112.

³⁶ Tr. 113.

³⁷ Tr. 124; Tr. 154, Michael Stahlman testified:

"A. The coefficient wasn't developed on an annual basis. So I don't know I can answer that question.

Q. So you don't know.

A. It's a question that doesn't make sense because the beta is developed using a series of billing cycle dates and so it's very specific to the billing cycle dates where there isn't billing cycle dates on an annual method."

³⁸ Exhibit Stahlman Direct, pp2-3.

³⁹ Tr. 114.

NDD is used to adjust the WNAR, the relationship between gas usage and HDD loses its validity.⁴⁰

22. Applying Spire's proposed method would require mixing and matching billing cycle start dates from calendar year 2018 with the HDD ranking for that date in 2016. This creates a needless mismatch of HDD and greater variations between actual and normal gas usage. This could result in a customer who uses more gas on a day during the adjustment period than what is reflected in the rates set in the most recent rate cases having to pay an additional amount through the WNAR.⁴¹

23. Staff's method maintains a consistent comparison between the coldest normal day to occur in that month with the coldest day that actually occurs in the month, while still maintaining the same total number of NDD that were determined in the most recent rate cases.⁴²

24. Staff's ranking method reduces the daily variations between actual and normal gas usage when it aligns billing cycles within the billing month with those in the rate case. Reducing the daily variation between actual and normal gas usage captured in the WNAR under Staff's ranking method reduces the financial impact to customers.⁴³

Conclusions of Law

Spire is a "gas corporation" and "public utility" as those terms are defined by Section 386.020, RSMo 2016.⁴⁰ Spire is subject to the Commission's jurisdiction, supervision, control, and regulation as provided in Chapters 386 and 393, RSMo (2016). The Commission has the authority under Section 386.266, RSMo (Supp. 2018), to consider

⁴⁰ Exhibit 201 Won Rebuttal, pg. 3.

⁴¹ Exhibit 204, Kliethermes Rebuttal, p4-5.

⁴² Staff's Recommendation, Appendix A, pg. 2.

⁴³ Exhibit 204 Kliethermes Rebuttal pgs. 5-6.

and approve weather normalization adjustment rider tariffs. Section 386.266.3, RSMo (Supp. 2018), states that any gas corporation may apply to the Commission for approval of rate schedules authorizing periodic rate adjustments outside of general rate proceedings to reflect the non-gas revenue effects of increases or decreases in residential customer usage due to variations in weather. Pursuant to Section 386.266.4, RSMo (Supp. 2018), the Commission has the power to approve, modify, or reject such an adjustment mechanism.

A tariff has the same force and effect as a statute, and it becomes state law.⁴⁴ The Commission has the authority to interpret a tariff and apply its terms.⁴⁵ The determination of witness credibility is left to the Commission, “which is free to believe none, part or all the testimony.”⁴⁶

DECISION

Spire and Staff disagree on how daily normal weather should be calculated when adjusting the Company’s WNAR. Spire asserts that under the Commission-approved WNAR tariff, “based upon Staff’s daily normal weather as determined in the most recent rate case” means that the NDD as set in the most recent rate cases are to be used in each WNAR adjustment without reapplication of the ranking methodology. Staff disagrees with Spire and asserts that the ranking methodology used to establish the NDD in the most recent rate cases should be applied to the current accumulation period’s actual daily temperature. For the reasons described below, the Commission agrees with Staff.

⁴⁴ *State ex rel. Missouri Pipeline Co. v. Missouri Public Service Com’n*, 307 S.W.3d 162 (Mo. App. W.D. 2009).

⁴⁵ *State ex rel. Mo. Pipeline Co. v. Pub. Service Com’n*, 307 S.W.3d 162, 177 (Mo. App. W.D. 2009). See *State ex rel Union Elec. Co. v. Public Service Com’n of State*, 399 S.W.3d 467 (Mo. App. W.D. 2013).

⁴⁶ *In Matter of Kansas City Power & Light Company’s Request for Authority to Implement a General Rate Increase for Electric Service*, 509 S.W.3d 757, 764 (Mo. App. W.D. 2016), quoting internal quotations from *State ex rel Pub Counsel v. Mo. Pub. Serv. Com’n*, 289 S.W.3d 240, 246-247 (Mo. App. W.D. 2009).

Spire asserts that the 2016 NDD should be matched by calendar date with the ADD collected in the 2018 accumulation period. Thus, for example, Spire's method would match the actual heating degree day for April 19, 2018, with the normal heating degree day for the thirty April 19s (their mean average, 1987 to 2016) marshalled from data for the 2016 rate case.⁴⁷

Staff contends, on the other hand, that the 2016 NDD should first be ranked by temperature, coldest to warmest, without regard to their original calendar dates. Then it would be matched to the 2018 ADD, which have been likewise temperature ranked without regard to their specific calendar dates. Staff contends that this method of weather ranking and subsequent weather matching should be followed, cycle by cycle, for each of the 18 billing cycles that apply to a particular billing month.⁴⁸

Spire's principal arguments are based upon the dictionary definitions for "determined"⁴⁹ and upon the fact that on an annualized basis, the difference between the overall impact of the two methods upon rates appears to be de minimis.⁵⁰ However, the tariffs have the same force and effect as a statute and are state law⁵¹; and Spire's argument and its method require the Commission to ignore the tariffs' specific Beta coefficients because the coefficients apply to billing cycle applications and not to annual applications.⁵²

⁴⁷ Exhibit 300, Mantle, Direct Testimony, p. 3 et seq.; See Kliethermes, Exhibit 204, Rebuttal Testimony, pp. 4 et seq.: "On April 19, 2018, Spire East experienced 19.5 HDD. Under Staff's interpretation of the ranking method, for April 19, 2018, Staff compared this to the 'normal' HDD for the 12th coldest day in April of 10.5 HDD. Under Spire's interpretation, those 19.5 HDD for April 19, 2018, the 12th coldest day in April, 2018, would be compared to 0 HDD, based on the warmest-coldest rank of April 19, 2016."

⁴⁸ See Exhibit 204, Kliethermes, Rebuttal Testimony, p. 2-6.

⁴⁹ Exhibit 101, Weitzel, Rebuttal Testimony. 4 et seq.

⁵⁰ Tr. 19-20; 67; 70; 96; 115; 123; 125; 138; 139; Post-Hearing Brief of Spire Missouri, Inc., p. 9 et seq.

⁵¹ *State ex rel. Missouri Pipeline Co. v. Missouri Public Service Com'n*, 307 S.W.3d 162 (Mo. App. W.D. 2009).

⁵² Tr. 154.

The Commission cannot abandon parts of a tariff formula because of one of several dictionary definitions or because the overall financial difference between the methods might seem small. It is the Commission's decision that Spire's method is not in accord with the tariffs' definition of NDDij because Spire's method requires the Commission to ignore part of the tariffs' formulas. In comparison, Staff's interpretation of the method on how to compare its ranked normal weather to the ranked accumulation period actual weather to calculate the Company's WNAR is adopted by the Commission.

The Commission finds that Spire's submitted tariff sheets adjusting its WNAR rate are not consistent with its Commission-approved WNAR tariff. The Commission finds that the tariff sheets to adjust Spire's WNAR rate should be rejected and that Spire should file tariff sheets based on Staff's ranked method for determining daily normal weather.

The Commission will reject the WNAR tariff sheets filed by Spire in Tariff Tracking No. YG-2019-0039 and order Spire to file P.S.C. MO. No. 7, Tariff Sheet No. 13.2 with a WNAR rate of \$(0.00050) for Spire Missouri East. The Commission will reject the WNAR tariff sheets filed by Spire in Tariff Tracking No. YG-2019-0040 and order Spire to file P.S.C. MO. No. 8, Tariff Sheet No. 13.2 with a WNAR rate of \$0.00084 for Spire Missouri West.

Since the tariff sheets were originally filed to go into effect on October 1, 2018, the Commission finds good cause to allow this order to go into effect in less than thirty days.

THE COMMISSION ORDERS THAT:

1. The Commission rejects the WNAR tariff sheets (Tariff Tracking No. YG-2019-0039) filed by Spire in File No. GO-2019-0058 for Spire East.

2. The Commission rejects the WNAR tariff sheets (Tariff Tracking No. YG-2019-0040) filed by Spire in File No. GO-2019-0059 for Spire West.

3. The Commission orders Spire to file tariff sheets consistent with this order for Spire Missouri East.

4. The Commission orders Spire to file tariff sheets consistent with this order for Spire Missouri West.

5. This Report and Order shall become effective on March 31, 2019.



BY THE COMMISSION

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

Morris Woodruff
Secretary

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

Graham, Regulatory Law Judge

APPENDIX 1

CALCULATION OF ADJUSTMENT

The WNA Factor will be calculated for each billing cycle and billing month as follows:

$$WNA_i = \sum_{j=1}^{18} ((NDD_{ij} - ADD_{ij}) \cdot C_{ij}) \cdot \beta$$

Where:

i = the applicable billing cycle month

WNA_i = Weather Normalization Adjustment

j = the billing cycle

NDD_{ij} = the total normal heating degree days based upon Staff’s daily normal weather as determined in the most recent rate case

ADD_{ij} = the total actual heating degree days, base 65 degrees at Kansas City International Airport Weather Station (Spire West)

C_{ij} = the total number of customer charges charged in billing cycle j and billing month i

β = the coefficient of 0.1291586 for Spire West [different for East]

1. Monthly WNA_i = WNA_i x Weighted Residential Volumetric Rate (“WRVR”)_i
2. The WRVR applicable to each month shall be derived using the billing determinants and residential volumetric rates from the Company’s then most-recent rate case. For the winter billing months (November through April), the WRVR shall be equal to the Residential Winter Charge for Gas Used established at the conclusion of each general rate case. For Case No. GR-2017-2015 the amount is \$0.15637. [Different for East] The WRVR for each of the summer billing months (May through October) shall be determined at the conclusion of each general rate case as the percentage of total residential customers whose usage ends in the first rate block multiplied by the volumetric rate of that block plus the percentage of total residential customers whose usage ends in the second rate block multiplied by the volumetric rate of that block. Currently affective summer WRVR’s are reflected in the table below [Different for East]:

May	June	July	August	September	October
\$0.14280	\$0.14139	\$0.14104	\$0.14099	\$0.14107	\$0.14121

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of United)	
Services, Inc., for a Certificate of Convenience)	
and Necessity Authorizing it to Construct, Install,	)	<u>File No. SA-2019-0161</u>
Own, Operate, Maintain, Control, and Manage)	
Sewer Systems in Unincorporated Areas in)	
Andrew and Nodaway Counties, Missouri)	

**ORDER GRANTING CERTIFICATE OF
CONVENIENCE AND NECESSITY AND WAIVER**

CERTIFICATES

§21 Grant or refusal of certificate generally

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

EVIDENCE, PRACTICE AND PROCEDURE

§23 Notice and hearing

The Commission need not hold a hearing if, after proper notice and opportunity to intervene, no party requests such a hearing. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494 (Mo. App. W.D. 1989)

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 17th day of April, 2019.

In the Matter of the Application of United Services, Inc., for a Certificate of Convenience and Necessity authorizing it to Construct, Install, Own, Operate, Maintain, Control, and Manage Sewer Systems in unincorporated areas in Andrew and Nodaway Counties, Missouri.)
)
)
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File No.: SA-2019-0161

**ORDER GRANTING CERTIFICATE OF
CONVENIENCE AND NECESSITY AND WAIVER**

Issue Date: April 17, 2019

Effective Date: April 27, 2019

On November 29, 2018, United Services, Inc. (“United”), a wholly owned subsidiary of United Electric Cooperative, Inc. (“Co-op”) filed its *Application and Request for Waiver* (“Application”). United requested a certificate of convenience and necessity (“CCN”) authorizing it to construct, install, own, operate, control, manage, and maintain a sewer system for the public located on unincorporated areas in Andrew and Nodaway Counties in Missouri.¹ United also asked the Commission to waive the 60-day notice requirements of Rule 4 CSR 240-4.017(1). On November 30, 2018, the Commission issued its *Order Directing Notice and Setting Date for Intervention*, setting December 17, 2018, as the deadline for applications for intervention. No one filed an application to intervene, and on December 26, 2018, the Commission ordered the Staff of the Commission (“Staff”) to file a recommendation. On March 26, 2019, Staff filed a

¹ On January 9, 2019, United filed a redacted *Application and Request for Waiver*, making the same requests but redacting certain information in compliance with the Commission’s January 8, 2019, *Order Directing Filing of Redacted Application and Request for Waiver*.

Staff Recommendation (“Recommendation”), recommending that the Commission grant United’s Application subject to certain conditions. Therefore, the Commission will evaluate the *Application and Recommendation*.

United presently operates ten (10) separate sewer systems located in Andrew and Nodaway Counties, Missouri, each serving subdivision-sized areas for a total of approximately 290 customers, all but two being residential customers.² These are the systems for which United is requesting a CCN. United, originally named Nodaway Worth Services, Inc., is organized as a corporation owned by the Co-op.³ The Co-op formed United originally for the purpose of providing fiber optic based internet, television, and telephone services in locations within its electric cooperative service area.⁴ In approximately 2004, United expanded to provide sewer service.⁵ The involved sewer systems already exist and are operated by United within the areas for which United is requesting a CCN.⁶ Since the electric cooperative operation is not subject to regulation by the Commission, the electric cooperative has been overseeing United’s sewer operations with an assumption that there was also no regulatory oversight regarding sewer service to its customers.⁷ However, United is a “for-profit” corporation that is subject to the Commission’s jurisdiction⁸, and has filed this case to correct the situation.⁹

The Commission may grant a certificate of convenience and necessity to operate a sewer corporation after determining that the construction and operation are either

² *Recommendation*, Staff’s Memorandum, p. 2.

³ *Recommendation*, Staff’s Memorandum, p. 1.

⁴ *Recommendation*, Staff’s Memorandum, p. 1 - 2.

⁵ *Recommendation*, Staff’s Memorandum, p. 2.

⁶ *Recommendation*, Staff’s Memorandum, p. 2.

⁷ *Recommendation*, Staff’s Memorandum, p. 2.

⁸ Section 386.020 (49), RSMO.

⁹ *Recommendation*, Staff’s Memorandum, p. 2.

“necessary or convenient for the public service.”¹⁰ 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 public interest.¹¹

The Commission need not hold a hearing if, after proper notice and opportunity to intervene, no party requests such a hearing.¹² No party or individual has requested a hearing or objected to Staff’s *Recommendation*. Based upon a review of the filings, the Commission finds that United has satisfied the “Tartan” factors and will grant United a certificate of convenience and necessity to provide sewer service within the proposed service areas, subject to the conditions set out in Staff’s *Recommendation*, as set out in this Order. Based also upon a review of the filings, the Commission also concurs with Staff’s conclusion and finds that a monthly flat rate for sewer service of \$43.84 applicable to commercial customers and to residential customers in Countryside subdivision, and a monthly flat rate for sewer services of \$35.44 applicable to all other residential customers are just and reasonable. The Commission will make no findings that would preclude the Commission from considering any ratemaking treatment in any later proceeding.

¹⁰ Section 393.170.3, RSMO.

¹¹ 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.).

¹² *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, supra.

With respect to United's request for a waiver of the 4 CSR 240-4.017 notice requirement, the Commission finds that United has made all of the verified declarations required by 4 CSR 240-4.017(1) (D) and notes that Staff expressly states that it does not oppose the waiver. The Commission finds, further, that it will serve United's current sewer customers' best interests to require United to begin complying with the conditions of this Order sooner rather than later. Accordingly, the Commission finds good cause to waive the notice requirements and will do so. For the same reason, the Commission will make this order effective in ten days.

THE COMMISSION ORDERS THAT:

1. The request of United Services, Inc. that the Commission waive the notice requirement of 4 CSR 240-4.017 is granted.
2. United Services, Inc. is granted a Certificate of Convenience and Necessity ("CCN") to provide regulated sewer services in unincorporated areas of Andrew and Nodaway Counties, Missouri, whose specific locations are set out in the maps and metes and bounds descriptions set out in Attachments A, B and C of Staff's Memorandum.
3. The Commission approves and orders a monthly flat rate for sewer service of \$43.84 applicable to commercial customers and to residential customers in Countryside subdivision, and \$35.44 applicable to all other residential customers.
4. The Commission approves and orders United Services, Inc. to use the depreciation rates for sewer utility plant accounts as described in Attachment D of Staff's Memorandum,.
5. United Services, Inc. shall submit a complete tariff for sewer service, as a thirty (30) day filing, within ten (10) days of the effective date of this Order.
6. United Services, Inc. shall implement the Uniform Systems of Accounts for Class C and D Sewer Utilities 1976 ("USOA") as prescribed by 4 CSR 240-61.020.

7. United Services, Inc. shall initiate a rate case within 24 months of the effective date of this Order.

8. United Services, Inc. shall establish an allocation methodology to assign United Electric Cooperative, Inc.'s costs that benefit the sewer company to sewer customers.

9. United Services, Inc. shall maintain documentation of sewer related revenues and costs.

10. United Services, Inc. shall keep records identifiable for each of its sewer systems, including those for customer account records and capital costs.

11. United Services, Inc. shall maintain timesheets for its employees or its affiliate's employees in sufficient detail to allocate time spent on regulated and non-regulated activities as well as capital or non-capital projects.

12. United Services, Inc. shall comply with all Commission Rules, including the filing of annual reports and payment of the Commission's annual assessments.

13. United Services, Inc. shall consider implementing the following bill design changes:

a. Billing statements should include the sewer customer's physical (service) address;

b. All fields on the billing statement should be filled out consistently;

c. United Services, Inc. should add appropriate terminology to the bill instructing customers how to initiate an inquiry or complaint regarding utility service and utility charges;

d. Billing statements should clearly mark the billing date, due date, and past due date on the billing statement, and the formatting on the customer bill should be easy to read and understand; and

e. United Services, Inc. should ensure that emergency contact numbers on the billing statement and user agreement are the same and up-to-date, as well as move the numbers to the top of the billing statement.

14 United Services, Inc. shall provide the Customer Experience Department a sample of three (3) bills from the first billing cycle after the effective date of this Order.

15 United Services, Inc. shall comply with 4 CSR 240-13.020(7), allowing monthly-billed customers at least twenty one (21) days from the rendition of bills to pay charges for sewer service.

16 United Services, Inc. shall require its contractor, White Cloud, to consistently track customer service hours related to sewer service.

17. United Services, Inc. shall distribute to all customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding the provision of sewer service, including customers' ability to contact the Public Service Commission regarding billing or service issues.

18. United Services, Inc. shall create and maintain a customer complaint log consistent with the requirements of Commission Rule 4 CSR 240-13.040 (5) (B) within thirty (30) days after the effective date of this Order.

19. United Services, Inc. shall file notice in this file of compliance with Staff's recommendations and this Order's conditions.

20. Nothing in this Order shall be considered a finding by the Commission of the value of a transaction for ratemaking purposes.

21. The Commission's Data Center shall mail a copy of this Order to the County Clerks for Andrew and Nodaway Counties, Missouri.

22. This Order shall be effective on April 27, 2019.



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.

Graham, Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of Missouri-American Water)
 Company's Application for Certificates of)
 Convenience and Necessity Authorizing it to)
 Install, Own, Acquire, Construct, Operate,)
 Control, Manage and Maintain a Sewer)
 System in an area of Clinton County, Missouri)
 (Timber Springs Estates))

File No. SA-2019-0183

**ORDER GRANTING CERTIFICATE OF
CONVENIENCE AND NECESSITY**

CERTIFICATES

§1 Generally

The Commission granted a certificate of convenience and necessity to Missouri American Water Company to acquire the sewer utility assets of the Timber Springs Estates Homeowners Association, a homeowner's association currently not subject to the Commission's jurisdiction.

SERVICE

§29 Service area

Missouri American Water Company requested a service area much larger than the subdivision it was requesting to acquire. The Commission did not agree that the larger service area best served the public interest. The Commission found that it was reasonable and necessary to limit the service area of the certificate of convenience and necessity to encompass only the Timber Springs Estates Subdivision. The Commission determined that there was no immediate harm from approving the smaller service, and that the company could apply for consideration by the Commission to increase its service area as it contracts for additional sewer or water systems.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 17th day of April, 2019.

In the Matter of Missouri-American Water)
 Company’s Application for Certificates of)
 Convenience and Necessity Authorizing it)
 to Install, Own, Acquire, Construct,)
 Operate, Control, Manage and Maintain a)
 Sewer System in an area of Clinton County,)
 Missouri (Timber Springs Estates))

File No. SA-2019-0183

**ORDER GRANTING CERTIFICATE OF
CONVENIENCE AND NECESSITY**

Issue Date: April 17, 2019

Effective Date: May 17, 2019

Missouri-American Water Company (“MAWC”) filed an application on December 18, 2018, with the Commission requesting a Certificate of Convenience and Necessity (“CCN”) to install, own, acquire, construct, operate, control, manage, and maintain a sewer system in the Timber Springs Estates subdivision in Clinton County, Missouri. MAWC is a “water corporation,” a “sewer corporation,” and “public utility” as those terms are defined in Section 386.020, RSMo and is subject to the jurisdiction of the Commission.

The CCN would allow MAWC to acquire sewer utility assets of the Timber Springs Estates Homeowners Association (“Association”), a homeowner’s association currently not subject to the Commission’s jurisdiction. MAWC would provide Timber Springs Estates subdivision sewer service for 61 current wastewater customers. MAWC has requested that its approved monthly flat rate of \$38.75 for a single family residence contained in MO PSC No. 26 Sheet No. 3.1 be applied to Timber Springs.

The Commission issued notice and set a deadline for intervention requests, but received none. On February 11, 2019, the Commission's Staff filed its recommendation which included a modification of the proposed service area to exclude locations where the municipality of Trimble provides sewer service. Staff recommended the Commission approve the transfer of assets and grant a CCN, with 15 conditions. The Office of the Public Counsel, after talking to MAWC's counsel about the CCN service area, indicated that it does not oppose the approval of the CCN as put forth in Staff's recommendation. On March 8, 2019, MAWC filed its response to Staff's recommendations. MAWC has no objection to Staff's recommendations.

No party has objected to MAWC's application or Staff's recommendation. No party has requested an evidentiary hearing, and no law requires one.¹ Therefore, this action is not a contested case.²

The Commission may grant a sewer corporation a CCN to operate after determining that the construction and operation are either "necessary or convenient for the public service."³ The Commission applies the five "Tartan Criteria" established in *In the Matter of Tartan Energy Company, et al.*, 3 Mo. PSC 3d 173, 177 (1994) when deciding whether to grant a new CCN. The criteria are: (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.

¹ *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

² Section 536.010(4), RSMo.

³ Section 393.170.3, RSMo.

There is a need for the service as 61 residents of Timber Springs Estates currently make use of the existing sewer system. MAWC is qualified to provide the service as it is currently regulated and already provides water service to over 465,000 Missouri customers, and sewer service to over 13,000 Missouri customers. MAWC has the financial ability to provide the service and no external financing is anticipated. The proposal is economically feasible according to MAWC's feasibility study. The proposal, as modified by the Commission, promotes the public interest as demonstrated by a vote of approval to the sale of Timber Springs Estates' assets to MAWC by 51 of the Association's 56 eligible voting members.

The Commission may impose conditions it deems reasonable and necessary.⁴ The Commission does not agree that the service area agreed upon by the parties best serves the public interest. Two sewer systems not owned by MAWC and not currently regulated by the Commission operate within the service area proposed by the parties. The Commission finds that it is reasonable and necessary to limit the service area of the CCN to encompass the Timber Springs Estates Subdivision. No immediate harm results from approving a service area smaller than the parties' proposed service area. MAWC may file new CCN applications for consideration by the Commission to increase its service area as it contracts for additional sewer systems or water systems.

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 sewer service to the customers currently served by the Association. Further, the

⁴ Section 393.170.3, RSMo.

Commission finds that MAWC possesses adequate technical, managerial, and financial capacity to operate the sewer system. The Commission will authorize the transfer of assets and grant MAWC a certificate of convenience and necessity to provide sewer service subject to the conditions described in Staff's recommendation and memorandum, within the Timber Springs Estates subdivision.

MAWC's application also asks the Commission to waive the 60-day notice requirement of Commission Rule 4 CSR 240-4.017(1). MAWC filed an affidavit pursuant to Commission Rule 4 CSR 240-4.017(1)(D) stating that it has had no communication with the office of the Commission within the preceding 150 days regarding the subject matter of the 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 sewer service to the Timber Springs Estates subdivision 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 a monthly residential flat rate of \$38.75 for sewer service to Timber Springs;
- b. Missouri-American Water Company shall submit new tariff sheets, to become effective before closing on the assets, including a service area map, service area written description, sewer rates, pump unit rules and appropriate index modifications, applicable to sewer service in its Timber Springs service area, to be included in its EFIS sewer tariff P.S.C. MO No. 26;
- c. Missouri-American Water Company shall notify the Commission of closing on the assets within five (5) days after such closing;
- d. If the closing on the 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 five 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 Missouri-American Water Company determines that the transfer of the assets will not occur;

- e. 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 Timber Springs service area in its sewer tariffs;
- f. Missouri-American Water Company shall keep its financial books and records for Timber Springs plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts;
- g. Missouri-American Water Company shall adopt the depreciation rates for the Timber Springs sewer assets ordered for Missouri-American Water Company in Case No. WR-2015-0301;
- h. Missouri-American Water Company shall obtain from Timber Springs, 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, depreciation reserve balances, documentation of contributions-in-aid-of-construction transactions, and any capital recovery transactions;
- i. The Commission specifically makes no finding that would preclude it from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the certificate of convenience and necessity to Missouri-American Water Company, including expenditures related to the Timber Springs certificated service area, in any later proceeding;
- j. Missouri-American Water Company shall provide training to its call center personnel regarding rates and rules applicable to the Timber Springs customers.
- k. Missouri-American Water Company shall include the Timber Springs customers in its established monthly reporting to the Customer Experience Department Staff on customer service and billing issues, on an ongoing basis, after closing on the assets;

- I. Missouri-American Water Company shall distribute to the Timber Springs 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;
- m. Missouri-American Water Company shall provide to the Customer Experience Department Staff an example of its actual communication with the Timber Springs customers regarding its acquisition and operations of the sewer system assets, and how customers may reach MAWC, within ten (10) days after closing on the assets;
- n. 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 after closing on the assets;
- o. Missouri-American Water Company shall file notice in this case outlining completion of the above-recommended training, customer communications, and notifications within ten (10) days after such communications and notifications.

2. Missouri-American Water Company is authorized to acquire Timber Springs Estates Homeowners Association's 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 applications.

4. This order shall become effective on May 17, 2019.

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 the Application of Spire 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 in)
Barton County as an Expansion of its Existing)
Certificated Areas)

File No. GA-2019-0214

**ORDER GRANTING CERTIFICATE OF
CONVENIENCE AND NECESSITY AND WAIVER**

CERTIFICATES

§21 Grant or refusal of certificate generally

The Commission may grant a gas 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.” Section 393.170, RSMo. The Commission has five criteria for this determination: 1) There must be a need for the service; 2) The applicant must be qualified to provide the 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 Company*, 3 Mo. P.S.C. 173, 177 (1994).

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 24th day of April, 2019.

In the Matter of the Application of Spire)
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 in)
Barton County as an Expansion of its Existing)
Certificated Areas)

File No.: GA-2019-0214

**ORDER GRANTING CERTIFICATE OF
CONVENIENCE AND NECESSITY AND WAIVER**

Issue Date: April 24, 2019

Effective Date: May 4, 2019

Procedural History

On January 17, 2019,¹ Spire Missouri, Inc. (“Spire”) applied for a certificate of convenience and necessity (“CCN”) to extend its existing certificated area in Barton County, Missouri, to Township 33 North, Range 30 West, Sections 7 and 18, in order to serve one customer.² On April 10, 2019, the Staff filed its *Report and Recommendation*.

Staff recommends approval of Spire’s CNN application subject to two conditions:

- That the Commission reserve all rate making determinations regarding the revenue requirement impact of this service area extension request until Spire’s next general rate making proceeding;
- That the Commission require Spire to update Tariff Sheet No. 20.1 incorporating the requested Sections for Barton County provided above.

¹ Calendar references are to 2019.

² *Recommendation*, Memorandum, pp. 1-2.

Commission Rule 4 CSR 240-2.080(13) states that parties have ten days to respond to pleadings unless otherwise ordered. The parties here were not otherwise ordered. Ten days have elapsed since Staff's recommendation. No party has objected to the recommendation. The Commission will take up the recommendation unopposed.

Decision

Spire is a gas corporation and a public utility subject to Commission jurisdiction.³ The Commission may grant a gas 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."⁴ The Commission has five criteria for this determination:

- 1) There must be a need for the service;
- 2) The applicant must be qualified to provide the 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.⁵

Based on the verified pleadings and Staff's Recommendation and Memorandum, the Commission finds the application for a certificate of convenience and necessity to provide gas service meets the above-listed criteria, when subject to the conditions recommended by Staff.⁶ No party has objected to Spire's being granted a CCN, the recommended conditions, nor requested a hearing. The application will be granted,

³ Section 386.020(18) and (43), RSMO.

⁴ Section 393.170, RSMO.

⁵ *In re Tartan Energy Company*, 3 Mo. P.S.C. 173, 177 (1994).

⁶ 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, so 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).

subject to the conditions recommended by Staff. This order will be given a ten-day effective date because the application is unopposed and because the Commission does not wish to cause undue delay.

Spire also requested a waiver of the Commission's 60-day notice requirement set out in Commission Rule 4 CSR 240-4.017(1). 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 because Spire declared in its application that it has had no communication with the Commission within the prior 150 days regarding any substantive issue likely to be in this case other than the pleadings here filed of record. For good cause shown, the Commission will waive the 60-day notice requirement of Commission Rule 4 CSR 240-4.017(1).

THE COMMISSION ORDERS THAT:

1. The sixty-day notice requirement of Commission Rule 4 CSR 240-4.017(1) is waived.
2. Spire Missouri, Inc. is granted permission, approval, and a certificate of convenience and necessity to construct, install, own, operate, control, manage, and maintain gas service in Township 33 North, Range 30 West, Sections 7 and 18 as more particularly described in its application and Staff's Recommendation.
3. The certificate of convenience and necessity is subject to the condition that the Commission will reserve all rate making determinations regarding the revenue impact of this service area extension until Spire Missouri, Inc.'s next general rate making proceeding.
4. Spire Missouri, Inc. shall update Tariff Sheet No. 20.1 to incorporate the above described section of Barton County, Missouri.
5. This Order shall be effective on May 4, 2019.

6. This file shall be closed on May 5, 2019.



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

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

Graham, Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Spire 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 in)
 Barry County as an Expansion of its Existing)
 Certificated Areas)

File No. GA-2019-0210

**ORDER GRANTING CERTIFICATE
OF CONVENIENCE AND NECESSITY**

CERTIFICATES

§21 Grant or refusal of certificate generally

The Commission may grant a gas 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.” Section 393.170, RSMo 2016. 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; Section 386.020(18), (43) RSMo 2016. 2 Section 393.170, RSMo 2016. 4) The applicant’s proposal must be economically feasible; and 5) The service must promote the public interest. *In re Tartan Energy Company*, 3 Mo. P.S.C. 173, 177 (1994)

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 24th day of April, 2019.

In the Matter of the Application of Spire 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 in Barry County as an Expansion of its)
Existing Certificated Areas)

File No.: GA-2019-0210

**ORDER GRANTING CERTIFICATE
OF CONVENIENCE AND NECESSITY**

Issue Date: April 24, 2019

Effective Date: May 4, 2019

Procedural History

On January 16, 2019, Spire Missouri, Inc. ("Spire") applied for a certificate of convenience and necessity ("CCN") to serve a single property in Barry County, Missouri. Spire estimates the addition of 8 customers as a result of this extension, which includes 5 accounts from the poultry operation on the property at issue. Spire requested a waiver of the Commission's 60-day notice requirement found in Commission Rule 4 CSR 240-4.017(1). Spire also requested a variance from the filing requirements of Commission Rule 4 CSR 240-3.205(1)(A).

The Commission set a deadline of February 9, 2019, to intervene in the case. No requests to intervene were received.

The Staff of the Commission filed its Recommendation on April 10. Staff recommends that the Commission grant the certificate, subject to two conditions. Spire filed no objections to the conditions or the Recommendation. The conditions are that the Commission should:

- reserve all rate making determinations regarding the revenue requirement impact of this service area extension request until the Company's next general rate making proceeding.
- require Spire to file an updated Tariff Sheet No. 20 incorporating the requested Sections for Barry County provided above.

Commission Rule 4 CSR 240-2.080(13) states that parties have ten days to respond to pleadings unless otherwise ordered. The parties here were not otherwise ordered. Ten days have elapsed since Staff's recommendation. No party has objected to the recommendation. The Commission will take up the recommendation unopposed.

Decision

Spire is a gas corporation and a public utility subject to Commission jurisdiction.¹ The Commission may grant a gas 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."² 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;

¹ Section 386.020(18), (43) RSMo 2016.

² Section 393.170, RSMo 2016.

- 4) The applicant's proposal must be economically feasible; and
- 5) The service must promote the public interest.³

Based on the verified pleadings and Staff's Recommendation and Memorandum, the Commission finds the application for a certificate of convenience and necessity to provide gas service meets the above listed criteria, when subject to the conditions recommended by Staff. No party has objected to Spire being granted a CCN, to the recommended conditions, nor requested a hearing.⁴ The application will be granted, subject to the conditions recommended by Staff. This order will be given a ten-day effective date to meet the immediate needs of the poultry farm at issue which has already contributed approximately \$10,000 in order to construct the extension⁵, because the application and recommended conditions are unopposed, and because the Commission does not wish to cause undue delay.

Spire requested a waiver of the 60-day notice of case filing requirement established by 4 CSR 240-4.017(1). Commission Rule 4 CSR 240-4.017(1)(D) states that a waiver may be granted for good cause, which includes "a verified declaration from the filing party that it has had no communication with the office of the commission within the prior 150 days regarding any substantive issue likely to be in the case". Spire 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

³ *In re Tartan Energy Company*, 3 Mo. P.S.C. 173, 177 (1994).

⁴ 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).

⁵ See Staff Memorandum, page 2.

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).

In its application, Spire also requested a variance from the filing requirements of Commission Rule 4 CSR 240-3.205(1)(A). The filing requirements are: a statement of existing utility service in the area; name and addresses of certain landowners or residents; a legal description of the area to be certificated; a plat drawn to one-half inch scale; and a feasibility study. The missing items were obtained through discovery and are no longer at issue. Therefore, the request is moot as all filing requirements in (1)(A) have been met. Thus, the Commission will not grant a variance from the filing requirements of CSR 240-3.205(1)(A).

THE COMMISSION ORDERS THAT:

1. The sixty day notice requirement of Commission Rule 4 CSR 240-4.017(1) is waived.
2. Spire Missouri, Inc. is granted permission, approval, and a certificate of convenience and necessity to construct, install, own, operate, control, manage, and maintain gas plant as more particularly described in its application and Staff Recommendation.
3. The certificate of convenience and necessity is subject to the condition that the Commission will reserve all ratemaking determinations regarding the revenue impact of this service area extension request until Spire Missouri, Inc.'s next general ratemaking proceeding.
4. No later than May 27, 2019, Spire Missouri, Inc. shall update Tariff Sheet No. 20 incorporating the requested sections for Barry County.

5. This order shall become effective on May 4, 2019.



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**

Claude Scott,)	
)	
Complainant,)	
v.	)	File No. EC-2018-0371
)	
Union Electric Company, d/b/a)	
Ameren Missouri,)	
)	
Respondent.)	

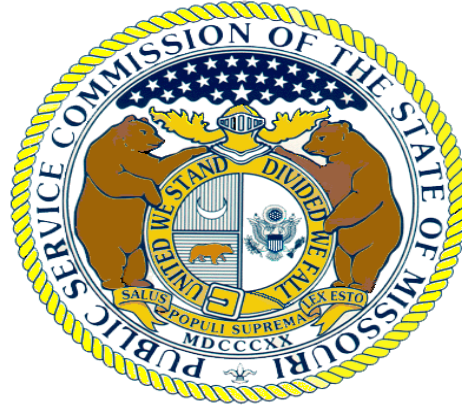
REPORT AND ORDER

ELECTRIC

§41 Billing practices

Complainant filed a small formal complaint because he believes that Ameren Missouri’s budget billing was causing him to pay more than he would otherwise have to pay for electrical service. The budget billing amount is the levelized amount to avoid seasonal variance. Because complainant did not have 12 months of prior billing history as required by Ameren Missouri’s tariff, his monthly budget bill amount was \$100.00 a month. The budget billing adjustment is the difference between what complainant’s bill should have been without budget billing and the budget billing amount. Complainant typically used less than the budget billing amount so budget billing did increase his monthly bill, but Ameren Missouri did not violate any Commission rule, law, or order, nor did Ameren Missouri violate its tariff.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



Claude Scott,

Complainant,

v.

Union Electric Company, d/b/a
Ameren Missouri,

Respondent.

File No. EC-2018-0371

REPORT AND ORDER

Issue Date:

May 15, 2019

Effective Date:

June 14, 2019

APPEARANCES

Appearing For Claude Scott:

Claude Scott, 3725 Geraldine Avenue, Saint Ann, Missouri 63074-2004.

Appearing for Union Electric Company d/b/a Ameren Missouri:

Sara E. Giboney, Smith Lewis, L.L.P., 111 South Ninth Street, Suite 200, Columbia Missouri 65205-0918,

Appearing for the Staff of the Missouri Public Service Commission:

Alexandra Klaus, Staff Counsel, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102-0360.

Regulatory Law Judge: John T. Clark

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

Claude Scott,)	
)	
Complainant,)	
v.	)	File No. EC-2018-0371
)	
Union Electric Company, d/b/a)	
Ameren Missouri,)	
)	
Respondent.)	

REPORT AND ORDER

I. Procedural History

On June 11, 2018, Claude Scott filed a small formal complaint with the Missouri Public Service Commission against Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”). The complaint alleged \$198.06 as the amount at issue. The Commission issued notice of the contested case on June 12, 2018. Ameren Missouri requested mediation of the complaint, Mr. Scott consented to mediation, and the Commission suspended the complaint pending the outcome of mediation. Mediation was unsuccessful and on September 21, 2018, the Commission lifted the suspension and directed Ameren Missouri to file an answer.

Ameren Missouri filed an answer to Mr. Scott’s complaint on October 24, 2018. The Commission ordered the Commission’s Staff (“Staff”) to investigate and respond, and on November 2, 2018, Staff filed a report stating it found no violations by Ameren Missouri of any applicable statutes, Commission rules or regulations, or Commission approved tariffs. The Commission received no responses to the *Staff Report*.

On January 7, 2019, Mr. Scott filed another complaint also alleging \$198.00 as the amount at issue. The Commission treated this complaint as a supplemental complaint. The supplemental complaint also alleged that Ameren Missouri failed to provide requested discovery to Mr. Scott.

The Commission held an evidentiary hearing at the Commission's St. Louis office on Friday January 18, 2019. At the evidentiary hearing the Commission admitted the testimony of three witnesses and received 26 exhibits into evidence. Aubrey Krcmar, Regulatory Liaison, testified for Ameren Missouri; and Dana Parish, Missouri Policy Analyst, testified for the Commission's Staff. Mr. Scott testified on his own behalf.

After Mr. Scott presented his case against Ameren Missouri and at the beginning of Ameren Missouri's testimony, Mr. Scott announced that he had a doctor's appointment at 1:00 p.m. and wished to continue the evidentiary hearing to another date. That request was not granted. At 12:22 p.m. the evidentiary hearing recessed until 2:30 p.m. to give Mr. Scott an opportunity to go to his doctor's appointment. Mr. Scott did not return to the evidentiary hearing or contact the Commission, and the evidentiary hearing proceeded without him.

The Commission issued an order for Ameren Missouri and Mr. Scott to file post-hearing briefs. Ameren Missouri submitted a brief. Mr. Scott did not submit a brief. On February 15, 2019, the case was deemed submitted for the Commission's decision. Commission Rule 4 CSR 240-2.150(1) states "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."

The Commission issued a Recommended Report and Order on May 2, 2019. Pursuant to 4 CSR 240-2.070(15)(H) the parties were given ten days to file comments supporting or opposing the recommended order. Ameren Missouri and Mr. Scott both filed timely comments regarding the order. The Commission considered the comments and made changes to correct some citations and add further clarity to circumstances surrounding the cancellation of a disconnection notice. Nothing in the filed comments changed the Commission's decision.

Background:

Mr. Scott's original complaint alleges that Ameren Missouri overbilled him \$160.06 and that an additional \$38.00 was not credited to his arrearage for a total disputed amount of \$198.06. Mr. Scott's supplementary complaint alleges a disputed amount of \$198.00. At the evidentiary hearing when asked to clarify if the two amounts in the complaint and supplementary complaint were different instances. Mr. Scott's response was that the \$198.00 was no longer in dispute, and the amount in dispute was \$973.74. The new amount consisted of overbilling by Ameren Missouri's budget billing program in the amount of \$752.00 and overpayment by Mr. Scott of \$241.44. Specific information related to a customer's bill is confidential under Commission Rule 4 CSR 240-2.135(2); however, the Commission may waive this provision under Commission Rule 4 CSR 240-2.135(19) for good cause. Good cause exists to waive confidentiality as to Mr. Scott's bills because it would be impossible to write findings of fact or a decision that did not use the confidential billing information, which is at the heart of Mr. Scott's claim. The confidential information disclosed in this Report and Order is the minimal amount necessary to support the decision.

II. Findings of Fact

1. Ameren Missouri is a utility regulated by this Commission.
2. Mr. Scott began receiving electrical service from Ameren Missouri at 4110 Geraldine Ave., Apt. 1 in July of 2017.¹
3. Mr. Scott's bill for electrical service from July 23, 2017 through July 31, 2017, issued August 2, 2017, included a transferred balance of \$1,005.57 from a prior address. His total amount due was \$1,027.04.²
4. On August 8, 2017, Mr. Scott called Ameren Missouri and asked to enter into a payment agreement. The payment agreement required an initial \$350 payment by August 29, 2017, with the remaining amount divided among 11 installments of \$57.00 and a final 12th installment of \$50.04.³ Mr. Scott payed the initial \$350 on August 24, 2017, and Ameren Missouri sent Mr. Scott a payment agreement letter.⁴
5. Payment agreements allow customers to pay past due amounts over a period of time while they continue to receive electrical service.⁵
6. All Ameren Missouri payment agreement letters contain the same general information, including a statement that late or insufficient payments will result in default of the payment agreement. Upon default the full amount owed is immediately due.⁶
7. On August 31, 2017, Ameren Missouri sent Mr. Scott a bill for electrical service from July 31, 2017, through August 29, 2017. The bill reflected the initial payment

¹ Ex. 102C, page 1.

² Ex. 102C, page 1.

³ Ex. 104C.

⁴ EX.117C.

⁵ 4 CSR 240-13.055(10)

⁶ Ex. 117C.

of \$350.00 and noted that after this bill Mr. Scott would owe \$620.04 on his payment agreement over the next 11 months. The total bill amount was \$146.14 including \$57.00 toward the payment agreement. Mr. Scott's usage charged was \$72.13, his customer charge was \$9.04, and other charges amounted to \$7.97. The bill's due date was September 22, 2017.⁷

8. Mr. Scott did not make a payment by September 22, 2017, and the payment agreement defaulted.⁸

9. On October 2, 2017, Ameren Missouri sent Mr. Scott a bill for electrical service from August 29, 2017, through September 28, 2017. The bill noted that Mr. Scott's payment agreement defaulted due to a missed payment. The total bill amount was \$830.03. This included the remaining payment agreement amount of \$677.04, a late charge of \$2.20, and a balance from the prior bill of \$89.14. Mr. Scott's usage charge was \$46.89, his customer charge was \$9.04, and other charges amounted to \$5.72. The bill's due date was October 23, 2017.⁹

10. On October 3, 2017, Ameren Missouri received a \$148.43 payment from Mr. Scott. This was \$2.00 more than the previous statement amount under the payment agreement, and significantly less than the amount owed on the defaulted payment agreement.¹⁰

⁷ Ex. 102C, page 3.

⁸ Ex. 115C

⁹ Ex. 102C, page 5.

¹⁰ Ex. 115C

11. Ameren Missouri issued Mr. Scott a disconnection notice on October 26, 2017, stating that his service would be disconnected unless he paid \$681.60 including the past due balance by November 7, 2017.¹¹

12. On October 31, 2017, Ameren Missouri sent Mr. Scott a bill for electrical service from September 28, 2017, through October 29, 2017. The bill noted the October 3, 2017 payment of \$148.43. The total bill amount was \$749.28. This included a late charge of \$0.45, and a balance from the prior bill of \$681.60. Mr. Scott's usage charge was \$51.98, his customer charge was \$9.04, and other charges amounted to \$6.51. The bill's due date was November 22, 2017. The bill contained a message that the account has a past due amount of \$681.60 and may be subject to disconnection.¹²

13. On October 31, 2017, Ameren Missouri received a \$124.00 payment from Mr. Scott, significantly less than the amount owed.¹³

14. The Cold Weather Rule period runs from November 1, through March 31.¹⁴

15. On November 1, 2017, Mr. Scott called Ameren Missouri and asked to enter into a payment agreement. The payment agreement required an initial \$175 payment by November 7, 2017, with the remaining amount divided among 12 installments of \$38.00. Mr. Scott paid \$176.00 on November 6, 2017. Pursuant to the Cold Weather Rule the company offered to place Mr. Scott on Budget Billing as well.¹⁵ Mr. Scott agreed and was informed that his budget bill amount would be \$100.00 a month plus the \$38.00 a month

¹¹ Ex. 104C.

¹² Ex. 102C, Page 7.

¹³ Ex. 115C

¹⁴ 4 CSR 240-13.055(2).

¹⁵ Transcript, page 121.

arrearage payment agreement amount. Ameren Missouri sent Mr. Scott a payment agreement letter.¹⁶

16. Budget billing levelizes a customer's bills to avoid seasonal variance.¹⁷

17. Budget billing amounts are \$100 per month if there is not 12 months of billing history for the customer at the current address.¹⁸

18. Mr. Scott did not reside at either the 4110 or the 3725 Geraldine Ave. address long enough to have 12 months of prior billing history at either address before starting budget billing.¹⁹ Mr. Scott was only eligible to start budget billing at a \$100 minimum monthly payment under Ameren Missouri's budget billing tariff.

19. Under budget billing the customers' bills are evaluated six months after enrollment to determine if the current budget billing amount is correct for the customer based upon usage.²⁰

20. Mr. Scott did not continue budget billing long enough at either address for enough time to be re-evaluated.

21. Budget billing as it appears on Mr. Scott's bills contains a current charge for electrical service followed by a budget bill adjustment which is positive or negative, and either raises or reduces the customer's payment amount to reach the budget bill amount (\$100.00 on Mr. Scott's bills).²¹

¹⁶ Ex. 104C.

¹⁷ Transcript, pages 118-119.

¹⁸ Ex. 114.

¹⁹ Ex. 102C and 103C.

²⁰ Ex. 114.

²¹ Ex. 114.

22. A payment agreement and budget billing can both occur at the same time.²²

23. Some of Mr. Scott's bills contain both the budget bill amount, in addition to the payment agreement amount.²³

24. On December 1, 2017, Ameren Missouri sent Mr. Scott a bill for electrical service from October 29, 2017, through November 29, 2017. The bill noted the November 7, 2017, payment of \$176.00. The total bill amount was \$138.00 (\$100.00 Budget bill amount + \$38.00 payment agreement amount). Mr. Scott's usage charge was \$89.03, his customer charge was \$9.04, and other charges amounted to \$10.64. The combined usage, customer charge, and other charges amounted to \$108.71, \$8.71 more than the budget bill amount of \$100.00 not including the \$38.00 payment agreement amount. Mr. Scott's Budget Bill Amount for this bill would leave \$8.71 that would have to be reconciled in the future. The bill's due date was December 26, 2017. The bill contained a message that after this bill he would owe \$411.28 on the payment agreement over the next 11 months, and that after paying this bill he would be behind \$8.71 on his Budget Billing balance.²⁴

25. On December 27, 2017, Ameren Missouri received a \$138.00 payment from Mr. Scott. While the payment was received after the due date Mr. Scott's payment agreement did not default due to Ameren Missouri's grace period to receive payments.²⁵

26. On January 4, 2018, Ameren Missouri sent Mr. Scott a bill for electrical service from November 29, 2017, through January 2, 2018. The bill noted the December

²² Transcript, pages 143-144.

²³ Ex. 102C and 103C.

²⁴ Ex. 102C, Page 9.

²⁵ Tr. Page 147

27, 2017, payment of \$138.00. The total bill amount was \$138.00 (\$100.00 Budget bill amount + \$38.00 payment agreement amount). Mr. Scott's usage charge was \$138.57, his customer charge was \$9.04, and other charges amounted to \$17.00. The combined usage, customer charge, and other charges amounted to \$164.61, so Mr. Scott's Budget Bill Amount for this bill would leave \$64.61 that would have to be reconciled in the future. The bill's due date was January 26, 2018. The bill contained a message that after this bill he would owe \$373.28 on the payment agreement over the next 10 months, and that after paying this bill he would be behind \$73.32 on his Budget Billing balance.²⁶

27. On January 29, 2018, Ameren Missouri received a \$139.00 payment from Mr. Scott for both the budget billing amount and the payment agreement. While the payment was received after the due date Mr. Scott's payment agreement did not default due to Ameren Missouri's grace period to receive payments.²⁷

28. On February 2, 2018, Ameren Missouri sent Mr. Scott a bill for electrical service from January 2, 2018, through January 31, 2018. The bill noted the January 29, 2018, payment of \$139.00. The total bill amount was \$138.00 (\$100.00 Budget bill amount + \$38.00 payment agreement amount). Mr. Scott's usage charge was \$116.54, his customer charge was \$9.04, and other charges amounted to \$14.63. The combined usage, customer charge, and other charges amounted to \$140.30, so Mr. Scott's Budget Bill Amount for this bill would leave \$40.30 that would have to be reconciled in the future. The bill's due date was February 26, 2018. The bill contained a message that after this

²⁶ Ex. 102C, Page 11.

²⁷ Ex. 102C, Page 13.

bill he would owe \$335.28 on the payment agreement over the next 9 months, and that after paying this bill he would be behind \$113.62 on his Budget Billing balance.²⁸

29. On February 27, 2018, Ameren Missouri received a \$138.00 payment from Mr. Scott. While the payment was received after the due date Mr. Scott's payment agreement did not default due to Ameren Missouri's grace period to receive payments.²⁹

30. On March 5, 2018, Ameren Missouri sent Mr. Scott a bill for electrical service from January 31, 2018, through March 1, 2018. The bill noted the February 27, 2018, payment of \$138.00. The total bill amount was \$138.00 (\$100.00 Budget bill amount + \$38.00 payment agreement amount). Mr. Scott's usage charge was \$99.44, his customer charge was \$9.04, and other charges amounted to \$12.42. The combined usage, customer charge, and other charges amounted to \$120.90, so Mr. Scott's Budget Bill Amount for this bill would leave \$20.90 that would have to be reconciled in the future. The bill's due date was March 26, 2018. The bill contained a message that after this bill he would owe \$297.28 on the payment agreement over the next 8 months, and that after paying this bill he would be behind \$134.52 on his Budget Billing balance.³⁰

31. Mr. Scott moved from 4110 Geraldine Ave. Apartment 1, to 3725 Geraldine Ave in mid-March 2018.³¹

32. On March 12, 2018, Mr. Scott called Ameren Missouri requesting that service at 4110 Geraldine Avenue be discontinued. He also requested service at 3725

²⁸ Ex. 102C, Page 13.

²⁹ Ex. 102C, Page 15.

³⁰ Ex. 102C, Page 15.

³¹ Ex. 104C, and Transcript page 107.

Geraldine Ave. as of March 9, 2018. Mr. Scott requested that budget billing be continued at his new address and was informed that it would remain at \$100.00 per month.³²

33. On March 15, 2018, Ameren Missouri sent Mr. Scott a final bill for electrical service from March 1, 2018, through March 12, 2018, at 4110 Geraldine Avenue. The bill noted the prior \$138.00 statement amount. Mr. Scott's usage charge was \$3.08, his customer charge was \$3.31, and other charges amounted to \$0.56. The combined usage, customer charge, and other charges amounted to \$6.95. The total bill amount was \$175.00, which included the prior balance of \$138.00 plus a Budget Bill adjustment amount of \$30.05 plus the current charge \$6.95 (Budget Billing was prorated because final bill only covered 11 days). The bill's due date was April 6, 2018. The bill contained a message that after paying this bill he would be behind \$104.47 on his Budget Billing balance, and that the payment agreement balance of \$297.28 was transferred to Mr. Scott's new account.³³

34. On March 19, 2018, Mr. Scott called Ameren Missouri to dispute the prorated budget bill adjustment on his final bill for electrical service at 4110 Geraldine Avenue.³⁴

35. On April 10, 2018, Ameren Missouri received a payment from Mr. Scott for \$175.00, the full amount of the March 15, 2018, bill, which was the last bill for the 4110 Geraldine Ave. address covering 11 days.³⁵

³² Ex. 104C.

³³ Ex. 102C, Page 17.

³⁴ Ex. 200C, Page 4.

³⁵ Ex. 103C, Page 1.

36. On April 12, 2018, Ameren Missouri sent Mr. Scott the first bill for electrical service from March 9, 2018, through April 10, 2018, at 3725 Geraldine Ave. The bill noted the April 10, 2018, payment of \$175.00. The total bill amount was \$138.00 (\$100.00 Budget bill amount + \$38.00 payment agreement amount). Mr. Scott's usage charge was \$17.38, his customer charge was \$9.64, and other charges amounted to \$2.55. The combined usage, customer charge, and other charges amounted to \$29.57, so Mr. Scott's Budget Bill Amount for this bill applied \$70.43 toward the amount his budget billing was behind. The bill's due date was May 3, 2018. The bill contained a message that after this bill he would owe \$259.28 on the payment agreement over the next 7 months, and that after paying this bill he would be behind \$34.04 on his Budget Billing balance.³⁶

37. On April 18, 2018, Mr. Scott called Ameren Missouri and requested that Budget Billing be discontinued. Mr. Scott was informed that because he was behind on his budget billing there would be a settlement amount on his next bill. Ameren Missouri discontinued Mr. Scott's budget billing.³⁷

38. Mr. Scott did not make a payment by May 3, 2018, and the payment agreement defaulted.³⁸

39. On May 11, 2018, Ameren Missouri sent Mr. Scott a bill for electrical service from April 10, 2018, through May 9, 2018. The total bill amount was \$459.41. Mr. Scott's usage charge was \$14.75, his customer charge was \$9.04, and other charges amounted to \$2.23. The combined usage, customer charge, and other charges amounted to \$26.02. A Budget Bill adjustment charge of \$34.04 appears on this bill to settle the amount Mr.

³⁶ Ex. 103C, Page 1.

³⁷ Ex. 105C Ex. 200C pages 5-6.

³⁸ Ex. 103C, page 3.

Scott was behind on budget billing. The \$297.28 remaining on the payment agreement appears on the bill due to defaulting on the payment agreement. The \$100.00 budget bill balance from the prior bill also appeared on this bill. The bill had a due date of June 4, 2018.³⁹

40. Mr. Scott did not make any payment by June 4, 2018.

41. Mr. Scott filed a formal complaint with the Commission on June 11, 2018.⁴⁰

42. On June 12, 2018, Ameren Missouri sent Mr. Scott a bill for electrical service from May 9, 2018, through June 10, 2018. The total bill amount was \$528.10. This included a late charge of \$2.43, and a balance from the prior bill of \$459.41. Mr. Scott's usage charge was \$50.82, his customer charge was \$9.04, and other charges amounted to \$6.40. The bill's due date was July 3, 2018. The bill contained a message that the account has a past due amount of \$459.41 and may be subject to disconnection.⁴¹

43. Mr. Scott did not make any payment by July 3, 2018.⁴²

44. On July 9, 2018, Ameren Missouri sent Mr. Scott a disconnection notice stating that his service would be disconnected unless his past due balance was paid by July 19, 2018. The amount in dispute was included in the disconnection notice in violation of Commission Rule 4 CSR 240-13.050(6).

45. On July 12, 2018, Mr. Scott sent a copy of the above disconnection notice to the regulatory law judge.⁴³

³⁹ Ex. 103C, page 3.

⁴⁰ Complaint, June 11, 2018, EFIS.

⁴¹ Ex. 103C, page 5.

⁴² Ex. 110C

⁴³ Notice of Extra Record Communication, July 12, 2018, EFIS.

46. On July 12, 2018, Ameren Missouri sent Mr. Scott a bill for electrical service from June 10, 2018, through July 10, 2018. The total bill amount was \$622.32. This included a late charge of \$3.46, and a balance from the prior bill of \$528.10. Mr. Scott's usage charge was \$72.76, his customer charge was \$9.04, and other charges amounted to \$8.96. The bill's due date was August 2, 2018. The bill contained a message that the account has a past due amount of \$528.10 and may be subject to disconnection.⁴⁴

47. Ameren Missouri subsequently removed the \$198.06 amount in dispute from collections and cancelled the disconnection notice.⁴⁵

48. On July 31, 2018, Ameren Missouri received an online inquiry from an energy assistance agency. Agencies can find out if an account is in collections, total balance and past due balance, and if the account is in threat of disconnection. Mr. Scott's account was not in threat of disconnection at that time.⁴⁶

49. Mr. Scott did not make any payment by August 2, 2018.⁴⁷

50. On August 7, 2018, Ameren Missouri sent Mr. Scott a disconnection notice stating that his service would be disconnected unless his past due balance was paid by August 17, 2018.⁴⁸

51. On August 10, 2018, Ameren Missouri sent Mr. Scott a bill for electrical service from July 10, 2018, through August 8, 2018. The total bill amount was \$718.80. This included a late charge of \$4.88, and a balance from the prior bill of \$622.32. Mr.

⁴⁴ Ex. 103C, page 7.

⁴⁵ Transcript, pages 178-179.

⁴⁶ Transcript, page 183.

⁴⁷ Transcript, page 184.

⁴⁸ Ex. 113C

Scott's usage charge was \$74.40, his customer charge was \$9.04, and other charges amounted to \$8.16. The bill's due date was August 31, 2018. The bill contained a message that the account has a past due amount of \$622.32 and may be subject to disconnection.⁴⁹

52. On August 17, 2018, Ameren Missouri made two collection calls to Mr. Scott.⁵⁰

53. Mr. Scott did not make any payment by August 17, 2018.⁵¹

54. Ameren Missouri disconnected Mr. Scott's service for nonpayment on August 22, 2018.⁵²

55. On August 22, 2018, two energy assistance fund pledges were made towards Mr. Scott's bill. The pledges just covered the arrearage related to the disconnection and the reconnection charge. The assistance inquiry and pledges were made after Mr. Scott's service had been disconnected.⁵³

56. Ameren Missouri reconnected Mr. Scott's service on August 22, 2018, after the energy assistance pledges were confirmed.⁵⁴

57. When an Ameren Missouri customer receives an energy grant from an energy assistance agency, the customer agrees to budget billing as a condition of receiving the grant. This is not an agreement between the customer and Ameren Missouri, but between the energy assistance agency and the customer. The energy

⁴⁹ Ex. 103C, page 7.

⁵⁰ Ex. 105C

⁵¹ Transcript, page 186

⁵² Transcript, page 186

⁵³ Ex. 105C

⁵⁴ Ex. 105C

assistance agency is responsible for informing the customer about being enrolled in budget billing.⁵⁵

58. On September 11, 2018, Ameren Missouri sent Mr. Scott a bill for electrical service from August 8, 2018, through September 9, 2018. The total bill amount was \$484.79. Mr. Scott's usage charge was \$67.46, his customer charge was \$9.04, and other charges amounted to \$2.67. The combined usage, customer charge, and other charges amounted to \$79.17. A Budget Bill adjustment charge of \$20.83 brings the Budget Bill amount to \$100. The bill also contains a \$30.00 reconnection fee and a \$30.00 credit from the energy grants payment of the fee. The bill also contains a late fee of \$0.08 and a St. Ann charge for non-service of \$1.91. The bill reflects the September 5, 2018, payment of \$66.00. The bill also shows a \$300.00 energy grant received and that a \$155.00 energy grant was pending. The bill notes that after this payment Mr. Scott will be \$20.83 ahead on his budget billing balance. The bill had a due date of October 2, 2018.⁵⁶

59. Mr. Scott did not make any payment by October 10, 2018.⁵⁷

60. On October 10, 2018, Ameren Missouri sent Mr. Scott a bill for electrical service from September 9, 2018, through October 8, 2018. The total bill amount was \$430.28 Mr. Scott's usage charge was \$36.70, his customer charge was \$9.04, and other charges amounted to \$1.02. The combined usage, customer charge, and other charges amounted to \$46.76. A Budget Bill adjustment charge of \$53.24 brings the Budget Bill amount to \$100. The bill contains a late charge of \$0.49. The bill shows the \$155.00

⁵⁵ Transcript, page 199-200.

⁵⁶ Ex. 103C, page 11.

⁵⁷ Ex. 103C, page 13, the bill reflects the receipt of the pending energy grant from the September 11, 2018, bill, but notes no other payments.

energy grant was received and is no longer pending. The bill notes that after this payment Mr. Scott will be \$74.07 ahead on his budget billing balance. The bill was due October 31, 2018.⁵⁸

61. Mr. Scott did not make any payment by October 31, 2018.⁵⁹

62. On November 5, 2018, Ameren Missouri sent Mr. Scott a disconnection notice stating that his service would be disconnected unless his past due balance was paid. The disconnect notice did not include the budget bill amounts which were higher than the actual service charges, but only the actual service charges of \$158.15.⁶⁰

63. On November 8, 2018, Ameren Missouri sent Mr. Scott a bill for electrical service from October 8, 2018, through November 6, 2018. The total bill amount was \$532.28 Mr. Scott's usage charge was \$27.39, his customer charge was \$9.04, and other charges amounted to \$0.91. The combined usage, customer charge, and other charges amounted to \$37.34. A Budget Bill adjustment charge of \$62.66 brings the Budget Bill amount to \$100. The bill contains a late charge of \$2.00. The bill notes that after this payment Mr. Scott will be \$136.73 ahead on his budget billing balance. The bill was due December 3, 2018.⁶¹

64. On November 16, 2018, a payment of \$159.00 was received by Ameren Missouri.⁶²

⁵⁸ Ex. 103C, page 13.

⁵⁹ Ex. 103C, page 15, the November 8, 2018, bill shows no prior payments.

⁶⁰ Ex. 113C.

⁶¹ Ex. 103C, page 15.

⁶² Ex. 103C, page 17.

65. On November 19, 2018, Mr. Scott demanded Ameren Missouri immediately discontinue budget billing. Ameren Missouri witness Aubrey Krcmar spoke with Mr. Scott and agreed to discontinue budget billing immediately and issue Mr. Scott a corrected bill.⁶³

66. On November 20, 2018, Ameren Missouri issued Mr. Scott a corrected bill for electrical service from October 8, 2018, through November 6, 2018. The amount due on the bill reflects the reduction of the prior balance from the settling up of the budget billing amount. The total bill amount was \$236.55 Mr. Scott's usage charge was \$27.39, his customer charge was \$9.04, and other charges amounted to \$0.91. The combined usage, customer charge, and other charges amounted to \$37.34. The bill contains a late charge of \$2.00. The bill reflects the November 16, 2018, payment of \$159.00. The bill was due December 12, 2018.⁶⁴

67. On December 11, 2018, Ameren Missouri issued Mr. Scott a bill for electrical service from November 6, 2018, through December 9, 2018. The bill includes the current monthly charge and the prior balance of \$236.55 from the November 20, 2018, corrected bill. The total bill amount was \$281.10. Mr. Scott's usage charge was \$34.51, his customer charge was \$9.04, and other charges amounted to \$1.00. The combined usage, customer charge, and other charges amounted to \$44.55. The bill was due January 4, 2019.⁶⁵

68. Ameren Missouri correctly calculated Mr. Scott's utility bills.

⁶³ Transcript, pages 198-199.

⁶⁴ Ex. 103C, page 17.

⁶⁵ Ex. 103C, page 19.

69. Budget billing was applied according to Ameren Missouri's tariff.⁶⁶

70. Mr. Scott calculated budget billing amounts not credited to the customer at \$752.40. Mr. Scott arrived at the number by adding or subtracting the budget bill adjustment to the budget bill amount (usually \$100.00) to produce what Mr. Scott is calling the "net amount."⁶⁷

III. Conclusions of Law

A. 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.

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. Commission Rule 4 CSR 240-13.055 (The Cold Weather Rule) states in part:

(6) Discontinuance of Service. From November 1 through March 31, a utility may not discontinue heat-related residential utility service due to nonpayment of a delinquent bill or account provided—

(A) The customer contacts the utility and states his/her inability to pay in full;

(B) The utility receives an initial payment and the customer enters into a payment agreement both of which are in compliance with section (10) of this rule;

(10) Payment agreements. The payment agreement for service under this rule shall comply with the following:

⁶⁶ Ex. 114.

⁶⁷ Ex. 13C.

(B) Payment Calculations.

1. The utility shall first offer a twelve (12)-month budget plan which is designed to cover the total of all preexisting arrears, current bills, and the utility's estimate of the ensuing bills.

D. Commission Rule 4 CSR 240-13.055(6) regarding disputed amounts and disconnection states:

(6) A utility shall maintain an accurate record of the date of mailing or delivery. A notice of discontinuance of service shall not be issued as to that portion of a bill which is determined to be an amount in dispute pursuant to sections 4 CSR 240-13.045(5) or (6) that is currently the subject of a dispute pending with the utility or complaint before the commission, nor shall such a notice be issued as to any bill or portion of a bill which is the subject of a settlement agreement except after breach of a settlement agreement, unless the utility inadvertently issues the notice, in which case the utility shall take necessary steps to withdraw or cancel this notice.

E. Ameren Missouri's applicable tariff states in relevant part:

I. BUDGET BILLING PLAN

Customers who are billed under Service Classification No. 1(M) or No. 2(M) with postcard or electronic billing and, at Company's option, certain eleemosynary customers may elect to be billed and pay for all electric service under Company's Budget Billing Plan provided customer shall have satisfied Company's credit requirements. The provisions of the Budget Billing Plan are as follows:

1. Upon enrollment in the Budget Billing Plan by customer, the average monthly bill amount will initially be equal to one-twelfth of the estimated annual billing to the customer with a one hundred dollar (\$100) minimum average monthly bill applicable to customers with less than twelve (12) months of billing history for the current account.
2. Company will re-evaluate the estimated annual billing to an actual use basis on the sixth month following the customer's enrollment in the program or anniversary date for existing Budget Bill customers. Thereafter, during the May and November bill cycles, the Company will re-evaluate the estimated annual bill and adjust the Budget Billing Plan amount where such adjustment will result in a change.

of at least three (\$3.00) per month.

3. Budget Bill settlement will occur annually during either the Company's May or November bill cycles with the initial settlement occurring more than six (6) but less than twelve (12) months after the customer's enrollment in the program or the anniversary date for existing Budget Bill customers. Any under or over collection balance existing at the settlement month will be rolled over and spread equally across all monthly bills in the next Budget Billing Plan year, unless customer requests the balance to be fully included on the settlement month's bill.
5. Company may terminate this Budget Billing Plan to any customer who shall fail to make payment hereunder by the delinquent date, and, upon such termination and thereafter, such customer shall be billed in accordance with the terms of Company's standard monthly billing practice. Any billing adjustments required at the date of such termination shall be included in the next bill rendered to customer.
6. Customer may, at any time, elect to terminate the application of this Budget Billing Plan by requesting such termination and thereafter paying when due any amounts, including billing adjustments, which may be necessary in order to settle the account hereunder.
7. Final bills, whenever rendered, will include such amounts as may be necessary to settle the account based on actual usage as of the date of final meter reading unless, beginning with the August 2015 billing cycle, the balance is transferred to customer's new account.

J. The burden of showing that a regulated utility has violated a law, rule or order of the Commission is with Mr. Scott.⁶⁸

IV. Discussion

Mr. Scott filed a small formal complaint against Ameren Missouri because he believes that Ameren Missouri's budget billing was causing him to pay more than he would otherwise have to pay for electrical service. There are months where he is correct,

⁶⁸ 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).

but that does not mean that Ameren Missouri has violated a law, rule or order of the Commission that is within the Commission's statutory authority to determine. One of the functions of budget billing is to decrease the seasonal variance of billing charges. It can be reasonably expected that with budget billing if a customer is paying less for the service used in the summer than the actual bill without budget billing, then that customer will most likely be paying more than what their actual bill would be in the winter. Budget billing should make a customer's bill more predictable and manageable all year.

Mr. Scott provides an accounting for 2018 budget billing. This accounting involves either subtracting the budget billing adjustment from the budget billing amount, or adding the budget billing amount to the budget billing adjustment to arrive at a "net amount." Both of these methods of calculation are incorrect. The budget billing amount is the levelized amount Mr. Scott has to pay regardless of monthly usage. Because Mr. Scott did not have 12 months of prior billing history as required by Ameren Missouri's tariff, his monthly budget bill amount was \$100.00 in any month that was not pro-rated. The budget billing adjustment is the difference between what Mr. Scott's bill should have been without budget billing and the budget billing amount. Mr. Scott agreed to budget billing for service at 4110 Geraldine Ave. in November 2017. Mr. Scott's budget billing amount of \$100.00 was less than his bill would otherwise have been in four out of the five months he was on budget billing at the 4110 Geraldine Ave. address. The only month his actual service for 4110 Geraldine Ave. was less than his budget billing amount was for March when his bill

was prorated. While Mr. Scott was behind on his budget billing balance when he moved in March, his calculations incorrectly show Ameren Missouri overbilling him.

Mr. Scott's calculations are incorrect. Some of the numbers Mr. Scott uses to calculate his overbilling are misused. For example, Mr. Scott calculates that Ameren Missouri overbilled him by \$35.39 on the bill issued January 4, 2018. He arrives at \$35.39 by subtracting the budget billing adjustment of \$64.61 from his budget billing amount of \$100.00. \$100.00 was the budget billing payment amount, the adjustment of \$64.61 is Ameren Missouri adjusting his bill down to the \$100.00 from what his actual service charges were: \$164.61. Ameren Missouri did not overbill Mr. Scott \$35.39 in the January 4, 2018 bill, Ameren Missouri under billed Mr. Scott \$64.61 as part of the budget billing program. Mr. Scott makes many such errors.

Mr. Scott's budget billing at the 3725 Geraldine Ave. address was greater than his bill would have otherwise been in all five of the months he was on budget billing at that address. Mr. Scott did not have 12 months of billing history at this address, so he also started budget billing at the required tariff budget billing at the amount of \$100.00 required by the tariff. Mr. Scott called Ameren Missouri in April 2018, and requested to discontinue budget billing. One of Mr. Scott's complaints was that budget billing appeared on his May 2018 bill. Mr. Scott was behind on his budget billing balance when he discontinued budget billing, and the May budget bill amount merely reconciles the amount he was behind on budget billing.

Mr. Scott was again placed on budget billing in September of 2018. This time budget billing occurred as a result of Mr. Scott receiving an energy assistance grant. Enrolling in budget billing is part of the agreement between the customer and the energy

assistance agency. The energy assistance agency is to inform the customer that they are being enrolled in budget billing. It is unclear whether the energy assistance agency told Mr. Scott he would be enrolled in budget billing. Mr. Scott called Ameren Missouri in November 2018, and requested that they immediately stop budget billing, which they did, issuing him a corrected bill in which the budget billing amount is reconciled.

Mr. Scott has cherry picked his bills in an effort to show that he has paid more than the amount of electrical service used. Mr. Scott provides payment amounts made by him or energy assistance agencies, and contrasts those amounts against a usage amount for the year. However, Mr. Scott provides no information as to how he arrived at this usage amount. The amount neither corresponds to actual charges for service, or service usage amounts. It is important to note that Mr. Scott started with a \$1,005.57 arrearage balance that was transferred to his account at 4110 Geraldine Ave. Mr. Scott never paid that balance in full. The energy assistance grants did not pay Mr. Scott's full arrearage, but only the amount necessary to restart his service and the reconnection fee. Mr. Scott was carrying an arrearage of some kind on every bill submitted, whether through a payment plan, budget billing, or a prior unpaid amount. Mr. Scott defaulted on multiple payment agreements, and failed to pay his bills for several months. The \$1,170.00 that Mr. Scott says he paid over the last year would barely cover the \$1,005.57 balance he owed when he started service at 4110 Geraldine Ave. Mr. Scott seems confused as to why his balance has not gone down and yet there is not a single bill in which Mr. Scott is not carrying some form of unpaid arrearage. Mr. Scott blames budget billing. However, a sequential analysis of Mr. Scott's bills shows that Ameren Missouri correctly billed Mr.

Scott, applied budget billing and payment agreements according to tariff and rule, and timely and correctly credited Mr. Scott's payments.

Ameren Missouri admits that it violated Commission Rule 4 CSR 240-13.050(6) by including part of the amount being disputed in a July 9, 2018, disconnection notice sent to Mr. Scott. Ameren Missouri testified that the inclusion of a disputed amount was inadvertent and upon discovery it immediately cancelled the disconnection in compliance with Commission Rule 4 CSR 240-13.055(6). Mr. Scott's service was not disconnected because of the inclusion of a disputed amount. While not part of Mr. Scott's complaint or supplemental complaint, in Mr. Scott's response to the Commission's *Order Directing Complainant to Show Cause Why Complaint Should not be Dismissed* for non-appearance at a prehearing conference, he alleged that Ameren blocked an energy assistance pledge (on July 31st) by providing false information that his account was not in jeopardy. As discussed above, Mr. Scott was not in danger of disconnection at that time because Ameren cancelled the disconnection notice. As a result, at that time, Mr. Scott's account was not in jeopardy. Ameren later issued a new notice and disconnected Mr. Scott's service for failure to pay subsequent additional amounts not in dispute at the time.

On January 7, 2019, Mr. Scott filed his supplemental complaint and motion for discovery. This occurred after the discovery deadline had passed, and 11 days prior to the scheduled evidentiary hearing. Mr. Scott requested any and all information, ledger postings of debits and credits, and meter readings relating to a specified account from Ameren Missouri. Without waiving objection Ameren Missouri provided Mr. Scott with copies of his bills. The bills contained meter readings as well as activity statements. The

bills Mr. Scott brought with him also contain meter readings and account activity. At the hearing Mr. Scott asked the judge to compel Ameren Missouri to produce the requested discovery. Ameren provided Mr. Scott a copy of his bills for the specified account which was all the discovery he was entitled to within the scope of his complaint. Mr. Scott's motion is overly broad and untimely, and accordingly will be denied along with his request to compel.

V. Decision

After applying the facts to its conclusions of law, the Commission has reached the following decision. Complainant has the burden to show that Ameren Missouri has violated a law, rule, or order of the Commission that is within the Commission's statutory authority to determine. Mr. Scott has failed to meet his burden of proof 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. Claude Scott's complaint is denied.
2. Claude Scott's request to compel discovery is denied.
3. Ameren Missouri may proceed, consistent with the law and the Commission's rules, with the Claude Scott's account as it sees appropriate.

4. This order shall become effective on June 14, 2019.



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.

Clark, Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Petition of Missouri-American)
Water Company for Approval to Change an)
Infrastructure System Replacement Surcharge)
(ISRS)) **File No. WO-2019-0184**

REPORT AND ORDER

Affirmed on appeal: *Missouri-American Water Company v. Public Service Commission*,
602 S.W.3d 252 (Mo. App. W.D. 2020)

ACCOUNTING

§38 Taxes

There was not sufficient evidence to show that a claimed net operating loss was generated during the time frame of the Infrastructure System Replacement Surcharge (ISRS), thus it could not be included in the surcharge calculation.

§38 Taxes

Net operating losses (NOLs) are not specifically tracked as to origin, and the term encompasses an annual or longer period.

§38 Taxes

The Commission could not determine the existence of a present or future net operating loss (NOL) without supporting tax documentation and evidence in the utility's books.

EVIDENCE, PRACTICE AND PROCEDURE

§6 Weight, effect and sufficiency

§19 Records and books of utilities

There was not sufficient evidence to show that a claimed net operating loss was generated during the time frame of the Infrastructure System Replacement Surcharge (ISRS), thus it could not be included in the surcharge calculation.

§6 Weight, effect and sufficiency

§19 Records and books of utilities

The Commission could not determine the existence of a present or future net operating loss (NOL) without supporting tax documentation and evidence in the utility's books.

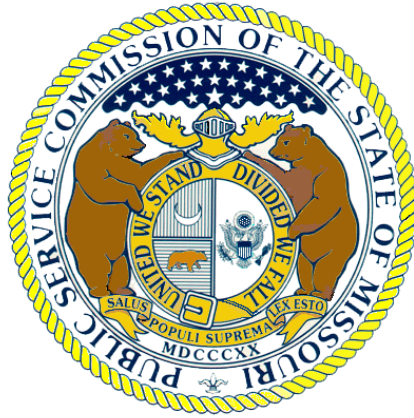
EXPENSE**§79 Infrastructure system replacement surcharge (ISRS) eligible expense**

There was not sufficient evidence to show that a claimed net operating loss was generated during the time frame of the Infrastructure System Replacement Surcharge (ISRS), thus it could not be included in the surcharge calculation.

WATER**§16 Rates and revenues**

There was not sufficient evidence to show that a claimed net operating loss was generated during the time frame of the Infrastructure System Replacement Surcharge (ISRS), thus it could not be included in the surcharge calculation.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Petition of Missouri-American
 Water Company for Approval to Change an
 Infrastructure System Replacement Surcharge
 (ISRS).

)
) **File No. WO-2019-0184**
) **Tariff No. YW-2019-0160**
)

REPORT AND ORDER

Issue Date: June 5, 2019

Effective Date: June 15, 2019

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

In the Matter of the Petition of Missouri-American)
Water Company for Approval to Change an) **File No. WO-2019-0184**
Infrastructure System Replacement Surcharge) **Tariff No. YW-2019-0160**
(ISRS).)

APPEARANCES

Missouri-American Water Company:

William R. England and 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 **Casi Aslin**, Associate Counsel, PO Box
360, 200 Madison Street, Jefferson City, Missouri 65102.

Office of the Public Counsel:

Lera Shemwell, Senior Public Counsel, PO Box 2230, 200 Madison St., Ste. 650,
Jefferson City, Missouri, 65102.

Regulatory Law Judge: Charles Hatcher

REPORT AND ORDER

I. Procedural History

On February 20, 2019, Missouri-American Water Company (“MAWC”) filed an application and petition with the Missouri Public Service Commission (“Commission”) to change an Infrastructure System Replacement Surcharge (“ISRS”).

MAWC requests to adjust its ISRS rate to recover costs incurred in connection with infrastructure system replacements made during the period October 1, 2018, through March 31, 2019. The Commission issued notice of the application and provided an opportunity for interested persons to intervene. No requests to intervene were received. The Commission suspended the filed tariff sheet until June 20, 2019.

On April 22, 2019, 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 April 26, 2019, MAWC filed a response disagreeing with Staff’s recommendation. The Commission held an evidentiary hearing on May 17, 2019. In total, the Commission admitted the testimony of six witnesses and 13 exhibits into evidence. Post-hearing briefs were filed by May 28, 2019, and the case was deemed submitted for the Commission’s decision on that date.¹

After the evidentiary hearing, the Office of Public Counsel (“OPC”) moved to admit the hearing transcript from the evidentiary hearing in file number WO-2018-0373, which is

¹ “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).

currently on appeal, pending a decision on the same issue presented in this case.² MAWC requested the Commission deny OPC's motion, or in the alternative admit the pre-filed direct testimony of the case in addition to the transcript. Upon a request for specificity, OPC responded they wanted three lines of text from the WO-2018-0373 hearing transcript admitted.³ MAWC responded without objection, but with additional lines it wanted admitted to show context as it was the immediately preceding question.⁴

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. The Office of the Public Counsel "may represent and protect the interests of the public in any proceeding before or appeal from the public service commission."⁵ The OPC participated in this matter.

2. 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.⁶

3. 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.⁷

² The motion also requested admission of the Report and Order in file number WO-2018-0373, which does not need to be admitted to evidence in order to be cited.

³ The question and answer to be admitted from lines 16-18, p. 52 of Vol. 1 of the Hearing Transcript: OPC – An NOL is not attached to any certain infrastructure, any particular asset? Witness Wilde – You're correct with that.

⁴ The question and answer to be admitted from lines 13-15, p. 52 of Vol. 1 of the Hearing Transcript: OPC - Carryover means you're bringing forward from year to year? Witness Wilde – Correct.

⁵ Section 386.710(2), RSMo 2016; Commission Rules 4 CSR 240-2.010(10) and (15) and 2.040(2).

⁶ Commission Rules 4 CSR 240-2.010(10) and (21) and 2.040(1).

4. MAWC is a “water corporation” and a “public utility”, as defined in Sections 386.020(59) and (43), and 393.1000(7), RSMo 2016.⁸

5. Water corporations are permitted to recover certain infrastructure system replacement costs outside of a formal rate case through a surcharge on its customers’ bills.⁹

6. On February 20, 2019, MAWC filed a petition (“Petition”) for its St. Louis County service territory, requesting a change to its ISRS to recover eligible costs incurred for infrastructure system replacements made during the period October 1, 2018, through March 31, 2019, (“ISRS Period”) initially filed with pro forma ISRS costs for February 1 through March 31, 2019.¹⁰

7. 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 general rate case.¹¹

8. This is MAWC’s second ISRS filing since their most recent general rate case.¹² As part of that general rate case, MAWC’s then existing ISRS was reset to zero.¹³

9. MAWC’s first ISRS filing since their most recent general rate case, WO-2018-0373, is currently on appeal, pending a decision on the same issue presented in this case.

⁷ MAWC’s Petition to Establish an Infrastructure System Replacement Surcharge & Motion For Approval of Customer Notice, p. 1-2.

⁸ *Id* at 2.

⁹ Sections 393.1000 to 393.1006, RSMo 2016.

¹⁰ Staff Recommendation, Appendix A, p. 1.

¹¹ Section 393.1003.1, RSMo 2016; Staff Recommendation, Appendix A, p. 2.

¹² 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.

¹³ Section 393.1006.6, RSMo 2016.

10. In conjunction with its Petition, MAWC filed a tariff sheet that would generate a total revenue requirement for MAWC's ISRS.¹⁴ MAWC's proposed ISRS revenue requirement was later updated by MAWC to \$9,706,228.¹⁵

11. MAWC attached supporting documentation to its Petition for completed plant additions. This included documentation identifying the type of additions, utility account, work order description, addition amount, depreciation rate, accumulated depreciation, and depreciation expense.¹⁶ The company also provided estimates of capital expenditures for projects completed through March 2019, which were subsequently replaced with updated actual cost information and provided to Staff.¹⁷

12. The term "net operating loss" is defined as "the excess of operating expenses over revenues."¹⁸ The Internal Revenue Code states, "For purposes of this section, the term 'net operating loss' means the excess of the deductions allowed by this chapter over the gross income."¹⁹

13. A net operating loss ("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, and is booked to a deferred tax asset account.²⁰ A deferred tax asset account allows the NOL to be carried forward, year to year, to be used to offset taxable income.²¹

¹⁴ MAWC's Petition to Establish an Infrastructure System Replacement Surcharge & Motion For Approval of Customer Notice, Appendix B.

¹⁵ Direct Testimony of Brian W. LaGrand, p. 4.

¹⁶ MAWC's Petition to Change Its Infrastructure System Replacement Surcharge & Motion For Approval of Customer Notice, Appendices D, E, and F.

¹⁷ Staff Recommendation, Appendix A, p. 1; Direct Testimony of Brian W. LaGrand, p. 4.

¹⁸ Deluxe Black's Law Dictionary, Sixth Edition.

¹⁹ I.R.C. Section 172(c).

²⁰ Direct Testimony of Mark Oligschlaeger, p. 5.

²¹ Rebuttal Testimony of Mark L. Oligschlaeger, p. 1-2.

14. An NOL is a tax return adjustment and not a regulatory item.²²

15. The documents MAWC filed in support of its ISRS petition included an amount for Accumulated Deferred Income Taxes (“ADIT”).²³ MAWC also included a proposed calculation for a Deferred Tax Asset relating to an assumed NOL for the ISRS period in the amount of \$8,764,652.²⁴

16. On April 22, Staff submitted its *Staff Recommendation*. Staff’s recommended revenue requirement for MAWC’s ISRS is \$8,878,845.²⁵

17. The Staff Recommendation removed certain costs from the ISRS revenue requirement such as: repairs to customer owned appliances and equipment; charges associated with service lines; and accounting entries that were included in the prior ISRS case.²⁶ Removal of the listed items was not objected to by MAWC.²⁷

18. Staff and MAWC are in agreement with the *Staff Recommendation* except on one issue, specifically whether there is an NOL for the ISRS Period, and, if so, what impact it may have on the ISRS.²⁸

19. Staff recommended removing approximately \$8.85 million in Deferred Tax Asset²⁹ from MAWC’s ISRS calculations because it was not an NOL resulting from the ISRS replacements during the ISRS Period.³⁰ This removal results in an \$827,383 reduction in MAWC’s submitted ISRS costs.³¹

²² Direct Testimony of John S. Riley, p. 2.

²³ MAWC’s Petition to Change Its Infrastructure System Replacement Surcharge & Motion For Approval of Customer Notice, Appendix C.

²⁴ Direct Testimony of Brian W. LaGrand, Schedule BWL-2; see also Rebuttal Testimony of Brian W. LaGrand, p. 3-4.

²⁵ Staff’s Post-Hearing Brief, p. 4.

²⁶ Staff Recommendation, Appendix A, p. 4.

²⁷ MAWC’s Response to Staff Recommendation, p. 1.

²⁸ MAWC’s Response to Staff’s Recommendation, p.1; Staff’s Post-Hearing Brief, p. 2.

²⁹ The \$8.85 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.

³⁰ Staff Recommendation, Appendix A, p. 4.

³¹ Staff’s Post-Hearing Brief, p. 5.

20. Only costs directly associated with qualifying ISRS plant that became in-service during the six months of the ISRS Period should be reflected in ISRS rates.³²

21. MAWC has a federal income tax NOL carryover (“NOL carryover”) from years prior to the ISRS Period.³³

22. MAWC’s NOL carryover has been decreasing over time since the start of 2018, and is expected to continue to decline through 2019 with the exception of a few months.³⁴

23. There are monthly increases to MAWC’s NOL carryover balance for the months of June, October, and November 2018, and February 2019, but these do not create an NOL as the other months are all decreases to NOL, because the net for the periods at issue is an overall decrease.³⁵

24. Including the four months of increases to MAWC’s NOL carryover balance, no net amount of NOL has actually been generated for federal income tax purposes by MAWC *on an aggregate basis* since January 1, 2018, the beginning of the ISRS Period from prior ISRS case WO-2018-0373.³⁶

25. MAWC’s presumption of an NOL calculates an NOL during the ISRS Period by subtracting depreciation, accelerated depreciation, repairs deduction, and interest expense from zero revenue generated by the subject ISRS replacements.³⁷

26. MAWC contends, “These deductions, taken against little ISRS revenue, create a NOL that is specifically associated with the ISRS investments.”³⁸

³² Direct Testimony of Mark L. Oligschlaeger, p. 7; see also Hearing Transcript, p. 17, 18, 49.

³³ Hearing Transcript, p. 42, and p. 47; Direct Testimony of John R. Wilde, p. 12; Direct Testimony of Karen Lyons, p. 5.

³⁴ Direct Testimony of Karen Lyons, p. 5 and 6.

³⁵ Direct Testimony of Karen Lyons, p. 6.

³⁶ Hearing Transcript, p. 128; Rebuttal Testimony of Mark L. Oligschlaeger, p. 2 and 4; Direct Testimony of Karen Lyons, p. 6 and Schedule KL-d4.

³⁷ MAWC’s Post-Hearing Brief, p. 11-12.

27. For the current ISRS period, MAWC assumes \$0 in current revenues being received from the subject ISRS replacements.³⁹

28. MAWC assumes an ISRS-related income, associated with the *prior* ISRS, WO-2018-0373, at \$4.25 million.⁴⁰

29. The deferred tax liability is booked on the Company's books and records, and the NOL calculated by MAWC for 2018 does not exist because MAWC's tax return has not been filed.⁴¹ MAWC has not filed their 2018 income tax statement, and does not expect to until October 2019.⁴²

30. MAWC has not filed their 2019 income tax statement, and does not expect to until October 2020.⁴³

31. MAWC has not filed their claimed \$34 million NOL on any income tax filing nor has MAWC recorded such NOL on its books.⁴⁴

32. MAWC's submitted Exhibit Number 3C⁴⁵, a 2017 Form 1120 US Corporation income tax return, is stated by MAWC to be a "pro forma form"⁴⁶. The Commission notes that this form does not break down the estimated NOL to specific projects. This 2017 Form 1120 was not a part of American Water Works 2017 tax return.⁴⁷

33. MAWC witness John Wilde acknowledged that according to MAWC's 2017 pro forma tax form 1120 it had a negative taxable income and therefore generated a net

³⁸ Id at 12.

³⁹ Direct Testimony of Brian W. LaGrand, Schedule BWL-2, Line 47.

⁴⁰ Id at 12; Direct Testimony of Brian W. LaGrand, Schedule BWL-2, Line 53 adding together \$1,594,490 in revenue from 2018 with \$2,657,483 for 2019, both from the prior ISRS.

⁴¹ Hearing Transcript, p. 128.

⁴² Hearing Transcript, p. 42.

⁴³ Hearing Transcript, p. 49-50.

⁴⁴ Rebuttal Testimony of John R. Wilde, p. 3 noting that MAWC will in the future be filing income tax statements that will reflect the claimed \$34 million loss; see also Rebuttal Testimony of Karen Lyons, p. 4-5.

⁴⁵ Exhibit is marked Confidential.

⁴⁶ Hearing Transcript, p. 46.

⁴⁷ Hearing Transcript, pp. 36-37.

operating loss carryforward amount in 2017. Mr. Wilde also acknowledged that for 2018 MAWC expects taxable income to be a positive amount.⁴⁸

34. In answer to a question about the amount of NOLs to be included in federal tax filings, Witness Wilde testified “They are knowable. I don’t know if they are known yet. They’re not completed 100 percent.”⁴⁹

35. NOL’s are calculated on an overall basis.⁵⁰

36. NOL’s are not split out for accounting purposes by the various tax deductions that may contribute to an NOL situation.⁵¹

37. 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.⁵²

38. MAWC’s NOL as of December 31, 2017, is 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, 2018.⁵³

39. MAWC’s last general rate case, File Number WR-2017-0285, under the terms of the stipulation and agreement approved by the Commission in that case, provide that no further rate treatment of ISRS eligible costs, which includes NOL amounts, incurred prior to 2018 is allowed to be included in subsequent ISRS proceedings.⁵⁴

⁴⁸ Hearing Transcript, pp. 44-45.

⁴⁹ Hearing Transcript, p. 43.

⁵⁰ Rebuttal Testimony of Karen Lyons, p. 3.

⁵¹ Id.

⁵² Direct Testimony of Mark L. Oligschlaeger, p. 7; Direct Testimony of Karen Lyons, p. 5-6.

⁵³ Hearing Transcript, p. 24; Direct Testimony of Karen Lyons, p. 5 and 7.

⁵⁴ Hearing Transcript, p. 24.

40. The Internal Revenue Service (“IRS”) Private Letter Rulings cited by MAWC to support its position⁵⁵ address time periods in which the utility in question was generating NOL amounts and not a single-issue rate case.⁵⁶

41. The Private Letter Rulings contain a statement excluding their use as precedent, and further state that such Rulings are “directed only to the taxpayer who requested it”.⁵⁷

III. Conclusions of Law

MAWC is a “water corporation” and “public utility” as those terms are defined by Section 386.020, RSMo 2016.⁵⁸ 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.⁵⁹ The burden of proof is the preponderance of the evidence standard.⁶⁰ In order to meet this standard, MAWC must convince the Commission it is “more likely than not” that its allegations are true.⁶¹

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

⁵⁵ Direct Testimony of John R. Wilde, Schedule JRW-1 through JRW-5; Private Letter Rulings are issued by the IRS to the taxpayer who requested them.

⁵⁶ Hearing Transcript, p. 99.

⁵⁷ Direct Testimony of John R. Wilde, Schedule JRW-5, p. 5.

⁵⁸ Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri 2016.

⁵⁹ “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.

⁶⁰ *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).

⁶¹ *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).

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.”

IV. Decision

The issue presented in this case is whether MAWC has proven by a preponderance of the evidence that an NOL exists for the ISRS Period and is associated with the ISRS replacements. We break this down into two questions: 1) is MAWC generating an NOL during the ISRS 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 the ISRS Period?

MAWC has the burden of proof to show that an NOL exists for the ISRS Period. In this case, evidence that an NOL exists is limited to estimates. Evidence that an NOL exists includes: a pro-forma corporate income tax return; testimony that exact tax filing numbers have not yet been calculated; and testimony that income tax returns for the time period at issue have not yet been filed. Alternatively, MAWC presents its theory that an NOL is shown by subtracting the depreciations and deductions from ISRS replacements from ISRS revenues, to show a loss from the ISRS investment. Without supporting tax documentation and without supporting evidence in the utility’s books, the Commission cannot determine if an NOL will, or does, exist based on estimates.

MAWC is expected to continue utilizing prior NOL carryovers to offset its taxable income in 2018 and 2019, but will not generate a new NOL in the aggregate, although it already has had four months where its carryover NOL amount increased for that month. As MAWC is expected to have taxable income in 2018 and 2019, it is reasonable to conclude

that MAWC is not generating an NOL during the ISRS Period. MAWC also seems to argue that apart from the NOL carryover, it experiences an NOL every time it invests in ISRS plant up until the ISRS rate for that ISRS plant is implemented and collected.

On the contrary, the record indicates that NOLs are not specifically tracked as to origin. The record also indicates that an NOL is an accounting item, not a regulatory item, and that it is a term encompassing an annual or longer period. The record further shows that prior instances of NOL are addressed in full rate cases, as MAWC's pre-December 2017 NOL was addressed in its most recent full rate case.

Since the IRS Private Letter Rulings only address periods where an NOL is generated, and none involve single-issue ratemaking, there is no legal support for MAWC's position that an exclusion of an NOL would violate normalization requirements of the IRS Code.⁶²

The Commission, for the reasons discussed herein, finds there is not sufficient evidence to show an NOL being generated in the ISRS Period.

If there is an NOL, is it associated with the replacements included in the currently effective ISRS?

Since there is not sufficient evidence to show an NOL occurring in the ISRS Period, the question of whether an NOL is associated with the ISRS investment is moot.

V. Conclusion

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 \$8,878,845. 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.

⁶² Hearing Transcript, p. 94 to 99.

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 revenues for this case in the amount of \$8,878,845. Since the revenues and rates authorized in this order differ from those contained in the tariffs MAWC 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 June 20, 2018, so the Commission will make this order effective on June 15, 2019.

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 \$8,878,845. 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 February 20, 2019, and assigned Tariff Tracking No. YW-2019-0160, is rejected.

3. Missouri-American Water Company is authorized to file new tariffs to recover the revenue authorized in this Report and Order.

4. The motion of the Office of Public Counsel to admit the evidentiary hearing transcript from case WO-2018-0373, and the responding request from Missouri-American Water Company to admit the pre-filed testimony from case WO-2018-0373 are denied.

5. The request of the Office of Public Counsel to admit lines 16-18 of page 52 of the evidentiary hearing transcript from case WO-2018-0373, and the responding request

from Missouri-American Water Company to admit lines 13-15 of page 52 of the evidentiary hearing transcript from case WO-2018-0373 are granted.

6. Missouri-American Water Company shall file notice with the Missouri Public Service Commission within 10 days the issuance of a conclusion or a statement of violation from the Internal Revenue Service regarding Missouri-American Water Company's February 1, 2019, letter to the Internal Revenue Service self-reporting a possible violation of its consent order and/or normalization rules.⁶³

7. This order shall become effective on June 15, 2019.

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

⁶³ Response to Commission Request (EFIS Item Number 30).

**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, 2019)
File No. AO-2019-0394

ASSESSMENT ORDER FOR FISCAL YEAR 2020

PUBLIC UTILITIES

§1 Generally

The Commission established the assessment amount for fiscal year 2020.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public
Service Commission held at
its office in Jefferson City on
the 19th day of June, 2019.

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, 2019)))))	<u>Case No. AO-2019-0394</u>
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ASSESSMENT ORDER FOR FISCAL YEAR 2020

Issue Date: June 19, 2019

Effective Date: July 1, 2019

Pursuant to 386.370, RSMo, the Commission estimates the expenses to be incurred by it during the fiscal year commencing July 1, 2019. These expenses are reasonably attributable to the regulation of public utilities as provided in Chapters 386, 392 and 393, RSMo and amount to \$21,032,178. 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 \$11,047,095. 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 \$9,985,083.

The Commission estimates that the amount of Federal Gas Safety reimbursement will be \$600,000. The unexpended balance in the Public Service Commission Fund in the hands of the State Treasurer on July 1, 2019, is

estimated to be \$3,106,248. The Commission deducts these amounts and estimates its Fiscal Year 2020 Assessment to be \$17,325,930. 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 2018, 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	\$ 9,130,765
Gas	\$ 4,639,589
Steam/Heating	\$ 184,065
Water & Sewer.....	\$ 2,113,917
Telephone.....	\$ 1,257,594
Total	\$ 17,325,930

The Commission allocates a proportionate share of the \$17,325,930 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, 2019. The assessment shall be due and payable on or before July 15, 2019, or at the option of each public utility, it may be paid in equal quarterly installments on or before July 15, 2019, October 15, 2019, January 15, 2020, and April 15, 2020. 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 2020 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, 2019.

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, 2019.

BY THE COMMISSION



Morris Woodruff
Secretary



Silvey, Chm., Kenney, Hall,
Rupp, and Coleman, 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 Certificates of)
Convenience and Necessity Related to Wind)
Generation Facilities) **File No. EA-2019-0010**

REPORT AND ORDER

CERTIFICATES

§21.1 Public interest

Sections 393.1025 and 393.1030, RSMo (Renewable Energy Standard) and Section 393.1075, RSMo (Missouri Energy Efficiency Investment Act) indicate that it is the public policy of this state to diversify the energy supply through the support of renewable and alternative energy sources. Additionally, the Commission concluded it had also previously expressed general support for renewable energy generation because it provides benefits to the public.

§21.1 Public interest

The Commission rejected the Office of the Public Counsel's argument that the proposed investment in wind generation was too risky.

§22 Restrictions and conditions

The Commission reviewed the *Stipulation and Agreement Concerning Wildlife's* provisions and found that the grant of certificates for Kings Point and North Fork Ridge should be conditioned on The Empire District Electric Company complying with the agreement's terms, which were reasonable and necessary.

§22 Restrictions and conditions

Under Section 393.170.3, RSMo, when granting a certificate of convenience and necessity, the "[C]ommission may by its order impose such condition or conditions as it may deem reasonable and necessary."

§22 Restrictions and conditions

Requiring the tax equity parameters as set out in the Non-Unanimous Stipulation and Agreement at Paragraph 12, was a reasonable and necessary condition to granting the certificates for the wind generation projects.

§34 Public convenience and necessity or public benefit

Sections 393.1025 and 393.1030, RSMo (Renewable Energy Standard) and Section 393.1075, RSMo (Missouri Energy Efficiency Investment Act) indicate that it is the public

policy of this state to diversify the energy supply through the support of renewable and alternative energy sources. The Commission has previously expressed general support for renewable energy generation because it provides benefits to the public.

§34 Public convenience and necessity or public benefit

The construction work in progress (CWIP) statute was not applicable to the grant of a certificate to own and operate the wind generation projects, but rather was applicable upon request for recovery of those costs to build the wind generation projects and put them in service.

§34 Public convenience and necessity or public benefit

The evidence showed the benefits of the wind generation projects, including the likely reduction in revenue requirement of \$169 million over 20 years, diversifying The Empire District Electric Company's energy supply, replacing expiring wind generation purchase agreements, and providing in-demand renewable energy, outweighed the costs and risks of the projects. Therefore, there was a need for the wind generation projects.

ELECTRIC

§3 Certificate of convenience and necessity

The evidence showed the benefits of the wind generation projects, including the likely reduction in revenue requirement of \$169 million over 20 years, diversifying The Empire District Electric Company's energy supply, replacing expiring wind generation purchase agreements, and providing in-demand renewable energy, outweighed the costs and risks of the projects. Therefore, there was a need for the wind generation projects.

§3 Certificate of convenience and necessity

Sections 393.1025 and 393.1030, RSMo (Renewable Energy Standard) and Section 393.1075, RSMo (Missouri Energy Efficiency Investment Act) indicate that it is the public policy of this state to diversify the energy supply through the support of renewable and alternative energy sources. The Commission has previously expressed general support for renewable energy generation because it provides benefits to the public.

§3 Certificate of convenience and necessity

The Commission reviewed the *Stipulation and Agreement Concerning Wildlife's* provisions and found that the grant of certificates for Kings Point and North Fork Ridge should be conditioned on The Empire District Electric Company complying with the agreement's terms, which were reasonable and necessary.

§3 Certificate of convenience and necessity

The Commission rejected the Office of the Public Counsel's argument that the proposed investment in wind generation was too risky. The Commission found the wind projects would promote the public interest.

§3 Certificate of convenience and necessity

Under Section 393.170.3, RSMo, when granting a certificate of convenience and necessity, the “[C]ommission may by its order impose such condition or conditions as it may deem reasonable and necessary.”

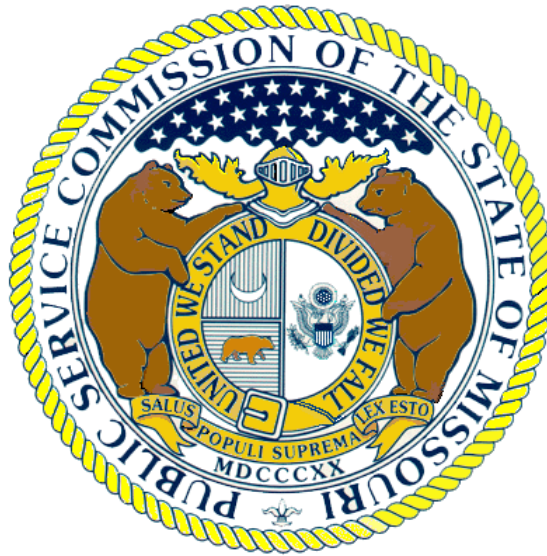
§3 Certificate of convenience and necessity

Requiring the tax equity parameters as set out in the Non-Unanimous Stipulation and Agreement at Paragraph 12, was a reasonable and necessary condition to granting the certificates for the wind generation projects.

§3 Certificate of convenience and necessity

The construction work in progress (CWIP) statute was not applicable to the grant of a certificate to own and operate the wind generation projects, but rather was applicable upon request for recovery of those costs to build the wind generation projects and put them in service.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Application of The)
 Empire District Electric Company for a) **File No. EA-2019-0010**
 Certificates of Convenience and Necessity)
 Related to Wind Generation Facilities)

REPORT AND ORDER

Issue Date: June 19, 2019

Effective Date: June 29, 2019

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of The)	
Empire District Electric Company for a	)	<u>File No. EA-2019-0010</u>
Certificates of Convenience and Necessity)	
Related to Wind Generation Facilities)	

APPEARANCES

EMPIRE DISTRICT ELECTRIC COMPANY:

Dean Cooper, Byrdon, Swearngen & England, PC, 312 East Capitol Avenue, Jefferson City, Missouri 65102

Sarah Knowlton, Liberty Utilities, 116 North Main Street, Concord, New Hampshire, 03301

MIDWEST ENERGY CONSUMERS GROUP:

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MISSOURI DEPARTMENT OF ECONOMIC DEVELOPMENT:

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OFFICE OF THE PUBLIC COUNSEL:

Nathan Williams, Deputy Counsel, and **Caleb Hall**, Senior Counsel, PO Box 2230, 200 Madison Street, Suite 650, Jefferson City, Missouri 65102

STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:

Nicole Mers, Deputy Counsel, and **Casi Aslin**, Associate Counsel, PO Box 360, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102

SENIOR REGULATORY LAW JUDGE: Nancy Dippell

REPORT AND ORDER

I. Procedural History

On October 18, 2018, The Empire District Electric Company (“Empire”) applied to the Missouri Public Service Commission (“Commission”) for approval of certificates of convenience and necessity (“CCNs”) for two wind facilities (each up to 150 MWs) located in Barton, Dade, Jasper, and Lawrence Counties in and near Empire’s service territory in Missouri (Kings Point and North Fork Ridge).¹ On November 18, 2018, Empire applied to the Commission for a CCN to build a wind generation facility up to 301 MWs located in Neosho County, Kansas (Neosho Ridge).² Collectively, Kings Point, North Fork Ridge, and Neosho Ridge are referred to as the “Wind Projects.” Both applications included requests for authority to construct, own, and operate the related transmission interconnection assets and approval of using federal tax incentives in conjunction with a tax equity partnership structure to finance the Wind Projects.

Empire had previously requested Commission 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”).³ In that case, the Commission declined to make a reasonableness determination.⁴ After the CSP Case, Empire concluded its negotiations

¹ File No. EA-2019-0010, Empire's Application for Certificates of Convenience and Necessity, (filed October 18, 2018), paras. 5-6.

² File No. EA-2019-0118 (now consolidated in File No. EA-2019-0010), Empire's Application for a Certificate of Convenience and Necessity and Motion for Waiver, If Necessary, (filed November 18, 2018), para. 6.

³ File No. EO-2018-0092, *In the Matter of the Application of The Empire District Electric Company for Approval of Its Customer Savings Plan*, Report and Order (issued July 11, 2018) (referred to as the “CSP Case”).

⁴ File No. EO-2018-0092, *In the Matter of the Application of The Empire District Electric Company for Approval of Its Customer Savings Plan*, Report and Order (issued July 11, 2018), p. 21.

to acquire wind generation assets and entered into the Purchase and Sale Agreements (“purchase agreements”) that form the basis for the Wind Projects that are the subject of this case.

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; Natural Resources Defense Council (“NRDC”); and the Missouri Department of Conservation (“Conservation” or “MDC”). The Commission conducted a local public hearing on January 23, 2019, in Joplin, Missouri, to provide an opportunity for the general public to comment on the applications for certificates of convenience and necessity.⁵ On April 5, 2019, Empire and Conservation filed a non-unanimous stipulation and agreement regarding the wildlife issues.⁶ Also on April 5, 2019, Empire, MECG, the Staff of the Commission (“Staff”), Renew Missouri, and DE filed a non-unanimous stipulation and agreement regarding the non-wildlife issues⁷ to which the Office of the Public Counsel (“Public Counsel”) timely objected.

The Commission held an evidentiary hearing on April 8-9, 2019. During the evidentiary hearing, the parties presented evidence relating to the following issues previously identified by the parties:

1. Does the evidence establish that the Kings Point, Neosho Ridge, and North Fork Ridge wind projects for which The Empire District Electric Company (“Empire”) is seeking certificates of convenience and necessity (“CCN”) are “necessary or convenient for the public service” within the meaning of that phrase in section 393.170, RSMo.?

⁵ Transcript (“Tr.”), Volume 1.

⁶ Exhibit 12, Stipulation and Agreement Concerning Wildlife Issues.

⁷ Exhibit 13, Non-Unanimous Stipulation and Agreement.

2. For each CCN the Commission grants, what conditions, if any, should the Commission deem to be reasonable and necessary, and impose?

Initial post-hearing briefs were filed on April 29, 2019. Reply briefs were filed on May 7, 2019.

II. The Stipulations and Agreements

A. Stipulation and Agreement Concerning Wildlife

On April 5, 2019, Empire and Conservation filed a non-unanimous stipulation and agreement regarding the wildlife issues. Commission rule 4 CSR 240-2.115(2)(B) allows non-signatory parties seven days to object to a non-unanimous stipulation and agreement. That same rule allows the Commission to treat the non-unanimous stipulation as unanimous if no party timely objects. More than seven days have elapsed since the signatories filed the stipulation and agreement, and no party has objected. Thus, the Commission will treat the stipulation and agreement as unanimous.

In general, the agreement provides certain conditions relating to the protection of eagles and Gray Bats including: a limitation on cutting down nest trees; a limitation on building turbines within one mile of a nest tree; a requirement to obtain eagle and Gray Bat incidental take permits from the United States Fish and Wildlife Service (“USFWS”); limitations on times of day the turbines in riparian corridors during active season for Gray Bats may be run; limitations on constructing turbines near the boundaries of MDC Conservation Areas; a requirement that Empire fund a traffic count survey at Providence Prairie Conservation Area; a requirement that Empire conduct post-construction monitoring of eagle and bat fatality and disturbances for a minimum of three years and other surveys as required by the USFWS habitat and eagle conservation plans; and requirements to report various wildlife information to MDC.

The Commission has reviewed the *Stipulation and Agreement Concerning Wildlife*'s provisions and finds that the grant of certificates for Kings Point and North Fork Ridge should be conditioned on Empire complying with its terms, which are reasonable and necessary. The Commission incorporates the provisions of the *Stipulation and Agreement Concerning Wildlife* into this order as if fully set forth herein.

B. Non-Unanimous Stipulation and Agreement

On April 5, 2019, Empire, MEEG, Staff, Renew Missouri, and DE filed a non-unanimous stipulation and agreement regarding the remaining issues. The signatories to the *Non-Unanimous Stipulation and Agreement* agreed that the CCNs should be granted with conditions. Public Counsel objected to the *Non-Unanimous Stipulation and Agreement*, therefore, it cannot be approved as an agreement. As the *Non-Unanimous Stipulation and Agreement* has been objected to, under Commission rule 4 CSR 240-2.115(2)(D) the agreement now becomes the positions of the signatory parties. With the exception of Public Counsel, the other non-signatory parties also take the position that the CCNs should be granted with the conditions set out in the *Non-Unanimous Stipulation and Agreement*. The parties' positions are further discussed below.

III. 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 in Missouri.⁸ Empire also provides electric service to the public in the states of Kansas, Oklahoma, and Arkansas.⁹

2. 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.¹⁰ Staff participated in this proceeding.

3. Public Counsel is a party to this case pursuant to Section 386.710(2), RSMo,¹¹ and by Commission Rule 4 CSR 240-2.010(10).

4. On October 18, 2018, Empire filed an application seeking CCNs for two wind facilities (each up to 150 MWs) located in Barton, Dade, Jasper, and Lawrence Counties in and near Empire's service territory in Missouri (Kings Point and North Fork Ridge) including related transmission interconnection using federal tax incentives in conjunction with a tax equity structure.¹²

5. On November 18, 2018, Empire applied to the Commission seeking a CCN for one wind generation facility up to 301 MWs located near Empire's service territory in

⁸ File No. EA-2019-0010, *Empire's Application for Certificates of Convenience and Necessity*, (filed October 18, 2018), para. 1; and File No. EA-2019-0118 (consolidated with File No. EA-2019-0010), *Empire's Application for a Certificate of Convenience and Necessity and Motion for Waiver, if Necessary*, (filed November 18, 2018), para. 1.

⁹ File No. EA-2019-0010, *Empire's Application for Certificates of Convenience and Necessity*, (filed October 18, 2018), para. 1; and File No. EA-2019-0118 (consolidated with File No. EA-2019-0010), *Empire's Application for a Certificate of Convenience and Necessity and Motion for Waiver, if Necessary*, (filed November 18, 2018), para. 1.

¹⁰ Commission Rules 4 CSR 240-2.010(10) and (21) and 2.040(1).

¹¹ Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri (2016).

¹² File No. EA-2019-0010, *Empire's Application for Certificates of Convenience and Necessity*, (filed October 18, 2018), paras. 5-6.

Neosho County, Kansas (Neosho Ridge), including related transmission interconnection assets using federal tax incentives in conjunction with a tax equity structure.¹³

6. Empire had previously requested Commission approval of its Customer Savings Plan that proposed achieving 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 generation unit.¹⁴

7. Empire conducted an analysis, referred to as the Generation Fleet Savings Analysis (“GFSA”), to determine whether it could provide savings to its customers through the acquisition of renewable resources and the retirement of a coal-fired power plant (the Asbury coal-fired generation plant).¹⁵ As a result of the GFSA, Empire developed the plan to acquire wind generation.¹⁶

8. During the CSP Case, the Commission determined that “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.”¹⁷

9. Since the CSP Case, Empire has concluded its negotiations to acquire approximately 600 MWs of wind generation assets and entered into the purchase agreements that form the basis for the projects that are the subject of this case.¹⁸

¹³ File No. EA-2019-0118 (now consolidated in File No. EA-2019-0010), Empire's Application for a Certificate of Convenience and Necessity and Motion for Waiver, If Necessary, (filed November 18, 2018), para. 6.

¹⁴ File No. EO-2018-0092, *In the Matter of the Application of The Empire District Electric Company for Approval of Its Customer Savings Plan*, Report and Order (issued July 11, 2018).

¹⁵ Exhibit 1, Mertens Direct (File No. EA-2019-0010), p. 4; and Exhibit 2, Mertens Direct (File No. EA-2019-0118), pp. 4-5.

¹⁶ Exhibit 1, Mertens Direct (File No. EA-2019-0010), p. 4-5; and Exhibit 2, Mertens Direct (File No. EA-2019-0118), pp. 4-5.

¹⁷ *In the Matter of the Application of The Empire District Electric Company for Approval of Its Customer Savings Plan*, Case No. EO-2018-0092, Report and Order, p. 20 (issued July 11, 2018).

¹⁸ Exhibit 1, Mertens Direct (File No. EA-2019-0010), p. 5; Exhibit 2, Mertens Direct (File No. EA-2019-0118), p. 5.

The Wind Projects

10. The Kings Point and North Fork Ridge facilities and generation tie lines are located entirely within the state of Missouri, and near the city of Joplin, Missouri.¹⁹ Legal descriptions of the area and the route for the Kings Point and North Fork Ridge projects were attached to Exhibits 9 and 10 as Schedules TNW-1, TNW-2A, TNW-2B, TNW-5, TNW-6A, and TNW-6B.

11. Kings Point will be constructed in southeastern Barton County, southwestern Dade County, northeastern Jasper County, and northwestern Lawrence County, Missouri. The point of interconnection for the generation tie lines will be the substation at Empire's La Russell Energy Center. Kings Point will have a capacity of approximately 150 MW.²⁰ Kings Point will consist of approximately 70 wind turbine generators and the infrastructure necessary for these generators to operate as an integrated energy production facility and deliver energy to the generation system.²¹

12. North Fork Ridge will be constructed in northwestern Jasper County and southwestern Barton County, Missouri. The point of interconnection for the generation tie lines will be the substation at Empire's Asbury Power Plant. North Fork Ridge will have a capacity of approximately 150 MW.²² North Fork Ridge will consist of approximately 70 wind turbine generators and the infrastructure necessary for these generators to operate as an integrated energy production facility and deliver energy to the generation system.²³

¹⁹ Exhibit 9, Wilson Corrected Direct (File No. EA-2019-0010), p. 2.

²⁰ Exhibit 9, Wilson Corrected Direct (File No. EA-2019-0010), p. 4.

²¹ Exhibit 9, Wilson Corrected Direct (File No. EA-2019-0010), p. 5.

²² Exhibit 9, Wilson Corrected Direct (File No. EA-2019-0010), p. 5.

²³ Exhibit 9, Wilson Corrected Direct (File No. EA-2019-0010), p. 7.

13. The Neosho Ridge facility and associated generation tie line will be located in Neosho County, Kansas, 35 miles to the west of Empire's service territory.²⁴ The point of interconnection for the generation tie line will be a new substation on Westar's Neosho-to-Caney River 345 kV transmission line. Neosho Ridge will have a capacity of approximately 300 MW.²⁵ Neosho Ridge will consist of approximately 140 wind turbine generators and the infrastructure necessary for these generators to operate as an integrated energy production facility and deliver energy to the generation system.²⁶

14. The location of the Wind Projects will reduce the risk of transmission upgrades and congestion pricing in the Southwest Power Pool ("SPP") Integrated Marketplace.²⁷

Tax Equity Partnership Structure

15. A key component of Empire's applications is achieving savings for customers through the use of production tax credits and tax equity financing. Customers would benefit from a tax equity ownership structure (whereby Empire and a tax equity partner jointly own the Wind Projects through holding companies) because a tax equity partner is willing to contribute half of the capital to acquire the Wind Projects in exchange for the federal tax benefits provided to incentivize the development of renewable generation.

16. In a tax equity structure, large, tax-paying corporations (typically large banks and insurance companies) become equity partners in projects such as the Wind

²⁴ Exhibit 2, Mertens Direct (File No. EA-2019-0118), p. 8.

²⁵ Exhibit 10, Wilson Direct (File No. EA-2019-0118), p. 4.

²⁶ Exhibit 10, Wilson Direct (File No. EA-2019-0118), p. 4.

²⁷ Exhibit 9, Wilson Corrected Direct (File No. EA-2019-0010), p. 2; Exhibit 10, Wilson Direct (File No. EA-2019-0118), pp. 2-3; and Tr. pp. 240-241 and 432.

Projects.²⁸ In exchange for providing a significant portion of the partnership's capital investment for acquisition of the Wind Projects, the tax equity partner will receive the tax incentives generated from the Wind Projects for approximately the first 10 years of the project's life.²⁹ In addition, the tax equity partner will receive cash distributions in the latter part of the first ten years (typically in years six to ten) to recover its return on and recovery of the capital it invested.³⁰ 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 Projects transfers to the non-tax equity partner.³¹

17. The federal government offers tax credits known as "production tax credits" at a current value of \$24 per MW-hour for wind and solar generation projects.³²

18. For the Wind Projects, tax equity financing is expected to provide approximately half of the capital necessary to acquire the Wind Projects – meaning that the rate base impact of the projects on Empire's ratepayers will be approximately 50% of the total cost.³³

19. To create the tax equity structure, on October 12, 2018, Empire entered into two purchase agreements with Tenaska Missouri Matrix Wind Holdings, LLC ("Tenaska") and Steelhead Missouri Matrix Wind Holdings, LLC. Pursuant to these purchase

²⁸ Exhibit 5, Mooney Direct (File No. EA-2019-0010), p. 13; and Exhibit 6, Mooney Direct (File No. EA-2019-0118), p. 14.

²⁹ Exhibit 5, Mooney Direct (File No. EA-2019-0010), p. 13; and Exhibit 6, Mooney Direct (File No. EA-2019-0118), p. 14.

³⁰ Exhibit 5, Mooney Direct (File No. EA-2019-0010), p. 13; and Exhibit 6, Mooney Direct (File No. EA-2019-0118), p. 14.

³¹ Exhibit 5, Mooney Direct (File No. EA-2019-0010), p. 13; and Exhibit 6, Mooney Direct (File No. EA-2019-0118), p. 14.

³² Exhibit 5, Mooney Direct (File No. EA-2019-0010), pp. 14-15; and Exhibit 6, Mooney Direct (File No. EA-2019-0118), p. 15.

³³ Exhibit 5, Mooney Direct (File No. EA-2019-0010), p. 16; and Exhibit 6, Mooney Direct (File No. EA-2019-0118), p. 17. The estimate of 50% of the total cost comes from a range in the "Highly Confidential" version of Exhibits 5 and 6. However, Empire made this estimate public in its *Empire's Initial Brief*, (filed April 29, 2019) at page 20.

agreements, Empire will acquire an ownership interest, through tax equity financing, in two holding companies to be formed by Tenaska and Steelhead Missouri Matrix Wind Holdings, LLC. Each holding company will own, through a project company, Kings Point and North Fork Ridge.³⁴

20. On November 16, 2018, Empire entered into a purchase agreement with Neosho Ridge Wind JV, LLC, a joint venture between a subsidiary of Apex Clean Energy, Inc. ("Apex") and a subsidiary of Steelhead Wind 2, LLC. Pursuant to the purchase agreement, Neosho Ridge JV, LLC will sell, and Empire will acquire an ownership interest, through tax equity financing, in a holding company, which will in turn own, through a project company, the Neosho Ridge wind project.³⁵

21. Empire will finance the purchase of the Wind Projects using a combination of debt, equity, and tax equity financing.³⁶ Empire plans to finance the acquisition of the holding companies in conjunction with a tax equity partner, Wells Fargo Central Pacific Holdings, Inc. ("Wells Fargo"),³⁷ as well as through intercompany funds from Liberty Utilities Co. ("Liberty Utilities").³⁸

22. The Wind Projects generated significant interest among potential tax equity partners and Empire selected Wells Fargo.³⁹ Final agreements with Wells Fargo had not

³⁴ Exhibit 5, Mooney Direct (File No. EA-2019-0010), p. 3 and Schedule TM-IA (Highly Confidential) (Kings Point), Schedule TM-IB (Highly Confidential) (North Fork), and TM-2 (Kings Point and North Fork).

³⁵ Exhibit 6, Mooney Direct (File No. EA-2019-0118), pp. 3-4 and Schedules TM-1 (Highly Confidential -- Neosho Ridge) and TM-2 (Neosho Ridge).

³⁶ Exhibit 1, Mertens Direct (File No. EA-2019-0010), p. 9; and Exhibit 2, Mertens Direct (File No. EA-2019-0118), p. 9.

³⁷ Wells Fargo will lead the tax equity financing of the Wind Projects, either solely or with another tax equity partner. Exhibit 5, Mooney Direct (File No. EA-2019-0010), p. 4, fn. 1; and Exhibit 6, Mooney Direct (File No. EA-2019-0118), p. 4, fn. 1

³⁸ Exhibit 5, Mooney Direct (File No. EA-2019-0010), pp. 3-4; and Exhibit 6, Mooney Direct (File No. EA-2019-0118), p. 4.

³⁹ Exhibit 5, Mooney Direct (File No. EA-2019-0010), p. 18; and Exhibit 6, Mooney Direct (File No. EA-2019-0118), p. 18.

yet been executed at the case submission, but a letter of interest entered into on October 10, 2018, and the other key agreements were attached to Exhibits 5 and 6, as “Highly Confidential” Schedules TM-5 HC, TM-6A HC, and TM-6B HC.⁴⁰

23. Wells Fargo has experience providing tax equity to renewable energy projects in the United States, financing approximately 11,000 MW of renewable generation, representing approximately \$6 billion of investment, since 2007.⁴¹

24. Wells Fargo is leading the solicitation of additional tax equity participants, has contacted a number of tax equity partners who are very interested in the project, and has identified a short list of those potential tax equity partners.⁴² Those tax equity partners would participate under the same terms as Wells Fargo.⁴³

25. At the time of the closings when Empire acquires its ownership interest in the holding companies, Wells Fargo will make a capital contribution to the holding company and thereby become a joint owner with Empire. Once acquired by Empire, the holding companies will be direct subsidiaries of Empire, and the project companies, will be indirect subsidiaries of Empire.⁴⁴

26. After approximately ten years of tax equity participation and Empire joint ownership of the project companies through the holding companies, Empire will have the right to purchase the tax equity partner’s ownership interest in the holding companies.⁴⁵

⁴⁰ Exhibit 5, Mooney Direct (File No. EA-2019-0010), pp. 17-18; Exhibit 6, Mooney Direct (File No. EA-2019-0118), p. 18; and Exhibit 7, Mooney Surrebuttal, p. 10.

⁴¹ Exhibit 5, Mooney Direct (File No. EA-2019-0010), p. 18; and Exhibit 6, Mooney Direct (File No. EA-2019-0118), p. 19.

⁴² Tr. p. 281.

⁴³ Tr. p. 281.

⁴⁴ Exhibit 5, Mooney Direct (File No. EA-2019-0010), p. 3 and Schedule TM-2; and Exhibit 6, Mooney Direct (File No. EA-2019-0118), p. 4 and Schedule TM-2.

⁴⁵ Exhibit 5, Mooney Direct (File No. EA-2019-0010), p. 13; and Exhibit 6, Mooney Direct (File No. EA-2019-0118), p. 14. There may be multiple tax equity partners, and thus multiple holding companies and multiple project companies.

27. In order to receive the full production tax credits, which will reduce the effective capital cost of the Wind Projects by at least half,⁴⁶ the Wind Projects must enter service by the end of 2020.⁴⁷

28. The tax equity structure enables Empire to reduce the capital investment it needs to construct the Wind Projects by an amount that reflects the ability of a tax equity partner to utilize the tax savings in the near term. This reduced capital investment will allow customers to realize the benefits of a reduced rate base for the full 10 years of the tax savings.⁴⁸

29. Given the time value of money, using a tax equity structure (as compared with direct ownership of the Wind Projects by Empire without a partner) will result in between \$4 and \$7 per MW hour more savings for Empire customers.⁴⁹

30. Empire, without the tax equity partnership, is not in a position to take advantage of these tax benefits in a timely manner⁵⁰ nor will the value of the resulting tax benefits exceed Empire's income tax liability.⁵¹ By the time Empire could utilize the tax benefits, the benefits would have been reduced in value due to the time value of money.⁵²

Qualifications

31. Empire's four-state electric utility system serves approximately 172,000 total electric customers. Empire has owned generation capacity of 1,447 MWs and

⁴⁶ Exhibit 8, McMahon Surrebuttal, p. 7.

⁴⁷ Exhibit 9, Wilson Corrected Direct (File No. EA-2019-0010), pp. 2-3; and Exhibit 10, Wilson Direct (File No. EA-2019-0118), pp. 2-3.

⁴⁸ Exhibit 5, Mooney Direct (File No. EA-2019-0010), p. 17; and Exhibit 6, Mooney Direct (File No. EA-2019-0118), p. 18.

⁴⁹ Exhibit 5, Mooney Direct (File No. EA-2019-0010), p. 17; and Exhibit 6, Mooney Direct (File No. EA-2019-0118), p. 18.

⁵⁰ Tr. p. 244.

⁵¹ Tr. p. 279.

⁵² Tr. p. 245.

purchased generation capacity of 303 MWs. These generation assets include coal-fired, natural gas fired, hydroelectric and wind generators. Empire owns and operates approximately 1,208 miles of transmission lines and 6,911 miles of distribution lines.⁵³

32. On January 1, 2017, Empire was acquired by Liberty Utilities, a subsidiary of Algonquin Power & Utilities Corp. (“APUC”). APUC consists of two primary operating units: Liberty Utilities, which provides electric, natural gas, and water services to nearly 800,000 customers across 12 states (including Empire) and includes a rate-regulated asset portfolio of 1.3 GW of generation capacity; and Liberty Power, which owns a portfolio of over 1.5 GW of hydroelectric, wind, solar, thermal, and natural gas fired generating capacity in the United States and Canada. APUC has developed renewable energy projects with tax equity partners and, as a result, has expertise in these types of transactions.⁵⁴

33. Tenaska, a large private company based in Omaha, Nebraska, has experience as an independent power producer in the United States. The company has developed more than 10,000 megawatts of fossil-fueled and renewables power generation projects, both in the United States and internationally, and has experience owning, operating, and managing power generation projects.⁵⁵

34. Apex is an independent renewable energy company based in Charlottesville, Virginia. Apex has completed development and construction of 12 wind and solar facilities in Illinois, Texas, and Oklahoma. These projects represent a total

⁵³ Exhibit 1, Mertens Direct (File No. EA-2019-0010), pp. 6-7; and Exhibit 2, Mertens Direct (File No. EA-2019-0118), pp. 6-7.

⁵⁴ Exhibit 1, Mertens Direct (File No. EA-2019-0010), p. 7; and Exhibit 2, Mertens Direct (File No. EA-2019-0118), p. 7.

⁵⁵ Exhibit 5, Mooney Direct (File No. EA-2019-0010), p. 7.

capital investment of approximately \$4 billion. Operating assets under Apex's management total more than 1,500 MW. Additionally, Apex has signed contracts for power and the sale of 16 projects totaling nearly 3,200 MW of capacity with utility, cooperative, government, and corporate customers.⁵⁶

35. Steelhead Missouri Matrix Wind Holdings, LLC is partnering with Tenaska to jointly develop and construct Kings Point and North Fork Ridge, and Steelhead Wind 2, LLC is partnering with Apex to jointly develop and construct Neosho Ridge. As wind project developers that have incurred costs for wind turbine components in 2016, Steelhead Missouri Matrix Wind Holdings, LLC and Steelhead Wind 2, LLC partnering with Tenaska and Apex allows the Wind Projects to qualify for 100% production tax credits according to the IRS guidelines.⁵⁷

36. Empire has an investment grade credit rating and is part of a corporate family that is also investment grade and has nearly \$9 billion in assets.⁵⁸

Portfolio Analysis and Modeling

37. Empire selected the Wind Projects after conducting a detailed portfolio analysis in the CSP Case using the industry standard modeling software and detailed, wide-ranging scenarios to identify and test risk.⁵⁹

38. Through that modeling and analysis, Empire evaluated alternative portfolios across wide-ranging scenarios that included different fuel and market prices, CO2 policy, nodal basis, load, and build out of wind in the SPP.⁶⁰

⁵⁶ Exhibit 6, Mooney Direct (File No. EA-2019-0118), pp. 8-9.

⁵⁷ Exhibit 5, Mooney Direct (File No. EA-2019-0010), p. 8; and Exhibit 6, Mooney Direct (File No. EA-2019-0118), p. 9.

⁵⁸ Exhibit 1, Mertens Direct (File No. EA-2019-0010), p. 7; and Exhibit 2, Mertens Direct (File No. EA-2019-0118), p. 7.

⁵⁹ Exhibit 8, McMahon Surrebuttal, p. 17.

⁶⁰ Exhibit 8, McMahon Surrebuttal, p. 17.

39. Empire ran 54 scenario combinations and a “high wind” scenario requested by the parties.⁶¹ This modeling showed that the Wind Projects had an effective capital cost of \$711/kW, putting them in parity with a new combined cycle gas plant, but without any fuel costs.⁶² Thus, the scenarios showed that the status quo portfolio was more costly in most of the evaluated scenarios.⁶³

40. The modeling showed that adding wind generation to Empire’s portfolio in or near its service territory was both possible and brought significant benefits to Empire’s customers.⁶⁴

41. The levelized cost of electricity⁶⁵ utilized for the 600 MW portfolio was a foundational element of the modelled \$169 million in customer savings over 20 years.⁶⁶ Empire has used the levelized cost of electricity as it has moved forward from the CSP Case to ensure that the three purchase agreements are within the economics modeled and thus will deliver the same level of benefits to customers as was put forward in the CSP Case.⁶⁷ While some of the project costs have changed during the negotiation of the purchase agreements, the overall portfolio levelized cost of electricity has decreased slightly, and as a result, the projects as contracted are consistent with the modelling performed by Empire.⁶⁸

⁶¹ Exhibit 8, McMahon Surrebuttal, p. 17.

⁶² Exhibit 8, McMahon Surrebuttal, pp. 7-8.

⁶³ Ex. 8, McMahon Surrebuttal, p. 16.

⁶⁴ Exhibit 1, Mertens Direct (File No. EA-2019-0010), p. 4; and Exhibit 2, Mertens Direct (File No. EA-2019-0118), p. 4.

⁶⁵ The levelized cost of electricity is calculated by adding the net present value of the total capital and operating and maintenance costs over the life of the project and dividing this sum by the megawatts of energy generated. (Exhibit 5, Mooney Direct (File No. EA-2019-0010), pp. 21-22; and Exhibit 6, Mooney Direct (File No. EA-2019-0118), p. 22.)

⁶⁶ Exhibit 5, Mooney Direct (File No. EA-2019-0010), pp. 21-22; and Exhibit 6, Mooney Direct (File No. EA-2019-0118), p. 23.

⁶⁷ Tr. pp. 277-278.

⁶⁸ Exhibit 6, Mooney Direct (File No. EA-2019-0118), p. 23; and Exhibit 8, McMahon Surrebuttal, p.18.

42. Empire's analysis demonstrated that the Wind Projects will reduce the present value revenue requirement of Empire's 2016 resource acquisition plan over both a 20-year and a 30-year period.⁶⁹ The modeling showed that the Wind Projects provided projected savings in the Base Market case of \$169 million on a net present value basis over a 20-year period.⁷⁰ For the High Market scenario, the Wind Projects produced \$320 million in projected savings over 20 years, and in the Low Market scenario they provided \$67 million projected savings over 20 years.⁷¹

43. The analysis also demonstrated that adding 600 MW of wind to its portfolio had significant benefits for Empire's customers, including substantially lowering the net present value revenue requirement of the generation portfolio and significantly reducing portfolio cost risk.⁷² The analysis also demonstrated that the savings from added wind generation came with less cost risk for customers than the status quo.⁷³

44. The SPP market prices Empire used in its modeling were the projections from ABB for Empire's 2016 triennial integrated resource plan ("IRP").⁷⁴

45. Empire did not use a historical time series analysis in its modeling, but instead it used a fundamental modeling approach.⁷⁵ Through this approach, Empire's consultant, ABB, effectively created a simulation of the SPP market to forecast hourly electricity prices.⁷⁶

⁶⁹ Tr. pp. 329-330.

⁷⁰ Exhibit 8, McMahon Surrebuttal, pp. 13-14.

⁷¹ Exhibit 8, McMahon Surrebuttal, pp. 13-14.

⁷² Exhibit 8, McMahon Surrebuttal, p. 7.

⁷³ Exhibit 8, McMahon Surrebuttal, pp. 8 and 13-14.

⁷⁴ Exhibit 205, Mantle Rebuttal, p. 5.

⁷⁵ Exhibit 8, McMahon Surrebuttal, pp. 20-24.

⁷⁶ Exhibit 8, McMahon Surrebuttal, p. 24.

46. Empire considered wind additions in SPP other than the Wind Projects and analyzed the historical interconnection queue, finding that a vast majority of those requests were withdrawn or terminated.⁷⁷

47. Empire modeled its estimated wind additions in SPP and ran various scenarios to account for those additions.⁷⁸

48. The results of the modeling showed that even with a 20% to 30% price reduction (the “low market” scenario), Empire’s customers were projected to save \$67 million over 20 years based on the net present value of the revenue requirement.⁷⁹ For the high wind scenario, Empire’s witness expected savings to be significantly higher than the “low case” because market prices were reduced by only a fraction of the amount in the low market scenario.⁸⁰

49. The modeling done in conjunction with the proposed Market Price Protection Mechanism included in the *Non-Unanimous Stipulation and Agreement* was updated with regard to the capacity value of the wind projects (wind quality), operations and maintenance costs, tax equity expense, capital costs (turbines), and the P50 production values.⁸¹ Empire used the fall 2017 price curves from ABB, because these prices were reviewed by Empire and found to remain reasonable in light of where the Wind Projects would be built.⁸² Updating a wind project cost forecast with actual values is quite different than updating a complete market price forecast with another market price forecast. Since the extensive economic analysis in the CSP Case included forecasts of

⁷⁷ Exhibit 8, McMahon Surrebuttal, p. 11.

⁷⁸ Exhibit 8, McMahon Surrebuttal, pp. 11-13.

⁷⁹ Exhibit 8, McMahon Surrebuttal, p. 13.

⁸⁰ Exhibit 8, McMahon Surrebuttal, p. 13.

⁸¹ Tr. pp. 203-204.

⁸² Tr. p. 189.

customer costs under dozens of wide-ranging scenarios, without a significant triggering event, no further update to the modeling as a whole was needed.⁸³

50. As an experienced electric utility partnered with experienced wind developers, Empire is aware of all the areas for which decisions must be made based on the information available. Empire has dealt with interconnections in the past and it is qualified to make these types of decisions.

51. Empire's modeling and analysis is the best information available and ultimately the decisions will be subject to a prudence review.

52. Additionally, the adoption of the Market Price Protection Mechanism in the *Non-Unanimous Stipulation and Agreement*, customers will have some protection from the risk that the Wind Projects will not produce the savings as expected.⁸⁴

Other Benefits

53. Wind generation has benefits other than cost savings, including helping to diversify Missouri's energy generation mix, providing renewable energy, and providing local and state economic benefits such as property taxes, land lease payments, and jobs.⁸⁵

54. Wind generation also helps corporations in Missouri to perform more competitively, as there is an emergence of corporate customer interest in renewable energy and corporations are seeking increased options for purchasing renewable power.⁸⁶

⁸³ Exhibit 8, McMahon Surrebuttal, p. 19.

⁸⁴ Exhibit 8, McMahon Surrebuttal, pp. 8 and 13-14.

⁸⁵ Exhibit 3, Mertens Surrebuttal, p. 7; Exhibit 200, Marke Rebuttal, p. 2; and Exhibit 400, Hyman Rebuttal, p. 5.

⁸⁶ Exhibit 300, Owen Surrebuttal, p. 3; and Exhibit 400, Hyman Rebuttal, pp. 5-7.

55. An increased number of energy customers (individuals, businesses, and governments) are seeking renewable energy to meet their own sustainability goals.⁸⁷

56. Production of renewable energy in the state of Missouri can lower the state's dependence on imported fuels.⁸⁸

57. Empire currently has two wind purchased power agreements that will expire in January 2021 (Elk River wind farm in 2025 (150 MW)) and 2028 (Meridian Way wind farm (105 MW)). These expiring contracts represent all of Empire's current wind capacity and more than 40% of the 600 MWs proposed currently.⁸⁹

58. Empire does not have an "immediate" capacity need for the power generated by the Wind Projects and would be able meet its future anticipated load without its wind contracts or the power from the Wind Projects.⁹⁰ All of Empire's generation is sold to the SPP market and any additional generation over its needs would be sold into the SPP market and 95% of the associated revenue would flow back to customers through Empire's fuel adjustment clause.⁹¹ These sales are included in the revenue requirement calculations and will reduce the revenue requirement, thereby reducing customer rates.⁹²

59. The Wind Projects would provide benefits to Empire's customers by providing replacement for the expiring wind generation contracts, giving Empire control over those wind generation assets, and continuing to provide value for their expected

⁸⁷ Exhibit 300, Owen Surrebuttal, p. 3; and Exhibit 400, Hyman Rebuttal, pp. 6-7.

⁸⁸ Exhibit 400, Hyman Rebuttal, pp. 7-8.

⁸⁹ Exhibit 1, Mertens Direct (File No. EA-2019-0010), p. 12; Exhibit 2, Mertens Direct (File No. EA-2019-0118), p.11; and Tr. p. 150.

⁹⁰ Exhibit 1, Mertens Direct (File No. EA-2019-0010), p. 12; Exhibit 2, Mertens Direct (File No. EA-2019-0118), p.11; and Tr. p. 150.

⁹¹ Tr. pp. 150 and 238-239.

⁹² Tr. p. 150.

lifetime which is longer than the 20-year term of a typical purchased power agreement.⁹³ Currently, under Empire's expiring wind generation contracts, Empire is paying more than the market rates for this wind-generated power, but has no ability to upgrade those facilities to make them more cost effective because it does not own the generation plant.⁹⁴

60. The primary policy objective of Chapter 22 of the Commission's Rules on Integrated Resource Planning is the focus on net present value of the revenue requirement associated with a utility's resource plan.⁹⁵

61. All necessary land rights for the Wind Projects, including for transmission, have been acquired voluntarily.⁹⁶

Proposed Conditions

62. On April 5, 2019, Empire, MECG, Staff, Renew Missouri, and DE filed a non-unanimous stipulation and agreement regarding the remaining issues. Public Counsel objected to that stipulation and agreement. Empire, Staff, and the intervenors advocate granting the CCNs because the Wind Projects are projected to bring benefits to Empire's customers under the low, mid, and high price scenarios. These parties also advocate imposing as conditions on the CCNs, the provisions of the *Non-Unanimous Stipulation and Agreement*⁹⁷ in order to mitigate any negative impacts that could arise.

⁹³ Exhibit 1, Mertens Direct (File No. EA-2019-0010), p. 12; Exhibit 2, Mertens Direct (File No. EA-2019-0118), p.11; and Tr. p. 150.

⁹⁴ Exhibit 1, Mertens Direct (File No. EA-2019-0010), p. 12; Exhibit 2, Mertens Direct (File No. EA-2019-0118), p. 11; and Tr. p. 162.

⁹⁵ 4 CSR 240-22.010.

⁹⁶ Tr. p. 314.

⁹⁷ Exhibit 13, Non-Unanimous Stipulation and Agreement.

63. The *Non-Unanimous Stipulation and Agreement* sets out the tax equity partnership ownership structure⁹⁸ and includes the following proposed conditions set out fully in the agreement:

a. Paragraph 12.a. specifies that the Wind Projects shall be operated in accordance with applicable SPP Integrated Marketplace rules and in a manner that is not detrimental to Empire's customers.⁹⁹

b. Paragraph 12.b. requires the Wind Projects purchase agreements include a requirement that before Empire, or its designated affiliate, is obligated to purchase a Wind Holdco, an independent, third-party professional licensed engineer must confirm the Wind Project is mechanically complete, has a reasonable likelihood of timely satisfying the in-service criteria provided for in Appendix A to the *Non-Unanimous Stipulation and Agreement*, and the turbines have a reasonable likelihood of meeting or exceeding the guaranteed power curve to be included in the turbine supply agreements;

c. Paragraph 12.c. states that the Wind Project must satisfy each of the in-service criteria set out in Appendix A to the *Non-Unanimous Stipulation and Agreement*;

d. Paragraphs 12.d. and 12.e. require Empire to make specific filings and quarterly progress reports on the construction level plans and specifications, the SPP Definitive Interconnection System Impact Studies, transmission and interconnection, a discussion of any sensitivity or curtailment issues raised by SPP

⁹⁸ Exhibit 13, *Non-Unanimous Stipulation and Agreement*, para. 11.

⁹⁹ See *also*, Tr. pp. 263-264.

in the study, and any issues related to those changes in assumptions, costs or curtailment.

e. Paragraph 12.f. requires Empire to provide notice of closing of the transactions set forth in the Wind Project purchase agreements.

f. Paragraph 12.g.i. provides that tax equity financing will be used and that the financing be within specific parameters with regard to approximate initial capital contribution, approximate expected return, partnership taxable income allocations, production tax credit allocations, partnership cash distributions, contingent contributions, a purchase option, and creditworthiness.¹⁰⁰

g. Paragraph 13 directs that the plant investment be recorded to plant in service;¹⁰¹

h. Paragraph 14 makes clear that the terms of the *Non-Unanimous Stipulation and Agreement* do not preclude the Commission or the signatories from reviewing the reasonableness and prudence of the costs of each Wind Project in a general rate proceeding;

i. Paragraph 15 sets out that Empire will use the 3.33% depreciation rate authorized in File No. EO-2018-0092 for the Wind Projects and that the Wind Projects will be incorporated in the first depreciation study completed after the Wind Projects are placed in-service, unless Empire shows the Commission that it does not have enough information at that time to include them;

¹⁰⁰ These parameters with some adjustments to the benefit of the customers, were also set out in the testimony of Empire's witness Mooney. (Exhibit 7, Mooney Surrebuttal, p. 11).

¹⁰¹ See also, File No. EO-2018-0092, *In the Matter of the Application of The Empire District Electric Company for Approval of Its Customer Savings Plan*, Report and Order (issued July 11, 2018), Ordered Paragraph 2.

j. Paragraph 16 provides for rate case true-up period recommendations by the signatories;

k. Paragraph 17.a. provides for employee protections under Empire's union contracts in the event of closure or retirement of the Asbury generation facility.

l. Paragraphs 17.b. and 17.c. set out an accounting authority order in the event of a retirement or sale of Asbury between general rate cases. This accounting authority order would contain two parts: a regulatory asset representing the undepreciated balance of the Asbury facility¹⁰² (currently estimated to be approximately \$200 million¹⁰³) and a regulatory liability account (to accrue the costs and revenues that Empire no longer incurs after retiring Asbury, including costs such as, but not limited to capital costs, depreciation expense, property taxes, operations and maintenance expense, fuel costs, SPP revenues and any deferred income tax effects).¹⁰⁴

m. Paragraph 18 formalizes the process by which Missouri non-residential customers may purchase a portion of the RECs received from the Wind Projects;

n. Paragraph 19 provides for the auditing and inspection of the books and records held by Empire, Liberty Utilities Service Corp., the wind holding companies, and the wind project companies for the purposes of ensuring

¹⁰² Exhibit 13, Non-Unanimous Stipulation and Agreement, para. 17.b.

¹⁰³ Tr. p. 147.

¹⁰⁴ Exhibit 13, Non-Unanimous Stipulation and Agreement, para. 17.c.

compliance with Commission rules and to make their findings and opinions available to the Commission.

o. Paragraph 20 provides that the Wind Project capital investments and costs will be allocated between Missouri and the other states in which Empire provides electric service using typical state and wholesale jurisdictional allocators for ratemaking purposes;

p. Paragraph 22 requires Empire to make a presentation to the parties regarding the costs and benefits and the impact on rates of installing battery/energy storage technology;¹⁰⁵ and,

q. Paragraph 21 sets out the details for a Market Price Protection Mechanism.¹⁰⁶ In general terms, the Market Price Protection Mechanism provides for the sharing of risk between customers and shareholders associated with the possibility that the Wind Projects do not generate enough revenue. The Market Price Protection Mechanism is designed to go into effect on the first day of the month after the effective date of rates in which a Wind Project is first placed into rates and remain in effect for 10 years following the effective date of rates resulting from the first general rate case in which all Wind Projects are included in rates. The Market Price Protection Mechanism operates by comparing the amount of revenue generated from sales of energy from each Wind Project into the SPP Integrated Marketplace and the capacity benefit of each Wind Project to the revenue requirement associated with the Wind Projects (and to the value of

¹⁰⁵ See also, Tr. p. 103.

¹⁰⁶ The Market Price Protection Mechanism is set out fully in Appendix B to the *Non-Unanimous Stipulation and Agreement*.

replacing the energy from the Elk River and Meridian Way purchased power agreements once they have expired).¹⁰⁷ The Market Price Protection Mechanism will factor in actual interconnection costs, tax equity cash distributions and PAYGO contributions, ongoing operation and maintenance costs, and curtailment.¹⁰⁸ If there is a harm caused, there is a sharing mechanism with a Missouri-jurisdictional cap of \$52.5 million for Empire to reduce costs to customers, while if the Wind Projects perform as projected, customers retain 100% of the upside.

64. The interests of the tax equity partners will not always align with the interests of Empire's customers because the tax equity partners will earn revenue from the sale of production tax credits and receive other tax benefits.¹⁰⁹ The production tax credits will be generated even if the Wind Projects are "selling" their produced power at a negative price.¹¹⁰

65. There are some situations where selling power at a negative price is also beneficial to Empire's customers.¹¹¹

66. The Market Price Protection Mechanism manages the cost benefit risk associated with the Wind Project in terms of the capital costs (to include network upgrade costs¹¹²), operating costs, SPP prices, and wind production, while still providing customers all the upside benefits.¹¹³

67. All of the variables in the Market Price Protection Mechanism could change over time, but the Market Price Protection Mechanism accommodates these changes by

¹⁰⁷ Exhibit 4, Holmes Surrebuttal, p. 11; and Tr. p. 168.

¹⁰⁸ Exhibit 4, Holmes Surrebuttal, p. 10.

¹⁰⁹ Tr. p. 150.

¹¹⁰ Tr. p. 151.

¹¹¹ Tr. p. 135.

¹¹² Tr. pp. 219 and 352-353.

¹¹³ Tr. p. 327.

updating these factors based on actual values, so customers do not need to lock in future conditions based on current assumptions.¹¹⁴

68. The cap of \$52.5 million is appropriate because it is designed such that it should cover all situations up to those having a 0.5% probability of exceeding the cap over the 10-year period.¹¹⁵ Additionally, it is a “soft” cap, as any amounts that would be incurred above that level, would go back to the Commission in a future rate case for a decision as to how they should be treated.¹¹⁶

69. The Market Price Protection Mechanism appropriately balances the interests of the customers and the shareholders.¹¹⁷

70. Public Counsel advocated imposing “hold harmless” conditions¹¹⁸ and in its position statement and briefs set out its own “customer protection plan.”¹¹⁹ Under this proposed plan Empire’s Missouri retail customers would pay no more than \$25 million for the Wind Projects during the time when Empire is paying hedge costs (anticipated to be the first 10 years the Wind Projects are in service) to the wind project companies for the difference between a fixed hedge price and the floating SPP market price (“Hedging Period”).¹²⁰

71. Public Counsel’s “customer protection plan” also included a method of tracking the revenues and expenses of the Wind Projects. The proposal was for “each month Empire would be required to record and accumulate on its books and records in

¹¹⁴ Exhibit 4, Holmes Surrebuttal, p. 10.

¹¹⁵ Tr. pp. 172-173 and 218.

¹¹⁶ Tr. pp. 172, 205, and 342.

¹¹⁷ Tr. pp. 334-335.

¹¹⁸ Exhibit 200, Marke Rebuttal, p. 2; and Exhibit 201, Marke Surrebuttal, p. 2.

¹¹⁹ *The Office of the Public Counsel’s Positions on Listed Issues*, (filed March 2, 2019), pp. 3-4.

¹²⁰ *The Office of the Public Counsel’s Initial Brief*, (filed April 29, 2019), pp. 27-28.

separate accounts, for each wind project and for them in the aggregate, both the Wind Project Revenues and the Wind Project Expenses.”¹²¹

72. Public Counsel’s proposed “hold harmless” and “customer protection plan” conditions would require Empire to make the ratepayers whole through rates if the Wind Projects did not generate cash through the holding companies equal to or greater than the costs of the Wind Projects.¹²² These proposed conditions are not reasonable because they would require Empire through rates to forgo any return on or return of its authorized capital investments.

Conclusions of Law

A. Empire is an “electrical corporation”¹²³ and “public utility”¹²⁴ and, thus, subject to the supervision of the Commission.¹²⁵

B. Section 393.170.1, RSMo 2000, provides, in part, that “[n]o ... electrical corporation ... shall begin construction of a ... electric plant ... without first having obtained the permission and approval of the commission.”

C. Section 393.170.3, RSMo 2000 provides that:

[t]he commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary. ...”

¹²¹ *The Office of the Public Counsel’s Initial Brief*, (filed April 29, 2019), p. 27.

¹²² Exhibit 200, Marke Rebuttal, p. 23; and *The Office of the Public Counsel’s Initial Brief*, (filed April 29, 2019), pp. 27-28.

¹²³ Section 386.020(15), RSMo.

¹²⁴ Section 386.020(43), RSMo.

¹²⁵ Sections 393.140(1) and 386.250(1), RSMo.

D. That statute sets the legal standard by which the Commission must determine whether to grant Empire the certificate of convenience and necessity it seeks. In interpreting the meaning of that legal standard in a 1993 decision, the Missouri Court of Appeals said:

The PSC has authority to grant certificates of convenience and necessity when it is determined after due hearing that construction is 'necessary or convenient for the public service' (*citing* section 393.170.3). The term 'necessity' does not mean 'essential' or absolutely indispensable', but that an additional service would be an improvement justifying its cost (*citing State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W. 2nd at 219). ... Furthermore, it is within the discretion of the Public Service Commission to determine when the evidence indicates the public interest would be served in the award of the certificate. (*Citing State ex rel. Ozark Elec. Coop. v. Public Serv. Comm'n*, 527 S.W.2d 390, 392 (Mo. App. 1975).¹²⁶

E. In evaluating applications for certificates of convenience and necessity, the Commission has frequently considered five factors first described in a Commission decision regarding an application for certificate of convenience and necessity filed by Tartan Energy Company, LC, d/b/a Southern Missouri Gas Company.¹²⁷ The *Tartan* factors, as they have become known, are: "(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."¹²⁸

F. While the *Tartan* factors are frequently cited in Commission decisions regarding applications for certificates of convenience and necessity, they are merely guidelines for the Commission's decision, and are not part of the legal standard set forth

¹²⁶ *State ex rel. Intercon Gas, Inc. v Pub. Serv. Comm'n*, 848 S.W.2nd 593, 597-598 (Mo. App. W.D. 1993).

¹²⁷ *In the Matter of the Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company*, 3 Mo. P.S.C. 3d, 173 (1994).

¹²⁸ *Tartan Energy*, at 177.

by the controlling statute. Moreover, the *Tartan* decision concerned an application for a certificate to provide natural gas service to a particular service area. As a result, the described factors are not precisely applicable to Empire's applications to construct the Wind Projects. Nevertheless, they provide some guidance and are specifically referenced in the list of issues set forth by the parties for resolution by the Commission. Therefore, the Commission will evaluate those factors as part of its decision in this case.

G. It is the public policy of this state to diversify the energy supply through the support of renewable and alternative energy sources.¹²⁹ The Commission has also previously expressed its general support for renewable energy generation because it provides benefits to the public.¹³⁰

H. The Commission may "prescribe uniform methods of keeping accounts, records and books to be observed by . . . electrical corporations[.]"¹³¹ Additionally, the Commission may "prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited."¹³²

I. Commission rule 4 CSR 240-20.030 requires Missouri regulated electrical corporations to "keep all accounts in conformity with the Uniform System of Accounts

¹²⁹ Sections 393.1025 and 393.1030 (Renewable Energy Standard); and Section 393.1075 (Missouri Energy Efficiency Investment Act).

¹³⁰ See, *In the Matter of the Application of The Empire District Electric Company for Approval of Its Customer Savings Plan*, Case No. EO-2018-0092, Report and Order, p. 20 (MoPSC July 11, 2018) (citing to 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).

¹³¹ Subsection 393.140(4), RSMo.

¹³² Subsection 393.140(8), RSMo.

[("USOA")] . . . as prescribed by the Federal Energy Regulatory Commission ("FERC") and published at 18 CFR part 101 (1992) and 1 FERC Stat. & Regs. Paragraph 15,001 and following (1992), except as otherwise provided in this rule." However, after a hearing, the Commission can change the prescribed "accounts in which particular outlays and receipts shall be entered, charged, or credited."¹³³

J. Missouri courts have recognized the Commission's regulatory authority to grant a form of relief to a utility in the form of an accounting authority order "which allows the utility to defer and capitalize certain expenses until the time it files its next rate case."¹³⁴

K. The courts have stated that an accounting authority order allows the deferral of a final decision on current extraordinary costs until a rate case and therefore is not retroactive ratemaking.¹³⁵ When evaluating whether an event should be considered extraordinary, the Commission will look to the appropriate USOA for guidance.¹³⁶

L. The Commission previously determined, and the Missouri Court of Appeals, Western District affirmed, that the use of trackers, which are similar to accounting authority orders, "should be limited because they violate the matching principle, tend to unreasonably skew ratemaking results, and dull the incentives a utility has to operate efficiently and productively under the rate regulation approach employed in Missouri."¹³⁷

¹³³ Section 393.140(8), RSMo.

¹³⁴ *State ex rel. Aquila, Inc. v. Missouri Public Service Comm'n of State*, 326 S.W.3d 20, 27 (Mo. App. 2010). See also, Section 393.140, RSMo.

¹³⁵ *State ex rel Office of Pub. Counsel v. Missouri Pub. Serv. Comm'n*, 301 S.W.3d 556 at 569-570 (Mo.App.2009).

¹³⁶ *In the Matter of Kansas City Power & Light Co.'s Request for Auth. To Implement a General Rate Increase for Elec. Serv. v. Missouri Pub. Serv. Comm'n*, 509 S.W.3d 757, 769-770 (Mo.App. W.D. 2016).

¹³⁷ *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, 769 (Mo. Ct. App. 2016), quoting File No. ER-2014-0370, *In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service, Report and Order* (issued September 2, 2015).

M. The USOA, allows for deferral for “extraordinary items.” General Instruction No. 7, states:

Extraordinary items. It is the intent that net income shall reflect all items of profit and loss during the period with the exception of prior period adjustments Those items related to the effects of events and transactions which have occurred during the current period and which are of unusual nature and infrequent occurrence shall be extraordinary items. Accordingly, they will be events and transactions of significant effect which are abnormal and significantly different from the ordinary and typical activities of the company, and which would not reasonably be expected to recur in the foreseeable future. (In determining significance, items should be considered individually and not in the aggregate. However, the effects of a series of related transactions arising from a single specific and identifiable event or plan of action should be considered in the aggregate.) To be considered as extraordinary under the above guidelines, an item should be more than approximately 5 percent of income, computed before extraordinary items. Commission approval must be obtained to treat an item of less than 5 percent, as extraordinary.¹³⁸

N. Section 393.135, RSMo. states that:

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

Decision

In this certificate case, the Commission is faced with two main issues: 1) Is a grant of these certificates necessary or convenient for the public service; and 2) If certificates are granted, what conditions, if any, are reasonable and necessary?

¹³⁸ 18 C.F.R. § Pt. 101, General Instruction No. 7.

Necessary or Convenient for the Public Service

Traditionally, in determining whether a certificate is “necessary or convenient for the public service,” the Commission looks to five criteria referred to as the *Tartan* factors.¹³⁹ Empire, Staff, and the intervenors all argue that the Wind Projects meet the *Tartan* factors and the CCNs should be granted. The Commission agrees that the *Tartan* factors are met as further discussed below.

1. Need for the Service –

The evidence established there is a need for this service. The Wind Projects will add renewable generation capacity at reduced costs to customers because they take advantage of tax benefits through tax equity partnerships.¹⁴⁰ Empire’s portfolio analysis showed that adding 600 MW of wind to its portfolio would benefit customers by substantially lowering the net present value revenue requirement of Empire’s generation portfolio and reducing portfolio cost risk.¹⁴¹

While the timing of the acquisition of the Wind Projects may not match up perfectly with the timing of the expiration of the Elk River and Meridian Farm wind purchased power agreements, this is an appropriate time for Empire to replace these renewable resources and transition its fleet to a greater percentage of renewable resources. This timing allows Empire the ability to acquire significant renewable energy resources at a 50% savings due to the availability of production tax credits in a way that is projected to deliver significant savings to its customers. Thus, Empire showed that the proposed Wind Projects not only have the benefit of rebalancing its portfolio with more wind, they

¹³⁹ *In re Tartan Energy*, Report and Order, 3 Mo.P.S.C. 3d 173 (issued September 16, 1994).

¹⁴⁰ Exhibit 3, Mertens Surrebuttal, pp. 4-5.

¹⁴¹ Exhibit 8, McMahon Surrebuttal, pp. 7 and 14.

represent a low-cost opportunity to replace the existing wind purchased power agreements that will expire.¹⁴² Adding wind to Empire's portfolio reduces risk and decreases costs because wind performs better than the status quo resource acquisition plan under almost all the market scenarios evaluated.

Additionally, Empire's focus on the cost of its generation fleet is consistent with the generation acquisition policy set out in Chapter 22 of the Commission's rules and with the public policy of the state of Missouri to diversify the energy supply through the support of renewable and alternative energy.

The evidence also showed that the Wind Projects are important to Empire's customer demand for renewable energy. Empire points out that its current wind purchased power agreements, representing all of Empire's current wind capacity, will expire in January 2021 (150MWs) and 2028 (105 MWs).¹⁴³ Further, the REC program, set out as one of the conditions in the *Non-Unanimous Stipulation and Agreement*, would formalize the process for selling RECs to nonresidential customers meeting a need expressed by Empire's larger customers, commercial customers, and industrial customers with sustainability programs.¹⁴⁴ Thus, the Wind Projects are in line with the public policy objective of conserving natural resources and pursuing renewable energy sources. Even though Empire does not have an immediate need for more generation capacity to meet its load, the evidence showed that the Wind Projects would provide benefits to Empire's customers by giving Empire control over those wind generation assets and continuing to provide value beyond the 20-year term of a typical purchased

¹⁴² Exhibit 8, McMahon Surrebuttal, p. 8.

¹⁴³ Exhibit 1, Mertens Direct (File No. EA-2019-0010), p. 12; and Exhibit 2, Mertens Direct (File No. EA-2019-0118), p. 11.

¹⁴⁴ Tr. p. 55.

power agreement.¹⁴⁵ Empire sells all of its generated power on the SPP market, thus, the sales of 60% additional capacity over what is expiring in the current wind generation contracts would flow back to customers through Empire's fuel adjustment clause.¹⁴⁶ These sales are included in the revenue requirement calculations and will reduce the revenue requirement, thereby reducing customer rates.¹⁴⁷ The evidence shows that the benefits of the Wind Projects, including the likely reduction in revenue requirement of \$169 million over 20 years, diversifying Empire's energy supply, replacing the wind generation purchase agreements that will expire, and providing in-demand renewable energy, outweigh the costs and risks of the projects. Therefore, the Commission finds that there is a need for the Wind Projects.

2. Qualified to Provide Service –

Empire has shown that it is qualified to provide this service and there is no dispute as to Empire's qualifications. Empire is experienced in the generation, transmission, and distribution of electricity. Empire's parent company, APUC, is also an experienced utility service provider, with experience in developing renewable generation, including renewable energy projects with tax equity partners.¹⁴⁸ Further, the partners that Empire proposes to do business with are all experienced in the provision of these kinds of projects or experienced financiers and familiar with production tax credits. Thus, the Commission finds that Empire is qualified to provide this service.

¹⁴⁵ Exhibit 1, Mertens Direct (File No. EA-2019-0010), p. 12; Exhibit 2, Mertens Direct (File No. EA-2019-0118), p.11; and Tr. p. 150.

¹⁴⁶ Tr. p. 150.

¹⁴⁷ Tr. p. 150.

¹⁴⁸ Exhibit 1, Mertens Direct (File No. EA-2019-0010), p. 7; and Exhibit 2, Mertens Direct (File No. EA-2019-0118), p. 7.

3. Financial Ability to Provide the Proposed Service –

There is no dispute that Empire has the financial ability to provide the proposed service. Empire and its corporate family have investment grade credit ratings and a total of nearly \$9 billion in assets.¹⁴⁹ Additionally, the production tax credits and the MACRS reduce the capital investment needs to construct the Wind Projects.¹⁵⁰ Further, Empire's financing partnership with Wells Fargo and APUC show that it is well equipped to finance the proposed Wind Projects. The Commission finds that Empire has the financial ability to provide the proposed service.

4. Economically Feasible –

The Commission determines that the Wind Projects are economically feasible. Tax equity financing is expected to provide approximately half of the capital necessary to acquire the Wind Projects.¹⁵¹ By utilizing a tax equity partnership, Empire has the opportunity to bring \$169 million of savings to customers over the 20-year IRP period, and up to \$295 million in customer savings over a 30-year period.¹⁵²

Empire ran 54 scenario combinations in the CSP Case and a “high wind” scenario requested by the parties.¹⁵³ This modeling showed that the Wind Projects had an effective capital cost of \$711/kW, putting them in parity with a new combined cycle gas plant, but without any fuel costs.¹⁵⁴ Thus, the scenarios showed that the status quo

¹⁴⁹ Exhibit 1, Mertens Direct (File No. EA-2019-0010), p. 7; and Exhibit 2, Mertens Direct (File No. EA-2019-0118), p. 7.

¹⁵⁰ Exhibit 5, Mooney Direct (File No. EA-2019-0010), p. 17; and Exhibit 6, Mooney Direct (File No. EA-2019-0118), p.18.

¹⁵¹ Exhibit 5, Mooney Direct (File No. EA-2019-0010), p. 16; Exhibit 6, Mooney Direct (File No. EA-2019-0118), p. 17.

¹⁵² Exhibit 5, Mooney Direct (File No. EA-2019-0010), p. 4; and Exhibit 6, Mooney Direct (File No. EA-2019-0118), pp. 4-5.

¹⁵³ Exhibit 8, McMahon Surrebuttal, p. 17.

¹⁵⁴ Exhibit 8, McMahon Surrebuttal, pp. 7-8.

portfolio was more costly in most of the evaluated scenarios.¹⁵⁵ Those scenarios also showed adding 600 MW of wind generation to Empire's portfolio will reduce portfolio cost risk.¹⁵⁶ The lack of fuel costs, coupled with the tax equity financing and tax credits make the Wind Projects economically feasible.

Public Counsel questioned the economic feasibility due to customer risk, stale information, inaccurate 30-year revenue forecasts, SPP wind additions, and unknowns. With regard to customer risk, Public Counsel suggests that if the Wind Projects are such a certain success, then Empire's parent company, APUC, would seek to invest in the projects as an unregulated enterprise and enjoy all the profits instead of sharing those profits.¹⁵⁷ Public Counsel argues that these Wind Projects will increase Empire's rate base by about 38%, from \$1.6 billion to approximately \$2.2 billion,¹⁵⁸ while only increasing Empire's SPP-accredited capacity by about 6.1% from 1,477 megawatts¹⁵⁹ to 1,567 megawatts.¹⁶⁰ Public Counsel further argues that because the capacity is not needed, requiring customers to pay for the Wind Projects is too risky.

The idea that these investments are too risky is refuted by Empire's portfolio analysis using industry standard modeling software and detailed wide-ranging scenarios to test risk. These scenarios showed that the investments were sound and brought significant benefits to Empire's customers.¹⁶¹ The Commission also previously determined that the addition of wind generation to Empire's portfolio significantly reduces

¹⁵⁵ Ex. 8, McMahon Surrebuttal, p. 16.

¹⁵⁶ Exhibit 8, McMahon Surrebuttal, p. 3.

¹⁵⁷ *The Office of the Public Counsel's Initial Brief*, (filed April 29, 2019), pp. 15-16.

¹⁵⁸ Tr. p. 107.

¹⁵⁹ Tr. p. 115.

¹⁶⁰ Tr. p. 154.

¹⁶¹ Exhibit 1, Mertens Direct (File No. EA-2019-0010), p. 4; Exhibit 2, Mertens Direct (File No. EA-2019-0118), p. 4.

financial risk for ratepayers.¹⁶² The Commission rejects Public Counsel's argument that these investments are too risky.

Public Counsel also argued that the modeling Empire did is based on stale data (the SPP market prices from Empire's 2016 triennial IRP) and is not reliable.¹⁶³ The Commission does not find Public Counsel's arguments persuasive. The modeling done in conjunction with its proposed Market Price Protection Mechanism in the *Non-Unanimous Stipulation and Agreement* was updated with regard to capacity value of the wind projects (wind quality), operations and maintenance costs, tax equity expense, capital costs (turbines), and the P50 production values.¹⁶⁴ Although, Empire used the ABB fall 2017 price curves, Empire's witness credibly testified that these prices were reviewed and remain reasonable in light of where the Wind Projects will be built.¹⁶⁵ Empire also explained why no further update was required, stressing the difference between a wind project cost forecast and a market price forecast, and that no significant event had triggered the need for more updating.¹⁶⁶ The Commission finds Empire's modeling reliable.

Public Counsel additionally had concerns with using 30-year revenue forecasts, though it did not object to the source of the forecasts used by Empire.¹⁶⁷ Public Counsel believes that historical SPP pricing is not reliable for developing price forecasts.¹⁶⁸ However, Empire did not use a historical time series analysis. Instead, it used a

¹⁶² *In the Matter of the Application of The Empire District Electric Company for Approval of Its Customer Savings Plan*, Case No. EO-2018-0092, Report and Order, (issued July 11, 2018), p. 14

¹⁶³ *The Office of the Public Counsel's Initial Brief*, (filed April 29, 2019), pp. 17-23.

¹⁶⁴ Tr. pp. 203-204.

¹⁶⁵ Tr. p. 189.

¹⁶⁶ Exhibit 8, McMahon Surrebuttal, p. 19.

¹⁶⁷ Tr. p. 411.

¹⁶⁸ Exhibit 8, McMahon Surrebuttal, p. 20.

“fundamental” modeling approach.¹⁶⁹ Through this approach, Empire’s consultant, ABB, effectively created a simulation of the SPP market to forecast hourly electricity prices.¹⁷⁰ Thus, the Commission finds the 30-year revenue forecasts reasonable.

Public Counsel also argues that selling the output from the Wind Projects into the SPP market at the same time other wind resources are also selling their output into the SPP market will depress prices. In its analysis, Empire considered other wind additions in SPP and analyzed the historical interconnection queue, finding that a vast majority of those requests were withdrawn or terminated.¹⁷¹ Further, Empire modeled significant wind additions in SPP and ran various scenarios to account for those additions.¹⁷² Empire’s evidence showed that given the results of the modeling, the net present value revenue requirement savings were expected to be significantly higher than the “low case” for the high wind scenario because market prices were reduced by only a fraction of the amount in the low market scenario.¹⁷³ Thus, the Commission finds that Empire’s modeling and analysis appropriately factored in the effects of wind additions to the market.

Lastly, Public Counsel suggested a list of unknowns that make the Wind Projects speculative and too risky for Empire’s customers.¹⁷⁴ As an experienced electric utility partnered with experienced wind developers, Empire is aware of all the areas for which decisions must be made based on the information available. Empire has dealt with interconnections in the past and it is qualified to make these types of decisions. Empire’s

¹⁶⁹ Exhibit 8, McMahon Surrebuttal, pp. 20-24.

¹⁷⁰ Exhibit 8, McMahon Surrebuttal, p. 24.

¹⁷¹ Exhibit 8, McMahon Surrebuttal, p. 11.

¹⁷² Exhibit 8, McMahon Surrebuttal, pp. 11-13.

¹⁷³ Exhibit 8, McMahon Surrebuttal, p. 13.

¹⁷⁴ *The Office of the Public Counsel’s Initial Brief*, (filed April 29, 2019), pp. 25-26.

modeling and analysis is the best information available and ultimately the decisions will be subject to a prudency review by the Commission before being added to rate base in a future rate case. Additionally, as set out below, the Commission will adopt the Market Price Protection Mechanism from the *Non-Unanimous Stipulation and Agreement*, thus affording ratepayers additional protection from harm.

5. Promote the Public Interest –

The Commission finds that the Wind Projects will promote the public interest. In addition to the low cost generation that the Wind Projects will provide, these projects meet the policy goals, as identified by the Commission in the *Grain Belt Express Clean Line LLC* case,¹⁷⁵ to diversify energy resources and develop “economical renewable energy sources”. Additionally, the Wind Projects are also important to satisfy the public interest in regard to the use of renewables, especially through the sale of RECs to non-residential customers as set out as a condition in the *Non-Unanimous Stipulation and Agreement*¹⁷⁶ and adopted in this order as a condition of the certificates. Finally, the evidence showed that the Wind Projects will promote the public interest through the local and state economic benefits such as additional property taxes, land lease payments, and job creation.¹⁷⁷

Thus, the Commission determines that with the conditions set out below, the requested certificates are necessary or convenient for the public service and should be granted.

¹⁷⁵ *In the Matter of the Application of Grain Belt Express Clean Line LLC*, Report and Order on Remand (issued March 20, 2019), File No. EA-2016-0358, pp. 45-46 (citations omitted).

¹⁷⁶ Tr. p. 102.

¹⁷⁷ Exhibit 3, Mertens Surrebuttal, p. 7; Exhibit 200, Marke Rebuttal, p. 2; and Exhibit 400, Hyman Rebuttal, p. 5.

Reasonable and Necessary Conditions

In granting a certificate of convenience and necessity, the “commission may by its order impose such condition or conditions as it may deem reasonable and necessary.”¹⁷⁸

The second main issue before the Commission is, what conditions should be imposed on the certificates?

Stipulation and Agreement Concerning Wildlife

On April 5, 2019, Empire and Conservation filed a non-unanimous stipulation and agreement regarding the protection of wildlife.¹⁷⁹ In general, the agreement provides certain conditions relating to the protection of eagles and Gray Bats including: limitations on cutting down nest trees; limitations on building turbines within one mile of a nest tree; requirements to obtain eagle and Gray Bat incidental take permits from the USFWS; limitations on the times of day turbines may run in riparian corridors during the active season for Gray Bats; limitations on constructing turbines near the boundaries of MDC Conservation Areas; a requirement that Empire will fund a traffic count survey at the Providence Prairie Conservation Area; a requirement that Empire will conduct post-construction monitoring of eagle and bat fatalities and disturbances for a minimum of three years and other surveys as required by the USFWS habitat and eagle conservation plans; and requirements to report various wildlife information to MDC.

No party objected to the wildlife agreement and the Commission treats it as a unanimous agreement. The Commission determines that the provisions of the *Stipulation and Agreement Concerning Wildlife* are reasonable and necessary conditions to the grant of certificates of convenience and necessity for the Kings Point and North Fork Ridge

¹⁷⁸ Section 393.170.3, RSMo.

¹⁷⁹ Exhibit 12, Non-Unanimous Stipulation and Agreement Concerning Wildlife.

wind projects. Therefore, the Commission will approve the agreement and make the grant of certificates of convenience and necessity for the Kings Point and North Fork Ridge wind projects conditioned on the agreement's provisions.

Non-Unanimous Stipulation and Agreement

On April 5, 2019, Empire, MEEG, Staff, Renew Missouri, and DE filed the *Non-Unanimous Stipulation and Agreement* in which those signatories recommend the grant of the certificates of convenience and necessity with numerous conditions. No other parties, with the exception of Public Counsel, objected to the agreement. The Commission has determined above, that certificates for the Wind Projects should be granted. However, in order to address any concerns about potential harm to customers and to mitigate any negative impacts that could arise, the Commission will adopt the conditions as proposed in the *Non-Unanimous Stipulation and Agreement* with the exception of the conditions related to Asbury.

The Commission will address the requirement to operate in accordance with the applicable SPP Integrated Marketplace rules and in a manner not detrimental to Empire's customers (Paragraph 12.a.), the tax equity parameters (Paragraph 12.g.), the sale of RECs (Paragraph 18), the potential Asbury closure (Paragraph 17), and the Market Price Protection Mechanism (Paragraph 21) separately. The remaining proposed conditions in the *Non-Unanimous Stipulation and Agreement* would protect ratepayers through the provision of information and procedures that will allow Staff, Public Counsel, the intervenors, and the Commission to review and identify issues as soon as possible,

assuring that ratepayers ultimately end up paying only just and reasonable rates.¹⁸⁰ These provisions also give Empire advanced notice of the information and procedures that it will be required to follow in the implementation of the Wind Projects, thus, providing it the opportunity to better plan how to conduct its business. Therefore, the Commission determines that these provisions in the *Non-Unanimous Stipulation and Agreement* are reasonable and necessary conditions to impose on the grant of the Wind Project certificates.

Also included in the *Non-Unanimous Stipulation and Agreement* at Paragraph 12 was the provision that tax equity financing be used and that the financing be within specific parameters with regard to approximate initial capital contribution, approximate expected return, partnership taxable income allocations, production tax credit allocations, partnership cash distributions, contingent contributions, a purchase option, and creditworthiness.¹⁸¹ As explained elsewhere in this order, it is the tax equity financing that makes the Wind Projects more economically feasible than they would be if Empire set out to do them on its own. By taking advantage of the tax benefits, that will not otherwise be available to Empire on its own, Empire need not provide as much capital up front to finance the projects, providing a net present value savings of an estimated \$169 million to customers over a 20-year period. Thus, the Commission finds that requiring the tax equity parameters as set out in the *Non-Unanimous Stipulation and Agreement* at

¹⁸⁰ Exhibit 13, *Non-Unanimous Stipulation and Agreement*, paras. 12-16, 19, 20, and 22. (This list is a summary and not meant to exclude any provision not specifically set out in the Ordered Paragraphs of this Report and Order.)

¹⁸¹ Exhibit 13, *Non-Unanimous Stipulation and Agreement*, para. 12.g.i. These parameters, with some adjustments to the benefit of the customers, were also set out in the testimony of Empire's witness Mooney. (Exhibit 7, Mooney Surrebuttal, p. 11).

Paragraph 12, is a reasonable and necessary condition to granting the Wind Project certificates.

Paragraph 12.a. of the *Non-Unanimous Stipulation and Agreement* requires that the Wind Projects be operated in accordance with SPP rules and “in a manner that is not detrimental to [Empire’s] customers.”¹⁸² The interests of the tax equity partners will not always align with the interests of Empire’s customers because the tax equity partners will earn revenue from the sale of production tax credits.¹⁸³ These production tax credits will be generated even if the Wind Projects are “selling” their produced power at a negative price.¹⁸⁴ Even so, there are also situations where selling power at a negative price is beneficial to Empire’s customers.¹⁸⁵ The addition of Paragraph 12.a. will protect Empire’s customers from having the Wind Projects operate in a manner to the detriment of the customers merely so that the tax equity partner can receive a benefit. The Commission finds Paragraph 12.a. is, therefore, a reasonable and necessary condition on the grant of certificates for the Wind Projects to guard against possible detriments to Empire’s customers from these divergent interests.

At Paragraph 18 of the *Non-Unanimous Stipulation and Agreement*, there is a proposal for the sale of RECs from the Wind Projects to non-residential customers. The evidence showed that Empire has large customers that would like to purchase some of the RECs that will be created as part of the Wind Projects. This provision will formalize the process for selling RECs to those customers, in order to allow the customers to meet

¹⁸² Exhibit 13, *Non-Unanimous Stipulation and Agreement*, para. 12.a.

¹⁸³ Tr. p. 150.

¹⁸⁴ Tr. p. 151.

¹⁸⁵ Tr. p. 135.

their sustainability goals.¹⁸⁶ Thus, the Commission finds that formalizing the process for the sale of RECs from the Wind Projects to non-residential customers is a reasonable and necessary condition to the granting of the certificates.

Paragraph 17 of the *Non-Unanimous Stipulation and Agreement* contained three provisions related to the potential closure of the coal-fired Asbury generation plant that the signatories recommended be conditions on the grant of any certificates for the Wind Projects. It is generally recognized and understood that the Asbury coal-fired generation facility would be more likely to be sold or retired if the Wind Projects were built because it would not need the additional capacity.¹⁸⁷ Paragraph 17 provides for employee protections under Empire's union contracts and an accounting authority order in the event of a retirement or sale of Asbury between general rate cases. This proposed accounting authority order would contain two parts: a regulatory asset representing the undepreciated balance of the Asbury facility, currently estimated to be approximately \$200 million; and a regulatory liability account to accrue the costs and revenues that Empire no longer incurs after retiring Asbury, including costs such as, but not limited to, capital costs, depreciation expense, property taxes, operations and maintenance expense, fuel costs, SPP revenues and any deferred income tax effects.

The Commission does not find these proposed conditions reasonable and necessary to the grant of the certificates.

Under its statutory authority, the Commission prescribes that electrical corporations keep their accounts, records, and books in conformity with the USOA as

¹⁸⁶ Exhibit 13, *Non-Unanimous Stipulation and Agreement*, para. 18; and Tr. p. 102.

¹⁸⁷ Tr. pp. 50, 103-104, 147-148, 213, and 273-274.

prescribed by FERC.¹⁸⁸ The USOA, in turn, provides for deferral accounting for “extraordinary items.”¹⁸⁹ The Commission has previously found (and the Court of Appeals has agreed) that the use of these deferral accounting mechanisms “should be limited because they violate the matching principle, tend to unreasonably skew ratemaking results, and dull the incentives a utility has to operate efficiently and productively under the rate regulation approach employed in Missouri.”¹⁹⁰

In this case, the sale or retirement of Asbury is not certain. In fact, from the evidence presented, it is not known whether the removal of Asbury from Empire’s generation fleet, if it occurs, will be accomplished through a sale or a closure. Thus, the effect on rates from the undepreciated plant value, the capital costs, depreciation expense, property taxes, operations and maintenance expense, fuel costs, SPP revenues and any deferred income tax effects are completely unknown. Further, there has not been sufficient evidence provided to show that this sale or retirement would be “extraordinary” under the definition as set out in the USOA. Further, because these events have not yet occurred, when they do occur, the signatories could present this to the Commission as a formal request for an accounting authority order where the facts can be reviewed with more certainty, less speculation, and under the appropriate burden of proof.

Empire and the other signatories to the *Non-Unanimous Stipulation and Agreement* have not shown that conditions related to possible Asbury closure or sale are reasonable or necessary. The Commission finds it would be premature to set out any conditions related to the possible sale or closure of Asbury. Additionally, the parties have

¹⁸⁸ Section 393.140(4), RSMo.; and 4 CSR 240-20.030.

¹⁸⁹ 18 C.F.R. § Pt. 101, General Instruction No. 7.

¹⁹⁰ *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, 769 (Mo. Ct. App. 2016).

not proven that this possible sale or closure will produce an extraordinary circumstance such that the Commission should take the unusual step of conditioning the grant of a certificate of convenience and necessity on this particular accounting treatment. The Commission will not impose the conditions set out in Paragraph 17 of the *Non-Unanimous Stipulation and Agreement*.

Paragraph 21 of the *Non-Unanimous Stipulation and Agreement* includes a Market Price Protection Mechanism with, among other terms, a \$52.5 million cap on customer losses over the first 10 years of the Wind Projects (the time it is expected to take for the tax equity partners to recoup their investments). The Market Price Protection Mechanism is designed to mitigate risks to the customers of the revenues from the Wind Projects not being as expected and adds a layer of protection for the low probability events related to supply side generation.¹⁹¹ The Market Price Protection Mechanism balances the interests of the customers and the shareholders appropriately.¹⁹² The Market Price Protection Mechanism is a compromise between the two proposals made by Empire and Staff in their testimony, is supported by the evidence before the Commission, and is a reasonable balance of the interests of the ratepayers and the shareholders.¹⁹³ When considered as a whole with the other conditions placed on the certificates, the Commission determines that the imposition of the Market Price Protection Mechanism is a reasonable and necessary condition to granting the certificates for the Wind Projects. The Commission finds that, with the exception of the provisions related to the Asbury

¹⁹¹ Tr. pp. 172-173, 370-371, and 372.

¹⁹² Tr. p. 334-335.

¹⁹³ Tr. p. 334-335.

plant, the provisions of the *Non-Unanimous Stipulation and Agreement* should be made conditions to the grant of the certificates for the Wind Projects.

Public Counsel objected to the grant of the certificates and to the terms of the *Non-Unanimous Stipulation and Agreement*. Public Counsel argued that Empire has excess generation capacity and, therefore, does not need the additional generation of the Wind Projects. According to Public Counsel, because the power from those projects is not needed, the Wind Projects will never be considered “used and useful” in providing electric service to its customers. Thus, Public Counsel argued that because the Wind Projects will not be “used and useful,” the anti-construction work in progress (“CWIP”) statute, Section 393.135, RSMo, will prevent Empire from recovering the costs of the Wind Projects in rates. Public Counsel suggests that this makes Empire’s customers investors because the only benefit they receive from the Wind Projects are the SPP revenues generated. Public Counsel proposed that if Empire’s shareholders wanted to invest in these resources to make money, rather than providing electric service to its customers, Empire should do it outside the regulated entity as an independent power producer.

The Commission disagrees with the Public Counsel’s premise that the Wind Projects only have benefits if they are necessary to meet capacity. Empire has shown many benefits to customers and the state of Missouri in general as a result of the Wind Projects. Further, the Commission disagrees with Public Counsel’s interpretation of the CWIP statute. The CWIP statute is not applicable to the grant of a certificate to own and operate the Wind Projects, but rather is applicable upon request for recovery of those costs to build the Wind Projects and put them in service.

Public Counsel also objected that the *Non-Unanimous Stipulation and Agreement* does not provide sufficient protections for Empire's customers of increasing rate base so significantly. Public Counsel's position is that the *Non-Unanimous Stipulation and Agreement* provides for sharing only the downside market risk 50/50 between customers and shareholders up to \$105 million, but leaves any other risks unresolved until the end of the 10-year period when Empire would purchase the assets. Public Counsel, although opposed to granting the certificates, proposed that if granted, the CCNs should be conditioned on its "customer protection plan" which lowers the loss-sharing cap to \$25 million and adds a hold harmless provision so that customers are not liable for any potential losses on these Wind Projects.

Public Counsel's "customer protection plan" provides that the Wind Projects investments would be included in rate base, but that Empire's Missouri retail customers would not pay "a return of nor a return on" that investment during the Hedging Period of the plan. The Commission finds it inappropriate to make ratemaking decisions, such as whether Empire should be allowed to earn a return on the investments, during these certificate of convenience and necessity proceedings. Rather, all ratemaking determinations will be made in a rate case where all factors can be considered to determine "just and reasonable" rates.¹⁹⁴

Public Counsel did not present sufficient evidence to support the need for or the reasonableness of imposing the provisions of either its "customer protection plan" or "hold harmless" conditions to impose on the CCNs. Further, the Commission finds that the conditions the Commission is placing on the certificates, including the Market Price

¹⁹⁴ *Bluefield Waterworks and Improve. Co.*, 262 U.S. 679, 692-93 (1923); *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944).

Protection Mechanism coupled with the prudence review in the course of a rate case, are sufficient and makes the majority of Public Counsel's proposed conditions unnecessary.

The Commission does find it appropriate to adopt the proposed condition from Public Counsel's "customer protection plan" in Paragraph 3. The proposed condition is that Empire be required to record and accumulate on its books in separate accounts, for each wind project and for them in the aggregate, both the Wind Project revenues and the Wind Project expenses. The Commission finds that this information will be useful in determining whether the Wind Projects have performed as expected and should be captured upfront. Only to the extent these expenses and revenues are tracked in a similar manner for Empire's other generating units, the Commission finds it reasonable and necessary to impose this revenue and expense tracking as a condition on the certificates.

Therefore, having considered all the evidence, the Commission determines that the certificates of convenience and necessity for the Wind Projects should be granted with conditions. Given the need to begin construction on the projects before the end of 2019 in order to qualify for production tax credits, the Commission will make this order effective in ten days.

THE COMMISSION ORDERS THAT:

1. The Empire District Electric Company is authorized to acquire an interest in the holding companies that will own the project companies that will be constructing and installing the Kings Point Wind Project, and is granted a certificate of convenience and necessity to own, operate, maintain, and otherwise control and manage the Kings Point Wind Project to be constructed in Barton, Dade, Jasper, and Lawrence Counties in

Missouri, including the infrastructure necessary for the generators to operate as an integrated energy production facility and deliver energy to the system.

2. The Empire District Electric Company is authorized to acquire an interest in the holding companies that will own the project companies that will be constructing and installing the North Fork Ridge Wind Project, and is granted a certificate of convenience and necessity to own, operate, maintain, and otherwise control and manage the North Fork Wind Project to be constructed in Barton and Jasper Counties in Missouri, including the infrastructure necessary for the generators to operate as an integrated energy production facility and deliver energy to the system.

3. The Empire District Electric Company is authorized to acquire an interest in the holding companies that will own the project companies that will be constructing and installing the Neosho Ridge Wind Project, and is granted a certificate of convenience and necessity to own, operate, maintain, and otherwise control and manage the Neosho Ridge Wind Project to be constructed in Neosho County, Kansas, including the infrastructure necessary for the generators to operate as an integrated energy production facility and deliver energy to the system.

4. The *Stipulation and Agreement Concerning Wildlife* is approved and incorporated into this order by reference as if fully set forth herein. The Empire District Electric Company and the Department of Conservation are ordered to comply with the provisions of the *Stipulation and Agreement Concerning Wildlife*.

5. The certificates of convenience and necessity for the Kings Point and North Fork Ridge wind projects are conditioned on the conditions contained in Appendix A of the *Stipulation and Agreement Concerning Wildlife*.

6. The certificates of convenience and necessity for the Kings Point, North Fork Ridge, and Neosho Ridge wind projects are conditioned on the following from the *Non-Unanimous Stipulation and Agreement*:

a. Planned Ownership Structure. The Kings Point, North Fork Ridge, and Neosho Ridge wind projects shall be accomplished using federal tax incentives in conjunction with a tax equity structure. To create the tax equity structure, Empire and a tax equity partner will own a holding company for each Wind Project, each of which will be a direct subsidiary of Empire (the “Wind Holdco”). Empire, via the Wind Holdco, will acquire a wind project company (“Wind Project Co.”) that owns a specific Wind Project. After approximately ten years of tax equity participation and Empire joint ownership of the Wind Project Co. (through the Wind Holdco), Empire will have the right to purchase the tax equity partner’s ownership interest in the Wind Holdco, at which point Empire would wholly own the Wind Project Co.¹⁹⁵

b. The Wind Project(s) shall be operated in accordance with applicable SPP Integrated Marketplace rules and in a manner that is not detrimental to Empire’s customers;

c. The Wind Project purchase agreement(s) shall include a requirement that before Empire, or its designated affiliate, is obligated to purchase a Wind Holdco, an independent, third-party professional engineer licensed must confirm in a written report, to be provided to Empire, that the Wind Project owned by the Wind Holdco has achieved mechanical completion, and there is a reasonable

¹⁹⁵ There may be multiple tax equity partners, and thus multiple Wind Holdco(s), as well as multiple Wind Project Co(s).

likelihood the Wind Project will satisfy the in-service criteria provided for in attached Appendix A from the *Non-Unanimous Stipulation and Agreement*, and be timely placed in-service, including a reasonable likelihood that the turbines will meet or exceed the guaranteed power curve for such turbines to be included in the turbine supply agreement(s) with Wind Project Co(s);

d. The Wind Project must satisfy each of the in-service criteria set out in attached Appendix A from the *Non-Unanimous Stipulation and Agreement*;

e. Plans and Specifications: Empire shall file with the Commission quarterly progress reports on the construction level plans and specifications for the Project, and the first report shall be due on the earlier of the first day of the first calendar quarter beginning after the issuance of this order. Empire shall also include an update on all permits obtained as part of its quarterly progress reports, and shall file complete plans and specifications prior to commencement of construction. Empire shall also include documentation regarding transmission and interconnection progress, including supporting documentation of cost increases or changes in assumptions. In its subsequent quarterly report, Empire shall address any results of the study that are material changes in assumptions or costs related to the Wind Projects;

f. Empire shall file a copy of the SPP Definitive Interconnection System Impact Studies within 30 days of receipt. In its subsequent quarterly report, Empire shall address any results of the study that are material changes in assumptions or costs related to the Wind Projects. Empire shall also include a discussion of any sensitivity or curtailment issues raised by SPP in the study. Empire shall also

include a proposed plan to address any issues related to those changes in assumptions, costs or curtailment;

g. Within 30 days of the closing of the transactions set forth in the Wind Project purchase agreements, Empire shall file in File No. EA-2019-0010 a notice of each such closing and, upon request, shall provide a copy of such documents to the signatories of the *Non-Unanimous Stipulation and Agreement*, and,

h. The following conditions shall apply to the transactions with the Tax Equity Partner(s):

i. Empire, through its ownership in Wind Holdco(s), shall contract with tax equity partner(s) (“TEPs”) for financing of the Wind Projects (a tax equity agreement), which contracts shall include terms for the approximate initial capital contribution, approximate expected return, partnership taxable income allocations for Years 1 to 10 (flip date¹⁹⁶) and thereafter, contingent contributions Years 1 to 10, purchase option, and creditworthiness, consistent with the parameters set out in the confidential table found in Paragraph 12.g.i. of the *Non-Unanimous Stipulation and Agreement*.

ii. Empire, through its ownership in the Wind Holdcos, shall enter into any such tax equity agreements with a TEP, as evidenced by an executed Term Sheet with one or more TEPs before issuing the Notice to Proceed with Construction of that project;

¹⁹⁶ The “flip date” is the date at which the tax equity partner(s) has achieved its expected return, scheduled to be approximately 10 years from the commencement of commercial operations.

iii. Within 30 days of when it executes a tax equity agreement Empire shall file in File No. EA-2019-0010 a notice it has executed the agreement and provide to each of the other signatories a copy of that tax equity agreement; and

iv. The tax equity agreement that Empire executes for a Wind Project must satisfy each and every one of the parameters in the table above.

i. Rate Basing Wind Projects. So long as Empire's Wind Projects acquisitions comply with the conditions set out herein, and subject to any prudency review, Empire is authorized to record its capital investment to acquire the Wind Projects as utility plant in service subject to audit in Empire's next general rate case consistent with the Commission's Report and Order in File No. EO-2018-0092.

j. Prudency not waived. Nothing in this Report and Order precludes the Commission, the signatories to the *Non-Unanimous Stipulation and Agreement*, or the other parties from reviewing the reasonableness and prudency of the costs of each Wind Project in a general rate proceeding following the date when that/those Wind Project(s) is/are fully operational and used for service.

k. Depreciation Rate Study. Upon placing the Wind Projects in-service, Empire shall utilize the 3.33% depreciation rate authorized in File No. EO-2018-0092. In the first depreciation study completed after the Wind Projects are placed in-service, Empire shall incorporate the Wind Projects in that depreciation study, unless it shows the Commission that it does not have enough

information concerning the Wind Projects to include them in that depreciation study.

l. Rate Case Recommendations. In any Empire general rate case(s) where a Wind Project is first included in Empire's rate base for setting rates, the signatories to the *Non-Unanimous Stipulation and Agreement* shall recommend a true-up period that ends no later than five months prior to the operation of law date. A Wind Project will be excluded from Empire's rate base used for setting Empire general distribution rates if the Wind Project does not satisfy the in-service criteria for that Wind Project before the end of the true-up period.

m. Non-Residential Access to Renewable Energy and Credits. In the first general rate case to include a Wind Project, Empire shall propose a tariff to implement a program by which Missouri retail non-residential customers may purchase a portion of renewable energy credits received from the Wind Project.

n. Auditing, Inspection of Books and Records. Staff, Public Counsel, and the signatories to the *Non-Unanimous Stipulation and Agreement* each shall have the authority to review, inspect and audit books, accounts, and other records held by Empire, Liberty Utilities Service Corp., Wind Holdco(s), and Wind Project Co(s), for the purposes of ensuring compliance with Commission Rule 4 CSR 240-20.015 (include successor rules with substantially the same content and language, however renumbered or reorganized) and this order, and to make their findings and opinions available to the Commission. Empire shall make all such books, accounts, and other records available for inspection at one or more locations in Missouri. This provision is not intended to restrict or limit the existing

powers of the Staff, Public Counsel, or any other party to review, inspect and audit those books, accounts and other records.

o. State and wholesale jurisdictional cost allocation for Missouri ratemaking. For Missouri ratemaking purposes, the Wind Project capital investments and costs will be allocated between Missouri and the other states in which Empire provides electric service using typical state and wholesale jurisdictional allocators. Only the Wind Project capital investments and expenses allocated to the Missouri state jurisdiction may be included in Empire's cost of service for setting rates in Missouri.

p. Market Price Protection Mechanism. The market price protection mechanism, as described more fully in Appendix B to the *Non-Unanimous Stipulation and Agreement*, and attached hereto, shall be implemented. In general terms, that mechanism seeks to provide for the sharing of risk between customers and shareholders associated with the possibility of reduced market prices and wind production associated with the Wind Projects. Such mechanism reflects the possibility that all Wind Projects may not be included in Empire rates in the same rate case. As such, the mechanism shall go into effect on the first day of the month after the effective date of rates in which a Wind Project is first placed into rates and shall remain in effect for 10 years following the effective date of rates resulting from the first general rate case in which all Wind Projects are included in rates.

q. Future Battery/Energy Storage Technology. In the event that it is determined that a certificate of convenience and necessity from the Commission is not required, Empire shall, three months prior to installing any battery or energy

storage device, make a presentation to the parties, regarding the costs and benefits and the impact on rates of installing such battery/energy storage technology. Such presentation shall include, but is not limited to, a discussion of the retirement of current generating units or the postponement of future generation additions resulting from the installation of the battery/energy storage technology. Further, such presentation will provide a discussion of how Empire's battery/energy storage technology is incorporated into and dispatched within the SPP. In the event that the battery/energy storage is on the customer side of the meter, Empire shall discuss rate design changes, if any, necessary to maximize the benefits of the battery/energy storage technology. Empire shall allow for reasonable discovery from the Signatories and OPC regarding the costs and benefits of the battery/energy storage technology.

7. The certificates of convenience and necessity for the Kings Point, North Fork Ridge, and Neosho Ridge wind projects are conditioned on Empire recording and accumulating on its books in separate accounts, for each wind project and for them in the aggregate, both the Wind Project revenues and the Wind Project expenses, to the extent these expenses and revenues are tracked in a similar manner for Empire's other generating units.

8. This report and order shall become effective on June 29, 2019.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris 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 Missouri-American Water)	
Company for Certificates of Convenience and)	
Necessity Authorizing it to Install, Own, Acquire,	)	<u>File No. SA-2019-0334</u>
Construct, Operate, Control, Manage and)	
Maintain a Sewer System in an area of Callaway)	
County, Missouri (Hillers Creek Association))	

**ORDER GRANTING CERTIFICATE OF
CONVENIENCE AND NECESSITY AND 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 economically feasible; and (5) the service must promote the public interest.⁶ 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).

§21.1. Public interest

The Commission may grant a sewer corporation a certificate of convenience and necessity to operate after determining that the construction or operation are either “necessary or convenient for the public service.” Citing Section 393.170.3 RSMO 2016.

EVIDENCE, PRACTICE AND PROCEDURE

§23 Notice and hearing

Where no party has requested an evidentiary hearing no law requires one, this action is not a contested case, and the Commission need not separately state its findings of fact. Citing *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989); and Section 536.010(4), RSMO 2016.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 10th day of July, 2019.

In the Matter of the Missouri-American Water)
Company for Certificates of Convenience and)
Necessity Authorizing it to Install, Own, Acquire,)
Construct, Operate, Control, Manage and Maintain)
a Sewer System in an area of Callaway County,)
Missouri (Hillers Creek Association))

File No.: SA-2019-0334

**ORDER GRANTING CERTIFICATE
OF CONVENIENCE AND NECESSITY
AND WAIVER**

Issue Date: July 10, 2019

Effective Date: August 9, 2019

On May 2, 2019, Missouri-American Water Company (“MAWC”) filed an Application and Motion for Waiver (“Application”) with the Missouri Public Service Commission (“Commission”) seeking a certificate of convenience and necessity (“CCN”) for MAWC to install, own, acquire, construct, operate, control, manage and maintain a sewer system now owned and operated by Hillers Creek Association Sewer System (the “Association”) in Callaway County, Missouri, in a subdivision known as Hillers Creek. The Application also requested a waiver of the 60-day notice requirements of Rule 4 CSR 240-4.017(1).

With the acquisition, MAWC will acquire the Association’s sewage treatment system serving approximately 43 residential customers in the Hillers Creek subdivision. The sewage treatment system is owned by its current customers, and those customers collectively made the decision to sell the system to MAWC after a petition to accept those

terms was circulated among all customers. That petition proposed to adopt MAWC's existing monthly sewer rates and contained signatures representing 32 customers, or approximately 75% of all of the customers. It was approved per the *Meeting Minutes for the April 28, 2019, Hillers Creek Sewer System Annual Meeting*. The current customers own the sewer system and collectively made the decision to sell the system to MAWC per the terms and conditions of the Asset Purchase Agreement included in the Application.

On May 5, 2019, the Commission issued its *Order Directing Notice* that set a deadline for applications to intervene. No application was filed. On May 28, 2019, the Commission ordered its Staff ("Staff") to file a recommendation on the Application. On June 27, 2019, Staff filed its recommendation and supporting memorandum ("Staff's Recommendation"), recommending that the Commission approve the sale of the sewer utility by the Association to MAWC and approve the issuance of a CCN to MAWC for a more limited service area than originally requested,¹ subject to certain conditions. Staff advises the Commission to issue an order that:

1. Approves the CCN for MAWC to provide sewer service in the proposed Hillers Creek service area as set out in Attachments A, B, and C of Staff's Memorandum in support of its Recommendation, as modified and outlined in the conditions below;
2. Approves MAWC's monthly residential flat rate of \$58.13 to apply to Hillers Creek;

¹ In its Application, MAWC requested an approved area that extended well beyond the Hillers Creek subdivision. However, after discussion, the Staff and MAWC settled upon the service area described in Attachments A, B, and C of Staff's Memorandum in support of its Recommendation.

3. Requires MAWC to submit new and revised tariff sheets, to become effective *before* closing on the assets, that include a service area map, a service area written description and sewer rates applicable to sewer service in its Hillers Creek service area to be included in its sewer tariff P.S.C. MO No. 26;
4. Requires MAWC to notify the Commission of closing on the assets within five (5) days after such closing;
5. If closing on the sewer system assets does not take place within thirty (30) days following the effective date of the Commission's order approving such, requires MAWC 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 assets will not occur;
6. If MAWC determines that a transfer of the assets will not occur, requires MAWC 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 requires MAWC to submit tariff sheets as appropriate and necessary that would cancel service area maps, descriptions and rates applicable to the Hillers Creek service area in its sewer tariff;
7. Requires MAWC to keep its financial books and records for plant-in-service and operating expenses as related to the Hillers Creek operations in accordance with the NARUC Uniform System of Accounts;

8. Adopts for the Hillers Creek assets the depreciation rates ordered for MAWC in File No. WR-2017-0285;
9. Requires MAWC to obtain from the Association, prior to or at closing, all available plant-in-service related 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;
10. 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;
11. Requires MAWC to provide training to its call center personnel regarding rates and rules applicable to the Hillers Creek customers;
12. Requires MAWC to include the Hillers Creek customers in its established monthly reporting to the Customer Experience Department Staff on customer service and billing issues, on an ongoing basis, after closing on the assets;
13. Requires MAWC to distribute to the Hillers Creek customers an information 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;

14. Requires MAWC to provide to the Customer Experience Department Staff an example of its actual communication with the Hillers Creek customers regarding its acquisition and operation of the sewer system assets, and how customers may reach MAWC, within ten (10) days after closing on the assets;
15. Requires 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 after closing on the assets; and
16. Requires MAWC to file notice in this case outlining completion of the above-described training, customer communications, and notifications within ten (10) days after such communications and notifications.

MAWC did not file an objection to Staff's Recommendation, and no other party objected to the Staff's Recommendation. Further, no party has requested an evidentiary hearing in this matter and no law requires one.² Therefore, this action is not a contested case,³ 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 or operation are either "necessary or convenient for the public service."⁴ MAWC is a sewer corporation under Missouri law,⁵ subject to the regulation, supervision and control of the Commission with regard to providing sewer service to the public. The Commission articulated the specific

² See *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

³ Section 536.010(4), RSMO 2016.

⁴ Section 393.170.3 RSMO 2000.

⁵ Section 386.020(49), RSMO 2016

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 public interest.⁶

If the requested certificate is granted and the proposed sale and transfer occurs, those customers currently being served by the Association will receive their sewer service from MAWC. MAWC now provides water service to more than 457,000 customers and sewer service to more than 13,000 customers in several service areas throughout Missouri. In recent years, MAWC has acquired several small existing water and sewer systems. MAWC's size and its ability to gain access to the financial resources necessary to maintain or improve service will benefit customers currently served by the Association. The Commission has been satisfied with MAWC's technical, management, and financial capabilities in previous CCN and transfer of asset cases, and finds the same in regard to the Association in this case. MAWC has demonstrated over many years that it has adequate resources to operate utility systems that it owns, to acquire new systems, to undertake construction of new systems and expansions of existing systems, to plan and undertake scheduled capital improvements, and to respond and resolve emergency issues in a timely manner when such situations arise.

⁶ 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.).

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 interest for MAWC to provide water service to the customers currently being served by the Association.

If the proposed sale and transfer is approved, those customers currently being served by the Association will receive their sewer service from MAWC. The Commission further finds that the application of MAWC's monthly residential flat rate of \$58.13 to Hillers Creek is just and reasonable.⁷ Consequently, based on the Commission's independent and impartial review of the verified filings, the Commission will grant MAWC the certificate of convenience and necessity to provide water service within the proposed service area, subject to the conditions described above. In making these findings, the Commission is making no ratemaking determination regarding any potential future regulatory oversight.

Rule 4 CSR 240-4.017 (1)(D) provides that a party may request a waiver of the 60-day notice requirement of the rule for good cause. It states that "[g]ood 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 the commission within the prior one hundred fifty (150) days regarding any substantive issue likely to be in the case" MAWC's verified

⁷ Staff reports that the president of the Association stated that a current rate of \$66 per quarter was adequate only for direct operating expenses and did not include such expenses as return on capital investment, depreciation, and billing costs. Thus, the \$58.13 per month rate here approved will result in a substantial increase in rates. The Staff reports that while undertaking the decision to sell the sewer system, the current customers (who all are also the current owners) were aware of the proposal for them to be converted to MAWC's existing monthly rates for sewer rates if the sale occurred and were aware of the amount of those rates. Pages 3-4, Memorandum in support of Staff Recommendation.

Application so states. The Commission finds good cause to waive the 60-day notice requirement.

The COMMISSION ORDERS THAT:

1. The 60-days' notice requirements of Rule 4 CSR 240.4.017(1) are waived, and Missouri-American Water Company is granted leave to proceed on its Application and Motion for Waiver.

2. Missouri-American Water Company is granted a certificate of convenience and necessity to provide water service within the authorized service area as more particularly described in Attachments A, B, and C of Staff's Memorandum in support of its Recommendation, subject to the conditions described in the body of this order.

3. Missouri-American Water, Company is authorized to acquire the assets of Hillers Creek Association Sewer System identified in the Application.

4. Missouri-American Water Company is authorized to take all 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 August 9, 2019.



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.

Graham, Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Liberty Utilities)
(Missouri Water) LLC and Franklin County)
Water, Inc. for Liberty to Acquire Certain Water)
Assets of Franklin County and for a Certificate of)
Convenience and Necessity)

File No. WA-2019-0036

**ORDER APPROVING TRANSFER OF ASSETS AND GRANTING
CERTIFICATE OF CONVENIENCE AND NECESSITY**

CERTIFICATES

§21 Grant or refusal of certificate generally

The Commission may grant a water corporation a CCN to operate after determining that the construction and operation are either “necessary or convenient for the public service.” The Commission applies the five “Tartan Criteria” established in *In the Matter of Tartan Energy Company, et al.*, 3 Mo. PSC 3d 173, 177 (1994) when deciding whether to grant a new CCN. The criteria are: (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.

§53 Consolidation or merger

Missouri law requires that “[n]o. . .water corporation. . .shall merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do.” The Commission will deny the application only 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 10th day of July, 2019.

In the Matter of the Application of Liberty Utilities)
(Missouri Water) LLC and Franklin County Water)
Company Inc. for Liberty Utilities to Acquire)
Certain Water Assets of Franklin County Water)

File No.: WA-2019-0036

**ORDER APPROVING TRANSFER OF ASSETS
AND GRANTING CERTIFICATE OF
CONVENIENCE AND NECESSITY**

Issue Date: July 10, 2019

Effective Date: August 9, 2019

On March 13, 2019, Liberty Utilities (Missouri Water) LLC d/b/a Liberty Utilities (hereinafter, "Liberty Utilities") filed an *Application for Authority to Transfer Utility Assets and Certificated Area of Franklin County* ("Application") with the Missouri Public Service Commission ("Commission") seeking an order authorizing Liberty Utilities to acquire the franchise and operating assets of Franklin County Water Company, Inc. ("Franklin County"), including its Certificate of Convenience and Necessity ("CCN"). With the transfer, Liberty Utilities would acquire all customers served by Franklin County, substantially all operating assets used to serve those customers, and all CCNs issued by the Commission.

The Franklin County water distribution assets are located in rural Franklin County, Missouri, near the City of St. Clair, Missouri, and serve approximately 189 single-family residential customers in an area known as "Lake Saint Clair." Liberty Utilities and Franklin County have entered into an Asset Purchase Agreement ("Agreement") providing for the

sale of the assets, property and real estate used in and comprising Franklin County's water distribution system, all as set out in the Agreement.

On March 19, 2019, the Commission issued its *Order Directing Notice and Order Directing Filing*. No applications to intervene were filed. Staff filed a *Report and Recommendation* ("Staff's Recommendation") on June 10, 2019, recommending that the Commission approve Franklin County's sale and transfer of utility assets and CCN to Liberty Utilities subject to conditions. Staff, however, did not support the consolidation of rates described in the Application. Liberty Utilities filed no objection to Staff's Recommendation. Staff recommends that the Commission do the following:

1. Authorize Franklin County to sell and transfer utility assets to Liberty Utilities and transfer the CCN currently held by Franklin County to Liberty Utilities upon closing on any of the respective systems;
2. Retain the existing Franklin County rates of \$5.70 customer charge and \$2.61 commodity charge;
3. Upon closing on the Franklin County water system, authorize Franklin County to cease providing service, and authorize Liberty Utilities to begin providing service;
4. Require Liberty Utilities to submit tariff sheets *prior* to closing on Franklin County assets, to include existing Franklin County water rates, a service area map, and service area written description, to be included in its EFIS water tariff P.S.C. MO No. 14, all applicable specifically to water service in its Franklin County service area;

5. Require Liberty Utilities to create and keep financial books and records for plant-in-service, revenues, and operating expenses (including invoices) in accordance with the NARUC Uniform System of Accounts;
6. Require Liberty Utilities, going forward, to keep and make available for audit and review all invoices and documents pertaining to the capital costs of constructing and installing the water and sewer utility assets;
7. Approve depreciation rates for water and sewer utility plant accounts as described in Attachment 1 of Staff's "Memorandum" attached to its Recommendation;
8. Make no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters in any later proceeding;
9. Require Liberty Utilities to provide to the Customer Experience Department Staff an example of its actual communication with the Franklin County customers regarding its acquisition and operations of the Franklin County water system assets, and how customers may reach Liberty Utilities regarding water matters, within ten (10) days after closing on the assets;
10. Require Liberty Utilities to include the Franklin County customers in its established monthly reporting to the Customer Experience Department Staff. Such reporting has been previously ordered by the Commission's Order Approving Application in WO-2011-0350 and is currently provided by Liberty Utilities. Such reporting includes, but is not limited to, such metrics as: 1) Calls Offered, 2) Call Center staffing, 3) Average Speed of Answer, 4) Abandoned Call Rate, 5) Number of Estimated Bills, 6) Number of

Consecutive Estimated Bills, and 7) calls answered by IVR (Integrative/Interactive Voice Response Unit);

11. Require Liberty Utilities to distribute an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its water service to the Franklin County customers prior to the first billing from Liberty Utilities, consistent with the requirements of Commission Rule 4 CSR 240-13.040(3)(A-K); and
12. Require Liberty Utilities to provide to the Customer Experience Department Staff a sample of (10) billing statements from each of the first three months of bills issued to Franklin County customers within thirty (30) days of such billing.

Liberty Utilities filed no comments opposing Staff's Recommendation.

Liberty Utilities is a water corporation under Missouri law,¹ subject to the regulation, supervision and control of the Commission with regard to providing water service to the public. The Commission has jurisdiction to rule on the Application because Missouri law requires that "[n]o. . .water corporation. . .shall merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do."² The Commission will deny the application only if approval would be detrimental to the public interest.³

¹ Section 386.020(59), RSMO 2016

² Section 393.190.1, RSMO 2016.

³ *State ex rel. City of St. Louis v. Public Service Comm'n of Missouri*, 73 S.W.2d 393, 400 (Mo. 1934).

Liberty Utilities now serves approximately 3,300 water customers in Missouri. Liberty Utilities' greater size and its ability to gain access to the financial resources necessary to maintain or improve service will benefit customers currently served by the much smaller Franklin County. Once the proposed sale and transfer is approved, those customers currently being served by Franklin County will receive their water service from Liberty Utilities.

Based upon the information provided in the Application and upon the verified Recommendation and Memorandum of Staff, the Commission finds that the proposed transfer of assets set forth in the Agreement and subject to Staff's proposed conditions is not detrimental to the public interest. The Commission finds, however, that Liberty Utilities' request for a rate increase for Franklin County customers as a part of the acquisition is not reasonable. The Commission finds that the existing Franklin County rates of a \$5.70 customer charge and a \$2.61 commodity charge are just and reasonable.

With these rates and subject to the conditions recommended by Staff, the Commission finds that the *Application* should be approved, with the exception that the request to transfer Franklin County's certificate of convenience and necessity to Liberty Utilities cannot be granted. The Application requests transfer of Franklin County's CCN to Liberty Utilities, and the Staff has acceded to that request. A CCN, like a driver's license, is based upon the licensee's personal qualifications and is non-assignable. The Commission, however, will *sua sponte* consider whether to grant Liberty Utilities a CCN for the Franklin County service area.

The Commission may grant a water corporation a CCN to operate after determining that the construction and operation are either "necessary or convenient for

the public service.”⁴ The Commission applies the five “Tartan Criteria” established in *In the Matter of Tartan Energy Company, et al.*, 3 Mo. PSC 3d 173, 177 (1994) when deciding whether to grant a new CCN. The criteria are: (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. For all of the reasons that the Commission finds for authorizing the transfer of the water operation assets to Liberty Utilities and stated above, the Commission finds that the factors for granting a certificate of convenience and necessity to Liberty Utilities have been satisfied. The Commission will grant Liberty Utilities a certificate of convenience and necessity for the Franklin County service area.

The COMMISSION ORDERS THAT:

1. Subject to the conditions recommended by the Commission Staff which are delineated in the body of this Order, the *Application of Liberty Utilities (Missouri Water) LLC d/b/a Liberty Utilities* is granted, except as stated in the next paragraph;
2. Liberty Utilities shall retain the existing Franklin County rates of a \$5.70 customer charge and a \$2.61 commodity charge. That part of the *Application* requesting the transfer of Franklin County’s CCN to Liberty Utilities is denied, and Liberty Utilities is granted a CCN as stated below;
3. Franklin County is authorized to sell and transfer to Liberty Utilities and Liberty Utilities is authorized to acquire the water system located in Franklin County,

⁴ Section 393.170.3, RSMO.

Missouri, described in the *Application* and the Asset Purchase Agreement entered into between those parties;

4. Liberty Utilities is granted a Certificate of Convenience and Necessity to provide water service within the Franklin County 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;

5. Liberty Utilities and Franklin County are authorized to do and perform, or cause to be done and performed, all such 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;

6. In issuing this order, the Commission is making no ratemaking determination regarding any potential future regulatory oversight;

7. This order shall become effective on August 9, 2019



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.

Graham, Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of The Empire)
District Electric Company and Ozark Electric)
Cooperative for Approval of a Written Territorial)
Agreement Designating the Boundaries of)
Exclusive Service Areas within Christian County)

File No. EO-2019-0381

**REPORT AND ORDER APPROVING
THIRD TERRITORIAL AGREEMENT**

ELECTRIC

§6 Territorial agreements

Pursuant to subsections 394.312.3 and .5 RSMo 2016, the Commission may approve the Agreement’s service area designation if it is in the public interest and the resulting agreement in total is not detrimental to the public interest.

§6 Territorial agreements

§11 Territorial agreements

Although the Commission has limited jurisdiction over rural electrical cooperatives, because the Commission has jurisdiction over all territorial agreements, Ozark Electric is subject to the Commission’s jurisdiction in this case. Section 394.312.4, RSMo, states, in relevant part: “[B]efore becoming effective, all territorial agreements entered into under the provision of this section, including any subsequent amendments to such agreements, or the transfer or assignment of the agreement or any rights or obligation of any party to an agreement, shall receive the approval of the public service commission by report and order. . . .”

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 31st day of July, 2019.

In the Matter of the Application of)
The Empire District Electric Company and)
Ozark Electric Cooperative for Approval of a)
Written Territorial Agreement Designating)
the Boundaries of Exclusive Service)

File No. EO-2019-0381

**REPORT AND ORDER APPROVING
THIRD TERRITORIAL AGREEMENT**

Issue Date: July 31, 2019

Effective Date: August 30, 2019

This order approves the Third Territorial Agreement (“Agreement”) between Empire District Electric Company (“Empire”) and Ozark Electric Cooperative (“Ozark Electric”) (collectively, “Joint Applicants”). Empire has a franchise with the city of Ozark (the “City”), Christian County, Missouri, to provide electric service to structures within the City’s limits. The Agreement designates a parcel of land (the “parcel”) within that area to be exclusively served by Ozark Electric.

Findings of Fact

1. Ozark Electric is a rural electric cooperative organized under Chapter 394 RSMo, with its headquarters in Mount Vernon, Christian County, Missouri. Ozark Electric provides electricity service to its members in Christian and other Missouri counties.

2. Empire is a Kansas corporation with its principal offices in Joplin, Missouri. Empire provides electricity and water services in Missouri.

3. Empire has a franchise with the City to provide electric service to structures within its limits, and the parcel which is the subject of the territorial agreement is in the City.

4. Ozark Electric has been providing electric service to structures on the parcel since October 1980, prior and subsequently to its annexation into the City's limits.

5. Ozark Electric has received a request to provide electricity for a sign on the parcel, but this sign is a new structure.

6. Although Empire services the structures surrounding the parcel, Empire would have to install more than 200 feet of extension to get electricity to the new sign. Ozark Electric can provide the service with a simple line drop from existing facilities.

7. Addressing these circumstances, the joint applicants have entered into the Agreement¹ as follows:

- the Agreement gives Ozark Electric an exclusive right to provide permanent service to all structures now or in the future located on the parcel;²
- the Agreement contains the parcel's legal description;³
- the Agreement defines "permanent service" to carry the meaning as found in Section 394.315, RSMo;⁴
- the Agreement defines "structure" to carry the meaning found in Section 394.315, RSMo, in effect at the relevant time or, in the absence of such

¹ Appendix A of the Joint Application

² Section 3a of the Agreement

³ Section 1 of the Agreement

⁴ Section 2b of the Agreement

statutory definition, to mean “anything using or designed to use electricity that is located in the [parcel]”;⁵

- the Agreement defines “new structure” with respect to the Agreement’s effective date;⁶
- the Agreement’s “effective date” is 12:01 a.m. on the effective date of the Commission’s Report and Order approving the Agreement, unless the order is challenged as set out in detail in the Agreement;⁷
- the Agreement’s initial term is thirty-five years, with automatic renewals for successive ten-year periods absent notification to the parties, the Commission, and the Office of Public Council at least a year before the end of a period;⁸

8. The Agreement allows the parties to maximize the use of their respective facilities and avoid duplicative facilities, while still providing the requested electric service to the new sign.

9. The Agreement includes no exchange of electric facilities or current customers. The Staff of the Commission states and the Commission finds that the joint applicants will continue serving all of their current customers even if those customers “should lie in an exclusive service territory of the other electric service provider.”⁹

10. The parties filed their Joint Application on June 4, 2019. On June 6 and June 10, 2019, the Commission issued its Orders Directing Notice, Setting Intervention

⁵ Section 2a of the Agreement

⁶ Section 2c of the Agreement

⁷ Section 2d of the Agreement

⁸ Section 7 of the Agreement

⁹ Staff Recommendation, Appendix A, pp. 1-2

Deadline and Directing Staff Recommendation. No requests to intervene have been filed. On July 15, 2019, Staff filed a recommendation that the Commission approve the Agreement and order Empire to file revised tariff sheets reflecting service to the parcel. The Office of Public Counsel has not objected to the Application.

Conclusions of Law

A. Section 394.312, RSMo 2016, gives the Commission jurisdiction over the Agreement.

B. Empire is an electrical corporation subject to the jurisdiction of the Commission per Chapters 386 and 393, RSMo.

C. Although the Commission has limited jurisdiction over rural electrical cooperatives, because the Commission has jurisdiction over all territorial agreements, Ozark Electric is subject to the Commission's jurisdiction in this case.¹⁰

D. Despite the franchise agreement between Empire and the City, Ozark Electric has retained its electric service rights to the current structures on the parcel located within the City's limits.¹¹

E. Ozark Electric and Empire must enter into the Agreement and obtain the Commission's approval because the sign which Ozark Electric and its customer want Ozark Electric to service is a new structure.¹²

¹⁰ Section 394.312.4, RSMo, states, in relevant part: "[B]efore becoming effective, all territorial agreements entered into under the provision of this section, including any subsequent amendments to such agreements, or the transfer or assignment of the agreement or any rights or obligation of any party to an agreement, shall receive the approval of the public service commission by report and order. . . ."

¹¹ Section 394.315.2, RSMo, states, in relevant part: "Once a rural electric cooperative, or its predecessor in interest, 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. . . ." (emphasis added).

¹² See *id.*

F. Pursuant to subsections 394.312.3 and .5 RSMo 2016, the Commission may approve the Agreement's service area designation if it is in the public interest and the resulting agreement in total is not detrimental to the public interest.

G. Section 394.312.5, RSMo 2016, provides that the Commission must hold an evidentiary hearing on a proposed territorial agreement unless an agreement is made between the parties and no one requests a hearing. Since the Agreement has been reached and no hearing has been requested, none is necessary for the Commission to make a determination.¹³ Based upon the uncontroverted verified pleadings and Staff's recommendation, the Commission now determines that all material facts are in accordance with its decision.

Decision

Rather than Empire's running a new line 200 or so feet onto Ozark Electric's parcel to service a new sign there, the Agreement allows Ozark Electric simply to drop a line from its existing facilities, thus allowing for more efficient electric service to the sign. Thus, the Agreement does not require Empire to extend service or provide new facilities to new areas and forces no customer to change service providers. The Commission concludes that the Agreement's service area designation is in the public interest and that the Agreement in total is not detrimental to the public interest. The Commission will approve it.

¹³ *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).

THE COMMISSION ORDERS THAT:

1. The Third Territorial Agreement set out as Appendix A in the Joint Application filed on June 7, 2019, of Empire District Electric Company and Ozark Electric Cooperative is approved.
2. The Empire District Electric Company and Ozark Electric Cooperative are authorized to perform the Third Territorial Agreement and legal acts and things necessary to performance.
3. The Empire District Electric Company shall file revised tariff sheets to reflect the Third Territorial Agreement.
4. This order shall be effective on August 30, 2019.

**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.

Graham, Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Joint Motion of Farmers')
Electric Cooperative, Inc. and The City of)
Gallatin for Approval of a First Addendum to the)
Parties' Territorial Agreement Designating the)
Boundaries of each Electric Service Supplier)
within Portions of Daviess County)

File No. EO-2019-0396

**REPORT AND ORDER APPROVING FIRST ADDENDUM TO
TERRITORIAL AGREEMENT**

ELECTRIC

§6 Territorial agreements

Pursuant to subsections 394.312.3 and .5, RSMo 2016, the Commission may approve the designation of electric service areas if in the public interest and approve a territorial agreement in total if not detrimental to the public interest.

§11 Territorial agreements

Section 394.312, RSMo 2016, gives the Commission jurisdiction over retail electric service territorial agreements, including those between rural electric cooperatives and municipally owned utilities, and including any subsequent amendments to such agreements. Section 394.312.1 and 4, RSMo.

EVIDENCE, PRACTICE AND PROCEDURE

§23 Notice and hearing

Section 394.312.5, RSMo 2016, provides the Commission must hold an evidentiary hearing on a proposed territorial agreement unless an agreement is made between the parties and no one requests a hearing. Since an agreement was made and no hearing was requested, the Commission may make a determination without an evidentiary hearing. *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).

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 7th day of August, 2019.

In the Matter of the Joint Motion of Farmers')
Electric Cooperative, Inc. and the City of)
Gallatin for Approval of a First Addendum)
for the Parties' Territorial Agreement)
Designating the Boundaries of each Electric)
Service Supplier within Portions of Daviess County)

FILE NO.: EO-2019-0396

**REPORT AND ORDER APPROVING FIRST ADDENDUM TO
TERRITORIAL AGREEMENT**

Issue Date: August 7, 2019

Effective Date: September 6, 2019

This order approves the First Addendum to the Territorial Agreement between Farmers' Electric Cooperative, Inc., ("Farmers'") and the City of Gallatin ("Gallatin"), allowing Farmers' to provide retail electric service to a parcel of land (the "Holcomb Tract")¹ in the corporate limits of the City of Gallatin, Daviess County, Missouri.

Findings of Facts

1. Farmers' is a Chapter 394 rural electric cooperative that provides electrical service to its members. Its principal place of business is in Chillicothe, Missouri. Farmers' is authorized to conduct business in Missouri.

2. Gallatin is a fourth class Missouri city under Section 79.010, RSMo. Gallatin provides electrical, water and sewer service to customers in its municipal service area.

¹ The tract's legal description is set out in Parts 1.B, 1.C and 5.A of the *Amended Appendix C to Territorial Agreement* filed on July 15, 2019.

3. On February 18, 1997,² the Commission approved a territorial agreement between Farmers' and Gallatin.³ In doing so, the Commission found the agreement was not detrimental to the public interest because it would prevent facility duplication, promote efficiency and safety, reduce customer confusion, and allow both suppliers to rationally plan their distribution systems.⁴

4. The territorial agreement has an addendum procedure that allows the parties to amend their service areas on a case-by-case basis. This procedure sets a 45-day deadline for objections from the Commission's Staff or the Office of Public Counsel. Failure to object timely is deemed approval.

5. On June 17, 2019,⁵ Farmers' and Gallatin filed a Joint Motion for Approval of First Addendum, whose purpose was to add the Holcomb Tract to Farmers' service area. On July 15, an Amended Appendix C to Territorial Agreement was filed ("Amended Appendix C").⁶

5. Because Farmers' has existing electrical facilities alongside a portion of the Holcomb Tract, its inclusion in the Farmers' service area will require less new facility construction and promote safe and efficient service to the tract.

6. The First Addendum to the Territorial Agreement requires no customer to change electricity supplier.

8. On June 17, the Commission ordered notice to potentially interested persons and set July 2 as the deadline for intervention requests. None has been filed.

² File No. EO-97-181

³ Appendix B of the Joint Motion for Approval of First Addendum filed on June 17.

⁴ File No. EO-97-181, at 26.

⁵ All dates are in 2019, unless otherwise indicated.

⁶ The First Addendum to Territorial Agreement will be referred to as the "first addendum," and "first addendum" will refer collectively to Appendices A, B, and D of the joint motion filed on June 17, together with the amended Appendix C filed on July 15.

The Commission also directed Staff to file a recommendation regarding the joint application by July 17.

9. On July 17, Staff filed its recommendation that the Commission approve the First Addendum and authorize the parties to perform it.

10. Based on the information provided in the verified Joint Motion for Approval of First Addendum, the Amended Appendix C to Territorial Agreement filed on July 15 and Staff's recommendation, the Commission finds that the designation of the electric service area stated in the First Addendum is in the public interest and that the First Addendum in total is not detrimental to the public interest.

Conclusions of Law

A. Section 394.312, RSMo 2016, gives the Commission jurisdiction over retail electric service territorial agreements, including those between rural electric cooperatives and municipally owned utilities, and including any subsequent amendments to such agreements.⁷

B. Pursuant to subsections 394.312.3 and .5, RSMo 2016, the Commission may approve the designation of electric service areas if in the public interest and approve a territorial agreement in total if not detrimental to the public interest.

C. The Office of Public Counsel did not file a recommendation or objection within 45 days of the filing of the First Addendum and by the terms of the Territorial Agreement is deemed to have approved the First Addendum.

D. Section 394.312.5, RSMo 2016, provides the Commission must hold an evidentiary hearing on a proposed territorial agreement unless an agreement is made

⁷ Section 394.312.1 and .4, RSMo.

between the parties and no one requests a hearing. Since an agreement was made and no hearing was requested, the Commission may make a determination without an evidentiary hearing.⁸ Based upon the uncontroverted verified pleadings and Staff's recommendation, the Commission determines that all material facts are in accordance with its decision.

Decision

The Commission concludes the electric service area designation made in the First Addendum is in the public interest and the territorial agreement with its First Addendum, in total, is not detrimental to the public interest. The Commission will approve the First Addendum to the Territorial Agreement.

THE COMMISSION ORDERS THAT:

1. The First Addendum to Territorial Agreement as amended by the Amended Appendix C to Territorial Agreement filed on July 15, 2019, is approved.
2. Farmers' Electric Cooperative, Inc., and the City of Gallatin are authorized to perform the First Addendum and all legal acts and things necessary to performance.

⁸ *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. This order shall become effective on September 6, 2019.

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.

Graham, Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of The Empire District)
Electric Company, The Empire District Gas Company,)
Liberty Utilities (Midstates Natural Gas) Corp., and) **File No. AO-2018-0179**
Liberty Utilities (Missouri Water) LLC for an Affiliate)
Transactions Rule Variance)

REPORT AND ORDER

ELECTRIC

§38 Taxes

A variance from the requirements of competitive bidding was approved by the Commission as the safeguards agreed to by the company offer similar consumer protections as those contained in the affiliate transaction rule.

§38 Taxes

A variance from the requirements of competitive bidding was approved by the Commission as the costs of issuing debt were less under the variance proposal.

§38 Taxes

Approval of a money pool requires a rule variance. A rule variance requires the Commission find good cause. Here, parties testified to at least four substantial reasons showing good cause related to the requested waiver of the requirement of competitive bids anticipated: 1) lower borrowing interest cost; 2) lower borrowing administrative costs due to lower transactional and documentation requirements; 3) higher interest and investment revenue from excess cash; and 4) having an immediately available line of credit.

EVIDENCE, PRACTICE AND PROCEDURE

§8 Stipulation

A nonunanimous stipulation and agreement was not approved in the Report and Order as it was objected to by a non-signatory party. The agreement, by rule, then becomes a statement of position of the signatory parties.

EXPENSE

§61 Payments to affiliated interests

A variance from the requirements of competitive bidding was approved by the Commission as the safeguards agreed to by the company offer similar consumer protections as those contained in the affiliate transaction rule.

§61 Payments to affiliated interests

A variance from the requirements of competitive bidding was approved by the Commission as the costs of issuing debt were less under the variance proposal.

§61 Payments to affiliated interests

Approval of a money pool requires a rule variance. A rule variance requires the Commission find good cause. Here, parties testified to at least four substantial reasons showing good cause related to the requested waiver of the requirement of competitive bids anticipated: 1) lower borrowing interest cost; 2) lower borrowing administrative costs due to lower transactional and documentation requirements; 3) higher interest and investment revenue from excess cash; and 4) having an immediately available line of credit.

GAS**§32 Financing practices****§78 Payments to affiliated interests**

A variance from the requirements of competitive bidding was approved by the Commission as the safeguards agreed to by the company offer similar consumer protections as those contained in the affiliate transaction rule.

§32 Financing practices**§78 Payments to affiliated interests**

A variance from the requirements of competitive bidding was approved by the Commission as the costs of issuing debt were less under the variance proposal.

§32 Financing practices**§78 Payments to affiliated interests**

Approval of a money pool requires a rule variance. A rule variance requires the Commission find good cause. Here, parties testified to at least four substantial reasons showing good cause related to the requested waiver of the requirement of competitive bids anticipated: 1) lower borrowing interest cost; 2) lower borrowing administrative costs due to lower transactional and documentation requirements; 3) higher interest and investment revenue from excess cash; and 4) having an immediately available line of credit.

SECURITY ISSUES**§50 Loans to affiliated interests**

A variance from the requirements of competitive bidding was approved by the Commission as the safeguards agreed to by the company offer similar consumer protections as those contained in the affiliate transaction rule.

§50 Loans to affiliated interests

A variance from the requirements of competitive bidding was approved by the Commission as the costs of issuing debt were less under the variance proposal.

§50 Loans to affiliated interests

Approval of a money pool requires a rule variance. A rule variance requires the Commission find good cause. Here, parties testified to at least four substantial reasons showing good cause related to the requested waiver of the requirement of competitive bids anticipated: 1) lower borrowing interest cost; 2) lower borrowing administrative costs due to lower transactional and documentation requirements; 3) higher interest and investment revenue from excess cash; and 4) having an immediately available line of credit.

SEWER**§26 Financing practices**

A variance from the requirements of competitive bidding was approved by the Commission as the safeguards agreed to by the company offer similar consumer protections as those contained in the affiliate transaction rule.

§26 Financing practices

A variance from the requirements of competitive bidding was approved by the Commission as the costs of issuing debt were less under the variance proposal.

§26 Financing practices

Approval of a money pool requires a rule variance. A rule variance requires the Commission find good cause. Here, parties testified to at least four substantial reasons showing good cause related to the requested waiver of the requirement of competitive bids anticipated: 1) lower borrowing interest cost; 2) lower borrowing administrative costs due to lower transactional and documentation requirements; 3) higher interest and investment revenue from excess cash; and 4) having an immediately available line of credit.

WATER**§28 Financing practices**

A variance from the requirements of competitive bidding was approved by the Commission as the safeguards agreed to by the company offer similar consumer protections as those contained in the affiliate transaction rule.

§28 Financing practices

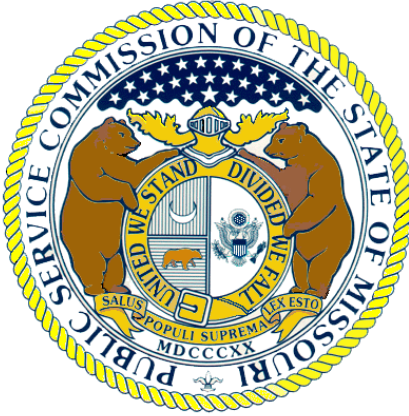
A variance from the requirements of competitive bidding was approved by the Commission as the costs of issuing debt were less under the variance proposal.

§28 Financing practices

Approval of a money pool requires a rule variance. A rule variance requires the Commission find good cause. Here, parties testified to at least four substantial reasons showing good cause related to the requested waiver of the requirement of competitive bids anticipated: 1) lower borrowing interest cost; 2) lower borrowing administrative costs due to lower transactional and documentation requirements; 3) higher interest and

investment revenue from excess cash; and 4) having an immediately available line of credit.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Application of The Empire District)
Electric Company, The Empire District Gas Company,)
Liberty Utilities (Midstates Natural Gas) Corp., and)
Liberty Utilities (Missouri Water) LLC for an Affiliate)
Transactions Rule Variance.)

File No. AO-2018-0179

REPORT AND ORDER

Issue Date: August 15, 2019

Effective Date: September 14, 2019

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of The Empire District Electric Company, The Empire District Gas Company, Liberty Utilities (Midstates Natural Gas) Corp., and Liberty Utilities (Missouri Water) LLC for an Affiliate Transactions Rule Variance.) **File No. AO-2018-0179**

APPEARANCES

The Empire District Electric Company, The Empire District Gas Company, Liberty Utilities (Midstates Natural Gas) Corp., and Liberty Utilities (Missouri Water) LLC:

Diana Carter, Liberty Utilities, 428 Capitol Avenue, Room 303, Jefferson City, Missouri 65101.

Staff of the Missouri Public Service Commission:

Karen Bretz, Senior Counsel, **Steve Dottheim**, Deputy Counsel, **Mark Johnson**, Deputy Counsel, **Kevin Thompson**, Chief Staff Counsel, and **Annabella Attias**, 200 Madison Street, Suite 800, Jefferson City, Missouri 65102.

Office of the Public Counsel:

Nathan Williams, Chief Deputy Public Counsel, 200 Madison Street, Suite 650, Jefferson City, Missouri, 65102.

Regulatory Law Judges: Ron Pridgin and Charles Hatcher

REPORT AND ORDER

I. Procedural History

On December 29, 2017, The Empire District Electric Company (“Empire Electric”), The Empire District Gas Company (“Empire Gas”), Liberty Utilities (Midstates Natural Gas)

Corp. (“Liberty Midstates”), and Liberty Utilities (Missouri Water) LLC (“Liberty Utilities”) (collectively “Applicants”) filed an application seeking a variance from the Commission’s competitive bidding rules for electric and gas utilities (the “Application”).¹ If the requested variance is granted, the holding company parent of Applicants, Liberty Utility Co. (“LUCo”), will seek to establish a Money Pool², distributing loans and investing excess cash of the money pool members without engaging in competitive bidding or cost documentation for those transactions.

The Commission issued notice of the Application and provided an opportunity for interested persons to intervene. No applications to intervene were received.

The Applicants’ original verified Application asked for two variances; one from the competitive bidding requirement³ and one from the asymmetrical pricing requirement.⁴ On May 31, 2018, the Staff of the Commission (“Staff”) filed its Recommendation and Memorandum recommending that the Commission reject the Application. Staff recommended a denial based on a lack of showing of good cause. The Memorandum stated “neither proposed variance by the Applicants meets the standard of being in the best interests of the utilities’ regulated customers.”⁵ The Memorandum further stated,

¹ Commission Rule 4 CSR 240-20.015(3)(A) and 4 CSR 24-40.015(3)(A). The rules are identical, except for exchanging the word ‘electrical’ with ‘gas’.

² The *Application For Variance* defines “money pool” in paragraph 16 as “a cash management arrangement among utilities, under which a utility may make short-term loans (less than 365 days) to other affiliates when they have excess cash, and may make short-term borrowings from other affiliates when they have short-term cash needs. Excess funds will also be invested in short-term high-quality liquid investments (such as money market funds) after borrowing participant needs have been met. LUCo is the administrator of the Money Pool and guarantees all loans by eligible borrowers. . . .”

³ Commission Rule 4 CSR 240-20.015(3)(A) and 4 CSR 24-40.015(3)(A); *see also Application for Variance*, paragraph 15.

⁴ Commission Rule 4 CSR 240-20.015(2)(A) and 4 CSR 24-40.015(2)(A) The rules are identical, except for exchanging the word ‘electrical’ with ‘gas’; *see also Application for Variance*, paragraphs 12-14.

⁵ Memorandum, page 2, footnote 4.

“Applicants have provided no assurance that participation in the Money Pool would not adversely impact Missouri utility customers’ rates.”⁶

Staff filed a *Nonunanimous Stipulation and Agreement* (“Agreement”) on its own and the Applicants’ behalf on January 24, 2019. The Agreement, which waives the competitive bidding requirements, is supported by Staff only if LUCo funds the Money Pool with at least an A2/F2-rated commercial paper program.⁷ The Agreement disposes of the second requested variance by Applicants, the waiver to the asymmetrical pricing requirements.⁸ The Agreement is not being approved in this Order as it becomes a statement of position of the signatory parties upon an objection from a party.⁹

The Office of the Public Counsel (“Public Counsel”) filed its objection to the Agreement on January 28, 2019. The Commission held an evidentiary hearing on June 27, 2019. In total, the Commission admitted the testimony of four witnesses and 19 exhibits into evidence. On June 28, 2019, the Commission directed all parties to file responses to Commission suggestions made at the hearing. Post-hearing briefs were filed by July 18, 2019, with the last filing in the case occurring July 19, 2019, and the case was deemed submitted for the Commission’s decision on that date.¹⁰

⁶ Memorandum, page 2.

⁷ Originally filed as confidential, the information concerning the backing of the Money Pool via a rated commercial paper program is now treated as public information. See Tr. Vol 2, pp.130-131 (where Applicants’ attorney waived confidentiality, stating the information could be public). See also Staff’s Post-Hearing Brief at p. 2; The Office of the Public Counsel’s Initial Brief at p. 19; and Initial Post-Hearing Brief of the Missouri Utilities at p. 4-5 – all of which refer to LUCo’s commercial paper program in publicly available documents.

⁸ *Nonunanimous Stipulation and Agreement*, paragraph 8. In summary, the Applicants will not be transacting with each other or other regulated utilities, each Money Pool transaction will be between LUCo, which is not regulated by the Commission, and a single member of the Money Pool. Therefore, no variance from the rule governing regulated-utility-to-regulated-utility transactions is necessary. See Direct Testimony in Support of Nonunanimous Stipulation and Agreement of Kimberly K. Bolin, p. 7, lines 19-24.

⁹ Commission Rule 4 CSR 240-2.115(2)(D).

¹⁰ “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).

In their Application, Applicants also requested a waiver of the 60-day notice requirement found in Rule 4 CSR 240-4.017(1).¹¹ That request will be ruled on in this Report and Order.

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. Public Counsel “may represent and protect the interests of the public in any proceeding before or appeal from the public service commission.”¹² Public Counsel participated in this matter.

2. 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.¹³

3. Empire Electric is a Kansas corporation engaged in the business of providing electric and water utility services in Missouri. Empire Electric is an “electrical corporation” and a “public utility,” as defined in Sections 386.020(15) and (43), RSMo 2016.¹⁴

4. Empire Gas is a Kansas corporation engaged in the business of providing natural gas service in Missouri. Empire Gas is a “gas corporation” and a “public utility,” as defined in Sections 386.020(18) and (43), RSMo 2016.¹⁵

¹¹ *Application for Variance*, paragraph 24.

¹² Section 386.710(2), RSMo 2016; Commission Rules 4 CSR 240-2.010(10) and (15) and 2.040(2).

¹³ Commission Rules 4 CSR 240-2.010(10) and (21) and 2.040(1).

¹⁴ *Application for Variance*, paragraph 1.

¹⁵ *Application for Variance*, paragraph 2.

5. Liberty Midstates is a Missouri corporation engaged in the business of providing natural gas service in Missouri. Liberty Midstates is a “gas corporation” and a “public utility”, as defined in Sections 386.020(18) and (43), RSMo 2016.¹⁶

6. Liberty Utilities is a Missouri limited liability company engaged in the business of providing water and sewer service in Missouri. Liberty Utilities is a water and sewer utility subject to the jurisdiction of the Commission.¹⁷

7. Applicants are affiliates of each other and subsidiaries of the parent holding company LUCo.¹⁸

8. The Commission’s affiliate transaction rules require competitive bids when obtaining services from an affiliated entity.¹⁹

9. The Applicants desire to participate in a Money Pool.²⁰

10. A Money Pool is a cash management arrangement amongst utilities, under which a utility may make short-term loans (less than 365 days) to affiliates when it has excess cash, and may make short-term borrowings from affiliates when it has short-term cash needs. Excess funds will also be invested in short-term high-quality liquid investments (such as money market funds) after the needs of borrowing participants have been met.²¹

11. LUCo would administrator the Applicants’ Money Pool and guarantee all loans by eligible borrowers.”²²

12. LUCo currently has a Money Pool backed by a \$500 million line-of-credit.²³

¹⁶ *Application for Variance*, paragraph 3.

¹⁷ *Application for Variance*, paragraph 4.

¹⁸ *Application for Variance*, paragraph 6.

¹⁹ Commission Rule 4 CSR 240-20.015(3)(A) and 4 CSR 24-40.015(3)(A).

²⁰ *Application for Variance*, paragraph 15.

²¹ *Application for Variance*, paragraph 16.

²² *Application for Variance*, paragraph 16.

²³ Direct Testimony of Mark T. Timpe, p. 9, lines 13-15.

13. LUCo is in the process of establishing a Money Pool backed by commercial paper.²⁴

14. Commercial paper is short-term unsecured debt sold by large corporations to institutional investors and other corporations. Being that commercial paper is unsecured, it is a market that is only available to companies with strong credit ratings (i.e. at least investment grade).²⁵ Spire Missouri, Ameren Missouri, Kansas City Power & Light, and KCP&L Greater Missouri Operations all have access to commercial paper.²⁶

15. The Applicants do not seek approval of the Money Pool agreement between LUCo and the Applicants.²⁷

16. One anticipated advantage of the Money Pool is lower borrowing costs for participants in the Money Pool when compared to other commercial lending markets since the commercial paper market effectively provides continuous bidding²⁸ with borrowing rates expected to be as low or lower than rates Applicants could obtain elsewhere²⁹, and with Applicants paying the lowest rate available under the LUCo Credit Agreement.³⁰

17. A second anticipated advantage of the Money Pool is that it will likely reduce borrowing costs by avoiding competitive bidding and associated record keeping for individual transactions on a daily basis.³¹

²⁴ Surrebuttal Testimony of Kimberly K. Bolin, p. 2, lines 20-21.

²⁵ Direct Testimony in Support of Nonunanimous Stipulation and Agreement of David Murray, CFA, p. 1.

²⁶ Direct Testimony in Support of Nonunanimous Stipulation and Agreement of David Murray, CFA, p. 2.

²⁷ *Motion for Additional Time, Request for Expedited Treatment, and Request for Ruling*, Filed April 17, 2019, paragraph 4.

²⁸ Direct Testimony of Mark T. Timpe, p. 4; Mark T. Timpe Deposition, p. 58.

²⁹ Direct Testimony of Mark T. Timpe, p. 5; Surrebuttal Testimony of Mark T. Timpe, p. 3, p. 4, and p. 7; Direct Testimony in Support of Nonunanimous Stipulation and Agreement of Kimberly K. Bolin, p. 4.

³⁰ Direct Testimony of Mark T. Timpe, p. 5, lines 14-16.

³¹ Mark T. Timpe Deposition, p. 58.

18. A third anticipated advantage of the Money Pool is to increase interest and investment income due to the higher returns from lending excess cash into the Money Pool.³²

19. A fourth anticipated advantage of the Money Pool is having a line of credit immediately available for use in emergencies, temporary disruptions, and cash flow timing differences.³³

20. In general, money pools provide higher returns to lenders, lower borrowing costs to borrowers than are commercially available, overdraft protection, and investment of excess cash.³⁴

21. On January 24, 2019, Staff and Applicants filed their Agreement, which resolved all issues between Staff and the Applicants.³⁵

22. On January 28, 2019, Public Counsel filed an objection to the Agreement.³⁶

23. The Agreement includes ten safeguards against perceived or potential regulatory or statutory violations.³⁷

24. The Applicants have agreed to comply with the safeguards.³⁸

25. The first safeguard³⁹ reads, “Applicant Utilities⁴⁰ may borrow from the Money Pool only if the interest cost on borrowing from the Money Pool does not exceed the

³² Surrebuttal Testimony of Mark T. Timpe, p. 7, and p. 9.

³³ Surrebuttal Testimony of Mark T. Timpe, p. 5, and p. 11.

³⁴ Rebuttal Testimony of Robert E. Schallenberg, p. 3.

³⁵ *Nonunanimous Stipulation and Agreement*.

³⁶ The Office of the Public Counsel’s Objections to the Non-Unanimous Stipulation and Agreement filed January 24, 2019.

³⁷ *Nonunanimous Stipulation and Agreement*, paragraph 6.

³⁸ Response to Order Directing Filing, paragraph 2; Initial Post-Hearing Brief of the Missouri Utilities, pp. 6-7.

³⁹ Safeguard language for the first and second Safeguards has been updated to reflect the changes recommended by the Commission, and accepted by the Applicants, in accordance with paragraph 11 of the Agreement. See *Order Directing Filing*, Issued June 28, 2019; *Response to Order Directing Filing*, Filed July 12, 2019 (paragraph 2). The recommended changes and submitted language was approved by the Commission. See *respectively Response to Order Directing Filing*, Filed July 12, 2019 (paragraphs 3-5); Agenda minutes for August 7, 2019.

actual interest cost for the funds obtained or used to provide the funds borrowed by the Applicant Utility. The Money Pool is designed to benefit all participants but shall not be operated as a profit center for LUCo. A reduction in LUCo's interest expense shall not be considered 'profit'.⁴¹

26. The second safeguard reads, "Applicant Utilities may not borrow from the Money Pool if the Applicant Utility [Applicant] could borrow at a lower cost directly from outside banks or other third party financial institutions or through the sale of its own commercial paper."⁴²

27. The third safeguard reads, "Applicant Utilities will not borrow from outside the Money Pool in order to make loans to Borrowing Affiliates."⁴³

28. The fourth safeguard reads, "An Applicant Utility may only loan funds through the Money Pool if the Applicant Utility [Applicant] cannot earn a higher rate of return on investments of similar risk in the open market, or if the Applicant Utility will earn no less than the rate the Applicant Utility [Applicant] would have earned on investments in existing short-term investments accounts maintained by the Applicant Utility during the period in question."⁴⁴

29. The fifth safeguard provides that a variance of the competitive bidding requirement with respect to borrowing rates is acceptable so long as Liberty Utilities funds the Money Pool via an A2/F2-rated (or higher) commercial paper program (without any mark-up in the interest rate). If Liberty Utilities' commercial paper program is rated

⁴⁰ The Empire District Gas Company, Liberty Utilities (Midstates Natural Gas) Corp., and Liberty Utilities (Missouri Water) LLC.

⁴¹ *Nonunanimous Stipulation and Agreement*, paragraph 6(a).

⁴² *Nonunanimous Stipulation and Agreement*, paragraph 6(b).

⁴³ *Nonunanimous Stipulation and Agreement*, paragraph 6(c).

⁴⁴ *Nonunanimous Stipulation and Agreement*, paragraph 6(d).

lower than A2/F2 then the waivers of the Commission's Affiliate Transactions Rules are rescinded, and the requirements of those Rules immediately are in full force and effect.⁴⁵

30. The sixth safeguard reads, "An Applicant Utility shall maintain evidence of the competitiveness of the rates associated with the funds borrowed from or lent into the Money Pool on an ongoing basis, and provide such evidence to Staff upon request."⁴⁶

31. The seventh safeguard reads, "During the period that outside borrowing or lending is being utilized by an Applicant Utility [Applicant], any administrative costs that are not related to a specific borrowing or lending under the Liberty Utilities Co. ("LUCo") Credit Agreement should not be charged to that Applicant Utility [Applicant]."⁴⁷

32. The eighth safeguard reads, "On the same date it files its annual Affiliate Transactions Report, Applicant Utilities will submit an annual report to the Commission for the prior calendar year, which summarizes the activities of the Money Pool, including monthly summaries of investments, earnings, borrowings and interest rates for all participants."⁴⁸

33. The ninth safeguard reads, "Applicant Utilities will file a copy of any proposed amendment to the Money Pool Agreement, with the Commission and serve a copy of the filing on Staff, Public Counsel, and any party to the Applicant Utilities' most recently preceding Money Pool case before the Commission."⁴⁹

34. The tenth safeguard reads, "Applicant Utilities agree that they will not lend surplus funds to the Money Pool which will be loaned to a future LUCo affiliate which is a future member of the Money Pool without filing notice with the Commission and serving a

⁴⁵ *Nonunanimous Stipulation and Agreement*, paragraph 6(e).

⁴⁶ *Nonunanimous Stipulation and Agreement*, paragraph 6(f).

⁴⁷ *Nonunanimous Stipulation and Agreement*, paragraph 6(g).

⁴⁸ *Nonunanimous Stipulation and Agreement*, paragraph 6(h).

⁴⁹ *Nonunanimous Stipulation and Agreement*, paragraph 6(i).

copy of the filing on Staff, Public Counsel, and any party to the Applicant Utilities' most recently preceding Money Pool case before the Commission. In its filing the Applicant Utilities are required to

- 1) identify the full name of the future member,
- 2) identify the future member's affiliate relationship with Applicant Utilities [Applicants],
- 3) describe the future member's corporate organization, and
- 4) state the future member's business purpose."⁵⁰

35. On January 24, 2019, Staff filed testimony in support of the Agreement.⁵¹

36. Good cause to approve the requested competitive bidding variance is supported by the ten safeguards outlined in the Agreement's paragraph 6 because they offer similar consumer protections as those contained in the affiliate transaction rule. Allowing the Applicants to borrow or lend outside of the Money Pool when market conditions are more economical (second and fourth safeguards)⁵² is a safeguard to the utility's finances, which in turn protects ratepayers.

37. The Agreement's market monitoring requirement (safeguard six) supports a finding of good cause to grant the variance because it provides similar protections that the affiliate transaction rule strives to achieve,⁵³ as it safeguards against LUCo taking financial advantage of Applicants on days when third party borrowing or lending rates may be desirable.

⁵⁰ *Nonunanimous Stipulation and Agreement*, paragraph 6(j).

⁵¹ Direct Testimony in Support of Nonunanimous Stipulation and Agreement of Kimberly K. Bolin; Direct Testimony in Support of Nonunanimous Stipulation and Agreement of David Murray, CFA.

⁵² Direct Testimony in Support of Nonunanimous Stipulation and Agreement of Kimberly K. Bolin, p. 4, lines 18-22.

⁵³ Direct Testimony in Support of Nonunanimous Stipulation and Agreement of Kimberly K. Bolin, p. 4, lines 22-25.

38. The Agreement's funding via an A2/F2-rated (or higher) commercial paper program (without any mark-up in the interest rate) supports a finding that good cause exists. This funding source should ensure the best market rates without the need to competitively bid each transaction.⁵⁴

39. The fifth safeguard ensures that the Applicants will not be charged short-term interest rates any higher than standard market rates charged for A2-F2-rated commercial paper.⁵⁵

40. The loss of an A2/F2-rating in the commercial paper program backing the Money Pool will require the Applicants to return to competitive bidding.⁵⁶

41. Public Counsel's witness Robert Schallenberg's testified that the Applicants would lose their ability to borrow or lend to third parties upon joining the LUCo Money Pool.⁵⁷ However, Applicants do not lose the ability to borrow or lend to third parties, rather the ability to borrow or invest with third parties is a safeguard listed in the Agreement filed January 24, 2019.⁵⁸

42. The fees associated with LUCo's line of credit will be cheaper for Applicants compared to the money pool administered by Empire Electric.⁵⁹

43. The annual commitment fee associated with LUCo's line of credit can be lower than the annual commitment fee for the Empire money pool line of credit. The

⁵⁴ Direct Testimony in Support of Nonunanimous Stipulation and Agreement of Kimberly K. Bolin, p. 5, lines 1-4.

⁵⁵ Direct Testimony in Support of Nonunanimous Stipulation and Agreement of David Murray, CFA, p. 4, lines 4-7.

⁵⁶ Direct Testimony in Support of Nonunanimous Stipulation and Agreement of David Murray, CFA, p. 4, lines 7-11.

⁵⁷ Rebuttal Testimony of Robert E. Schallenberg, p. 6, p. 15, p. 18, p. 20 (citing Mark T. Timpe Deposition page 38-39), and p. 21.

⁵⁸ Surrebuttal Testimony of Kimberly K. Bolin, p. 8; see also Mark T. Timpe Deposition, p. 55; see also *Nonunanimous Stipulation and Agreement*, paragraph 6(b), (d), and (g).

⁵⁹ Surrebuttal Testimony of Kimberly K. Bolin, p. 4, lines 4-18.

Empire money pool line of credit costs \$350,000. The annual fee for LUCo's Money Pool line of credit is based only upon the unused balance.⁶⁰

44. Businesses routinely pay administrative fees to have an available line-of credit⁶¹.

45. A utility would incur costs if it issued its own debt.⁶²

46. .

47. The Applicants have not communicated with the Commission within the one hundred fifty (150) days prior to the filing of the *Application for Variance* regarding any substantive issue likely to be addressed in this case.⁶³

III. Conclusions of Law

48. Empire Electric is an "electrical corporation" and a "public utility", as defined in Sections 386.020(15) and (43), RSMo 2016.

49. Empire Gas is a "gas corporation" and a "public utility", as defined in Sections 386.020(18) and (43), RSMo 2016.

50. Liberty Midstates is a "gas corporation" and a "public utility", as defined in Sections 386.020(18) and (43), RSMo 2016.

51. Liberty Utilities is water and sewer utility subject to the jurisdiction of the Commission as provided in Chapters 386 and 393, RSMo.

⁶⁰ Surrebuttal Testimony of Kimberly K. Bolin, p. 4, line 20 to p. 5, line 3.

⁶¹ Surrebuttal Testimony of Mark T. Timpe, p. 5, and p. 11.

⁶² Direct Testimony in Support of Nonunanimous Stipulation and Agreement of Kimberly K. Bolin, p. 5, lines 10-12.

⁶³ *Application for Variance*, Verification pages.

52. Rule 4 CSR 240-20.015(3)(A) and 4 CSR 240-40.015(3)(A), which apply to electric and gas utilities respectively, both require competitive bids when obtaining services from an affiliated entity.

53. Rule 4 CSR 240-20.015(10)(A)(1) and 4 CSR 240-40.015(10)(A)(1), which apply to electric and gas utilities respectively, allow for requests for variance from the provisions of Rule 20.015.⁶⁴

54. Variance requests are governed by Rule 4 CSR 240-2.060(4), and must meet a standard of good cause.

55. Good cause "generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law, or to put it more concisely, a "[l]egally sufficient ground or reason."⁶⁵ Similarly, "good cause" has also been judicially defined as a "substantial reason or cause which would cause or justify the ordinary person to neglect one of his [legal] duties."⁶⁶ Of course, not just *any* cause or excuse will do. To constitute good cause, the reason or legal excuse given "must be real not imaginary, substantial not trifling, and reasonable not whimsical."⁶⁷ And some legitimate factual showing is required, not just the mere conclusion of a party or his attorney.⁶⁸ Moreover, a finding of good cause "lies largely in the discretion of the officer or court to

⁶⁴ The rules' internal cross-reference is outdated, and should refer to 4 CSR 240-2.060(4).

⁶⁵ *Black's Law Dictionary* 692 (6th ed. 1990).

⁶⁶ *Graham v. State*, 134 N.W. 249, 250 (Neb. 1912). Missouri appellate courts have also recognized and applied an objective "ordinary person" standard. See, e.g., *Cent. Mo. Paving Co. v. Labor & Indus. Relations Comm'n*, 575 S.W.2d 889, 892 (Mo. App. W.D. 1978) ("[T]he standard by which good cause is measured is one of reasonableness as applied to the average man or woman.") *Id.*

⁶⁷ *Belle State Bank v. Indus. Comm'n*, 547 S.W.2d 841, 846 (Mo. App. S.D. 1977). See also *Barclay White Co. v. Unemployment Compensation Bd.*, 50 A.2d 336, 339 (Pa. 1947) (to show good cause, reason given must be real, substantial, and reasonable). *Id.*

⁶⁸ See generally *Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. E.D. 1975); *Havrisko v. U.S.*, 68 F.Supp. 771, 772 (E.D.N.Y. 1946); *The Kegums*, 73 F.Supp. 831, 832 (S.D.N.Y. 1947).

which the decision is committed" and "depends upon the circumstances of the individual."⁶⁹ (Original footnotes numbered 25-31.).⁷⁰

56. Since Applicants brought the Petition, they bear the burden of proof.⁷¹

57. The burden of proof is the preponderance of the evidence standard.⁷²

58. In order to meet this standard, Applicants must convince the Commission it is "more likely than not" that its claims are true.⁷³

59. A nonunanimous stipulation and agreement is treated as a joint statement of the party-signatories when a party objects, except no party is bound by it, and all issues remain for determination after a hearing pursuant to Rule 4 CSR 240-2.115(2)(D).

60. Commission Rule 4 CSR 240-4.017(1) requires 60-day notice prior to filing a case.

61. Commission Rule 4 CSR 240-4.017(1)(D) allows for waiver of the 60-day notice requirement, and outlines how good cause can be met.

62. Good cause to waive the 60-day notice requirement is defined as, "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..."

⁶⁹ *Wilson v. Morris*, 369 S.W.2d 402, 407 (Mo. 1963); *Matter of Seiser*, 604 S.W.2d 644, 646 (Mo. App. E.D. 1980).

⁷⁰ Rebuttal Testimony of Robert E. Schallenberg, p. 11, lines 3-21 citing *In the Matter of the Tariffs of Aquila, Inc., d/b/a Aquila Networks – MPS and Aquila Networks – L&P Increasing Electric Rates for the Services Provided to Customers in the Aquila Networks – MPS and Aquila Networks – L&P Service Areas*, Report and Order issued May 17, 2007.

⁷¹ "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. RSMo.

⁷² *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).

⁷³ *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 Applicants have proven by a preponderance of the evidence that good cause exists to grant them a variance from the competitive bidding requirements for affiliate transactions. The Commission finds the Applicants have shown good cause to grant the requested variance from the competitive bidding requirements, subject to the terms of the Agreement which are restated above in this *Report and Order*.

The definition of good cause used by the Commission focuses on the concept of the substantiality of the reason given. Paraphrasing: the reason for the waiver must be substantial, factual, reasonable, and not minor.

Applicants and Staff both testified to at least four substantial reasons showing good cause related to the requested waiver of the requirement of competitive bids anticipated: 1) lower borrowing interest cost; 2) lower borrowing administrative costs due to lower transactional and documentation requirements; 3) higher interest and investment revenue from excess cash; and 4) having an immediately available line of credit.

In addition to those four benefits, Staff and Applicants contend that the standard to award the requested variance is good cause, and both cite the benefits and the safeguards listed in the Agreement as evidence of good cause. The Commission agrees. The Agreement provides a list of ten safeguards against perceived or potential regulatory or statutory violations. For example, requiring documentation of the competitiveness of the borrowing and lending rates ensures the variance is in the best interests of the utilities' regulated customers. Safeguards such as limiting the interest charged to the actual interest cost for the funds obtained, or requiring the best lending and borrowing rates for each

Applicant on each transaction gives assurance that participation in the Money Pool will not adversely impact Missouri utility customers' rates.

The Applicants have the burden of proof to show that good cause exists for the requested variance. In this case, evidence consists of at least four benefits and ten safeguards. No credible evidence was introduced which convincingly disputed any of those four benefits. Public Counsel's witness unsuccessfully argued that the Empire Electric money pool⁷⁴ would be financially better⁷⁵, that Applicants could physically and financially comply with the competitive bidding process⁷⁶, the Empire Electric money pool could earn more in investment income by investing in higher risk instruments⁷⁷, and the waiver would impair the Commission's ability to protect ratepayers of Empire Electric and Empire Gas.⁷⁸

The Commission finds the testimony of the Staff's and Applicant's witnesses to be more credible on the financial comparison of LUCo's and Empire Electric's money pools. The fees associated with LUCo's line of credit will be cheaper for Applicants compared to the money pool administered by Empire Electric. Further, the annual commitment fee associated with LUCo's line of credit can be lower than the annual commitment fee for the Empire Electric money pool line of credit. The Empire Electric money pool line of credit costs \$350,000 annually. The annual fee for LUCo's Money Pool line of credit is based only upon the unused balance. Moreover, the Agreement bases the waiver of the competitive bidding requirements on LUCo establishing its commercial paper program with at least an A2/F2 rating. Finally, the Commission is only conditioning a grant of the

⁷⁴ A money pool is currently being administered by Empire Electric, however its commercial paper program will end upon the operation of LUCo's Money Pool being backed by its equivalently A2/F2-rated commercial paper program. Such a decision has the *prima facie* appearance of a business decision, and is not at issue in the present request for variance.

⁷⁵ Rebuttal Testimony of Robert E. Schallenberg, p. 4, lines 8-10, p. 20, lines 1-8, and p. 23, lines 14-16.

⁷⁶ Rebuttal Testimony of Robert E. Schallenberg, p. 12, lines 18-20.

⁷⁷ Rebuttal Testimony of Robert E. Schallenberg, p. 16, lines 14-15.

⁷⁸ Rebuttal Testimony of Robert E. Schallenberg, p. 4, lines 8-13.

requested variance upon compliance with the terms of the Agreement, the the Commission is not making any decision as to prudence or ratemaking treatment of any money pool transactions nor agreeing to a limitation of its investigatory or statutory powers..

The Commission rejects the suggestion that potential higher risk investing by the Empire Electric money pool serves as an objection to the interest and investment benefits of the LUCo Money Pool.

Whether Applicants can comply with a rule is not a question of finding good cause. The Applicants clearly testified they could comply, but at a cost. They argued that savings of that cost of compliance is evidence in showing good cause, and the Commission agrees.

Based on the testimony of Applicant's and Staff's witnesses, the ten safeguards are found to be protective of the interests of the ratepayers, as well as a contributor to a finding of good cause. The safeguards insure the Applicants will obtain the best borrowing and lending rates available, will not borrow to lend, will document competitive rates even though not competitively bidding each transaction, and will inform Staff of new members, among other protections. The Commission finds the described reasons for granting a variance from the competitive bidding requirements to be substantial, reasonable, and factual.

Public Counsel offered arguments against the draft language of the Money Pool Agreement⁷⁹ between LUCo and Applicants. The Commission finds these arguments ill-placed as the evidence shows the Applicants were not seeking Commission approval of the Money Pool Agreement. The Applicants seek a variance from the competitive bidding requirement for affiliated entities. That variance requires only a showing of good cause.

Public Counsel offered objections to a finding of good cause in the form of evidence of alleged past wrongdoings. The Commission finds these objections not germane to this

⁷⁹ This is not referring to the Stipulation and Agreement, referenced throughout this Order as the 'Agreement'.

case. Public Counsel also offered scenarios of behavior that may occur in the future as an argument against a finding of good cause. The Commission likewise finds these offerings not germane to this case. Public Counsel offered objections based on the Applicant's and LUCo's past and future business decisions. The Commission is not in a position to second-guess a utility's business decisions outside of a prudence review, which this case is not.

This case is a request for a variation from the competitive bidding requirements in the electrical and gas utility affiliate transaction rules. Those rules are in place to protect a utility from giving a financial advantage to a corporate affiliate utility. The rules show that affiliate transactions have the potential for abuse, and the rules, such as competitive bidding of each transaction, protect the utility's finances, which ultimately protects the ratepayer.

Applicants request this waiver to avoid getting competitive bids on each transaction when they make certain financial transactions with affiliates. The financial transaction at issue is borrowing and lending money in LUCo's existing Money Pool. Any analysis of the conditions of the Money Pool is limited, and relates to whether there are substantial protections in place that provide the good cause to waive the affiliate transaction competitive bidding rule so that ratepayers are protected as they would be under the affiliate transaction rule.

The LUCo Money Pool is currently backed by a line-of-credit, and with this approval will expand that backing to include a commercial paper program. A commercial paper program is a source of lower interest rates than a line-of-credit. The commercial paper market effectively provides continuous bidding. Continuous bidding in the commercial paper market allows the utility to be proactive in its borrowing and investing rather than reactive in having a financial situation of need or excess cash, and then needing to bid the

transaction. The Commission also notes the ratepayer protection that if the A2/F2-rating is not met, then the Applicants must return to competitive bidding (safeguard five). The Commission likewise recognizes that the borrowing and lending rate comparison with third party providers serves to protect the Applicants from being financially exploited, which in turn protects the ratepayer (safeguards two and four). The Commission recognizes that capping the borrowing interest cost to the lending interest cost incurred (safeguard one), and the restriction on Applicants borrowing from third parties in order to lend into the Money Pool (safeguard three) both serve to protect the financial interests of the Applicants independent of the parent LUCo, which in turn protects the ratepayers.

Maintaining evidence of the competitiveness of rates (safeguard six), restricting administrative costs when an Applicant utilizes third party borrowing or lending (safeguard seven), and annual reporting of Money Pool activities (safeguard eight) are also found to protective of the finances of each Applicant independent of their parent LUCo. The requirement to notify the Commission of any new Money Pool participants (safeguard ten), with the requirement of filing any amendments to the Money Pool Agreement (safeguard nine) both serve to allow the Commission and the public to keep informed of Money Pool expansions and changes so that ratepayers are as protected as they would be under the affiliate transaction rule.

These ten safeguards, along with the advantages discussed, as well as the Commission's ability to address future issues, all contribute to the Commission's finding of good cause to grant Applicant's requested variance from the competitive bidding requirements in the affiliate transaction rules.

Applicant's original request for a waiver from the asymmetrical pricing requirements is found to be withdrawn under the terms of the Stipulation and Agreement.

The unopposed evidence shows the Applicants filed verification that they did not communicate with the Commission on substantive matters likely to be at issue in this case. Therefore, we find Applicants have met the requirements for a finding of good cause to waive the 60-day notice requirement.

THE COMMISSION ORDERS THAT:

1. The *Application for Variance* filed on December 29, 2017, by The Empire District Electric Company, The Empire District Gas Company, Liberty Utilities (Midstates Natural Gas) Corp., and Liberty Utilities (Missouri Water) LLC seeking a variance from the Commission's affiliate transaction competitive bidding rules for electric and gas utilities, is granted subject to the ten safeguards set forth above.
2. The 60-day notice requirement of 4 CSR 240-4.017(1) is waived.
3. This order shall become effective on September 14, 2019.



BY THE COMMISSION

A handwritten signature in cursive script 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.

Hatcher, Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

Jill Covington Beatty,)	
)	
Complainant,)	
v.	)	<u>File No. EC-2019-0168</u>
)	
Union Electric Company,)	
d/b/a Ameren Missouri,)	
)	
Respondent.)	

REPORT AND ORDER

EVIDENCE, PRACTICE AND PROCEDURE

§2 Jurisdiction and powers

The Commission is an administrative body of limited jurisdiction, having only the powers expressly granted by statutes and reasonably incidental thereto. The Commission has no authority to require reparation or refund, cannot declare or enforce any principle of law or equity, and cannot determine damages. *State ex. rel. City of St. Louis v. Missouri Public Service Comm'n*, 73 S.W.2d 393, 399 (Mo. banc 1934); *State ex. rel. Kansas City Transit, Inc. v. Public Service Comm'n*, 406 S.W.2d 5, 8 (Mo. 1966); *Straube v. Bowling Green Gas Co.*, 227 S.W.2d 666,668-669 (Mo. 1950).

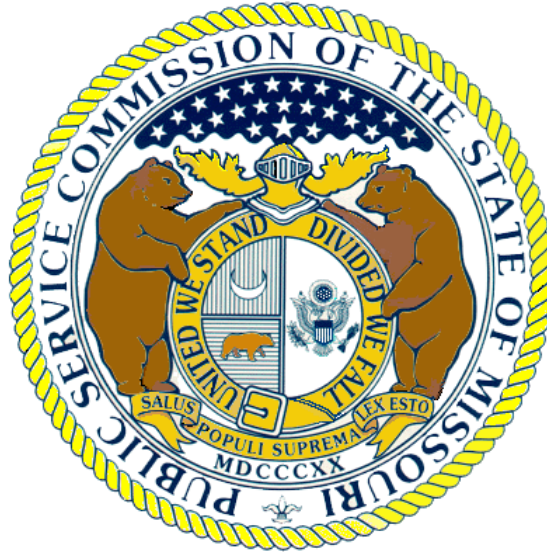
§6 Weight, effect and sufficiency

The determination of witness credibility is left to the Commission, “which is free to believe none, part or all of the testimony.” *In the Matter of Kansas City Power & Light Company’s Request for Authority to Implement a General Rate Increase for Electric Service and Midwest Energy Consumers’ Group v. Missouri Public Service Commission*, 509 S.W.3d 757, 764 (Mo. App. W.D. 2016).

§26 Burden of proof

A complainant has the burden of proving the Company’s alleged acts and/or omissions violated the law or its tariff. It is the Commission’s decision, accordingly, that Ms. Beatty did not sustain her burden of proof that Ameren Missouri violated the Commission’s deposit rule 4 CSR 240-13.030 (1) or its service discontinuance rule 4 CSR 240-13.050 (1) when the Company required a deposit and then discontinued service at the 3rd Street address on July 28, 2016. ” It is the Commission’s decision, accordingly, that Ms. Beatty failed to sustain her burden to show Ameren Missouri violated Commission Rule 4 CSR 240-13.050(9), the “existing medical emergency” rule, when it discontinued her service on July 28, 2016.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



Jill Covington Beatty,)
)
 Complainant,)
)
 v.)
)
 Union Electric Company,)
 d/b/a Ameren Missouri,)
)
 Respondent.)

File No. EC-2019-0168

REPORT AND ORDER

Issue Date: August 21, 2019

Effective Date: September 20, 2019

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

Jill Covington Beatty,)	
)	
Complainant,)	
)	
v.	)	<u>File No. EC-2019-0168</u>
)	
Union Electric Company,)	
d/b/a Ameren Missouri,)	
)	
Respondent.)	

APPEARANCES

Jill Covington Beatty

Complainant, appeared pro se

Sara E. Giboney

For Respondent, Union Electric Company
d/b/a Ameren Missouri

Casi Aslin

For Staff of the Missouri Public Service Commission

Regulatory Law Judge

Paul T. Graham

REPORT AND ORDER

On April 23, 2019, the Missouri Public Service Commission (the “Commission”) conducted an evidentiary hearing on the Complaint of Jill Covington Beatty (“Ms. Beatty”) against Union Electric Company, d/b/a Ameren Missouri (“Ameren Missouri” or the “Company”).

Introduction

Ms. Beatty filed a complaint alleging Ameren Missouri overcharged her for service at her Cape Girardeau (the “Cape Meadows”) address by failing to credit her account with an energy assistance payment she claimed was made in 2014, and otherwise by overcharging her when the residence was vacant and required little electricity.¹ She alleged that as a result, the Company transferred an incorrect balance when she opened service at a Caruthersville (the “3rd Street”) address in 2016. She alleged this also resulted in the Company’s improperly requiring a deposit for her 3rd Street address. She alleged Ameren Missouri then improperly discontinued her 3rd Street service on July 28, 2016.

Ms. Beatty alleges the discontinuance was improper because it was based on a prior incorrect Cape Meadows bill and improper deposit requirement and because it occurred despite a documented medical hardship and when the heat index was one hundred degrees.

¹ Ms. Beatty’s current complaint incorporates two earlier ones: Files EC-2010-0142, and EC-2017-0198. The 2010 Complaint was dismissed without prejudice on June 26, 2010, because Ms. Beatty failed to show cause why she did not appear at a prehearing conference. Ms. Beatty voluntarily dismissed the 2017 Complaint at an evidentiary hearing scheduled for October 4, 2017, in Caruthersville, Missouri, before any witnesses had been sworn or testimony or evidence had been taken.

Ms. Beatty's current case repeats the complaints she made in EC-2017-0198, and the Commission will dispose of both cases on the basis of the April 23, 2019, hearing. Although the current case also incorporated Ms. Beatty's EC-2010-0142 case, she presented no evidence concerning that case at the April 23, 2019, hearing. Staff witness Contessa King, however, testified Staff had investigated the 2010 claim, offered Staff's Exhibit No. 1, which was received in evidence, and stated that Staff had concluded that the Company had violated no applicable statutes, regulation or tariffs.² The Commission will decide the allegations made in File No. EC-2010-0142 based on the evidence received at the April 23 hearing.

Findings of Fact

1. From June 6, 2012 through March 12, 2014, Ms. Beatty resided at the Cape Meadows address.³
2. Ms. Beatty owed \$306.88 on the Cape Meadows account as of November 22, 2013.⁴ An energy assistance payment of \$251.00 was then credited to the account on November 29, 2013.⁵ That was the last payment on the account. Ms. Beatty closed the account on March 12, 2014.⁶ In the meantime, the bill for December 2013 service was \$141, and for January 2014 the bill for service was \$160.⁷ The unpaid balance as of March 12, 2014, on the Cape Meadows account stood at \$545.97.⁸

² Tr. 59.

³ Staff's report from the prior cases was included in Staff's Exhibit 1, admitted into evidence at the April 23, 2019, hearing. Tr. 58.

⁴ Tr. 81.

⁵ Tr. 81.

⁶ Staff's Exhibit 1.

⁷ Tr. 118.

⁸ Tr. 111.

3. After terminating her Cape Meadows service with Ameren Missouri in 2014, Ms. Beatty left the state of Missouri⁹ until she moved and established new service with the Company at the 3rd Street address in Caruthersville on May 20, 2016.¹⁰

4. On May 23, 2016, the Company advised Ms. Beatty that because of an unpaid \$545.97 bill still owed on the Cape Meadows account, it required a \$118.00 deposit (in three installments) to establish service at the 3rd Street address.¹¹

5. On June 10, 2016, the Company billed Ms. Beatty \$636.58, which included the \$545.97 owed on the Cape Meadows account, current charges of \$51.28, and a deposit installment of \$39.33.¹²

6. On June 21, 2016, the Company advised Ms. Beatty it would not withdraw the deposit requirement.¹³

7. On July 12, 2016, the Company mailed Ms. Beatty a bill for \$804.35, which included a deposit installment of \$39.33, current charges of \$127.67, a prior balance of \$636.58, and late charges of \$0.77.¹⁴

8. On July 12 and July 15, 2016, the Company mailed disconnection notices to Ms. Beatty requiring payment of \$636.58 by July 27, 2016.¹⁵

9. On July 20, 2016, the Company advised Ms. Beatty she could prevent disconnection by paying \$441.00 by July 27, 2016, and the remaining balance in three installments.¹⁶ She declined.¹⁷

⁹ Tr.24

¹⁰ Tr. 26-27.

¹¹ Staff's Exhibit 1, p. 2.

¹² Staff's Exhibit 1, p. 2.

¹³ Staff's Exhibit 1, p. 2.

¹⁴ Staff's Exhibit 1, p. 2.

¹⁵ Staff's Exhibit 1, p. 2.

¹⁶ Staff's Exhibit 1, Attachments.

¹⁷ Staff's Exhibit 1, p. 18.

10. The Complaint made no allegations and neither party adduced evidence or argument as to whether the Company did or did not advise the Commission's consumer services department of the dispute or obtain the department's authorization to discontinue service prior to service discontinuance on July 28, 2016.

11. The Complaint made no allegations and neither party adduced evidence or argument as to whether the amount that the Company required Ms. Beatty to pay by July 27, 2016, \$441.00, exceeded the lesser of an amount not to exceed 50% of the charge in dispute or an amount based on usage during a like period under similar conditions.

12. On July 28, 2016, the Company advised Ms. Beatty she might be eligible for a medical hardship extension, but had to provide a doctor's statement within 24 hours.¹⁸ On July 29, 2016, the Social Security Office sent a letter to the Company.¹⁹ The Company advised Ms. Beatty this letter was insufficient for a medical hardship extension. The Company told her the letter had to have a doctor's letterhead and be signed either by a doctor or a nurse practitioner.²⁰ Neither in her pleadings nor at the April 23, 2019, hearing did Ms. Beatty claim or present evidence of the existence of a "medical emergency" on July 28, 2016. The evidence does not support a conclusion that when Ms. Beatty's service was discontinued on July 28, 2016, either she, a member of her family, or a permanent resident of the premises had an existing medical emergency.

¹⁸ Staff's Exhibit 1, p. 3.

¹⁹ Staff's Exhibit 1, p. 3.

²⁰ Ameren Missouri's Exhibit 1C, log entries for July 28-29, 2016.

13. On August 4, 2016, Ms. Beatty called the Company and reported a \$236.58 payment,²¹ and on August 5, 2016, the Company reconnected Ms. Beatty's service.²²

14. Ms. Beatty testified the heat index was "probably" one hundred degrees when her service was discontinued.²³ Ameren Missouri introduced evidence of the weather forecast for Cape Girardeau for July 28, 2016.²⁴ The forecast for that date in Cape Girardeau was highs in the upper 80s.²⁵ The service discontinuance was in Caruthersville, and no party adduced evidence of the National Weather Service local forecasted temperature or heat index for Caruthersville, Missouri, for the twenty-four hours commencing at 6:00 a.m. on July 28, 2016. The evidence does not support a conclusion that the National Weather Service issued a Caruthersville local forecast between 6:00 a.m. and 9:00 p.m. on July 28, 2016, for the following twenty-four hours predicting a temperature above ninety-five degrees Fahrenheit or a heat index above one hundred five degrees Fahrenheit.

Conclusions of Law

A. Section 386.390.1, 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. . . ."

²¹ Staff's Exhibit 1, p. 3.

²² Staff's Exhibit 1, p. 3.

²³ Tr.112.

²⁴ Ameren Missouri's Exhibit No. 11. Ameren Missouri's witness Krcmar testified that the data in this exhibit was from the National Weather Forecast "for the area that Ms. Beatty resided in." Tr. 97

²⁵ Tr.97.

B. Ameren Missouri is a “public utility” as defined in Section 386.020 (43), RSMo.

C. As authorized by Section 386.390.1, RSMo, Ms. Beatty has filed a Complaint alleging Ameren Missouri’s actions were in violation of provisions of law, as she is allowed to do by Section 393.130, RSMo. The Commission has jurisdiction in this case.

D. Commission Rule 4 CSR 240-2.070 (4) provides:

“A formal complaint may be made by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any person, corporation, or public utility, including any rule or charge established or fixed by or for any person, corporation, 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. A complainant has the burden of proving the Company’s alleged acts and/or omissions violated the law or its tariff.²⁶

E. The determination of witness credibility is left to the Commission, “which is free to believe none, part or all of the testimony.”²⁷

F. The Commission is an administrative body of limited jurisdiction, having only the powers expressly granted by statutes and reasonably incidental thereto.²⁸ The Commission has no authority to require reparation or refund, cannot declare or enforce any principle of law or equity, and cannot determine damages.²⁹

G. The Company’s tariff on transfers of balances provides:

²⁶ *State ex rel GS Technologies Operating Co., Inc. v. Public Service Comm’n.*, 116 S.W.3d 680, 696 (Mo. App. W.D. 2003).

²⁷ *In the Matter of Kansas City Power & Light Company’s Request for Authority to Implement a General Rate Increase for Electric Service and Midwest Energy Consumers’ Group v. Missouri Public Service Commission*, 509 S.W.3d 757, 764 (Mo. App. W.D. 2016).

²⁸ See, e.g., *State ex. rel. City of St. Louis v. Missouri Public Service Comm’n*, 73 S.W.2d 393, 399 (Mo. banc 1934); *State ex. rel. Kansas City Transit, Inc. v. Public Service Comm’n*, 406 S.W.2d 5, 8 (Mo. 1966).

²⁹ See, e.g., *Straube v. Bowling Green Gas Co.*, 227 S.W.2d 666,668-669 (Mo. 1950).

“In the event of disconnection or termination of service at a separate customer metering point, premise or location, Company may transfer any unpaid balance to any other service account of the customer having a comparable class of service.”³⁰

H. Commission Rule 4 CSR 240-13.030 (1) states:

“A utility may require a deposit or other guarantee as a condition of new residential service if—

(A) The customer has outstanding with a utility providing the same type of service, an unpaid bill which accrued within the last five (5) years and, at the time of the request for service, remains unpaid and not in dispute. . . .”

I. The Company’s tariff on deposits provides:

“Company may, as a condition to furnishing service initially, require any applicant for residential service to make a cash deposit or furnish a written guarantee of a responsible party, due to any of the following:

(a) The applicant has an unpaid bill, which accrued within the last five (5) years and at the time of the request for service, remains unpaid and not in dispute with a utility for the provision of the same type of service. . . .”³¹

J. Commission Rule 4 CSR 240-13.050 (1) states:

“Service may be discontinued for any of the following reasons:

(A) Nonpayment of an undisputed delinquent charge;

(B) Failure to post a required deposit or guarantee. . . .”

K. Ms. Beatty’s first claim is that Ameren Missouri wrongly discontinued her service when she did not owe \$545.97 on the Cape Meadows account. Ms. Beatty’s Complaint, evidence, and arguments require the Commission to determine the amount due on the Cape Meadows account. The Commission concludes Ms. Beatty owed \$547.97 on the Cape Meadows account and that this amount was delinquent per the

³⁰ Ameren Missouri’s Exhibit 4.

³¹ Ameren Missouri’s Exhibit 5.

Commission's deposit rule 4 CSR 240-13.030(1) and service discontinuance rule 4 CSR 240-13.050(1) when she established service at the 3rd Street address.

L. Ms. Beatty's Complaint did not allege Ameren Missouri violated the dispute resolution procedures established in Commission's Rule 4 CSR 240-13.045, and no claim, evidence, or argument on that score was presented at the April 23, 2019 hearing. Based on the Complaint and Staff's contacts with Ms. Beatty, Staff filed no report concerning these procedures.³² The Commission cannot conclude that Ameren Missouri had notice of any such issue or that given notice and an opportunity to do so, it could not have adduced evidence that it complied with the Commission's dispute resolution procedures. Accordingly, the Commission cannot conclude that Ameren Missouri violated the Commission's Rule 4 CSR 240.133.045 dispute resolution procedures, its deposit rule 4 CSR 240-13.030 (1) or its service discontinuance rule 4 CSR 240-13.050 (1), when it required a deposit for the 3rd Street Service and then discontinued the 3rd Street Service on July 28, 2016.

M. Commission Rule 4 CSR 240.13.050(9) states:

"Notwithstanding any other provision of this rule, a utility shall postpone a discontinuance for a time not in excess of twenty-one (21) days if the discontinuance will aggravate an existing medical emergency of the customer, a member of his/her family or other permanent resident of the premises where service is rendered. Any person who alleges a medical emergency, if requested, shall provide the utility with reasonable evidence of the necessity."

³² Commission Rule 4 CSR 240.13.045 (2) requires a utility to record the date, time, and place a dispute is made; investigate it promptly and thoroughly, and attempt to resolve it. Subsection 4 requires the utility to contact the Commission's consumer service department prior to service discontinuance and provides for discontinuance then with the department's permission. Subsections 5 and 6 state that pending a dispute resolution, service may continue if the customer pays the undisputed part of the bill. It also says that if that amount cannot be agreed on, then the customer will "pay to the utility the lesser of an amount not to exceed fifty percent (50%) of the charge in dispute or an amount based on usage during a like period under similar conditions which shall represent the amount not in dispute."

The Commission finds the evidence insufficient to conclude that Ms. Beatty, a member of her family or any permanent resident of the premises where service was rendered had an existing medical emergency per Commission Rule 4 CSR 240.13.050(9) when service was discontinued on July 28, 2016.

M. Section 393.108, RSMo, sets out Missouri's "hot weather rule." It states service discontinuance for nonpayment is prohibited:

"(1) On any day when the National Weather Service local forecast between 6:00 a.m. and 9:00 p.m. for the following twenty-four hours predicts that the temperature shall rise above ninety-five degrees Fahrenheit or that the heat index shall rise above one hundred five degrees Fahrenheit."

The Commission finds the evidence was insufficient to conclude that the National Weather Service had issued a forecast between 6:00 a.m. and 9:00 p.m. for the following twenty-four hours predicting that for Caruthersville, Missouri, the temperature would rise above 95 degrees Fahrenheit or that the heat index would rise above 105 degrees Fahrenheit.

N. Ms. Beatty asks for money damages. The Commission has no jurisdiction to make such an award.³³

³³ *Straube v. Bowling Green Gas Co.*, 227 S.W.2d 666,668-669 (Mo. 1950).

Decision

Ms. Beatty incorporated two prior cases into her current Complaint.³⁴ Accordingly, the Commission's Report and Order will fully dispose of all allegations made in those cases as well as in the current case and will do so on the evidence admitted into the record at the April 23, 2019, evidentiary hearing.

Ameren Missouri discontinued Ms. Beatty's service on July 28, 2016, because she had not taken up the Company on its offer to continue her service if she paid \$441.00 by July 27, 2016, against a balance due of \$636.56, with the rest to be paid in installments. Part of the total \$636.56 was for service which Ms. Beatty had received beginning May of 2016 at the 3rd Street address, part was for a deposit, and a balance of \$545.97 was carried over for service at the Cape Meadow address prior to March 12, 2014.

Ms. Beatty disputed the Cape Meadows bill of \$545.97 and the resulting deposit requirement. She claimed the Cape Meadows bill did not properly reflect a 2014 energy assistance payment. Ms. Beatty relied wholly upon her Exhibit 16 to show she had not been properly credited a \$251.00 energy assistance payment for 2014. However, Exhibit 16 documented a 2013 payment, not a 2014 payment, and her account records showed a credit for the 2013 payment. It is the Commission's decision Ms. Beatty's Cape Meadows bill for \$545.97 properly credited all energy assistance payments.

Ms. Beatty also claimed her Cape Meadows bill was too high because she had actually moved out of the Cape Meadow address prior to the March 12, 2014 date her service was terminated. The Commission is free to believe none, part, or all of Ms.

³⁴ EC-2010-0142; and EC-2017-0198.

Beatty's testimony that although she maintained her service up to March 12, 2014, she was not actually using it.³⁵ It is the Commission's decision that Ms. Beatty's bill in the amount of \$545.97 correctly reflected her service usage. It is, further, the Commission's decision that that amount was delinquent per the Commission's deposit rule 4 CSR 240-13.030 (1) and its service discontinuance rule 4 CSR 240-13.050 (1),

Commission Rules 4 CSR 240-13.030 and 4 CSR 240-13.050 allow a utility to require a deposit and discontinue service where the delinquency is not in dispute. Ms. Beatty put the bill amount before the Commission for decision. She did not put the Company's compliance with Commission's dispute procedures before the Commission. Her Complaint made no claim and she offered no evidence or argument that Ameren Missouri did not comply with the Commission's dispute rules 4 CSR 240-13.045 (4), (5) and (6). The Staff filed no report concerning these rules. These rules were not addressed in any post-hearing filings. Thus, the Commission is unable to find the Company has ever been on notice of any alleged violations of these rules or, if placed on proper notice, could not have rebutted them. It is the Commission's decision, accordingly, that Ms. Beatty did not sustain her burden of proof that Ameren Missouri violated the Commission's deposit rule 4 CSR 240-13.030 (1) or its service discontinuance rule 4 CSR 240-13.050 (1) when the Company required a deposit and then discontinued service at the 3rd Street address on July 28, 2016.

The next point of decision is whether the Company violated Commission Rule 4 CSR 240-13.050(9), the existing medical emergency rule, when it discontinued service

³⁵ *In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service and Midwest Energy Consumers' Group v. Missouri Public Service Commission*, 509 S.W.3d 757, 764 (Mo. App. W.D. 2016).

despite Ms. Beatty's Social Security letter. Here the burden of proof rule again determines the issue. First, Ms. Beatty did not produce the letter at the hearing or describe its contents in her testimony. Accordingly, the Commission cannot determine whether the letter was reasonable evidence of an existing medical emergency, as required by the Commission rule. Second, and dispositive, Ms. Beatty simply offered no evidence (or even a claim) of any "existing medical emergency." It is the Commission's decision, accordingly, that Ms. Beatty failed to sustain her burden to show Ameren Missouri violated Commission Rule 4 CSR 240-13.050(9), the "existing medical emergency" rule, when it discontinued her service on July 28, 2016.

The final point of decision is whether the Company violated Section 393.108(1), RSMo, Missouri's "hot weather" rule, when it discontinued service on July 28, 2016. Ameren Missouri introduced evidence of the temperature forecast for Cape Girardeau, Missouri, while the 3rd Street service discontinuance occurred in Caruthersville, Missouri. However, it was Ms. Beatty's burden to prove the violation. She testified only that the heat index on July 28, 2016, was 100 degrees.³⁶ She did not produce evidence from the National Weather Service showing a Caruthersville local forecasted July 28, 2016, temperature above 95 degrees or a local forecasted July 28, 2016, heat index above 105 degrees and did not sustain her burden of proof.

Ms. Beatty's evidence at the April 23, 2019, hearing was limited to the issues described in this Report and Order. Ms. Beatty has also placed her Complaint in File No. EC-2010-0142 before the Commission for decision. She offered no evidence concerning that file. Based upon Staff's investigation and report and upon all the

³⁶ Tr.112.

evidence received on April 23, 2019, it is the Commission's decision that Ameren Missouri committed no violations of applicable statutes, regulations or tariff as alleged or implicated in File No. EC-2010-0142.

In summary, it is the Commission's decision that in charging \$545.97 to Ms. Beatty's Cape Meadows account, requiring a deposit to open service at her 3rd Street address, and discontinuing service at her 3rd Street address on July 28, 2016, Ameren Missouri violated no statute, regulation, or tariff within the Commission's jurisdiction, properly pleaded and concerning which evidence was presented. The Commission's decision disposes of all claims properly before it per the pleadings and the evidence presented at the hearing on April 23, 2016, in the current case and in Files EC-2010-0142 and EC-2017-0198; and, in any event, the Commission has no jurisdiction to grant Ms. Beatty the money damages relief she has requested.

Any application for rehearing must be filed before the effective date of this Order.

THE COMMISSION ORDERS THAT:

1. All claims of Jill Covington Beatty made in the Complaint in this case and in Files EC-2010-0142 and EC-2017-0198 are denied.
2. The Report and Order shall become effective on September 20, 2019.



BY THE COMMISSION

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

Morris Woodruff
Secretary

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

Graham, Regulatory Law Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of Spire Missouri Inc. to)
 Change its Infrastructure System Replacement) **File No. GO-2019-0115**
 Surcharge in its Spire Missouri East Service Territory) Tracking No. YG-2020-0027

In the Matter of the Application of Spire Missouri Inc. to)
 Change its Infrastructure System Replacement) **File No. GO-2019-0116**
 Surcharge in its Spire Missouri West Service Territory) Tracking No. YG-2020-0028

REPORT AND ORDER ON REHEARING

Affirmed on appeal: *Spire Missouri, Inc. v. Public Service Commission*, 607 S.W.3d 759
 (Mo. App. W.D. 2020)

NOTE: Commissioner Hall filed a concurring opinion. This opinion is attached to the
 Report and Order.

ACCOUNTING

§42 Accounting Authority orders

Request for an AAO as part of a request to establish a recovery amount under an ISRS
 was procedurally inappropriate.

EVIDENCE, PRACTICE AND PROCEDURE

§2 Jurisdiction and powers

If review of a PSC order is pending before a court, the PSC may not enter a modified,
 extended, or new order.

§2 Jurisdiction and powers

The Commission had no jurisdiction to rehear evidence from a prior case that was on
 appeal and to make a new order based on that evidence.

§24 Procedures, evidence and proof

The Commission admitted into evidence exhibits containing calculations performed by
 Staff at the direction of the Commission after conclusion of the hearing where the parties
 were given an opportunity to respond to the verified calculations and to provide their own
 calculations.

EXPENSE**§79 Infrastructure system replacement surcharge (ISRS) eligible expense**

Cast iron and bare steel pipes were replaced to comply with state and federal safety requirements and the cost of their replacement was eligible for recovery under an ISRS.

§79 Infrastructure system replacement surcharge (ISRS) eligible expense

Plastic components of gas mains and service lines were not shown to be deteriorated and the cost of their replacement could not be recovered under ISRS even when the plastic was replaced as part of the replacement of eligible cast iron and bare steel mains and service lines.

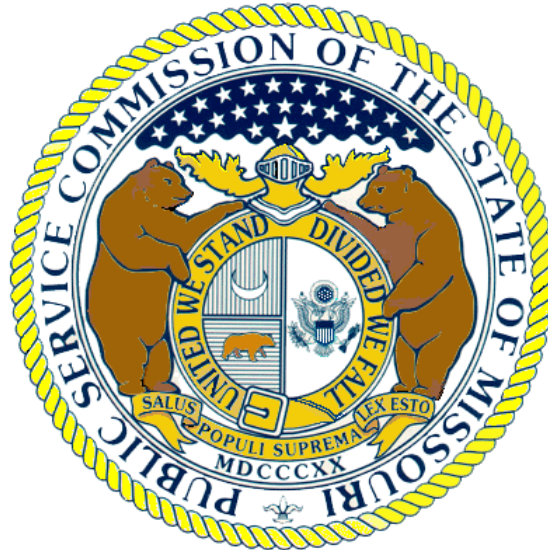
GAS**§42.1 Infrastructure system replacement surcharge (ISRS) eligible expense**

Cast iron and bare steel pipes were replaced to comply with state and federal safety requirements and the cost of their replacement was eligible for recovery under an ISRS.

§42.1 Infrastructure system replacement surcharge (ISRS) eligible expense

Plastic components of gas mains and service lines were not shown to be deteriorated and the cost of their replacement could not be recovered under ISRS even when the plastic was replaced as part of the replacement of eligible cast iron and bare steel mains and service lines.

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) **File No. GO-2019-0115**
Surcharge in its Spire Missouri East Service Territory) Tracking No. YG-2020-0027

In the Matter of the Application of Spire Missouri Inc. to)
Change its Infrastructure System Replacement) **File No. GO-2019-0116**
Surcharge in its Spire Missouri West Service Territory) Tracking No. YG-2020-0028

REPORT AND ORDER ON REHEARING

Issue Date: August 21, 2019

Effective Date: August 21, 2019

**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) **File No. GO-2019-0115**
Surcharge in its Spire Missouri East Service Territory)

In the Matter of the Application of Spire Missouri Inc. to)
Change its Infrastructure System Replacement) **File No. GO-2019-0116**
Surcharge in its Spire Missouri West Service Territory)

APPEARANCES

SPIRE MISSOURI:

Michael C. Pendergast, of Counsel, Fischer & Dority, P.C., 423(R) South Main Street, St. Charles, Missouri 63301, and **Rick Zucker**, Zucker Law LLC, 14412 White Pine Ridge, Chesterfield, MO 63017

OFFICE OF THE PUBLIC COUNSEL:

John Clizer, Associate Public Counsel, and **Lera Shemwell**, Senior Counsel, PO Box 2230, 200 Madison Street, Suite 650, Jefferson City, Missouri 65102-2230

STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:

Kevin A. Thompson, Chief Staff Counsel, **Robert S. Berlin**, Deputy Counsel, and **Ron Irving**, Staff Counsel, PO Box 360, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

CHIEF REGULATORY LAW JUDGE: Morris L. Woodruff

REPORT AND ORDER ON REHEARING

I. Procedural History

On January 14, 2019, Spire Missouri, Inc. (“Spire Missouri” or “Company”) filed applications and petitions with the Missouri Public Service Commission (“Commission”) to change its Infrastructure System Replacement Surcharge (“ISRS”) in its Spire Missouri East and Spire Missouri West service territories. Spire Missouri requested recovery of “new” infrastructure replacement costs for the period from July 1, 2018, through January 31, 2019 (“New ISRS Request”). In the applications, Spire Missouri also requested recovery of “old” infrastructure replacement costs for the period from October 1, 2017, through June 30, 2018 (“Old ISRS Request”).

The New ISRS Request is consistent with how ISRS applications have been processed traditionally at the Commission with regard to the relevant time frame of infrastructure replacements. The infrastructure replacement costs in the Old ISRS Request were previously denied by the Commission and those projects found ineligible under the requirements of the ISRS statute in File Nos. GO-2018-0309 and GO-2018-0310.¹ Both Spire Missouri and the Office of the Public Counsel (“Public Counsel”) appealed the Commission’s decisions in those cases to the Missouri Court of Appeals, Western District, and that appeal is pending.²

The Commission issued notice of the applications and provided an opportunity for interested persons to intervene, but no intervention requests were submitted. The

¹ See File Nos. GO-2018-0309 and GO-2018-0310, *Report and Order* (issued September 20, 2018).

² Missouri Court of Appeals, Western District, Docket No. WD82302 (consolidated with Docket No. WD82373).

Commission also suspended the filed tariffs until May 14, 2019.³ On February 25, 2019, Spire Missouri filed updated requests for ISRS investments that included the month of January 2019.⁴

On March 15, 2019, the Staff of the Commission (“Staff”) filed its recommendation. Staff argued that the infrastructure replacement costs in the Old ISRS Request were outside the jurisdiction of the Commission due to the current appeal and, therefore, Staff did not include those costs in its recommended ISRS revenue requirement.⁵ Staff further set out the revenue requirement it believed incorporated all the ISRS-eligible infrastructure replacements with regard to the New ISRS Request.⁶ 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.

Public Counsel filed its objections and request for hearing on March 15, 2019.⁷ Public Counsel objected to the applications, stating that Spire Missouri had failed to show that replacement of the plastic mains and service lines claimed were required by state or federal mandates and were in deteriorated or worn out condition;⁸ and that Spire Missouri had failed to show that any of the claimed infrastructure replacements were ISRS-

³ *Order Directing Notice, Setting Intervention Deadline, Directing Filing, and Suspending Tariff Sheets*, (issued January 15, 2019).

⁴ Exhibit 3, GO-2019-0115, *Spire East ISRS Appendix A - January Actuals Update*, (filed February 25, 2019); and Exhibit 4, GO-2019-0116, *Spire West ISRS Appendix A - January Actuals Update*, (filed February 25, 2019).

⁵ File No. GO-2019-0115, *Staff Recommendation* (filed March 15, 2019), paras. 4-6; and File No. GO-2019-0116, *Staff Recommendation* (filed March 15, 2019), paras. 4-6.

⁶ File No. GO-2019-0115, *Staff Recommendation* (filed March 15, 2019), paras. 4-6; and File No. GO-2019-0116, *Staff Recommendation* (filed March 15, 2019), paras. 4-6.

⁷ File Nos. GO-2019-0115 and GO-2019-0116, *Objections to Spire Missouri Inc.’s Applications and Petitions and Request for an Evidentiary Hearing*, (filed March 15, 2019).

⁸ File Nos. GO-2019-0115 and GO-2019-0116, *Objections to Spire Missouri Inc.’s Applications and Petitions and Request for an Evidentiary Hearing*, (filed March 15, 2019), paras. 8-10.

eligible.⁹ Additionally, Public Counsel objected to Spire Missouri's method of calculating the ISRS costs arguing that a portion of the administrative and general costs (the overhead costs) included in the ISRS request may already be recovered in rates.¹⁰ Public Counsel also joined Staff's objection to the Old ISRS Request.

On March 20, 2019, Staff filed a motion to dismiss the Old ISRS Request portion of the applications for lack of jurisdiction.¹¹ Public Counsel supported Staff's request and Spire Missouri opposed the request.

On April 1, 2019, the parties identified the following issues for the hearing:

A. Are all costs included in the Company's ISRS filings in these cases eligible for inclusion in the ISRS charges to be approved by the Commission in this proceeding?

B. If a Party believes that certain costs are not eligible for inclusion in the ISRS charges to be approved by the Commission in this proceeding, what are those costs and why are they not eligible for inclusion?

C. How should income taxes be calculated for purposes of developing the ISRS revenue requirement in these cases?¹²

The Commission held an evidentiary hearing on April 3-4, 2019. During the course of the hearing the parties settled the issues regarding income taxes and included overhead. Stipulation and agreements were filed after the hearing and are addressed below.

⁹ File Nos. GO-2019-0115 and GO-2019-0116, *Objections to Spire Missouri Inc.'s Applications and Petitions and Request for an Evidentiary Hearing*, (filed March 15, 2019), paras. 11-14.

¹⁰ See, *Direct Testimony of Robert E. Schallenberg* and *Direct Testimony of John A. Robinett*.

¹¹ File No. GO-2019-0115, *Motion to Dismiss Portion of Spire West's ISRS Application that is Under Review by the Western District Court of Appeals*, (filed March 20, 2019); and File No. GO-2019-0116, *Motion to Dismiss Portion of Spire East's ISRS Application that is Under Review by the Western District Court of Appeals*, (filed March 20, 2019).

¹² *List of Issues, List and Order of Witnesses, Order of Cross-Examination, and Order of Opening Statements*, (filed April 1, 2019), p. 2.

II. Post-Hearing Evidence and Briefs

The Commission also received and admitted without objection Exhibit 104, provided by Staff. Exhibit 104 is a breakdown of the claimed savings that resulted from Spire Missouri's cost avoidance studies by service area and by New ISRS Request and Old ISRS Request as requested at the hearing. Additionally, Exhibit 104 contains a reconciliation of Staff and Spire Missouri's positions concerning the recovery of the Old ISRS Request and the New ISRS Request.

The parties filed simultaneous briefs on April 15, 2018. Additionally, the USW Local 11-6 ("Union") and the Missouri Energy Development Association ("MEDA") filed motions asking permission to file briefs as *amicus curiae*. Section 4 CSR 240-2.075(11) allows a party to petition to the Commission for leave to file an *amicus curiae* brief.

The Union stated that for collective bargaining purposes it represents 850 employees of Spire Missouri involved in the maintenance and construction of the distribution facilities used to deliver natural gas to Spire Missouri's customers and that it participated in Spire Missouri's last general rate case. The Union states that it should be allowed to file this brief because various ratemaking and regulatory decisions affect its members.

MEDA also filed a motion seeking permission to file an *amicus curiae* brief. MEDA is an incorporated trade association whose member companies include Union Electric Company, d/b/a Ameren Missouri, Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company, Summit Natural Gas of Missouri, and Spire Missouri. MEDA states that its interest in filing this brief is to address the "policy issue of importance to all regulated utilities in the State of Missouri, that is, whether a pending appeal of a

different case necessarily divests the Commission of jurisdiction to consider similar costs and investments with certain features addressed in a new case”¹³ Further, MEDA argues that it should be allowed to file the brief to assist the Commission in reaching a well-informed decision on the legal issues presented by the motions currently pending.

Both the Union and MEDA have met the criteria set out in the rule for filing an *amicus curiae* brief. The Commission will grant leave to file the briefs. The briefs attached to the requests for leave to file are accepted.

Following the conclusion of the evidentiary hearing, the Commission determined no party had provided a calculation as to what that party believed was the specific cost of the replacement of ineligible plastic mains and service lines to be removed from Spire Missouri’s ISRS cost recovery, even though all parties to the case had access to the work orders and other information necessary to identify that cost.¹⁴ On April 24, 2019, the Commission directed Staff to report the results from the calculations of the amount of pretax revenues related to the replacement of cast iron or bare steel material in Spire Missouri’s ISRS request for the period of July 1, 2018, through January 31, 2019.¹⁵ These calculations were directed to be made using the same methodology Staff used in the 2018 ISRS cases¹⁶ to remove the cost of the replacement of ineligible plastic mains and service

¹³ File Nos. GO-2019-0115 and GO-2019-0116, *Petition of the Missouri Energy Development Association for Leave to File Brief as Amicus Curiae*, (filed April 15, 2019), para. 3.

¹⁴ Ex. 4, Direct Testimony of Wesley E. Selinger, pp. 4-5; and Tr. pp. 205 (Spire Missouri’s witness, Rob C. Atkinson, testified that this calculation was “relatively easy.”) and 265 (Public Counsel’s witness, John A. Robinett, testified that Public Counsel had the work order authorizations that Spire Missouri provided). The ISRS statute specifically requires the utility to provide “a copy of its petition, its proposed rate schedules, and its supporting documentation” upon filing its petition. (Subsection 393.1014.1, RSMo.)

¹⁵ Staff’s witnesses testified that Staff had reviewed a sampling of the work orders and made some calculations with regard to removing what it considered ineligible plastic from certain types of work orders. (Transcript pp. 187-188 and 204-205; and Exhibits 100 and 101, *Staff Direct Report*, pp. 4 and 11-12).

¹⁶ File Nos. GO-2018-0309 and GO-2018-0310.

lines from Spire Missouri's ISRS cost recovery.¹⁷ The order also afforded the other parties an opportunity to file objections, responses, or alternate calculations to that report and afforded all parties the opportunity to file cross responses.

On April 25, 2019, Staff filed its verified *Staff Report*, and on April 29, 2019, Staff filed a verified *Notice of Correction to Staff Report*. The report and the notice of correction have been marked as Exhibit 105 and Exhibit 106, respectively. Responses to Exhibits 105 and 106 were received on April 30, 2019, from Spire Missouri and the Public Counsel.¹⁸ Spire Missouri stated that, although it disagreed with disallowing the plastic components, as corrected on April 29, 2019, Staff had accurately calculated the amounts as directed by the Commission.¹⁹ Spire Missouri also requested that if the Commission denied ISRS recovery of these costs, that the Commission grant accounting authority to defer any depreciation, return, and taxes associated with such costs incurred, beginning July 1, 2018, for potential recovery in the next rate cases.

On April 30, 2019, Public Counsel objected to Exhibits 105 and 106 on the grounds that the admission of these calculations on an expedited basis after the conclusion of the hearing would be a violation of Public Counsel's (and Spire Missouri's) constitutional rights to due process. However, the Commission heard testimony that the parties had

¹⁷ In those earlier 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 (plastic, cast iron, steel, etc.). Staff applied the actual individual plastic main and service 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. For work order authorizations that Spire Missouri did not provide, or that included estimations, 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 or estimated. (File Nos. GO-2018-0309 and GO-2018-0310, *Report and Order*, (issued September 20, 2018), Finding of Fact Nos. 21 and 22.)

¹⁸ Public Counsel's verified response was marked as Exhibit 207.

¹⁹ *Spire Missouri Inc's Response to Staff Report and Request for Accounting Authorization to Defer Amounts Excluded From ISRS Charges for Consideration in Its Next Rate Cases*, (filed April 30, 2019), para 3.

this data readily available and that these calculations were relatively simple to make.²⁰ There were also many arguments and references to these calculations and the methodology that Staff used to make similar calculations in the Report and Order in File Nos. GO-2018-0309 and GO-2018-0310 that the Commission took official notice of without objection.²¹

In its April 30th response, Public Counsel also raised two substantive issues with Staff's calculations. First, Public Counsel stated an adjustment should be made to the blanket work orders to remove the plastic in the service renewals. Second, Public Counsel argued that, with regard to Spire Missouri East, Staff applied all of the costs of service transfers and Staff did not calculate any disallowance for the inclusion of ineligible plastic.²² Public Counsel provided a "total reduction to the gross plant additions for mains found in the revenue requirement for the Spire Missouri East service territory"²³ and recommended reductions to the Spire Missouri East revenue requirement.²⁴ Spire Missouri filed a response to Exhibit 207, reiterating its arguments against the proposed adjustments.²⁵

So that the Commission could be confident that Staff would file an additional response to Public Counsel, the Commission directed Staff to answer specific questions in its reply to Public Counsel's issues.²⁶ Staff replied on May 1, 2019, with an explanation

²⁰ Tr. pp. 205, 209-210, and 265; and Ex. 8, Direct Testimony of Wesley E. Selinger, pp. 4-5.

²¹ In fact, Public Counsel offered at hearing over 4000 pages containing all the work orders provided to the parties by Spire Missouri with the necessary information. (Tr. pp. 247-254). Reference and discussion of the previous cases were also made at Tr. pp. 9, 11, 12, 22, 25, 44, 66, 67, 90, 169, and 340.

²² Ex. 207, *Response to Commission Order Directing Filing and Staff Report*, paras. 7-12.

²³ Ex. 207, *Response to Commission Order Directing Filing and Staff Report*, para. 11.

²⁴ Ex. 207, *Response to Commission Order Directing Filing and Staff Report*, para. 12.

²⁵ *Reply of Spire Missouri Inc. to OPC's Response to Commission Order and Staff Report*, (filed May 1, 2019).

²⁶ *Order Directing Response*, (issued May 1, 2019).

about its calculations for service renewals in the blanket work orders and the transfers issue.²⁷ Staff stated that it had “erroneously included 100% recovery of service transfers work orders” and made a further adjustment of 6.36% (\$300,067) to remove the recovery for the plastic in those work orders.²⁸

On May 2, 2019, Public Counsel filed two additional responses. The first of these responses was a verified response that has been marked as Exhibit 208.²⁹ In that response, Public Counsel acknowledges the “procedural limitations” involved in the expedited nature of an ISRS proceeding.³⁰ With that acknowledgement, Public Counsel stated that with regard to the blanket work orders, and for the purposes of the current cases only, it does not contest Staff’s adjustments further.³¹ Public Counsel also stated that it accepted Staff’s corrected adjustment with one small exception relating to the net property tax calculation.³²

Spire Missouri also replied to Staff’s further corrections in Exhibit 107. Spire Missouri opposed the further adjustments provided in Exhibit 107 and urged the Commission to reject those adjustments.

ISRS cases are an expedited process to allow the utility to collect a surcharge for very specific utility plant additions. As such, the procedure does not always follow the same path as new and complex issues are raised. As stated before, at the conclusion of

²⁷ *Staff Response to Order Directing Response and Notice of Second Corrected Revenue Requirement for Spire East*, (filed May 1, 2019). This verified response has been marked as Exhibit 107.

²⁸ Exhibit 107, *Staff Response to Order Directing Response and Notice of Second Corrected Revenue Requirement for Spire East*, p. 2.

²⁹ *Response to Staff Response to Order Directing Response and Notice of Second Corrected Revenue Requirement for Spire East and Reply of Spire Missouri Inc. to OPC’s Response to Commission Order and Staff Report*, (filed May 2, 2019). This verified response was marked as Exhibit 208.

³⁰ Ex. 208, para. 14.

³¹ Ex. 208, para. 14.

³² Ex. 208, para. 7.

this hearing and after review of the evidence, the Commission determined that no party had provided a calculation as to what that party believed was the cost of the replacement of ineligible plastic mains and service lines to be removed from Spire Missouri's ISRS cost recovery, even though all parties to the case had access to the work orders and other information necessary to identify that cost.³³ The Commission further determined that that calculation was necessary to make a final decision in accordance with the ISRS statute. The parties were given an opportunity to respond to the verified calculations provided and to provide their own calculations. The parties were further given the opportunity to reply to those responses. The objections are overruled and the Commission admits Exhibits 105, 106, 107, 207, and 208 into evidence.

Public Counsel also objects to Spire Missouri's request for an accounting authority order (AAO).³⁴ Public Counsel argued that it is not an AAO application in accordance with Commission rules,³⁵ and is procedurally inappropriate in this ISRS for at least two reasons. First, the procedural requirements necessary to ensure due process of law when considering a utility's request for an AAO will greatly exceed the time remaining in this case. Second, Spire Missouri has failed to submit the evidence necessary for the Commission to consider granting an AAO application. The Commission agrees with Public Counsel. Spire Missouri's request for an accounting authority order is denied. If Spire Missouri believes such a mechanism is needed, it may file a separate application in accordance with Commission rules.

³³ Ex. 4, Direct Testimony of Wesley E. Selinger, pp. 4-5; and Tr. pp. 205 and 265. See also, Section 393.1014.1, RSMo (2016).

³⁴ *The Office of the Public Counsel's Response to Spire Missouri Inc.'s Response to Staff Report and Request for Accounting Authorization to Defer Amounts Excluded from ISRS Charges for Consideration in Its Next Rate Cases*, (filed May 2, 2019).

³⁵ 4 CSR 240-2.060.

III. Report and Order and Rehearing

The Commission issued its Report and Order in this case on May 3, 2019, to be effective on May 14, 2019. Spire Missouri and Public Counsel filed timely applications for rehearing. On July 25, 2019, the Commission granted, in part, Public Counsel's application for rehearing. Specifically, the Commission indicated it would rehear the portion of the Report and Order dealing with the effect of net property tax values on revenue requirement calculations.

This issue was identified by Public Counsel in its application for rehearing, where it explained that when Staff filed its revenue requirement calculations, as ordered by the Commission, Staff incorrectly reverted to using the net property tax amounts updated through January 2019 that Spire Missouri provided rather than the net property tax amounts that would have reflected the property values with the plastic pipe disallowance. Those net property tax amounts were carried through in Staff's subsequent updates to the revenue requirement calculations. Ultimately those incorrect calculations were used in the final revenue requirement approved by the Commission, and in the approved compliance tariffs.

After granting rehearing on that limited issue, the Commission directed the parties to meet in a procedural conference on August 9, 2019. Following that conference, on August 13, 2019, Spire Missouri, Public Counsel, and Staff filed a unanimous stipulation and agreement to resolve the net property tax issue. In the stipulation and agreement the parties agreed that the appropriate amount of property tax expense to be included in the revenue requirement is \$1,057,200 for Spire Missouri East, and \$2,317,402 for Spire Missouri West. The parties further agreed that the appropriate revenue requirement for

Spire Missouri East in File No. GO-2019-0115 is \$5,943,490. For Spire Missouri West in File No. GO-2019-0116, the parties agreed the appropriate revenue requirement is \$6,501,455. The parties also agreed that the difference between property tax expenses as originally approved by the Commission and the amount of those expenses recalculated as provided in the stipulation and agreement will be reflected in the annual reconciliation amounts in Spire Missouri's current ISRS filings (File No. GO-2019-0356 and GO-2019-0357) in the amounts of approximately \$118,855 for Spire Missouri East, and \$69,314 for Spire Missouri West.

Spire Missouri filed tariffs on August 13, 2019 to implement the revised property tax calculations agreed to in the stipulation and agreement. Those tariffs carry a September 12 effective date, but the stipulation and agreement asks the Commission to expedite its approval to allow them to become effective on August 23, 2019.

After reviewing the stipulation and agreement as to resolution of property tax expense, the Commission independently finds and concludes that it is a reasonable resolution of the issue it addresses. The Commission will approve the unanimous stipulation and agreement, and finds good cause to approve the implementing tariffs to become effective on August 23, 2019.³⁶

IV. Stipulation and Agreements

Stipulation and Agreement on Income Taxes

In its original recommendation, Staff did not include an amount for income taxes on the theory that the Company's current tax liability was offset by the tax deductions

³⁶ Expedited approval of a tariff for good cause shown is permitted by Section 393.140(11), RSMo 2016.

from the installation of ISRS facilities.³⁷ Spire Missouri objected to Staff's proposed disallowance. Spire Missouri explained that when it made its first ISRS filing the income tax issue arose but a settlement agreement was reached where the Company agreed to "split the difference" in exchange for the parties processing these cases on an expedited basis. However, in recent cases Public Counsel has objected to some aspect of the ISRS filings and requested a hearing. Thus, Spire Missouri once again included the entire amount that it believed was recoverable.

Staff and Spire Missouri reached a settlement agreement similar to the past practice where 50% "of the entire income tax gross-up that would be derived from multiplying the revenue requirement before gross-up . . . by the marginal income tax rate"³⁸ would be included in Total ISRS Revenues. Additionally, the Staff and Spire Missouri agreed to meet within 30 days after the effective date of the Report and Order in this case to try to reach a long-term solution for this issue. Public Counsel did not sign the agreement, but did not object.

Commission rule 4 CSR 240-2.115(2)(B) allows nonsignatory parties seven days to object to a nonunanimous stipulation and agreement. More than seven days have passed and no objections were received. The Commission has considered the stipulation and agreement regarding income taxes and finds it to be a reasonable resolution of the income tax issue. The Commission will approve the agreement. The Commission

³⁷ See, File Nos. GO-2019-0115 and GO-2019-0116, *Staff Recommendation*, (filed March 15, 2019), *Memorandum*, p. 10; Exs. 100 and 101, *Staff Direct Report*, pp. 12-13; and Ex. 5, *Direct Testimony of Chuck J. Kuper*.

³⁸ File Nos. GO-2019-0115 and GO-2018-0116, *Stipulation and Agreement Regarding Income Tax Issue*, (filed April 8, 2019), para. 3.

incorporates the provisions of the *Stipulation and Agreement on Income Taxes* into this order as if fully set forth herein and directs the signatories to comply with its terms.

Stipulation and Agreement Regarding Overheads

One of Public Counsel's objections to the Petitions was to the method of calculating the ISRS costs. Public Counsel argued that a portion of the administrative and general costs (the overhead costs) may already be recovered in rates.³⁹ After the hearing, the parties reached a unanimous settlement agreement on this issue.

The agreement states "that no adjustment shall be made in these ISRS cases relating to the overhead costs assigned to the Company's ISRS projects"⁴⁰ but that in a rate case Public Counsel and Staff are not precluded from challenging the prudence of overhead costs being assigned to the ISRS projects. The parties also agreed to begin meeting within 45 days of the Commission's order approving the stipulation and agreement to more fully discuss the method Spire Missouri uses to allocate overhead to the ISRS projects.⁴¹

The Commission has considered the *Stipulation and Agreement Regarding Overheads* and finds it to be a reasonable resolution of the issue in this case. The Commission will approve the agreement. The Commission incorporates the provisions of the agreement into this order as if fully set forth herein and directs the parties to comply with its terms.

V. Motion to Dismiss the "Old ISRS Request" for Lack of Jurisdiction

³⁹ See, Exhibit 201, *Direct Testimony of Robert E. Schallenberg*; and Exhibit 200, *Direct Testimony of John A. Robinett*.

⁴⁰ File Nos. GO-2019-0115 and GO-2018-0116, *Stipulation and Agreement Regarding Overheads*, (filed April 11, 2019), para. 3.

⁴¹ File Nos. GO-2019-0115 and GO-2018-0116, *Stipulation and Agreement Regarding Overheads*, (filed April 11, 2019), para. 4.

On March 20, 2019, Staff requested the Old ISRS Request portion of the Petitions be dismissed for lack of jurisdiction.⁴² Staff argued that the Commission lacks jurisdiction to hear the Old ISRS Request because the Commission's previous orders in File Nos. GO-2018-0309 and GO-2018-0310 are on appeal at the Missouri Court of Appeals, Western District, and therefore, the Court of Appeals has sole jurisdiction over these ISRS charges.⁴³

Public Counsel also objected to the applications because Spire Missouri included the Old ISRS Request. Public Counsel argued that if Spire Missouri's appeal is successful, then it would likely be able to recover the Old ISRS Request during the remand proceedings, thus creating a double recovery of those costs.⁴⁴

Spire Missouri responded to the objections, arguing that the Commission maintains jurisdiction because Spire Missouri is neither renewing a previous request nor seeking reconsideration of the Commission's previous decisions.⁴⁵ Spire Missouri argues that in its previous decision, the Commission did not determine that these costs were ineligible to be recovered through an ISRS. Spire Missouri argues instead that the Commission found Spire Missouri had merely not met its burden of showing these costs were eligible for ISRS recovery. Now, Spire Missouri comes forward with additional evidence in the form of avoided cost studies and seeks to implement a new ISRS on a

⁴² File No. GO-2019-0115, *Motion to Dismiss Portion of Spire West's ISRS Application that is Under Review by the Western District Court of Appeals*, (filed March 20, 2019); and File No. GO-2019-0116, *Motion to Dismiss Portion of Spire East's ISRS Application that is Under Review by the Western District Court of Appeals*, (filed March 20, 2019).

⁴³ Missouri Court of Appeals, Western District, Docket No. WD82302 (consolidated with Docket No. WD82373).

⁴⁴ File Nos. GO-2019-0115 and GO-2019-0116, *Objections to Spire Missouri Inc.'s Applications and Petitions and Request for an Evidentiary Hearing*, (filed March 15, 2019), paras. 6-7.

⁴⁵ File Nos. GO-2018-0309 and GO-2018-0310, *Report and Order* (issued September 20, 2018).

going forward basis (not reaching back to the period prior to the current applications being filed).⁴⁶

Spire Missouri also argues four other points. First, Spire Missouri states that barring a utility from seeking recovery of an ISRS investment that meets the statutory criteria because such costs were not previously allowed in a prior Commission Order now under appeal would impermissibly add a new eligibility condition to the statutory language. Second, Spire Missouri argues that the Commission often maintains jurisdiction to hear rate issues that are on appeal.⁴⁷ Third, Spire Missouri argues that to dismiss this part of the petition would be unduly punitive toward the Company in that it would be punished for having appealed the Commission's decision. And finally, Spire Missouri argues that Staff's arguments are inconsistent with the method of evaluating whether to dismiss a cause of action (*i.e.* whether a petition has stated a cause of action that can be acted upon).

Staff filed a reply in which it dismissed most of Spire Missouri's arguments under the theory that if the Commission lacks jurisdiction, Spire Missouri's other arguments are moot; without jurisdiction, the Commission cannot hear the matter. As to the fact that the Commission often retains jurisdiction in general rate proceedings to make determinations about items that are on appeal, Staff argues that there is a distinction between a general rate case, where the Commission recognizes all of a utility's capital expenditures, whether ISRS eligible or not, and an ISRS case, where the Commission merely allows early recognition, between general rate cases, and thus incentivizes infrastructure investment.

⁴⁶ Exs. 1, 2, 3, and 4.

⁴⁷ Citing the recent rate cases File Nos. GR-2017-0215 and GR-2017-0216 in which the Commission heard Spire Missouri's general rate case including the ISRS issues that were on appeal. Spire Missouri also cites to the *Missouri American Water Company* case, 516 S.W.3d 823 (Mo. banc 2017).

Staff argues that once the general rate case is considered, the denial of ISRS recognition is necessarily mooted because there is no further remedy available.

Conspicuously missing from Spire Missouri's response to Staff's motion is case law to support Spire Missouri's argument that the Commission maintains jurisdiction even though these same issues and facts are on appeal. Spire Missouri cites only to cases regarding the mootness doctrine⁴⁸ and to case law regarding the treatment of a motion to dismiss for failure to state a cause of action on which relief may be granted not relating to jurisdiction.⁴⁹ However, Staff's motion to dismiss also lacks citations to Commission-specific case law. Instead, Staff's case law arguments compare the Commission's jurisdiction, or lack thereof, to that of a trial court once a case is appealed.⁵⁰

One case that is more on-point that Staff failed to rely on in its motion to dismiss, but incorporated in its brief, is the *Missouri Cable Telecommunications Association*⁵¹ case. In that case, the Commission approved a settlement agreement of the issues that were on appeal. The Court found that approving the settlement agreement was tantamount to modifying its original order that was on appeal. The Missouri Court of Appeals, Western District, stated, "If review of a PSC order is pending before a . . . court,⁵² the PSC may not enter a modified, extended or new order."⁵³ Spire Missouri argues,

⁴⁸ *Response in Opposition to Staff's Motion to Dismiss*, (filed March 25, 2019), paras. 14-15.

⁴⁹ *Response in Opposition to Staff's Motion to Dismiss*, (filed March 25, 2019), paras. 18-19.

⁵⁰ Staff cites to *Reynolds v. Reynolds*, 109 S.W.3d 258, 269–71 (Mo. App., W.D. 2003); *State ex rel. Stickelber v. Nixon*, 54 S.W.3d 219, 223 (Mo. App., W.D. 2001); and *State ex rel. Steinmeyer v. Coburn*, 671 S.W.2d 366, 371 (Mo. App., W.D. 1984).

⁵¹ *State ex rel. Missouri Cable Telecommunications Association v. Missouri Pub. Serv. Commission*, 929 S.W.2d 768, 772 (Mo. Ct. App. 1996).

⁵² Decisions of the Commission were previously appealed first to circuit court. That law, section 386.510, RSMo., was amended in 2011, so that appeals of Commission decisions go directly to the Missouri Court of Appeals.

⁵³ *State ex rel. Missouri Cable Telecommunications Association v. Missouri Pub. Serv. Commission*, 929 S.W.2d 768, 772 (Mo. Ct. App. 1996).

however, it is not requesting a modification, extension, or new order, but is asking for a determination based on new and different evidence to be implemented on a prospective basis. Spire Missouri attempts to distinguish its request from a request that would modify, extend, or make a new order in the previous case by citing to the *KCP&L Carrying Costs*⁵⁴ case.

The *KCP&L Carrying Costs* is distinguishable from this case. In that case, the Court said that the Commission had jurisdiction to determine the carrying costs that it had previously ordered to be included in rates even though the original order approving the inclusion of carrying costs was on appeal. The Court stated the Commission had jurisdiction to do this because it was merely implementing its prior order (that remained in effect pending the appeal) and was not attempting to alter or modify the order under review. The court also made a point of stating that the *KCP&L Carrying Costs* case was a new proceeding and not an order issued in the same proceeding, which also distinguished it from the *Missouri Cable Association* case. Spire Missouri relies on the fact that this is a new ISRS proceeding to distinguish its Old ISRS Request.

Spire Missouri admits in its applications that the Old ISRS Request is based on the same costs and issues that the Commission previously denied.⁵⁵ Spire Missouri argues, however, that it has provided new and additional evidence the Commission needs to approve those items as set out by the Commission in its Report and Order.⁵⁶

⁵⁴ *In re KCP & L Greater Missouri Operations Co.*, 408 S.W.3d 175 (Mo. Ct. App. 2013), as modified (June 25, 2013).

⁵⁵ Ex. 1, File No. GO-2019-0115, Verified Application and Petition of Spire Missouri, Inc. to Change its Infrastructure System Replacement Surcharge for It's (*sic*) Spire Missouri East Service Territory and Tariff Revision, (filed January 14, 2019), para. 7; and Ex. 2, File No. GO-2019-0116, Verified Application and Petition of Spire Missouri, Inc. to Change its Infrastructure System Replacement Surcharge for It's (*sic*) Spire Missouri West Service Territory and Tariff Revision, (filed January 14, 2019), para. 7.

⁵⁶ In its *Report and Order* at pages 15-16 in File Nos. GO-2018-0309 and GO-2018-0310, the Commission stated:

In the Report and Order in File Nos. GO-2018-0309 and GO-2018-0310, the Commission specifically found “that Spire Missouri’s plastic pipe replacements were not worn out or deteriorated”⁵⁷ and that Spire Missouri had not provided “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.”⁵⁸ Further, Spire Missouri specifically appealed the Commission’s decision that these costs were not eligible,⁵⁹ so that is the issue vested in the Court of Appeals. Thus, Spire Missouri is arguing that the Commission would not be altering or modifying its previous decision or making a new decision. However, it is asking the Commission to make a new decision on the same costs that it previously found ineligible for ISRS recovery.

Spire Missouri also argues that this ISRS proceeding is a rate proceeding like a general rate case, where the Commission regularly considers items on appeal during the course of a general rate cases.⁶⁰ Rehearing the same ISRS cost issues in a new ISRS case is not an analogous situation to considering those same costs that may be under

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.

⁵⁷ File Nos. GO-2018-0309 and GO-2018-0310, *Report and Order* (issued September 20, 2018), p. 14.

⁵⁸ File Nos. GO-2018-0309 and GO-2018-0310, *Report and Order* (issued September 20, 2018), p. 15. The *Report and Order* also specifically refers to the “*ineligible* plastic pipe replacements” and “the *ineligible* costs” which seems to be a determination that these projects and costs are ineligible for ISRS recovery.

⁵⁹ Spire Missouri’s Notice on Appeal at the Western District says it is appealing the Commission’s Report and Order because, “the Commission erroneously determined that certain costs incurred by Spire Missouri, Inc. were not eligible for recovery through its ISRS mechanism because some plastic facilities were retired or replaced in connection with various ISRS projects.”

⁶⁰ For example, when an ISRS case is appealed and a general rate case is then filed the Commission regularly considers the same costs that were the subject of the ISRS in the rate case.

appeal in a rate case. In an ISRS case, the Commission is only deciding if, under the very specific criteria in the ISRS statutes, the costs proposed are eligible to be collected prior to a rate case being filed. However, in a rate case, the Commission is determining whether these pipe replacement expenses and costs may be included as revenue requirement or rate base, and be recovered through rates on a going forward basis.

Further, the ISRS statute requires the Commission, in the rate case, “to reset the ISRS to zero . . . incorporat[ing] in the utility's base rates . . . eligible costs previously reflected in an ISRS.”⁶¹ Thus, in a general rate case the Commission would not be determining if the costs are ISRS eligible, which is the issue here and the issue on appeal. All of the costs, whether the Commission determined they were ISRS eligible or not, will be considered in a rate case. The determination in the ISRS case is not related to the general rate case except with regard to the accounting for what revenues have been received, the prudence of those costs, and, if not prudent, the potential refund of revenues collected.⁶² The issues for Commission decision in an ISRS case and a general rate case are simply not the same issues, nor are the same facts required for the Commission to make a decision.

Spire Missouri also argues that the ISRS statute requires the Commission to hear the Old ISRS Request because the statute provides for the recovery of “eligible infrastructure system replacements”⁶³ which includes gas utility plant projects that “[w]ere not included in the gas corporation’s rate base in its most recent general rate case.”⁶⁴ However, the statute also says that a gas corporation “may file a petition . . . for the

⁶¹ Section 393.1015.6(1), RSMo (2016).

⁶² Subsections 393.1015(5)c, (6), and (8), RSMo (2016).

⁶³ Subsection 393.1012.1, RSMo 2016.

⁶⁴ Subsection 393.1009(3)(d), RSMo 2016.

recovery of costs for eligible infrastructure system replacements.”⁶⁵ The statute authorizes one filing, but does not necessarily authorize the repeated filing of petitions to recover costs that the Commission has already determined are ineligible.

The settled case law is that the Commission loses jurisdiction to the Court once an appeal has been filed and the Commission may not modify or alter its order that is being appealed and it may not issue a new order. The Commission maintains jurisdiction to implement its orders that are appealed and the Commission maintains jurisdiction to hear new cases on similar issues or new cases involving the same costs or revenues, such as in a rate case. Even though Spire Missouri has presented new evidence with regard to the Old ISRS Request, it is still asking the Commission to rehear the evidence from the prior case and to make a new order based on those costs that the Commission has already determined to be ineligible for ISRS recovery.

Staff’s motion to dismiss for lack of jurisdiction is granted. The portions of the applications dealing with the time period of October 1, 2017, through June 30, 2018, are dismissed.

VI. 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.

⁶⁵ Subsection 393.1012.1, RSMo 2016.

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.⁶⁶

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. Public Counsel “may represent and protect the interests of the public in any proceeding before or appeal from the public service commission.”⁶⁷ Public Counsel “shall have discretion to represent or refrain from representing the public in any proceeding.”⁶⁸ 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.⁶⁹

5. The last general rate cases applicable to Spire Missouri are File Nos. GR-2017-0215 and GR-2017-0216 (“rate cases”), which were decided by the Commission by order issued on March 7, 2018, effective on March 17, 2018, with new rates effective on April 19, 2018.⁷⁰ Those rate cases included rate base investments

⁶⁶ Exs.1 and 2, p. 2.

⁶⁷ Section 386.710(2), RSMo 2016; and 4 CSR 240-2.010(10) and (15) and 2.040(2).

⁶⁸ Section 386.710(3), RSMo 2016; and 4 CSR 240-2.010(10) and (15) and 2.040(2).

⁶⁹ 4 CSR 240-2.010(10) and (21) and 2.040(1).

⁷⁰ *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, (issued 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).

made through September 30, 2017, and Spire Missouri's existing ISRS were reset to zero.⁷¹

6. Spire Missouri filed verified applications and petitions ("Petitions") with the Commission on January 14, 2019, for its East and West service territories, requesting an ISRS adjustment to recover eligible costs incurred in connection with infrastructure system replacements made during the period July 1, 2018 through November 30, 2018, with pro forma ISRS costs updated through January 31, 2019 (the New ISRS Request).⁷²

7. Spire Missouri's Petitions also requested an ISRS adjustment to recover eligible costs incurred in connection with infrastructure system replacements made during the period October 1, 2017 through June 30, 2018 (the Old ISRS Request).⁷³

8. The Old ISRS Request is the same costs from the same time period that were previously determined to be ineligible for ISRS recovery in Commission File Nos. GO-2018-0309 and GO-2018-0310.⁷⁴

9. 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

⁷¹ Section 393.1015.6, RSMo 2016, and Exs. 1 and 2, p. 5, para. 11.

⁷² Ex. 1 and 2, paras. 7-8.

⁷³ Ex. 1 and 2, paras. 7-8.

⁷⁴ Ex. 1, File No. GO-2019-0115, *Verified Application and Petition of Spire Missouri, Inc. to Change its Infrastructure System Replacement Surcharge for It's (sic) Spire Missouri East Service Territory and Tariff Revision*, (filed January 14, 2019), para. 7; and Ex. 2, File No. GO-2019-0116, *Verified Application and Petition of Spire Missouri, Inc. to Change its Infrastructure System Replacement Surcharge for It's (sic) Spire Missouri West Service Territory and Tariff Revision*, (filed January 14, 2019), para. 7.

Spire Missouri East in the amount of \$9,203,991⁷⁵ and for Spire Missouri West in the amount of \$9,769,606.⁷⁶

10. Spire Missouri's estimates of capital expenditures for projects completed through January 2019 that it filed in its Petitions, were subsequently replaced with updated actual cost information.⁷⁷ Spire Missouri East's revenue requirement request in this proceeding, after updating the pro-forma months of December 2018 and January 2019 with actual information, is \$9,257,817. Spire Missouri West's revenue requirement request in this proceeding, after updating the pro-forma months of December 2018 and January 2019 with actual information, is \$8,754,194.⁷⁸

11. 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, including the Petitions, do not exceed ten percent of the base revenue levels approved by the Commission in the last Spire Missouri rate cases.⁷⁹

12. As set out earlier in this order, the Old ISRS Request portions of the Petitions are dismissed.⁸⁰

⁷⁵ Ex. 100, Staff Direct Report (Spire East), p. 1. This amount included the pro-forma amounts for January 2019 and was revised to \$9,257,817 with the filing of January actual costs. (Ex. 3, Appendix A, Schedule 8).

⁷⁶ Ex. 101, Staff Direct Report (Spire West), p. 1. This amount included the pro-forma amounts for January 2019 and was revised to \$8,751,036 with the filing of January actual costs. (Ex. 4, Appendix A, Schedule 8).

⁷⁷ Exs. 3 and 4.

⁷⁸ Ex. 8, Direct Testimony of Wesley E. Selinger, p. 3.

⁷⁹ Ex. 100, Staff Direct Report (Spire East), p. 9; and Ex. 101, Staff Direct Report (Spire West), p. 10. See, Section 393.1012.1, RSMo.

⁸⁰ Therefore, even though, similar evidence was presented for the Old ISRS Request portions of the Petitions, this Report and Order will cite to only the New ISRS Request portions of the evidence.

13. Spire Missouri attached supporting documentation to its Petitions for completed plant additions. This included detailed tables identifying the plant account/type of addition, work order number, funding project number, work order description, month of completion, addition amount, number of months, depreciation rate, accumulated depreciation, depreciation expense, retirement month, and retirement amount.⁸¹

14. Spire Missouri provided a description of the reason for the replacement broken into five categories: A. Service Replacements (i.e. renewals); B. Mains Replaced Under Maintenance "Mtce" - not related to a planned project, but emergency situations (i.e. worn out or deteriorated); C. Encapsulation/Clamping of Cast Iron Main; and D. Cathodic Protection Applied to Steel Mains Plant.⁸² The Company also provided a summary of the total costs of each of the categories⁸³ and revenue requirement, depreciation, rate design, and tax calculations.⁸⁴

15. Spire Missouri provided its project analysis result percentage, adjustment percentage, and revised addition amount resulting from its cost avoidance analysis discussed below.⁸⁵

16. Spire Missouri 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.⁸⁶ The tables also included a reference to the paragraph of the definition of "Gas utility plant projects" found in Subsection 393.1009(5), RSMo.⁸⁷

⁸¹ Exs. 1, 2, 3, and 4, Appendix A, Schedules 1, 2, and 3.

⁸² Exs. 1, 2, 3, and 4, Appendix A, Schedule 2.

⁸³ Exs. 1, 2, 3, and 4, Appendix A, Schedule 5.

⁸⁴ Exs. 1, 2, 3, and 4, Appendix A, Schedules 8-18.

⁸⁵ Exs. 1, 2, 3, and 4, Schedules 1 and 2.

⁸⁶ Exs. 1, 2, 3, and 4, Appendix A, Schedules 6 and 7.

⁸⁷ Exs. 1, 2, 3, and 4, Appendix A, Schedule 6.

17. Spire Missouri is required to implement a program to replace cast iron and steel pipes.⁸⁸ The mandated cast iron and bare steel replacement programs began over 25 years ago and Spire Missouri has been actively engaged in replacing cast iron and bare steel since the 1950s.⁸⁹

18. 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.⁹⁰

19. Spire Missouri's current neighborhood replacement program replaces or retires in place cast iron, steel, and plastic pipes.⁹¹

20. Some of the plastic pipes could not safely be reused due to Spire Missouri increasing the pressure for the gas lines as part of a systematic redesign.⁹²

21. A majority of the costs that Spire Missouri is requesting to recover through its ISRS are related to Spire Missouri's systematic or strategic replacement program.⁹³

22. Each year, under Spire Missouri's replacement program, Spire Missouri replaces between 60 and 65 miles of cast iron pipes in the Spire Missouri East territory

⁸⁸ See 4 CSR 240.40-030(15).

⁸⁹ Ex. 200, Direct Testimony of John A. Robinett, Schedule JAR-D-5.

⁹⁰ File Nos. GO-2018-0309 and GO-2018-0310, *Report and Order* (issued September 20, 2018), p. 5, Finding of Fact 11.

⁹¹ File Nos. GO-2018-0309 and GO-2018-0310, *Report and Order* (issued September 20, 2018), p. 5, Finding of Fact 12.

⁹² Tr. p. 82, Ln. 12- 83, Ln. 13.

⁹³ Tr. p. 92.

and approximately 120 miles of cast iron and bare steel pipes in the Spire Missouri West territory.⁹⁴

23. Spire Missouri uses its Distribution Integrity Management Program (“DIMP”) to rank the pipeline system according to potential risks.⁹⁵ The DIMP identifies the cast iron and bare steel facilities as posing higher risks of leaks or other incidents than other types of facilities reflecting their status as worn out or deteriorated.⁹⁶

24. The cast iron pipes being replaced are sixty to one-hundred years old.⁹⁷ Cast iron pipes are unsafe to use because they tend to graphitize, making the pipe brittle and subject to cracking and leaking.⁹⁸

25. The steel pipe being replaced is bare steel, meaning it is not cathodically-protected. Without this protection, steel pipes corrode relatively quickly and need to be replaced.⁹⁹ Bare steel corrodes, diminishing the wall thickness, which causes the possibility of leaks.¹⁰⁰

26. The cast iron and bare steel pipes are in a worn out or deteriorated state.¹⁰¹

27. The bare steel and cast iron replacements are done subject to a Commission-approved cast iron and bare steel replacement program and have historically been found by the Commission to be in worn out or deteriorated condition.¹⁰²

⁹⁴ Tr. pp. 108-109.

⁹⁵ Tr. p. 129.

⁹⁶ Tr. pp. 79 and 129.

⁹⁷ Tr. pp. 90 and 139.

⁹⁸ Tr. p. 90.

⁹⁹ Tr. p. 257.

¹⁰⁰ Tr. p. 90.

¹⁰¹ Tr. pp. 78 and 139.

¹⁰² File Nos. GO-2018-0309 and GO-2018-0310, *Report and Order*, (issued September 20, 2018); 4 CSR 240-40.030(15); and Ex. 200, Direct Testimony of John A. Robinett, Schedule JAR-D-5.

28. A joint statement by federal pipeline safety officials at the United States Department of Transportation (“USDOT”) and Pipeline and Hazardous Material Safety Administration (“PHMSA”) sent to the National Association of Regulatory Utilities Commissioners (“NARUC”) in December 2011, recommended the accelerated replacement of cast iron and bare steel facilities.¹⁰³ These officials and Spire Missouri’s witness reflected that such facilities are sufficiently worn out or deteriorated to justify expedited replacement and the utilization of special rate mechanisms such as ISRS to encourage the expedited replacement.¹⁰⁴

29. It would be cost prohibitive to physically or visibly evaluate all pipe being replaced.¹⁰⁵ From an engineering perspective, however, with regard to pipeline replacement, depreciable life is a reasonable proxy for determining whether all pipe is worn out or deteriorated.¹⁰⁶ When the facilities are dug up, those facilities are regularly found to be in a worn out or deteriorated condition.¹⁰⁷ Spire Missouri’s witness, Rob C. Atkinson, a person with over 25 years of relevant experience at Spire Missouri (and its predecessor),¹⁰⁸ testified that he had never encountered a cast iron or bare steel pipe dug up that was not in some sort of a deteriorated state.¹⁰⁹

30. Most of the cast iron pipes being replaced have already exceeded their useful services lives for depreciation purposes.¹¹⁰ The useful service life for cast iron and steel mains is 80 years for Spire Missouri East and 50 years for Spire Missouri West.¹¹¹

¹⁰³ Tr. pp. 75-76.

¹⁰⁴ Tr. pp. 75-77.

¹⁰⁵ Ex. 6, Direct Testimony of Rob C. Atkinson, p.11.

¹⁰⁶ Ex. 6, Direct Testimony of Rob C. Atkinson, p.11.

¹⁰⁷ Tr. pp. 78 and 139.

¹⁰⁸ Ex. 6, Direct Testimony of Rob C. Atkinson, pp. 1-2.

¹⁰⁹ Tr. p. 78.

¹¹⁰ Ex. 6, Direct Testimony of Rob C. Atkinson, p.12.

¹¹¹ Ex. 6, Direct Testimony of Rob C. Atkinson, p.12.

31. The useful life for plastic and copper is 70 years for Spire Missouri East.¹¹² For Spire Missouri West, the useful life for all mains (plastic, cast iron, and steel) is 50 years. The useful life for service lines is 44 years for Missouri East and 40 years for Missouri West.¹¹³

32. Some of the sections of mains replaced were plastic, but a majority of the plastic pipes being replaced are service lines.¹¹⁴ Spire Missouri did not conduct a review to determine if the plastic pipe was worn out or deteriorated before replacing it. Spire Missouri did not attempt to calculate the amount of plastic pipe replaced that was worn out or in a deteriorated condition. The service lines are being replaced because Spire Missouri is replacing its entire system, not because they were worn out or in a deteriorated condition.¹¹⁵

33. The plastic mains being replaced are not past their useful service lives as the oldest plastic in Spire Missouri's system was installed in the early 1970s.¹¹⁶

34. Blanket work orders are work orders that cover a large number of tasks which remain open for an extended period and contain items that are not planned replacement projects.¹¹⁷ To determine the amount of blanket work order costs that are not ISRS eligible, Spire Missouri categorized each task in the blanket work order as either ISRS eligible or ISRS ineligible, and then found the percentage of ISRS eligible to ISRS ineligible and applied the ISRS ineligible task percentage to the blanket work order total amounts to calculate the blanket work order costs that are not ISRS eligible.¹¹⁸

¹¹² Tr. p. 127.

¹¹³ Tr. pp. 127-128.

¹¹⁴ Tr. pp. 123-124.

¹¹⁵ Tr. p. 126.

¹¹⁶ Tr. pp. 127-128.

¹¹⁷ Exs. 100 and 101, Staff Direct Report, p. 11; and Ex. 107, p. 1.

¹¹⁸ Ex. 100, pp. 11-12; and Ex. 101, p. 12.

35. Tasks that Spire Missouri considered ISRS eligible were mandated relocations, replacements due to leak repairs and corrosion inspections, and replacement of copper and cast iron pipe.¹¹⁹ ISRS ineligible items included relocations at a customer's request, replacements due to excavation damage, replacement of plastic not related to a leak repair, and installation of new services.¹²⁰

36. Staff agreed with Spire Missouri's blanket work order task categorizations and the eligibility of all the tasks included in the blanket work orders.¹²¹ Public Counsel also indicated several times through its attorney and witness at the hearing that it is not challenging the blanket work orders in this case.¹²²

37. A "service renewal occurs when an existing service line is replaced in its entirety with a new service line."¹²³ Service renewals could be done at either the request of the customer or in the course of a leak repair.¹²⁴

38. A "service transfer occurs when an existing ratepayer's service line is connected to a new main requiring either the extension or retirement of part of the current service line."¹²⁵ If a service line will be reused after repair or replacement of the main, it must be transferred (attached) to the main to provide service.¹²⁶

39. In an attempt to comply with guidance from the Commission in the previous ISRS cases, Spire Missouri conducted "avoided cost studies" consisting of engineering

¹¹⁹ Exs. 100 and 101, p.12.

¹²⁰ Exs. 100 and 101, p.12.

¹²¹ Exs. 1 and 2, Staff Direct Report, p. 12.

¹²² Tr. pp. 54, 62, and 275. Public Counsel also stated in its brief at page 3, footnote 2, and in Exhibit 208, paragraph 18, that it was choosing not to contest whether the blanket orders were for worn out and deteriorated pipe.

¹²³ Ex. 200, Direct Testimony of John A. Robinett, p. 6; and Ex. 107, p. 1.

¹²⁴ Ex. 107, p. 1.

¹²⁵ Ex. 200, Direct Testimony of John A. Robinett, pp. 6-7.

¹²⁶ Tr. pp. 85-86.

analyses, by individual project, comparing the estimated costs of retiring the pipe, including plastic pipe, with an estimate of the cost of reusing the existing pipe.¹²⁷ Spire Missouri conducted this analysis for each project included in the ISRS filing, with the exception of relocation projects mandated by governmental entities, projects related to a pipe found to be in an angle of repose, and projects in which either no plastic pipe was abandoned or plastic pipe was abandoned because it was no longer necessary and not replaced.¹²⁸

40. Spire Missouri applied the results of its avoided cost studies to the actual plant addition amount using a percentage adjustment. If the individual analysis showed that it was more costly to replace plastic pipe than to reuse it, Spire Missouri adjusted the actual addition amount by the percentage difference between the two estimates.¹²⁹

41. The net cost avoidance according to this method was \$1.6 million for all four cases at issue (old and new for both Spire Missouri East and Spire Missouri West).¹³⁰ In Spire Missouri East territory the avoided cost studies for all projects show “savings” when replacing plastic pipe versus reusing plastic pipe. In Spire Missouri West territory reusing plastic pipe is more cost effective than replacing that pipe according to the avoided cost studies.¹³¹

42. Staff’s witnesses testified that Staff had reviewed a sampling of the work orders and made some calculations with regard to removing what it considered ineligible plastic from certain types of work orders.¹³² Additionally, Staff witnesses testified that it

¹²⁷ Ex. 6 Direct Testimony of Rob C. Atkinson, p. 4.

¹²⁸ Ex. 6 Direct Testimony of Rob C. Atkinson, pp. 4-5. For both Spire Missouri East and Spire Missouri West for the period of October 1, 2017 through January 31, 2019, this was more than 500 analyses.

¹²⁹ Ex. 8, Direct Testimony of Wesley E. Selinger, p. 5-6; and Exs. 1, 2, 3, and 4, Appendix A–Schedule 1.

¹³⁰ Ex. 104

¹³¹ Ex. 104.

¹³² Tr. pp. 187-188 and 204-205; and Exs. 100 and 101, *Staff Direct Report*, pp. 4 and 11-12.

was a relatively easy process to determine the cost associated with the plastic replacement.¹³³

43. Staff calculated the amount of plastic in Spire Missouri's requested ISRS recovery using the same methodology that was applied in Spire Missouri, Inc.'s previous ISRS Cases (File Nos. GO-2018-0309 and GO-2018-0310).¹³⁴ Staff used the work order authorizations provided to determine the feet of main and service lines replaced and retired by the type of pipe (plastic, cast iron, steel, etc.).¹³⁵ Staff then applied the actual individual plastic main and service line percentages to the work order cost to determine the cost of the replacement of plastic pipe.¹³⁶ Staff did not remove any amounts for work orders that were associated with relocations required by a governmental authority, encapsulation work orders, angle of repose work orders, or regulator replacement work orders.¹³⁷

44. In order to calculate the amount of ISRS ineligible plastic in the blanket work orders, Staff used the same calculation that was in Staff's direct filing.¹³⁸ Staff included 100% recovery of mandated relocations, replacements due to leak repairs and corrosion inspections, and replacement of copper and cast iron pipe. Staff's total ISRS revenues calculation did not include relocations at a customer's request, replacements due to excavation damage, replacement of plastic not related to a leak repair, and installation of new services.¹³⁹

¹³³ Tr. p. 205.

¹³⁴ Ex. 105, para. 3.

¹³⁵ Ex. 105, para. 3.

¹³⁶ Ex. 105, para. 3.

¹³⁷ Ex. 105, Staff Report, para. 3.

¹³⁸ Ex. 105, Staff Report, para. 4. Referring to Exs. 100 and 101, Staff Direct Report, pp. 11-12.

¹³⁹ Ex. 105, Staff Report, para. 4.

45. Staff indicated that if the Commission adopted the re-calculated ISRS revenue requirements as shown in Attachments “A” and “B” of Exhibit 105 (and the corrections in Exhibit 106), Staff will need to update the rate design (tariffed rates by customer class) for both Spire Missouri East and Spire Missouri West. As part of an updated rate design, Staff would also include the existing ISRS revenues that are currently in ISRS rates.¹⁴⁰

46. Staff’s April 24, 2019, ISRS revenue requirement calculation inadvertently excluded several work orders.¹⁴¹ On April 29, 2019, Staff filed Exhibit 106 with corrections.¹⁴²

47. Staff’s April 29, 2019, calculations in Exhibit 106 were in error for Spire Missouri East (File No. GO-2018-0115) because Staff erroneously included 100% recovery of the service transfer work orders.¹⁴³ Staff corrected these numbers by removing 6.36% of the service transfers that were plastic.¹⁴⁴ This reduced the Spire Missouri East ISRS revenue requirement by \$360,067.¹⁴⁵

48. The adjusted ISRS revenue requirement as calculated by Staff on May 1, 2019, results in Spire Missouri collecting total ISRS revenues in the amount of

¹⁴⁰ Ex. 105, Staff Report, para. 6.

¹⁴¹ Ex. 106, Notice of Correction to Staff Report, para. 1.

¹⁴² Ex. 106, Notice of Correction to Staff Report, para. 2.

¹⁴³ Ex. 107, *Staff Response to Order Directing Response and Notice of Second Corrected Revenue Requirement for Spire East*, p. 2.

¹⁴⁴ Ex. 107, *Staff Response to Order Directing Response and Notice of Second Corrected Revenue Requirement for Spire East*, p. 2.

¹⁴⁵ Ex. 107, *Staff Response to Order Directing Response and Notice of Second Corrected Revenue Requirement for Spire East*, p. 2.

\$6,425,514 for its Spire Missouri East service territory¹⁴⁶ and \$6,782,560 for its Spire Missouri West service territory.¹⁴⁷

49. Spire Missouri agreed that after the April 29, 2019 correction,¹⁴⁸ Staff applied the methodology used in previous ISRS cases accurately.¹⁴⁹ However, Spire Missouri disagreed that the May 1, 2019 correction should be made.¹⁵⁰

50. The Petitions affirmatively state that the infrastructure system replacements listed on Appendix A and Appendix B to the Petitions: a) did not increase revenues by directly connecting to new customers; b) are currently in service and used and useful; c) were not included in rate base in Spire Missouri's most recently completed general rate cases, Case Nos. GR-2017-0215 and GR-2017-0216, and d) replaced and/or extended the useful life of existing infrastructure.¹⁵¹

VII. Conclusions of Law

A. Spire Missouri is a "gas corporation" and "public utility" as those terms are defined by Section 386.020, RSMo (2016).¹⁵² Spire Missouri is subject to the

¹⁴⁶ Ex. 107, *Staff Response to Order Directing Response and Notice of Second Corrected Revenue Requirement for Spire East*, Attachment A – Spire Missouri East, ISRS Revenue Requirement Calculation – 2nd Corrected 5/1/2019.

¹⁴⁷ Exhibit 107, *Staff Response to Order Directing Response and Notice of Second Corrected Revenue Requirement for Spire East*, Attachment A – Spire Missouri East, ISRS Revenue Requirement Calculation – 2nd Corrected 5/1/2019.

¹⁴⁸ Ex. 106.

¹⁴⁹ *Spire Missouri Inc's Response to Staff Report and Request for Accounting Authorization to Defer Amounts Excluded From ISRS Charges for Consideration in Its Next Rate Cases*, (filed April 30, 2019), para. 2.

¹⁵⁰ *Reply of Spire Missouri Inc. to OPC's Response to Commission Order and Staff Report*, (filed May 1, 2019).

¹⁵¹ Exs. 1 and 2, p. 5, para. 10.

¹⁵² Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.

Commission's jurisdiction, supervision, control, and regulation as provided in Chapters 386 and 393, RSMo.

B. The Commission has the authority under Sections 393.1009 through 393.1015, RSMo, to consider and approve ISRS requests such as those proposed in the Petitions.

C. Since Spire Missouri brought the Petitions, it bears the burden of proof.¹⁵³ The burden of proof is the preponderance of the evidence standard.¹⁵⁴ In order to meet this standard, Spire Missouri must convince the Commission it is "more likely than not" that its allegations are true.¹⁵⁵

D. 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".

E. Spire Missouri is required by Section 393.130, RSMo, to provide safe and adequate service.

¹⁵³ "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).

¹⁵⁴ *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).

¹⁵⁵ *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).

F. Spire Missouri is required by state regulation 4 CSR 240.40-030(15) and the corresponding portions of 49 CFR part 192¹⁵⁶ and by Commission orders¹⁵⁷ to implement a program to replace cast iron and steel pipes.

G. 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.”

H. Eligible infrastructure system replacements are defined in Section 393.1009(3), RSMo., as:

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[.]

I. As defined in Section 393.1009(5):

“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[.]

¹⁵⁶ Commission rule 4 CSR 240-40.030 largely similar to the Minimum Federal Safety Standards contained in the Code of Federal Regulations at 49 CFR part 192.

¹⁵⁷ File No. GO-91-275, *Order Approving Main Replacement Program*, (Laclede Gas Company, n/k/a Spire Missouri East); and File No. GO-2002-50, *Order Approving Application*, (Missouri Gas Energy, n/k/a Spire Missouri West). See, Ex. 200, Schedules JAR-D-4 and JAR-D-5.

J. The Missouri Court of Appeals, Western District, has previously overturned the Commission's decision to allow the costs of plastic components of mains and service lines because they were an integral part of the replacement of the projects as a whole.

The Court stated:

Section 393.1009(5)(a) . . . clearly 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.¹⁵⁸

The Court found that even though it may have been a prudent decision and may have enhanced safety, Laclede (now Spire Missouri) had not shown that there was a state or federal safety requirement mandating the replacement of plastic pipe that was not shown to be in worn out or deteriorated condition. Therefore, the Court stated that costs related to the plastic replacements were not eligible for early recovery under the ISRS statutes.

The Court clarified in footnote 5 of the opinion, however:

We recognize that the replacement of worn out or deteriorated components will, at times, necessarily impact and require the replacement of nearby components that are not in a similar condition. Our conclusion here should not be construed to be a bar to ISRS eligibility for such replacement work that is truly incidental and specifically required to complete replacement of the worn out or deteriorated components. However, we do not believe that section 393.1009(5)(a) allows ISRS eligibility to be bootstrapped to components that are not worn out or deteriorated simply because that [sic] are interspersed within the same neighborhood system of such components being replaced or because a gas utility is using the need to replace worn out or deteriorated components as an opportunity to redesign a system (*i.e.*,

¹⁵⁸ *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) (footnote omitted).

by changing the depth of the components or system pressure) which necessitates the replacement of additional components.¹⁵⁹

VIII. Decision

After the settlements are taken into consideration and excluding the Old ISRS Request, the remaining issues concern whether the expenditures made by Spire Missouri are eligible for recovery under the ISRS statute. In making a determination of eligibility for ISRS recovery, the Commission must look to the requirements of the statute. As the court of Appeals stated,

Section 393.1009(5)(a) . . . clearly 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.¹⁶⁰

There is agreement that the gas utility plant contained in Spire Missouri's blanket work orders and its work orders for relocations may be considered ISRS eligible for purposes of this case.¹⁶¹ However, Public Counsel objects to the recovery of the remaining costs on the basis that Spire Missouri has not shown that the expenditures were made in conjunction with replacing "existing facilities that have worn out or are in deteriorated condition."¹⁶² This argument includes the Company's replacements of bare

¹⁵⁹ *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).

¹⁶⁰ *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) (footnote omitted).

¹⁶¹ Staff's testimony was that it agreed with Spire as to its categorization of ISRS eligible and not ISRS eligible tasks in the blanket work orders. Additionally, Public Counsel stated several times through its attorney and witness at the hearing that it is not challenging the blanket work orders in this case. (Tr. pp. 54, 62, and 275). Public Counsel also stated in its brief (at fn. 2, p. 3) and in Exhibit 208 that it was choosing not to pursue this issue.

¹⁶² Section 393.1009(5)(a), RSMo 2016.

steel and cast iron mains and service lines, and the plastic components associated with those replacements.

Public Counsel argues that all of the costs are ineligible for ISRS recovery because the Company has failed to show that the plastic mains and service lines claimed were required by state or federal mandates and were in deteriorated or worn out condition;¹⁶³ and that Spire Missouri had also failed to show that any of the bare steel and cast iron infrastructure replacements were worn out or deteriorated.¹⁶⁴

Bare Steel and Cast Iron

With regard to replacements of cast iron and bare steel pipes, the evidence showed that Spire Missouri is required by state statute to provide safe and adequate service.¹⁶⁵ In its Petitions, Spire Missouri specifically identified for each individual project the state or federal safety requirement, with a citation to a state statute or Commission rule, mandating each work order.¹⁶⁶ The evidence showed that both Commission and federal regulations require Spire Missouri to implement a program to replace cast iron and bare steel pipes.¹⁶⁷ Thus, the Commission concludes that the cast iron and bare steel pipes were replaced to comply with state or federal safety requirements.

The second element that Spire Missouri must prove is that the bare steel and cast iron mains and service lines were worn out or in deteriorated condition. Public Counsel argues that Spire Missouri has not provided any evidence that the bare steel and cast

¹⁶³ File Nos. GO-2019-0115 and GO-2019-0116, *Objections to Spire Missouri Inc.'s Applications and Petitions and Request for an Evidentiary Hearing*, (filed March 15, 2019), paras. 8-10.

¹⁶⁴ File Nos. GO-2019-0115 and GO-2019-0116, *Objections to Spire Missouri Inc.'s Applications and Petitions and Request for an Evidentiary Hearing*, (filed March 15, 2019), paras. 11-14.

¹⁶⁵ Section 393.130, RSMo (2016).

¹⁶⁶ See, Schedule 6 to Exhibits 1, 2, 3, and 4, citing the specific sections of the gas safety rules that are applicable.

¹⁶⁷ 4 CSR 240-40.030; and 49 CFR part 192.

iron mains and service lines were worn out or deteriorated.¹⁶⁸ Public Counsel points to Spire Missouri's testimony that it has replaced between 60 and 65 miles of cast iron pipes in the Spire East territory and 120 miles of cast iron and bare steel pipes in the Spire West territory.¹⁶⁹ Public Counsel argues that such extensive replacements cannot be due to the replacement of worn out or deteriorated pipe, but rather is "the product of a full-scale, top-to-bottom redesign of Spire's gas distribution system done to accommodate a change in pipeline material to plastic."¹⁷⁰

Spire Missouri provided several types of evidence to prove that the cast iron and bare steel portions of its ISRS requests were worn out or in deteriorated condition. The first of Spire Missouri's evidentiary points is that the bare steel and cast iron replacements are done subject to a Commission-approved cast iron and bare steel replacement program and have historically been found by the Commission to be in worn out or deteriorated condition.¹⁷¹ Public Counsel's evidence showed that the mandated cast iron and bare steel replacement programs began over 25 years ago and the Company has been actively engaged in replacing cast iron and bare steel since the 1950s.¹⁷²

Additionally, the evidence showed that a joint statement by federal pipeline safety officials at the USDOT and PHMSA sent to NARUC in December 2011, recommended the accelerated replacement of cast iron and bare steel facilities.¹⁷³ These officials and Spire Missouri's witness reflected that such facilities are sufficiently worn out or

¹⁶⁸ Exhibit 200, Direct Testimony of John A. Robinett, (filed March 29, 2019), pp. 4-6.

¹⁶⁹ Tr. p. 109, Ins. 1-5.

¹⁷⁰ File Nos. GO-2019-0115 and GO-2019-0116, *Brief of the Office of the Public Counsel*, (filed April 15, 2019), p.4.

¹⁷¹ File Nos. GO-2018-0309 and GO-2018-0310, *Report and Order*, (issued September 20, 2018); 4 CSR 240-40.030(15); and Ex. 200, Direct Testimony of John A. Robinett, Schedule JAR-D-5.

¹⁷² Ex. 200, Direct Testimony of John A. Robinett, Schedule JAR-D-5.

¹⁷³ Tr. pp. 75-76.

deteriorated to justify expedited replacement and the utilization of special rate mechanisms such as ISRS to encourage the expedited replacement.¹⁷⁴

Other evidence supporting a finding that cast iron and bare steel mains are worn out or deteriorated included testimony that cast iron and bare steel facilities are ranked by the Company's DIMP as posing higher risks of leaks or other incidents than other types of facilities reflecting their status as worn out or deteriorated.¹⁷⁵ Additionally, the testimony of Spire Missouri's witness was that when the facilities are dug up, those facilities are regularly found to be in a worn out or deteriorated condition.¹⁷⁶ Spire Missouri's witness further testified that he had never encountered a cast iron or bare steel pipe dug up that was not in some sort of a deteriorated state.¹⁷⁷ 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, causing those pipes to corrode relatively quickly and requiring their replacement.¹⁷⁸

Another factor in determining that cast iron and bare steel pipe is worn out or in deteriorated condition is the age of that pipe. The testimony in this case supports that most of the cast iron mains being replaced have exceeded their useful service lives for depreciation purposes.¹⁷⁹

When considered in combination, the totality of the evidence supports a finding by the Commission that the cast iron and bare steel pipe was worn out or in a deteriorated condition. The Commission concludes that the cast iron and bare steel pipes were

¹⁷⁴ Tr. pp. 75-77.

¹⁷⁵ Tr. pp. 79 and 129.

¹⁷⁶ Tr. pp. 78 and 139.

¹⁷⁷ Tr. p. 78.

¹⁷⁸ Tr. p. 90.

¹⁷⁹ Ex. 6, Atkinson Direct, p. 12.

replaced to comply with state or federal safety requirements and were worn out or in a deteriorated condition. Thus, the Commission determines that the cast iron and bare steel pipes are eligible for cost recovery under ISRS.

Plastic Components of Mains and Service Lines

With regard to the plastic components of the mains and service lines, the Commission again begins with the requirements of the statute. Spire Missouri must first prove the replacements satisfy the elements for ISRS eligibility, then, if eligible, the Commission will determine the amounts of that recovery. Spire Missouri must prove first, that its requests consist of “gas utility plant projects . . . installed to comply with state or federal safety requirements as replacements for existing facilities that have worn out or are in deteriorated condition[.]”¹⁸⁰

There was little, if any, evidence that the non-cast iron or bare steel components (plastic components) were in a worn out or deteriorated condition. In fact, the evidence generally showed that the plastic pipe was not worn out or in a deteriorated condition. The evidence showed that in approximately 2010, Spire Missouri changed from a piece meal approach to replacing its deteriorating infrastructure to a more systemic approach. With this systematic approach, Spire Missouri retires pipes in place and installs new plastic pipes often in a different location. Spire Missouri indicated that the new location is more accessible and efficient to maintain than the location of the old pipes which were often under a street.¹⁸¹ Spire Missouri’s witness admitted that the replacement of plastic was part of the entire system replacement.¹⁸² In other words, the plastic components,

¹⁸⁰ Section 393.1009(5)(a).

¹⁸¹ File Nos. GO-2018-0309 and GO-2018-0310, *Report and Order* (issued September 20, 2018), p. 5, Finding of Fact 11.

¹⁸² Tr. p. 126.

whether part of the mains or service lines, are not being replaced because they are themselves in worn out or deteriorated condition, but because they are part of the systematic replacement of all the pipe.

Spire Missouri argues that the costs to replace the plastic components were less than the costs of reusing the plastic components and, therefore, there are no incremental costs of replacing the plastic. However, this argument does not align with the statutory requirements or the Court's interpretation of those requirements and is an inappropriate comparison.

The ISRS was not designed to allow early recovery of system-wide replacement of infrastructure, only the replacement of worn out or deteriorated infrastructure. Plastic components that are not otherwise worn out or deteriorated cannot become ISRS eligible as part of a systemic redesign.

In Footnote 5 of its decision, the Court of Appeals recognized that the replacement of worn out or deteriorated components “will, at times, necessarily impact and require the replacement of nearby components that are not in similar condition.”¹⁸³ The Court of Appeals specifically acknowledged that the statute allows for recovery of plastic components that were “truly incidental and specifically required to complete replacement of the worn out or deteriorated components.”¹⁸⁴ Spire Missouri interpreted Footnote 5 and the language in the Court's conclusions that the “costs did not satisfy the requirements found in the plain language in section 393.1009(5)(a)” to mean that as long

¹⁸³ *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).

¹⁸⁴ *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).

as it could show the costs to replace were less than the cost of reusing plastic components, the replacements were recoverable under ISRS. This however, is an inaccurate interpretation of the Court's decision.

Spire Missouri's cost studies may show that it cost less to replace the plastic components than it cost to reuse them;¹⁸⁵ however, nothing in Spire Missouri's cost studies or other evidence proves that the plastic components being replaced were costs that could be recovered under ISRS.

While Spire Missouri compares the cost to replace plastic versus reusing plastic parts, the comparison is not sound. Spire Missouri's cost benefit analysis compares the wrong information, but even if it were used, the information would not be persuasive. Firstly, Exhibit 104 demonstrates that when the costs for projects completed during the New ISRS period in Spire West were totaled, it was more cost effective to reuse rather than replace the pipe.¹⁸⁶ Moreover, some of the plastic pipes could not safely be reused due to Spire Missouri increasing the pressure for the gas lines as part of a systematic redesign.¹⁸⁷ The "reuse" comparison is misleading.

Unlike the prior cases where Staff presented its methodology to determine the percentage of plastic, that calculation was not done initially in this case. However, like the prior cases, the same information was provided to and being evaluated by the parties; merely the final step of separating out the numbers for the plastic components was not

¹⁸⁵ Whether the cost analysis shows that the decision to redesign its system was cost effective or that replacing the plastic components that were not worn out or deteriorated was a safety enhancement are prudence issues. The Commission is not making a judgement about the prudence of these replacements as prudence and eligibility for ISRS are not the same determination.

¹⁸⁶ Exhibit 104 shows an approximate savings in Spire's cost avoidance study of \$267,166.39 by not replacing plastic. "Case Nos. GO-2018-0310 and GO-2019-0116 both showed reusing pipe (Scenario 2) was more cost effective than replacing the pipe (Scenario 1)."

¹⁸⁷ Tr. p. 82, Ln. 12- 83, Ln. 13.

done. In order to separate the cost of the ISRS-ineligible plastic, from the cost of the ISRS-eligible parts of the system, the Commission directed its Staff to make the calculation using the same methodology Staff used in the 2018 ISRS cases to remove the cost of the replacement of ISRS-ineligible plastic mains and service lines. Staff completed these calculations and submitted Exhibits 105, 106, and 107.

Staff explained that it used the same methodology as in the previous ISRS cases to calculate the amount of plastic to remove. Staff used the work order authorizations provided by Spire Missouri to determine the feet of main and service lines replaced and retired by the type of pipe. Staff then applied the actual individual plastic main and service line percentages to the work order cost to determine the cost of the replacement of plastic pipe. Staff did not remove any amounts for work orders that were associated with relocations required by a governmental authority, encapsulation work orders, angle of repose work orders and regulator replacement work orders.

The Commission concludes that ineligible plastic cannot be made eligible by a systematic redesign. Therefore, in order to determine how much ineligible plastic is in a project the Commission will use the same methodology previously used for removing the cost of replacing ISRS-ineligible plastic components. The Commission also concludes that the appropriate ISRS revenue requirements are provided in Exhibit 107. Additionally, the appropriate rate design is what was 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, as updated to comply with the ISRS revenue requirements as set out in Exhibit 107, and approved in this Report and Order.

Further, as to Spire Missouri's request for an AAO, the end of an ISRS case is not the appropriate venue to request this relief. The Commission has rules and procedures in place that afford Spire Missouri an opportunity to request this type of relief that will allow a full and fair consideration of such a request. The Commission denies Spire Missouri's request for an AAO.

Summary

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, with regard to the blanket work orders and relocations ((5)(b) and (5)(c)), and with regard to the cast iron and bare steel portions of the projects. Each of these portions of the projects were found to be "gas utility plant projects." The Commission concludes that Spire Missouri shall be permitted to establish an ISRS to recover ISRS surcharges for these cases in the amounts set out in Exhibit 107, filed by Staff on May 1, 2019. The ISRS revenue requirement for Spire Missouri East is \$5,943,490¹⁸⁸ and for Spire Missouri West is \$6,501,455.¹⁸⁹ Spire Missouri's tariffs implementing those revenue requirement amounts will be approved to go into effect on August 23, 2019.

¹⁸⁸ Unanimous Stipulation and Agreement as to Resolution of Property Tax Expense, Paragraph 5.

¹⁸⁹ Unanimous Stipulation and Agreement as to Resolution of Property Tax Expense, Paragraph 5.

Denial of Rehearing Requests

On July 25, 2019, the Commission granted in part Public Counsel's Motion for Rehearing. That order did not address the other aspects of Public Counsel's Motion for Rehearing. It also did not address Spire Missouri's Application for Rehearing.

Section 386.500.1, RSMo (2016), indicates the Commission shall grant an application for rehearing if "in its judgment sufficient reason therefor be made to appear." In the judgment of the Commission, neither Spire Missouri nor Public Counsel has shown sufficient reason to rehear any other aspect of the report and order. The Commission will deny those applications for rehearing.

Effective Date of This Order

Section 386.510, RSMo 2016, which describes the process for appellate review of Commission orders or decisions, allows for a request for judicial review to be made "within thirty days after the application for rehearing is denied, or, if the application is granted, then within thirty days after the rendition of the decision on rehearing, ..." Because this Report and Order is a decision on rehearing, it will be effective on the date it is issued. Any notice of appeal should be made within thirty days from the issuance of this Report and Order. The statute does not require the filing of any additional applications for rehearing of this decision on rehearing.

THE COMMISSION ORDERS THAT:

1. The USW Local 11-6 is granted leave to file a brief as *amicus curiae* and its brief is accepted.
2. The Missouri Energy Development Association is granted leave to file a brief as *amicus curiae* and its brief is accepted.

3. The objections to Exhibits 105, 106, 107, 207, and 208 are overruled and those exhibits are admitted into evidence.

4. The attached *Stipulation and Agreement on Income Taxes* is approved and its provisions are incorporated into this order as if fully set forth herein. The signatory parties are directed to comply with its terms.

5. The attached *Stipulation and Agreement Regarding Overheads* is approved and its provisions are incorporated into this order as if fully set forth herein. The parties are directed to comply with its terms.

6. Staff's motion to dismiss for lack of jurisdiction is granted. The portions of the applications dealing with the time period of October 1, 2017, through June 30, 2018, are dismissed.

7. Spire Missouri, Inc. is authorized to establish Infrastructure System Replacement Surcharges sufficient to recover ISRS revenues in the amount of \$5,943,490 for its Spire Missouri East service territory and \$6,501,455 for its Spire Missouri 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.

8. The Unanimous Stipulation and Agreement as to Resolution of Property Tax Expense, filed on August 13, 2019, is approved as a resolution of the issue addressed in that stipulation and agreement. 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.

9. The tariffs filed by Spire Missouri on August 13, 2019 (Tariff Tracking Numbers YG-2020-0027 and YG-2020-0028) are approved to become effective on August 23, 2019. The specific tariff sheets approved are:

**P.S.C. MO. No. 7
(Spire Missouri East)**

Third Revised Sheet No. 12, Cancelling Second Revised Sheet No. 12

**P.S.C. MO. No. 8
(Spire Missouri West)**

Third Revised Sheet No. 12, Cancelling Second Revised Sheet No. 12

10. Spire Missouri Inc.'s Application for Rehearing is denied.
11. All aspects of Public Counsel's Motion for Rehearing or Reconsideration for which rehearing was not granted, are denied.
12. Spire Missouri, Inc.'s request for an accounting authority order is denied.
13. This report and order on rehearing shall be effective when issued.

BY THE COMMISSION



Morris L. Woodruff

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Rupp, and Coleman, CC., concur; Hall, C., concurs with separate concurring opinion attached; and certify compliance with the provisions of Section 536.080, RSMo.

Woodruff, Chief Regulatory Law Judge

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)	<u>File No. GO-2019-0115</u>
Surcharge in its Spire Missouri East Service Territory)	Tracking No. YG-2019-0138

In the Matter of the Application of Spire Missouri Inc.)	
To Change its Infrastructure System Replacement)	<u>File No. GO-2019-0116</u>
Surcharge in its Spire Missouri West Territory)	Tracking No. JG-2019-0139

CONCURRING OPINION OF COMMISSIONER DANIEL Y. HALL IN THE REPORT AND ORDER

I join in the Commission's Report and Order, issued May 3, 2019, in the above-captioned case. I write separately in concurrence to set forth my reasoning with regards to the issue of Infrastructure System Replacement Surcharge (ISRS) eligibility for replacement of plastic components.¹

Spire began a cast iron and bare steel replacement program over 25 years ago. Until 2010, this program employed a piecemeal approach to pipe replacement by replacing pipes when they were failing or about to fail. In 2010, the company changed to a more systematic and economical approach where it retires all the pipes in a neighborhood including some plastic pipe that is not worn out or deteriorated and installs new pipe often in different locations that are more accessible and efficient to maintain. This approach also

¹ This rationale is offered to clarify the Commission's Report and Order and is not inconsistent therewith.

presumably allows the system to perform more efficiently by operating at higher pressures and enhances customer safety, convenience, and service by installing metering equipment outside the home.

I believe that good public policy (customer service, cost, efficiency, safety, and reliability) supports Spire's neighborhood main and service line replacement program. The majority of the infrastructure being replaced is composed of cast iron and bare steel, is beyond its useful life, is recognized by US Department of Transportation and the Pipeline and Hazardous Materials Safety Administration as needing to be replaced for purposes of safety and reliability, and is in fact worn out or deteriorated.

However, ISRS is a single-issue rate making mechanism and by its statutory terms must be read narrowly. The courts have reinforced that requirement in recent decisions. And the Commission must give that direction due deference. That direction includes footnote 5 in the Western District's 2017 Opinion,² which specifically and expressly prohibits ISRS eligibility for plastic replacement that is not worn out or deteriorated as part of a systematic redesign, and that states ineligible plastic cannot be "bootstrapped" in or deemed incidental to such projects.

As a result, the Commission finds itself in an awkward and difficult position. This is particularly so due to the frequency of these ISRS proceedings, the expedited process set by statute, and the time lag between our decisions and the resolution of the subsequent appeals. It is made even more difficult by the complexity of the engineering and the financials.

² *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 (n5) (Mo. Ct. App. 2017), reh'g and/or transfer denied (Dec. 14, 2017), transfer denied (Mar. 6, 2018).

Spire admits that per the Western District's 2017 decision, because the plastic is not worn out or deteriorated, the cost for ineligible plastic replacement must be subtracted from the total cost of the project to determine the eligible portion. However, Spire argues that based on the roadmap the Commission provided in its prior Report and Order concerning Spire ISRS revenues,³ and the company's analysis of the 509 projects for which it seeks ISRS recovery, when it cost less to replace the plastic than it would have cost to re-use it, there is no incremental cost and nothing to subtract. The problem with this argument is the methodology of the comparison employed by Spire. Spire compared the cost of (A) replacing the plastic as part of the systematic redesign versus (B) maintaining the plastic as part of the systematic redesign. The proper methodology, pursuant to the Western District's direction set forth in footnote 5, is to compare the cost of (A) systematic redesign (replacement of worn out or deteriorated cast iron/bare steel and the plastic) versus (C) patchwork replacement of only the worn out or deteriorated cast iron and bare steel. If that comparison showed it was more expensive to re-use the plastic ($A > C$), then there would be no incremental cost to replace the plastic, and nothing to subtract from the total project cost.⁴

As a result, the methodology relied on by Spire, and supported by Staff, cannot be employed to determine the ISRS revenues. The only alternative, therefore, is to look to the

³ Report and Order, *In the Matter of the Application of Spire Missouri Inc. to Change its Infrastructure System Replacement Surcharge in its Missouri East Service Territory*, File No. GO-2018-0309 and *In the Matter of the Application of Spire Missouri Inc. to Change its Infrastructure System Replacement Surcharge in its Spire West Service Territory*, File No. GO-2018-0310, issued September 20, 2018, pp. 15-16.

⁴ I do not pretend to understand the difficulties involved in such an analysis, but to the extent such an analysis is not possible only highlights the inherent difficulty of trying to get ISRS recovery for systematic redesign projects.

methodology the Commission employed in the last ISRS case,⁵ basing ISRS revenues on the feet of pipe retired by the type of pipe (iron and steel versus plastic). While it may be somewhat crude, it is the best evidence available.

I am not happy with this result but I do believe that in light of the statutory language, the courts' interpretation of that language, the evidence presented in this case along with the public policy issues in play, it represents the appropriate balancing of the interests. Going forward, I strongly advocate for a statutory change to (1) ensure efficient systematic replacement of cast iron and bare steel pipe, including incidental portions of plastic pipe; and (2) a clear, transparent and predictable process for timely cost recovery of such expenses.

For the forgoing reasons, I concur.

Respectfully submitted,



Daniel Y. Hall
Commissioner

Dated at Jefferson City, Missouri,
on this 9th day of May 2019.

⁵ Report and Order, File Nos. GO-2018-0309 and GO-2018-0310, p. 16.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Timber Creek)	
Sewer Company for a Certificate of Convenience)	
and Necessity Authorizing it to Construct, Install,	)	<u>File No. SA-2020-0013</u>
Own, Operate, 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**

CERTIFICATES

§1 Generally

Timber Creek Sewer Company filed an application with the Missouri Commission requesting a certificate of convenience and necessity to install, own, acquire, construct, operate, control, manage, and maintain a sewer system to a single-family residence that has not yet been constructed as an expansion of its service area.

§21.1 Public interest

The proposal promotes the public interest because the requested service will provide additional revenue with no increased capital expense, benefiting existing customers in the long-term. Additionally, the single residence will not burden the Oakbrook facility, which is operating at approximately 20 percent of its capacity.

§21.4 Economic feasibility of proposed service

The proposal is economically feasible because the service area expansion will be funded by the property owner. The property owner will be responsible for installing a grinder pump and the necessary pressure collection line to Timber Creek's system.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 11th day of September, 2019.

In the Matter of the Application 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-2020-0013

**ORDER GRANTING CERTIFICATE OF
CONVENIENCE AND NECESSITY**

Issue Date: September 11, 2019

Effective Date: October 11, 2019

Timber Creek Sewer Company (Timber Creek) filed an application on July 24, 2019, with the Missouri Public Service Commission (Commission) requesting a Certificate of Convenience and Necessity (CCN) to install, own, acquire, construct, operate, control, manage, and maintain a sewer system to a single residence in an area adjoining the Oak Brook Subdivision in Clay County, Missouri. Timber Creek 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.

The CCN would allow Timber Creek to expand its service area to a single-family residence that has not yet been constructed. The property owner plans to construct a single-family residence and has requested sewer service from Timber Creek.

The Commission issued notice and set a deadline for intervention requests, but received no requests. On August 28, 2019, the Commission’s Staff filed its

recommendation to approve the expansion of Timber Creek's service area and grant a CCN, for the single residence. Timber Creek wants to charge for sewer service under existing rates, rules, and regulations applicable to its Clay County service area in MO PSC No. 2, 2nd Revised Sheet No. 4 (\$28.50 per month).

Ten days have passed and no party has objected to Timber Creek's application or Staff's recommendation. Thus, the Commission will rule upon the application. No party has requested an evidentiary hearing, and no law requires one.¹ Therefore, this action is not a contested case.²

The Commission may grant a sewer corporation a CCN to operate after determining that the construction and operation are either "necessary or convenient for the public service."³ The Commission articulated criteria to be used when evaluating applications for utility certificates of convenience and necessity 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 public interest.⁴

¹ *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

² Section 536.010(4), RSMo.

³ Section 393.170.3, RSMo.

⁴ 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).

There is a need for the service as the property owner has requested service and will construct a single-family residence that will require sewer service. Timber Creek is qualified to provide the service as it already provides sewer service to over 2,171 Clay and Platte County, Missouri, customers. Timber Creek has the financial ability to provide the service as no external financing is anticipated, and the property owner will be responsible for installing a grinder pump and the necessary pressure collection line to Timber Creek's system. The proposal is economically feasible as the expansion will be funded by the property owner. The proposal promotes the public interest because the requested service will provide additional revenue with no increased capital expense, benefiting existing customers in the long-term. Additionally, the single residence will not burden the Oakbrook facility, which is operating at approximately 20 percent of its capacity.

Based on the application and Staff's recommendations, 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's interest for Timber Creek to provide sewer service to the requested property adjoining the Oak Brook Subdivision in Clay County, Missouri. Further, the Commission finds that Timber Creek possesses adequate technical, managerial, and financial capacity to operate the sewer system extension. Therefore, the Commission will authorize the expansion of Timber Creek's service area, subject to the conditions described by Staff's recommendation.

Timber Creek's application also asks the Commission to waive the 60-day notice requirement in 20 CSR 4240-4.017(1) (previously 4 CSR 240-4.017(1)). Timber Creek asserts there is good cause for granting such waiver; 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 good cause exists to waive the notice requirement, and a waiver of 20 CSR 4240-4.017(1) will be granted.

THE COMMISSION ORDERS THAT:

1. Timber Creek Sewer Company is granted a certificate of convenience and necessity to provide sewer service to the property described in the map and legal description Timber Creek provided to Staff⁵, subject to the conditions and requirements contained in Staff's Recommendation, including the filing of tariffs, as set out below:
 - a. Timber Creek shall file 1st Revised Sheets 2A and 3A, as 30-day filings, within ten days after the effective date of an order from the Commission approving the CCN, with a metes and bounds description and a map depicting the new service area;
 - b. The Commission makes no finding that would preclude it from considering the ratemaking treatment to be afforded in any matters pertaining to utility plant constructed within the new service area, or providing service in the new service area, in any later proceeding.
2. This order shall become effective on October 11, 2019.

BY THE COMMISSION



Morris L. Woodruff

Morris L. Woodruff
Secretary

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

Clark, Regulatory Law Judge

⁵ *Staff Recommendation* File No. SA-2020-0013, Memorandum (Filed August 28, 2019).

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Joint Application of Invenergy)
Transmission LLC, Invenergy Investment)
Company LLC, Grain Belt Express Clean Line LLC)
and Grain Belt Express Holding LLC for an Order) **File No. EM-2019-0150**
Approving the Acquisition by Invenergy)
Transmission LLC of Grain Belt Express Clean)
Line LLC)

AMENDED REPORT AND ORDER

Affirmed on appeal: *Matter of Invenergy Transmission, LLC*, 604 S.W.3d 634 (Mo. App. W.D. 2020)

CERTIFICATES

§21.1 Public interest

Invenergy needs the Commission’s approval to acquire Grain Belt. In evaluating the proposed merger, the Commission can only disapprove the transaction if it is detrimental to the public interest. Determining what is in the interest of the public is a balancing process. As put forth in the order granting Grain Belt a certificate of convenience and necessity, state energy policy in Missouri has increasingly leaned toward energy conservation and renewable energy.

§21.3 Financial ability of applicant

Currently Grain Belt does not have sufficient capital to complete the Grain Belt transmission project. Invenergy has significantly more cash than Grain Belt’s current parent company, and Invenergy also has a greater book value. Both of these when combined with Invenergy’s significant experience with large scale renewable energy projects will promote the completion of the Grain Belt Project.

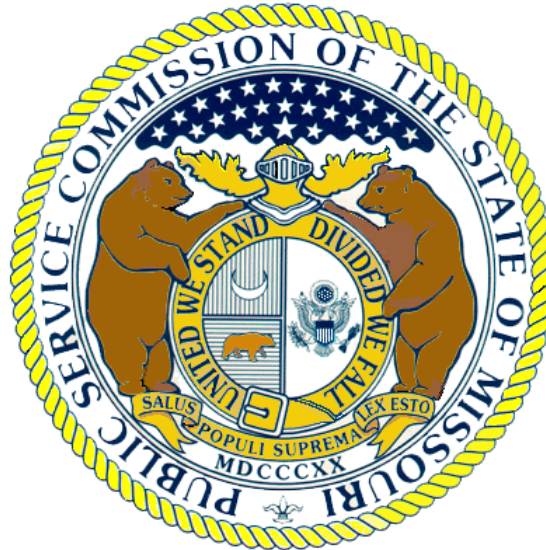
§22 Restrictions and conditions

The Commission amended its Report and Order to clarify that Invenergy will be required to exercise its control such that Grain Belt complies with all conditions placed on the granting of its certificate of convenience and necessity, not that Invenergy will be required to independently comply with each of those conditions.

§59 Sale of certificate rights

Invenergy Transmission LLC and Invenergy Investment Company applied to the Commission to approve a transaction in which Invenergy would acquire ownership of Grain Belt and the Grain Belt Express transmission project.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Joint Application of)
Invenergy Transmission LLC, Invenergy)
Investment Company LLC, Grain Belt)
Express Clean Line LLC and Grain Belt)
Express Holding LLC for an Order)
Approving the Acquisition by Invenergy)
Transmission LLC of Grain Belt Express)
Clean Line LLC)

File No. EM-2019-0150

AMENDED REPORT AND ORDER

Issue Date: September 11, 2019

Effective Date: September 21, 2019

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Joint Application of)
Invenergy Transmission LLC, Invenergy)
Investment Company LLC, Grain Belt)
Express Clean Line LLC and Grain Belt)
Express Holding LLC for an Order)
Approving the Acquisition by Invenergy)
Transmission LLC of Grain Belt Express)
Clean Line LLC)

File No. EM-2019-0150

APPEARANCES

INVENERGY TRANSMISSION, LLC, and INVENERGY INVESTMENT COMPANY, LLC:

Anne E. Callenbach and **Andrew Shulte**, Polsinelli PC, 900 W. 48th Place, Suite 900, Kansas City, Missouri 64112.

GRAIN BELT EXPRESS CLEAN LINE, LLC, and GRAIN BELT EXPRESS HOLDING COMPANY:

Karl Zobrist and **Jacqueline M. Whipple**, Dentons US LLP, 4520 Main Street, Suite 1100, Kansas City, Missouri 64111.

STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:

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MISSOURI LANDOWNERS ALLIANCE, JOSEPH and ROSE KRONER:

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MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION:

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RENEW MISSOURI:

Timothy Opitz, 409 Vandiver Drive, Building 5, Suite 25, Columbia, Missouri 65202.

OFFICE OF THE PUBLIC COUNSEL:

Nathan Williams, Post Office Box 2230, Jefferson City, Missouri 65102.

CHIEF REGULATORY LAW JUDGE: Morris L. Woodruff, presided over hearing.

REGULATORY LAW JUDGE: John T. Clark, Report and Order.

AMENDED REPORT AND ORDER

I. Procedural History

On February 1, 2019, Invenergy Transmission LLC, and its parent company Invenergy Investment Company (Invenergy), and Grain Belt Express Clean Line LLC (Grain Belt) and Grain Belt Express Holding LLC (collectively, Applicants) filed a joint application asking the Missouri Public Service Commission (“Commission”) to approve a transaction in which Invenergy would acquire ownership of Grain Belt. The application also requests expedited treatment, asking that any regulatory approval be completed by June 30, 2019.

The Commission granted requests to intervene filed by the Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners (Show Me); Missouri Landowners Alliance (MLA); Joseph and Rose Kroner; Missouri Joint Municipal Electric Utility Commission (MJMEUC); and Renew Missouri Advocates d/b/a Renew Missouri (Renew Missouri).

The Commission held an evidentiary hearing on April 23, 2019.¹ During the evidentiary hearing, the parties presented evidence relating to the following unresolved issues previously identified by the parties:

1. Does the Commission have jurisdiction and statutory authority under Section 393.190, RSMo to approve the sale of Grain Belt to Invenergy Transmission LLC?
2. Should the Commission find that Invenergy’s acquisition of Grain Belt is not detrimental to the public interest and approve the transaction?
3. Should the Commission condition its approval of Invenergy’s acquisition of Grain Belt and, if so, what should those conditions be?

¹ Transcript (“Tr.”), Vols. 2, the evidentiary hearing, and 3, the in camera proceeding. The Commission admitted the testimony of 6 witnesses and 16 exhibits into evidence during the evidentiary hearing.

Final post-hearing briefs were filed on May 15, 2019, and the case was deemed submitted for the Commission's decision on that date when the Commission closed the record.²

The Commission issued a Report and Order on June 5, 2019. On June 11, 2019, MLA, Show Me, and Joseph and Rose Kroner filed a joint application for rehearing. On June 14, 2019, the Applicants, MJMEUC, and Renew Missouri filed a Joint Motion for Clarification or Reconsideration. MLA, Show Me, and Joseph and Rose Kroner filed a motion in opposition to the motion for clarification.

The Commission is amending this Report and Order to clarify that Invenergy will be required to exercise its control such that Grain Belt complies with all conditions placed on the granting of its Certificate of Convenience and Necessity (CCN), not that Invenergy will be required to independently comply with each of those conditions.

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. 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 in this proceeding.

² "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).

2. The Office of the Public Counsel (Public Counsel) is a party to this case pursuant to Section 386.710(2), RSMo , and by Commission Rule 4 CSR 240 2.010(10). Public Counsel participated in this proceeding.

3. Grain Belt is a limited liability company organized under the laws of the State of Indiana. Grain Belt is a wholly-owned subsidiary of Grain Belt Express Holding LLC, which is a wholly-owned subsidiary of Clean Line Energy Partners LLC. Grain Belt was formed for development and construction of the Grain Belt Express Project.³

4. The Grain Belt Express Project is the multi-terminal ± 600 kilovolt (kV) high voltage direct current (HVDC) transmission line, and an HVDC converter station and associated transmission facilities, running from near the Spearville 345 kV substation in Ford County, Kansas, to a delivery point near the Sullivan 765 kV substation in Sullivan County, Indiana. The line is sited to traverse Buchanan, Clinton, Caldwell, Carroll, Chariton, Randolph, Monroe and Ralls Counties, Missouri.⁴ The Grain Belt Express Project covers approximately 780 miles, and the project will primarily use a pole design which has a smaller footprint than traditional alternating current transmission lines. The structures will occupy ten acres for the entire state of Missouri.⁵

5. As part of the Grain Belt Express Project a converter station capable of injecting 500 megawatts into the region controlled by the Midcontinent Independent System Operator will be built.⁶

³ Ex. 1, Detweiler Direct, p. 3-4

⁴ Ex. 1, Detweiler Direct, p. 1, footnote one.

⁵ Tr. Vol. 2, p. 19

⁶ Tr. Vol. 2, p. 20.

6. The Commission initially denied Grain Belt a CCN, in File No. EA-2016-0358, because Grain Belt lacked necessary county assents under Section 229.100 RSMo.⁷

7. On appeal, the Missouri Supreme Court ruled that the Western District's decision in the ATXI case,⁸ which the Commission criticized but relied upon in determining that it could not grant the CCN without the company having obtained the necessary county assents, was wrongly decided and remanded the case to the Commission.⁹ As part of the remand proceedings, the Joint Applicants informed the Commission of the pending Transaction and provided evidence of Invenergy's technical and financial ability to manage the Project going forward.¹⁰

8. On March 20, 2019, the Commission granted Grain Belt a CCN effective April 19, 2019.¹¹

9. Invenergy, founded in 2001, is headquartered in Chicago, Illinois. Invenergy is North America's largest privately held company that develops, owns, and operates large scale renewable and other clean energy generation, energy storage facilities, and electric transmission facilities across North America, Latin America, Japan and Europe. Invenergy's expertise includes a range of fully integrated in-house capabilities, including: project development, permitting, transmission, interconnection, energy marketing, finance, engineering, project construction, operations, and maintenance.¹²

⁷ Ex. 1, Detweiler Direct, p.4.

⁸ *In re Ameren Transmission Co. of Illinois (ATXI)*, 523 S.W.3d 21 (Mo App. 2017).

⁹ *Grain Belt Express Clean Line LLC v. PSC*, 555 S.W.3d 469, 470, 474 (Mo. banc 2018).

¹⁰ Ex. 1, Detweiler Direct, p. 6.

¹¹ *Report and Order on Remand*, File No. EA-2016-0358, Issued March 20, 2019.

¹² Ex. 3, Zadlo Direct, p. 6.

10. On November 9, 2018, Invenergy Transmission entered into a Membership Interest Purchase Agreement (the MIPA) with Grain Belt Express Holding to acquire Grain Belt, which is the owner of all of the assets comprising the Grain Belt Express Project. The MIPA is attached to the application as Exhibit F, and contains a requirement that the change in ownership in Grain Belt Express from Grain Belt Express Holding to Invenergy Transmission be approved by both the Kansas Corporation Commission and this Commission as conditions precedent to closing the acquisition. The related Development Management Agreement (DMA) that provides development funding through the projected closing date of the MIPA is attached as Exhibit G to the application.¹³

11. Invenergy and its affiliates have in excess of \$9 billion in total assets and \$3 billion in total equity on a consolidated basis (as of December 31, 2017).¹⁴

12. Invenergy is highly experienced in raising corporate and project level financing in support of developing, constructing and operating its energy projects. Over the last 17 years, Invenergy has raised more than \$30 billion of financing in connection with the successful development of more than 20,220 MW in projects in the United States, Canada, Europe, Latin America, and Japan.¹⁵

13. Since 2001, Invenergy has built all required transmission and distribution lines, generator step-up transformers, and substations for its facilities in numerous regions, including within the regions managed by Southwest Power Pool, Inc. (SPP), Midcontinent Independent System Operator, Inc. (MISO) and PJM Interconnection, LLC (PJM). Invenergy developed, permitted and constructed this infrastructure across various

¹³ Ex. 3, Zadlo Direct, p. 4.

¹⁴ Ex. 2, Hoffman Direct, p. 4, and Tr. Vol. 2, p. 23.

¹⁵ Ex. 2, Hoffman Direct, p. 5.

terrains, state and local jurisdictions, and in vastly differing environmental and regulatory conditions. This effort has led to the construction of over 392 miles of high-voltage transmission lines, over 1,748 miles of distribution lines, 59 substations and 73 generator step-up transformers of which several have been built for utilities.¹⁶

14. Invenergy Transmission plans to purchase Grain Belt using cash available from Invenergy Investment. Invenergy plans to use a combination of debt and equity to finance the construction and operation of the Grain Belt Express Project.¹⁷

15. Under the DMA, Invenergy Transmission manages and funds the business and affairs of the Grain Belt Express Project, in addition to performing all services related to development, ownership and maintenance during the pendency of the acquisition process.¹⁸

16. Invenergy's financial statements as of December 31, 2017, indicated that Invenergy had sufficient cash on hand. Invenergy's cash balance was approximately six times greater than the cash balance of Clean Line Energy Partners, LLC. The book value of Invenergy's equity was twenty times greater than Clean Line Energy Partner, LLC's equity.¹⁹

17. Grain Belt currently possesses cash and cash equivalents.²⁰ Grain Belt has sufficient cash on hand to continue the Grain Belt Express Project, but not to complete it.²¹

¹⁶ Ex. 3, Zadlo Direct, p. 5.

¹⁷ Ex. 6, Staff Rebuttal Report, p. 2.

¹⁸ Ex. 6, Staff Rebuttal Report, p. 2.

¹⁹ Ex. 6, Staff Rebuttal Report, p.

²⁰ Tr. Vol. 2, p. 76.

²¹ Ex. 8, Schedule JK-8, p. 8-9

18. Grain Belt currently possesses 39 easements, which are interests in real property.²²

19. The 39 easements will be necessary for the development of the Grain Belt Express Project.²³

20. Invenergy will also be acquiring Grain Belt's engineering work as part of the Grain Belt development assets.²⁴

21. Many of the traditional regulatory concerns pertaining to potential merger detriments, such as rate increases, service quality issues, market power, and involuntary reduction in workforce, are not present in this case. Grain Belt will offer transmission service to load-serving entities and other wholesale transmission customers through an open-access transmission tariff that will be filed with and be subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC) pursuant to the Federal Power Act. Grain Belt will not have any retail customers in Missouri and will not be rate regulated by the Commission.²⁵

22. FERC will oversee Grain Belt's process for allocating transmission capacity in a non-discriminatory manner to wholesale customers.²⁶

23. The Grain Belt Express Project will benefit the State of Missouri. Expected benefits of the Grain Belt Express Project to the State of Missouri include:

- An estimated 1,500 jobs during the three to four years of construction;
- A continuing source of property tax revenues to the political subdivisions where the facilities are located;

²² Tr. Vol. 2, p. 76-77.

²³ Tr. Vol. 2, p. 100-101.

²⁴ Tr. Vol. 2, p. 99-100.

²⁵ Ex. 2, Hoffman Direct, p. 3.

²⁶ Ex 8, Kisser Rebuttal, Schedule JK-4, p. 2, and Schedule JK-1, p. 2, and Tr. Vol. 2, p 115-116.

- A participant-funded model, such that GBE assumes all financial risk of building and operating the transmission line, with no costs anticipated to be recovered through the rates of regional transmission organizations;
- An estimated \$9.5-\$11 million in annual savings for customers of MJMEUC, which will receive up to 250 MW of capacity from the Project through an existing Transmission Services Agreement;
- Additional access to high-capacity-factor Kansas wind resources to fulfill the growing demand for renewable energy in Missouri.²⁷

24. The Commission's order granting Grain Belt a CCN, File No. EA-2016-0358, required Grain Belt to comply with specific conditions. Invenergy has agreed to those conditions ordered by the Commission in its March 20, 2019, Report and Order on Remand.²⁸

25. The acquisition of Grain Belt by Invenergy benefits the public interest. The acquisition will expedite and promote the continued development of the Grain Belt Express Project, which will deliver low-cost wind energy to Missouri wholesale customers, who will, in turn, provide that lower-cost energy to their retail customers.²⁹

26. The Commission has previously certificated companies operating transmission and distribution facilities in Missouri, and as with Grain Belt, their facilities also furnish wholesale electricity under rates set by FERC and have no Missouri retail customers.³⁰

²⁷ Ex. 3, Zadlo Direct, p 11.

²⁸ Ex. 4, Zaldo Surrebuttal, p. 2, "Invenergy agrees to the conditions outlined by the Commission in its March 20, 2019 Report and Order on Remand that was issued in the CCN Case."

²⁹ Ex. 2, Hoffman Direct, p. 2.

³⁰ *In the Matter of Entergy Arkansas, Inc.* File No. EO-2013-0431, 23 Mo.P.S.C.3d 226 (2013); *In the Matter of GridLiance High Plains LLC*, File No. EA-2019-0112 (2018); *In re Ameren Trans. Co. of Illinois*, File No. EA-2017-0345 (2018); *In re Transource Missouri LLC*, File No. EA-2013-0098 (2013); *In re Interstate Power & Light Co.*, File No. EO-2007-0485 (2007); *In re IES Utilities, Inc.*, File No. EA-2002-296 (2002).

III. Conclusions of Law and Discussion

Jurisdiction

The Missouri Landowners Alliance, Show Me Concerned Landowners, and Joseph and Rose Kroner (Landowners) have challenged the jurisdiction of the Commission over this acquisition. They have alleged that Grain Belt is not an electrical corporation because it is not devoted to the public use, it does not currently own any electrical plant in Missouri, and it has failed to file annual reports with the Commission that an electrical utility would be required to file. Landowners additionally contend that the Commission lacks authority because Grain Belt currently has no assets to transfer that are necessary or useful in the performance of its duties to the public.

As explained in the Report and Order granting Grain Belt a CCN, a division of regulatory authority between the federal government and the states has existed since the Federal Power Act was enacted in 1935.³¹ The federal government regulates wholesale sales and transmission of electricity in interstate commerce and leaves to the states authority not specifically granted to the federal government. The Commission has certificated companies operating transmission and distribution facilities in Missouri, and as with Grain Belt, their facilities also furnish wholesale electricity under rates set by FERC and have no Missouri retail customers.³²

Landowners rely on *State ex rel. M. O. Danciger & Company v. Public Service Commission*, 275 Mo. 483, 205 S.W. 36, 39 (1918), for the proposition that an electrical

³¹ 16 U.S.C. §§791a – 824w; Jeffery S. Dennis, *et al.*, *Federal/State Jurisdictional Split: Implications for Emerging Electricity Technologies*, Energy Analysis and Environmental Impacts Division, Lawrence Berkeley National Laboratory, p. 3 (December 2016).

³² *In the Matter of Entergy Arkansas, Inc.* File No. EO-2013-0431, 23 Mo.P.S.C.3d 226 (2013); *In the Matter of GridLiance High Plains LLC*, File No. EA-2019-0112 (2018); *In re Ameren Trans. Co. of Illinois*, File No. EA-2017-0345 (2018); *In re Transource Missouri LLC*, File No. EA-2013-0098 (2013); *In re Interstate Power & Light Co.*, File No. EO-2007-0485 (2007); *In re IES Utilities, Inc.*, File No. EA-2002-296 (2002).

corporation serves the public use only by having direct retail customers. Missouri courts have stated that for a company to qualify as a public utility, the company must be devoted to a public use for the general public.³³ The Grain Belt Express Project will deliver wind energy to Missouri wholesale customers, who will provide that energy to their retail customers. FERC oversees Grain Belt's process for allocating transmission capacity in a non-discriminatory manner to wholesale customers. In *Danciger* the company was selectively selling electricity to particular retail customers thus excluding it from the public use. Grain Belt will not be selectively selling to particular retail customers, but the electricity it transmits will serve the general public, as evidenced by the MJMEUC, which will receive up to 250 MW of capacity an existing Transmission Services Agreement. The Commission concludes that Grain Belt will serve the public use.

Section 386.020(15), RSMo, defines an electrical corporation:

"Electrical corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, other than a railroad, light rail or street railroad corporation generating electricity solely for railroad, light rail or street railroad purposes or for the use of its tenants and not for sale to others, 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;

Section 386.020(14), RSMo, defines electric plant:

"Electric plant" includes all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying

³³ *State ex rel. M.O. Danciger & Co. v. Pub. Serv. Commission of Missouri*, 275 Mo. 483, 205 S.W. 36, 39 (1918); *State ex rel. Buchanan County Power Transmission Co. v. Baker*, 320 Mo. 1146, 1153, 9 S.W.2d 589, 591 (1928).

conductors used or to be used for the transmission of electricity for light, heat or power;

Grain Belt possesses 39 easements with Missouri landowners that are interests in real estate.³⁴ The cash on hand to continue the Grain Belt Express Project is personal property.³⁵ Under the statute, these qualify as electric plant, and Grain Belt owns them. Section 386.010(14) does not require that the electrical plant be currently used to transmit electricity for power, but defines electric plant as including plant “to be used for the transmission of electricity.” Grain Belt qualifies as an electrical corporation under the statutory definition.

Landowners contend that the easements are no longer enforceable because of additional conditions placed upon the company by the Commission regarding the landowners. The Commission ordered Grain Belt to incorporate the Missouri Landowner Protocol in any easements to provide additional protections for landowners. Grain Belt owned those 39 easements before the Commission ordered those conditions. Additionally, Landowners argue that Grain Belt does not control the property on which it has an easement until it begins to construct the proposed transmission line in Missouri. The Commission is not a court of law and its powers are limited to those conferred by statute.³⁶ The Commission is not authorized under Section 393.190, RSMo, to interpret the rights of the parties to those easements, nor may it for purposes of this case. The Commission simply notes that the easements are possessed by Grain Belt and does not determine the enforceability of the easements.

³⁴ *Kansas City Power & Light Co. v. Riss*, 312 S.W.2d 846, 847 (Mo. 1958); *Beery v. Shinkle*, 193 S.W.3d 435, 440 (Mo. Ct. App. 2006).

³⁵ *In re Armistead*, 362 Mo. 960, 964, 245 S.W.2d 145, 147 (1952); *State ex rel. Reid v. Barrett*, 234 Mo. App. 684, 118 S.W.2d 33, 37 (1938)..

³⁶ *State ex rel. Utility Consumers Council of Missouri, Inc.*, 585 S.W. 2d 41, 49, (Mo. banc 1979)

Landowners allege that Grain Belt is not an electric utility as it has not filed any annual reports pursuant to Section 393.140(6), RSMo, or Commission Rule 4 CSR 240-10.145, and there are no exceptions for utilities that are not yet operational. However, those reports are due on or before April 15 of each calendar year and were not required to be filed until after the Commission determined that Grain Belt was an electrical utility and granted it a CCN, which for Grain Belt was effective April 19, 2019. Consequently, Grain Belt's first annual report is not yet due.

Landowners finally argue that the Commission lacks jurisdiction to approve the acquisition under Section 393.190, RSMo, because the sale does not transfer any assets that are "necessary or useful in the performance of its duties to the public." Section 393.190, RSMo, states that "No...electrical corporation...shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber 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." Landowners read the statute too narrowly. The easements, the cash, and even the engineering work are all necessary to build the structures that allow Grain Belt to transport electricity in the future, and thus bring the transaction within the authority of the Commission.

The Commission concludes that Grain Belt is an "electrical corporation"³⁷ and "public utility"³⁸ and is subject to the jurisdiction and supervision of the Commission.³⁹

Public Interest

³⁷ Section 386.020(15), RSMo.

³⁸ Section 386.020(43), RSMo.

³⁹ Sections 393.140(1) and 386.250(1), RSMo.

Under Missouri law, the Applicants need the Commission's approval for Invenergy to acquire Grain Belt.⁴⁰ In evaluating the proposed merger, the Commission can only disapprove the transaction if it is detrimental to the public interest.⁴¹ Determining what is in the interest of the public is a balancing process.⁴² As put forth in the order granting Grain Belt a CCN, state energy policy in Missouri has increasingly leaned toward energy conservation and renewable energy. Laws such as the Renewable Energy Standard and the Missouri Energy Efficiency Investment Act embody such public policy. The Grain Belt Express Project will deliver low-cost wind energy to Missouri wholesale customers, who will provide that low-cost energy to their retail customers. This benefit alone would be sufficient to find that, far from being a detriment, the Grain Belt Express Project promotes the public interest and Missouri state energy policy.

Additional benefits to the state of Missouri include an estimated 1,500 jobs during the three to four years of construction; a continuing source of property tax revenues to the political subdivisions where the facilities are located; a participant-funded model such that Grain Belt Express assumes all financial risk of building and operating the transmission line, with no costs anticipated to be recovered through the rates of regional transmission organizations; an estimated \$9.5-\$11 million in annual savings for customers of MJMEUC, which will receive up to 250 MW of capacity from the Project through an existing Transmission Services Agreement; and additional access to high-

⁴⁰ Section 393.190.1, RSMo.

⁴¹ *State ex rel. City of St. Louis v. Public Service Com'n of Missouri*, 73 S.W.2d 393, 400 (Mo banc 1934).

⁴² *In the Matter of Sho-Me Power Electric Cooperative's Conversion from a Chapter 351 Corporation to a Chapter 394 Rural Electric Cooperative*, Case No. EO-93-0259, Report and Order issued September 17, 1993, 1993 WL 719871 (Mo. P.S.C.).

capacity-factor Kansas wind resources to fulfill the growing demand for renewable energy in Missouri.

Allowing Invenergy to acquire Grain Belt is not detrimental to the public interest. Invenergy acquiring Grain Belt benefits the Grain Belt Express Project, which benefits the State of Missouri and the public interest. Currently Grain Belt does not have sufficient capital to complete the project. Invenergy has significantly more cash than Grain Belt's current parent company, and Invenergy also has a greater book value. Both of these when combined with Invenergy's significant experience with large scale renewable energy projects will promote the completion of the Grain Belt Project.

The Commission has put in place protections for the landowners through the landowner protocol and other conditions imposed on Grain Belt in EA-2016-0358, the case by which it was granted a CCN. Invenergy has agreed to the conditions that the Commission imposed on Grain Belt.

The Commission finds the acquisition of Grain Belt by Invenergy is not detrimental to the public interest.

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 Invenergy's acquisition of Grain Belt is not detrimental to the public interest. Therefore, the Commission will grant the Applicants' application, subject to the conditions ordered in EA-2016-0358. The

Commission will order Invenergy to exercise its control over Grain Belt such that Grain Belt complies with those conditions.

The Commission will make this order effective in ten days, because of the need to bring finality to this matter. This is a new order and consequentially all applications for rehearing of the June 5, 2019, Report and Order are now moot. Anyone seeking rehearing of this Amended Report and Order must file a new application before the effective date of this order.

THE COMMISSION ORDERS THAT:

1. The Commission approves the acquisition of Grain Belt Express Clean Line LLC by Invenergy Transmission LLC, subject to the same conditions placed upon Grain Belt Express Clean Line LLC in the Report and Order on Remand in File No. EA-2016-0358. Invenergy Transmission LLC shall exercise its control over Grain Belt Express Clean Line LLC such that Grain Belt Express Clean Line LLC complies with the conditions ordered in File No. EA-2016-0358. Invenergy Transmission LLC shall ensure that Grain Belt Clean Line LLC complies with its Commission ordered conditions.

2. Grain Belt Express Clean Line LLC's owners, including, but not limited to, Invenergy Transmission LLC, Invenergy Investment Company LLC, and any related subsidiaries, shall cooperate with the Commission's Staff in providing reasonable access to its un-redacted financial records until the completion or official abandonment of the Grain Belt Project.

3. This order shall become effective on September 21, 2019.

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**

William L. Gehrs, Jr.,)	
)	
Complainant,)	
v.	)	File No. EC-2018-0033
)	
The Empire District Electric Company,)	
)	
Respondent.)	

REPORT AND ORDER

ELECTRIC

§14 Rules and regulations

The Public Utility Regulatory Act of 1978, 16 U.S.C. 2601, requires that individual meters be installed in new buildings to encourage the conservation of energy by the occupants of those buildings. This is codified in Missouri law in the Commission's rule 20 CSR 4240-20.050(2).

EVIDENCE, PRACTICE AND PROCEDURE

§2 Jurisdiction and powers

The Commission will not address changing the tariff, which would alter Empire's revenue requirement, or the justness and reasonableness of Empire's rates in this complaint because complainant's complaint does not meet the requirements of 386.390 RSMo.

RATES

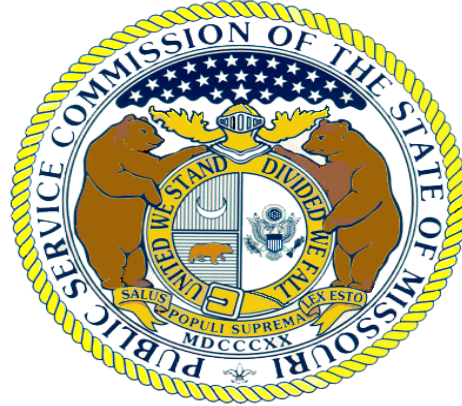
§15 Classification of customers

Complainant alleges that Empire failed to uniformly assess multiple customer charge fees to multi-unit apartment buildings in the Joplin, Missouri area, which were billed at the residential rate. Specifically, complainant asserts that Empire bills him multiple customer charges for a single meter building while other single meter apartment building owners are only being billed one customer charge, making his rates unjust and unreasonable.

§24 Exemptions

Complainant requested the Commission provide a credit to any property owner who paid customer charges in excess of a single fee per meter from 1978 to date, and a revision of the Residential Service portion of Empire's tariff. While complainant has presented evidence that Empire previously charged a customer a rate different from its Commission approved rate, Empire remedied the situation as soon as it became aware of it.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



William L. Gehrs, Jr.,

Complainant,

v.

The Empire District Electric Company,

Respondent

File No. EC-2018-0033

REPORT AND ORDER

Issue Date: October 9, 2019

Effective Date: November 8, 2019

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

William L. Gehrs, Jr.,)	
)	
Complainant,)	
	)	File No. EC-2018-0033
v.)	
)	
The Empire District Electric Company,)	
)	
Respondent)	

APPEARANCES

Appearing For William L. Gehrs, Jr.:

William L. Gehrs, Jr., 201 N. Wall #17, Joplin, MO 64801

Appearing For Bob Higginbotham:

Bob Higginbotham, 839 West 4th St., Joplin, MO 64801

Appearing for The Empire District Electric Company:

Diana C. Carter, 428 E. Capitol Avenue, Suite 303, Jefferson City, MO 65101

Appearing for the Staff of the Missouri Public Service Commission:

Casi Aslin, Associate Counsel, Governor Office Building, 200 Madison Street, Jefferson City, MO 65102

Senior Regulatory Law Judge: John T. Clark

REPORT AND ORDER

Procedural History

On July 31, 2017, William Gehrs, Jr. (Gehrs) filed a formal complaint with the Missouri Public Service Commission (Commission) against The Empire District Electric Company (Empire). Gehrs' complaint alleges that Empire failed to uniformly assess multiple customer charge fees to multi-unit apartment buildings in the Joplin, Missouri area, which were billed at the residential rate. Specifically, Gehrs asserts that Empire bills him multiple customer charges for a single meter building while other single meter apartment building owners are only being billed one customer charge, making his rates unjust and unreasonable.

On August 1, 2017, the Commission issued notice of a contested case, ordered Empire to answer the complaint, and ordered the Commission's Staff (Staff) to file a recommendation and report regarding the complaint. Staff filed a recommendation and report on September 14, 2017. The report concluded that Empire had not violated any applicable statutes, Commission Rules, or Commission-approved Company tariffs related to the complaint.

On December 12, 2017, Bob Higginbotham (Higginbotham) filed an application to intervene. Higginbotham was granted intervention as an interested party and not as a co-complainant. Higginbotham is similarly situated to Gehrs, and his application to intervene states that he has an interest in the rates and billing practices at issue in this proceeding. However, the Commission makes no determination regarding Higginbotham's properties in this order.

On January 1, 2018, Gehrs amended his complaint to allege that Empire is required to render a bill to residential customers in accordance with its approved tariff and Empire has not because Empire has admitted that at least one customer was not being billed in accordance with its approved tariff.

Staff filed a supplemental recommendation and report restating that under its analysis Empire had not violated any applicable statutes, Commission Rules, or Commission-approved Company tariffs related to the complaint. Staff also recommended that the Commission not address concerns regarding the justness or reasonableness of Empire's tariff, or any proposed change to Empire's tariff.

The Commission held a hearing at the Joplin Public Library in Joplin, Missouri, on Friday, June 14, 2019. At the hearing, the Commission admitted the testimony of four witnesses and received 19 exhibits into evidence. Patsy Mulvaney, Director of Consumer Experience, testified for Empire; and Robin Kliethermes, Tariff and Rate Design Manager, testified for the Commission's Staff. Gehrs testified on his own behalf, and Higginbotham testified for Gehrs. Daniel Whitworth and Alexandra Steel accompanied Gehrs, but did not testify. Empire, Staff, and Gehrs submitted initial post hearing briefs on July 12, 2019. Gehrs submitted a reply brief on July 26, 2019. No other party submitted a reply brief.

Preliminary Matter

On August 23, 2019, Gehrs filed a request to have the Commission consider a Jasper County, Missouri, Associate Circuit Court case number 18AO-AC00918, involving a third party's action against Empire for failing to bill at a contracted rate. Gehrs previously asked the Commission to postpone this matter pending the disposition of this Jasper

County case. The Commission did postpone this proceeding until Gehrs indicated he was ready to proceed.

Gehrs' request to have the Commission consider the Jasper County order granting summary judgment was made after this matter would usually have been deemed submitted for the Commission's consideration. Therefore, the Commission afforded Empire an opportunity to object to Gehrs' request. Empire responded that it had no objection to the Commission taking notice of the Court's order granting summary judgment in 18AO-AC00918, but noted that because the Court order was issued August 6, 2019, it was not yet final.¹

The Commission takes official notice of the August 6, 2019, order granting summary judgment in 18AO-AC00918, which is admitted onto the record as Exhibit 20.

Findings of Fact

General Findings of Fact

1. Empire is an electrical corporation and public utility regulated by this Commission.²
2. Gehrs is the sole shareholder of BBG Corporation, a Missouri Corporation.³ Gehrs' BBG Corporation owns the property in dispute at 1802 S. Wall Ave.⁴ in Empire's Joplin, Missouri, service area, and is a customer of Empire for electric service.⁵
3. 1802 S. Wall Ave. is a 14-unit apartment building built in 1977.⁶

¹ Thirty days have passed since the court granted summary judgment and the judgment is now final pursuant to Missouri Supreme Court Rule 81.05.

² Commission Ex. 1.

³ Ex. 5, Affidavit.

⁴ Ex. 5, pages 1-2.

⁵ Commission Ex. 1.

⁶ Commission Ex. 1.

4. Multiunit apartment buildings constructed prior to 1981 do not need to have separate meters for each dwelling unit.⁷

5. Empire has provided electric service through a single meter to the 1802 S. Wall Ave.,⁸ under Empire's Residential Service tariff, Schedule RG since at least 1980.⁹

6. Empire does not have records for 1802 S. Wall prior to 1980.¹⁰

7. The electrical service provided to the 1802 S. Wall Ave. apartment building is used by the individual dwelling units for residential purposes.¹¹

The Customer Charge

8. It is typical for a residential tariff to have two parts, a customer charge, which is a flat fee per customer, and a usage charge per kWh.¹² Empire's residential tariff contains both a customer charge and a usage charge.¹³

9. Under Empire's residential tariff Gehrs is billed the equivalent of 14 customer charges, one for each of the dwelling units at 1802 S. Wall Ave. apartments.¹⁴

10. Gehrs contends that he should not be paying for multiple meters when he only has one meter on the building. Gehrs believes that no additional service is being rendered for the additional customer service charges¹⁵

⁷ 20 CSR 4240-20.050(2).

⁸ Commission Ex. 1.

⁹ Ex. 12, Mulvaney Direct, page 2.

¹⁰ Ex. 12, Mulvaney Direct, page 2.

¹¹ Tr., pages 74-75.

¹² Tr., page 178.

¹³ Ex. 15, Tariff Schedule RG, effective September 14, 2016.

¹⁴ Ex 5, Gehrs Direct, page 2.

¹⁵ Tr., pages 60-61.

11. Under Empire's Commission approved tariff, the customer charge does not relate to the number of meters used at a location, but is based on the fixed cost of delivering service to that location.¹⁶

12. The purpose of the customer charge is to cover the cost of Empire having everything in place to be ready to deliver energy to its customers before they use any energy.¹⁷ The customer charge would include costs for all lines feeding to the property, all lines running onto the property, transformers, the meter, labor costs involved in outage response, and tree trimming.¹⁸

13. Empire's residential tariff's Conditions of Service says that if service is provided through a single meter to multiple-family dwellings in a single building the customer charge will be multiplied by the number of dwelling units when calculating the bill.¹⁹

14. Gehrs' complaint included a bill from 2006 with a customer charge of \$144.90. Gehrs' complaint also included a bill from 2017 with a customer charge of \$182.00.²⁰

15. Empire's Commission authorized customer charge in 2006 was \$10.35.²¹

16. Empire's Commission authorized customer charge in 2017 was \$13.00.²²

17. Gehrs' bills show that he was correctly charged \$144.90 in customer charges under Empire's tariff in 2006 ($\$10.35 \times 14$ dwelling units = \$144.90), and correctly

¹⁶ Tr., Pages 161-162.

¹⁷ Tr., page 177.

¹⁸ Tr., page 165-166.

¹⁹ PSC Mo. No. 5, Sec. 1, 19th Revised Sheet No 1.

²⁰ Commission Ex. 1.

²¹ Commission Ex. 1.

²² Commission Ex. 1.

charged \$182.00 in customer charges under Empire's tariff in 2017 (\$13.00 x 14 dwelling units = \$182.00).

High Usage Rates

18. Gehrs contends that he should receive a usage discount. Under the residential tariff during the winter season after the first usage block of 600 kWh the usage rate per kWh goes down from \$0.13006 to \$0.10574.²³

19. Empire's residential tariff's Conditions of Service says that if service is provided through a single meter to multiple-family dwellings in a single building the kWh block is to be multiplied by the number of dwelling units when calculating each month's bill.²⁴

Commercial Classification

20. Gehrs contends that he should receive a commercial rate because the larger meter serving 1802 S. Wall Ave. is a larger demand meter generally used for commercial businesses, and not a smaller residential meter.²⁵

21. Both types of meters measure kilowatt hours (kWh), that is the total amount of electricity consumed over a set period of time. Demand meters additionally measure kilowatt demand, that is the rate at which energy is being consumed to identify a customer's peak consumption (demand) during a period of time.²⁶

22. The purpose of an electric meter is to measure the level of electric usage.²⁷

²³ PSC Mo. No. 5, Sec. 1, 19th Revised Sheet No 1.

²⁴ PSC Mo. No. 5, Sec. 1, 19th Revised Sheet No 1.

²⁵ Tr., page 70 and 174.

²⁶ Tr., page 172.

²⁷ Tr., page 172.

23. Using a demand meter to provide electrical service to Gehrs' apartment building does not mean that it should be served under Empire's commercial tariff, but is appropriate because commercial electric loads are generally larger and Gehrs' 14-unit apartment building is capable of demanding a larger load than a single residence.²⁸

24. When determining eligibility for a particular tariff Empire assesses the customer's qualifications and requirements. If a customer is eligible to receive service under more than one tariff, Empire will provide the options to choose from to the customer.²⁹

25. 1802 S. Wall Ave. is not eligible for service under Empire's commercial tariff. Empire's commercial tariff is for those whose electric load is consistently less than 40 kW, and are not conveying electric service to others for residential usage (with an exception for transient or seasonal such as hotels, motels, and resorts).³⁰

26. 1802 S. Wall Ave. apartments is only eligible for service under Empire's residential tariff. The residential tariff is available for residential service to single-family dwellings or to multi-family dwellings within a single building.³¹

Unequal Billing

27. Gehrs contends that he is being charged different rates than other single metered apartment buildings in the Joplin area that are only being billed one customer charge.

²⁸ Tr., page 171.

²⁹ Ex. 12, Mulvaney Direct, page 3.

³⁰ PSC Mo. No. 5, Sec. 2, 18th Revised Sheet No. 1.

³¹ Ex. 15, Tariff Schedule RG, effective September 14, 2016.

28. Gehrs' witness testified that this unequal application places him at a competitive disadvantage because he is unable to recover multiple customer charges from tenants.³²

29. Gehrs testified that to recover the cost of the electric bill from tenants would be unlawful resale or redistribution under Empire's residential tariff.³³

30. Gehrs informed Empire of five multi-unit apartment buildings that he alleged were only being billed one customer charge.³⁴ Some of those were properties that he previously owned.³⁵

31. Gehrs admitted that the number of dwelling units in the buildings could not be determined by looking at the outside of the building,³⁶ and that he was unaware whether any remodeling had occurred that would alter the number of dwelling units in the building.³⁷

32. Empire's customers self-report the number of dwelling units in their buildings.³⁸

33. When asked how Empire would ascertain the number of units in a building, Gehrs stated that he did not know. He stated that he does not believe Empire will ever be able to enforce its tariff if it relies on customers to self-report the number of dwelling units in their apartment buildings.³⁹

³² Tr., page 127.

³³ Tr., pages 105-107

³⁴ Complainant's Reply to Staff Recommendation and Report, September 29, 2017.

³⁵ Tr., page 83.

³⁶ Tr., page 114.

³⁷ Tr, pages 115-116.

³⁸ Tr., page 116.

³⁹ Tr. pages 75-76.

34. After Gehrs informed Empire that it was not billing customers correctly, Empire investigated. Empire determined that one customer was being undercharged and began billing the number of customer charges based on the number of living units as reported by the fire department.⁴⁰

35. An additional property owner Gehrs alleged was being incorrectly billed for multiple dwelling units in a single apartment building, refused to grant Empire access to the property to verify the number of units.⁴¹

36. That apartment owner sued Empire in the Jasper County Circuit Court, (case number 18AO-AC00918)⁴² alleging that Empire contractually agreed to charge him differently than required in Empire's Residential tariff. He sued to enforce the rate he had contracted with Empire.⁴³

37. The Jasper County Court granted summary judgment in favor of Empire. It determined that even though Empire contracted with an apartment owner for a different rate than Empire's Commission approved rate, Empire cannot charge a rate not approved by the Commission.⁴⁴

38. Empire cannot contractually offer a rate not approved by the Commission.⁴⁵

39. Owners of multi-unit buildings with single meters may avoid having to pay the customer charges for their tenants by having additional meters installed at their own expense. The cost is the same as that incurred by developers of new construction.⁴⁶

⁴⁰ Ex. 12, Mulvaney Direct, pages 6-7.

⁴¹ Ex. 5, pages 2-3.

⁴² Ex. 20, Jasper County summary judgement order.

⁴³ Ex. 12, Mulvaney Direct, page 7.

⁴⁴ Missouri Case Number 18AO-AC00918, Order (Granting Summary Judgment), August 6, 2019, and also *May Department Stores Company v. Union Electric Light & Power Company*, 107 S.W.2d 41 (1937).

⁴⁵ Ex 20, and *May Department Stores Company v. Union Electric Light & Power Company*, 107 S.W.2d 41 (1937), and Commission Rule 20 CSR 4240-13.020(1).

⁴⁶ Tr., page 160-161.

Conclusions of Law

A. Empire is a public utility as defined by Section 386.020(43), RSMo. Furthermore, Empire is an electrical corporation as defined by Section 386.020(15), RSMo. Therefore, Empire is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo.

B. Under Section 386.390 RSMo, a person may file a complaint against a regulated utility setting forth any act or thing done or omitted to be done by any public utility in violation of any provision of law subject to the commission's authority, any rule promulgated by the commission, any utility tariff, or any order or decision of the commission. Therefore, the Commission has authority over this complaint.

C. Section 386.390 RSMo provides that "no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water, sewer, or telephone corporation, unless the same be signed by the public counsel or the mayor or the president or chairman of the board of aldermen or a majority of the council, commission or other legislative body of any city, town, village or county, within which the alleged violation occurred, or not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of such gas, electricity, water, sewer or telephone service."

D. Empire's applicable tariff rules state:

PSC Mo. No. 5, Sec. 2, 18th Revised Sheet No 1.

Commercial Service Schedule CB

Availability: This schedule is available to any general service customer on the lines of the Company whose electric load is not consistently in excess of 40 kW, except those who are conveying electric service received to others whose utilization of same is for residential purposes other than transient or seasonal.

Motels, hotels, inns, resorts, etc., and others who provide transient rooms and/or board service and/or provide service to dwellings on a transient or seasonal basis are not excluded from the use of this rate. The Company reserves the right to determine the applicability or the availability of this rate to any specific applicant for electric service.

PSC Mo. No. 5, Sec. 1, 19th Revised Sheet No 1.

Residential Service Schedule RG

Availability: This schedule is available for residential service to single-family dwellings or to multi-family dwellings within a single building. This schedule is not available for service through a single meter to two or more separate buildings each containing one or more dwelling units.

Monthly Rate:	<u>Summer Season</u>	<u>Winter Season</u>
Customer Access Charge	\$13.00	\$13.00
The first 600-kWh, per kWh	0.13006	0.13006
Additional kWh, per kWh	0.13006	0.10574

Conditions of Service:

1. Service will be furnished for the sole use of the Customer and will not be resold, redistributed or submetered, directly or indirectly.
4. If this schedule is used for service through a single meter to multiple-family dwellings within a single building, each Customer charge and kWh block will be multiplied by the number of dwelling units served in calculating each month's bill.

E. Applicable Federal Law:

The Public Utility Regulatory Act of 1978, 16 U.S.C. 2601, requires that individual meters be installed in new buildings to encourage the conservation of energy by the occupants of those buildings. This is codified in Missouri law in the Commission's rule 20 CSR 4240-20.050(2)

F. Applicable Commission rules state:

20 CSR 4240-13.020(1) A utility shall render a bill for each billing period to every residential customer in accordance with commission rules and its approved tariff.

20 CSR 4240-20.050(2) Each residential and commercial unit in a multiple-occupancy building construction of which has begun after June 1, 1981 shall have installed a separate electric meter for each residential or commercial unit.

The burden of showing that a regulated utility has violated a law, rule or order of the Commission is with the Complainant.⁴⁷ 386.390 RSMo does not require that the alleged act or violation involve the Complainant.

Decision

Gehrs' amended complaint alleges that Empire failed to uniformly assess multiple customer charge fees to multiunit apartment buildings in the Joplin, Missouri area, which were billed at the residential rate. Empire has admitted that on at least one occasion it has not charged a multi-unit apartment building the correct number of customer charges under its residential tariff. Empire has no mechanism to obtain the correct number of dwelling units in a building, and must rely on customers to self-report the number of units in their buildings.

Gehrs testified that he is unable to recover the customer charge or usage he is paying for from tenants because that would be unlawful resale or redistribution under Empire's residential tariff. He is correct that it would be unlawful for him to recover from tenants on a bill-by-bill basis. He could not charge his tenants based on individual bills or a variable rate. However, Gehrs can charge a sufficient rent on the property to account for the overall value of having landlord paid utilities.

Gehrs has requested the Commission provide a credit to any property owner who paid customer charges in excess of a single fee per meter from 1978 to date, and a

⁴⁷ 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).

revision of the Residential Service, Schedule RG, portion of Empire's tariff deleting paragraph four of Conditions of Service. Alternatively, Gehrs asks for an addition to Empire's tariff adding a paragraph to the conditions of service stating that, "If the Company has reason to believe there are multiple-family dwellings within a single building through a single meter, but only one Customer charge is being billed, then Customer shall allow the Company to inspect such property or shall swear under penalty of perjury as to the number of dwelling units in such building."

A credit is inappropriate for Gehrs because he has been correctly billed under Empire's Commission-approved tariff. The Commission will not address changing the tariff (which would alter Empire's revenue requirement) or the justness and reasonableness of Empire's rates in this complaint because Gehrs' complaint does not meet the requirements of 386.390 RSMo.

The Complainant has the burden to show that the Empire has violated a law subject to the Commission's authority, a rule, or an order of the Commission. While Gehrs has presented evidence that Empire had previously charged a customer a rate different from its Commission approved rate, Empire remedied the situation as soon as it became aware of it. Empire charging different rates within a customer class appears to be an error, and not an attempt to avoid charging a Commission approved rate. Gehrs has not pointed to any ongoing violations by Empire, of which Empire is aware of the violation and continues to charge an unapproved rate.

Therefore, the Commission must rule in favor of Empire.

THE COMMISSION ORDERS THAT:

1. William Gehrs' complaint is denied.

2. This order shall become effective on November 8, 2019.



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.

Clark, Senior Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of Carl R. Mills Trust Certificate of)
 Convenience and Necessity Authorizing it to)
 Install, Own, Acquire, Construct, Operate, Control,) **File No. WA-2018-0370**
 Manage and Maintain Water Systems in Carriage)
 Oaks Estates)

REPORT AND ORDER

CERTIFICATES

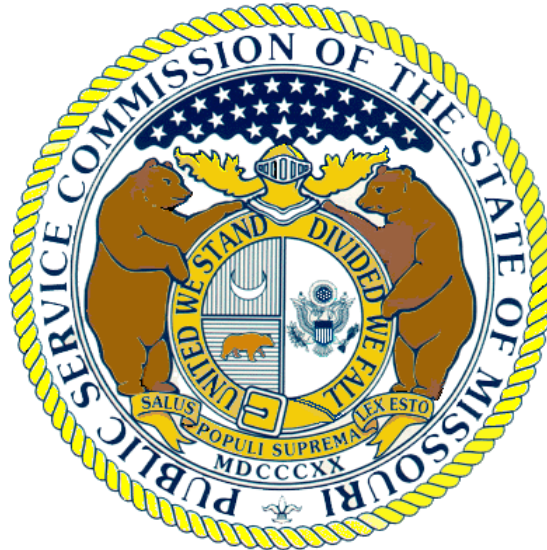
§11 When a certificate is required generally

In a prior complaint case the Commission determined that Mills was a water corporation within the definition of Section 386.020(59) RSMo, and as such was subject to Commission jurisdiction. The Commission also determined that any transfers of water assets were void and Mills retained ownership of the water assets. The Commission ordered Mills to apply for a certificate of convenience and necessity.

§22 Restrictions and conditions

The Commission concludes that the proposed conditions are reasonable and necessary in granting a certificate of convenience and necessity to Mills to ensure safe and adequate service because of Mills' inexperience with utility regulation, customer concerns with water quality, continued inappropriate billing of customers through the HOA, and Mills' difficulty in fully complying with the Commission's prior orders in File No. WC-2017-0037. The Commission will order conditions that it feels are necessary to safeguard the interests of the customers residing in the subdivision and are articulated in the ordered paragraphs below.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of Carl R. Mills Trust)
 Certificate of Convenience and)
 Necessity Authorizing it to Install, Own,)
 Acquire, Construct, Operate, Control,)
 Manage and Maintain Water Systems in)
 Carriage Oaks Estates)

File No. WA-2018-0370

REPORT AND ORDER

Issue Date: October 9, 2019

Effective Date: November 8, 2019

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

In the Matter of Carl R. Mills Trust)
Certificate of Convenience and)
Necessity Authorizing it to Install, Own,)
Acquire, Construct, Operate, Control,)
Manage and Maintain Water Systems in)
Carriage Oaks Estates)
File No. WA-2018-0370

APPEARANCES

Appearing for **Carl Richard Mills:**

Carl Richard Mills, pro se, 209 Falling Leaf Court, Branson West MO 65737

Appearing for the **Staff of the Missouri Public Service Commission:**

Alexandra L. Klaus, Senior Counsel, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

Mark Johnson, Deputy Counsel, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

Appearing for the **Office of the Public Counsel:**

John Clizer, Associate Counsel, Governor Office Building, 200 Madison Street, Suite 650, Post Office Box 2230, Jefferson City, Missouri 65102.

Appearing for **Derald Morgan, Rick and Cindy Graver, William and Gloria Phipps, and David Lott:**

Karl Finkenbinder, Attorney, 100 Prairie Dunes Dr., Ste. 200, Branson MO 65616-6561,

Regulatory Law Judge: John T. Clark

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REPORT AND ORDER

Procedural History

On April 12, 2018, the Missouri Public Service Commission (Commission) issued its Report and Order in File No. WC-2017-0037. That proceeding involved several residents of the Carriage Oaks Estates subdivision filing a complaint with the Commission against subdivision developer Carl Richard Mills (Mills), the subdivision homeowners association (HOA), and several entities created by Mills. The Complaint alleged that Mills operated a public utility subject to the Commission's jurisdiction without having obtained a Certificate of Convenience and Necessity (CCN) from the Commission. The complaint also alleged that Mills transferred the subdivision's water assets to various entities owned or controlled by Mills without the Commission's approval.

The Commission determined that Mills was a water corporation within the definition of Section 386.020(59) RSMo, and as such was subject to Commission jurisdiction. The Commission also determined that any transfers of water assets were void and Mills retained ownership of the water assets. The Commission ordered Mills to apply for a CCN.

On June 7, 2018, the Carl Richard Mills Trust filed an Application for a CCN to install, own, acquire, construct, operate, control, manage and maintain the water system in the Carriage Oaks Estates subdivision. The Commission issued notice of the application, ordered its Staff to file a recommendation, and set a deadline for interventions. Subdivision residents Derald Morgan, Rick and Cindy Graver, William and Gloria Phipps, and David Lott (Intervenors) were granted intervention. An Amended

Application for Convenience and Necessity was filed on October 2, 2018, with Mr. Mills in his individual capacity as the applicant.

On October 11, 2018, Staff filed its recommendation that the Commission approve the application subject to certain conditions. The Intervenors filed a request for an evidentiary hearing on November 13, 2018.

On June 24, 2019, an evidentiary hearing was held at the Commission's offices in Jefferson City, Missouri. During the hearings, the parties presented evidence relating to two unresolved issues previously identified by the parties. The Commission admitted the testimony of 4 witnesses, received 17 exhibits into evidence, and took official notice of certain matters.¹ The final post-hearing briefs were filed on August 6, 2019, and the case was deemed submitted for the Commission's decision on that date.²

General Matters

General Findings of Fact

1. Carl Mills is the developer of the Carriage Oaks Estates, a small subdivision located in Stone County, Missouri.³
2. Mills has operated the water system in Carriage Oaks Estates subdivision since its installation during the construction of the subdivision in 1999.⁴
3. The Intervenors are homeowners in the Carriage Oaks Estates subdivision and are required to connect to the water system.⁵

¹ At the hearing, the regulatory law judge took official notice of the Report and Order in File No. WC-2017-0037.

² "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 20 CSR 4240-2.150(1).

³ Ex. 1, Mills Direct, page 3.

⁴ Ex. 1, Mills Direct, pages 4 and 9.

⁵ Commission Ex. 1, Joint Stipulation of Agreed Upon Facts, page 2.

4. The Office of the Public Counsel (OPC) is a party to this case⁶ pursuant to Commission Rule 20 CSR 4240-2.010(10).

5. The Staff is a party to this case⁷ pursuant to Section 386.071, RSMo, and Commission Rule 20 CSR 4240-2.010(10).

6. There are 32 developed lots within the Carriage Oaks Estates subdivision.⁸

7. Homes are constructed on seven lots, and are connected to the water system.⁹

8. All seven homes currently receive water service from the water system, and it is anticipated that those seven customers will continue to receive water services from the subdivision water system.¹⁰

9. The water system consists of a single well with current production capacity of 55 gallons per minute, a ground storage tank with an approximate volume of 35,000 gallons, high service pumps to provide distribution system water pressure, and bladder type pressure tanks to normalize distribution system pressure. The distribution system is in place for all of the existing 32 lots in the developed area.¹¹

10. The system includes meters for six of the seven customers, but they are neither being read nor used for billing.¹²

11. Any finding of fact reflecting that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight

⁶ Commission Ex. 1, Joint Stipulation of Agreed Upon Facts, page 2.

⁷ Commission Ex. 1, Joint Stipulation of Agreed Upon Facts, page 2.

⁸ Commission Ex. 1, Joint Stipulation of Agreed Upon Facts, page 2.

⁹ Commission Ex. 1, Joint Stipulation of Agreed Upon Facts, page 2.

¹⁰ Commission Ex. 1, Joint Stipulation of Agreed Upon Facts, page 2.

¹¹ Ex. 100, McMellen Rebuttal, Memorandum, Appendix A, page 2.

¹² Ex. 100, McMellen Rebuttal, Memorandum, Appendix A., page 2.

to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.¹³

General Conclusions of Law

A. Carl Mills owns a “water corporation” and a “public utility” as defined in Sections 386.020(59) and 386.020(43), RSMo,¹⁴ 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.

B. 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.

C. Carl Mills bears the burden of proving that granting his application is required by public convenience and necessity.¹⁵ In order to carry his burden of proof, Carl Mills must meet the preponderance of the evidence standard.¹⁶

Disputed Issues

- I. Does the evidence establish that the water system in Carriage Oaks Estates for which Carl R. Mills is seeking a certificate of convenience and necessity (CCN) is “necessary or convenient for the public service” within the meaning of that phrase in Section 393.170, RSMo.?**
- II. If the Commission grants Mr. Mills a CCN, what conditions, if any, should the Commission deem to be reasonable and necessary, and impose?**

¹³ 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)

¹⁴ Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in 2016 and subsequently revised or supplemented.

¹⁵ 20CSR 4240-3.600(1)(D).

¹⁶ *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).

Findings of Fact

1. There is a need for the service.¹⁷
2. There are no other utility companies providing water services to the Carriage Oaks Estates Subdivision.¹⁸
3. As the subdivision developer, Mills paid for the installation of the water system.¹⁹
4. The water system is already constructed, so there will be no additional financing required.²⁰
5. Mills used his personal finances to pay for upgrades and repairs.²¹
6. Staff's observation of current operations indicates that upgrades and repairs appear to have been adequate in the past.²²
7. Mills has provided safe and adequate service for the Carriage Oaks Estates subdivision for the prior 19 years.²³
8. The Intervenors have asserted that Mills lacks the physical and mental capacity to operate the water system.²⁴
9. Mills credibly testified that he is physically capable of operating the system.²⁵

¹⁷ Commission Ex. 1, Joint Stipulation of Agreed Upon Facts, page 3.

¹⁸ Ex. 1, Mills Direct, Exhibit 1, Amended Application for Convenience and Necessity, page 2.

¹⁹ Ex. 1, Mills Direct, page 9.

²⁰ Ex. 1, Mills Direct, Exhibit 1, Amended Application for Convenience and Necessity, page 2.

²¹ Ex. 100, McMellen Rebuttal, Memorandum, Appendix A, page 5.

²² Ex. 100, McMellen Rebuttal, Memorandum, Appendix A, page 5.

²³ Ex. 100, McMellen Rebuttal, Memorandum, Appendix A, page 5.

²⁴ Tr., page 36.

²⁵ Tr., pages 46-47.

10. Mills competent testimony at the hearing, his prior experience operating the water system,²⁶ and his prior employment experience²⁷ indicate that he has sufficient mental capacity to operate the Carriage Oaks Estates water system.

11. The homeowners in the Carriage Oaks Estates subdivision pay an annual assessment for to the Carriage Oaks Estates Homeowners' Association, a portion of which pays for the costs of the water system.²⁸

12. Mills previously informed the Carriage Oaks Estates Homeowners' Association, that he would shut off the water for nonpayment of the assessment fee.²⁹

13. Mills hired a third party contract operator to operate the water system for two and a half months,³⁰ and terminated that contractor three weeks prior to the evidentiary hearing due to a contract dispute.³¹

14. A contract operator/manager could solve many of the issues or perceived issues associated with water quality and customer relations, because it would remove Mills from the day-to-day issues, although he would remain involved as the owner, financier, and executive of the utility.³²

15. Mills has expressed that in the near future he would like to turn over operation of the system to Ozark Clean Water.³³

16. Ozark Clean Water is a company that maintains all aspects of drinking water systems.³⁴

²⁶ Ex. 100, McMellen Rebuttal, Memorandum, Appendix A, page 5.

²⁷ Ex. 1, Mills Direct, page 3.

²⁸ Ex. 300, Morgan Direct, page 6.

²⁹ Tr., pages 126-128.

³⁰ Tr., pages 86-87

³¹ Tr., page 89.

³² Ex. 101, Merciel Rebuttal, page 7.

³³ Ex. 1, Mills Direct, page 11.

³⁴ Ex. 3, Mills Surrebuttal, attached Exhibit 501.

17. Mills stated that Ozark Clean Water has confirmed that it would be willing to take over management and maintenance of the water system.³⁵

18. The Intervenor asks the Commission to deny Mills' application for a CCN and order another public utility to acquire the water system under Section 393.146, RSMo.³⁶

19. The Intervenor has asserted that they are not included in the decision making process, and want the water system placed with an entity in which all owners are members of the entity and each member receives one vote.³⁷

20. The Department of Natural Resources does not currently monitor or test the Carriage Oaks Estates water supply because there are less than 15 connections to the water system and less than 25 individuals using it.³⁸

21. The Intervenor has testified to service quality issues involving rocks,³⁹ water pressure, and iron content.⁴⁰

22. The water quality issues involving discoloration from iron, sediment, and water flow are not health related or violations of drinking water standards.⁴¹

23. The record in the WC-2017-0037 complaint, in which the Intervenor in this matter were also intervenors, does not demonstrate any abuse by Mills in regard to rates or safety.⁴²

³⁵ Ex. 3, Mills Surrebuttal, page 3.

³⁶ Tr., pages 38-39.

³⁷ Ex. 300, Morgan Direct, pages 6-7.

³⁸ Ex. 101, Merciel Rebuttal, page 3.

³⁹ Tr., page 177.

⁴⁰ Ex. 300, Morgan Direct, pages 9-11.

⁴¹ Ex. 101, Merciel Rebuttal, page 4.

⁴² Commission Ex. 2, Report and Order, page 14.

24. Mills has testified that the water system is now titled in his name, and therefore in compliance with the Commissions prior orders.⁴³

25. Staff has expressed concern regarding Mills' failure to timely title the water system in his name, though the Commission's order in WC-2017-0037 voided any of Mills' transfers of the water system to other entities.

26. Staff observed that the water system appears to be adequately designed and constructed, is in good condition, and at the time of Staff's report, customers were not complaining about service issues.⁴⁴

Conclusions of Law

A. No water corporation can construct a water system without prior Commission authorization.⁴⁵

B. No water corporation may exercise any franchise right or privilege without the Commission's authorization.⁴⁶

C. The Commission may grant a water 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."⁴⁷

D. The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed service" would be an improvement justifying

⁴³ Tr., page 91.

⁴⁴ Ex. 100, McMellen Rebuttal, Memorandum, Appendix A, page 4.

⁴⁵ Section 393.170.1, RSMo.

⁴⁶ Section 393.170.2, RSMo.

⁴⁷ Section 393.170.3, RSMo.

its cost,"⁴⁸ and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.⁴⁹

E. The Commission has articulated the filing requirements for water utility CCNs in Commission Rule 20 CSR 4240-3.600, and the specific criteria to be used when evaluating applications of water utility CCNs are more clearly set out in *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 public interest.⁵⁰

F. It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.⁵¹ In determining the public interest, "[P]ositive findings with respect to the other four standards will in most instances support a finding that an application for a certificate of convenience and necessity will promote the public interest."⁵²

⁴⁸ *St. ex rel. Intercon Gas, Inc. v. Public Service Commission*, 848 S.W.2d 593, 597 (Mo. App. 1993); *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo. App. 1973).

⁴⁹ *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo. App. 1973); *State ex rel. Transport Delivery Service v. Burton*, 317 S.W.2d 661 (Mo. App. 1958).

⁵⁰ 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.).

⁵¹ *In the Matter of the Application of Southern Missouri Gas Company, L.P., d/b/a Southern Missouri Natural Gas, for a Certificate of Public Convenience and Necessity Authorizing It to Construct, Install, Own, Operate, Control, Manage, and Maintain a Natural Gas Distribution System to Provide Gas Service in Lebanon, Missouri*, Case Number GA-2007-0212, et al., 2007 WL 2428951 (Mo. P.S.C.); *Intercon Gas, supra*, quoting *St. ex rel. Ozark Electric Coop. v. Public Service Commission*, 527 S.W.2d 390, 392 (Mo. App. 1975).

⁵² *In Re Tartan Energy Co., L.C.*, No. GA-94-127, 1994 WL 762882 at *11 (Sept. 16, 1994).

G. The Commission may impose the conditions it deems reasonable and necessary for the grant of a CCN.⁵³

H. The Commission may order a capable utility to acquire a small water corporation if the Commission determines that the small water corporation is in violation of statutory or regulatory standards that affect safety and adequacy of service, that it has not complied with orders concerning the safety and adequacy of service, or that it is unreasonable to assume it will furnish and maintain safe adequate service in the future. In the absence of an imminent threat of serious harm to life or property, the Commission shall discuss alternatives to acquisition including having the small water corporation enter into a contract with another public utility or management service to operate the small water corporation.⁵⁴

Decision

After applying the facts to the applicable law, the Commission finds that Carl Mills qualifies for the requested CCN. 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.

The Commission finds that there is a need for water service, as stipulated by the parties. Therefore, the service is necessary within the meaning of Section 393.170, RSMo. The water system is convenient because it is set up to provide service to all current residents of Carriage Oaks Estate and a distribution system capable of supplying water

⁵³ Section 393.170.3, RSMo.

⁵⁴ Section 393.146, RSMo.

to all 32 developed lots. The Commission also concludes that Carl Mills possesses adequate technical, managerial, and financial capacity to operate the water system in the Carriage Oaks Estates subdivision. The factors for granting certificate of convenience and necessity to Carl Mills have been satisfied and it is in the public interest for Carl Mills to provide water service to the customers residing in the Carriage Oaks Estates subdivision. The Commission does not find that sufficient reasons exist for the Commission to consider ordering another utility to acquire the water system.

Staff, OPC and the Intervenors submitted proposed conditions in their post-hearing briefs. The Commission concludes that Staff's and OPC's conditions are reasonable and necessary in granting a CCN to Mills to ensure safe and adequate service because of Mills' inexperience with utility regulation, customer concerns with water quality, continued inappropriate billing of customers through the HOA, and Mills' difficulty in fully complying with the Commission's prior orders in File No. WC-2017-0037. The Commission will order conditions that it feels are necessary to safeguard the interests of the customers residing in the subdivision and are articulated in the ordered paragraphs below.

OPC additionally states that Staff's proposed flat quarterly rate for water services of \$271.42 is consistent with Mills not contracting with a company to manage the water system. Staff updated that rate to \$289.68⁵⁵ premised on Mills contracting with a third party operator for management of the water system. OPC opposes granting Mills the higher rate in the absence of a third party operator managing the water system. The Commission concludes that because Mills is being required to hire a third party contractor, a flat quarterly rate of \$289.68 is just and reasonable.

⁵⁵ Ex. 102, Updated D-1.

The Commission makes no findings that would preclude it from considering the ratemaking treatment to be afforded any matters in any later proceeding.

THE COMMISSION ORDERS THAT:

1. Carl Mills is granted a certificate of convenience and necessity to provide water service within the Carriage Oaks Estates subdivision service area as depicted by the map metes and bounds description included with Staff's Memorandum, as Attachments A and B.

2. The Commission approves the depreciation rates for water utility plant accounts as described and shown on Staff's Memorandum Attachment E: Schedule of Depreciation Rates for Water Plant.

3. The Commission approves a quarterly flat rate for water service of \$289.68, as a just and reasonable rate.

4. The Commission extends the requirement for Mills to submit a rate case ordered in the Commission's *Report and Order* issued in WC-2017-0037. Mills shall submit a rate case one year after the effective date of the issuance of the Certificate of Convenience and Necessity in this Report and Order.

5. The Commission orders the following reasonable and necessary conditions:
- a. Mills shall follow all applicable requirements pertaining to regulated water companies.
 - b. Mills shall create and keep financial books and records for plant-in-service, revenues, and operating expenses (including invoices) in accordance with the NARUC Uniform System of Accounts.
 - c. Mills shall, going forward, keep and make available for audit and review all invoices and documents pertaining to the capital costs of constructing and installing the water utility assets.

- d. Mills shall submit a complete tariff for water service, as a 30-day filing, within ten days after the effective date of this Report and Order.
- e. Mills shall submit information to the Commission's Staff indicating he owns pertinent water utility real estate, and has access and control of water-related utility easements throughout the service area, within 30 days after the effective date of this Report and Order.
- f. Mills shall distribute to all 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 20 CSR 4240-13, within 30 days after the effective date of this Report and Order.
- g. Mills shall provide to the Customer Experience Department staff a sample of three bills from the first billing cycle after the effective date of this Report and Order.
- h. Mills shall file notice in this case once conditions f. and g. above have been completed;
- i. Mills shall take water samples for laboratory analysis at least twice per year at approximately six-month intervals for bacterial contamination, chlorine residual and iron content, such sample to begin within 30 days of the effective date of this Report and Order.
- j. Mills shall report the twice-annual water testing results to customers at least annually, beginning within 240 days after the effective date of this Report and Order.
- k. Mills shall provide the Commission's Staff and OPC evidence of his purported contract with Ozark Clean Water within 30 days of the effective date of this Report and Order.
- l. Mills shall notify the Commission's Staff and OPC within one week of any termination of the purported contract with Ozark Clean Water.
- m. Mills shall initiate a rate case proceeding within two months of any termination of the purported contract with Ozark Clean Water.

6. This Report and Order shall become effective on November 8, 2019.



BY THE COMMISSION

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

Morris Woodruff
Secretary

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

Clark, Senior Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

The Office of the Public Counsel and)	
The Midwest Energy Consumers Group,)	
)	
Complainants,)	
v.	)	<u>File No. EC-2019-0200</u>
)	
KCP&L Greater Missouri Operations)	
Company)	
)	
Respondent.)	

REPORT AND ORDER

Affirmed on appeal: *Office of Public Counsel v. Evergy Missouri West, Inc.*, 609 S.W.3d 857 (Mo. App. W.D. 2020)

NOTE: Commissioner Hall filed a concurring opinion and Commissioner Kenney filed a dissenting opinion. These opinions are attached to the Report and Order.

ACCOUNTING

§42 Accounting Authority Orders

A request by consumers for establishment of a regulatory liability will be evaluated under the same standard used to evaluate a request by a utility to establish a regulatory asset.

§42 Accounting Authority Orders

A utility's decision to retire a coal-fired generating plant was extraordinary, unusual and unique, and not recurring, and warranted the issuance of an AAO.

§42 Accounting Authority Orders

A utility's current level of earnings is not considered when determining whether an AAO is appropriate.

ELECTRIC

§43 Accounting Authority Orders

A request by consumers for establishment of a regulatory liability will be evaluated under the same standard used to evaluate a request by a utility to establish a regulatory asset.

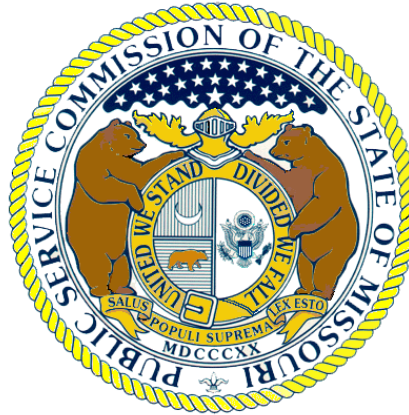
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§43 Accounting Authority Orders

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BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



The Office of the Public Counsel and)
 The Midwest Energy Consumers Group,)
)
 Complainants,)
)
 v.)
)
 KCP&L Greater Missouri Operations)
 Company)
)
 Respondent.)

File No. EC-2019-0200

REPORT AND ORDER

Issue Date: October 17, 2019

Effective Date: October 27, 2019

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

The Office of the Public Counsel and)	
The Midwest Energy Consumers Group,)	
)	
Complainants,)	
)	
v.)	<u>File No. EC-2019-0200</u>
)	
KCP&L Greater Missouri Operations)	
Company)	
)	
Respondent.)	

APPEARANCES

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For the Staff of the Missouri Public Service Commission.

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

¹ After the final briefs were submitted, KCP&L Greater Missouri Operations Company changed its name to Every Missouri West. Similarly, Kansas City Power & Light Company changed its name to Every Missouri Metro. To avoid confusion, the Commission will refer to the companies by the names used throughout the case.

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

On December 28, 2018, the Office of the Public Counsel and the Midwest Energy Consumers Group (MECG) filed what they denominated as a Petition for an Accounting Order. That petition asked the Commission to order KCP&L Greater Missouri Operations Company (GMO) to record as a regulatory liability in Account 254 the revenue and the return on the Sibley unit investments collected in rates for non-fuel operations and maintenance costs, taxes, including accumulated deferred income taxes, and all other costs associated with Sibley units 1, 2, 3, and common plant.

The Petition for an Accounting Order was filed as a petition, not as a complaint, and it was assigned File No. EU-2019-0197 in the Commission's Electronic Filing and Information System (EFIS). The Commission, acting on its own motion, determined that the Petition could best be considered using complaint-type procedures. The Commission closed File No. EU-2019-0197, and reassigned the Petition to File No. EC-2019-0200, which is a complaint designation within EFIS. The Commission then issued a Notice of Complaint to provide notice of the filing to GMO, and directed GMO to file an answer to the "complaint" by February 1, 2019.

GMO filed its answer on February 1, 2019, and on February 5, 2019, filed a motion to dismiss the complaint for failure to state a claim for relief. The Commission denied that motion to dismiss on March 6, 2019. Thereafter, the Commission adopted a procedural schedule.

The parties prefiled direct, rebuttal, cross-rebuttal, and surrebuttal testimony. An evidentiary hearing was held on August 7 and 8, 2019. Thereafter, the parties filed initial briefs on August 29, 2019, and reply briefs on September 10, 2019.

Pending Motion

The Commission's Staff filed a motion on September 12, 2019, asking the Commission to strike a section of MEEG's reply brief. The challenged section of MEEG's brief is entitled "Staff Lacks Objectivity in Recent KCPL and GMO Cases,"² and consists largely of accusations that the Commission's Staff has recently taken positions in various cases that are overly aligned with the positions espoused by Kansas City Power and Light Company (KCP&L) and its sister utility, GMO. The brief warns the Commission to beware of Staff's lack of objectivity so that it "may adequately consider whether Staff's position

² Reply Brief of the Midwest Energy Consumers' Group, Section H1, pages 16-19.

establishes an appropriate balancing of the interest of ratepayers and shareholders.”³ Staff contends the challenged section of the brief is intended to “improperly poison the Commission’s mind against Staff” and on the basis should be struck. MEGC did not respond to Staff’s Motion to Strike.

In support of its Motion, Staff cites Missouri’s Rule of Civil Procedure 55.27(e), which allows the court to strike from any pleading “any redundant, immaterial, impertinent, or scandalous matter.” Staff also cites Commission Rule 20 CSR 4240-2.080(6)(A), which requires that arguments before the Commission must not be “presented or maintained for any improper purpose, such as to harass”

After reviewing the challenged section of MEGC’s reply brief, the Commission finds it to be an unpersuasive attempt to cast aspersions on the integrity of the Commission’s Staff. Nevertheless, the arguments presented in the brief do echo matters addressed at the hearing and on that basis should not be struck. While the Commission will not strike the portions of the brief challenged by Staff, it will address the argument raised in that section later in this order.

Findings of Fact

1. GMO 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. Sibley units 1, 2, and 3 were coal-fired generation units located near the town of Sibley, in Jackson County, Missouri.⁴

3. The Sibley units were initially constructed by GMO’s predecessor, Missouri Public Service Company. Sibley 1, completed in June 1960, had a capacity of 48 MWs.

³ Reply Brief of the Midwest Energy Consumers’ Group, page 19.

⁴ Transcript, Page 398, Lines 20-25.

Sibley 2, completed in May 1962, had a capacity of 51 MWs. Sibley 3, built in June 1969, had a capacity of 364 MWs.⁵

4. In 1991, Missouri Public Service Company completed a major renovation of the Sibley units to extend the life of the units and to allow the units to burn low sulfur western coal.⁶

5. GMO added scrubbers to Sibley unit 3 in 2009 to meet environmental requirements.⁷

6. On June 2, 2017, GMO announced it would be retiring Sibley units 1, 2, and 3 by December 31, 2018.⁸

7. The Sibley 3 unit suffered a forced outage on September 5, 2018 as a result of turbine vibrations and ceased generating electricity at that time.⁹

8. Rather than repair the Sibley 3 unit, all three Sibley units were retired by GMO on November 13, 2018.¹⁰ All of Sibley unit 1, except the boiler, had previously been retired on June 1, 2017.¹¹

9. The aggregate financial impact of the retirement of the Sibley units exceeds five percent of GMO's reported net income, although the parties disagree about the exact amount of that impact.¹²

⁵ Meyer Direct, Ex. 1, Page 3, Lines 7-11.

⁶ Meyer Direct, Ex. 1, Page 3, Lines 12-13.

⁷ Transcript, Pages 176-177, Lines 22 -25, 1-13.

⁸ Ives Rebuttal, Ex. 24, Page 11, Lines 4-8.

⁹ Transcript, Page 377, Lines 7-11. *See also*, Ex. 26 and Transcript, Page 379, Lines 12-17.

¹⁰ Transcript, Page 402, Lines 7-8.

¹¹ Spanos Rebuttal, Ex. 21, Page 6, fn.1.

¹² Oliglschlaeger Cross-Rebuttal, Ex. 17, Pages 6-7, Lines 21-22. 1-3, Schallenberg Direct, Ex. 5, Pages 10-12, Lines 24-30, 1-15, 1-7. Spanos Rebuttal, Ex. 21, Schedule JJS-1. Meyer Direct, Ex. 1, Page 14, Lines 9-14.

10. At the time of the retirement of the Sibley units, GMO had a general rate case pending before the Commission in File No. ER-2018-0146. The Commission used a historic test year in that rate case, with a true-up date of June 30, 2018.¹³ The Sibley units were operating at that time and the cost of operating those units are incorporated into GMO's current rates, which went into effect on December 6, 2018. That means GMO's ratepayers are continuing to pay for GMO's ongoing expenses to operate the Sibley units even though they are no longer producing power.¹⁴

11. GMO's position in the rate case was that while it anticipated the Sibley units would be retired by December 31, 2018, that decision had not been finally made and the retirement could be delayed by unforeseen circumstances such as the loss of other generating facilities.¹⁵

12. GMO's rate case in File No. ER-2018-0146 was resolved through a series of stipulations and agreements that were presented to the Commission on October 3, 2018.¹⁶ GMO did not inform the signatories to the stipulation and agreement, including Public Counsel, or the Commission, except for a routine notification to Staff, that Sibley 3 had ceased operation in September until the units were formally retired in November,¹⁷ which was after the stipulation and agreement had been approved by the Commission on October 31, 2019.¹⁸

¹³ Transcript, Page 232, Lines 2-10.

¹⁴ *In the Matter of KCP&L Greater Missouri Operations Company's Request for Authority to Implement a General Rate Increase for Electric Service*, File No. ER-2018-0146, Order Approving Stipulations and Agreements, October 31, 2018, Partial Stipulation and Agreement resolving revenue requirement issues, Page 9.

¹⁵ Transcript, Page 404, Lines 3-15.

¹⁶ Transcript Page 395, Lines 8-15.

¹⁷ Transcript, Page 397, Lines 11-18.

¹⁸ *In the Matter of KCP&L Greater Missouri Operations Company's Request for Authority to Implement a General Rate Increase for Electric Service*, File No. ER-2018-0146, Order Approving

13. In a provision regarding the retirement of the Sibley and Lake Road units, the approved stipulation and agreement included a provision stating:

This Stipulation does not preclude any Signatory from proposing an accounting authority order (“AAO”) or any other ratemaking treatment, for the recovery of any other costs associated with the KCP&L and GMO retirements listed above. This Stipulation does not preclude any party from opposing an AAO, or any other ratemaking treatment, for the recovery of any other costs associated with the KCP&L and GMO retirements of the units listed above.¹⁹

14. The approved stipulation and agreement also required GMO to:

[C]reate a regulatory liability to capture the amount of depreciation expense included in GMO’s revenue requirement beginning when each of the following units is retired and depreciation expense is no longer recorded on GMO’s books: Sibley units 1, 2, and 3, including common plant, and Lake Road unit 4/6.²⁰

15. If the parties had known that Sibley 3 had ceased producing power and would be retired, they could have proposed an isolated adjustment outside the test year and true-up date to remove the operating costs of the retired units from GMO’s new rates.²¹

16. Because of GMO’s election to use Plant In Service Accounting (PISA) as it is allowed to do under Section 393.1400(5) RSMo, its rates are currently frozen by the terms of Section 393.1655.2 RSMo, and new rates cannot be effective before December 6, 2021.²²

17. GMO has not retired a major generating facility in the last thirty years. Its last retirements were the Edmond Street plant in 1987 and Ralph Green Units 1 and 2 in

Stipulations and Agreements, October 31, 2018.

¹⁹ *In the Matter of KCP&L Greater Missouri Operations Company’s Request for Authority to Implement a General Rate Increase for Electric Service*, File No. ER-2018-0146, Non-Unanimous Partial Stipulation and Agreement, Page 9. See also, Transcript, Page 182, Lines 7-14.

²⁰ *In the Matter of KCP&L Greater Missouri Operations Company’s Request for Authority to Implement a General Rate Increase for Electric Service*, File No. ER-2018-0146, Non-Unanimous Partial Stipulation and Agreement, Page 9.

²¹ Transcript, Page 310, Lines 14-17.

²² Ives Rebuttal, Ex. 24, Page 26, Lines 12-13. See also, Transcript, Page 296, Lines 17-22.

November 1982.²³

18. Retirement of coal-fired units is more common in the industry as a whole. A total of 89,731 MW of coal-unit capacity has been retired since 1969. About 85 percent of that total, 76,526 MW, has been retired since 2010.²⁴

19. GMO's current depreciation rates for Sibley unit 3 are based on a 2040 retirement date.²⁵

20. It is unusual to close a generating plant with twenty years of remaining anticipated service life and twenty years of unrecovered depreciation expense.²⁶

21. The estimated net book value of each Sibley unit and the common assets at Sibley as of June 30, 2018, as calculated by GMO's witness, is \$145.7 million.²⁷ Public Counsel's witness estimated that net book value at \$160 million,²⁸ while MCEG's witness estimated that value at \$300 million.²⁹

22. The Sibley retirement is the only coal plant retirement in the Southwest Power Pool footprint that had a projected remaining operation life of more than twenty years and more than \$100 million in remaining book value.³⁰

23. In its 2018 10K filed with the Security and Exchange Commission (SEC) Evergy (the parent of GMO) indicates its

²³ Schallenberg Direct, Ex. 5, Page 12, Lines 17-20.

²⁴ Rodgers Rebuttal, Ex. 20, Page 8, Lines 19-23.

²⁵ Schallenberg Direct, Ex. 5, Page 13, Lines 10-13.

²⁶ Transcript, Page 340, Lines 12-18.

²⁷ Spanos Rebuttal, Ex. 21, Page 6, Line 17.

²⁸ Schallenberg Direct, Ex. 5, Page 8, Lines 31-33.

²⁹ Meyer Direct, Ex. 1, Page 13, Lines 3-9.

³⁰ Marke Surrebuttal, Ex. 14, Page 10, Lines 20-23.

regulatory assets increased by \$243.4 million primarily due to the reclassification of retired generating plant of \$159.9 million related to GMO's Sibley No. 3 Unit from property, plant and equipment, net to a regulatory asset upon the retirement of the unit in 2018.³¹

The creation of such a regulatory assets means the company believes those costs will probably be recovered from future revenues.³²

24. The magnitude of the decision to retire the Sibley units is demonstrated by the fact that while GMO reported it retired \$30,998,133 of steam production plant in 2016,³³ and \$26,834,314 in 2017,³⁴ in 2018 it reported retiring \$486,451,128 of steam production plant, a number that it attributed to the retirement of the Sibley units.³⁵

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;

By the terms of the statute, GMO is an electrical corporation and is subject to regulation by the Commission pursuant to Section 393.140, RSMo 2016.

B. Public Counsel and MECG are authorized to bring a complaint before the Commission by Section 386.390.1, RSMo 2016.

³¹ Schallenberg Direct, Ex. 5, Page 6, Lines 20-29.

³² Schallenberg Direct, Ex. 5, Pages 7-8.

³³ Ex. 7.

³⁴ Ex. 8.

³⁵ Ex. 9. These numbers are discussed at pages 158-160 of the Transcript.

C. Commission Rule 20 CSR 4240-20.030(1) requires Missouri utilities to keep all accounts in conformity with the Uniform System of Accounts (USOA) as prescribed by the Federal Energy Regulatory Commission, as published at 18 CFR Part 101.

D. Instruction number 7 of the General Instructions for the Uniform System of Accounts provides that a utility's net income should generally reflect all items of profit and loss during the period. However, that instruction allows for special treatment of certain items. In the words of the instruction:

Those items related to the effects of events and transactions which have occurred during the current period and which are of unusual nature and infrequent occurrence shall be considered extraordinary items. Accordingly, they will be events and transactions of significant effect which are abnormal and significantly different from the ordinary and typical activities of the company and which would not reasonably be expected to recur in the foreseeable future. ... To be considered as extraordinary under the above guidelines, an item should be more than approximately 5 percent of income, computed before extraordinary items. Commission approval must be obtained to treat an item of less than 5 percent, as extraordinary.³⁶

E. The Commission has authority to defer extraordinary costs of a utility for consideration in a later period. In doing so, it is not engaging in single-issue rate making.³⁷

F. The purpose of an Accounting Authority Order (AAO) is to defer a final decision on current extraordinary costs until a rate case is in order. In that subsequent rate case, the Commission is not bound by the terms of the AAO in setting new rates.³⁸

G. In a 1991 decision involving a request for an AAO, the Commission held that an AAO was appropriate where "events occur during a period which are extraordinary, unusual and unique, and not recurring." This has sometimes been described as "the Sibley Standard."³⁹

³⁶ 18 CFR Ch. 1, Pt. 101, General Instruction 7. That regulation is in the record as Ex. 4.

³⁷ *State ex rel. Office of Pub. Counsel v. Pub. Serv. Com'n of Mo.* 858 S.W. 2d 806 (Mo. App. W.D. 1993).

³⁸ *Missouri Gas Energy v. Pub. Serv. Com'n of Mo.*, 978 S.W. 2d 434 (Mo. App. W.D. 1998).

³⁹ *In the Matter of the Application of Missouri Public Service for the Issuance of an Accounting Order*

H. Retroactive ratemaking, defined as “the setting of rates which permit a utility to recover past losses or which require it to refund past excess profits collected under a rate that did not perfectly match expenses plus rate-of-return with the rate actually established” is prohibited.⁴⁰

I. Section 393.1655.2, RSMo provides that an electrical corporation’s base rates are to be held constant for a period of three years after the utility gave notice of its election under section 393.1400(5), RSMo to make the plant-in service deferrals allowed by that statute.

Decision

This is an unusual case in that most often requests for an AAO are made by a utility seeking to defer to a regulatory asset some cost it has incurred, thereby allowing for the possible recovery of those costs in a later rate case. This time the request for an AAO is coming from parties representing ratepayers and asks the Commission to defer to a regulatory liability the savings the utility will accrue from its decision to close the Sibley generating plant. Despite the identity of the parties requesting the AAO and the fact that creation of a regulatory liability rather than a regulatory asset is sought, this request can be considered under the same standards the Commission has consistently used to evaluate other requests for an AAO.

The USOA definition of extraordinary items for which an AAO may be appropriate clearly applies to both items of profit and loss, as does the Commission’s “Sibley standard” for considering whether an AAO should be issued. Therefore, the question before the

Relating to its Electrical Operations, Case No. EO-91-358, Report and Order, 1 Mo. P.S.C. 3d 200, 205, 1991.

⁴⁰ *State ex rel Utility Consumers’ Council of Mo., Inc. v. Pub. Serv. Com’n*, 585 S.W.2d 41, 59 (Mo. banc 1979).

Commission is whether GMO's decision to close the Sibley units is "extraordinary, unusual and unique, and not recurring."

In describing the factors that should be taken into account when deciding whether a given item of profit or loss should be considered "extraordinary", the USOA definition refers to significant events and transactions that are "abnormal and significantly different from the ordinary and typical activities *of the company*." (emphasis added). Thus, the focus of the standard is on the abnormality and significance of the event and transaction on the company, not on the industry as a whole. That is a reasonable focus as the Commission is expected to determine whether the event is extraordinary and a justification for an AAO for a single utility, not for the industry as a whole.

Clearly, it is unusual for GMO to retire a generating unit as it has not done so in the past thirty years. More importantly, it is unusual and unique for a utility to retire a generating unit with twenty years of remaining anticipated service life, and twenty years of unrecovered depreciation expense. It is also significant that the Sibley plant was retired just after GMO's last rate case was resolved and in fact before those new rates went into effect. Because of the PISA related rate freeze, those rates, through which GMO's ratepayers will continue to pay GMO's costs of operating a power plant that no longer produces power, will remain in effect for at least three years.

Most importantly, if GMO requests accelerated recovery of net plant depreciation costs in its next rate case, the Commission should preserve the option of the future Commission to consider the offset of those costs by consideration of the past savings amounts that would be deferred under the AAO. If this AAO is not granted, such an offset could be challenged as retroactive ratemaking.

GMO chose to close the Sibley units, and the prudence of that decision is not at issue in this case. The question of prudence will be addressed in a future general rate

case. Similarly, GMO's current level of earnings is not a factor in the Commission's decision. The question of whether a utility is currently earning an appropriate rate of return through its established rates is a question to be determined after consideration of all relevant factors in a general rate case. That determination cannot be made with only limited information while considering a request for an AAO.

GMO has suggested that an AAO should not be established because it is currently not earning its allowed return on equity and deferring the savings it would otherwise accrue from the closing of the Sibley units would cause its net earnings levels to drop even lower. As previously indicated, the Commission will not attempt to make any determination of the sufficiency of GMO's current rates in this proceeding. However, those current rates were set in GMO's last rate case using an assumption that the Sibley units were in operation and that the costs of operating those units would be recovered from ratepayers through those rates. GMO's net income was thus enhanced when the costs of operating the Sibley units went away with the closing of the plant, while rates including those costs remain in effect. This order requires GMO to defer that enhancement to its earnings, but it does not impair the company's opportunity to earn the rate of return established in its last rate case.

The Commission also emphasizes that its decision to grant this AAO does not mean the Commission is waiving in its support for renewable energy. On the contrary the State of Missouri, and this Commission in particular firmly support the expansion of renewable energy as a resource to provide clean energy to Missourians. Furthermore this decision should not be taken as an indication that the Commission will dissuade Missouri utilities from retiring economically inefficient coal-fired generation plants in the future. Rather, this decision is based solely on the Commission's consideration of the particular circumstances of this case.

The Commission will briefly address one more issue. MECG contended at the hearing and in its briefs that the Commission's Staff has been overly supportive of KCP&L and GMO's positions in several recent cases. Aside from a meaningless comparison of the number of data requests submitted in the recent merger case involving Great Plains Energy (KCP&L and GMO's parent company) and Westar Energy, MECG offers little support for this theory. Although it is denying Staff's motion to strike the portion of MECG's brief addressing this theory, the Commission will state that it is not persuaded by unsupported accusations of impropriety.

Having decided that an AAO should be established, one more question remains: What amount is to be deferred? This order finds that the retirement of the Sibley units is extraordinary, and will direct GMO to establish the AAO requested by Public Counsel and MECG. That is the only relief sought by Public Counsel and MECG, and it is not necessary for them to establish the amount to be deferred. If GMO believes it needs the Commission's guidance on establishing the amount to be deferred, it may file a new application seeking that guidance. That course will make this order a final order from which GMO may seek rehearing and ultimately appeal.

Because of the need for a prompt resolution of this matter, the Commission will make this order effective in ten days.

THE COMMISSION ORDERS THAT:

1. Staff's Motion to Strike is denied.
2. KCP&L Greater Missouri Operations Company shall record as a regulatory liability in Account 254 the revenue and the return on the Sibley unit investments collected in rates for non-fuel operations and maintenance costs, taxes, including accumulated

deferred income taxes, and all other costs associated with Sibley units 1, 2, 3, and common plant. The regulatory liability should quantify separately dollars related to return and other cost of service expense savings.

3. This report and order shall be effective on October 27, 2019.



BY THE COMMISSION

A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, and Coleman, CC., concur;
Hall, C., concurs with separate concurring opinion to follow;
Kenney, C., dissents;
and certify compliance with the
provisions of Section 536.080, RSMo 2016

Dated at Jefferson City, Missouri,
on this 17th day of October, 2019.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

The Office of the Public Counsel and)	
The Midwest Energy Consumers Group,)	
)	
Complainants,)	
)	
v.	)	<u>File No. EC-2019-0200</u>
)	
KCP&L Greater Missouri Operations)	
Company)	
)	
Respondent.)	

CONCURRING OPINION OF COMMISSIONER DANIEL Y. HALL IN THE REPORT AND ORDER

I join in the Commission’s Report and Order, issued October 17, 2019, in the above-captioned case, which approved the establishment of an Accounting Authority Order to record a regulatory liability associated with the Sibley retirement. I support the determination of the majority affirming that Office of Public Counsel and Midwest Energy Consumers Group met their burden to demonstrate that the closure of the Sibley units by KCP&L Greater Missouri Operations Company (GMO), with 20 years of remaining anticipated service life and with 20 years of unrecovered depreciation expense remaining, was “extraordinary, unusual and unique, and not recurring.” As stated in the order, it is appropriate, therefore, to require GMO to record as a regulatory asset its O&M costs related to the Sibley units, its depreciation expense and its return on that investment.

I write separately to expound upon the regulatory conditions and public policy challenges made evidently clear in this case and humbly provide some hopeful guidance

that could aid in squaring the practical and economic energy market transformation that we are witnessing here in Missouri with the regulatory framework our investor-owned electric utilities must operate within.

At the outset, it is important to note how this decision fits into the historical and national context. We are witnessing a massive shift away from coal generation to gas and renewables. Coal-fired power generation continues to fall from a peak of 57% in 1988¹, to just 28% in 2018, and is expected to fall to 22% by 2020². In contrast, renewable energy system generation has surged from roughly 10% of capacity in 2000 to almost 20% in 2017^{3,4,5}, and accounts for over 60% of new power construction⁶. And more specific to Missouri, KCPL and GMO retired almost 740MW of coal generation last year, while increasing their renewable portfolio to more than 20% of total load⁷. Similarly, Ameren Missouri has announced plans to retire 832 MW in 2022 and construct 775 MW of wind by 2020, and 100 MW of solar by 2027⁸. In addition to those retirements, according to their most recent integrated resource plans, collectively Missouri investor owned electric

¹U.S. ENERGY INFORMATION ADMINISTRATION (EIA), TABLE 8.2B. ELECTRICITY NET GENERATION: ELECTRIC POWER SECTOR, 1949-2011 (2012), available at <https://www.eia.gov/totalenergy/data/annual/txt/ptb0802b.html> and John Kemp, *U.S. Power Producers' Coal Consumption Falls to 35-year Low*, Reuters, Sept. 26, 2018, available at <https://www.reuters.com/article/us-usa-coal-kemp/us-power-producers-coal-consumption-falls-to-35-year-low-kemp-idUSKCN1M61ZX>.

² EIA, SHORT-TERM ENERGY OUTLOOK (Oct. 8, 2019) <https://www.eia.gov/outlooks/steo/>.

³ STATISTA, <https://www.statista.com/statistics/183420/electricity-generation-from-renewable-sources-in-the-us-from-2000/> (accessed Apr. 2, 2019 and last visited Oct. 21, 2019).

⁴ EIA, ELECTRICITY EXPLAINED: ELECTRICITY IN THE UNITED STATES (2018), available at <https://www.eia.gov/energyexplained/electricity/electricity-in-the-us.php>.

⁵ BCSE, 2019 SUSTAINABILITY ENERGY IN AMERICAN FACTBOOK (2019) <https://www.bcse.org/factbook/> (last visited accessed Oct. 21, 2019).

⁶ David Z. Morris, *Renewable Energy Surges to 18% of U.S. Power Mix*, Fortune, Feb. 18, 2018, available at <https://fortune.com/2018/02/18/renewable-energy-us-power-mix/>.

⁷ <https://www.businesswire.com/news/home/20170602005344/en/KCPL-Continues-Sustainability-Commitment-Announcing-Retirement-Units> accessed Apr. 5, 2019.

⁸ News Release from Ameren Missouri (issued Mar. 11, 2019), available at <http://ameren.mediaroom.com/2019-03-11-Ameren-issues-new-report-detailing-its-efforts-to-build-a-cleaner-energy-future>.

utilities are considering retiring at least over half of their remaining coal fleet, or 3,840 MW, by 2036⁹.

As noted above, coal-fired plants have been losing market share for 30 years. The reasons for this trend are well-known and documented – the fracking revolution dramatically reducing the price of natural gas¹⁰; advancing technologies reducing the cost and improving the efficiencies of wind, solar, storage, and other distributed energy resources; a growing concern about the indisputable science linking fossil fuels to climate change¹¹; and Corporate America¹², as well as many residential customers¹³, demanding cleaner, renewable energy. Even the company's own June 2, 2017 news release, provides evidence of this shift by announcing its intentions to retire multiple coal generation units.

These actions further the company's commitment to a sustainable energy future and balanced generation portfolio. "When these power plants started operation more than 50 years ago, coal was the primary means of producing energy. Today, as part of our diverse portfolio, we have cleaner ways to generate the energy our customers need," said Terry Bassham, President

⁹ Ameren Missouri's 2017 Integrated Resource Plan (IRP) which is available by visiting <https://www.ameren.com/missouri/company/environment-and-sustainability/integrated-resource-plan> includes the retirement or consideration of retiring more than 2,750 MW of coal-powered generation. The Empire Electric District Company's 2019 IRP contains coal generation retirements analysis amounting to more than 390 MW which is available by visiting <https://www.empiredistrict.com/About#irp> (click the blue "magnifying glass icon" to view the report or the green "download icon" button to save a copy of the report). The KCP&L and KCP&L GMO 2016 Sustainability Report includes more than 700 MW of coal generation retirements and can be viewed by visiting <http://www.greatplainsenergy.com/static-files/e8293c10-31a6-4fcd-84f8-ec2c93bbb308>.

¹⁰ Jeffry Bartash, *Fracking Revolution That's Made the U.S. the Top Global Oil Producer is Boosting the Economy – and Keeping Emissions Down*, MarketWatch, Mar. 22, 2019, available at <https://www.marketwatch.com/story/fracking-revolution-thats-made-the-us-the-top-global-oil-producer-is-boosting-the-economy-and-curbing-emissions-too-2019-03-22>

¹¹ Aaron Lawson, *Natural Gas and Renewable Energy Continue Leading the Market*, Power Mag, Jan. 1, 2019, available at <https://www.powermag.com/natural-gas-and-renewable-energy-to-continue-leading-the-market/?pagenum=4>.

¹² Herman Trabish, *Green designs: Corporate demand pushes new generation of utility green tariffs*, Utility Dive, May 4, 2017, available at <https://www.utilitydive.com/news/green-designs-corporate-demand-pushes-new-generation-of-utility-green-tari/441580/>.

¹³ Peter Maloney, *'Voluntary demand' for renewables pushes utilities to new technology, business models: Deloitte*, Utility Dive, Dec. 12, 2018, available at <https://www.utilitydive.com/news/voluntary-demand-for-renewables-pushes-utilities-to-new-technology-busin/544174/>.

and CEO of Great Plains Energy and KCP&L. “After considering many options, it is clear that retiring units at Montrose, Lake Road and Sibley is the most cost-effective way to meet our customers’ energy needs as we continue to move to a more sustainable energy future.¹⁴

Simply put, I applaud this vision.

The decision on prudence and rate treatment related to these retirement issues will fall on future Commissions. Common sense dictates that less efficient, older coal generation facilities that become more expensive to run compared to other generation alternatives, in the interest of ratepayers, should be shuttered.

We must encourage, if not require, Missouri investor owned utilities to fully and properly account for, track and report the costs and savings associated with their decisions related to generation additions and retirements to ensure future Commissioners have the information necessary to make those decisions. This underlies the importance of separately tracking the dollars related to return and other cost of service expense savings in accordance with the report and order and the stipulation and agreement approved by the Commission in File No. ER-2018-0146.¹⁵

In GMO’s next rate case, the Commission will be able to examine all relevant factors in setting just and reasonable rates going forward and determine whether to apply that regulatory asset, or some portion of that regulatory asset to make a downward adjustment to the company’s revenue requirement. I purposefully emphasize the phrase – some portion – because I think it distinctly possible that the Commission might determine that to promote fairness, consistency and adherence to certain legal principles

¹⁴ Ives Rebuttal, Sch.DRI-3, Page 1.

¹⁵ *In the Matter of KCP&L Greater Missouri Operations Company’s Request for Authority to Implement a General Rate Increase for Electric Service*, File No. ER-2018-0146, Non-Unanimous Partial Stipulation and Agreement, Page 9.

that GMO be allowed to recover its investment, just not its return on that investment or operational expenses which no longer exist. For that reason, the requirement to specify these amounts in sub accounts is appropriate.

I would also note that there is legal uncertainty as to whether Missouri law allows GMO to recover from its rate payers costs or investments associated with plant that is no longer used and useful. While the Commission did not render its decision on this basis, it is an issue that will be addressed during GMO's next rate case. There is one case - *State ex rel. Missouri Office of Public Counsel v. Public Service Commission of State*, 293 S.W.3d 63, 74-76 (Mo. App. S.D. 2009) – which seems to indicate that while stranded costs can be recovered in rates, a return on those stranded costs is not permitted.

Some may argue that our decision here disincentivizes the retirement of aging coal plants even when they may no longer be cost effective sources of generation. I disagree. If a utility fails to close an inefficient coal generation facility that is no longer cost effective to run, solely in the interests of shareholders and to the detriment of ratepayers, I have faith that an informed and enlightened Commission, with the necessary evidence before it, will find costs related to the ongoing operations of such units imprudent and disallow them.

Thus, when a utility has significant rate base left in a non-cost effective generation unit, it finds itself caught between Homer's mythical sea monsters, Scylla and Charybdis. Either close down inefficient coal facilities that are no longer cost effective and possibly lose the return of and on that investment; or keep them running and face the likelihood of related costs being disallowed. There is at least one viable solution to this dilemma – securitization. It requires legislative action but it would allow the utility to recover its

undepreciated investment and re-invest those monies in additional renewables, grid modernization, energy storage, or transmission. If legislation is written correctly and implemented properly, it is a win for the utility, a win for ratepayers, and a win for the environment. It brings certainty and fairness.

As I understand that utilities and their shareholders are focused on their performance as evaluated by credit rating agencies, I would share that securitization is an approach that Moody's calls "a credit positive tool for regulated utilities" and is a "tool to recover often significant costs related to large or unforeseen developments" and "allows utilities to avoid potentially credit negative events."¹⁶

Shifting toward a more diverse portfolio should be applauded. Given that Missouri's current aging coal fleet includes over 8,000 MW of generation capacity and represents over \$5 billion in undepreciated rate base¹⁷, the scope of this challenge is enormous. To that end, it is incumbent upon us to ensure future Commissions have the ability to appropriately consider the prudence of continuing to operate or retire such units. Accordingly, this Commission must preserve and provide an adequate record to review in future proceedings. It is then incumbent upon our regulated electric utilities and policymakers to provide the extraordinary leadership necessary to ensure that the interests of both utility customers and shareholders are not unduly harmed on this perilous but inevitable journey.

¹⁶ Moody's Investor Service, *Regulated Utilities – US: Utility Cost Recovery through Securitization is Credit Positive 1* (Jul. 18, 2018) (available through subscription).

¹⁷ Based on company filings made *In the Matter of Kansas City Power & Light Company's 2018 Triennial Compliance Filing Pursuant to 4 CSR 240-22*, File No. EO-2018-0268, *In the Matter of KCP&L Greater Missouri Operations Company's 2018 Triennial Compliance Filing Pursuant to 4 CSR 240-22*, File No. EO-2018-0269, *In the Matter of The Empire District Electric Company's 2019 Triennial Compliance Filing Pursuant to 4 CSR 240-22*, File No. EO-2019-0049, and *In the Matter of Ameren Missouri's 2017 Utility Resource Filing Pursuant to 4 CSR 240 - Chapter 22*, File No. EO-2018-0038.

For the forgoing reasons, I concur.

Respectfully submitted,

A handwritten signature in black ink that reads "D. Hall". The signature is written in a cursive style with a large, stylized initial "D" and a long, sweeping underline.

Daniel Y. Hall
Commissioner

Dated at Jefferson City, Missouri,
on this 24th day of October 2019.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

The Office of the Public Counsel and)	
The Midwest Energy Consumers Group,)	
)	
Complainants)	
)	
v.	)	<u>File No. EC-2019-0200</u>
)	
KCP&L Greater Missouri Operations)	
Company)	
)	
Respondent.)	

DISSENTING OPINION OF COMMISSIONER WILLIAM P. KENNEY IN THE REPORT AND ORDER

I respectfully dissent from the majority opinion in this case because I believe it reaches the wrong conclusion in granting the Accounting Authority Order (AAO) when the record supports denial of such an AAO because the retirement of coal facilities is not an extraordinary event. Traditionally, the Commission has been reluctant to grant requests for AAOs, finding a rate case is the more appropriate venue to consider all costs and revenues at one time, rather than this unique exception to otherwise prohibited single-issue ratemaking. I believe Evergy Missouri West¹ (Evergy West or Company) followed applicable rules and laws by making appropriate filings with the Commission and proper public announcements about the future retirements of Sibley Units 2 and 3, including Sibley Unit 1 boiler and common plant.² (Sibley Units). Additionally, the Company made a sound business management decision when it decided to

¹ Known at the time of filing as Kansas City Power & Light Greater Missouri Operations Company.

² When Sibley Units 2 and 3 were retired, the Sibley Unit 1 boiler and common plant were also retired and are included when Sibley Units are used in this document.

retire Sibley Units based on state policy, economic analysis, and national trends. The retirement of coal facilities is a management decision, it is not unusual in nature or infrequent in occurrence, and therefore is not extraordinary to qualify for AAO treatment. In finding that such a retirement does qualify for AAO treatment, the Majority decision creates inconsistency with how the Commission has treated requests for AAOs in the past and created regulatory uncertainty for the utilities in Missouri.

Timeline of Events

It is first important to identify the timeline of the discussions related to the Sibley Units. Those discussions about the Sibley Unit retirements began more than two and a half years prior to the actual retirements. On January 20, 2015, the Company formally known as KCP&L Greater Missouri Operations announced that Sibley Unit 1 and Unit 2 would stop burning coal by the end of 2019.³ This announcement cited the company's commitment to a sustainable energy future and balanced generation portfolio as reasons for these expected retirements.⁴ The Company also stated that it will make final decisions in the coming years whether to retire the units at Montrose and Sibley or convert them to alternative fuel sources.⁵ On June 2, 2017, the Company announced its plans to retire the Montrose and Sibley units by December 31, 2018, instead of 2019 as previously announced.⁶ In that announcement, the Company stated that the contributing factors to deciding to retire the Sibley Units included: (1) the reduction in wholesale electricity market prices, (2) a reduction in the required reserve generation capacity; (3) a decline in near-term capacity needs, (4) the age of the Sibley plants and (5) expected environmental

³ Ex 24, Ives Rebuttal, DRI-2, Page 2.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at DRI-3 at 1.

compliance costs.⁷ This information was released more than one and a half years before the units were actually retired. In addition to the Company announcements about future retirements, the Company filed its Integrated Resource Plan 2017 Annual Update on June 1, 2017, and presented that the IRP analysis determined that the retirement of Sibley Units 2 and 3 by 2019 should occur.

On January 30, 2018, Evergy Missouri Metro⁸ and Evergy Missouri West filed general rate cases separately that were ultimately consolidated into one case.⁹ The decision to file a rate case was driven by the desire to reflect the efficiencies gained from the merger of Greater Plains Energy Incorporated and Westar Energy and a new customer billing system.¹⁰ At the time of the rate case, Evergy West's position was that while it anticipated the Sibley Units would be retired by December 31, 2018, a final decision had not yet been made and therefore it could be delayed due to an unforeseen circumstance.¹¹ Additionally, the Companies elected to use Plant In Service Accounting (PISA) pursuant to Section 393.1400(5) RSMo, and as a result, its rates are currently frozen by the terms of Section 393.165.2 RSMo, and new rates cannot be effective before December 6, 2021.¹²

The rate case used a historical test year ending June 30, 2017, with a true-up date of June 30, 2018.¹³ At that time, the Sibley Units were operating and thus those operation costs were

⁷ *Id.* at DRI-2 at 1-2.

⁸ Known at the time of filing as Kansas City Power & Light.

⁹ Commission File Nos. ER-2018-0145 and 0146.

¹⁰ Ex 6, page 1, Schallenberg Surrebuttal, RES-S-1.

¹¹ Transcript, Page 404, Lines 3-15.

¹² Transcript page 296, lines 17-22; Ex. 24, Ives Rebuttal,,Page 26, lines 12-12.

¹³ *Order Granting Motion to Consolidate and Order Setting Procedural Schedule*, ER-2018-0145 and 0146, P. 3 (March 13, 2018).

appropriately included in rates that went into effect on December 6, 2018.¹⁴ On October 31, 2018, the Commission issued an Order Approving Stipulations and Agreements, which reduced base rates by \$24 million with an effective date of November 10, 2018.¹⁵ The Commission approved tariffs consistent with its Order on November 26, 2018, with an effective date of December 6, 2018.¹⁶

On September 5, 2018, the Sibley Unit 3 unit suffered a forced outage as a result of turbine vibrations and ceased generation electricity at that time.¹⁷ Rather than repair Sibley 3, Evergy West retired all three units on November 13, 2018, with the only remaining part of Sibley 1 unit in operation being the boiler.¹⁸ This occurred after the Commission approved the Stipulations and Agreements in the rate case.¹⁹

On December 28, 2018, the Office of the Public Counsel (OPC) and the Midwest Energy Consumers Group (MECG) filed what they denominated as a Petition for an Accounting Order. The Commission determined that the Petition should be considered a complaint and this case proceeded from there, with the Commission issuing its Report and Order on October 17, 2019.

¹⁴ Transcript, Page 404, Lines 3-15.

¹⁵ *In the Matter of Kansas City Power & Light Company's request for Authority to Implement a General Rate Increase for Electric Service, File No ER-2018-0145*, Order Approving 2018 Rate Case Stipulations, October 31, 2018.

¹⁶ *In the Matter of Kansas City Power & Light Company's request for Authority to Implement a General Rate Increase for Electric Service, File No ER-2018-0145*, Order Approving Tariffs, November 26, 2018.

¹⁷ Transcript, page 377, Lines 7-11, Ex 26, and Transcript, page 379, Lines 12-17.

¹⁸ Ex 21, Spanos Rebuttal, page 6 fn 1.

¹⁹ *In the Matter of KCP&L Greater Missouri Operations Company's Request for Authority to Implement a General Rate Increase for Electric Service, File No ER-2018-0146*, Order Approving Stipulations and Agreements, October 31, 2018.

Not Extraordinary

A utility company's decision to retire plant assets is a routine decision and standard operating procedure for any utility.²⁰ All tangible assets placed in service are expected to have a finite service life and will likely be retired at some point.²¹ Retirement of facilities is not an extraordinary event.²² Generating facilities are not assumed to have an infinite life and would be expected to be retired at some future point.²³ It is not extraordinary.²⁴ Other Missouri utilities have retired, or announced plans to retire, coal or other fossil fuel generating units.²⁵ In my tenure at the Commission no utility or party has requested an AAO for such retirements.

The evidence in this case does not meet the legal standard used when evaluating whether or not to grant an AAO. Historically, the Commission has only allowed AAOs for costs associated with an extraordinary event that is unusual or unique in nature.²⁶ The standard the Commission uses when it analyzes request for AAOs is based on the Uniform System of Accounts (USOA). Commission Rule 20 CSR 4240-20.030(1) requires Missouri utilities to keep all accounts in conformity with the USOA as prescribed by the Federal Energy Regulatory Commission, as published at 18 CFR Part 101. Instruction number 7 of the General Instructions for the Uniform System of Accounts provides that a utility's net income should generally reflect all items of profit and loss during the period. However, that instruction allows for special treatment of certain items. In the words of the instruction:

²⁰ *Id.* at Page 4, lines 14-16.

²¹ *Id.* at Page 4 lines 12-13.

²² *Id.* at Page 6, line 7.

²³ *Id.* at Page 4, Lines 19-21.

²⁴ *Id.* at Page 4, lines 14-16.

²⁵ *Id.* Page 5 lines 8-10.

²⁶ Ex. 17, Cross-Rebuttal Testimony of Mark Ojigschlaeger Page 3, lines 17-18.

Those items related to the effects of events and transactions which have occurred during the current period and which are of **unusual nature and infrequent occurrence shall be considered extraordinary items**. Accordingly, they will be events and transactions of significant effect which are abnormal and significantly different from the ordinary and typical activities of the company and which would **not reasonably be expected to recur in the foreseeable future**. ... To be considered as extraordinary under the above guidelines, an item should be more than approximately 5 percent of income, computed before extraordinary items. Commission approval must be obtained to treat an item of less than 5 percent, as extraordinary.²⁷

The Commission has authority to defer extraordinary costs of a utility for consideration in a later period. In doing so, it is not engaging in single-issue rate making.²⁸ The purpose of an AAO is to defer a final decision on current extraordinary costs until a rate case is in order. In that subsequent rate case, the Commission is not bound by the terms of the AAO in setting new rates.²⁹ An AAO is a deferral mechanism that allows a utility to “defer and capitalize certain expenses until it files its next rate case”.³⁰ For accounting purposes, the consistent meaning of an extraordinary item is an event that is considered unique, unusual and nonrecurring.³¹

In a 1991 decision involving a request for an AAO, the Commission held that an AAO was appropriate where “events occur during a period which are extraordinary, unusual and unique, and not recurring.” This has been described as “the Sibley standard.”³²

²⁷ 18 CFR Ch. 1, Pt. 101, General Instruction 7. (Emphasis added.) That regulation is in the record as Ex. 4.

²⁸ *State ex rel. Office of Pub. Counsel v. Pub. Serv. Com'n of Mo.* 858 S.W. 2d 806 (Mo. App. W.D. 1993).

²⁹ *Missouri Gas Energy v. Pub. Serv. Com'n of Mo.*, 978 S.W. 2d 434 (Mo. App. W.D. 1998).

³⁰ *Mo. Gas Energy v. Pub. Serv. Comm'n*, 978 S.W.2d 436 (Mo.App W.D. 1998).

³¹ *Kan. City Power & Light Co.'s Request for Auth. To Implement a General Rate Increase for Elec. Serv.* 7, 769-770 (Mo.App. W.D. 2016).

³² *In the Matter of the Application of Missouri Public Service for the Issuance of an Accounting Order Relating to its Electrical Operations*, Case No. EO-91-358, Report and Order, 1 Mo. P.S.C. 3d 200, 205, 1991.

Previously, Missouri-American Water Company (MAWC) requested an AAO for property taxes because it was faced with a large change in its property taxes due to administrative changes in two Missouri counties and mistaken amounts paid by MAWC.³³ In the Commission's Order denying the request, the Commission stated, "Property taxes are an expected cost of operating a business in the State of Missouri. It is an obligation borne by all investor-owned utilities, including MAWC ... There is nothing unusual or extraordinary about paying property taxes to warrant AAO. It is a recurring expense."³⁴

There is nothing extraordinary or unusual about the retirement of coal plants. Retiring coal plants may be equated to paying property taxes in that it is part of the ordinary course of business. I do not distinguish MECG and OPC's request in this complaint case from MAWC's request for an AAO to address higher than usual property taxes in a previous case. Therefore, I do not believe that this Commission should reach a different result.

Coal retirements are part of the ordinary course of utility business. This point was well supported in the record. From October 2013 through September 2018, GMO retired \$90 million of generation plan.³⁵ From 1949 to 2019, Westar Energy, Inc. (or its predecessors) retired 38 generating units, five of which were retired in 2018.³⁶ Evergy Missouri Metro's Montrose Unit 1 was retired on April 16, 2016, and no party asked for an accounting authority order.³⁷ Sibley Unit 1 except the boiler was retired on June 30, 2017 and no party asked for an accounting

³³ *In the Matter of the Application of Missouri-American Water Company for an Accounting Authority Order Related to Property Taxes in St. Louis County and Platte County, Case No. WU-2017-0351, Report and Order, page 15-16. December 20, 2017.*

³⁴ *Id.*

³⁵ Ex. 22, Klote Rebuttal, Page 25, lines 13-14.

³⁶ Ex 24, Ives Rebuttal, Page 13, Lines 17-19.

³⁷ *Id.* at Page 12, lines 15-18.

authority order.³⁸ On December 31, 2018, Evergy Missouri Metro retired Montrose Units 2 and 3, including common plant, and no party asked for an accounting authority order.³⁹ In the case of Montrose Units 2 and 3 and common plant retiring, the Evergy Missouri Metro is deferring depreciation expense, just as Evergy West and other parties agreed in the First Stipulation in its most recent rate case.⁴⁰ MCEG and OPC did not file a similar case in regard to Montrose Units 2 and 3, even though it has the same language as the stipulation with Evergy West. This leads to entirely inconsistent treatments and requirements for two very similar utilities serving similar territories.

Additionally, Staff's witness provided a method in which this matter could be considered in the next rate case without the creation of an AAO.⁴¹ Under the "mass asset" accounting procedure, Evergy West should gradually receive rate recovery of the unrecovered balance through ongoing application of depreciation rates to the remaining investment over an extended period.⁴² The Company's witness testified more specifically as to how the Company records plant retirements following the USOA accounting rules for mass asset accounting by removing the original gross cost amount from both plant in service account 101 and accumulated depreciation reserve account 108.⁴³ The entry that is booked is a credit to account 101 which removes the original gross cost amount from plant in service, and a debit to account 108 which reduces the accumulated depreciation reserve in a like original gross cost amount. After this entry, the

³⁸ Ex 24, Ives Rebuttal, Page 11, lines 4-11.

³⁹ *Id.* at Page 12, lines 19-20 and Page 13 lines 2-4.

⁴⁰ *Id.* at Page 12, line 23, and Page 13, lines 1-2.

⁴¹ Ex. 17, Cross-Rebuttal Testimony of Mark Oligschlaeger, Page 7, lines 18-22.

⁴² *Id.* Page 7, lines 7-10.

⁴³ Exhibit 22, Klote Rebuttal, Pages 24, lines 21-23.

resulting net plant (plant in service less accumulated depreciation) is identical as before the entry is recorded.⁴⁴

The Company based its treatment of the Sibley Units, in part, on the method retirements have historically been handled. Every utility asset has a finite service life and will likely retire at some point.⁴⁵ Sibley Units 2 and 3, and the boiler from Unit 1, were all part of the Company's rate base when that case was resolved. The retirements had not occurred by the end of the rate case. The parties discussed the potential retirements and accounted for them in the First Stipulation and Agreement by specifically addressing how to account for the accumulated depreciation of the plants.⁴⁶

Allowing an AAO in this case changes that historic treatment of plant retirement. For several years, the Company put the public and the parties on notice that the Sibley Units would likely be retired in the next few years. The retirement was not sudden. Finally, it is important to note that the GMO and Staff witnesses provide an appropriate avenue for handling these retirements in the next rate case. The company would create a mass asset accounting procedure which would allow a future Commission to evaluate the appropriate treatment; there is no need for an AAO to be granted in this case. The retirements of the Sibley Units were not extraordinary.

FUTURE COMMISSION

In discussing this case, there has been much discussion about leaving the ultimate decision to a future Commission, but the Majority's decision leaves that future Commission in a bind in several ways. The retirement will not be in the test year. This case will be seen as an

⁴⁴ *Id.* at Page 25, lines 1-5.

⁴⁵ Ex. 17, Cross-Rebuttal Testimony of Mark Oligschlaeger, page 4, lines 12-13.

⁴⁶ *In the Matter of KCP&L Greater Missouri Operations Company's Request for Authority to Implement a General Rate Increase for Electric Service, File No ER-2018-0146, Non-Unanimous Partial Stipulation and Agreement, Page 9; Transcript, page 182, lines 7-14.*

exception to the Commission's analysis and treatment of requests for an AAO. This present Commission reviewed the evidence in the rate case, approved the stipulations in the rate case, and heard the arguments for the AAO request in this case, therefore this Commission should make the decision. The Majority should not kick the proverbial can down the road to avoid making a tough, and perhaps unpopular, decision now. As a result of the Majority's decision, no final resolution will be made until the end of Evergy Missouri West's next rate case, which they are prohibited from filing for 3 years.⁴⁷ That means, it will be that much further removed from the 2018 retirement than it is today, and because the regulatory world is quickly changing who knows what the regulatory landscape will look like then and there is not finite resolution. It is unfair to place this burden on a future Commission.

Business and Management Decision

The utility retains the lawful right to manage its own affairs and conduct its business as it may choose, as long as it performs, legally, within the appropriate regulations and does not harm the public.⁴⁸ Retiring and controlling its electricity load are within the discretion of the utility's management team. Utilities should be aware of national and state policies. As my colleague, Commissioner Hall, stated in his Concurring Opinion, we are witnessing a massive shift away from coal generation to gas and renewables.⁴⁹

Federal and state regulatory policy changes, technological and operational developments, and consumer demand for renewable energy have resulted in a significant transformation of the

⁴⁷ Section 393.1655.2, RSMo provides that an electrical corporation's base rates are to be held constant for a period of three years after the utility gave notice of its election under section 393.1400(5), RSMo to make the plant in service deferrals allowed by that statute.

⁴⁸ *State ex rel. Harline v. Publ Serv Comm'n* 343 S.W.2d 177, 182 (Mo. App. 1960).

⁴⁹ Concurring Opinion of Commissioner Daniel Y. Hall in the Report and Order, page 2.

economics that affect the business of generating electricity.⁵⁰ As a result, coal plants have been retired more frequently and in the course of business across the country.⁵¹ Coal retirements are becoming more common in the industry and routing in the last 10 years.⁵² A total of 89, 731 MW of coal-unit capacity has been retired since 1969.⁵³ About 85% of that total, 76,526 MW, has been retired since 2010.⁵⁴ 4,548 fossil-fueled generating units have retired since 1969, and almost 70 percent of this capacity was retired in the last decade beginning in 2010.⁵⁵

Changes in regulatory policy, consumer demand, technological breakthroughs, fallen prices in natural gas and renewable generation resources, and operational costs results in a shift in electric utility generation economics that made many coal plants too expensive to operate and caused a significant increase in the retirement of coal plants generally, and the Sibley Units in particular.⁵⁶ Coal units continue to face increasing O&M costs as a result of environmental and other regulations regarding emissions, fuel storage, fuel disposal, and related issues.⁵⁷ In light of the continuing regulatory, technological, consumer and economic trends, it would not be reasonable to describe the Sibley retirements as premature.⁵⁸ Retiring the Sibley Units reflects the realities of the electric generation business that all public utilities must face.⁵⁹

⁵⁰ Exhibit 20, Rogers Rebuttal, Page 6, lines 19-23.

⁵¹ *Id.*

⁵² *Id.* at Page 10 lines 1-4.

⁵³ *Id.* at Page 8, lines 19-23.

⁵⁴ *Id.*

⁵⁵ *Id.* at Page 9, lines 14-18.

⁵⁶ *Id.* at Page 13, lines 3-10.

⁵⁷ *Id.* at Page 17, lines 19-22.

⁵⁸ *Id.* at Page 20, lines 14-17.

⁵⁹ *Id.*

In this situation, the Company evaluated the national trends related to coal generation. The Company is also well aware of the State's preference to support renewable energy and often leads the state in that task. The Company is in the business of routinely evaluating its generating sources. Several witnesses testified that retirements are routine. As such, no one has ever requested, let alone been granted, an AAO for such routine retirements. The Commission should not now second-guess the Company's expert evaluation of when to retire coal generation and create a new regulatory avenue for second-guessing those decisions by parties to the rate case.

The Company likely avoided court costs, environmental costs, and ratepayer expenses by closing the Sibley Units and avoiding additional costs in repairing or retrofitting them and any litigation that would have resulted from such a decision. A final decision was not made in haste simply to meet the rate case timeline, it was made over time when the Company thought it best to make the decision. Every party to the rate case knew it was possible that the Sibley Units could be retired at any time after the rate case. The Company made a decision based on its regulatory history, experience, review of costs, analysis of generation, and awareness of national trends. The Commission should allow them to make such decisions. The Commission should not treat one retirement uniquely by granting an AAO request as the Majority did in this case.

The Company was up front about its intentions to retire the Sibley Units for over two years. It filed appropriate information with the Commission during the Integrated Resource Planning dockets and based its decision to retire on sound economic, environmental, and national considerations. Retiring a coal generating unit is a routine utility decision that does not warrant special accounting in the form of an AAO. The Company made a sound business and management decision to retire the Sibley Units and the Commission should support that decision.

I respectfully dissent from the Majority decision in this case.



**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 an Order Approving) **File No. EO-2020-0060**
an Addendum to a Territorial Agreement Regarding)
Service to Customers in Livingston and Daviess)
Counties, Missouri)

**REPORT AND ORDER APPROVING THIRD
ADDENDUM TO TERRITORIAL AGREEMENT**

ELECTRIC

§2 Obligation of the utility

An investor-owned utility obligated to serve a customer can be relieved of that obligation via a Commission-approved territorial agreement.

§11 Territorial agreements

The Commission has jurisdiction over territorial agreements between electric cooperatives and electrical corporations, including subsequent amendments to those agreements.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 23rd day of October, 2019.

In the Matter of the Application of Union Electric)
Company d/b/a Ameren Missouri and Farmers')
Electric Cooperative, Inc., for an Order Approving)
An Addendum to a Territorial Agreement Regarding)
Service to Customers in Livingston and Daviess)
Counties, Missouri)

File No. EO-2020-0060

**REPORT AND ORDER APPROVING THIRD
ADDENDUM TO TERRITORIAL AGREEMENT**

Issue Date: October 23, 2019

Effective Date: November 3, 2019

This order approves Addendum No. 3 to the Territorial Agreement between Union Electric Company d/b/a Ameren Missouri and Farmers' Electric Cooperative, Inc., which will allow Farmers to provide retail electric service to a home and a cabin 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.¹ 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 approved a first addendum to the territorial agreement in 2013.² That addendum authorized Farmers to provide service to a structure owned by Beetsma Farms, Inc., located near Mooresville, Missouri.

5. The Commission also approved a second addendum to the territorial agreement in 2018.³ That addendum authorized Farmers to provide service to another structure owned by Beetsma Farms, Inc., located near Mooresville, Missouri.

6. On September 4, 2019, 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 third amendment would allow Farmers to serve a modular home in Daviess County, and a cabin in Livingston County.

¹ File No. EO-98-511.

² File No. EO-2014-0044.

³ File No. EO-2018-0278.

7. The home and cabin are 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 customers have consented to the change of suppliers.

8. The third 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.

9. On September 9, 2019, the Commission ordered that notice of the joint application be provided to potentially interested persons and established September 29, 2019 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 October 18, 2019.

10. On October 18, 2019, Staff filed a recommendation advising the Commission to approve the third addendum. The Office of Public Counsel has not objected to the joint application.

11. Based on the information provided in the application and Staff's recommendation, the Commission finds that the third 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 third addendum. By the terms of the Territorial Agreement, the Office of the Public Counsel is deemed to have approved the third 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.⁴ 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 third addendum between the parties is not detrimental to the public interest and will be approved. In approving the third addendum, the Commission is making no ratemaking determinations and reserves the right to consider any ratemaking treatment in a later rate proceeding.

The Commission will make this order effective in ten days because of the need to approve the third addendum expeditiously to allow Farmers to serve these two new customers' project as soon as possible.

⁴ *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).

THE COMMISSION ORDERS THAT:

1. The Addendum No. 3 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. 3.
3. Union Electric Company d/b/a Ameren Missouri and Farmers' Electric Cooperative, Inc. are authorized to do such other acts, including making, executing, and delivering any and all documents that may be necessary, advisable, or proper to consummate the agreements reflected in Addendum No. 3 and to 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. 3.
5. This order shall become effective on November 3, 2019.

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, Regulatory Law Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of Spire Missouri, Inc. to)
 Change its Infrastructure System Replacement) **File No. GO-2019-0356**
 Surcharge in its Spire Missouri East Service Territory) Tracking No. YG-2020-0009

In the Matter of the Application of Spire Missouri, Inc. to)
 Change its Infrastructure System Replacement) **File No. GO-2019-0357**
 Surcharge in its Spire Missouri West Service Territory) Tracking No. YG-2020-0010

REPORT AND ORDER

Affirmed on appeal: *Spire Missouri, Inc. v. Office of Public Counsel*, 613 S.W.3d 806
 (Mo. App. W.D. 2020)

NOTE: Commissioner Hall filed a concurring opinion. This opinion is attached to the Report and Order.

ACCOUNTING

§38 Taxes

The stipulation and agreement setting out a methodology for calculating income taxes in the development of the infrastructure system replacement surcharge (ISRS) revenue requirement was a reasonable resolution to the income tax issue and should be approved.

EVIDENCE, PRACTICE AND PROCEDURE

§4 Presumption and burden of proof

§6 Weight, effect and sufficiency

Spire Missouri Inc. satisfactorily refuted Public Counsel's claims that errors in work orders make the eligibility of these projects suspect by explaining the complicated process of generating work orders and how inadvertent errors could occur. Additionally, there is no requirement that Spire Missouri provide evidence of testing or specific leak analysis in order to prove that its pipes are in worn out or deteriorated condition.

§6 Weight, effect and sufficiency

When considered in combination, the totality of the evidence supported a finding that the cast iron mains were in a worn out or in a deteriorated condition.

EXPENSE**§79 Infrastructure system replacement surcharge (ISRS) eligible expense**

The controlling statute authorized one filing for an infrastructure system replacement surcharge (ISRS), but did not necessarily authorize the repeated filing of petitions to recover costs that the Commission had already determined were not ISRS-eligible.

§79 Infrastructure system replacement surcharge (ISRS) eligible expense

Ineligible plastic pipes could not be made eligible by a systematic redesign and twelve project analyses were too few for the Commission to reasonably conclude there was no cost associated with the retirement of the plastic facilities.

§79 Infrastructure system replacement surcharge (ISRS) eligible expense

The plain reading of 20 CSR 4240-40.030(15)(E) was clear that the rule required a single action – “cathodically protect or replace.” Spire Missouri Inc. was not prohibited from cathodically protecting and then replacing, but it was only required under the rule to do one or the other. Thus, the rule could not be used to meet the “required by state or federal law” criteria for infrastructure system replacement surcharge (ISRS) eligibility.

§79 Infrastructure system replacement surcharge (ISRS) eligible expense

Given the expedited nature of an infrastructure replacement surcharge (ISRS) case and the complexity of determining the appropriate overheads to include in construction costs, decisions varying from the methods in a general rate case are best handled during the course of a rate case when there is more time for a full examination and all rate factors are being reviewed.

GAS**§7 Jurisdiction and powers of the State Commission****§29 Costs and expenses**

Spire Missouri Inc. was asking the Commission to make a new decision on the same costs that it previously found ineligible for infrastructure system replacement surcharge (ISRS) recovery. Additionally, since those costs were under appeal to the Court of Appeals, the Commission lost jurisdiction to the Court once an appeal was filed. Therefore, the Commission could not modify or alter its order and could not issue a new order regarding those costs.

§29 Costs and expenses

The controlling statute authorized one filing for an infrastructure system replacement surcharge (ISRS), but did not necessarily authorize the repeated filing of petitions to recover costs that the Commission had already determined were not ISRS-eligible.

§35 Safety

Spire Missouri Inc. was required by 20 CSR 4240.40-030(13)(B) and the corresponding portions of 49 CFR part 192 to maintain its pipeline and to replace, repair, or remove it from service if it becomes unsafe.

§35 Safety

Spire Missouri Inc. was required by 20 CSR 4240.40-030(15) and the corresponding portions of 49 CFR part 192 to implement a program to replace unprotected steel service and yard lines and cast iron transmission lines, feeder lines, or mains. Commission Rule 20 CSR 4240-40.030(15)(D) required the systematic replacement program be prioritized to identify and eliminate pipelines that present the greatest potential for hazard. Finally, 20 CSR 4240.40-030(15) also required Spire Missouri to develop a program that identified and prioritized unprotected steel pipe and to cathodically protect or replace it in an expedited manner.

§35 Safety

Spire Missouri Inc. is required by 20 CSR 4240.40-030(17) and the corresponding portions of 49 CFR part 192 to develop an integrity management plan that must identify and implement measures to address risks including corrosion and materials.

§35 Safety

Commission orders required Spire Missouri Inc. to establish cast iron pipe replacement programs in accordance with 20 CSR 4240-40.030 and Spire Missouri West's replacement program approved in File No. GO-2002-50 also addressed the replacement of cathodically protected steel mains.

§35 Safety

Even though Spire Missouri was not required to replace the cathodically protected steel mains under 20 CSR 4240-40.030(15)(E) or under its Commission-approved replacement programs, it was required to replace the cathodically protected steel mains under the regulation requiring the development and implementation of an integrity management plan in 20 CSR 4240-40.030(17). Specifically, subsection (D)4 of section (17) required the company to “[i]dentify and implement measures to address the risks” and “[d]etermine and implement measures designed to reduce the risks from failure of its gas distribution pipeline.”

§35 Safety

Spire Missouri Inc. is required by Section 393.130, RSMo, to provide safe and adequate service and is required by 20 CSR 4240-40.030(13), (15), and (17) to implement an integrity management plan and to repair or replace unsafe pipeline facilities, including cast iron mains. Therefore, the cast iron pipes were replaced to comply with state or federal safety requirements.

§35 Safety

Under 20 CSR 4240- 40.030(13)(B), Spire Missouri Inc. was required to have maintenance plans in place to proactively keep the system in a safe condition. Thus, if

Spire Missouri did not replace the cathodically protected steel mains until its entire system was “unsafe” it would not be complying with the law.

PUBLIC UTILITIES

§7 Jurisdiction and powers of the State Commission

Spire Missouri Inc. was asking the Commission to make a new decision on the same costs that it previously found ineligible for infrastructure system replacement surcharge (ISRS) recovery. Additionally, since those costs were under appeal to the Court of Appeals, the Commission lost jurisdiction to the Court once an appeal was filed. Therefore, the Commission could not modify or alter its order and could not issue a new order regarding those costs.

RATES

§12 Capitalization and security prices

Since Spire Missouri allocated overhead costs consistently with how these costs were allocated in its last general rate cases, it did not add arbitrary percentages or amounts to its overhead costs. Spire Missouri’s treatment of overheads for purposes of these cases is allowable according to the Uniform System of Accounts (USOA). Further, Section (4) of 20 CSR 4240-40.040 allowed the Commission to vary from the USOA where appropriate.

§12 Capitalization and security prices

Given the expedited nature of an infrastructure replacement surcharge (ISRS) case and the complexity of determining the appropriate overheads to include in construction costs, decisions varying from the methods in a general rate case are best handled during the course of a rate case when there is more time for a full examination and all rate factors are being reviewed.

SECURITY ISSUES

§51 Overhead

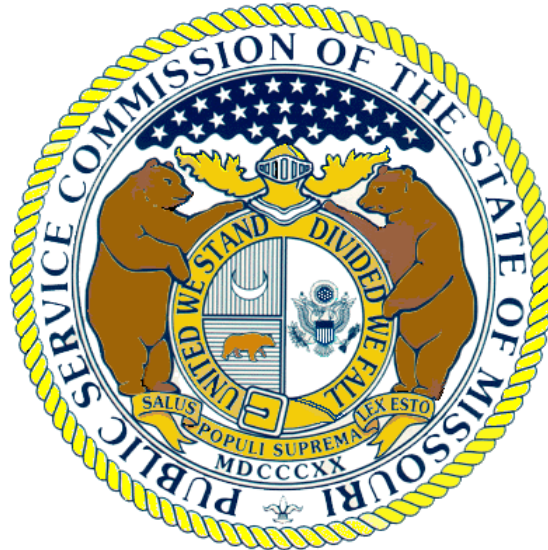
Since Spire Missouri allocated overhead costs consistently with how these costs were allocated in its last general rate cases, it did not add arbitrary percentages or amounts to its overhead costs. Spire Missouri’s treatment of overheads for purposes of these cases is allowable according to the Uniform System of Accounts (USOA). Further, Section (4) of 20 CSR 4240-40.040 allowed the Commission to vary from the USOA where appropriate.

VALUATION

§27 Overheads in general

Since Spire Missouri allocated overhead costs consistently with how these costs were allocated in its last general rate cases, it did not add arbitrary percentages or amounts to its overhead costs. Spire Missouri’s treatment of overheads for purposes of these cases is allowable according to the Uniform System of Accounts (USOA). Further, Section (4) of 20 CSR 4240-40.040 allowed the Commission to vary from the USOA where appropriate.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Application of Spire)
 Missouri, Inc. to Change its Infrastructure) **File No. GO-2019-0356**
 System Replacement Surcharge in its Spire) Tracking No. YG-2020-0009
 Missouri East Service Territory)

In the Matter of the Application of Spire)
 Missouri, Inc. to Change its Infrastructure) **File No. GO-2019-0357**
 System Replacement Surcharge in its Spire) Tracking No. YG-2020-0010
 Missouri West Service Territory)

REPORT AND ORDER

Issue Date: October 30, 2019

Effective Date: November 12, 2019

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Spire)	
Missouri, Inc. to Change its Infrastructure	)	<u>File No. GO-2019-0356</u>
System Replacement Surcharge in its Spire	)	Tracking No. YG-2020-0009
Missouri East Service Territory)	

In the Matter of the Application of Spire)	
Missouri, Inc. to Change its Infrastructure	)	<u>File No. GO-2019-0357</u>
System Replacement Surcharge in its Spire	)	Tracking No. YG-2020-0010
Missouri West Service Territory)	

APPEARANCES

SPIRE MISSOURI:

Goldie Bockstruck and **Michael Pendergast**, Spire Missouri, Inc., 700 Market Street, 6th Floor, St. Louis, Missouri 63101.

OFFICE OF THE PUBLIC COUNSEL:

John Clizer, Associate Counsel, Department of Commerce & Insurance, 200 Madison Street, Suite 650, P.O. Box 2230, Jefferson City, Missouri 65102.

STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:

Robert S. Berlin, Deputy Counsel, and **Karen Bretz**, Staff Counsel, Department of Economic Development, 200 Madison Street, Suite 800, P.O. Box 360, Jefferson City, Missouri 65102.

SENIOR REGULATORY LAW JUDGE: Nancy Dippell

REPORT AND ORDER

I. Procedural History

On July 15, 2019, Spire Missouri, Inc. (“Spire Missouri” or “Company”) filed applications and petitions with the Missouri Public Service Commission (“Commission”) to change its Infrastructure System Replacement Surcharge (“ISRS”) in its Spire Missouri East and Spire Missouri West service territories. Spire Missouri requested recovery of “new” infrastructure replacement costs for the period from February 1, 2019, through May 31, 2019 (“New ISRS Request”). In the applications, Spire Missouri also requested recovery of “old” infrastructure replacement costs for the period from October 1, 2017, through June 30, 2018 (“Old ISRS Request”).

The Commission issued notice of the applications and provided an opportunity for interested persons to intervene.¹ On July 18, 2019, Spire Missouri filed its tariff revision (Tariff Tracking No. YG-2020-0009 and YG-2020-0010). On July 25, 2019, the Commission suspended the tariffs until November 12, 2019.² The City of St. Joseph, Missouri, applied for and was granted intervention.

On September 13, 2019, the Staff of the Commission (“Staff”) filed its recommendations. 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 in each case.

¹ Order Directing Notice, Setting intervention Deadline, and Directing Filings, File Nos. GO-2019-0356 and GO-2019-0357 (July 17, 2019).

² Order Suspending Tariff Sheets, File Nos. GO-2019-0356 and GO-2019-0357 (July 25, 2019).

The Office of the Public Counsel (“Public Counsel”) filed its objections and request for hearing on September 13, 2019.³ Public Counsel objected to the applications arguing that Spire Missouri was seeking recovery of certain costs that were not ISRS-eligible.

On September 30, 2019, the parties identified the following issues for the hearing:

A. Are all costs included in the Company’s ISRS filings in these cases eligible for inclusion in the ISRS charges to be approved by the Commission in this proceeding?

B. If a Party believes that certain costs are not eligible for inclusion in the ISRS charges to be approved by the Commission in this proceeding, what are those costs and why are they not eligible for inclusion?

C. How should income taxes be calculated for purposes of developing the ISRS revenue requirement in these cases?⁴

The Commission held an evidentiary hearing on October 2, 2019. During the course of the hearing the parties settled the issues regarding income taxes. A stipulation and agreement regarding the income tax issue was filed on October 2, 2019.⁵ The parties filed simultaneous briefs on October 11, 2019.

On October 29, 2019, Staff and Spire Missouri each filed updated revenue requirements that incorporated the results from the tax issue settlement. Spire Missouri stated that it had reviewed Staff’s numbers and agreed that the calculations were done consistently with the settlement agreement and Staff’s position on the other issues. Staff stated that Public Counsel had also reviewed its filing and was unaware of any objection to its calculations. Public Counsel did not respond.

³ The Missouri Office of the Public Counsel’s Objections to Spire Missouri’s Application to Change Its Infrastructure System Replacement Surcharge and Request for an Evidentiary Hearing (filed September 13, 2019).

⁴ List of Issues, List and Order of Witnesses, Order of Cross-Examination, and Order of Opening Statements (filed September 30, 2019), para. 2.

⁵ Stipulation and Agreement Regarding Income Tax Issue (filed October 2, 2019).

II. Stipulation and Agreement

Staff and Spire Missouri reached a settlement agreement on the income tax issue and filed that agreement on October 2, 2019. The agreement set out a methodology for calculating income taxes in the development of the ISRS revenue requirement. The parties agreed that:

[F]or purposes of these cases, the revenue requirement before grossing up for taxes will be reduced to reflect a tax deduction related to interest expense. The interest expense deduction will be calculated by multiplying the approved ISRS rate base by the Company's weighted cost of debt from its last general rate proceedings (1.89%). After accounting for the interest deduction, the revenue requirement will be multiplied by the marginal income tax rate. At that point, the tax gross up will be split 52%/48% with 52% of the tax gross up included in the Company's total ISRS revenue requirement. Should the UOI change as a result of an agreed revision or Commission order, income taxes will be adjusted accordingly using the same methodology.⁶

Commission rule 20 CSR 4240-2.115(2)(B)⁷ allows nonsignatory parties seven days to object to a nonunanimous stipulation and agreement. More than seven days have passed and no party objected. The Commission has considered the stipulation and agreement regarding income taxes and finds it to be a reasonable resolution of the income tax issue. The Commission will approve the agreement. The Commission incorporates the provisions of the *Stipulation and Agreement Regarding Income Tax Issue* into this order as if fully set forth herein and directs the signatories to comply with its terms.

⁶ Stipulation and Agreement Regarding Income Tax Issue (filed October 2, 2019), para. 3.

⁷ Effective August 28, 2019, all of the Commission's regulations were transferred from the Department of Economic Development's (DED) Title 4, Chapter 240, to the Department of Commerce and Insurance's (DCI) (formerly Department of Insurance, Financial Institutions and Professional Registration) Title 20, Chapter 4240.

III. Dismissal of the “Old ISRS Request” for Lack of Jurisdiction

The infrastructure replacement costs in the Old ISRS Request were previously denied by the Commission and those projects found ineligible under the requirements of the ISRS statute in File Nos. GO-2018-0309 and GO-2018-0310.⁸ Both Spire Missouri and Public Counsel appealed the Commission’s decisions in those cases to the Missouri Court of Appeals, Western District, and that appeal is pending.⁹

Spire Missouri also requested recovery of the Old ISRS Request in File Nos. GO-2019-0115 and GO-2019-0116. In the previous cases, Staff filed a motion to dismiss the Old ISRS Request arguing that the Commission lacked jurisdiction over the Old ISRS Request because the Commission’s previous orders in File Nos. GO-2018-0309 and GO-2018-0310 were on appeal at the Missouri Court of Appeals, Western District.¹⁰ The Commission determined that it lacked jurisdiction to hear the Old ISRS Request and granted Staff’s motion to dismiss those portions of the cases.¹¹ In the current cases, Staff did not file a formal motion to dismiss, but stated its opinion that the Commission continues to lack jurisdiction due to the Old ISRS Request being on appeal.¹² Staff did

⁸ See, *In the Matter of the Application of Spire Missouri, Inc. to Change its Infrastructure System Replacement Surcharge in Its Spire Missouri East Service Territory*, Report and Order, File No. GO-2018-0309 (September 20, 2018); and *In the Matter of the Application of Spire Missouri, Inc. to Change its Infrastructure System Replacement Surcharge in Its Spire Missouri West Service Territory*, Report and Order, File No. GO-2018-0310 (September 20, 2018). (“File Nos. GO-2018-0309 and GO-2018-0310”).

⁹ Missouri Court of Appeals, Western District, Docket No. WD82302 (consolidated with Docket No. WD82373).

¹⁰ *In the Matter of the Application of Spire Missouri Inc. to Change its Infrastructure System Replacement Surcharge in Its Spire Missouri East Service Territory*, Report and Order on Rehearing, File No. GO-2019-0115 (August 21, 2019), p. 16; and *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-2019-0116 (August 21, 2019), p. 16.

¹¹ Report and Order on Rehearing, File Nos. GO-2019-0115 and GO-2019-0116 (August 21, 2019), p. 22.

¹² Staff Recommendation, File No. GO-2019-0356 (filed September 13, 2019), para. 8; Staff Recommendation, File No. GO-2019-0357 (filed September 13, 2019), para. 8; Exhibit 100, Staff Direct Report (Spire Missouri East), pp. 3-4; and Exhibit 101, Staff Direct Report (Spire Missouri West), pp. 3-4.

not include the costs of recovery for the Old ISRS Request in its recommended revenue requirements.¹³

Spire Missouri continues to advocate for the recovery of the Old ISRS Request.¹⁴ However, Spire Missouri recognized in its applications that the Commission was likely to rule in a similar manner with regard to the Old ISRS Request and provided as Appendix B to its applications the revenue requirement amounts associated with the Old ISRS Request.¹⁵

In the Report and Order in File Nos. GO-2018-0309 and GO-2018-0310, the Commission specifically found “that Spire Missouri’s plastic pipe replacements were not worn out or deteriorated”¹⁶ and that Spire Missouri had not provided “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.”¹⁷ By requesting recovery for the Old ISRS Request, Spire Missouri is asking the Commission to make a new decision on the same costs that it previously found ineligible for ISRS recovery. Spire Missouri specifically appealed the Commission’s decision that these costs were not eligible,¹⁸ vesting that issue in the Court of Appeals.

¹³ Exhibit 100, Staff Direct Report, pp. 3-4; and Exhibit 101, Staff Direct Report, pp. 3-4.

¹⁴ Exhibit 1, Verified Application and Petition of Spire Missouri Inc. to Change Its Infrastructure System Replacement Surcharge for It’s[sic] Spire Missouri East Service Territory, pp. 5-6 and Appendix B (“Verified Application”); and Exhibit 2, Verified Application and Petition of Spire Missouri Inc. to Change Its Infrastructure System Replacement Surcharge for It’s[sic] Spire Missouri West Service Territory, pp. 5-6 and Appendix B (“Verified Application”).

¹⁵ Exhibits 1 and 2, Verified Applications.

¹⁶ Report and Order, File Nos. GO-2018-0309 and GO-2018-0310 (September 20, 2018), p. 14.

¹⁷ Report and Order, File Nos. GO-2018-0309 and GO-2018-0310 (September 20, 2018), p. 15. The Report and Order also specifically refers to the “*ineligible* plastic pipe replacements” and “the *ineligible* costs” which seems to be a determination that these projects and costs are ineligible for ISRS recovery.

¹⁸ Spire Missouri’s Notice on Appeal at the Western District says it is appealing the Commission’s Report and Order because, “the Commission erroneously determined that certain costs incurred by Spire Missouri, Inc. were not eligible for recovery through its ISRS mechanism because some plastic facilities were retired or replaced in connection with various ISRS projects.”

Spire Missouri argues that the ISRS statute requires the Commission to hear the Old ISRS Request because the statute provides for the recovery of “eligible infrastructure system replacements”¹⁹ which includes gas utility plant projects that “[w]ere not included in the gas corporation’s rate base in its most recent general rate case.”²⁰ However, the statute also says that a gas corporation “may file a petition . . . for the recovery of costs for eligible infrastructure system replacements.”²¹ The statute authorizes one filing, but does not necessarily authorize the repeated filing of petitions to recover costs that the Commission has already determined are ineligible.

The settled case law is that the Commission loses jurisdiction to the Court once an appeal has been filed, and the Commission may not modify or alter its order that is being appealed and it may not issue a new order.²² The Commission maintains jurisdiction to implement its orders that are appealed and the Commission maintains jurisdiction to hear new cases on similar issues or new cases involving the same costs or revenues, such as in a rate case. Even though Spire Missouri presented additional evidence in the prior cases, File Nos. GO-2019-0115 and GO-2019-0116, with regard to the Old ISRS Request, it is still asking the Commission to rehear the evidence from the cases where those costs were rejected as ineligible for ISRS recovery, File Nos. GO-2018-0309 and GO-2018-0310, and to enter a new order based on those costs.

¹⁹ Subsection 393.1012.1, RSMo (2016). Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.

²⁰ Subsection 393.1009(3)(d), RSMo.

²¹ Subsection 393.1012.1, RSMo.

²² *State ex rel. Missouri Cable Telecommunications Association v. Missouri Pub. Serv. Commission*, 929 S.W.2d 768, 772 (Mo. Ct. App. 1996) (the Commission approved a settlement agreement of the issues that were on appeal. The Court found that approving the settlement agreement was tantamount to modifying its original order that was on appeal. The Missouri Court of Appeals, Western District, stated, “If review of a PSC order is pending before a... court, the PSC may not enter a modified, extended or new order.”).

The Commission continues to conclude that it lacks jurisdiction to hear and make a determination on the portions of the applications dealing with the Old ISRS Request. If the Commission lacks jurisdiction, it may not hear the issue, regardless of there being a formal motion to dismiss. Therefore, those portions of the applications dealing with the time period of October 1, 2017, through June 30, 2018, are dismissed.

IV. 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.²³

2. Spire Missouri is a “gas corporation” and a “public utility” as each of those phrases is defined in Section 386.020, RSMo.

3. Public Counsel “may represent and protect the interests of the public in any proceeding before or appeal from the public service commission.”²⁴ Public Counsel “shall have discretion to represent or refrain from representing the public in any proceeding.”²⁵ Public Counsel participated in this matter.

²³ Exhibits 1 and 2, Verified Applications, pp. 1-2.

²⁴ Section 386.710(2), RSMo; and 20 CSR 4240-2.010(10) and (15) and 2.040(2).

²⁵ Section 386.710(3), RSMo; and 20 CSR 4240-2.010(10) and (15) and 2.040(2).

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.²⁶

5. The last general rate cases applicable to Spire Missouri are File Nos. GR-2017-0215 and GR-2017-0216 (“rate cases”), which were decided by the Commission by order issued on March 7, 2018, effective on March 17, 2018, with new rates effective on April 19, 2018.²⁷ Those rate cases included rate base investments made through September 30, 2017, and Spire Missouri’s existing ISRS were reset to zero.²⁸

6. Spire Missouri filed verified applications and petitions (“Petitions”) with the Commission on July 15, 2019, for its East and West service territories, requesting an ISRS adjustment to recover eligible costs incurred in connection with infrastructure system replacements made during the period February 1, 2019, through May 31, 2019, with pro forma ISRS costs updated for the months of June and July 2019 (the New ISRS Request).²⁹

7. Spire Missouri’s Petitions also requested an ISRS adjustment to recover eligible costs incurred in connection with infrastructure system replacements made during

²⁶ 20 CSR 4240-2.010(10) and (21) and 2.040(1).

²⁷ *In the Matter of Laclede Gas Company’s Request to Increase Its Revenues for Gas Service*, Amended Report and Order, File No. GR-2017-0215 (March 7, 2018) (“File No. GR-2017-0215”); *In the Matter of Laclede Gas Company d/b/a Missouri Gas Energy’s Request to Increase Its Revenues for Gas Service*, Report and Order, File No. GR-2017-0216 (March 7, 2018) (“File No. GR-2017-0216”); Order Approving Tariff in Compliance with Commission Order, File No. GR-2017-0215 (April 4, 2018); Order Approving Tariff in Compliance with Commission Order, File No. GR-2017-0216 (April 4, 2018); and Exhibits 1 and 2, Verified Applications, para. 13.

²⁸ Section 393.1015.6, RSMo; and Exhibits 1 and 2, Verified Applications, para. 14.

²⁹ Exhibits 1 and 2, Verified Applications, paras. 7-8.

the period October 1, 2017 through June 30, 2018, to the extent the costs associated with those investments were not previously approved for recovery (the Old ISRS Request).³⁰

8. In conjunction with its Petitions, Spire Missouri filed tariff sheets that would generate a total annual revenue requirement of \$8,104,616 for Spire Missouri East³¹ and \$6,294,574 for Spire Missouri West.³² These requests included the Old ISRS Requests and pro forma costs for the months of June and July 2019.³³

9. The pro forma costs for June and July 2019 were updated with actual cost information resulting in a request for Spire Missouri East of \$7,640,218 (a decrease of \$464,398) and Spire Missouri West of \$6,424,114 (an increase of \$129,540).³⁴ When these figures are adjusted to include the settlement of the tax issue, the ISRS revenue requirement request for Spire Missouri East is \$6,777,579 and for Spire Missouri West is \$5,694,548.³⁵

10. The cumulative ISRS revenue requirement request for Spire Missouri East is \$16,191,318³⁶ and for Spire Missouri West is \$18,337,362.³⁷

³⁰ Exhibits 1 and 2, Verified Applications, paras. 7-9.

³¹ Exhibit 100, Staff Direct Report (Spire Missouri East), pp. 1-3.

³² Exhibit 101, Staff Direct Report (Spire Missouri West), pp. 1-3.

³³ Exhibits 100 and 101, Staff Direct Report, pp. 1-3.

³⁴ Exhibit 3, Spire East Updated Appendices, Appendix A, Schedule 8; Exhibit 4, Spire West Updated Appendices, Appendix A, Schedule 8; and Exhibits 100 and 101, Staff Direct Report, p. 2.

³⁵ Verified Revenue Requirement Recommendations of Spire Missouri, Inc. (filed October 29, 2019).

³⁶ Exhibit 3, Spire East Updated Appendices, Appendix A, Schedule 8; and Exhibit 100, Staff Direct Report, p.3. (The cumulative total includes the Old ISRS Request, as well as, a reduction to ISRS revenue requirement for property taxes approved by the Commission in its August 21, 2019 Report and Order on Rehearing in File No. GO-2019-0115, and an adjustment to correct an error in Spire Missouri's application workpapers for File No. GO-2018-0309. Exhibit 100, Staff Direct Report, p. 3, Notes 1-3. The cumulative ISRS revenue requirement request does not include the effects of the tax issue settlement.)

³⁷ Exhibit 4, Spire West Updated Appendices, Appendix A, Schedule 8; and Exhibit 101, Staff Direct Report, p. 3. (The cumulative total includes the Old ISRS Request, as well as, a reduction to ISRS revenue requirement for property taxes approved by the Commission in its August 21, 2019 Report and Order on Rehearing in File No. GO-2019-0116, and an adjustment to correct an error in Spire Missouri's application workpapers for File No. GO-2018-0310. Exhibit 101, Staff Direct Report, p. 3, Notes 1-3. The cumulative ISRS revenue requirement request does not include the effects of the tax issue settlement.)

11. Spire Missouri did not argue that the plastic pipes being replaced were worn out or in a deteriorated condition. Rather, Spire Missouri argued that the costs to replace the plastic components were less than the costs of reusing the plastic components and, therefore, there are no incremental costs of replacing the plastic.³⁸ To support its argument, Spire Missouri randomly selected twelve projects (seven from Spire Missouri East and five from Spire Missouri West) from the hundreds of projects³⁹ presented and compared the costs to replace the facilities under its systematic approach with the estimated costs of the piecemeal approach, where it would have only replaced the cast iron or steel components.⁴⁰ According to Spire Missouri's limited costs comparisons, the piecemeal approach would have been 11% to 198% more expensive than the systematic approach.⁴¹

12. Anticipating that the Commission may continue to order the removal of the plastic components from the ISRS-eligible costs, Spire Missouri presented an alternative calculation using the same methodology Staff used in prior ISRS cases to remove the cost of the replacement of ISRS-ineligible plastic pipes.⁴² In that revenue requirement model, the feet of plastic main and service lines replaced or retired were divided by the total footage of the pipe replaced or retired to arrive at the percentage of costs associated with plastic to be removed from ISRS recovery.⁴³ Staff reviewed all the work orders Spire Missouri provided for its alternative calculations to confirm the feet of main and service lines replaced and retired by the type of pipe (plastic, cast iron, steel, etc.), and concluded

³⁸ Exhibit 5, Hoferlin Direct, p. 13.

³⁹ Exhibits 1, 2, 3, and 4, Appendices A, B, and C, Schedules 1-5.

⁴⁰ Exhibit 5, Hoferlin Direct, pp. 15-16.

⁴¹ Exhibit 5, Hoferlin Direct, p. 16.

⁴² Exhibits 1, 2, 3, and 4, Appendix C.

⁴³ Exhibits 100 and 101, Staff Direct Report, pp. 7-8.

that Spire Missouri's adjustments are consistent with the Commission methodology used in Case Nos GO-2018-0309 and GO-2019-0115.⁴⁴

13. Staff's total ISRS revenue requirement recommendations were \$4,439,498 for Spire Missouri East and \$3,721,343 for Spire Missouri West.⁴⁵ These recommendations remove the Old ISRS Request and the percentage of plastic pipes replaced following the methodology used in prior cases. After adjustment for the tax issue settlement, Staff's recommended total ISRS revenue requirement recommendations are \$4,763,180 for Spire Missouri East, and \$3,996,543 for Spire Missouri West.⁴⁶

14. 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, including the Petitions, do not exceed ten percent of the base revenue levels approved by the Commission in the last Spire Missouri rate cases.⁴⁷

15. The Old ISRS Request contains the same costs from the same time period that were previously determined to be ineligible for ISRS recovery in Commission File Nos. GO-2018-0309 and GO-2018-0310.⁴⁸ The Old ISRS Request revenue requirement amount for Spire Missouri East is \$1,590,345 and for Spire Missouri West is \$1,383,297.⁴⁹

⁴⁴ Exhibits 100 and 101, Staff Direct Report, pp. 7-8.

⁴⁵ Exhibit 100, Staff Direct Report, Schedule 2; and Exhibit 101, Staff Direct Report, Schedule 2.

⁴⁶ Staff's Revenue Requirement Updated to Include Tax Stipulation and Agreement (filed October 29, 2019). Spire Missouri also completed an updated calculation of its recommended revenue requirement; however, the Commission need not review those calculations since it is adopting Staff's recommendation that Spire Missouri has agreed was calculated accurately to reflect Staff's position on the issues as adjusted to reflect the tax settlement impact. See, Verified Revenue Requirement Recommendations of Spire Missouri, Inc. filed October 29, 2019),

⁴⁷ Exhibits 100 and 101, Staff Direct Report, pp. 6-7. See, Section 393.1012.1, RSMo.

⁴⁸ Exhibits 1 and 2, Verified Applications, para. 9.

⁴⁹ Exhibits 100 and 101, Staff Direct Report, p. 2.

16. As set out earlier in this order, the Old ISRS Request portions of the Petitions are dismissed.⁵⁰

17. Spire Missouri attached supporting documentation to its Petitions for completed plant additions. This included detailed tables identifying the plant account/type of addition, work order number, funding project number, work order description, month of completion, addition amount, number of months, depreciation rate, accumulated depreciation, and depreciation expense.⁵¹

18. Spire Missouri provided a description of the reason for the replacement broken into five categories: A. Service Replacements (i.e. renewals); B. Mains Replaced Under Maintenance "Mtce" - not related to a planned project, but emergency situations (i.e. worn out or deteriorated); C. Encapsulation/Clamping of Cast Iron Main; and D. Cathodic Protection Applied to Steel Mains Plant.⁵² The Company also provided a summary of the total costs of each of the categories⁵³ and revenue requirement, depreciation, rate design, and tax calculations.⁵⁴

19. Spire Missouri 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.⁵⁵ The tables also included a reference to the applicable paragraph of the definition of "Gas utility plant projects" found in Subsection 393.1009(5), RSMo.⁵⁶

⁵⁰ Therefore, even though similar evidence was presented for the Old ISRS Request portions of the Petitions, this Report and Order going forward will cite to only the New ISRS Request portions of the evidence.

⁵¹ Exhibits 1, 2, 3, and 4, Appendix A, Schedules 1, 2, and 3.

⁵² Exhibits 1, 2, 3, and 4, Appendix A, Schedule 2.

⁵³ Exhibits 1, 2, 3, and 4, Appendix A, Schedule 5.

⁵⁴ Exhibits 1, 2, 3, and 4, Appendix A, Schedules 7-17.

⁵⁵ Exhibits 1, 2, 3, and 4, Appendix A, Schedules 5 and 6.

⁵⁶ Exhibits 1, 2, 3, and 4, Appendix A, Schedules 5-6.

20. Spire Missouri is required to implement a program to replace “cast iron transmission lines, feeder lines, or mains,”⁵⁷ and implement a program to “cathodically protect or replace”⁵⁸ “unprotected steel transmission lines, feeder lines, or mains.”⁵⁹ The mandated cast iron and bare steel⁶⁰ replacement programs began over 25 years ago.⁶¹

21. Spire Missouri’s predecessor Laclede Gas Company, began replacing cast iron and bare steel as long ago as the 1950’s due to problematic characteristics of the facilities and their history of failure.⁶²

22. Spire Missouri’s predecessor cathodically protected these bare steel mains 30-40 years after they were installed pursuant to the Commission’s gas pipeline replacement rules at 20 CSR 4240-40.030(15).⁶³ These safety rules were promulgated in 1989 after several gas explosions involving bare steel service and yard lines.⁶⁴ At that time, Spire Missouri West’s steel mains had been installed and operating for over 30 years, with some of those facilities being as much as 50 years old.⁶⁵

⁵⁷ 20 CSR 4240-40.030(15)(D).

⁵⁸ 20 CSR 4240-40.030(15)(E).

⁵⁹ 20 CSR 4240-40.030(15)(E).

⁶⁰ When the Commission refers to “bare steel” or “unprotected steel” it means steel pipes that had no protective coating either at the time of installation or after installation. When the Commission refers to “coated steel” it means steel pipes that had a protective coating when they were installed. When the Commission refers to “cathodically protected steel” it means steel pipes that had a cathodic protection applied after installation.

⁶¹ *In the Matter of Approval of Pipeline Replacement Programs Required by 4 CSR 240-40.030(15)*, Order Concerning Pipeline Replacement Programs, File No. GO-91-239 (April 12, 1991). See also: 40 CSR 4240-40.030(15)(E); and Exhibit 6, Leonberger Direct, pp. 5-6.

⁶² Exhibit 5, Hoeflerlin Direct, p. 5.

⁶³ 20 CSR 4240-40.030(15) states in relevant part:

Replacement/Cathodic Protection Program—Unprotected Steel Transmission Lines, Feeder Lines, and Mains. Operators who have unprotected steel transmission line, feeder lines, or mains shall develop a program to be submitted with an explanation to the commission by May 1, 1990, for commission review and approval. This program shall be prioritized to identify and cathodically protect or replace pipelines in those areas that present the greatest potential for hazard in an expedited manner. . . . (Emphasis added.)

⁶⁴ Exhibit 6, Leonberger Direct, p. 6.

⁶⁵ Exhibit 5, Hoeflerlin Direct, p. 20.

23. In 2001, prior to the ISRS statutes being promulgated, the Commission approved a new long-term replacement program for cast iron mains, cathodically protected steel mains, and unprotected steel service and yard lines.⁶⁶ As part of that case, it was recognized that these pipes had not been protected for many years after being installed, that numerous leaks had developed, and that a replacement program was needed.⁶⁷

24. Following several gas explosions in 2010 and 2011, resulting in injury and loss of life, a national concern developed regarding the safety of aging cast iron and bare steel pipes.⁶⁸ As a result of that concern in April 2011, the Secretary of the Department of Transportation convened a Pipeline Safety Forum with the states and urged utility commissions in each state to “encourage companies . . . to accelerate pipeline repair, rehabilitation, and replacement programs for systems whose integrity cannot be positively confirmed.”⁶⁹

25. The Commission issued a Pipeline Safety Program Report in April 2011.⁷⁰ In that report, the Commission noted that cast iron natural gas pipelines that were over 100 years old were still in service in Missouri.⁷¹ The report also noted that aged steel facilities had been involved in two recent (at that time) incidents in Missouri.⁷²

⁶⁶ Exhibit 5, Hoferlin Direct, p. 21; and Exhibit 200, Robinett Direct, Schedule JAR-D-8, citing *In the Matter of Missouri Gas Energy’s Application for Approval of Certain Matters Pertaining to Ongoing Cast Iron Main and Service/Yard Replacement as a Part of its Safety Line Replacement Program*, Order Approving Application, File No. GO-2002-50 (September 20, 2001) (“File No. GO-2002-050”).

⁶⁷ Exhibit 5, Hoferlin Direct, pp. 21-22.

⁶⁸ Exhibit 5, Hoferlin Direct, pp. 6-7.

⁶⁹ Exhibit 5, Hoferlin Direct, Schedule CRH-1.

⁷⁰ Exhibit 5, Hoferlin Direct, Schedule CRH-4.

⁷¹ Exhibit 5, Hoferlin Direct, p. 9 and Schedule CRH-4, p. 26.

⁷² Exhibit 5, Hoferlin Direct, p. 9 and Schedule CRH-4, p. 26; Exhibit 6, Leonberger Direct, p. 14.

26. In December 2011, the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) urged state gas utility regulators to accelerate the replacement of high-risk intrastate gas infrastructure including cast iron mains, bare steel pipe, plastic pipe manufactured from 1960 to the early 1980s, mechanical couplings used for joining or pressure sealing, copper pipes, pipelines with inadequate construction records or assessment results, and older pipe that is “vulnerable to failure from time-dependent forces, such as corrosion”⁷³

27. The USDOT Annual Reports for Gas Distribution Systems indicates that natural gas distribution operators outside of Missouri have also accelerated the replacement of their cathodically protected steel mains.⁷⁴

28. In 2018, corrosion of a cathodically protected steel main resulted in a leak incident in Spire Missouri West territory.⁷⁵ Also in 2018, there were two leak incidents involving cast iron mains in Spire Missouri East territory.⁷⁶

29. The consensus among industry professionals is that steel facilities initially installed without cathodic protection need to be replaced expeditiously whether or not they have been subsequently cathodically protected because the upward trend in leaks in these facilities will continue.⁷⁷

30. Historically, Spire Missouri had used a piecemeal approach to pipe replacement by replacing pipes when they were leaking or exhibiting conditions that made replacement or repair seem more immediately necessary.⁷⁸

⁷³ Exhibit 5, Hoferlin Direct, Schedule CRH-2 (PSHMA Letter dated December 19, 2011, p. 2); and Exhibit 6, Leonberger Direct, p. 12.

⁷⁴ Exhibit 5, Hoferlin Direct, pp. 23-24.

⁷⁵ Exhibit 5, Hoferlin Direct, p. 24.

⁷⁶ Exhibit 5, Hoferlin Direct, p. 24.

⁷⁷ Exhibit 5, Hoferlin Direct, p. 23.

⁷⁸ Exhibit 5, Hoferlin Direct, pp. 14-15.

31. Cathodic protection will slow corrosion of steel facilities, but it does not repair or mitigate corrosion that has already occurred and it does not eliminate the corrosion completely. Thus, there may be “hot spots” that will cause leaks or other unsafe conditions any time and the steel pipes will eventually need to be replaced.⁷⁹

32. Spire Missouri uses its Distribution Integrity Management Program (“DIMP”) to identify and prioritize the pipeline system according to potential risks.⁸⁰ The DIMP identifies the cast iron and bare steel facilities as posing a high risk of leaks or breaks.⁸¹

33. Spire Missouri’s leak data shows that the overall leak rate on cathodically protected steel mains is higher than on cast iron even though the risks are not ranked as high as cast iron’s risks in the DIMP.⁸²

34. In the December 2016 DIMP, corrosion of cathodically protected steel mains is addressed under the rankings of risks.⁸³ The cathodically protected steel mains ranked only 189 of 220 identified risks. However, the ranking is similar to cast iron and many of the higher ranked risks are things not in the control of the company.⁸⁴ Additionally, the risk ranking for corrosion of cathodically protected steel mains changes in the 2019 DIMP so that it first appears as 16 of 233 for Spire Missouri East and 52 of 233 for Spire Missouri West of the identified risks.⁸⁵

35. In 2017, the risk for leaks from a cathodically protected steel main was 20 times higher than the risk for leaks from plastic or coated steel.⁸⁶ In 2018, that risk had

⁷⁹ Exhibit 5, Hoeflerlin Direct, pp. 20-21; Exhibit 6, Leonberger Direct, p. 11; and Transcript, pp. 76, 85-86, and 102.

⁸⁰ Exhibit 5, Hoeflerlin Direct, p. 6. See also, Exhibits 10C, 2019 DIMP, and 202C, 2016 DIMP.

⁸¹ Exhibit 5, Hoeflerlin Direct, p. 6.

⁸² Exhibit 5, Hoeflerlin Direct, p. 24.

⁸³ Exhibit 202C, 2016 DIMP, Appendix C, Section C 2.

⁸⁴ Exhibit 202C, 2016 DIMP, Appendix C, Section C 2; Transcript, pp. 124 and 152-155.

⁸⁵ Exhibit 10C, 2019 DIMP, Appendix C, Section C 3; and Transcript, p. 153.

⁸⁶ Exhibit 5, Hoeflerlin Direct, p 25; and Transcript, p. 80.

decreased as a result of accelerating replacement of the cathodically protected steel mains, but remained 10 times greater than plastic or coated steel.⁸⁷

36. The cast iron pipes being replaced are sixty to one-hundred years old.⁸⁸ Cast iron pipes are unsafe to use because they tend to graphitize, making the pipe brittle and subject to cracking and leaking.⁸⁹

37. The Commission determined in prior Spire Missouri ISRS cases that the bare steel and cast iron was in worn out or deteriorated condition.⁹⁰

38. There are no unprotected bare steel mains remaining in either Spire Missouri East or Spire Missouri West territories.⁹¹ The steel pipe being replaced in these cases was bare steel when it was installed; however, 30-50 years later it was cathodically protected.⁹²

39. Unprotected bare steel corrodes, diminishing the wall thickness, which causes the possibility of leaks.⁹³ Steel pipes without cathodic protection will begin to corrode as soon as they are installed underground.⁹⁴ The rate of corrosion is relatively quick compared to other types of pipe, such as coated steel.⁹⁵ The rate of corrosion will also depend on other factors such as the soil the pipe is in, the level of cathodic protection, and whether there is rock impingement or scratches on the coating.⁹⁶ There is no simple

⁸⁷ Exhibit 5, Hoeflerlin Direct, pp. 24-25; and Transcript, pp. 80-81.

⁸⁸ Exhibit 5, Hoeflerlin Direct, p. 3.

⁸⁹ Exhibit 5, Hoeflerlin Direct, pp. 3-5 and Schedule CRH-2 (PSHMA Letter dated December 19, 2011, p. 2).

⁹⁰ Exhibit 5, Hoeflerlin Direct, pp 3-4 (citing, File Nos. GO-2018-0309, GO-2018-0310, GO-2019-0115, and GO-2019-0116).

⁹¹ Exhibit 200, Robinett Direct, p. 2 and Schedule JAR-D-15, p. 26.

⁹² Exhibit 6, Leonberger Direct, pp. 9 and 11-12.

⁹³ Exhibit 5, Hoeflerlin Direct, p. 3; and Transcript, pp. 137 and 175.

⁹⁴ Transcript, p. 137.

⁹⁵ Exhibit 5, Hoeflerlin Direct, pp.19-20; and Transcript, p. 137.

⁹⁶ Transcript, pp. 100-101, 165, and 174-175.

formula that would be an accurate predictor of when bare steel mains that are subsequently cathodically protected should be replaced.⁹⁷

40. Plastic mains that are made of polyethylene will last indefinitely.⁹⁸

41. The pipelines made of cast iron and bare steel that was cathodically protected 30-50 years after its installation are worn out or in a deteriorated condition.⁹⁹

42. Spire Missouri did not perform testing or leak analysis on the cast iron or cathodically protected steel mains replaced.¹⁰⁰ Spire Missouri did not take any coupons (samples) of the cathodically protected steel mains that were replaced.¹⁰¹

43. Spire Missouri's witness, Craig R. Hoeflerlin, Vice President – Operations Services for Spire Missouri, has a degree in chemical engineering and has been continuously employed by Spire Missouri since June 1984.¹⁰² He has been in his current position since April 2012. He has decades of experience in engineering, gas supply and control, and construction and maintenance.¹⁰³ Mr. Hoeflerlin testified that he had never encountered a cast iron or bare steel pipe dug up that was not in some sort of deteriorated state.¹⁰⁴ He testified that based on his experience the types of pipe that Spire Missouri is targeting and replacing are worn out and deteriorated.¹⁰⁵ He also attached photographs to his written testimony and brought into the hearing examples of what he considered to

⁹⁷ Transcript, pp. 75-76.

⁹⁸ Transcript, p. 139.

⁹⁹ Transcript, p. 89, 103, 105, 170-171, and 188; Exhibit 6, Leonberger Direct, p. 12.

¹⁰⁰ Exhibit 200, Robinett Direct, pp. 5-7.

¹⁰¹ Transcript, p. 158.

¹⁰² Exhibit 5, Hoeflerlin Direct, p. 1.

¹⁰³ Exhibit 5, Hoeflerlin Direct, p. 1.

¹⁰⁴ Exhibit 5, Hoeflerlin Direct, pp. 1-2 and 4.

¹⁰⁵ Exhibit 5, Hoeflerlin Direct, p. 4-5; and Transcript, pp. 70-73.

be illustrative of the entire system's cast iron and cathodically protected steel mains.¹⁰⁶ The Commission finds that testimony to be credible and persuasive.

44. It would be cost prohibitive to physically or visibly evaluate all pipe being replaced. However, depreciable life corresponds with the average service life and is used to determine when an asset is deteriorated and not useful anymore.¹⁰⁷ When the facilities are dug up, those facilities are regularly found to be in a worn out or deteriorated condition.¹⁰⁸

45. The useful life for plastic pipe is 70 years for Spire Missouri East.¹⁰⁹ For Spire Missouri West, the useful life for all mains (plastic, cast iron, and steel) is 50 years. The useful life for service lines is 44 years for Missouri East and 40 years for Missouri West.¹¹⁰

46. Most of the cast iron pipes being replaced are 60-100 years old and have already exceeded their useful services lives for depreciation purposes.¹¹¹

47. Blanket work orders are work orders that cover a large number of tasks which remain open for an extended period and contain items that are not planned replacement projects.¹¹² To determine the amount of blanket work order costs that are not ISRS eligible, Spire Missouri categorized each task in the blanket work order as either ISRS eligible or ISRS ineligible, and then found the percentage of ISRS eligible to ISRS

¹⁰⁶ Exhibit 5, Hoferlin Direct, p. 5 and Schedule CRH-5; and Transcript, pp.71-73.

¹⁰⁷ Transcript, pp. 257-260.

¹⁰⁸ Exhibit 5, Hoferlin Direct, pp. 4-5; and Transcript, pp. 70-73.

¹⁰⁹ Exhibit 200, Robinett Direct, p. 10.

¹¹⁰ Exhibit 200, Robinett Direct, p. 10.

¹¹¹ Exhibit 5, Hoferlin Direct, p.3.

¹¹² Exhibits 100 and 101, Staff Direct Report, p. 8.

ineligible and applied the ISRS ineligible task percentage to the blanket work order total amounts to calculate the blanket work order costs that are not ISRS eligible.¹¹³

48. Tasks that Spire Missouri considered ISRS eligible were mandated relocations, replacements due to leak repairs and corrosion inspections, and replacement of copper and cast iron pipe.¹¹⁴ ISRS ineligible items included relocations at a customer's request, replacements due to excavation damage, replacement of plastic not related to a leak repair, and installation of new services.¹¹⁵

49. Staff agreed with Spire Missouri's blanket work order task categorizations and the eligibility of all the tasks included in the blanket work orders.¹¹⁶ Public Counsel did not challenge the ISRS eligibility of blanket work orders in this case.

50. Spire Missouri changed from a piecemeal approach to replacing its deteriorating infrastructure to a more systemic approach. With this systematic approach, Spire Missouri retires pipes in place and installs new plastic pipes, often in a different location.¹¹⁷

51. The plastic pipes are being replaced because they are part of Spire Missouri's systematic replacing parts of its system, not because they were worn out or in a deteriorated condition.¹¹⁸

52. The Petitions affirmatively state that the infrastructure system replacements listed on Appendix A and Appendix B to the Petitions: a) did not increase revenues by directly connecting to new customers; b) are currently in service and used and useful; c)

¹¹³ Exhibits 1 and 2, Verified Applications, p. 7; and Exhibits 100 and 101, Staff Direct Report, p. 8.

¹¹⁴ Exhibits 100 and 101, Staff Direct Report, p. 8.

¹¹⁵ Exhibits 100 and 101, Staff Direct Report, p. 8.

¹¹⁶ Exhibits 100 and 101, Staff Direct Report, p. 8.

¹¹⁷ Exhibit 5, Hoeflerlin Direct, pp. 14-15.

¹¹⁸ Exhibit 5, Hoeflerlin Direct, pp.1-2 and 13.

were not included in rate base in Spire Missouri's most recently completed general rate cases, Case Nos. GR-2017-0215 and GR-2017-0216, and d) replaced and/or extended the useful life of existing infrastructure.¹¹⁹

53. Public Counsel's witness expressed "concern" about certain work orders that had incomplete, missing, or incorrect information leading the witness to question the ISRS-eligibility of those work orders.¹²⁰ However, Spire Missouri's witness explained how occasionally inadvertent coding errors can occur early in the process of entering information into Spire Missouri's work order creation and tracking system.¹²¹

54. Public Counsel argues that Spire Missouri is requesting ISRS recovery for overheads that do not bear a definite relationship to construction and have instead been assigned using arbitrary or general allocators.¹²² Public Counsel's witness referred to the categories of "Director Fees, Administrative & General Salaries, Injuries and Damages, General Office Supplies, and Miscellaneous Administrative & General expense"¹²³ as being problematic, but did not identify any specific amounts that should be excluded from the overhead allocation or propose an adjustment.¹²⁴

55. Overhead costs is a complex issue requiring a systemic approach and consistency.¹²⁵ An ISRS case is conducted on an expedited basis by statute and, therefore, does not allow for an in depth audit or review of overheads.¹²⁶ In a general

¹¹⁹ Exhibits 1 and 2, Verified Applications, para. 13.

¹²⁰ Exhibit 200, Robinett Direct, p. 5 and Schedules JAR-D-2, JAR-D-3, JAR-D-4, and JAR-D-5; and Transcript, pp. 260-263.

¹²¹ Transcript, pp. 212-214.

¹²² Exhibit 201, Schallenberg Direct, pp. 8-9; and Transcript, pp. 289-290.

¹²³ Exhibit 201, Schallenberg Direct, p. 9.

¹²⁴ Transcript, p. 289.

¹²⁵ Exhibits 100 and 101, Staff Direct Report, p. 10; and Transcript, pp. 196 and 234-235.

¹²⁶ Once the Commission receives a petition to establish or change an ISRS, under Section 393.1015.2(3), RSMo, the "commission may hold a hearing on the petition and any associated rate schedules and shall issue an order to become effective not later than one hundred and twenty days after the petition is filed."

rate case, all factors affecting rates are considered over a longer time frame allowing for a full examination of complex issues and accounting mechanisms. Spire Missouri was consistent with its last general rate cases, File Nos. GR-2016-0215 and GR-2016-0216, in the application of its overheads in these ISRS cases.¹²⁷

56. Spire Missouri's Controller, Timothy W. Krick, also testified that in his opinion the treatment of overheads in these cases is consistent with long-standing practice and is allowable according to the Uniform System of Accounts ("USOA").¹²⁸ Staff's witness also opined that the cost categories identified by Public Counsel are allowed under the USOA.¹²⁹

V. Conclusions of Law

A. Spire Missouri is a "gas corporation" and "public utility" as those terms are defined by Section 386.020, RSMo. Spire Missouri is subject to the Commission's jurisdiction, supervision, control, and regulation as provided in Chapters 386 and 393, RSMo.

B. The Commission has the authority under Sections 393.1009 through 393.1015, RSMo, to consider and approve ISRS requests such as those proposed in the Petitions. Those statutes permit gas corporations to recover certain infrastructure system replacement costs outside of a formal rate case through a surcharge on its customers' bills.

¹²⁷ Exhibits 100 and 101, Staff Direct Report, pp. 11-12. Additionally, Spire Missouri indicated that even though the company's Cost Allocation Manual ("CAM") and the U.S. Generally Accepted Accounting Principles ("GAAP") are not used in the ISRS accounting calculations, Spire Missouri's methods and procedures are also consistent with the general allocation principles set forth in these documents and principles. Exhibit 7, Krick Direct, p. 10.

¹²⁸ Transcript, pp. 190-191; and Exhibit 7, Krick Direct, p. 10.

¹²⁹ Transcript, p. 228.

C. Since Spire Missouri brought the Petitions, it bears the burden of proof.¹³⁰ The burden of proof is the preponderance of the evidence standard.¹³¹ In order to meet this standard, Spire Missouri must convince the Commission it is “more likely than not” that its allegations are true.¹³²

D. 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.”

E. Eligible infrastructure system replacements are defined in Section 393.1009(3), RSMo, as:

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[.]

F. As defined in Section 393.1009(5):

“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

¹³⁰ “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).

¹³¹ *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).

¹³² *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).

(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[.]

G. 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”.

H. The Missouri Court of Appeals, Western District, has previously overturned the Commission’s decision to allow the costs of plastic components of mains and service lines because they were an integral part of the replacement of the projects as a whole.

The Court stated:

Section 393.1009(5)(a) . . . clearly 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.¹³³

The Court found that even though it may have been a prudent decision and may have enhanced safety, Laclede (now Spire Missouri) had not shown that there was a state or federal safety requirement mandating the replacement of plastic pipe that was not shown to be in worn out or deteriorated condition. Therefore, the Court stated that costs related to the plastic replacements were not eligible for early recovery under the ISRS statutes.

¹³³ *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) (footnote omitted).

The Court clarified in footnote 5 of the opinion, however:

We recognize that the replacement of worn out or deteriorated components will, at times, necessarily impact and require the replacement of nearby components that are not in a similar condition. Our conclusion here should not be construed to be a bar to ISRS eligibility for such replacement work that is truly incidental and specifically required to complete replacement of the worn out or deteriorated components. However, we do not believe that section 393.1009(5)(a) allows ISRS eligibility to be bootstrapped to components that are not worn out or deteriorated simply because that [sic] are interspersed within the same neighborhood system of such components being replaced or because a gas utility is using the need to replace worn out or deteriorated components as an opportunity to redesign a system (*i.e.*, by changing the depth of the components or system pressure) which necessitates the replacement of additional components.¹³⁴

I. Spire Missouri is required by Section 393.130, RSMo, to provide safe and adequate service.

J. Spire Missouri is required by 20 CSR 4240.40-030(13)(B) and the corresponding portions of 49 CFR part 192¹³⁵ to maintain its pipeline and to replace, repair, or remove it from service if it becomes unsafe.

K. Spire Missouri is required by 20 CSR 4240.40-030(15) and the corresponding portions of 49 CFR part 192 to implement a program to replace “unprotected steel service and yard lines”¹³⁶ and “cast iron transmission lines, feeder lines, or mains[.]”¹³⁷ Commission rule 20 CSR 4240-40.030(15)(D) requires “[t]his systematic replacement program shall be prioritized to identify and eliminate pipelines in those areas that present the greatest potential for hazard in an expedited manner.”

¹³⁴ *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).

¹³⁵ Commission rule 20 CSR 4240-40.030 largely similar to the Minimum Federal Safety Standards contained in the Code of Federal Regulations at 49 CFR part 192. The corresponding portions of the Code of Federal Regulations are cited within the Commission rule.

¹³⁶ 20 CSR 4240.40-030(15)(C).

¹³⁷ 20 CSR 4240.40-030(15)(D).

Commission rule 20 CSR 4240.40-030(15) also requires Spire Missouri to develop a program that identifies and prioritizes unprotected steel pipe and to “cathodically protect or replace” it in an expedited manner.¹³⁸

L. Spire Missouri is required by 20 CSR 4240.40-030(17) and the corresponding portions of 49 CFR part 192 to develop an integrity management plan. That integrity management plan must “[i]dentify and implement measures to address risks” including corrosion and materials.¹³⁹ Spire Missouri’s integrity management plan (referred to as the “DIMP”) revised December 2016 and revised May 2019 are Exhibits 10C and 202C, respectively.

M. Commission orders also require Spire Missouri to establish cast iron pipe replacement programs in accordance with 20 CSR 4240-40.030.¹⁴⁰ Spire Missouri West’s replacement program approved in File No. GO-2002-50 also addresses the replacement of cathodically protected steel mains. However, under that order, Spire Missouri is required to replace a “minimum of 5 miles” after being triggered by the “5-5-3 program” (5 leaks within 500 feet within a 3-year period).¹⁴¹

N. Commission rule 20 CSR 4240-40.040 requires Spire Missouri to:

keep all accounts in conformity with the Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act, as prescribed by the Federal Energy Regulatory Commission (FERC) and published at 18 CFR part 201 (1992) and 2 FERC Stat. & Regs. paragraph 20,001 and following (1992), except as otherwise provided in this rule.

¹³⁸ 20 CSR 4240.40-030(15)(E).

¹³⁹ 20 CSR 4240.40-030(17)(C) and (D).

¹⁴⁰ *In the Matter of the Review and Approval of Cast Iron Main Program for Laclede Gas Company*, Order Approving Main Replacement Program, File No. GO-91-275 (August 27, 1993) (Laclede Gas Company is now known as Spire Missouri East); and Order Approving Application, File No. GO-2002-50 (September 20, 2001) (Missouri Gas Energy is now known as Spire Missouri West). See, Exhibit 200, Robinett Direct, Schedules JAR-D-8 and JAR-D-9.

¹⁴¹ See, Order Approving Application, File No. GO-2002-50 (September 20, 2001); and Exhibit 200, Robinett Direct, Schedule JAR-D-8, p. 29 (paragraph 12.A. of the Application in File No. GO-2002-50).

O. The USOA contains "Gas Plant Instructions" that detail how gas corporations are to account for certain expenses.¹⁴² These instructions include an instruction on "3. Components of construction cost" and "4. Overhead construction costs" setting out the details of how plant accounts are to be kept. Gas Plant Instruction 3 provides for "injuries and damages,"¹⁴³ "general administration capitalized,"¹⁴⁴ and "earnings and expenses during construction"¹⁴⁵ to be included in construction costs. Gas Plant Instruction 4 states that "overhead construction costs . . . shall be charged to particular jobs or unit"¹⁴⁶ and with regard to pay roll, "[t]he addition to direct construction costs of arbitrary percentages or amounts to cover assumed overhead costs is not permitted."¹⁴⁷

P. Since Spire Missouri allocated overhead costs consistently with how these costs were allocated in its last general rate cases,¹⁴⁸ it did not add arbitrary percentages or amounts to its overhead costs. The Commission concludes that Spire Missouri's treatment of overheads for purposes of these cases is allowable according to the USOA. Further, Section (4) of 20 CSR 4240-40.040 allows the Commission to vary from the USOA where appropriate.

VI. Decision

After approval of the tax issue settlement and the dismissal of the Old ISRS Request, the remaining issues concern whether the expenditures made by Spire Missouri

¹⁴² 18 CFR Part 201, Gas Plant Instructions; and Exhibit 201, Schallenberg Direct, p. 5.

¹⁴³ 18 CFR Part 201, Gas Plant Instructions, 3.A.(8).

¹⁴⁴ 18 CFR Part 201, Gas Plant Instructions, 3.A.(12).

¹⁴⁵ 18 CFR Part 201, Gas Plant Instructions, 3.A.(18).

¹⁴⁶ 18 CFR Part 201, Gas Plant Instructions, 4.A.

¹⁴⁷ 18 CFR Part 201, Gas Plant Instructions, 4.B.

¹⁴⁸ Exhibits 100 and 101, Staff Direct Report, p. 12.

are eligible for recovery under the ISRS statute and whether all the overheads are appropriate costs to be included in the capital expenditures of ISRS-eligible projects. In making a determination of eligibility for ISRS recovery, the Commission must look to the requirements of the statute. As the court of Appeals stated,

Section 393.1009(5)(a) . . . clearly 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.¹⁴⁹

Public Counsel objects to the recovery through ISRS of the costs of replacing cast iron, plastic, and cathodically protected steel on the basis that Spire Missouri has not shown that those expenditures were made in conjunction with replacing “existing facilities that have worn out or are in deteriorated condition.”¹⁵⁰ Public Counsel also argues that the costs for the replaced plastic and cathodically protected steel are ineligible for ISRS recovery because Spire Missouri has failed to show that the replacement of those components was required by state or federal mandates. Finally, Public Counsel objected to portions of the overhead expenses that were included in the ISRS expenses.

Cast Iron

Spire Missouri is required by state statute to provide safe and adequate service.¹⁵¹ Additionally, Spire Missouri is required by state regulations to implement an integrity management plan and to repair or replace unsafe pipeline facilities, including cast iron mains.¹⁵² In its Petitions, Spire Missouri specifically identified for each individual project

¹⁴⁹ *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) (footnote omitted).

¹⁵⁰ Section 393.1009(5)(a), RSMo.

¹⁵¹ Section 393.130, RSMo.

¹⁵² 20 CSR 4240-40.030(13), (15), and (17).

the state or federal safety requirements, with a citation to a state statute or Commission rule, mandating each work order.¹⁵³ The Commission concludes that the cast iron pipes were replaced to comply with state or federal safety requirements.

Once Spire Missouri has shown that the cast iron mains are required to be replaced or repaired, the second element that Spire Missouri must prove to show ISRS eligibility is that the cast iron mains were worn out or in a deteriorated condition. Public Counsel argues that because of work order errors and a lack of evidence to show that Spire Missouri had performed testing and leak analysis on the cast iron mains replaced, it did not provide evidence that the cast iron was worn out or in a deteriorated condition.¹⁵⁴

Spire Missouri satisfactorily refuted Public Counsel's claims that errors in work orders make the eligibility of these projects suspect by explaining the complicated process of generating work orders and how inadvertent errors could occur.¹⁵⁵ Additionally, there is no requirement that Spire Missouri provide evidence of testing or specific leak analysis in order to prove that its pipes are in worn out or deteriorated condition. Spire Missouri provided other persuasive evidence to prove that the cast iron portions of its ISRS requests were worn out or in deteriorated condition.

To put all the evidence into perspective it is important to understand the historical context of cast iron and bare steel replacement programs. The evidence showed that the age and inherent characteristics of cast iron pipes can render them unsafe to use because they are subject to cracking and leaking, which requires their replacement.¹⁵⁶ Because

¹⁵³ See, Appendix A, Schedule 6 to Exhibits 1, 2, 3, and 4, citing the specific sections of the gas safety rules that are applicable.

¹⁵⁴ Exhibit 200, Robinett Direct, pp. 5-7; and Transcript, p. 260.

¹⁵⁵ Exhibit 200, Robinett Direct, p. 5; and Transcript, pp. 212-214 and 260.

¹⁵⁶ Exhibit 5, Hoeflerlin Direct, pp. 3-5.

of these inherent characteristics, Spire Missouri has been actively engaged in replacing cast iron and bare steel since the 1950s. The Commission, adopting regulations similar to federal regulations, also put gas safety regulations in place over 30 years ago to mandate replacement programs for cast iron and steel mains and service lines. The Commission found cast iron and bare steel to be of a significant enough concern that it approved accelerated cast iron replacement programs as early as 1993 for Spire Missouri.¹⁵⁷

Additionally, the evidence showed that federal pipeline safety officials at the USDOT and PHMSA have urged state regulators to encourage the accelerated replacement of cast iron facilities.¹⁵⁸ These officials and Spire Missouri's witness reflected that such facilities are sufficiently worn out or deteriorated to justify expedited replacement and the utilization of special rate mechanisms such as ISRS to encourage the expedited replacement.¹⁵⁹ Further, the Commission's own April 2011 Pipeline Safety Program Report identifies a need to eliminate cast iron mains expeditiously.¹⁶⁰

Other evidence supporting a finding that cast iron mains are worn out or deteriorated included testimony that cast iron facilities are ranked by Spire Missouri's DIMP as posing a high risk of leaks from corrosion reflecting their status as worn out or deteriorated.¹⁶¹ Additionally, the testimony of Spire Missouri's witness was that when the facilities are dug up, those facilities are regularly found to be in a worn out or deteriorated

¹⁵⁷ Exhibit 5, Hoferlin Direct, pp. 5 and 8; and Exhibit 200, Robinett Direct, Schedules JAR-D-8 and JAR-D-9.

¹⁵⁸ Exhibit 5, Hoferlin Direct, Schedule CRH-2 (PHMSA Letter dated December 19, 2011, p. 2); and Exhibit 6, Leonberger Direct, p. 12.

¹⁵⁹ Exhibit 5, Hoferlin Direct, p. 6.

¹⁶⁰ Exhibit 5, Hoferlin Direct, Schedule CRH-4.

¹⁶¹ Exhibit 5, Hoferlin Direct, p. 6. See also, Exhibits 10C, 2019 DIMP and 202C, 2016 DIMP.

condition and that he had never encountered a cast iron or bare steel pipe dug up that was not in some sort of a deteriorated state.¹⁶²

When considered in combination, the totality of the evidence supports a finding by the Commission that the cast iron mains were in a worn out or in a deteriorated condition. The Commission concludes that the cast iron mains were replaced to comply with state or federal safety requirements and were worn out or in a deteriorated condition. Thus, the Commission determines that the costs to replace the cast iron mains are eligible for cost recovery under ISRS.

Cathodically Protected Steel

Similar to the replacement of cast iron, the issue here is whether the replacement of mains that were bare steel when originally installed (as opposed to coated steel, which does not corrode in the same manner as bare steel) and later cathodically protected are eligible to be recovered through the ISRS. Spire Missouri's predecessor cathodically protected these bare steel mains 30-40 years after they were installed pursuant to the Commission's gas pipeline replacement rules at 20 CSR 4240-40.030(15).¹⁶³ These safety rules were promulgated in 1989 after several gas explosions involving bare steel service and yard lines.¹⁶⁴ Spire Missouri seeks ISRS recovery for the replacement of the cathodically protected steel mains.

¹⁶² Exhibit 5, Hoeflerlin Direct, pp. 4-5 and Schedule CRH-5.

¹⁶³ 20 CSR 4240-40.030(15) states in relevant part:

Replacement/Cathodic Protection Program—Unprotected Steel Transmission Lines, Feeder Lines, and Mains. Operators who have unprotected steel transmission line, feeder lines, or mains shall develop a program to be submitted with an explanation to the commission by May 1, 1990, for commission review and approval. This program shall be prioritized to identify and cathodically protect or replace pipelines in those areas that present the greatest potential for hazard in an expedited manner. . . . (Emphasis added.)

¹⁶⁴ Exhibit 6, Leonberger Direct, p. 6.

Public Counsel argues that these cathodically protected steel mains are not required under law to be replaced and are not in a worn out or deteriorated condition. Public Counsel argues that the plain language of the rule requires the gas utility to *either* cathodically protect *or* replace the bare steel pipes.¹⁶⁵ In this instance, Spire Missouri initially chose to cathodically protect the mains. Thus, Public Counsel argues the company is not *required* to replace the protected steel mains and these replacements are not ISRS-eligible.

Spire Missouri and Staff argue that the original cathodic protection was a “stop gap” measure and not meant to be a permanent solution because the steel pipes continue to corrode after the cathodic protection, just at a much slower pace. No one, including Public Counsel, is arguing that Spire Missouri should not replace these pipes. The contested issue is whether the cathodically protected steel mains meet the statutory criteria to be ISRS-eligible. The plain reading of 20 CSR 4240-40.030(15)(E) seems clear that the rule requires a single action – “cathodically protect or replace.” Spire Missouri is not prohibited from cathodically protecting and then replacing, but it is only required under the rule to do one or the other. Thus, this rule cannot be used to meet the “required by state or federal law” criteria for ISRS eligibility.

Spire Missouri also claims that it is required to replace the cathodically protected steel mains under its Commission-approved replacement programs. However, only Spire Missouri West has a Commission-approved replacement plan that specifically includes cathodically protected steel mains.¹⁶⁶ Further, that Commission-approved replacement

¹⁶⁵ 20 CSR 4240-40.030(15)(E).

¹⁶⁶ See, Order Approving Application, File No. GO-2002-50, (September 20, 2001); and paragraph 12.A. of the Application.

plan only requires a “minimum of 5 miles” be replaced after a trigger by the “5-5-3 program” (5 leaks within 500 feet within a 3-year period).¹⁶⁷ There was no evidence that the 5-5-3 program had triggered any of the replacements in the application. Therefore, the Commission-approved replacement plan cannot be used to show that the costs in the Spire Missouri West territory are ISRS-eligible.

Even though Spire Missouri was not required to replace the cathodically protected steel mains under 20 CSR 4240-40.030(15)(E) or under its Commission-approved replacement programs, it is required to replace the cathodically protected steel mains under the regulation requiring the development and implementation of an integrity management plan in 20 CSR 4240-40.030(17). Specifically, subsection (D)4 of section (17) requires the company to “[i]dentify and implement measures to address the risks” and “[d]etermine and implement measures designed to reduce the risks from failure of its gas distribution pipeline.” As Spire Missouri’s witness testified, compliance with this rule is accomplished through Spire Missouri’s DIMP and its systematic replacement program.¹⁶⁸ Two versions (December 2016 and May 2019) of Spire Missouri’s DIMP were presented at the hearing.¹⁶⁹ In both versions of the DIMP, corrosion of cathodically protected steel mains is identified as a risk to be addressed.¹⁷⁰

The final requirements to replace the cathodically protected steel mains is found in 20 CSR 4240-40.030(13)(B) dictating maintenance, requiring the replacement, repair, or removal of unsafe system elements, and Section 393.130, RSMo, the general

¹⁶⁷ See, Order Approving Application, File No. GO-2002-50, (September 20, 2001); and paragraph 12.A. of the Application.

¹⁶⁸ Exhibit 5, Hoferlin Direct, pp. 8-9; Transcript, pp. 124-126; Exhibit 202C, 2016 DIMP; and Exhibit 10C, 2019 DIMP.

¹⁶⁹ Exhibit 202C, 2016 DIMP; and Exhibit 10C, 2019 DIMP.

¹⁷⁰ Exhibit 10C, 2019 DIMP, Appendix C, Section C 3; and Exhibit 202C, 2016 DIMP, Appendix C, Section C 2.

requirement for Spire Missouri to ensure it has a safe and adequate system for distributing natural gas service. Public Counsel argues that since Spire Missouri's witness claims its system is "safe" while it is utilizing the cathodically protected steel mains, Spire Missouri is not required under the rule to replace the cathodically protected steel mains in order to comply with the law. However, Spire Missouri must not wait until its system is leaking and exploding to make necessary repairs and replacements. Under 20 CSR 4240-40.030(13)(B), Spire Missouri is required to have maintenance plans in place to proactively keep the system in a safe condition. If Spire Missouri did not replace the cathodically protected steel mains until its entire system was "unsafe" it would not be complying with the law.

The Commission concludes that Spire Missouri installed the new pipeline components replacing cathodically protected steel components in order to comply with the state requirements of Section 393.130, RSMo (requiring Spire Missouri to provide safe and adequate service), 20 CSR 4240-40.030(17) (requiring Spire Missouri to identify and implement measures to address risks), and 20 CSR 4240-40.030(13)(B) (requiring Spire Missouri to repair, replace, or remove unsafe segments of pipeline from service).

Public Counsel also argues that Spire Missouri has not shown that the cathodically protected steel mains are worn out or in a deteriorated condition. The Commission disagrees. Although there was no couponing (sampling) of the cathodically protected steel mains that were replaced,¹⁷¹ there was other evidence to support that these pipes were deteriorated. This evidence includes most of the same factors that show that cast iron is worn out or deteriorated. Those factors include the history of a need for accelerated

¹⁷¹ Transcript, p. 136.

replacement programs as evidenced by white papers, reports, letters, and regulations from the USDOT, PHMSA, and the Commission. Other factors indicating the deterioration of cathodically protected steel mains were the ranking of cathodically protected steel mains as a risk in the 2016 DIMP and even a higher risk in the 2019 DIMP and the testimony of the expert witnesses as to the condition of the pipes.

In addition to those factors shared with the cast iron, the evidence showed that bare steel started to corrode as soon as it was put in the ground and it was in the ground unprotected for 30-40 years when it began to fail. It was these failures of cast iron and unprotected steel that prompted the accelerated replacement programs and the need for regulations requiring those replacement programs. Additionally, the cathodic protection greatly slowed that corrosion but did not stop it completely and there may be “hot spots” that could cause leaks or other unsafe conditions any time.¹⁷² The evidence showed that the leaks on the cathodically protected steel mains are 10-20 times greater than leaks on plastic or coated steel pipes and those leaks increased notably in 2017. As a result of accelerating replacement of the cathodically protected steel mains there was a decrease in leaks of cathodically protected steel in 2018, further supporting a finding that these pipes are worn out or in a deteriorated condition and in need of replacement.¹⁷³

Taken as a whole, the evidence convincingly shows that the cathodically protected steel pipes are worn out or in a deteriorated condition. The Commission concludes that the cathodically protected steel mains were replaced to comply with state or federal safety requirements and were worn out or in a deteriorated condition. Thus, the Commission

¹⁷² Transcript, pp. 85-86 and 102.

¹⁷³ Exhibit 10C, 2019 DIMP, Appendix D, Figure D 3-2; and Exhibit 5, Hoeflerlin Direct, p. 25.

determines that the costs to replace the cathodically protected steel mains are eligible for cost recovery under ISRS.

Plastic

With regard to the plastic components of the mains and service lines, the Commission again begins with the requirements of the statute. Spire Missouri must first prove the replacements satisfy the elements for ISRS eligibility, then, if eligible, the Commission will determine the amount of that recovery. Spire Missouri must prove first, that its requests consist of “gas utility plant projects . . . installed to comply with state or federal safety requirements as replacements for existing facilities that have worn out or are in deteriorated condition[.]”¹⁷⁴

There was little, if any, evidence that the non-cast iron or steel components (plastic components) were in a worn out or deteriorated condition. In fact, the evidence generally showed that the plastic pipe was not worn out or in a deteriorated condition. The evidence showed that in approximately 2010, Spire Missouri changed from a piecemeal approach to replacing its deteriorating infrastructure to a more systemic approach. With this systematic approach, Spire Missouri retires pipes in place and installs new plastic pipes, often in a different location. In other words, the plastic components, whether part of the mains or service lines, are not being replaced because they are themselves in worn out or deteriorated condition, but because they are part of the systematic replacement of all the pipe.

Spire Missouri did not argue that the plastic pipes being replaced were worn out or in a deteriorated condition. Rather, Spire Missouri argued that the costs to replace the

¹⁷⁴ Section 393.1009(5)(a), RSMo.

plastic components were less than the costs of reusing the plastic components and, therefore, there are no incremental costs of replacing the plastic. To support its argument, Spire Missouri randomly selected twelve projects (seven from Spire Missouri East and five from Spire Missouri West) from the hundreds of projects presented and compared the costs to replace the facilities under its systematic approach, with the estimated costs of the piecemeal approach where it would have only replaced the cast iron or steel components. According to Spire Missouri's costs comparisons, the piecemeal approach would have been 11% to 198% more expensive than the systematic approach.¹⁷⁵

However, these cost comparisons still do not convince the Commission that the statutory requirement of "worn out or in a deteriorated condition" and the Court's interpretation of that requirement has been proven with regard to the plastic components. The ISRS was not designed to allow early recovery of system-wide replacement of infrastructure, only the replacement of specifically worn out or deteriorated infrastructure. Plastic components that are not otherwise worn out or deteriorated or incidental to the replacement of worn out or deteriorated material cannot become ISRS eligible as part of a systemic redesign.¹⁷⁶ Spire Missouri's limited cost comparisons may show that it cost less to replace the plastic components than it cost to do a piecemeal replacement; however, nothing in Spire Missouri's cost comparisons or other evidence proves that the plastic components being replaced were being replaced because they were worn out or deteriorated.¹⁷⁷

¹⁷⁵ Exhibit 5, Hoferlin Direct, pp. 15-16.

¹⁷⁶ *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).

¹⁷⁷ Whether the cost analysis shows that the decision to redesign its system was cost effective or that replacing the plastic components that were not worn out or deteriorated was a safety enhancement are

Spire Missouri asks the Commission to extrapolate from its twelve projects and reach a similar result in the hundreds of work orders that Spire Missouri did not analyze. The Commission finds that Spire Missouri's analysis is based on far too few work orders for the Commission to reasonably conclude that there was, in fact, no cost associated with the retirement of the plastic facilities.

Anticipating that the Commission may continue to order the removal of the plastic components from the ISRS-eligible costs, Spire Missouri presented an alternative calculation using the same methodology Staff used in prior ISRS cases to remove the cost of the replacement of ISRS-ineligible plastic pipes. Spire Missouri's calculation divided the feet of plastic main and service lines replaced or retired by the total footage of the pipe replaced or retired to arrive at the percentage of costs associated with plastic. That cost associated with plastic was then removed from the amount for the alternative ISRS recovery calculation.

Staff reviewed all the work orders Spire Missouri provided to confirm the feet of main and service lines replaced and retired by the type of pipe (plastic, cast iron, steel, etc.), and concluded that Spire Missouri's adjustments are consistent with the prior Commission-approved methodology.¹⁷⁸ Staff reported that Spire Missouri's calculations were accurate and used the same methodology that the Commission approved in the prior Spire Missouri ISRS cases.¹⁷⁹

The Commission concludes that ineligible plastic cannot be made eligible by a systematic redesign and the twelve project analyses are too few for the Commission to

prudence issues. The Commission is not making a judgement about the prudence of these replacements as prudence and eligibility for ISRS are not the same determination.

¹⁷⁸ Exhibits 100 and 101, Staff Direct Report, pp. 6-8.

¹⁷⁹ File Nos. GO-2018-0309, GO-2018-0310, GO-2019-0115, and GO-2019-0116.

reasonably conclude that there was no cost associated with the retirement of the plastic facilities. Therefore, in order to determine how much ineligible plastic is in a project the Commission will use the same methodology previously used for removing the cost of replacing ISRS-ineligible plastic components as calculated by Spire Missouri and verified by Staff.

Overheads

The final contested issue in these cases relates to the overheads allocated by Spire Missouri to the ISRS-eligible projects. Public Counsel argues that Spire Missouri is requesting ISRS recovery for overheads that do not bear a definite relationship to construction and have instead been assigned using arbitrary or general allocators.¹⁸⁰ Public Counsel did not identify any specific costs that should be excluded from the overhead allocation or propose an adjustment.¹⁸¹

Spire Missouri's Controller, Timothy W. Krick, explained that overheads is a complex issue requiring a systemic approach and consistency.¹⁸² For this reason, Spire Missouri and Staff recommend, and the Commission agrees, that the context of a rate case would facilitate a more holistic examination of overheads.¹⁸³ Spire Missouri's witness also testified that the treatment of overheads in these cases is consistent with long-standing practice and is allowable according to the USOA.¹⁸⁴ Similarly, Staff's witness testified that the cost categories identified by Public Counsel are allowed under the USOA.¹⁸⁵ More importantly, the accounting treatment of overhead costs is consistent

¹⁸⁰ Exhibit 201, Schallenberg Direct, pp. 8-9; and Transcript, pp. 289-290.

¹⁸¹ Transcript, p. 289.

¹⁸² Transcript, p. 196.

¹⁸³ Transcript, p. 196.

¹⁸⁴ Transcript, pp. 190-191; and Exhibit 7, Krick Direct, p. 10.

¹⁸⁵ Transcript, p. 228.

with how base rates were set in Spire Missouri's most recent general rate case.¹⁸⁶ The Commission is persuaded by these arguments and finds that under the facts of this case, the Spire Missouri's treatment of overheads is allowable. Further, even if this application of overheads was not consistent with the USOA, the Commission is not bound by the USOA and under 20 CSR 4240-40.040 could determine not to follow it.

The Commission finds that the shortened time frame of ISRS cases does not allow for in depth analysis of overhead costs. The treatment of overheads by Spire Missouri was consistent with how base rates were set in the most recent general rate cases. Therefore, the Commission finds that they are appropriately included for recovery in the ISRS. Further, given the expedited nature of an ISRS case and the complexity of determining the appropriate overheads to include in construction costs, decisions varying from the methods in a general rate case are best handled during the course of a rate case when there is more time for a full examination and all rate factors are being reviewed.

Summary

In making this decision, the Commission has considered the positions and arguments of all of the parties. The Commission has concluded that the Old ISRS Request should be dismissed due to a lack of Commission jurisdiction. As to the remainder of these cases, 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 met, by a preponderance of the evidence,

¹⁸⁶ Exhibits 100 and 101, Staff Direct Report, p. 11. Additionally, Spire Missouri indicated that even though the company's Cost Allocation Manual ("CAM") and the U.S. Generally Accepted Accounting Principles ("GAAP") are not used in the ISRS accounting calculations, Spire Missouri's methods and procedures are also consistent with the general allocation principles set forth in these documents and principles. Exhibit 7, Krick Direct, p. 10.

its burden of proof to demonstrate that the Petitions and supporting documentation comply with the requirements of Sections 393.1009 to 393.1015, RSMo, with regard to the cast iron and cathodically protected steel portions of the projects including the overheads and the tax issue settlement agreement. Each of these portions of the projects were found to be “gas utility plant projects.”

The Commission concludes that Spire Missouri shall be permitted to establish an ISRS to recover ISRS surcharges for these cases in the amounts as recommended by Staff with adjustments for the tax issue settlement. The total ISRS revenue requirement for Spire Missouri East is \$4,763,180¹⁸⁷ and for Spire Missouri West is \$3,996,543.¹⁸⁸ 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 (Tariff Tracking Nos. YG-2020-0009 and YG-2020-0010). 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 November 12, 2019, so the Commission will make this order effective on November 12, 2019.

THE COMMISSION ORDERS THAT:

1. The attached *Stipulation and Agreement Regarding Income Tax Issue* is approved and its provisions are incorporated into this order as if fully set forth herein. The

¹⁸⁷ Exhibit 100, Staff Direct Report, Schedules 1 and 2, as adjusted by the tax issue settlement. See also, Staff's Revenue Requirement Updated to Include Tax Stipulation and Agreement (filed October 29, 2019).

¹⁸⁸ Exhibit 101, Staff Direct Report, Schedules 1 and 2, as adjusted by the tax issue settlement. See also, Staff's Revenue Requirement Updated to Include Tax Stipulation and Agreement (filed October 29, 2019).

signatory parties are directed to comply with its terms.

2. The portions of the applications dealing with the time period of October 1, 2017, through June 30, 2018, are dismissed.

3. Spire Missouri, Inc. is authorized to establish Infrastructure System Replacement Surcharges sufficient to recover ISRS revenues in the amount of \$4,763,180 for its Spire Missouri East service territory and \$3,996,543 for its Spire Missouri 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.

4. The tariff sheets filed by Spire Missouri, Inc. on July 18, 2019, and assigned Tariff Tracking Nos. YG-2020-0009 and YG-2020-0010, are rejected.

5. Spire Missouri, Inc. is authorized to file new tariffs to recover the revenue authorized in this Report and Order.

6. This report and order shall become effective on November 12, 2019.



BY THE COMMISSION

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

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, and

Coleman, CC., concur.

Hall, CC., concurs, with separate concurring
opinion to follow.

Rupp, C., dissents.

Dippell, Senior Regulatory Law Judge

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-2019-0356**
 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-2019-0357**
 Replacement Surcharge in its Spire Missouri)
 West Service Territory)

CONCURRING OPINION OF COMMISSIONER DANIEL Y. HALL IN THE REPORT AND ORDER

I join in the Commission's Report and Order, issued October 30, 2019, in the above-captioned case regarding the application of Spire Missouri Inc. (Spire Missouri or the Company) to modify its Infrastructure System Replacement Surcharge (ISRS). I write separately in concurrence to suggest an outline of an amendment to the ISRS statute that would provide for consistency and certainty in implementation, and promote safety through leak prevention (the public policy that underlies the ISRS statute) as well as economic efficiency.

Spire Missouri began a cast iron and steel replacement program over 25 years ago. Until 2010, this program employed a piecemeal approach to pipe replacement by replacing pipes when they were about to fail. In 2011, the Company changed to a more systematic and economic approach whereby it retires all the existing pipes in a neighborhood, including some plastic pipe that may not be worn out or deteriorated, and installs new pipe often in different locations that are more accessible and efficient to

maintain. This approach also allows the system to perform more efficiently by operating at higher pressures and enhances customer safety, convenience, and service by installing metering equipment outside the home.

Under the ISRS statute, for an infrastructure cost to be ISRS-eligible, the component replacement must be “installed to comply with state or federal safety requirements” and the replaced component must be “worn out or in a deteriorated condition.”¹ The critical issue in this case, as well as the previous three ISRS cases before the Commission, two of which are currently on appeal in the Western District, is the extent to which the cost of new plastic pipe is ISRS eligible, when it is replacing some portion of plastic pipe that may not be worn out or deteriorated. While good public policy supports Spire Missouri’s systematic replacement program (customer service, cost, efficiency, safety, reliability), the Western District has expressly ruled that costs to replace plastic that is not worn out or deteriorated, as part of a systematic redesign, are not ISRS-eligible.²

While Spire Missouri does not dispute that the cost for ineligible plastic replacement must be subtracted from the total cost of the project to determine the eligible portion, it argues that because it cost less to replace the plastic than it would have cost to re-use it, there is no incremental cost and, therefore, nothing to subtract. This approach involved Spire Missouri’s analysis of 509 ISRS projects in the prior case and twelve projects in this case, comparing the actual costs for systematic replacement (cast iron,

¹ Section 393.1009(5)(a), RSMo.

² *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).

steel and plastic) with estimated costs for piecemeal replacement (cast iron and steel). This accounting approach is problematic because: (1) it compares actual costs to estimated costs; (2) it is only employed for a small sampling of the projects at issue; (3) requires a significant amount of Spire Missouri accounting and engineering resources to produce; (4) requires the Staff of the Commission (Staff) and the Office of the Public Council (Public Counsel) to engage in a massive amount of auditing and analysis in an abbreviated timeframe; and (5) it does not fit neatly within the statutory language.

To address this issue in this case, the Commission employed the same methodology it employed in the prior two cases, reducing ISRS revenues by the percentage of plastic pipe replaced of the total pipe replaced. This methodology is the best evidence available to: (1) implement the express language of the ISRS statute; (2) comply with the Western District's interpretation of this statute; and (3) fulfill the purpose of the ISRS statute to promote safety by incentivizing the replacement of deteriorated cast iron and steel pipes. However, this approach is admittedly crude in that it does not account for what I believe is undisputable costs savings and efficiencies resulting from the systematic replacement approach. In addition, it assumes without empirical support an ironclad engineering and financial correlation between the length of existing plastic pipe compared to the total existing pipe to be replaced in a project, the costs to replace such ineligible pipe and the percentage of the total project costs attributable to plastic replacement.

Clearly there is a misalignment between the courts' narrow interpretation of the statute and the evolving best practices of cast iron and steel replacement. This problem is exasperated by the frequency of these ISRS proceedings, the expedited process set

by statute, the time lag between our decisions and the resolution of the subsequent appeals, and the complexity of the relevant engineering and financials. Therefore, moving forward, I believe that the most appropriate action is a statutory change to the ISRS statute to ensure efficient systematic replacement of cast iron and steel pipe through a transparent, consistent, and predictable process.

My proposal, though skeletal in nature and certainly subject to considerable improvement through discussions and negotiations by interested policymakers and stakeholders, is set forth below:

1. A gas company would be required to submit a five to ten year Infrastructure System Replacement Plan (ISRP) that includes a list of the gas distribution system infrastructure replacements to be considered for ISRS treatment, a detailed estimate of projected costs, and an explanation of how the ISRP promotes safety and reliability in a cost-effective manner.
2. After considering the ISRP application and weighing the positions of all interested parties, and based on the record presented, the Commission would approve, reject, or modify the ISRP based on a public interest standard.
3. The Commission would be required to make this determination within 150 days of the ISRP application.
4. Approval of an ISRP would constitute a determination of decisional prudence (as opposed to operational prudence).
5. Twice a year, the gas company would be authorized to file an application to modify its ISRS surcharge to account for new completed projects contained in the ISRP, were necessitated by relocations, or were incurred in connection with leak repairs.

5. The Commission would have 90 days to rule on the ISRS surcharge modification application.

6. The existing ISRS cap of 10 percent of a company's base revenue level would be unchanged.

7. A gas company would be required to file a general rate case every five years but Staff or Public Counsel could request one after three years.

Some may view this approach as an overly broad departure from the current ISRS structure and would prefer a more narrowly tailored fix of ISRS eligibility to include replacement of plastic portions incidental to a systematic replacement process. However, I believe such an approach would only result in additional disputes between the parties, and before the Commission and the courts over the meaning of "portions," "incidental" and "systematic." These decisions would have to be reconciled with prior judicial decisions employing a narrow interpretation of eligibility in the current statute. This can be avoided by allowing a company to propose (based on its operational expertise), and the Commission to approve (based on its view of the public interest), an ISRP that provides a certain but flexible category of eligible expenses.

For the foregoing reasons, I concur.

Respectfully submitted,



Daniel Y. Hall
Commissioner

Dated at Jefferson City, Missouri,
on this 30th day of October 2019.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Eighth Prudence Review of)	
Costs Subject to the Commission-Approved)	
Fuel Adjustment Clause of KCP&L Greater	)	<u>File No. EO-2019-0067</u>
Missouri Operations Company)	

REPORT AND ORDER

EVIDENCE, PRACTICE AND PROCEDURE

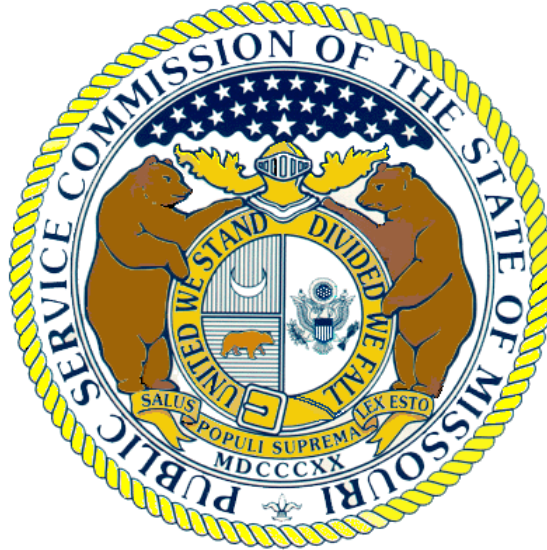
§4 Presumption and burden of proof

In determining whether a utility's conduct was prudent, the Commission will 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. The Commission cited *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). 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).

§4 Presumption and burden of proof

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 do not make the decision extravagant or imprudent." *State ex rel. Missouri Power and Light Co. v. Pub. Serv. Com'n*, 669 S.W.2d 941, 948 (Mo. App. W.D. 1984). The Commission must find both that (1) the utility acted imprudently and (2) the imprudence resulted in harm to the utility's ratepayers to disallow a cost based on a finding that the cost was imprudently incurred. The Commission cited *State ex rel. Associated Natural Gas Co. v. Public Service Com'n of State of Mo.*, 954 S.W.2d 520, 529- 530 (Mo. App. W.D., 1997).

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Eighth Prudence Review)
of Costs Subject to the Commission-Approved) **File No. EO-2019-0067, et al.**
Fuel Adjustment Clause of KCP&L Greater)
Missouri Operations Company)

REPORT AND ORDER

Issue Date: November 6, 2019

Effective Date: December 6, 2019

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

In the Matter of the Eighth Prudence Review)
of Costs Subject to the Commission-Approved) **File No. EO-2019-0067, et al.**
Fuel Adjustment Clause of KCP&L Greater)
Missouri Operations Company)

Appearances

Kansas City Power & Light Company

Roger W. Steiner
Joshua Harden
James M. Fischer

Office of Public Counsel

John Clizer

Staff of the Missouri Public Service Commission

Jeffrey A. Keevil
Alexandra Claus
Travis J. Pringle

Judge: Paul T. Graham

REPORT AND ORDER

Summary: Three files have been consolidated. In File No. EO-2019-0068, the Missouri Public Service Commission (“Commission”) concludes KCPL was not imprudent and did not violate its Fuel Adjustment Clause tariff in allowing 722,628 Renewable Energy Credits to expire during the review period. In File No. EO-2019-0067, the Commission concludes GMO’s indirect cost assignment method for allocating costs associated with auxiliary power between electric and steam operations at GMO’s Lake Road plant was not imprudent. Further, the Commission concludes GMO and KCPL were not imprudent in entering into purchase power agreements with the Rock Creek and Osborn Wind projects. A subsequent true-up file - ER-2019-0199 - was also consolidated into this case; however, no issues were raised concerning that file, and the numbers used in subsequent true-ups are dependent on the issues that will be decided in this case. File No. ER-2019-0199 will not be further addressed in this order.¹

PROCEDURAL HISTORY

The Commission Staff (“Staff”) filed its *Notice of Start of Eighth Prudence Review of KCP&L Greater Missouri Operations Company* (“GMO”) on September 7, 2018, in File No. EO-2019-0067, to review costs and revenues associated with GMO’s Fuel Adjustment Clause (“FAC”) for the period December 1, 2016 through May 31, 2018. This review period corresponds to the twentieth, twenty-first, and twenty-second sequential FAC accumulation periods (each accumulation period is 6 months) of GMO’s FAC. Also on September 7, 2018, Staff filed its *Notice of Start of Second Prudence Review of Kansas City Power and Light Company* (“KCPL”), in File No. EO-2019-0068, to review costs and revenues related to KCPL’s FAC for the period January 1, 2017 to June 30, 2018. This review period corresponds to the fourth, fifth, and sixth FAC accumulation periods of KCPL’s FAC.

¹ GMO and KCPL have changed their names respectively to Evergy Missouri West and Evergy Missouri Metro. The Commission will use their former names in this Order consistent with the pleadings and evidence presented in these cases.

On February 28, 2019, Staff filed its separate reports in File Nos. EO-2019-0067 and EO-2019-0068. In EO-2019-0067, Staff found no evidence of imprudence for the items it examined for the period of December 1, 2016, through May 31, 2018.² In EO-2019-0068, Staff asserted KCPL was imprudent in failing to take any action to sell (generate revenues from) 722,628 Renewable Energy Credits (“RECs”), which it did not need to satisfy its Renewable Energy Standard requirement, and in simply allowing those RECs to expire to the detriment of its customers. Staff recommended the Commission order a prudence adjustment of \$350,351.³

On March 11, 2019, in EO-2019-0067 the Office of the Public Counsel (“OPC”) filed its response to Staff’s report, request for evidentiary hearing, and request for consolidation (with EO-2019-0068 and ER-2019-0199). OPC objected to GMO’s inclusion of the cost of fuel used to produce auxiliary power for its steam operations and to GMO’s allocation of the costs associated with auxiliary power between the electric operations and the steam operations at GMO’s Lake Road plant. OPC recommended a prudence adjustment of \$469,409 in GMO’s next filing, and that GMO be ordered to account for and exclude the cost of fuel used to produce auxiliary power for its steam operations from the actual net energy cost calculated in future FAC rate change cases.

Also on March 11, 2019, in EO-2019-0068, both OPC and KCPL requested an evidentiary hearing.⁴ KCPL objected to Staff’s position concerning the unsold RECs. OPC agreed with Staff’s position on the RECs,⁵ but challenged the prudence of KCPL’s and

² Commission Exhibit 300, Staff Report in EO-2019-0067, p. 2.

³ Commission Exhibit 301, Staff Report in EO-2019-0068, p. 25.

⁴ The rule cited was “4 CSR 240-20.090(7)(B) [sic]” (now 20 CSR 4240-20.090(7)(B)). Subsection 11 of the cited rule provided for prudence review respecting RAMs. (11)(B) stated that a party had 10 days after the filing of Staff’s report to request hearing.

⁵ Staff argues for an adjustment of \$357,308, Staff’s Initial Brief, p. 8; and OPC argues for an adjustment of \$325,969, OPC Initial Brief, p. 13.

GMO's purchased power agreements ("PPAs") for the Osborn Wind Energy and Rock Creek Wind Projects. OPC recommended the Commission disallow all the losses that KCPL and GMO incurred with regard to the Rock Creek and Osborn PPAs by a prudence adjustment of \$9,484,315 in KCPL's next Fuel Adjustment Rider ("FAR") filing and \$11,070,668 in GMO's next FAR filing.

The three files were consolidated by the Commission on March 21, 2019.

On August 9, 2019, the parties identified the following issues for the hearing:

Issue (1)

- A. Was it imprudent, or in violation of its Rider FAC tariff, for KCPL to allow 722,628 renewable energy credits ("RECs") to expire during the review period of File EO-2019-0068 rather than take action which would have allowed KCPL to generate revenues from those RECs?
- B. If it was, what if any adjustment should the Commission order?

Issue (2)

- A. Has GMO appropriately allocated the costs associated with auxiliary power between the electric operations and the steam operations at GMO's Lake Road plant?
- B. If not, what if any adjustment should the Commission order for the review period of File EO-2019-0067?
- C. Should the Commission order GMO to calculate the fuel cost of the steam operations auxiliary power that was recovered through the FAC since July 1, 2011, and return that amount plus interest at its short-term borrowing rate back to GMO's customers?
- D. Should the Commission Order GMO to make adjustments to the method by which it allocates auxiliary power between the electric operations and the steam operations at GMO's Lake Road plant for the 23rd Accumulation Period and/or any future FAC rate change cases?

Issue (3)

- A. Was it prudent for GMO to have entered into Purchase Power Agreements with the Rock Creek and Osborn Wind Projects under the terms of the contracts as executed?
- B. If it was not prudent, what if any adjustment should the Commission order?

An evidentiary hearing occurred on August 27, 2019. Evidence was received in File Nos. EO-2019-0067 and EO-2019-0068. On August 29, 2019, the Staff filed a Request that the Commission take Official Notice of Tariff and Receive Late Filed Exhibit 202. No party has objected, and Exhibit 202 is received and made a part of the record.⁶

⁶ Exhibit 202, Tariff Sheets. Exhibit No. 202 contains KCPL Tariff Sheets 50 through 50.20 and contain KCPL's Rider FAC Tariff applicable to service during the FAC Prudence Review in File No. EO-2019-0068. They are:

January 1, 2017 through June 7, 2017	June 8, 2017 through June 30, 2018
Fourth Revised Sheet No. 50	Second Revised Sheet No. 50.11
Third Revised Sheet No. 50.1	Second revised Sheet No. 50.12
Second Revised Sheet No. 50.2	Second revised Sheet No. 50.13
Second Revised Sheet No. 50.3	Second revised Sheet No. 50.14
Second Revised Sheet No. 50.4	Second revised Sheet No. 50.15
Second Revised Sheet No. 50.5	Second revised Sheet No. 50.16
Second Revised Sheet No. 50.6	Second revised Sheet No. 50.17
Second Revised Sheet No. 50.7	Second revised Sheet No. 50.18
Second Revised Sheet No. 50.8	Second revised Sheet No. 50.19
Second Revised Sheet No. 50.9	

The following were in effect for GMO during the period December 1, 2016, through May 31, 2018, and the Commission will officially notice them. See EO-2019-0069 Staff Report, Commission Exhibit 301, p. 3.

December 1, 2016, through February	February 22, 2017 through May 31, 2018
3 rd Revised Sheet No. 124	3 rd Revised Sheet No. 127.1
3 rd Revised Sheet No. 125	3 rd Revised Sheet No. 127.2
3 rd Revised Sheet No. 126	3 rd Revised Sheet No. 127.3
1 st Revised Sheet No. 126.1	3 rd Revised Sheet No. 127.4
1 st Revised Sheet No. 126.2	7 th Revised Sheet No. 127.5
14 th Revised Sheet No. 127	3 rd Revised Sheet No. 127.6
	3 rd Revised Sheet No. 127.7
	3 rd Revised Sheet No. 127.8
	3 rd Revised Sheet No. 127.9
	5 th Revised Sheet No. 127.10
	1 st Revised Sheet No. 127.11
	3 rd Revised Sheet No. 127.12

Staff's reports in the respective files were also not received in evidence on August 27, 2019. On October 29, 2019, the Commission issue a Notice and Order giving notice that absent objections, it would admit into evidence Staff's *Eight Prudence Review Report* filed in EO-2019-0067 on February 28, 2019 as Commission Exhibit 300, and Staff's *Second Prudence Review Report* filed in EO-2019-0068 on February 28, 2019 as Commission Exhibit 301. The Commission ordered that any objections to those exhibits be filed no later than November 5, 2019. No objections were filed, and the Commission's Exhibits 300 and 301 will be received in evidence.

FINDINGS OF FACT

In making these findings of fact, the Commission has fully considered and weighed all evidence and inferences to be drawn from the evidence, both those supporting the findings and those to the contrary. Thus, although the Commission may state a finding without expressly disposing of opposing arguments and/or evidence to the contrary, the Commission has fully considered and weighed such. Any finding of fact for which the Commission has made a determination between conflicting evidence indicates the Commission found the source of the evidence that it accepted to be more credible and more persuasive than that of the conflicting evidence.

General

1. The Missouri Public Service Commission ("Commission") first authorized a Fuel Adjustment Clause ("FAC") for Aquila, Inc. ("Aquila") effective July 5, 2007, in File No. ER-2007-0004.⁷ The Commission approved the acquisition of Aquila by Great Plains

⁷ In the Matter of Aquila, Inc. d/b/a Aquila Networks-L&P, for authority to File Tariffs Increasing Electric Rates for the Service provided to Customers in the Aquila Networks-MPS and Aquila Networks-L&P Service Area, Report and Order, File No. ER-2007-0004 (Issued May 17, 2007).

Energy, Inc.⁸, and subsequently Aquila was renamed KCP&L Greater Missouri Operations Company. Since its initial approval of GMO's FAC in 2007, the Commission has approved continuation of GMO's FAC with modifications in its *Reports and Orders* in the Company's general rate cases: File Nos. ER-2009-0090, ER-2010-0356, ER-2012-0175, ER-2016-0156, and ER-2018-0146.⁹

2. The Commission first authorized a FAC for KCPL in File No. ER-2014-0370.¹⁰ Since then, the Commission has approved continuation of KCPL's FAC with modification in its most recent general rate cases: File Nos. ER-2016-0285 and ER-2018-0145.¹¹

3. The GMO prudence review that is the subject of File No. EO-2019-0067 is GMO's eighth and covers its twentieth, twenty-first, and twenty-second accumulation periods. GMO's twentieth accumulation period started December 1, 2016 and ended May 31, 2017. GMO's twenty-first accumulation period started June 1, 2017 and ended November 30, 2017. GMO's twenty-second accumulation period started December 1, 2017 and ended May 31, 2018.¹²

4. The KCPL prudence review that is the subject of File No. EO-2019-0068 is KCPL's second and covers its fourth, fifth and sixth accumulation periods. KCPL's fourth accumulation period started January 1, 2017 and ended June 30, 2017. The fifth

⁸ 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. Report and Order, File No. EM-2007-0374 (Issued July 1, 2008).

⁹ Commission Exhibit 300, Staff Report in EO-2019-0067, p. 1.

¹⁰ In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service, Report and Order, File No. ER-2014-0370 (Issued September 2, 2015).

¹¹ Exhibit 200, p. 1; Commission Exhibit 301, Staff Report in EO-2019-0068, p. 1.

¹² Commission Exhibit 300, Staff Report in EO-2019-0067, pp. 1- 3.

accumulation period started July 1, 2017 and ended December 31, 2017. The sixth accumulation period started January 1, 2018 and ended June 30, 2018.¹³

5. Commission rule 20 CSR 4240-20.090(7)¹⁴ and Section 386.266.4(4), RSMo, provide a prudence review of costs and revenues will occur no less frequently than at 18-month intervals.

KCPL's Renewable Energy Credits

6. During KCPL's prudence review period from January 1, 2017 through June 30, 2018, KCPL did not sell any Renewable Energy Credits ("RECs"), and 722,628 RECs were allowed to expire for purposes of compliance with Missouri's Renewable Energy Standards.¹⁵

7. A renewable energy credit constitutes evidence that a unit of energy has been generated by a renewable resource, can be used or retired only once to comply with the Renewable Energy Standard and, if unused, a REC may exist for up to three years after the date of its creation.¹⁶

8. The Renewable Energy Standard ("RES") was enacted in 2008 as sections 393.1020 to 393.1030, RSMo., and requires electric utilities to provide a certain portion of the electricity they sell to Missouri consumers from renewable energy resources.¹⁷

9. A REC is a certificate corresponding to the environmental attributes of energy produced from renewable sources.¹⁸

¹³ Boustead Rebuttal, Exhibit 200, P. 1; Commission Exhibit 301, Staff Report in EO-2019-0068 p. 1.

¹⁴ Rule 4 CSR 240-20.090(11), when these proceedings were initiated. Effective August 28, 2019, all of the Commission's regulations were transferred from the Department of Economic Development's (DED) Title 4 to the Department of Commerce and Insurance's Title 20.

¹⁵ Boustead Rebuttal, Exhibit 200, p. 4; Commission Exhibit 301, Staff Report in EO-2019-0068 p. 25. Section 393.1030.2, RSMo.

¹⁶ Martin Direct, Exhibit 1, p. 2-3 footnoting Section 393.1030.2, RSMo.

¹⁷ Martin Direct, Exhibit 1, p. 2.

¹⁸ Marke Rebuttal, Exhibit 100, p. 3.

10. A REC is a financial instrument that can be purchased or sold within markets established for the trade of RECs.¹⁹ Buying RECs allows an entity to support renewable energy without having to install solar panels or wind turbines.²⁰ RECs can be purchased in one state and applied for compliance in another state.²¹ One can purchase a REC and can "claim emissions reductions" even if it does not actually reduce the end-use at all-or even increase it.²² For example, a REC generating facility can be located in Florida, where the actual power produced goes to the local grid in Florida, but the credit for the "renewable attributes" of that power would be purchased by a Missouri utility and used to meet the Missouri RES.²³ This is known as an "unbundled" REC, as the energy produced from the REC is not physically delivered to the customers purchasing it.²⁴ To prevent "double counting," the renewable energy produced in Florida cannot be counted for renewable compliance purposes in Florida as the REC has been sold to Missouri.²⁵

12. Selling the 722,628 RECs would have unbundled the RECs from the actual power sold such that the energy which customers then received would lose its environmental attributes.²⁶ Had the RECs been unbundled and sold, the percentage of power received by customers from renewable energy sources during the period January 1, 2017 through June 30, 2018, would have dropped from 25.15% to 19.39%.²⁷

¹⁹ Martin Direct, Exhibit 1, p. 2

²⁰ Marke Rebuttal, Exhibit 100, p. 3.

²¹ Marke Rebuttal, Exhibit 100, p. 3.

²² Marke Rebuttal, Exhibit 100, p. 3

²³ Marke Rebuttal, Exhibit 100, p. 3.

²⁴ Marke Rebuttal, Exhibit 100, p. 3.

²⁵ Marke Rebuttal, Exhibit 100, p. 3.

²⁶ Martin Surrebuttal, Ex. 2, pp 4-5.

²⁷ Martin Surrebuttal, Exhibit 2, p. 5.

13. KCPL determined at least some of its customers preferred not to lose the environmental attributes of the power they were purchasing.²⁸ In support, KCPL observed that customer surveys had showed KCPL's customers valued KCPL's ability to demonstrate that a key component of the power KCPL sold to retail customers was provided from renewable energy resources.²⁹ A number of its larger customers had announced corporate plans to reduce their carbon footprint by making greater use of renewable energy resources for the power that they consumed.³⁰ The City of Kansas City, Missouri ("KCMO") had announced it had cut greenhouse emissions by 40% below 2000 levels, surpassing its goals, and a substantial portion of that reduction could be attributed to KCPL's increased use of renewables.³¹ KCMO's City Council had authorized the City Manager to enter into KCPL's "Renewables Direct Program" to help the city procure 100% of the City's municipal electricity from carbon free sources.³² More than half of the Missouri customer members of KCPL's Customer Advisory Panel had said they were "likely" or "somewhat likely" to participate in a solar program if offered by KCPL at a cost of \$5 to \$10 per month.³³

14. The revenue opportunities in selling the RECs were very limited.³⁴

15. KCPL's determination that the limited revenue opportunities and resulting small customer benefit of approximately \$0.02 per month for usage of 1,000 kWh were

²⁸ Martin Direct, Exhibit 1, pp. 5-7.

²⁹ Martin Direct, Exhibit 1, p. 5.

³⁰ Martin Direct, Exhibit 1, p. 5.

³¹ Martin Direct, Exhibit 1, pp. 5-6.

³² Martin Direct, Exhibit 1, pp. 5-6.

³³ Martin Direct, Exhibit 1, pp. 6-7.

³⁴ Martin Direct, Exhibit 1, p. 4 and 8-9.

outweighed by its customers' desire to retain the environmental attributes of the power they purchased, was reasonable.³⁵

16. The Commission finds that while KCPL's tariff stated how revenues from sold RECs would figure into a Fuel Adjustment Rider ("FAR") calculation, KCPL's tariff did not mandate the sale of GMO'S RECs and KCPL did not violate its tariff in not selling the REC's.

17. The Commission finds that when made, KCPL's decision not to sell the 722,628 RECs was not imprudent in light of the circumstances then existing and considered, to wit: KCPL's consideration of its customers' wishes to retain their energy's environmental attributes; KCPL's consideration that selling the RECs would reduce from 25.15% to 19.39% the percentage of power customers were receiving from renewable energy sources; KCPL's consideration that the revenue opportunities in selling the RECs were very limited; KCPL's consideration that the credit to customers of approximately \$0.02 per month per 1,000kWh was *de minimis* and outweighed by KCPL's customers' desires to receive energy bundled with their corresponding renewable energy credits and thereby reduce their carbon footprint.

Auxiliary Power Allocation

18. Auxiliary power is the electricity GMO uses in the process of generating steam for its steam operations and electricity for its electric operations at its Lake Road generating facility.³⁶

19. Two separate products are produced at the Lake Road Station: electricity for the GMO L&P electric power grid, and process steam delivered to industrial customers

³⁵ Martin Surrebuttal, Exhibit 2, pp. 2-7; Martin Direct, Exhibit 1, pp. 9-11.

³⁶ Mantle Rebuttal, Exhibit 101, p. 7.

located near the Lake Road Station. The two business operations are referred to as the electric and steam jurisdictions.³⁷

20. GMO uses a seven-factor allocation method to separate its rate base and cost of service between electric and steam products.³⁸ This allocation methodology is applied to the electric generation assets in an effort to segregate and allocate appropriately the portion of generation plant used in both the production of electricity and the production of industrial steam.³⁹ With respect to each of the seven allocation factors, GMO's methodology calculates a ratio of all steam boiler production plant to total electric and steam production plant in order to separate the costs between the two utility jurisdictions.⁴⁰

³⁷ Klote Direct, (Electric) Testimony in File No. HR-2009-0092, Exhibit 8, pp. 4-5, and Klote Direct, (Gas) Testimony in File No. HR-2009-0092, Exhibit 7, p. 5.

³⁸ Klote Direct, (Electric) Testimony in File No. HR-2009-0092, Exhibit 8, pp. 5-6, and Tr. pp. 204-209. The seven-factor Allocation Method included the following factors:

1. Allocated Plant Base Factor – this is the ratio of all allocated steam plant to total regulated electric and steam plant.

2. Land Factor, Structures Factor, Access Electric Equipment Factor, Electric/Steam Plant Factor (FERC 310, 311, 315, 341-346) – this is the ratio of all allocated steam production plant to total electric and steam production plant.

3. Boiler Plant Factor (FERC 312) – this is the ratio of all allocated steam boiler plant 5 equipment to total regulated electric and steam boiler plant equipment.

4. Turbo generators (“turbogen”) Factor (FERC 314) – this is the ratio of all allocated steam turbogen units to total regulated electric and steam turbogen units.

5. 900# Steam Demand Factor - this is used in steam production allocation calculations, and Miscellaneous Steam Gen Equipment Factor (FERC 316) – this is the weighted ratio of the highest maximum steam coincident peaks over the previous three years and the total highest maximum coincident peaks over the previous three years.

6. Electric after Steam operation and maintenance (“O&M”) allocation (O&M Factor) – this is the ratio of allocated payroll applicable to steam business to the total generation payroll charged to O&M. The allocated payroll applicable to steam business is calculated using the ratio of the previous three years of steam coal burn to total Lake Road coal burn applied against total Lake Road payroll charged to O&M.

7. Electric after Steam administrative and general (“A&G”) allocation (A&G Factor) – this factor is comprised of the sum of a 50% weighting of steam O&M to total O&M from Annual Report Form 1, page 323 and a 50% weighting of total allocated steam plant to total steam and electric plant. Klote Direct (Electric) Testimony in File No. HR-2009-0092, Exhibit 8, pp. 4-6, and Tr. pp 204-209.

³⁹ Klote Direct, (Electric) Testimony in File No. HR-2009-0092, Exhibit 8, p. 4-6 and Tr. pp. 204-209.

⁴⁰ Klote Direct, (Gas) Testimony in File No. HR-2009-0092, Exhibit 7, pp. 4-6.

21. Except for a minor modification to accommodate the consolidation of the MPS and L&P jurisdictions into one GMO jurisdiction,⁴¹ the same seven factor allocation method has been used to distribute costs between GMO's electric and steam operations in every GMO rate case since 2009: File Nos. ER-2010-0356, ER-2012-0175, ER-2016-0156 and ER-2018-0146.⁴²

22. In its most recent general rate case, ER-2018-0146, GMO proposed an allocation methodology involving direct assignment of auxiliary power costs "more akin to the methodology from EO-94-36."⁴³ Staff objected, and the allocations issue was resolved in an unopposed stipulation.⁴⁴ This stipulation was approved by the Commission. The Commission takes official notice of its October 31, 2018, Order in ER-2018-0146 approving the unopposed stipulation and ordering its signatories, including GMO, to comply with the terms of the stipulation. This unopposed stipulation and agreement expressly required GMO's current allocation methodology to be used in FAC cases until revisited in GMO's next rate case.⁴⁵

23. In light of the provisions expressly agreed to and ordered by the Commission in ER-2018-0146 that GMO would use the allocation model approved in

⁴¹ Aquila Networks-MPS and Aquila Networks-L&P

⁴² Nunn Direct, Exhibit 3, p. 6.

⁴³ Nunn Direct, Exhibit 3, p. 8.

⁴⁴ Nunn Direct, Exhibit 3, p. 8.

⁴⁵ The Commission officially notices the Order Approving Stipulations and Agreements of October 31, 2018, in ER-2018-0146. That Order incorporated the stipulation into the order. Section 10 of the Stipulation stated: "GMO Steam Allocations

GMO will use the allocation numbers used in Staff's model filed in Case No. ER-2016-0156. These allocation numbers shall be used by GMO in its FAC, QCA and surveillance reporting. GMO agrees to work with Staff, OPC and MCEG to develop new steam allocation procedures prior to GMO's next electric general rate case."

The following parties signed the Stipulation: the Commission Staff; KLPL; Midwest Energy Consumers Group; GMO; Missouri Division of Energy; Missouri Industrial Energy Consumers; Missouri Joint Municipal Electric Utility Commission; Renew Missouri. The Office of Public Counsel did not sign the stipulation, nor did it object to it. Noting this, the Commission's October 31, 2018, Order treated the stipulation as "unanimous."

ER-2016-0156, and the continuation of the previous approvals of this method in File Nos. ER-2010-0356, ER-2012-0175, and ER-2016-0156, GMO was not imprudent in its method of allocating the costs associated with auxiliary power between the electric operations and the steam operation at its Lake Road Plant.

24. Regardless of the prior approvals of GMO's method, however, GMO has sustained its burden here to show that its seven-factor allocation method, whereby for each of the seven factors it calculated a ratio of steam production plant to total the regulated electric and steam production plant and thereby separated GMO's rate base and cost of service between electric and steam products, was not imprudent.

Rock Creek and Osborn Wind Purchase Power Agreements

25. Both the Rock Creek and Osborn wind projects are located in northwest Missouri, Osborn in Dekalb County, and Rock Creek in Atchison County. KCPL takes 60% of the energy from each wind facility, and GMO takes the remaining 40%.⁴⁶

26. GMO and KCPL have long-term (20-year) Purchased Power Agreements ("PPAs") with Rock Creek Wind Project, LLC, for energy and RECs generated by the Rock Creek Wind Farm located in Missouri.⁴⁷

27. The Rock Creek Wind Project PPA is a long-term agreement, and the performance of this contract should be viewed on a long-term basis and not just from data gathered during this Review Period.⁴⁸

⁴⁶ Crawford Direct, Exhibit 5, pp. 2-3.

⁴⁷ Crawford Direct, Exhibit 5, pp. 3-4.

⁴⁸ Commission Exhibit 300, Staff Report in EO-2019-0067, p. 34. Crawford Direct, Exhibit 5, pp. 3-5; Crawford Surrebuttal, Exhibit 6, pp. 7, 8, 10, 12.

28. GMO and KCPL have a long-term (20-year) PPA with NextEra Energy Resources for energy and RECs generated by the Osborn Wind Energy Center located in Missouri.⁴⁹

29. GMO's Osborn Wind Energy PPA is a long-term PPA and the performance of this contract should be viewed on a long-term basis and not just from data gathered during this Review Period.⁵⁰

30. In deciding to acquire the PPAs from the Missouri-based Rock Creek Wind Project and Osborn wind projects, GMO and KCPL considered the following:

- a. Missouri Renewable Energy Standard ("RES") incentives;
- b. The economic benefits to the area;
- c. The pending elimination of the federal Production Tax Credit ("PTC");
- d. The Environmental Protection Agency's ("EPA") proposed Clean Power Plan;
- e. Projected revenue requirement reduction over 20 years; and
- f. The relatively low transmission risks.⁵¹

31. In deciding to acquire the PPAs, GMO and KCPL considered that both facilities qualify for the RES incentive set out in 20 CSR 4240-20.100 (2)(B)1 and (3)(G) and Section 393.1030.1, RSMo.⁵²

32. In deciding to acquire the PPAs, GMO and KCPL considered the economic benefits to the local communities involved, estimating that the project would result in road and bridge improvements; money in support of the local schools; money to support local

⁴⁹ Crawford Direct, Exhibit 5, pp. 3-4; Crawford Surrebuttal, Exhibit 6, pp. 7, and 12.

⁵⁰ Crawford Direct, Exhibit 5, p. 3; Crawford Surrebuttal, Exhibit 6, pp. 7 and 12.

⁵¹ Crawford Direct, Exhibit 5, pp. 3-4.

⁵² Crawford Direct, Exhibit 5, p. 3.

emergency services; jobs provided to the local areas; and property tax benefits for the local areas.⁵³

33. In deciding to acquire the PPAs, GMO and KCPL considered that the facilities would provide additional CO₂-free energy that would comply with Clean Power Plan requirements beginning in 2020.⁵⁴

34. In deciding to acquire the PPAs, GMO and KCPL considered the status of the Production Tax Credit, which was set to end for projects beginning construction in 2014. GMO's decision took into consideration that higher PPA contract prices could then be in the offing.⁵⁵

35. In deciding to acquire the PPAs, GMO and KCPL projected revenue requirements and evaluated the PPAs over 9 scenarios. Both PPAs were shown to reduce net present value revenue requirements ("NPVRR") under 8 of 9 scenarios.⁵⁶ The only one that increased NPVRR was based on low natural gas prices and no future CO₂ restrictions.⁵⁷ The evaluations were based on the projected Southwest Power Pool ("SPP") wholesale market energy prices used in the KCP&L and GMO 2014 Integrated Resource Plan analysis.⁵⁸

36. When made, GMO and KCPL's decisions to acquire the Rock Creek Wind Project and Osborn Wind Project PPA's were not imprudent in light of the long-term nature

⁵³ Crawford, Direct, Exhibit 5, p. 5.

⁵⁴ Crawford Direct, Exhibit 5, p. 4.

⁵⁵ Crawford Direct, Exhibit 5, pp. 3-4.

⁵⁶ Crawford Direct, Exhibit 5, p. 4-5.

⁵⁷ The supposition was that if natural gas remained low or that federal agencies did restrict CO₂ emissions in the future, then NPVRR could *increase*. See Crawford Direct, Exhibit 5, p. 5. Crawford stated in Surrebuttal, Exhibit 6, p. 13: "Given the reasonable likelihood of future CO₂ restrictions and the reasonable likelihood that the value of these renewable PPAs would increase under such restrictions, the fact that the PPAs have costs in excess of recent SPP revenues does not mean that the PPAs are imprudent."

⁵⁸ Crawford Direct, Exhibit 5, p. 6-7.

of these investments, RES incentives, the economic benefits to the areas, the impending elimination of the federal Production Tax Credit, the EPA's proposed Clean Power Plan, projected revenue requirement reductions over 20 years, and the relatively low transmission risks.

CONCLUSIONS OF LAW

General

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 KCP&L and GMO, 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.

C. Commission rule 20 CSR 4240-20.090(11) 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 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.⁵⁹

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 do not make the decision extravagant or imprudent."⁶⁰

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. The determination of witness credibility is left to the Commission, "which is free to believe none, part or all of the testimony."⁶¹

H. The Commission must find both that (1) the utility acted imprudently and (2) the imprudence resulted in harm to the utility's ratepayers to disallow a cost based on a finding that the cost was imprudently incurred.⁶²

⁵⁹ 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., 4th 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).

⁶⁰ *State ex rel. Missouri Power and Light Co. v. Pub. Serv. Com'n*, 669 S.W.2d 941, 948 (Mo. App. W.D. 1984).

⁶¹ *In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service and Midwest Energy Consumers' Group v. Missouri Public Service Commission*, 509 S.W.3d 757, 764 (Mo. App. W.D. 2016).

⁶² See *State ex rel. Associated Natural Gas Co. v. Public Service Com'n of State of Mo.*, 954 S.W.2d 520, 529-530 (Mo. App. W.D., 1997).

I. Any costs which the Commission determines have been incurred imprudently or in violation of the Rider FAC shall be returned to customers.⁶³ The prudence review includes an analysis of costs and revenues, and the costs eligible for the Fuel and Purchased Power Adjustment (“FPA”) include those laid out in the tariff, which “will be offset by jurisdictional off-system sales revenues, applicable SSP revenues, and revenue from the sale of Renewable Energy Certificates or Credits (“REC”).”⁶⁴

J. KCPL’s FAC tariff provides for the computation of a Fuel Adjustment Rider (“FAR”). The FAR is a function of the FPA.⁶⁵ The FPA is a function of actual net energy costs (“ANEC”).⁶⁶ ANEC, in turn, is a function, in part, of revenue from the sale of renewable energy credits (“R”).⁶⁷ The tariff states:

“R = Renewable Energy Credit Revenue:
Revenues reflected in FERC account 509000 from the sale of Renewable Energy Credits that are not needed to meet the Renewable Energy Standards.”⁶⁸

K. For each six-month accumulation period, GMO’s Commission-approved FAC allows GMO to recover from (if the actual net energy costs exceed) or requires a refund to (if the actual net energy costs are less than) its rate payers ninety-five percent of its Missouri jurisdictional actual net energy costs (“ANEC”) less net base energy costs (“B”) which is identified as $(ANEC - B) * J$ in GMO’s FAC.⁶⁹

⁶³ Exhibit 202, P.S.C. MO. No. 7 Second Revised Sheet No. 50.9.

⁶⁴ Exhibit 202, P.S.C. MO No. 7 Second Revised Sheet No. 50.11.

⁶⁵ Exhibit 202, P.S.C. MO No. 7 Second Revised Sheet No. 50.11.

⁶⁶ Exhibit 202, P.S.C. Mo. No. 7, Second Revised Sheet No. 50.12, $FPA = 95\% * ((ANEC - B) * J) + T + I + P$

⁶⁷ Exhibit 202, P.S.C. MO No. 7 Second Revised Sheet No. 50.12. ANEC = Actual Net Energy Costs = $(FC + E + PP + TC - OSSR - R)$, where R = Renewable Energy Credit Revenue. P.S.C. MO. No. 7 Second Revised Sheet No. 50.14.

⁶⁸ Exhibit 202, P.S.C. MO. No. 7 Second Revised Sheet No. 50.14, Canceling P.S.C. MO. No. 7 First Revised Sheet No. 50.14.

⁶⁹ Commission Exhibit 300, Staff Report in EO-2019-0067, F.N. 7, 8 and 9, p. 4: “Actual Net Energy Costs are equal to fuel costs (FC) plus net emission costs (E) plus purchased power costs (PP) plus transmission

L. Per GMO's tariff, ANEC net energy costs are defined by GMO's tariff as the prudently incurred variable fuel costs, purchased power costs, transmission costs and net emissions costs minus off-system sales revenues and renewable energy credit revenues.⁷⁰

M. Per GMO's tariff, each six-month accumulation period is followed by a twelve-month recovery period during which 95% of the $(ANEC-B)^*J$ amount (including the monthly application of interest) is recovered from or returned to ratepayers through an increase or decrease in the FAC Fuel Adjustment Rates ("FAR") during a twelve-month recovery period ("RP").⁷¹

N. GMO's FAC tariff is designed to true-up the difference between the revenues billed and the revenues authorized (including the monthly application of interest) for collection during recovery periods. Any disallowance the Commission orders as a result of a prudence review shall include interest at the Company's short-term interest rate and will be accounted for as an item of cost in a future filing to adjust the FAR.⁷²

Renewable Energy Credits

O. The Missouri Renewable Energy Standard ("RES") requires all investor-owned electric utilities in Missouri to provide at least two percent (2%) of their retail

costs (TC) minus off-system sales revenue (OSSR) and renewable energy credit revenue (R) as defined on GMO's 3rd Revised Sheet No. 127.2. Net base energy costs (B) are defined on GMO's 5th Revised Sheet No. 127.10 as net base energy costs ordered by the Commission in the last general rate case consistent with the costs and revenues included in the calculation of the FPA. Net base energy costs will be calculated as shown below $SAP \times \text{Base Factor ("BF")}$. For the twentieth, twenty-first and twenty-second accumulation periods, the $(ANEC-B)^*J$ amounts are included on line 5 of GMO's 1st Revised Sheet No. 127.12, 2nd Revised Sheet No. 127.12, and 3rd Revised Sheet No. 127.12, respectively."

⁷⁰ See Commission Exhibit 300, Staff Report in EO-2019-0067, F.N. 4; GMO's 1st Revised Sheet No. 127.12, 2nd Revised Sheet No. 127.12, and 3rd Revised Sheet No. 127.12.

⁷¹ Commission Exhibit 300, Staff Report in EO-2019-0067, p. 4.

⁷² Commission Exhibit 300, Staff Report in EO-2019-0067, p. 4.

electricity sales using renewable energy resources in each calendar year 2011 through 2013, and to increase that percentage over time to at least fifteen percent by 2021.⁷³

P. Commission rule 20 CSR 4240-20.100, sets out the definitions, structure, operations, and procedures for implementing the RES.

Q. The Commission's RES rule creates categories of renewable energy resources.⁷⁴ Renewable energy resources produce electrical energy and are wind, solar sources, thermal sources, hydroelectric sources, photovoltaic cells and panels, fuel cells using hydrogen produced by one of the above named electrical energy sources, and other sources of energy that become available after August 28, 2007, and are certified as renewable by the Missouri Department of Economic Development – Division of Energy.⁷⁵

R. Once an energy resource is certified, it begins producing RECs, with one REC representing one megawatt-hour of electricity that has been generated from the renewable energy resource. These RECs can be sold and/or traded in the market place bundled with or without the energy that generated the REC.⁷⁶

S. The cost of a REC (as a RES compliance cost) cannot be recovered through GMO's FAC.⁷⁷ Revenues from the sale of RECs are recovered through the FAC as an off-set to fuel costs.⁷⁸

Auxiliary Power Allocation

⁷³ Section 393.1020, RSMo. 2016 and Section 393.1030.1(1), RSMo. 2016.

⁷⁴ 20 CSR 240-20.100 (5)(B).

⁷⁵ Commission Exhibit 300, Staff Report in EO-2019-0067, p. 24. The Division of Energy has been moved to the Department of Natural Resources.

⁷⁶ 20 CSR 4240-20.100(6)(B)(5)(J).

⁷⁷ 20 CSR 4240-20.100(6)(A)(16).

⁷⁸ Exhibit 202. P.S.C. MO No. 7 Second Revised Sheet No. 50.12. ANEC = Actual Net Energy Costs = (FC + E + PP + TC – OSSR - R), where R = Renewable Energy Credit Revenue. P.S.C. MO. No. 7 Second Revised Sheet No. 50.14.

T. Neither GMO's tariff nor any relevant statute or regulation required GMO to directly allocate the fuel costs associated with auxiliary power between the electric operations and the steam operations at GMO's Lake Road plant.

U. Section 386.550, RSMo, states: "In all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive."⁷⁹

V. In ER-2018-0146, the Commission issued its *Order Approving Stipulations and Agreements* on October 31, 2018. The Commission takes official notice that Order and that that Order approved a stipulation with the following language:⁸⁰

"GMO will use the allocation numbers used in Staff's model filed in Case No. ER-2016-0156. These allocation numbers shall be used by GMO in its FAC, QCA and surveillance reporting. GMO agrees to work with Staff, OPC, and MEGC to develop new steam allocation procedures prior to GMO's next electric general rate case."

KCPL was a signatory party of the stipulation referenced in the Order. The stipulation was incorporated into the Order. The order required KCPL to comply with the aforesaid provision. The aforesaid October 31, 2018, Order entered in ER-2018-0146 became final and is conclusive in this case.

Rock Creek and Osborn Wind Purchase Power Agreements

W. Rule 20 CSR 4240-20.090(1)(B) and (C), and GMO's FAC allow purchased power costs and revenues in its FERC account to be recovered through the FAC. If GMO

⁷⁹ See *McBride & Son Builders, Inc. v. Union Electric Company*, 526 S.W.2d 310, 312 (Mo. 1975). See also *State ex rel. Ozark Border Elec. Co-op v. Public Service*, 924 S.W.2d 597, 601 (Mo. App. W.D. 1996): "This statutory provision makes a decision of the Commission immune to collateral attack."

⁸⁰ See *Environmental Utilities, LLC v. Public Service Commission*, 219 S.W.3d 256, 265 (Mo. App. W.D. 2007). Noting that an agency may officially notice all matters of which a court takes judicial notice, the court held that the Commission had taken proper administrative notice of conclusive findings against a utility in a prior PSC hearing. The appellate court went on then to find that the Commission's prior finding was conclusive.

imprudently included costs from the Osborn Wind Energy PPA in its FAC, ratepayer harm could result from an increase in FAC charges.⁸¹

DECISION

The Staff and the OPC challenge KCPL's decision to allow 722,628 RECs to expire during the File EO-2019-0068 review period and not sell them. . It is the Commission's decision that although the tariff expressly contemplates the sale of RECs and provides that when such sales occur the revenues will flow back to customers through the tariff formulas, the tariff does not, in fact, mandate their sale. The existence alone of a contingent variable in a tariff's mathematical formula,⁸² where the formula will properly function with zero assigned to the variable, raises no inference that a utility must sell RECs to create a number for the variable.

The Commission finds that KCPL was not imprudent in choosing not to sell the RECs. KCPL's surveys showed its customers valued its ability to demonstrate that a key component of the power it sold was provided from renewable energy resources. Its largest customer had announced plans to reduce their carbon footprint by using more renewable energy resources for the power they consumed. KCMO had announced it had cut greenhouse emissions by 50%, and its Council had authorized participation in KCPL's "Renewables Direct Program" to help the city procure 100% of the City's municipal electricity from carbon free sources.⁸³ More than half of the Missouri customer members of KCPL's Customer Advisory Panel had said they were "likely" or "somewhat likely" to participate in a solar program if offered by KCPL at a cost of \$5 to \$10 per month.⁸⁴

⁸¹ Commission Exhibit 300, Staff Report in EO-2019-0067, p. 32

⁸² E.g., "R" for renewable energy credit.

⁸³ Martin Direct, Exhibit 1, pp. 5-7.

⁸⁴ Martin Direct, Exhibit 1, pp. 6-7.

KCPL's tariff mandated no customer poll, and it is the decision of the Commission that KCPL's conclusion that its customers wanted to retain the environmental attributes of their power was adequately supported.

It is for the Commission to determine the credibility and weight to be accorded the evidence, and it is the Commission's decision that the tariff did not preclude GMO's considering and weighing its customers' environmental concerns against cost considerations in reaching its decision. When made, KCPL's decision not to sell the 722,628 RECs was not imprudent in light of the circumstances then existing and considered, to wit: KCPL's consideration of its customers' wishes to retain their energy's environmental attributes; KCPL's consideration that selling the RECs would reduce from 25.15% to 19.39% the percentage of power customers were receiving from renewable energy sources; KCPL's consideration that the revenue opportunities in selling the RECs were very limited; KCPL's consideration that the credit to customers of approximately \$0.02 per month per 1,000kWh was *de minimis* and outweighed by KCPL's customers' desires to receive energy bundled with their corresponding renewable energy credits and thereby reduce their carbon footprint. It is the decision of the Commission that KCPL has sustained its burden of showing that its decision process was prudent, and, thus, that its decision not to sell the 722,628 RECs was not imprudent.

The Commission will not here reach the question of whether OPC's suggested cost allocation method for steam and electric operations at the Lake Road facility might be better. That question was disposed of conclusively in GMO's last rate case, ER-2018-0146, by and through the language of the stipulation and agreement approved by the Commission and incorporated into its Order and, therefore, is not subject to

collateral attack here per Section 386.550, RSMo, 2016. Any reexamination of the Order entered in ER-2018-0146, must wait for the next rate case. Here the question presented is prudence under the FAC statute. It is for the Commission to assess the weight and credibility of testimony and the evidence. Having considered the detailed evidence on the seven-factor allocation method, evidence of Staff's previous objections to OPC's suggested method, and evidence that the Commission has repeatedly approved GMO's seven-factor allocation method, the Commission finds its use by GMO was not imprudent.

The Commission finds that the Rock Creek and Osborn wind power PPAs were long-term investments made in contemplation of the long-term (20-year) ebb and flow of market and political forces. OPC's argument, on the other hand, that the PPAs were not needed when acquired to meet Missouri RES requirements or customers' needs and that values declining before the PPA acquisition continued to decline afterwards, presupposes the PPAs were acquired as only short-term investments. The Commission will not replace the companies' primary supposition at the point of decision that the PPAs were being acquired in the context of a long term, twenty-year investment with a supposition that the investment was short term, and then apply a hindsight test and pronounce the investments imprudent, . It is the Commission's decision that when made, the companies' decisions to acquire the Rock Creek and Osborn Wind PPAs were not imprudent in light of the factors that they appropriately considered.

The Commission finds Staff's request for an adjustment of \$357,308 and OPC's request for a prudence adjustment of \$325,969 in File No. EO-2019-0068 are not appropriate and will deny them. The Commission further finds OPC's request for a prudence adjustment of \$469,409.00 in File No. EO-2019-0067 inappropriate and will

deny it. With regard to the Rock Creek and Osborn PPAs, the Commission finds OPC's request for a prudence adjustment of \$9,484,315 in KCPL's next FAR filing and of \$11,070,668 in GMO's next FAR filing are not appropriate and will deny them.

THE COMMISSION ORDERS THAT:

1. Staff's Exhibit 202 and the Commission's Exhibits 300 and 301, described in the body of this order, are received in evidence and made a part of the record. The Commission's Data Center shall appropriately mark those exhibits and enter them into EFIS.

2. The Commission Staff's request for a prudence adjustment of \$357,308 and OPC's request for a prudence adjustment of \$325,969 in File No. EO-2019-0068 are denied.

3. OPC's request for a prudence adjustment of \$469,409 in File No. EO-2019-0067 is denied.

4. OPC's request relative to the Rock Creek and Osborn PPAs, for prudence adjustments of \$9,484,315 in KCPL's next FAR filing and \$11,070,668 in GMO's next FAR filing, is denied.

5. This Order shall be effective on December 6, 2019.



BY THE COMMISSION

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

Morris L. Woodruff
Secretary

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

Graham, Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of KCP&L Greater)
 Missouri Operations Company for Approval of a) **File No. EO-2019-0244**
 Special Rate for a Facility Whose Primary Industry) Tracking No. YE-2020-0002
 Is the Production or Fabrication of Steel in or)
 Around Sedalia, Missouri)

REPORT AND ORDER

Appeal to Court of Appeals was dismissed (Case No. WD83531).

DISCRIMINATION

§11 Inequality of rates

A special rate for a high use customer, taking electricity at a high load factor, that is less than its fully allocated cost, but more than its incremental cost is just and reasonable and is not unduly or unreasonably preferential.

ELECTRIC

§20 Rates

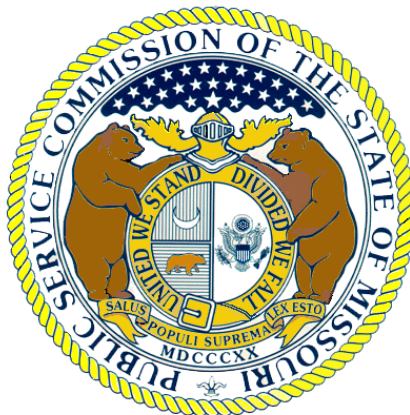
A special rate for a high use customer, taking electricity at a high load factor, that is less than its fully allocated cost, but more than its incremental cost is just and reasonable and is not unduly or unreasonably preferential.

RATES

§21 Discrimination, partiality, or unfairness

A special rate for a high use customer, taking electricity at a high load factor, that is less than its fully allocated cost, but more than its incremental cost is just and reasonable and is not unduly or unreasonably preferential.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Application of KCP&L Greater)
Missouri Operations Company for Approval of a)
Special Rate for a Facility Whose Primary Industry)
Is the Production or Fabrication of Steel in or)
Around Sedalia, Missouri)

File No. EO-2019-0244
Tariff No. YE-2020-0002

REPORT AND ORDER

Issue Date: November 13, 2019

Effective Date: November 23, 2019

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of KCP&L Greater)
 Missouri Operations Company for Approval of a) **File No. EO-2019-0244**
 Special Rate for a Facility Whose Primary Industry) **Tariff No. YE-2020-0002**
 Is the Production or Fabrication of Steel in or)
 Around Sedalia, Missouri)

APPEARANCES

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James M. Fischer, Attorney at Law, Fischer & Dority, P.C. 101 Madison Street, Suite 400, Jefferson City, Missouri 65101.

For Evergy Missouri West, f/k/a KCP&L Greater Missouri Operations Company.¹

Michael K. Lavanga and Peter J. Mattheis, Attorneys at Law, Stone Mattheis Xenopoulos & Brew, PC, 1025 Thomas Jefferson Street, N.W., Suite 800 West, Washington, D.C. 20007, and

Stephanie S. Bell, Attorney at Law, Ellinger & Associates, LLC, 308 East High Street, Suite 300, Jefferson City, Missouri 65101.

For Nucor Steel Sedalia, LLC.

Kevin A. Thompson, Chief Staff Counsel, Missouri Public Service Commission, 200 Madison Street, Suite. 800, Jefferson City, Missouri 65102-0360.

For the Staff of the Missouri Public Service Commission.

Caleb Hall, 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.

David L. Woodsmall, Attorney at Law, 308 E. High Street, Suite 204, Jefferson City, Missouri 65101.

For the Midwest Energy Consumers' Group.

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

¹ KCP&L Greater Missouri Operations Company has changed its name to Evergy Missouri West. The Commission will refer to the company by its new name throughout this Report and Order.

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

On July 12, 2019, Evergy Missouri West (EMW), then known as KCP&L Greater Missouri Operations Company (GMO) filed an Application seeking authority from the Commission to implement a special incremental load rate for a steel production facility in Sedalia, Missouri. The Application explains that EMW and Nucor Steel Sedalia, LLC, (Nucor) the owner of the steel production facility, have signed a Special Incremental Load Rate Contract that establishes the rate and terms of service by which EMW intends to serve Nucor. Along with the Application, EMW filed a Special Incremental Load Tariff to

implement the agreed-upon rate for Nucor. That tariff carries a January 1, 2020 effective date.²

The Commission directed that notice of EMW's Application be given to potentially interested parties. Nucor and the Midwest Energy Consumers' Group (MECG) were allowed to intervene. Thereafter, the Commission adopted a procedural schedule.

EMW prefiled direct testimony along with its Application. Although the procedural schedule allowed for the prefiling of rebuttal and surrebuttal testimony, no such testimony was filed.³ An evidentiary hearing was held on October 17, 2019. Thereafter, the parties filed initial briefs on November 1, 2019, and reply briefs on November 8, 2019.

The Stipulation and Agreement

EMW, the Staff of the Commission, and Nucor filed a non-unanimous stipulation and agreement on September 19, 2019. That stipulation and agreement purports to resolve all pending issues and would have the Commission approve the contract between EMW and Nucor, as well as an amended Special Incremental Load Tariff. Public Counsel did not sign the stipulation and agreement, but did not oppose it. However, on September 24, 2019, MECG filed a timely objection to the stipulation and agreement.

With the stipulation and agreement having been objected to, the evidentiary hearing proceeded on the assumption that the stipulation and agreement had become merely a joint position statement of the signatory parties, which they continued to support. After the conclusion of the hearing, but before initial briefs were filed, MECG filed notice on October 28, 2019, withdrawing its objection to the stipulation and agreement. The Commission will

² Tariff No. YE-2020-0002.

³ EMW prefiled the Direct Testimony of Kevin Van de Ven, Vice President and General Manager of Nucor. Nucor was not a party at the time the testimony was prefiled. At the evidentiary hearing, Nucor, which by that time had been allowed to intervene, sponsored Mr. Van de Ven's testimony on its own behalf.

address the treatment of the now unanimous stipulation and agreement later in this Report and Order.

Findings of Fact

1. EMW 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, including the Sedalia, Missouri area.

2. Nucor and its affiliates manufacture steel and steel products at over 60 facilities in the United States, including 21 steel mills that use electric arc furnaces to produce steel.⁴

3. Nucor is constructing a steel rebar producing micro mill in Sedalia. The Sedalia plant will utilize an electric arc furnace to recycle scrap steel into steel rebar. At full production, the Sedalia plant will convert scrap steel into approximately 380,000 tons of steel rebar per year.⁵

4. When operational, the Nucor steel mill will be the largest energy user within EMW's service territory. The mill will take electric power with a high load factor.⁶

5. The Nucor steel mill will take electric power directly from a newly constructed EMW substation at 13,800 volts.⁷

6. At the time of the hearing, construction of the mill was approximately ninety percent complete.⁸ Nucor expects to begin commercial steel production in the first quarter of 2020.⁹

⁴ Van de Ven Direct, Ex. 4, Page 3, Lines 15-17.

⁵ Van de Ven Direct, Ex. 4, Pages 3-4, Lines 22-23, 1-2.

⁶ Ives Direct, Ex. 2, Page 8, Lines 19-21. The numbers shown in the testimony are confidential.

⁷ Transcript, Page 132, Lines 1-4.

⁸ Transcript, Page 92, Lines 20-22.

⁹ Transcript, Page 93, Lines 6-11.

7. Nucor needs to have its electric rate approved and in effect before starting commercial operations.¹⁰

8. Upon completion, the Nucor project will encompass more than \$250 million of private investment and will create 250 new employment opportunities. The new employment positions include highly technical, skilled, well compensated positions, with an estimated average annual salary of \$65,000, nearly double the current average wage in the Sedalia area.¹¹

9. The opening of the Nucor steel production plant will significantly increase the tax base for local government units, benefiting the Sedalia area.¹²

10. Nucor accepted Sedalia and Missouri's bid to host the steel production plant after a competitive bidding process that included proposals from other states.¹³

11. Competitive electricity rates are very important to Nucor and were a primary factor in its decision to locate its plant in Sedalia.¹⁴

12. Absent the availability of a special electric rate, Nucor would not have chosen to locate its steelmaking operations in Sedalia.¹⁵

13. The contract between EMW and Nucor provides that EMW will supply electricity to Nucor at a fixed rate for a period of ten years. That fixed rate is expected to exceed EMW's average incremental cost to serve Nucor over that period, meaning the contract rate will contribute to recovery of EMW's fixed costs and thereby reduce rates paid

¹⁰ Transcript, Page 93, Lines 12-21.

¹¹ Stombaugh Direct, Ex. 3, Pages 2-3, Lines 22-23, 1-3.

¹² Craig Direct, Ex. 1, Page 4, Lines 9-16.

¹³ Ives Direct, Ex. 2, Page 4, Lines 10-12.

¹⁴ Ives Direct, Ex. 2, Page 5, Lines 9-13.

¹⁵ Van de Ven Direct, Ex. 4, Page 8, Lines 5-6.

by EMW's other customers below the level that would exist if EMW did not serve Nucor.¹⁶

14. EMW will obtain the power needed to serve Nucor by entering into a power purchase agreement for the delivery of wind power. This power purchase agreement will enable the incremental cost of serving Nucor to be more easily isolated from other EMW energy supply sources.¹⁷

15. EMW will track the costs to serve Nucor separately from the energy costs incurred to serve other customers, and those costs will not be considered as a component in the calculations associated with EMW's Fuel Adjustment Clause.¹⁸

16. The stipulation and agreement¹⁹ provides that the Commission should approve the contract between EMW and Nucor. Further, it provides that the Commission should approve and amended Special Incremental Load Tariff to become effective on January 1, 2020.

17. The stipulation and agreement also includes provisions to protect EMW's other customers from any adverse effects from the special rate being provided to Nucor. EMW expects that the overall aggregate revenues it receives from Nucor over the ten-year period of the special contract and rate will exceed the company's incremental cost to provide that service. However, EMW acknowledges that on a month-to-month view, conditions could fluctuate enough to produce an under-recovery of incremental costs in a specific month or months of the test year used to establish rates in a future rate case.²⁰ The stipulation and agreement addresses that possibility by providing that no such revenue

¹⁶ Ives Direct, Ex. 2, Page 10, Lines 4-16. The numbers describing EMW's incremental costs and the contract rate are included in the testimony, but are confidential. The entire contract is attached to Ives' Direct Testimony as Confidential Schedule DRI-2.

¹⁷ Ives Direct, Ex. 2, Page 13, Lines 5-11.

¹⁸ Ives Direct, Ex. 2, Page 14, Lines 1-6.

¹⁹ The stipulation and agreement is Ex. 5.

²⁰ Ives Direct, Ex. 2, Page 15, Lines 1-9.

deficiency would be reflected in EMW's cost of service during the ten-year term of the special contract and rate.²¹ In other words, EMW's shareholders would be responsible for any such revenue shortfall, not ratepayers.

18. EMW does not want to recover such a revenue deficiency from its other ratepayers, and the special rate is not designed to allow for such recovery.²² Indeed, because Nucor will represent new load, EMW's revenues will increase as a result of serving Nucor, so there will be no need to spread any reduction of revenues, or shortfall of cost recovery to other customers.²³

19. EMW will incur substantial capital costs to provide electric service to Nucor, including approximately \$18 million needed to construct a new substation to serve the mill. All such incremental costs are included in the calculation of the special rate.²⁴

20. EMW is not requesting approval of the special contract and special rate under the provisions of section 393.355, RSMo.²⁵

21. In a 2015 rate case decision involving Union Electric Company, d/b/a Ameren Missouri and its largest customer, Noranda, the Commission approved a special electric rate for service to Noranda. However, in denying a request that the rate be established for a ten-year period, the Commission said: "the Commission cannot bind future Commission's, nor can it preclude future litigants from presenting contrary positions in future rate cases, positions to which the Commission will need to give due consideration."²⁶ The Noranda

²¹ Ex. 5 and Transcript, Page 115, Lines 11-16.

²² Transcript, Page 146, Lines 17-25.

²³ Ives Direct, Ex. 2, Page 11, Lines 9-12.

²⁴ Transcript, Page 125, Lines 3-18.

²⁵ Ives Direct, Ex. 2, Page 7, Lines 17-19.

²⁶ *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase its Revenues for Electric Service*, Report and Order, File No. ER-2014-0258, 25 Mo PSC 3d 70, 204, (April 29, 2015.) The applicable portions of the Report and Order are Ex. 7.

case is factually different from this case in that Noranda and Ameren Missouri had not presented an agreed-upon contract to the Commission for approval. Rather the Report and Order established a rate devised by the Commission after a hotly contested rate case.

22. EMW, the Staff of the Commission, and Nucor filed a non-unanimous stipulation and agreement on September 19, 2019. That stipulation and agreement purports to resolve all pending issues and would have the Commission approve the contract between EMW and Nucor, as well as an amended Special Incremental Load Tariff. Public Counsel did not sign the stipulation and agreement, but did not oppose it. MECG filed a timely objection to the stipulation and agreement on September 24, 2019, but withdrew that objection on October 28, 2019. Since the stipulation and agreement is now unopposed, it may be treated as unanimous.

23. The stipulation and agreement asks the Commission to approve a modified Special Incremental Load (SIL) tariff that was attached as exhibit 4 to the stipulation and agreement. That modified tariff differs from the SIL tariff filed with the application, Tariff No. YE-2020-0002, which is currently on file, and will go into effect on January 1, 2020, unless withdrawn by EMW, or rejected by the Commission.

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;

By the terms of the statute, EMW is an electrical corporation and is subject to regulation by the Commission pursuant to Section 393.140, RSMo 2016.

B. Commission rule 20 CSR 4240-2.115(2)(C) provides that if no party timely objects to a non-unanimous stipulation and agreement the Commission may treat it as unanimous. No party objects to the stipulation and agreement filed on September 19, 2019, so the Commission will treat it as unanimous.

C. Section 536.060, RSMo 2016 provides that a contested case before an administrative agencies may be resolved by stipulation and agreement among the parties.

D. Section 393.130.1, RSMo 2016 requires that all charges made or demanded by an electrical corporation for electrical service be just and reasonable and not more than allowed by law or order of this Commission. Subsection 2 of that statute further states:

No ... electrical 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 ... electricity ..., 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:

No ... electrical 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 courts that have examined this issue have made fact-based inquiries about the statutory proscription against unjust and unreasonable rates and undue or unreasonable preference or disadvantage.²⁷

E. Section 393.140(11), RSMo 2016 gives the Commission power to:
require every ... electrical corporation ... to file with the commission ...

²⁷ For example see, *State ex rel. City of Joplin v. Pub. Serv. Comm'n*, 186 S.W.3d 290 (Mo. App. W.D. 2005).

schedules 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 to be used, and all general privileges and facilities granted or allowed by such ... electrical corporation

EMW has appropriately filed the Nucor contract and related tariff with the Commission.

F. Section 393.150.1, RSMo 2016 gives the Commission authority to conduct a hearing regarding any “new rate or charge, or any new form of contract or agreement” submitted by a utility, and to make an order regarding the propriety of such rates, charges, contract or agreement.

G. The Nucor contract and related tariff concern a new service being offered by EMW and do not change EMW’s existing rates. Therefore, the Commission can approve the new rates outside a general rate case, without engaging in prohibited single-issue ratemaking.²⁸

H. Section 393.355, RSMo authorizes the Commission to establish a special rate for a “[f]acility whose primary industry is the production or fabrication of steel.”²⁹ Nucor would qualify for a special rate under this statute.

I. Section 393.355, RSMo gives the Commission “authority to approve a special rate, outside a general rate proceeding, that is not based on the electrical corporations cost of service for a facility,”³⁰ but limits that authority to situations where the Commission determines (1) that the facility would not commence operations absent the special rate, and that the special rate is in the interest of the state of Missouri and its citizens; (2) that after approving the special rate, the Commission allocate the revenue difference between the special rate and the utility’s applicable standard rate to all the other customers of the

²⁸ *State ex rel. Sprint Spectrum L.P. v. Mo. Pub. Serv. Comm’n*, 112 S.W.3d 20 (Mo. App. W.D. 2003).

²⁹ Section 393.355.1.(2)(b), RSMo.

³⁰ Section 393.355.2, RSMo.

electric utility; and (3) that the Commission approve a tracking mechanism that would ensure that the “changes in net margins experienced by the electrical corporation between general rate proceedings as a result of serving the facility are calculated in such a manner that the electrical corporation’s net income is neither increased nor decreased.”³¹

J. Section 393.355.5, RSMo provides that a special rate established under this section may be in effect for no more than ten years from the date the special rate is authorized.

K. Section 393.356, RSMo provides that once the Commission has approved a special rate under section 393.355, it may not modify or eliminate that special rate during the specified term of that rate.

L. Section 393.355, RSMo gives the Commission authority to approve a special electric rate under specific circumstance, but its terms do not limit any other authority the Commission has to approve a special electric rate under more general authority granted by other statutory provisions.

Decision

If the Commission is to find that EMW’s special contract, and related tariff, to provide service to Nucor should be approved, it must find that the rates established in that contract and tariff are just and reasonable, and that they do not establish an undue or unreasonable preference in favor of a particular customer. The evidence shows that a special contract for Nucor is in the public interest. The opening of the Nucor steel plant in Sedalia will provide unquestioned economic development benefits to that city and region, and to the State of Missouri as a whole. The evidence also shows that the steel plant will not be viable without the certain and stable electric rates made available by this special contract and tariff.

³¹ Section 393.355.2.(1-3), RSMo.

The rates afforded to Nucor under this special contract and tariff will be greater than EMW's incremental cost to serve the steel plant, and will contribute to the utility's fixed costs and thereby provide a financial benefit to all of EMW's customers.

The evidence also shows that Nucor will be a unique customer of EMW because it uses more electricity than any other EMW customer. Further, it uses that electricity at a high load factor. Under these circumstances, a rate for Nucor that is less than its fully allocated cost, but more than its incremental cost, is just and reasonable within the meaning of Section 393.130, RSMo 2016, and is not unduly or unreasonably preferential.

Questions have been raised about why EMW chose not to seek a special rate under the provisions of section 393.355, RSMo. That statute seems to have been designed to address the conflict between Noranda and Ameren Missouri, and consequently contains provisions that do not fit well with the cordial and cooperative relationship between EMW and Nucor. If the Commission is to approve a special rate under the authority granted by section 393.355, the statute requires that it must allocate the revenue difference between the special rate and the utility's applicable standard rate to all other customers. EMW does not want that benefit, and such an allocation would not be in the best interest of EMW's other customers.

Further, section 393.355, would require the implementation of a tracker designed to prevent EMW from increasing its net income between rate cases as a result of serving Nucor under the special rate. Such a provision is unnecessary and would be unfair to EMW, as it will incur substantial costs to construct new infrastructure to enable it to serve Nucor.

It was suggested that EMW and Nucor must proceed under section 393.355 if they are to ensure the ten-year term of their contract because of the provision in section 393.356 that prevents the Commission from modifying a contract approved under section 393.355 during its approved term. That provision would provide an extra measure of assurance to Nucor and EMW, but it does not prevent the Commission from approving the ten-year term

of the contract presented by Nucor and EMW.

The provisions of the unopposed stipulation and agreement, which the Commission will treat as unanimous, provide further protections to EMW's other ratepayers. In particular, the stipulation and agreement will protect those ratepayers from the risk of having to pay any under-recovery of EMW's incremental costs in a future rate case.

Based on its findings of fact and conclusions of law described in this Report and Order, the Commission will approve the stipulation and agreement of the parties, and will approve the special contract between EMW and Nucor, as well as the tariff that will implement that agreement.

Because of the need for a prompt resolution of this matter, the Commission will make this order effective in ten days.

THE COMMISSION ORDERS THAT:

1. The Special Incremental Load Rate Contract between Evergy Missouri West and Nucor Steel Sedalia, LLC is approved.
2. The Special Incremental Load Tariff pending before the Commission as Tariff No. YE-2020-0002 is rejected. Evergy Missouri West may file for approval the Special Incremental Load Tariff attached to the stipulation and agreement as exhibit 4.
3. The unopposed Stipulation and Agreement filed on September 19, 2019, is deemed to be unanimous and is approved.

4. This report and order shall be effective on November 23, 2019.

BY THE COMMISSION



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

Morris L. Woodruff
Secretary

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

Dated at Jefferson City, Missouri,
on this 13th day of November, 2019.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of Evergy Missouri Metro and Evergy)
 Missouri West's Notice of Intent to File Applications)
 for Authority to Establish a Demand-Side Programs) **File No. EO-2019-0132**
 Investment Mechanism)

REPORT AND ORDER

Affirmed on appeal: *Office of Public Counsel v. Public Service Commission*, 621 S.W.3d 670 (Mo. App. W.D. 2021)

ELECTRIC

§9 Jurisdiction and powers of the State Commission

Evergy Missouri Metro and Evergy Missouri West applied to the Commission for approval of certain demand-side programs, a Technical Resource Manual, and a Demand-Side Investment Mechanism as contemplated by the Missouri Energy Efficiency Investment Act.

§13.1 Energy Efficiency

The Missouri Energy Efficiency Investment Act does not define avoided costs, and nowhere in the statute does it say that a supply-side resource must be avoided or deferred. Avoided costs are the foundation of whether a program is cost-effective under the total resource cost test, and the statute only allows for recovery for cost-effective programs.

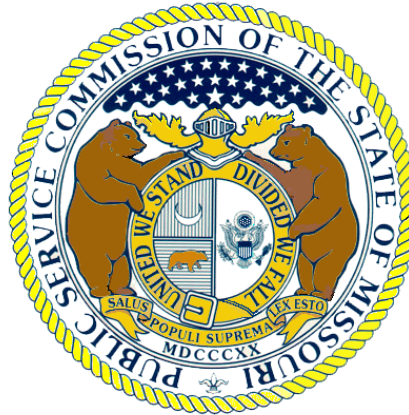
§13.1 Energy Efficiency

A market-based approach was the most appropriate way to calculate avoided costs for this Missouri Energy Efficiency Investment Act application and that a market-based approach best values demand-side investments equal to traditional investments in supply and delivery infrastructure. Therefore, the Commission will direct the parties to use the average of bids that Evergy Missouri West received for capacity in 2017 for purposes of calculating avoided costs.

§13.1 Energy Efficiency

Recovery for demand-side programs will only be allowed if the programs result in energy or demand savings and benefit all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers. The projected costs will be outweighed by the savings benefits and all customers will monetarily benefit from the programs within the class the programs are offered. Further, all customers across all classes will benefit from the non-monetary general benefits of energy efficiency related to less energy consumption, such as reduced emissions.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of Evergy Missouri Metro and)
 Evergy Missouri West's Notice of Intent to)
 File Applications for Authority to Establish)
 a Demand-Side Programs Investment)
 Mechanism)

File No. EO-2019-0132

REPORT AND ORDER

Issue Date: December 11, 2019

Effective Date: January 1, 2020

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

In the Matter of Evergy Missouri Metro and)
 Evergy Missouri West's Notice of Intent to)
 File Applications for Authority to Establish) **File No. EO-2019-0132**
 a Demand-Side Programs Investment)
 Mechanism)

REPORT AND ORDER

APPEARANCES

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Jacob Westen, Deputy General Counsel, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, Missouri 65102, for the Missouri Division of Energy.

Andrew Linhares, Suite 600, 3115 S. Grand Ave., St. Louis Missouri 63118, for The National Housing Trust and West Side Housing Organization.

David Woodsmall, 308 East High Street, Jefferson City, Missouri 65101, for Midwest Energy Consumers Group.

William D. Steinmeier, William D. Steinmeier, PC., 2031 Tower Drive, Jefferson City, Missouri 65109, for the City of St. Joseph.

Rick E. Zucker, Zucker Law LLC, 14412 White Pine Ridge Ln., Chesterfield, Missouri 63017, for Spire.

Caleb Hall, Senior Counsel, Office of the Public Counsel, 200 Madison Street, Suite 650, Post Office Box 2230, Jefferson City, Missouri 65102, for the Office of the Public Counsel.

Nicole Mers, Deputy Counsel, and **Travis J. Pringle**, Legal Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

Regulatory Law Judge: John T. Clark

Procedural History

On November 29, 2018, Evergy Missouri Metro¹ and Evergy Missouri West² (collectively, “Evergy Missouri or the Companies”) each applied to the Commission for approval of certain demand-side programs, a Technical Resource Manual (TRM), and a Demand-Side Investment Mechanism (DSIM) (collectively, “MEEIA Cycle 3”) as contemplated by the Missouri Energy Efficiency Investment Act (MEEIA) and the Commission’s implementing regulations. Those applications resulted in the opening of File Nos. EO-2019-0132 and EO-2019-0133, respectively. The Commission provided notice and set a deadline for applications to intervene in both files.

The Missouri Division of Energy; Midwest Energy Consumers Group; Renew Missouri Advocates d/b/a Renew Missouri; Natural Resources Defense Council; the City of St. Joseph; Spire; The National Housing Trust; and the West Side Housing Organization (collectively “Intervening Parties”) timely filed intervention requests in each file. The Commission granted those requests.

On December 27, 2018, the Commission granted an unopposed motion to consolidate EO-2019-0133, Evergy Missouri West’s MEEIA application, into EO-2019-0132, Evergy Missouri Metro’s MEEIA application, as the two cases involve related questions of law and fact.

Commission Rule 20 CSR 4240-20.094(4)(H) states that the Commission shall approve, approve with modification acceptable to the company, or reject MEEIA applications within 120 days of their filing. The parties were unable to reach an agreement

¹ At that time, known as Kansas City Power & Light Company.

² At that time, known as KCP&L Greater Missouri Operations Company.

regarding the applications within the Commission's allotted period and on February 27, 2019, sought to suspend the procedural schedule to allow discussions to continue and consider pursuing an agreement to extend MEEIA Cycle 2 programs for an additional year.³ The Commission approved the motion to suspend the procedural schedule until February 13, 2019⁴ and a subsequent motion to extend the deadline to allow adequate time for parties to file stipulation.⁵ On February 15, 2019, the parties filed an unopposed stipulation and agreement requesting an extension of the Companies' MEEIA Cycle 2 programs which would allow the Companies to continue offering demand-side programs for an additional year and provide continuity between cycles while parties continue to conduct additional discussions regarding a potential MEEIA Cycle 3.⁶ The Commission issued an order approving a stipulation and agreement between the parties extending MEEIA Cycle 2 until December 31, 2019, and rejecting the tariffs filed concurrently with the Companies' application.

On August 7, 2019, the Commission issued an order setting a procedural schedule. That order also granted Evergy Missouri a variance from filing a 2019 Integrated Resource Plan annual update required by Commission Rule 20 CSR 4240-22.080(3), because of uncertainty regarding the status of the MEEIA Cycle 2 and 3 programs. Evergy Missouri will next file an Integrated Resource Plan update in 2020.

³ *Motion to Suspend Procedural Schedule*, page 1, File No. EO-2019-0132, filed January 28, 2019.

⁴ *Order Granting Motion to Suspend Procedural Schedule*, page 2, filed January 28, 2019.

⁵ *Order Extending Time to File Stipulation or Pleading*, page 1, filed February 14, 2019.

⁶ *Stipulation and Agreement Regarding Extension of MEEIA 2 Programs During Pendency of MEEIA 3 Case*, page 2, filed February 15, 2019.

On September 23 and 24, 2019, the Commission held an evidentiary hearing. During the hearing, the parties presented evidence relating to the following unresolved issues previously identified by the parties:

1. When it developed MEEIA Cycle 3, did the Companies' value demand-side investments equal to traditional investments in supply and delivery infrastructure?
2. Is the proposed MEEIA Cycle 3, as designed by the Companies, expected to provide benefits to all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers?
3. Should the Commission approve, reject, or modify the Companies' MEEIA Cycle 3, along with the waivers in the Companies' application intended to enable its implementation?
 - a. If MEEIA Cycle 3 should be modified, how should the plans be modified?
4. If the Commission approves or modifies MEEIA 3, what DSIM provisions should be approved to align recovery with the MEEIA statute?
5. Should Opt-Out Customers be eligible to participate in Business Demand Response programs?
 - a. Should Evergy Missouri West be required to publish in its tariff the participation payment to customers that participate in the Business Demand Response programs?

The Staff of the Missouri Public Service Commission (Staff) and the Office of the Public Counsel (OPC) contested Evergy Missouri's MEEIA applications. The Intervening Parties supported Evergy Missouri's MEEIA Cycle 3 applications.

Initial post-hearing briefs were filed on October 11, 2019. Reply briefs were filed on October 21, 2019, and the case was deemed submitted for the Commission's decision on that date and the record closed.⁷

⁷ "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 20 CSR 4240-2.150(1).

I. 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. Evergy Missouri Metro is a Missouri corporation with its principal office located in Kansas City, Missouri. Evergy Missouri Metro is engaged in the generation, transmission, distribution, and sale of electricity in western Missouri, operating primarily in the Kansas City metropolitan area.⁸

2. Evergy Missouri West is a Delaware corporation with its principal office located in Kansas City, Missouri. Evergy Missouri West is engaged in the business of providing electric utility service in Missouri to the public in its certificated areas.⁹

3. Evergy Missouri Metro and Evergy Missouri West are in the Southwest Power Pool (SPP), a Regional Transmission Organization, and the Companies have an Joint Network Integrated Transmission Service Agreement with the SPP.¹⁰ The SPP treats them as a single load serving entity.¹¹

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.¹² Staff participated in this proceeding.

⁸ *Application to Approve DSIM Filing, Request for Variances and Motion to Adopt Procedural Schedule*, page 2, File No. EO-2019-0132, filed November 29, 2018.

⁹ *Application to Approve DSIM Filing, Request for Variances and Motion to Adopt Procedural Schedule*, page 2, File No. EO-2019-0133, filed November 29, 2018.

¹⁰ Dietrich Rebuttal, Exhibit 100, page 6.

¹¹ Transcript, pages 388.

¹² Commission Rules 20 CSR 4240-2.010(10) and (21) and 2.040(1).

5. OPC is a party to this case pursuant to Section 386.710(2), RSMo,¹³ and by Commission Rule 20 CSR 4240-2.010(10).

6. In 2009, the Missouri general assembly passed MEEIA. Participation under MEEIA is voluntary and companies do not have to offer demand side programs.¹⁴ Utilities participate in MEEIA because it authorizes cost recovery that allows utilities to value demand-side efficiency equal to traditional investments as an incentive to participate in energy efficiency programs.¹⁵

7. On November 29, 2018, the Companies filed applications and accompanying tariffs with the Commission requesting approval of demand side programs, TRMs, and DSIMs under the MEEIA statute.¹⁶

8. Evergy Missouri Metro and Evergy Missouri West have proposed separated demand side portfolios that contain the same programs, with the exception that only Evergy Missouri Metro's portfolio has an Income Eligible Home Energy Report.¹⁷

9. The applications indicate that the Companies are planning to invest \$96.3 million with the anticipation of achieving 185.9 megawatts of capacity reduction in the first year of MEEIA Cycle 3's implementation.¹⁸

10. A successful MEEIA application is dependent on multiple program offerings in the categories of energy efficiency, demand response, low-income, and pilot

¹³ All statutory references are to the 2016 Missouri Revised Statutes, as supplemented, unless otherwise indicated.

¹⁴ Section 393.1075, RSMo.

¹⁵ Evergy Missouri Surrebuttal Report, Exhibit 4, page 1.

¹⁶ *Application to Approve DSIM Filing, Request for Variances and Motion to Adopt Procedural Schedule*, page 2, File No. EO-2019-0132 and EO-2019-0133, filed November 29, 2018.

¹⁷ Dietrich Rebuttal, Exhibit 100, page 3.

¹⁸ Staff Surrebuttal Report, Exhibit 101, page 3.

programs.¹⁹ Evergy Missouri has program offerings in all of those categories, including both business and residential programs.²⁰

11. Evergy Missouri's MEEIA Cycle 3 programs are similar to the ones approved by the Commission in its MEEIA Cycle 1 and MEEIA Cycle 2.²¹

12. Evergy Missouri's portfolio of MEEIA Cycle 3 programs consists of a three-year plan for specific demand-side programs and a six-year plan for the income-eligible multi-family program, recovery of program costs and an offset of the throughput disincentive at the same time energy efficiency investments are made, and an opportunity to earn an incentive amount based upon demand and energy savings achieved.²²

13. Evergy Missouri asks the Commission to approve MEEIA Cycle 3 for a three year period from the date of approval.²³

Avoided Costs

14. Avoided costs are the cost savings obtained by substituting demand side programs for existing and new supply side resources.²⁴ The importance of avoided costs is that they are used to calculate whether a demand side program is cost-effective as part of the Total Resource Cost test (TRC test).²⁵

15. The TRC test compares the costs to deliver the program (including incentives paid to customers, administrative costs, the costs to do the evaluation, measurement and verification, and any out of pocket expenses paid by the customer) to

¹⁹ Marke Rebuttal, Exhibit 200, page 21.

²⁰ MEEIA Cycle 3, Exhibit 2, pages 16 and 17.

²¹ Caisley Surrebuttal, Exhibit 5, page 3.

²² *Application to Approve DSIM Filing, Request for Variances and Motion to Adopt Procedural Schedule*, page 5, File No. EO-2019-0132 and EO-2019-0133, filed November 29, 2018.

²³ Transcript, page 167.

²⁴ Commission Rule 20 CSR 4240-20.092(1)(C).

²⁵ Transcript, pages 393-394

the value of the program benefits (calculated as any energy savings in kWh, times the avoided cost of energy plus any capacity savings times the avoided costs of capacity equals the present value of the benefits). If the TRC results for a program are greater than one, the benefits are greater than the costs and the program is determined to be cost-effective.²⁶

16. The TRC test is a preferred cost-effectiveness test under MEEIA. The Commission allows recovery under MEEIA for cost-effective programs as determined utilizing the TRC test.²⁷

17. The Commission's Integrated Resource Plan (IRP) rule requires that Evergy Missouri analyze combinations of demand-side management programs and supply side resources to look for the lowest net present value of revenue requirement.²⁸

18. Evergy Missouri used the levelized cost of a hypothetical Combustion Turbine (CT) to calculate avoided costs because of how it interprets the term "traditional investment" and because the SPP uses the avoided cost of a CT to value capacity.²⁹

19. Using Evergy Missouri's proposed avoided costs based upon a hypothetical CT, the programs are cost effective as a whole,³⁰ but those avoided costs overstate the benefits as calculated using the TRC test.³¹

20. Using Evergy Missouri's proposed avoided costs overstates the avoided costs of generation transmission and distribution facilities.³²

²⁶ Transcript, pages 393-394.

²⁷ Section 393.1075.4 RSMo.

²⁸ Transcript, pages 141-142. See also: Commission Rule 20 CSR 4240-22.050.

²⁹ Evergy Missouri's Surrebuttal Report, Exhibit 4, page 11.

³⁰ Evergy Missouri's Surrebuttal Report, Exhibit 4, page 30.

³¹ Transcript, page 381.

³² Transcript, page 380.

21. Eversource Missouri's avoided costs calculations relies on outdated data from 2015.³³

22. Eversource Missouri's capacity exceeds the needs of its customers and the resource adequacy requirements of SPP. Eversource Missouri would not need to build a CT to meet capacity needs until 2033. It would need to build a CT in 2033 regardless of the implementation of MEEIA Cycle 3.³⁴

23. Using the levelized cost of a hypothetical CT to value avoided costs in this instance is not appropriate because Eversource Missouri is not actually avoiding the cost of building a CT. A hypothetical CT is a representative valuation and has no link to an actual avoided "existing or new supply-side resource."³⁵

24. Eversource Missouri's demand-side programs do not defer any specific identifiable supply-side resource.³⁶

25. Staff's position on avoided costs changed from prior MEEIA cycles to when it evaluated the Eversource Missouri's MEEIA Cycle 3. Staff's new position focused on avoided costs and the postponement of new supply-side resources and early retirement of existing supply-side resources.³⁷

26. OPC supports Staff's position that avoided costs should be valued at zero for failing to defer a supply-side investment.³⁸

27. Staff's use of zero for avoided costs is inappropriate because the MEEIA statute does not require deferral of capacity.³⁹

³³ Transcript, Page 486.

³⁴ Staff Surrebuttal Report, Exhibit 101, page 17.

³⁵ Transcript, pages 303-304.

³⁶ Staff Surrebuttal Report, Exhibit 101, page 25.

³⁷ Transcript, page 272.

³⁸ Marke Rebuttal, Exhibit 200, pages 5-10, and Transcript 487-488.

³⁹ Eversource Missouri's Surrebuttal Report, Exhibit 4, pages 10-11.

28. Demand-side programs that produce capacity savings have an avoided cost greater than zero even if the subject utility is long on capacity. Valuing avoided costs at zero, as Staff suggests, will make it difficult for utilities to design cost-effective demand-side programs. This will reduce the number of cost effective programs offered by companies that have excess capacity.⁴⁰

29. MEEIA is not a program for managing generation and providing supply-side power. MEEIA is designed to compensate the utility for promoting energy efficiency as it encourages its customers to save money by using less of the product the utility sells.⁴¹

30. In 2017, Evergy Missouri West issued a Request for Proposal (RFP) for generating capacity. The company received seven offers to supply capacity, with terms ranging from four to ten years. Evergy Missouri now offers to use the average price of those bids as an alternative market-based equivalent with which to value avoided costs.⁴²

31. The Commission's IRP rules permit the use of a market-based equivalent for calculating avoided costs.⁴³

32. Staff did not analyze Evergy Missouri's market-based alternative avoided costs.⁴⁴

33. Using Evergy Missouri's 2017 market-based approach to calculate avoided costs, all but one of the Companies' MEEIA Cycle 3 programs would be cost effective.⁴⁵

⁴⁰ Caisley Surrebuttal, Exhibit 5, page 6.

⁴¹ Owen Surrebuttal, Exhibit 452, page 4.

⁴² Transcript, pages 423-425.

⁴³ Commission Rule 20 CSR 4240-22.050(5)(A)1.

⁴⁴ Transcript, pages 404 and 422.

⁴⁵ Transcript, pages 424-425.

Benefit All Customers

34. MEEIA requires that all customers in the class for which MEEIA programs are offered benefit, regardless of whether they participate in the programs.⁴⁶

35. Under Evergy Missouri's market-based approach calculations, the only program that would not be cost-effective is the business thermostat program.⁴⁷ Evergy Missouri is willing to make changes to that program so that it is cost-effective.⁴⁸

36. Valuing avoided generation as the means to show benefits to all customers overlooks the purpose of MEEIA, which is to encourage energy efficiency. Utilities should be endeavoring to increase customer participation in energy efficiency programs. Non-participating customers will benefit from Evergy Missouri's MEEIA Cycle 3 because the programs will be cost-effective, but participating customers save money on their bills and experience direct benefits. Simply put, all customers benefit, but participating customers benefit more.⁴⁹

37. All of Evergy Missouri's customers will benefit because the Company's proposed MEEIA programs will result in the lowest net present value of revenue requirements or minimization of the present worth of long-run utility costs over the long term.⁵⁰

38. Customers participating in MEEIA energy efficiency programs will get the benefit of a lower bill because they will have less usage than non-participants.⁵¹

⁴⁶ Transcript, page 307, and Section 393.1075.4 RSMo.

⁴⁷ Transcript, pages 424-425.

⁴⁸ Evergy Missouri Surrebuttal Report, Exhibit 4, page 18

⁴⁹ Owen Surrebuttal, Exhibit 452, page 7.

⁵⁰ Evergy Missouri's Surrebuttal Report, Exhibit 4, pages 15-16 and 26.

⁵¹ Transcript, page 349.

39. Benefits from a reduction in a customer's bill is not the only benefit to customers. There are also societal benefits, such as improved health and safety, investment in local economies, and local job creation.⁵²

40. If all utilities in SPP were to work toward energy efficiency there would be benefits for all customers in the SPP area, including Missouri. There would be a reduction in the number of hours that fossil fuel plants would run, a decrease in the amount of time that higher margin units would run, and fewer emissions.⁵³

Pay As You Save Program

41. Pay As You Save (PAYS) is a system that allows utilities to invest in efficiency upgrades on the customer's side of the meter and recover their costs through a tariffed charge on the participant's bill. It is not a consumer loan or individual debt.⁵⁴ As a tariffed program, it is tied to the meter.⁵⁵ PAYS enables deeper energy efficiency and demand savings by customers who do not have thousands of dollars of disposable income to make energy-related investments, including many residential customers.⁵⁶

42. Under PAYS, the utility collects payments through a tariff to recover its investments from customers at the locations where the upgrades were installed. If any money needs to be borrowed, it is borrowed by the utility. Payment obligations are tied to the location, so whoever is a customer at a location where upgrades are installed makes the payments for only as long as they are a customer there, or until the upgrade costs are recovered.⁵⁷

⁵² Staff Surrebuttal Report, Exhibit 101, Page 10.

⁵³ Transcript, pages 328-330.

⁵⁴ Marke Rebuttal, attachment GM-10, PAYS Questions for KCPL MEEIA, Exhibit 200, page 1.

⁵⁵ Marke Rebuttal, attachment GM-9, Response to PAYS Feasibility Study, Exhibit 200, page 3.

⁵⁶ Marke Rebuttal, exhibit 200, page 45.

⁵⁷ Marke Rebuttal, attachment GM-9, Response to PAYS Feasibility Study, Exhibit 200, page 3.

43. In ER-2016-0285, the Commission ordered Evergy Missouri Metro to consider incorporating the Pay As You Save (PAYS) program into its next MEEIA filing.⁵⁸

44. Evergy Missouri complied with that order by hiring the Cadmus Group to complete a feasibility study, which was completed on September 28, 2018.⁵⁹ The Cadmus Group is a consulting firm based in Waltham, Massachusetts.⁶⁰

45. The Cadmus Group's feasibility study recommended that Evergy Missouri consider a PAYS program that targets low-income and multifamily populations.⁶¹

46. OPC recommends that Evergy Missouri offer a PAYS program as part of its MEEIA Cycle 3 program portfolio. While OPC would like to see a full PAYS program, it is agreeable to a one-year pilot program to show that the program is feasible.⁶²

47. Renew Missouri also recommends inclusion of a PAYS program in Evergy Missouri's MEEIA Cycle 3 as a way to increase customer participation and expand the scope of benefits.⁶³

48. The position of Evergy Missouri has not changed from the position it expressed in ER-2016-0285. Evergy Missouri is not interested in being a financial institution that holds loans or liens on equipment on the customer's side of the meter.⁶⁴

49. PAYS starts with an analysis of the property to determine what energy efficiency measures would pay for themselves.⁶⁵ Generally, that means any upgrade that

⁵⁸ File No. ER-2016-0285, Report and Order, May 3, 2017, page 14.

⁵⁹ Marke Rebuttal, attachment GM-9, Response to Pay As You Save Feasibility Study, Exhibit 200.

⁶⁰ Owens Rebuttal, Exhibit, page 451.

⁶¹ Marke Rebuttal, attachment GM-9, Response to Pay As You Save Feasibility Study, Exhibit 200.

⁶² Marke Rebuttal, Exhibit 200, page 43.

⁶³ Owen Surrebuttal, Exhibit 452, page 8.

⁶⁴ Evergy Missouri Surrebuttal Report, Exhibit 4, page 74.

⁶⁵ Transcript, page 188

is a proven technology and can provide immediate net savings to the customer after it has been installed.⁶⁶

50. PAYS does not require credit checks because it is not a loan program.⁶⁷ The payback of the costs of the upgrades are tied to the structure that receives the improvement. The funding for each project is capped at a level that is no more than 80% of the savings from the energy efficiency measures being installed. The customer's bill will be less, even though the customer is paying back the costs of the upgrades because the energy efficiency savings are higher than the fixed monthly charge for the upgrades.⁶⁸

51. PAYS is also available to renters with the building owner's consent.⁶⁹

52. PAYS allows customers without the necessary upfront capital to make energy-related investments to take part in energy efficiency projects they could not otherwise afford.⁷⁰

53. Mark Cacye, the general manager for Ouachita Electric Cooperative in Camden Arkansas, testified that the cooperative is averaging 15 percent lower bills for every house participating in the PAYS program.⁷¹

54. It is appropriate to fund the PAYS program through MEEIA and provide an earnings opportunity for Evergy Missouri for successful implementation of the PAYS program.⁷²

⁶⁶ Marke Rebuttal, attachment GM-10, PAYS Questions for KCPL MEEIA, Exhibit 200, page 2.

⁶⁷ Transcript, page 188

⁶⁸ Cayce Rebuttal, Exhibit 450, page 2.

⁶⁹ Transcript, page 198.

⁷⁰ Marke Rebuttal, Exhibit 200, page 45.

⁷¹ Transcript, page 191.

⁷² Transcript, page 502.

Business Demand Response Opt-Out Customers

55. The Business Demand Response program is primarily intended to build potential capacity for use in peak reduction to meet SPP capacity margin requirements.⁷³ One of the advantages of the business response program is that during peak demand periods the Companies can ask those customers in the Business Demand Response program to curtail or interrupt their load to take pressure off the system. Those customers are paid a financial incentive for allowing this interruption. The main benefit to Evergy Missouri is the ability to interrupt load to avoid paying higher SPP prices for electricity during peak demand.⁷⁴

56. Interruptible or curtailable rates are voluntary on behalf of the customer.⁷⁵

57. Evergy Missouri's largest interruptible customer is willing to interrupt approximately six megawatts of load.⁷⁶

58. The business demand response program is an interruptible or curtailable program.⁷⁷

II. Conclusions of Law and Discussion

Evergy Missouri Metro is an electrical corporation and a public utility, as those terms are defined by Section 386.020(15) and (43), RSMo. As such, the Commission has jurisdiction over Evergy Missouri Metro pursuant to Sections 386.250(1), RSMo, and 393.140, RSMo.

⁷³ Staff Surrebuttal Report, Exhibit 101, page 65.

⁷⁴ Transcript, page 219-220.

⁷⁵ Transcript, page 496.

⁷⁶ Transcript., page 220.

⁷⁷ Transcript, page 173.

Evergy Missouri West is an electrical corporation and a public utility, as those terms are defined by Section 386.020(15) and (43), RSMo. As such, the Commission has jurisdiction over Evergy Missouri West pursuant to Sections 386.250(1), RSMo, and 393.140, RSMo.

In making its determination, the Commission may adopt or reject any or all of any witnesses' testimony.⁷⁸ Testimony need not be refuted or controverted to be disbelieved by the Commission.⁷⁹ The Commission determines what weight to accord to the evidence adduced.⁸⁰ "It may disregard evidence which in its judgment is not credible, even though there is no countervailing evidence to dispute or contradict it."⁸¹ The Commission may evaluate the expert testimony presented to it and choose between the various experts.⁸²

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. Where the evidence conflicts, the Commission determines which evidence is most credible.

Commission Rule 20 CSR 4240-20.094(3) requires that the Commission must approve Evergy Missouri Metro's and Evergy Missouri West's MEEIA Cycle 3 plans, approve the plans with modifications acceptable to Evergy Missouri Metro and Evergy Missouri West, or reject the plans. The Commission will consolidate Evergy Missouri Metro's and Evergy Missouri West's applications, because the SPP treats Evergy Missouri Metro and Evergy Missouri West as a single load serving entity, and the parties

⁷⁸ *State ex rel. Associated Natural Gas Co. v. Public Service Commission*, 706 S.W.2d 870, 880 (Mo. App., W.D. 1985).

⁷⁹ *State ex rel. Rice v. Public Service Commission*, 220 S.W.2d 61, 65 (Mo. banc 1949).

⁸⁰ *State ex rel. Rice v. Public Service Commission*, 220 S.W.2d 61, 65 (Mo. banc 1949).

⁸¹ *State ex rel. Rice v. Public Service Commission*, 220 S.W.2d 61, 65 (Mo. banc 1949).

⁸² *Associated Natural Gas, supra*, 706 S.W.2d at 882.

who addressed that question in post-hearing briefs all encouraged the Commission to take the applications together. Furthermore, consolidation will ultimately make it easier for customers who might otherwise be confused if MEEIA programs were only available for one company.

Avoided Costs

The MEEIA statute does not define avoided costs, and nowhere in the MEEIA statute does it say that a supply-side resource must be avoided or deferred. Avoided costs are the foundation of whether a MEEIA program is cost-effective under the TRC test, and the MEEIA statute only allows for recovery for cost-effective programs (excluding low-income or general education programs determined by the Commission to be in the public interest).

The Commission permits electric corporations to implement Commission approved demand-side programs, but recovery for such programs is not allowed unless they result in energy or demand savings.⁸³ The Commission must consider the TRC test a preferred cost-effectiveness test.⁸⁴ While the TRC test is not the only test for evaluating cost-effectiveness, it is the test used by the parties. The TRC test compares the sum of avoided utility costs and avoided probable environmental compliance costs to the sum of all incremental costs of end-use measures that are implemented due to the program.⁸⁵

Avoided costs are defined in 20 CSR 4240-20.092(1)(C) which states in part: “Avoided costs or avoided utility costs means the cost savings obtained by substituting demand-side programs for existing and new supply-side resources.” In this case, Staff’s

⁸³ Section 393.1075.4 RSMo.

⁸⁴ Section 393.1075.4 RSMo.

⁸⁵ Section 393.1075.2(6) RSMo.

proposal assumes that the only acceptable measure of avoided costs is the substitution of demand-side programs for specific identifiable and physical supply side resources. Staff has concluded that for avoided costs to exist, a specific identifiable supply side resource must be either retired or avoided. The difficulty with this position is that MEEIA is not just about saving ratepayers money, and it is not a program for managing supply side generation.

Section 393.1075.3 states that: "It shall be the policy of the state to value demand-side investments equal to traditional investments..." Ultimately, equivalent valuation is both a technical and a policy decision. Demand-side programs may not be essential when a utility has excess capacity, but state policy is to encourage energy efficiency,⁸⁶ and it is not practical to wait until a company is short of capacity to start acclimating customers to the idea of using energy more efficiently.

Commission Rule 20 CSR 4240-22.010(2)(A) and (B), concerning electric utility resource planning, does not support Staff and OPC's view of avoided costs in this instance. The rule says that a utility should use minimization of the present worth of long-run utility costs as the primary selection criteria in choosing a preferred resource plan, which is what the Companies testify they have done. Eversource Missouri contends that its demand-side portfolio as a part of its IRP, produces the lowest 20-year net present value revenue requirement. However, as OPC noted in testimony, Eversource Missouri is relying on outdated data from 2015. Also, Eversource Missouri was granted a variance from filing its

⁸⁶ "...it is also the policy of this state to encourage electrical corporations to develop and administer energy efficiency initiatives that reduce the annual growth in energy consumption and the need to build additional electric generation capacity." Section 393.1040 RSMo.

2019 IRP update, and will file its next IRP update in 2020, so Evergy Missouri's original position on avoided costs is not supported by the evidence.

The Commission's Rule 20 CSR 4240-22.050, which dictates how potential demand-side resources are developed and analyzed for cost-effectiveness, states that "avoided demand costs include the capacity costs of generation, transmission, and facilities. . . or the corresponding market-based equivalent." An advantage to the market-based approach is that future profiles of available resources are uncertain, but a market-based approach can always be applied. Evergy Missouri has said it is agreeable to a market-based avoided cost approach based upon the average of bids Evergy Missouri West received for capacity in 2017. Although less than Evergy Missouri's hypothetical CT valuation for avoided costs, this approach will produce avoided costs sufficient to encourage Evergy Missouri to continue to offer energy efficiency demand-side programs. Thus, a market-based approach will value demand-side investments equal to traditional investments.

Benefit All Customers

Section 393.1075.4 RSMo says that recovery for demand-side programs will only be allowed if the programs result in energy or demand savings and benefit all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers.

There are two ways to examine benefits to all customers, monetary benefits and non-monetary benefits. Using a market based equivalency for avoided costs, Evergy Missouri calculates that all but one of its MEEIA Cycle 3 programs is cost-effective, and Evergy Missouri is willing to modify that program so it becomes cost effective. Once that

is done, the projected costs will be outweighed by the savings benefits and all customers will monetarily benefit from the programs within the class the programs are offered. Further, all customers across all classes will benefit from the non-monetary general benefits of energy efficiency related to less energy consumption, such as reduced emissions.

The MEEIA statute does not indicate the level of benefits non-participants are to receive, and it is apparent that the customers who participate in energy efficiency programs will receive most of the benefits of those programs, but all customers will receive some benefit.

Pay As You Save Program

Participation in MEEIA is voluntary and no company is required to offer demand-side programs under MEEIA. As stated above the Commission can approve the applications with modifications so long as those modifications are acceptable to Evergy Missouri. Evergy Missouri has stated that it has no interest in having a PAYS program as part of its MEEIA Cycle 3 portfolio. However, the Commission finds that the PAYS program offers unique opportunities to broaden participation in MEEIA programs to customers who might not otherwise engage in energy efficiency programs.

This pilot program appropriately belongs in MEEIA Cycle 3 because the Commission wants to give Evergy Missouri an appropriate earnings opportunity for offering the program, as proposed by Dr. Marke in rebuttal testimony. Evergy Missouri may not find offering a PAYS program to be an acceptable condition for approval of the Companies' MEEIA Cycle 3 applications, and Evergy Missouri may exercise its

prerogative and not offer a MEEIA Cycle 3 portfolio if it does not find this addition acceptable.

Business Demand Response Opt-Out Customers

Section 393.1075.10 RSMo states that customers opting not to participate in funding MEEIA programs shall still be allowed to participate in interruptible or curtailable rate schedules or tariffs.

The Company has testified that the program is in fact a curtailable or interruptible program. This section of the MEEIA statute applies to the tariff or schedule. The Commission rejected Evergy Missouri's MEEIA Cycle 3 tariffs when it approved a stipulation and agreement between the parties extending MEEIA Cycle 2. Thus, there are no schedules or tariffs for the Commission to examine.

Variations

Evergy Missouri has requested variations be granted to five Commission rules:

1. Variations related to the incentive to be implemented and based on prospective analysis rather than achieved performance verified by EM&V, the proposed utilization of a Technical Resource Manual for purposes of calculating Throughput Disincentive: 20.092(1)(HH);20.092(1)(M); 20.092(1)(R); 20.093(2)(I) 20.093(2)(I)3; 20.092(1)(N)
2. Variations related to allowing adjustments to Demand-Side Investment Mechanism (DSIM) rates for the Throughput Disincentive DSIM utility incentive revenue requirement as well as the DSIM cost recovery: 20.093(4); 20.093(4)(C)
3. Variations related to "revenue requirement" where the Throughput Disincentive is excluded from the cost recovery revenue requirement: 20.092(1)(Q); 20.092(1)(UU); 20.092(1)(P); 20.092(1)(R); 20.093(2)(J); 20.092(1)(F)
4. Variations related to allowing flexibility in setting the incentives and changing measures within a program: 14.030.

5. Variances related to the methodology for calculating avoided costs, 20.092(1)(C).

All of the Intervening Parties support granting Evergy Missouri's MEEIA Cycle 3 applications and associated variances. Staff opposes only the granting of a variance of Commission Rule 20 CSR 4240-20.092(1)(C), which defines avoided costs. Evergy Missouri requests the variance of the avoided cost definition because it say that the Companies have interpreted the rule to mean that the methodology for calculating avoided costs would be consistent with the most recently filed IRP at the time of the MEEIA application filing.

III. Decision

The Commission will approve Evergy Missouri's MEEIA Cycle 3 subject to certain conditions. The Commission determines that a market-based approach is the most appropriate way to calculate avoided costs for this MEEIA application and that a market-based approach best values demand-side investments equal to traditional investments in supply and delivery infrastructure. Therefore, the Commission will direct the parties to use the average of bids Evergy Missouri West received for capacity in 2017 for purposes calculating avoided costs.

The Commission determines that Evergy Missouri's MEEIA Cycle 3 programs are beneficial to all customers in the customer class in which the programs are proposed. The Company's proposed MEEIA programs will result in the lowest net present value of revenue requirements or minimization of the present worth of long-run utility costs over

the long term, as well as improved health and safety, investment in local economies, and local job creation.⁸⁷

The Commission determines that if Eversource Missouri implements a MEEIA Cycle 3, it shall offer a PAYS pilot program as described in the rebuttal testimony of Dr. Marke, with the exception that, the budget for the pilot program shall be reduced to no less than \$10 million, and no more than \$15 million. Eversource Missouri Metro and Eversource Missouri West may administer the pilot program themselves or may employ a third-party operator with experience to operate the Pay As You Save program. The program should be appropriately scaled down to accommodate the reduced budget, as the purpose of the one-year pilot program is to determine the feasibility and desirability of the PAYS program.

Testimony supports the Business Demand Response program as being interruptible or curtailable. The Commission determines from the description of the program that it is an interruptible or curtailable program and that opt-out customers shall be allowed to participate in the Business Demand Response program. If Eversource Missouri files tariffs to implement the approved revised MEEIA Cycle 3, those tariffs will appropriately represent the Commission's determination that the programs are interruptible or curtailable within the meaning of the statute.

The Commission will grant the four unopposed variance requests, because the variances are necessary to successfully implement Eversource Missouri's MEEIA Cycle 3, and gain at-will participation. The Commission will grant the fifth variance even though the Commission is not approving Eversource Missouri's avoided costs. The Commission is

⁸⁷ Companies' Surrebuttal Report, Exhibit 4, page 26.

approving the Companies MEEIA Cycle 3 applications with a market-based approach to calculating avoided costs. As modified, the variance is still needed. For this reason the Commission is granting a variance of Commission Rule 20 CSR 4240-20.092(1)(C).

THE COMMISSION ORDERS THAT:

1. The MEEIA Cycle 3 Plans, as put forth by Evergy Missouri Metro and Evergy Missouri West, and modified by the Commission, are approved for a period of three years from the effective date of this order. Avoided costs shall be calculated using the average cost of the seven bids to supply capacity which Evergy Missouri West received in response to a 2017 Request for proposal and described in testimony.

2. If Evergy Missouri Metro and Evergy Missouri West offer a MEEIA Cycle 3 plan, the companies shall modify their respective MEEIA Cycle 3 portfolios to include a one-year Pay As You Save pilot program. The Companies and parties shall file within 60 days of the effective date of this order the proposed pilot program. The Pay As You Save pilot program shall include the following:

- a. The budget for the pilot program shall be no less than 10 million dollars, and no more than 15 million dollars.
- b. Evergy Missouri Metro and Evergy Missouri West may administer the pilot program themselves or may employ a third party operator with experience to operate the pilot program.
- c. The pilot program shall identify a goal for the number of participants living in neighborhoods designated by the parties as predominately low or moderate-income customers or renters in multifamily housing with five or more units where the renter is responsible for paying their energy bills. The pilot program

- shall allow owners of multifamily units in participating buildings to use the program to install upgrades in common areas.
- d. The pilot program shall have an appropriate earnings opportunity component for the Companies to be agreed upon by the parties.
 - e. The pilot program shall include customer protections by capping administrative costs (including total advertising costs as allocated to the total number of projects) for each individual customer project to a percentage of the total loan costs. Energy audit costs are a separate project Component and will not be included with administrative costs.
 - f. The utilization of Pay As You Save to fund participation in any MEEIA program shall be recovered under the Pay As You Save tariff and shall not be recovered under any other MEEIA tariff.
 - g. Evergy Missouri Metro and Evergy Missouri West will notify the Commission of the pilot program's expected starting date, as selected by the Companies.
 - h. Evergy Missouri Metro and Evergy Missouri West shall submit progress reports both six months and one year after the Pay As You Save pilot program begins. The reports shall provide information based on benchmarks established by the parties to help identify the long-term feasibility and desirability of a Pay As You Save program, including participation rates.
3. Opt-out customers shall be allowed to participate in Evergy Missouri Metro's and Evergy Missouri West's business response program. The Companies are not required to publish compensation in their tariffs.

4. Evergy Missouri Metro and Evergy Missouri West are granted variances from the following Commission rules for the purpose of facilitating their MEEIA Cycle 3

Plans:

- 20 CSR 4240-20.092(1)(HH)
- 20 CSR 4240-20.092(1)(M)
- 20 CSR 4240-20.092(1)(R)
- 20 CSR 4240-20.093(2)(I)3
- 20 CSR 4240-20.092(1)(N)
- 20 CSR 4240-20.093(4)(C)
- 20 CSR 4240-20. 20.092(1)(Q)
- 20 CSR 4240-20.092(1)(UU)
- 20 CSR 4240-20.092(1)(P)
- 20 CSR 4240-20.092(1)(R)
- 20 CSR 4240-20.093(2)(J)
- 20 CSR 4240-20.092(1)(F)
- 20 CSR 4240-14.030
- 20 CSR 4240-20.092(1)(C)

5. If Evergy Missouri Metro and Evergy Missouri West want to offer a MEEIA Cycle 3 plan, they shall file tariff sheets in compliance with this order no later than December 16, 2019.

6. The Staff of the Missouri Public Service Commission shall file its recommendation on the sufficiency of the companies' compliance tariff sheets no later than December 20, 2019, at 10:00 a.m.

7. Any other party wishing to respond or comment on the Companies' compliance tariff sheets shall file a response or comment or recommendation no later than December 20, 2019, at 10:00 a.m.

8. This Report and Order shall become effective on January 1, 2020.



BY THE COMMISSION

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

Morris L. Woodruff
Secretary

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

Clark, Senior Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

Mary Ann Jackson,)	
)	
Complainant,)	
v.	)	<u>File No. GC-2019-0331</u>
)	
Spire Missouri, Inc. d/b/a Spire,)	
)	
Respondent.)	

REVISED REPORT AND ORDER

GAS

§1 Generally

The evidence showed a 100-year old home with at least eighteen windows, with only two covered in plastic, plus an increase in the number of heating degree days directly impacted gas usage at a residential home.

§7 Jurisdiction and powers of the State Commission

A complaint may be filed against a natural gas utility which is under the jurisdiction of the Commission. The Commission granted the request of the complainant to deem certain information as non-confidential in order to let other customers know they have a right to file a complaint.

APPEARANCES

Mary Ann Jackson, 5641 Summit Place, St. Louis, Missouri 63136

Appearing on behalf of herself as a pro se complainant.

Rick E. Zucker, Zucker Law, LLC, 14412 White Pine Ridge Ln, Chesterfield, Missouri 63017-6301

Goldie Bockstruck, Spire Missouri, Inc. 700 Market Street, St. Louis, Missouri 63101

Appearing for Spire Missouri, Inc. d/b/a Spire.

Travis Pringle, Legal Counsel, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102

Appearing for the Staff of the Missouri Public Service Commission.

Regulatory Law Judge: Charles Hatcher

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Mary Ann Jackson,)	
)	
Complainant,)	
)	
v.	)	<u>File No. GC-2019-0331</u>
)	
Spire Missouri, Inc. d/b/a Spire,)	
)	
Respondent.)	

REVISED REPORT AND ORDER

I. Procedural History

On April 29, 2019, Mary Ann Jackson filed a complaint with the Missouri Public Service Commission (Commission) against Spire Missouri, Inc. d/b/a Spire (Spire). Ms. Jackson complained primarily that she has been charged for gas she has not used.¹ The case proceeded under the small formal complaint process. Spire filed its answer denying Ms. Jackson’s allegations. Staff filed its report determining that Spire has not violated any tariff, rule, regulation, or statute. Ms. Jackson, Spire, and Staff filed a *Stipulation of Undisputed Facts* on September 6, 2019.

Because there were material facts in dispute, the Commission held an evidentiary hearing on September 13, 2019, in St. Louis, Missouri, to address Ms. Jackson’s

¹ Ms. Jackson’s initial complaint also alleged that the Company estimated her usage and requested a monetary award of \$700. As the allegation and request for monetary damages were not included in the jointly filed *List of Issues and Witnesses, and Position Statements*, nor raised in the hearing, and as the Commission has no authority to award monetary damages, these points will not be discussed further.

allegations.² At the conclusion of the hearing, Ms. Jackson requested that certain information in this case be deemed non-confidential in order to let other customers know they have a right to file a complaint.³

Subsequent to the hearing, Ms. Jackson requested that the complainant identification in the caption be clarified to include her middle name, in order to avoid confusion. The Commission notes that it has the authority to set the identifiers in the caption as part of its recordkeeping duties, and will exercise that authority to reflect Ms. Jackson's full name in the caption.

A copy of the recommended version of this Report and Order was sent to the parties as required by Commission rule 20 CSR 4240-2.070(15)(H). Spire was the only party to submit a response, which was in support of the recommended report and order.

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. Mary Ann Jackson currently resides at 5641 Summit Place in St. Louis, Missouri, and was, at all times relevant hereto, a customer of Spire for gas service.⁴

² Transcript, Volume 2 (hereinafter, "Tr."). In total, the Commission admitted the testimony of three witnesses and received seven exhibits into evidence. Several topics surrounding Ms. Jackson's account were discussed during the hearing, including: the process of auto-enrolling ratepayers in budget billing; a case of mistaken identity with a complaint file from a separate Mary Jackson; and the disconnection of Ms. Jackson's gas service during the pendency of this case, which was due to human error and rectified the same day. These topics were important to discuss, but are not relevant to Ms. Jackson's allegation of overbilling and will not be addressed in this Order. Nevertheless, these topics are the subject of a broader Staff investigation into Spire's Customer Service practices in File Number GO-2020-0182.

³ Tr., p. 136-142.

2. Ms. Jackson presented her own sworn testimony as evidence of her claim that she is being overcharged for gas by Spire.⁵

3. Ms. Jackson's home was rehabbed by her and her husband in 2008, shortly after they purchased it.⁶ The rehab included adding insulation and drywall.⁷

4. Around the time of the purchase, the roof of Ms. Jackson's home suffered damage when a tree limb falling into it created a hole, large enough to see through.⁸ Ms. Jackson insulated the attic when repairing the hole in the roof.⁹

5. Ms. Jackson repaired the roof of her home using thick plywood.¹⁰

6. The furnace in Ms. Jackson's home was installed new in 2010.¹¹ The furnace filter was replaced in 2016 by Spire after contact from Ms. Jackson. The furnace stopped working and replacement of the filter corrected the problem.¹² No evidence was introduced as to whether the filter was only replaced once in that six years, if the furnace filter needs to be changed more frequently, or if the furnace filter has been changed on a regular basis since the 2016 replacement by Spire.

7. The windows of Ms. Jackson's home were described as old, but with plastic covering on the two bedroom windows.¹³

⁴ Stipulation of Undisputed Facts.

⁵ Tr., p. 20-68.

⁶ Tr., p. 20-21, and 32-33.

⁷ Tr., p. 22, 28, and 38.

⁸ Tr., p. 30-31.

⁹ Tr., p. 31.

¹⁰ Tr., p. 41.

¹¹ Tr., p. 24.

¹² Tr., p. 23-24.

¹³ Tr., p. 34, and 55.

8. Uninsulated windows are commonly known as a source of heat loss in a home.¹⁴

9. Pictures submitted into evidence show Ms. Jackson's home with at least 18 windows.¹⁵

10. Ms. Jackson's home was built in 1919, and is 100 years old.¹⁶

11. Ms. Jackson uses several methods to keep her gas consumption low: turning off the gas supply to the stove when not in use; using electric heaters; keeping the furnace thermostat set low; and not using hot water.¹⁷

12. Ms. Jackson stays the night away from home frequently and turns the furnace down to 65 degrees Fahrenheit as no one is at her home.¹⁸

13. Ms. Jackson's home has a total of three gas appliances installed: a furnace, an energy-efficient hot water tank, and a gas stove.¹⁹

14. The gas bills at Ms. Jackson's home show a decrease in usage from 2016 to 2017.²⁰ The gas bills show an increase in usage from 2017 to 2018, which continues to increase for three of the first four months of 2019.²¹ The increase in usage correlates to an increase in heating degree days for 2018 and 2019.²²

¹⁴ Tr., p. 30, and 108.

¹⁵ Exhibit 7.

¹⁶ Tr., p. 49, and 92.

¹⁷ Tr., p. 23, 28, and 43.

¹⁸ Tr., p. 23.

¹⁹ Tr., p. 25, and 82; Exhibit 4, p. 3.

²⁰ Tr., p. 74, and 83; Exhibit 2.

²¹ Exhibit 2.

²² Tr., p. 86-87; Exhibit 6.

15. A heating degree day is the difference between the normal temperature and the average temperature for the day. Normal temperature is set at 65, and if the average daily temperature is less than 65, it is subtracted and the remainder is the number of heating degree days for that day. For example a day with an average temperature of 40 degrees will produce 25 heating degree days for that day.²³ An increase in heating degree days indicates the weather is colder compared to a prior year.

16. Spire gas bills are based on actual readings.²⁴

17. A high bill inspection was performed by a Spire technician on Ms. Jackson's home on February 13, 2017. The technician found that both Spire's meter and Ms. Jackson's gas appliances were operating as designed with no problems noted.²⁵

18. A meter test was performed on the gas meter at Ms. Jackson's home in April 2018, upon the request of Ms. Jackson.²⁶ The test results show that the meter passed inspection as being within a two percent accuracy range.²⁷

19. Ms. Jackson's home has not had a blower door test, which is one method of testing for air leaks.²⁸

²³ Tr., p. 87-88.

²⁴ Tr., p. 70. This finding is contrary to Ms. Jackson's allegation that Spire estimates her bills. Tr., p. 57 and 65. Ms. Jackson offered hearsay evidence that when she called to complain about her bill, Spire customer service agents referred her to the bill for that month in the previous year. There is confusion as to whether the Spire agent was explaining that the bill has decreased as compared to the previous year's bill to explain why Spire did not believe they were overcharging, or if the Spire agent was commenting that the bill for that month in the previous year is the basis to estimate Ms. Jackson's gas bill in the current year. See Tr., p. 57 and p. 73-74; and Exhibit 1, Memorandum p. 5 of 6; and Exhibit 3, p. 1. The Commission finds the testimony and evidence provided by Spire and Staff to be more credible on the issue of whether Spire estimates its bills.

²⁵ Stipulation of Undisputed Facts; Tr., p. 78; Exhibit 4.

²⁶ Tr., p. 83-84; Exhibit 5.

²⁷ Tr., p. 85; Exhibit 5.

²⁸ Tr., p. 54.

III. Conclusions of Law

Spire is a “gas corporation” and a “public utility” as those terms are defined in Section 386.020, RSMo 2016. Spire Missouri is subject to the Commission’s jurisdiction, supervision, control, and regulation as provided in Chapters 386 and 393, RSMo. Complaints are authorized to be brought before the Commission by any person under Sections 386.390 and 386.400. As Ms. Jackson brought the complaint, she bears the burden of proof.²⁹ The burden of proof is the preponderance of the evidence standard.³⁰ In order to meet this standard, Ms. Jackson must convince the Commission it is “more likely than not” that Spire violated an applicable statute, rule, or provision of a Commission-approved tariff.³¹

Complaint procedures are set forth in Commission rule 20 CSR 4240-2.070. Complaint cases that involve a dispute of less than \$3,000, as does this case, are further governed by the small rate case procedure encompassed in Commission rule 20 CSR 4240-2.070(15).

IV. Decision

Ms. Jackson claims Spire is overcharging her. Ms. Jackson does not claim a meter malfunction, nor does she complain about high prices per cubic foot of gas used. Rather, she believes she could not have used as much gas as her meter shows. Ms. Jackson puts forth her theory of being overcharged based on evidence that her house is well-insulated,

²⁹ *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).

³⁰ *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).

³¹ *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).

that she turns off her gas stove at the shut-off valve, and keeps her furnace turned low. Ms. Jackson also stays the night away from home often, turning her furnace down (further than usual) before she leaves. Ms. Jackson is essentially claiming that she's taking multiple actions to conserve gas, and concludes that the evidence speaks for itself in showing that Spire has been overcharging her. The Commission finds Ms. Jackson's factual testimony to be credible, but cannot agree with her conclusion.

Ms. Jackson is to be applauded for her efforts in energy conservation, installing insulation, patching the hole in the roof, lowering her thermostat, and shutting off gas appliances when not in use. However, the evidence shows Ms. Jackson's home has at least eighteen (18) windows, but only two of them are covered with plastic insulation. Heat loss associated with non-insulated windows plus the number of heating degree days both directly impact gas usage at Ms. Jackson's home. Given the increase in heating degree days and the sixteen non-insulated windows that were described by their owner as old, it can reasonably be concluded that even with the stove shut off at the valve, the furnace thermostat set low but still on, and the water heater on; consumption of gas could increase due to the weather.

Given the evidence presented, including the likely heat loss from the sixteen older non-insulated windows, the increase in heating degree days during the period in question, and the meter test results, the Commission, considering the standard of "more likely than not" whether Ms. Jackson's theory is correct, must find against her complaint. The Commission believes Ms. Jackson's testimony, but finds that Ms. Jackson's evidence did not support the burden necessary, to establish that her high gas bills were more likely than not caused by a Spire violation of law or its tariff.

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 Ms. Jackson has failed to meet, by a preponderance of the evidence, her burden of proof to demonstrate that Spire violated any statute, Commission rule, order, or tariff provision. Ms. Jackson's complaint will be denied on the merits.

No parties objected to Ms. Jackson's request to have certain pleadings deemed non-confidential. Ms. Jackson's unopposed request is reasonable and the Commission will grant it.

THE COMMISSION ORDERS THAT:

1. Mary Ann Jackson's complaint is denied.
2. Per the request of Mary Ann Jackson, the following pleadings in the case shall have their designations as confidential removed:
 - a. *Formal Complaint* (filed April 29, 2019);
 - b. *Spire Missouri Inc.'s Answer* (filed May 29, 2019);
 - c. *Staff Report* (filed June 13, 2019);
 - d. *Stipulation of Undisputed Facts* (filed September 6, 2019); and
 - e. *List of Issues and Witnesses, and Position Statements* (filed September 10, 2019).

3. This order shall become effective on January 29, 2020.

BY THE COMMISSION



Morris L. Woodruff

Morris L. Woodruff
Secretary

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

Hatcher, Regulatory Law Judge

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

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ACCOUNTING

§4. Jurisdiction and powers of the State Commission

The Commission is granted jurisdiction by Section 393.140(8) RSMo to prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited.

EC-2019-0200 **29 MPSC 3d 101**

§8. Uniform accounts and rules

Having determined that the assessment cost was not extraordinary under the first part of the Uniform Standard of Accounts (USOA) definition, the Commission need not reach the question of whether the cost is “material.”

GU-2019-0011 **29 MPSC 3d 166**

§38. Taxes

There was not sufficient evidence to show that a claimed net operating loss was generated during the time frame of the Infrastructure System Replacement Surcharge (ISRS), thus it could not be included in the surcharge calculation.

WO-2019-0184 **29 MPSC 3d 260**

§38. Taxes

Net operating losses (NOLs) are not specifically tracked as to origin, and the term encompasses an annual or longer period.

WO-2019-0184 **29 MPSC 3d 260**

§38. Taxes

The Commission could not determine the existence of a present or future net operating loss (NOL) without supporting tax documentation and evidence in the utility's books.
WO-2019-0184 **29 MPSC 3d 260**

§38. Taxes

The stipulation and agreement setting out a methodology for calculating income taxes in the development of the infrastructure system replacement surcharge (ISRS) revenue requirement was a reasonable resolution to the income tax issue and should be approved.
GO-2019-0356 & GO-2019-0357 **29 MPSC 3d 576**

§42. Accounting Authority Orders

It was in the public interest to authorize a deferral accounting mechanism or tracker.
ET-2018-0132 **29 MPSC 3d 010**

§42. Accounting Authority Orders

The Commission only approved one of four parts of Union Electric d/b/a Ameren Missouri's pilot program upon which the evidence of expected performance was based. Further, the Commission found it was impossible to determine if a particular electric vehicle (EV) in Ameren Missouri's service territory was purchased because of the EV Charging Corridor Sub-Program. Therefore, the Commission did not order a performance based metric as part of the tracker.
ET-2018-0132 **29 MPSC 3d 010**

§42. Accounting Authority Orders

Commission could not determine based on the evidence in the case, that seven years was an appropriate amortization period for these expenses. Therefore, the Commission did not authorize a seven-year amortization with the tracker or determine if the costs would be included in rates. The

Commission stated that those determinations would be determined in a future rate case.

ET-2018-0132 **29 MPSC 3d 010**

§42. Accounting Authority Orders

Trackers have traditionally been used in the context of a rate case to track future expenses and have been used for a particular policy reason. Whereas, accounting authority orders (AAOs) have traditionally been implemented to account for a past expense that would not otherwise be possible to be recovered in rates. Therefore, the Commission determined that because the request for a tracker was the same as a request for an AAO, the Commission should apply the same analysis to either deferral mechanism.

GU-2019-0011 **29 MPSC 3d 166**

§42. Accounting Authority Orders

The use of deferral accounting mechanisms “should be limited because they violate the matching principle, tend to unreasonably skew ratemaking results, and dull the incentives a utility has to operate efficiently and productively under the rate regulation approach employed in Missouri.” *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, 769 (Mo. Ct. App. 2016).

GU-2019-0011 **29 MPSC 3d 166**

§42. Accounting Authority Orders

Request for an AAO as part of a request to establish a recovery amount under an ISRS was procedurally inappropriate.

GO-2019-0115 & GO-2019-0116 **29 MPSC 3d 417**

§42. Accounting Authority Orders

A request by consumers for establishment of a regulatory liability will be evaluated under the same standard used to evaluate a request by a utility to establish a regulatory asset.

EC-2019-0200 **29 MPSC 3d 533**

§42. Accounting Authority Orders

A utility's decision to retire a coal-fired generating plant was extraordinary, unusual and unique, and not recurring, and warranted the issuance of an AAO.

EC-2019-0200 **29 MPSC 3d 533**

§42. Accounting Authority Orders

A utility's current level of earnings is not considered when determining whether an AAO is appropriate.

EC-2019-0200 **29 MPSC 3d 533**

CERTIFICATES

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CERTIFICATES**§1. Generally**

The Commission granted a certificate of convenience and necessity to Missouri American Water Company to acquire the sewer utility assets of the Timber Springs Estates Homeowners Association, a homeowner's association currently not subject to the Commission's jurisdiction.

SA-2019-0183 **29 MPSC 3d 211**

§1. Generally

Timber Creek Sewer Company filed an application with the Missouri Commission requesting a certificate of convenience and necessity to install, own, acquire, construct, operate, control, manage, and maintain a sewer system to a single-family residence that has not yet been constructed as an

expansion of its service area.

SA-2020-0013 **29 MPSC 3d 473**

§4. Jurisdiction and powers generally

Grain Belt committed to establish a decommissioning fund to pay for wind-up activities to retire the project facilities and restore landowner property. Such a fund would be the first of its kind in the country.

EA-2016-0358 **29 MPSC 3d 108**

§5. Jurisdiction and powers of Federal Commissions

The Commission's authority to grant a certificate of convenience and necessity exists alongside federal regulatory authority.

EA-2016-0358 **29 MPSC 3d 108**

§6. Jurisdiction and powers of the State Commission

The Commission's authority to grant a certificate of convenience and necessity exists alongside federal regulatory authority.

EA-2016-0358 **29 MPSC 3d 108**

§11. When a certificate is required generally

In a prior complaint case the Commission determined that Mills was a water corporation within the definition of Section 386.020(59) RSMo, and as such was subject to Commission jurisdiction. The Commission also determined that any transfers of water assets were void and Mills retained ownership of the water assets. The Commission ordered Mills to apply for a certificate of convenience and necessity.

WA-2018-0370 **29 MPSC 3d 515**

§21. Grant or refusal of certificate generally

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.” 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.), 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 public interest. The factors have also been referred to as the “Tartan Factors” or the “Tartan Energy Criteria.” See *Report and Ord, 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).

WM-2018-0116 **29 MPSC 3d 065**

§21. Grant or refusal of certificate generally

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

SA-2019-0161 **29 MPSC 3d 203**

§21. Grant or refusal of certificate generally

The Commission may grant a gas 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.” Section 393.170, RSMo. The Commission has five criteria for this determination: 1) There must be a need for the service; 2) The applicant must be qualified to provide the 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 Company*, 3 Mo. P.S.C. 173, 177 (1994).

GA-2019-0214 **29 MPSC 3d 219**

§21. Grant or refusal of certificate generally

The Commission may grant a gas 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.” Section 393.170, RSMo 2016. 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; Section 386.020(18), (43) RSMo 2016. 2 Section 393.170, RSMo 2016. 4) The applicant’s proposal must be economically feasible; and 5) The service must promote the public interest. *In re Tartan Energy Company*, 3 Mo. P.S.C. 173, 177 (1994)

GA-2019-0210 **29 MPSC 3d 224**

§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 economically feasible; and (5) the service must promote the public interest.⁶ 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).

SA-2019-0334 **29 MPSC 3d 346**

§21. Grant or refusal of certificate generally

The Commission may grant a water corporation a CCN to operate after determining that the construction and operation are either "necessary or convenient for the public service." The Commission applies the five "Tartan Criteria" established in *In the Matter of Tartan Energy Company, et al.*, 3 Mo. PSC 3d 173, 177 (1994) when deciding whether to grant a new CCN. The criteria are: (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.

WA-2019-0036 **29 MPSC 3d 355**

§21.1. Public interest

Sections 393.1025 and 393.1030, RSMo (Renewable Energy Standard) and Section 393.1075, RSMo (Missouri Energy Efficiency Investment Act) indicate that it is the public policy of this state to diversify the energy supply through the support of renewable and alternative energy sources. Additionally, the Commission concluded it had also previously expressed general support for renewable energy

generation because it provides benefits to the public.
EA-2019-0010 **29 MPSC 3d 282**

§21.1. Public interest

The Commission rejected the Office of the Public Counsel's argument that the proposed investment in wind generation was too risky.

EA-2019-0010 **29 MPSC 3d 282**

§21.1. Public interest

The Commission may grant a sewer corporation a certificate of convenience and necessity to operate after determining that the construction or operation are either "necessary or convenient for the public service." Citing Section 393.170.3 RSMO 2016.

SA-2019-0334 **29 MPSC 3d 346**

§21.1. Public interest

The proposal promotes the public interest because the requested service will provide additional revenue with no increased capital expense, benefiting existing customers in the long-term. Additionally, the single residence will not burden the Oakbrook facility, which is operating at approximately 20 percent of its capacity.

SA-2020-0013 **29 MPSC 3d 473**

§21.1. Public interest

Invenergy needs the Commission's approval to acquire Grain Belt. In evaluating the proposed merger, the Commission can only disapprove the transaction if it is detrimental to the public interest. Determining what is in the interest of the public is a balancing process. As put forth in the order granting Grain Belt a certificate of convenience and necessity, state energy policy in Missouri has increasingly leaned toward energy conservation and renewable energy.

EM-2019-0150 **29 MPSC 3d 478**

§21.3. Financial ability of applicant

Currently Grain Belt does not have sufficient capital to complete the Grain Belt transmission project. Invenergy has significantly more cash than Grain Belt's current parent company, and Invenergy also has a greater book value. Both of these when combined with Invenergy's significant experience with large scale renewable energy projects will promote the completion of the Grain Belt Project.

EM-2019-0150 **29 MPSC 3d 478**

§21.4. Economic feasibility of proposed service

The proposal is economically feasible because the service area expansion will be funded by the property owner. The property owner will be responsible for installing a grinder pump and the necessary pressure collection line to Timber Creek's system.

SA-2020-0013 **29 MPSC 3d 473**

§22. Restrictions and conditions

The Commission reviewed the *Stipulation and Agreement Concerning Wildlife's* provisions and found that the grant of certificates for Kings Point and North Fork Ridge should be conditioned on The Empire District Electric Company complying with the agreement's terms, which were reasonable and necessary.

EA-2019-0010 **29 MPSC 3d 282**

§22. Restrictions and conditions

Under Section 393.170.3, RSMo, when granting a certificate of convenience and necessity, the "[C]ommission may by its order impose such condition or conditions as it may deem reasonable and necessary."

EA-2019-0010 **29 MPSC 3d 282**

§22. Restrictions and conditions

Requiring the tax equity parameters as set out in the Non-

Unanimous Stipulation and Agreement at Paragraph 12, was a reasonable and necessary condition to granting the certificates for the wind generation projects.

EA-2019-0010 **29 MPSC 3d 282**

§22. Restrictions and conditions

The Commission amended its Report and Order to clarify that Invenergy will be required to exercise its control such that Grain Belt complies with all conditions placed on the granting of its certificate of convenience and necessity, not that Invenergy will be required to independently comply with each of those conditions.

EM-2019-0150 **29 MPSC 3d 478**

§22. Restrictions and conditions

The Commission concludes that the proposed conditions are reasonable and necessary in granting a certificate of convenience and necessity to Mills to ensure safe and adequate service because of Mills' inexperience with utility regulation, customer concerns with water quality, continued inappropriate billing of customers through the HOA, and Mills' difficulty in fully complying with the Commission's prior orders in File No. WC-2017-0037. The Commission will order conditions that it feels are necessary to safeguard the interests of the customers residing in the subdivision and are articulated in the ordered paragraphs below.

WA-2018-0370 **29 MPSC 3d 515**

§34. Public convenience and necessity or public benefit

Sections 393.1025 and 393.1030, RSMo (Renewable Energy Standard) and Section 393.1075, RSMo (Missouri Energy Efficiency Investment Act) indicate that it is the public policy of this state to diversify the energy supply through the support of renewable and alternative energy sources. The Commission has previously expressed general support for renewable energy generation because it provides benefits to

the public.

EA-2019-0010 **29 MPSC 3d 282**

§34. Public convenience and necessity or public benefit

The construction work in progress (CWIP) statute was not applicable to the grant of a certificate to own and operate the wind generation projects, but rather was applicable upon request for recovery of those costs to build the wind generation projects and put them in service.

EA-2019-0010 **29 MPSC 3d 283**

§34. Public convenience and necessity or public benefit

The evidence showed the benefits of the wind generation projects, including the likely reduction in revenue requirement of \$169 million over 20 years, diversifying The Empire District Electric Company's energy supply, replacing expiring wind generation purchase agreements, and providing in-demand renewable energy, outweighed the costs and risks of the projects. Therefore, there was a need for the wind generation projects.

EA-2019-0010 **29 MPSC 3d 283**

§42. Electric and power

Grain Belt committed to establish a decommissioning fund to pay for wind-up activities to retire the project facilities and restore landowner property. Such a fund would be the first of its kind in the country.

EA-2016-0358 **29 MPSC 3d 108**

§42. Electric and power

Demand for renewably-generated electricity meets the definition of a need for service. Specifically, wind power transmitted to Missouri is of interest to commercial, manufacturing, consumer companies, and industrial customers.

EA-2016-0358 **29 MPSC 3d 108**

§42. Electric and power

The use of Grain Belt transmission service would save approximately \$10 million per year for one party's wholesale customers in transmission charges alone, compared to Southwest Power Pool (SPP) and Midcontinent Independent System Operator (MISO) transmission rates.

EA-2016-0358 **29 MPSC 3d 108**

§42. Electric and power

The Grain Belt interregional transmission line produces consumer benefits by providing an alternate pathway for electricity between and within transmission region across regional seams. Use of the Grain Belt line can also avoid pancaking transmission rates when crossing regional seams into adjoining electric transmission regions.

EA-2016-0358 **29 MPSC 3d 109**

§42. Electric and power

The Grain Belt Project will employ a shipper pays model. None of the costs will be recovered through the cost allocation process of Midcontinent Independent System Operator (MISO), PJM Interconnection, or Southwest Power Pool (SPP). Accordingly, none of the Grain Belt Project costs will be passed through to Missouri ratepayers, unless and only to the extent that their local utility voluntarily chooses to purchase capacity or power on the Grain Belt interregional transmission line.

EA-2016-0358 **29 MPSC 3d 109**

§42. Electric and power

Wind energy from Kansas delivered to Missouri by the Grain Belt interregional transmission line is substantially less expensive than wind energy generated within the Midcontinent Independent System Operator (MISO) region

and delivered to Missouri due primarily to transmission congestion costs.

EA-2016-0358 **29 MPSC 3d 109**

§42. Electric and power

Because wind power varies proportionally to wind velocity by the third power, a Kansas wind site with an average wind velocity of 8.8 meters/second produces almost double the power of a site in Missouri with a 7.0 meter/second average. This exponential effect substantially reduces the cost of wind energy produced by facilities located in areas with higher average wind speeds.

EA-2016-0358 **29 MPSC 3d 109**

§42. Electric and power

No more than nine acres of land would be taken out of agricultural production as a result of the structures installed for the Grain Belt transmission line. Further, much of the land traversed by the transmission line is not suited for center pivot irrigation, which is the primary agricultural concern when constructing transmission lines because of the permanent nature of such irrigation systems.

EA-2016-0358 **29 MPSC 3d 109**

§43. Gas

The Commission may grant a gas 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.

GA-2019-0226 **29 MPSC 3d 083**

§46. Telecommunications

The application process for designation as an eligible telecommunications carrier is not designed to assess a company's technology broadband speed and latency capabilities. In any event, the FCC separately evaluates a

winning bidder's technology before releasing any funding. In that regard, mechanisms are in place during the FCC's funding process to test and verify whether a company is meeting service obligations.

DA-2019-0102 **29 MPSC 3d 005**

§53. Consolidation or merger

Missouri law requires that "[n]o. . .water corporation. . .shall merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do." The Commission will deny the application only if approval would be detrimental to the public interest.

WA-2019-0036 **29 MPSC 3d 355**

§59. Sale of certificate rights

Invenergy Transmission LLC and Invenergy Investment Company applied to the Commission to approve a transaction in which Invenergy would acquire ownership of Grain Belt and the Grain Belt Express transmission project.

EM-2019-0150 **29 MPSC 3d 478**

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

DEPRECIATION

No headnotes in this volume involved the question of Depreciation.

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

DISCRIMINATION**§11. Inequality of rates**

A special rate for a high use customer, taking electricity at a high load factor, that is less than its fully allocated cost, but more than its incremental cost is just and reasonable and is not unduly or unreasonably preferential.

EO-2019-0244 **29 MPSC 3d 657**

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
-

ELECTRIC

§2. Obligation of the utility

An investor-owned utility obligated to serve a customer can be relieved of that obligation via a Commission-approved territorial agreement.

EO-2020-0060 **29 MPSC 3d 570**

§3. Certificate of convenience and necessity

Demand for renewably-generated electricity meets the definition of a need for service. Specifically, wind power transmitted to Missouri is of interest to commercial, manufacturing, consumer companies, and industrial customers.

EA-2016-0358 **29 MPSC 3d 109**

§3. Certificate of convenience and necessity

The use of Grain Belt transmission service would save approximately \$10 million per year for one party's wholesale customers in transmission charges alone, compared to Southwest Power Pool (SPP) and Midcontinent Independent System Operator (MISO) transmission rates.

EA-2016-0358 **29 MPSC 3d 109**

§3. Certificate of convenience and necessity

The Grain Belt interregional transmission line produces consumer benefits by providing an alternate pathway for electricity between and within transmission region across regional seams. Use of the Grain Belt line can also avoid pancaking transmission rates when crossing regional seams into adjoining electric transmission regions.

EA-2016-0358 **29 MPSC 3d 110**

§3. Certificate of convenience and necessity

The Grain Belt Project will employ a shipper pays model. None of the costs will be recovered though the cost

allocation process of Midcontinent Independent System Operator (MISO), PJM Interconnection, or Southwest Power Pool (SPP). Accordingly, none of the Grain Belt Project costs will be passed through to Missouri ratepayers, unless and only to the extent that their local utility voluntarily chooses to purchase capacity or power on the Grain Belt interregional transmission line.

EA-2016-0358 **29 MPSC 3d 110**

§3. Certificate of convenience and necessity

Wind energy from Kansas delivered to Missouri by the Grain Belt interregional transmission line is substantially less expensive than wind energy generated within the Midcontinent Independent System Operator (MISO) region and delivered to Missouri due primarily to transmission congestion costs.

EA-2016-0358 **29 MPSC 3d 110**

§3. Certificate of convenience and necessity

Because wind power varies proportionally to wind velocity by the third power, a Kansas wind site with an average wind velocity of 8.8 meters/second produces almost double the power of a site in Missouri with a 7.0 meter/second average. This exponential effect substantially reduces the cost of wind energy produced by facilities located in areas with higher average wind speeds.

EA-2016-0358 **29 MPSC 3d 110**

§3. Certificate of convenience and necessity

No more than nine acres of land would be taken out of agricultural production as a result of the structures installed for the Grain Belt transmission line. Further, much of the land traversed by the transmission line is not suited for center pivot irrigation, which is the primary agricultural concern when constructing transmission lines because of the

permanent nature of such irrigation systems.

EA-2016-0358 **29 MPSC 3d 110**

§3. Certificate of convenience and necessity

The Commission's authority to grant a certificate of convenience and necessity exists alongside federal regulatory authority.

EA-2016-0358 **29 MPSC 3d 110**

§3. Certificate of convenience and necessity

Real estate easements qualify as real estate, and cash on hand for project development is personal property, when meeting the statutory definition of an electrical corporation.

EA-2016-0358 **29 MPSC 3d 111**

§3. Certificate of convenience and necessity

Indiscriminate transmission service provided by an entity that constructs and operates a transmission line bringing electrical energy from electrical power generators to public utilities that serve consumers meets the statutory definition of a public utility.

EA-2016-0358 **29 MPSC 3d 111**

§3. Certificate of convenience and necessity

Grain Belt committed to establish a decommissioning fund to pay for wind-up activities to retire the project facilities and restore landowner property. Such a fund would be the first of its kind in the country.

EA-2016-0358 **29 MPSC 3d 111**

§3. Certificate of convenience and necessity

The evidence showed the benefits of the wind generation projects, including the likely reduction in revenue requirement of \$169 million over 20 years, diversifying The Empire District Electric Company's energy supply, replacing expiring wind generation purchase agreements, and

providing in-demand renewable energy, outweighed the costs and risks of the projects. Therefore, there was a need for the wind generation projects.

EA-2019-0010 **29 MPSC 3d 283**

§3. Certificate of convenience and necessity

Sections 393.1025 and 393.1030, RSMo (Renewable Energy Standard) and Section 393.1075, RSMo (Missouri Energy Efficiency Investment Act) indicate that it is the public policy of this state to diversify the energy supply through the support of renewable and alternative energy sources. The Commission has previously expressed general support for renewable energy generation because it provides benefits to the public.

EA-2019-0010 **29 MPSC 3d 283**

§3. Certificate of convenience and necessity

The Commission reviewed the *Stipulation and Agreement Concerning Wildlife's* provisions and found that the grant of certificates for Kings Point and North Fork Ridge should be conditioned on The Empire District Electric Company complying with the agreement's terms, which were reasonable and necessary.

EA-2019-0010 **29 MPSC 3d 283**

§3. Certificate of convenience and necessity

The Commission rejected the Office of the Public Counsel's argument that the proposed investment in wind generation was too risky. The Commission found the wind projects would promote the public interest.

EA-2019-0010 **29 MPSC 3d 283**

§3. Certificate of convenience and necessity

Under Section 393.170.3, RSMo, when granting a certificate of convenience and necessity, the "[C]ommission may by its

order impose such condition or conditions as it may deem reasonable and necessary.”

EA-2019-0010 **29 MPSC 3d 284**

§3. Certificate of convenience and necessity

Requiring the tax equity parameters as set out in the Non-Unanimous Stipulation and Agreement at Paragraph 12, was a reasonable and necessary condition to granting the certificates for the wind generation projects.

EA-2019-0010 **29 MPSC 3d 284**

§3. Certificate of convenience and necessity

The construction work in progress (CWIP) statute was not applicable to the grant of a certificate to own and operate the wind generation projects, but rather was applicable upon request for recovery of those costs to build the wind generation projects and put them in service.

EA-2019-0010 **29 MPSC 3d 284**

§6. Territorial agreements

Pursuant to subsections 394.312.3 and .5 RSMo 2016, the Commission may approve the Agreement’s service area designation if it is in the public interest and the resulting agreement in total is not detrimental to the public interest.

EO-2019-0381 **29 MPSC 3d 363**

§6. Territorial agreements

Although the Commission has limited jurisdiction over rural electrical cooperatives, because the Commission has jurisdiction over all territorial agreements, Ozark Electric is subject to the Commission’s jurisdiction in this case. Section 394.312.4, RSMo, states, in relevant part: “[B]efore becoming effective, all territorial agreements entered into under the provision of this section, including any subsequent amendments to such agreements, or the transfer or assignment of the agreement or any rights or obligation of

any party to an agreement, shall receive the approval of the public service commission by report and order. . . .”

EO-2019-0381 **29 MPSC 3d 363**

§6. Territorial agreements

Pursuant to subsections 394.312.3 and .5, RSMo 2016, the Commission may approve the designation of electric service areas if in the public interest and approve a territorial agreement in total if not detrimental to the public interest.

EO-2019-0396 **29 MPSC 3d 370**

§8. Jurisdiction and powers of Federal Commissions

The Commission’s authority to grant a certificate of convenience and necessity exists alongside federal regulatory authority.

EA-2016-0358 **29 MPSC 3d 110**

§9. Jurisdiction and powers of the State Commission

Under Subsection 393.1075.11, RSMo, the Commission has the authority to “approve corporation-specific settlements and tariff provisions . . . to ensure that electric corporations can achieve the goals of . . . [MEEIA].”

EC-2015-0315 **29 MPSC 3d 001**

§9. Jurisdiction and powers of the State Commission

Under its broad regulatory power in Section 393.130, RSMo, to ensure that services provided by an electric corporation are safe and adequate, the Commission had the authority to approve or reject incentive programs or promotional practices such as the Charge Ahead program presented by Union Electric Company d/b/a Ameren Missouri. The Commission exercised this power by investigating, examining, and hearing evidence on proposed tariff changes for new rates and services of those electrical corporations.

ET-2018-0132 **29 MPSC 3d 010**

§9. Jurisdiction and powers of the State Commission

The Commission promulgated rules to implement its supervisory powers with regard to promotional practices. Thus, the Commission concluded Union Electric Company d/b/a Ameren's Charge Ahead programs should be evaluated under the standards set out in Chapter 14 of the Commission's rules (20 CSR 4240-14).

ET-2018-0132 **29 MPSC 3d 010**

§9. Jurisdiction and powers of the State Commission

The Commission's authority to grant a certificate of convenience and necessity exists alongside federal regulatory authority.

EA-2016-0358 **29 MPSC 3d 110**

§9. Jurisdiction and powers of the State Commission

Real estate easements qualify as real estate, and cash on hand for project development is personal property, when meeting the statutory definition of an electrical corporation.

EA-2016-0358 **29 MPSC 3d 111**

§9. Jurisdiction and powers of the State Commission

Indiscriminate transmission service provided by an entity that constructs and operates a transmission line bringing electrical energy from electrical power generators to public utilities that serve consumers meets the statutory definition of a public utility.

EA-2016-0358 **29 MPSC 3d 111**

§9. Jurisdiction and powers of the State Commission

Evergy Missouri Metro and Evergy Missouri West applied to the Commission for approval of certain demand-side programs, a Technical Resource Manual, and a Demand-

Side Investment Mechanism as contemplated by the Missouri Energy Efficiency Investment Act.

EO-2019-0132 **29 MPSC 3d 673**

§11. Territorial agreements

Although the Commission has limited jurisdiction over rural electrical cooperatives, because the Commission has jurisdiction over all territorial agreements, Ozark Electric is subject to the Commission's jurisdiction in this case. Section 394.312.4, RSMo, states, in relevant part: “[B]efore becoming effective, all territorial agreements entered into under the provision of this section, including any subsequent amendments to such agreements, or the transfer or assignment of the agreement or any rights or obligation of any party to an agreement, shall receive the approval of the public service commission by report and order. . . .”

EO-2019-0381 **29 MPSC 3d 363**

§11. Territorial agreements

Section 394.312, RSMo 2016, gives the Commission jurisdiction over retail electric service territorial agreements, including those between rural electric cooperatives and municipally owned utilities, and including any subsequent amendments to such agreements. Section 394.312.1 and 4, RSMo.

EO-2019-0396 **29 MPSC 3d 370**

§11. Territorial agreements

The Commission has jurisdiction over territorial agreements between electric cooperatives and electrical corporations, including subsequent amendments to those agreements.

EO-2020-0060 **29 MPSC 3d 570**

§13.1. Energy Efficiency

In accordance with the mandate of the Supreme Court of Missouri's opinion issued July 3, 2018, and the *Revised*

Non-Unanimous Stipulation and Agreement Addressing Ameren Missouri's Performance Incentive Award and the Commission order approving that agreement, Union Electric Company d/b/a Ameren Missouri was authorized to recalculate (subject only to verification of the accuracy of the recalculation) its performance incentive award for the period of October 1, 2014 through December 31, 2015, and was authorized to include the resulting sum for recovery in the appropriate Rider EEIC adjustment filings.

EO-2015-0315 **29 MPSC 3d 001**

§13.1. Energy Efficiency

The Missouri Energy Efficiency Investment Act does not define avoided costs, and nowhere in the statute does it say that a supply-side resource must be avoided or deferred. Avoided costs are the foundation of whether a program is cost-effective under the total resource cost test, and the statute only allows for recovery for cost-effective programs.

EO-2019-0132 **29 MPSC 3d 673**

§13.1. Energy Efficiency

A market-based approach was the most appropriate way to calculate avoided costs for this Missouri Energy Efficiency Investment Act application and that a market-based approach best values demand-side investments equal to traditional investments in supply and delivery infrastructure. Therefore, the Commission will direct the parties to use the average of bids that Evergy Missouri West received for capacity in 2017 for purposes of calculating avoided costs.

EO-2019-0132 **29 MPSC 3d 673**

§13.1. Energy Efficiency

Recovery for demand-side programs will only be allowed if the programs result in energy or demand savings and benefit all customers in the customer class in which the programs are proposed, regardless of whether the programs are

utilized by all customers. The projected costs will be outweighed by the savings benefits and all customers will monetarily benefit from the programs within the class the programs are offered. Further, all customers across all classes will benefit from the non-monetary general benefits of energy efficiency related to less energy consumption, such as reduced emissions.

EO-2019-0132 **29 MPSC 3d 673**

§14. Rules and regulations

The Public Utility Regulatory Act of 1978, 16 U.S.C. 2601, requires that individual meters be installed in new buildings to encourage the conservation of energy by the occupants of those buildings. This is codified in Missouri law in the Commission's rule 20 CSR 4240-20.050(2).

EC-2018-0033 **29 MPSC 3d 498**

§20. Rates

A special rate for a high use customer, taking electricity at a high load factor, that is less than its fully allocated cost, but more than its incremental cost is just and reasonable and is not unduly or unreasonably preferential.

EO-2019-0244 **29 MPSC 3d 657**

§36. Local service

Indiscriminate transmission service provided by an entity that constructs and operates a transmission line bringing electrical energy from electrical power generators to public utilities that serve consumers meets the statutory definition of a public utility.

EA-2016-0358 **29 MPSC 3d 111**

§38. Taxes

A variance from the requirements of competitive bidding was approved by the Commission as the safeguards agreed to

by the company offer similar consumer protections as those contained in the affiliate transaction rule.

AO-2018-0179 **29 MPSC 3d 376**

§38. Taxes

A variance from the requirements of competitive bidding was approved by the Commission as the costs of issuing debt were less under the variance proposal.

AO-2018-0179 **29 MPSC 3d 376**

§38. Taxes

Approval of a money pool requires a rule variance. A rule variance requires the Commission find good cause. Here, parties testified to at least four substantial reasons showing good cause related to the requested waiver of the requirement of competitive bids anticipated: 1) lower borrowing interest cost; 2) lower borrowing administrative costs due to lower transactional and documentation requirements; 3) higher interest and investment revenue from excess cash; and 4) having an immediately available line of credit.

AO-2018-0179 **29 MPSC 3d 376**

§41. Billing practices

Complainant filed a small formal complaint because he believes that Ameren Missouri's budget billing was causing him to pay more than he would otherwise have to pay for electrical service. The budget billing amount is the levelized amount to avoid seasonal variance. Because complainant did not have 12 months of prior billing history as required by Ameren Missouri's tariff, his monthly budget bill amount was \$100.00 a month. The budget billing adjustment is the difference between what complainant's bill should have been without budget billing and the budget billing amount. Complainant typically used less than the budget billing amount so budget billing did increase his monthly bill, but

Ameren Missouri did not violate any Commission rule, law, or order, nor did Ameren Missouri violate its tariff.
EC-2018-0371 **29 MPSC 3d 230**

§43. Accounting Authority orders

It was in the public interest to authorize a deferral accounting mechanism or tracker.

ET-2018-0132 **29 MPSC 3d 011**

§43. Accounting Authority orders

A request by consumers for establishment of a regulatory liability will be evaluated under the same standard used to evaluate a request by a utility to establish a regulatory asset.

EC-2019-0200 **29 MPSC 3d 533**

§43. Accounting Authority orders

A utility's decision to retire a coal-fired generating plant was extraordinary, unusual and unique, and not recurring, and warranted the issuance of an AAO.

EC-2019-0200 **29 MPSC 3d 534**

§43. Accounting Authority orders

A utility's current level of earnings is not considered when determining whether an AAO is appropriate.

EC-2019-0200 **29 MPSC 3d 534**

§45. Decommissioning costs

Grain Belt committed to establish a decommissioning fund to pay for wind-up activities to retire the project facilities and restore landowner property. Such a fund would be the first of its kind in the country.

EA-2016-0358 **29 MPSC 3d 111**

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**
-

EVIDENCE, PRACTICE AND PROCEDURE

§1. Generally

The determination of witness credibility is left to the Commission, “which is free to believe none, part or all the testimony.” *In Matter of Kansas City Power & Light Company’s Request for Authority to Implement a General Rate Increase for Electric Service*, 509 S.W.3d 757, 764 (Mo. App. W.D. 2016), quoting internal quotations from *State ex rel Pub Counsel v. Mo. Pub. Serv. Com’n*, 289 S.W.3d 240, 246-247 (Mo. App. W.D. 2009).

GO-2019-0058 & GO-2019-0059 **29 MPSC 3d 187**

§2. Jurisdiction and powers

The Commission is an administrative body of limited jurisdiction, having only the powers expressly granted by statutes and reasonably incidental thereto. The Commission has no authority to require reparation or refund, cannot declare or enforce any principle of law or equity, and cannot determine damages. The Commission cannot grant equitable relief or abate a nuisance.

GC-2017-0348 **29 MPSC 3d 088**

§2. Jurisdiction and powers

A tariff has the same force and effect as a statute, and it becomes state law. *State ex rel. Missouri Pipeline Co. v. Missouri Public Service Com’n*, 307 S.W.3d 162 (Mo. App. W.D. 2009). The Commission has the authority to interpret a tariff and apply its terms. 45 5 *State ex rel. Mo. Pipeline Co. v. Pub. Service Com’n*, 307 S.W.3d 162, 177 (Mo. App. W.D. 2009). See *State ex rel Union Elec. Co. v. Public Service Com’n of State*, 399 S.W.3d 467 (Mo. App. W.D. 2013).

GO-2019-0058 & GO-2019-0059 **29 MPSC 3d 187**

§2. Jurisdiction and powers

The Commission is an administrative body of limited jurisdiction, having only the powers expressly granted by statutes and reasonably incidental thereto. The Commission has no authority to require reparation or refund, cannot declare or enforce any principle of law or equity, and cannot determine damages. *State ex. rel. City of St. Louis v. Missouri Public Service Comm'n*, 73 S.W.2d 393, 399 (Mo. banc 1934); *State ex. rel. Kansas City Transit, Inc. v. Public Service Comm'n*, 406 S.W.2d 5, 8 (Mo. 1966); *Straube v. Bowling Green Gas Co.*, 227 S.W.2d 666,668-669 (Mo. 1950).

EC-2019-0168 **29 MPSC 3d 401**

§2. Jurisdiction and powers

If review of a PSC order is pending before a court, the PSC may not enter a modified, extended, or new order.

GO-2019-0115 & GO-2019-0116 **29 MPSC 3d 417**

§2. Jurisdiction and powers

The Commission had no jurisdiction to rehear evidence from a prior case that was on appeal and to make a new order based on that evidence.

GO-2019-0115 & GO-2019-0116 **29 MPSC 3d 417**

§2. Jurisdiction and powers

The Commission will not address changing the tariff, which would alter Empire's revenue requirement, or the justness and reasonableness of Empire's rates in this complaint because complainant's complaint does not meet the requirements of 386.390 RSMo.

EC-2018-0033 **29 MPSC 3d 498**

§4. Presumption and burden of proof

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. *State ex rel GS Techs Operating Co. v. PSC of Mo.*, 116 S.W.3d 680, 696 (Mo. App. 2003)

GC-2017-0348 **29 MPSC 3d 088**

§4. Presumption and burden of proof

Spire Missouri Inc. did not meet its burden of proof to demonstrate that its increased assessment cost was extraordinary. Therefore, the Commission denied Spire Missouri Inc.'s request for an accounting deferral mechanism.

GU-2019-0011 **29 MPSC 3d 166**

§4. Presumption and burden of proof

Spire Missouri Inc. satisfactorily refuted Public Counsel's claims that errors in work orders make the eligibility of these projects suspect by explaining the complicated process of generating work orders and how inadvertent errors could occur. Additionally, there is no requirement that Spire Missouri provide evidence of testing or specific leak analysis in order to prove that its pipes are in worn out or deteriorated condition.

GO-2019-0356 & GO-2019-0357 **29 MPSC 3d 576**

§4. Presumption and burden of proof

In determining whether a utility's conduct was prudent, the Commission will 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. The Commission cited *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). 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).

EO-2019-0067 **29 MPSC 3d 629**

§4. Presumption and burden of proof

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 do not make the decision extravagant or imprudent." *State ex rel. Missouri Power and Light Co. v. Pub. Serv. Com'n*, 669 S.W.2d 941, 948 (Mo. App. W.D. 1984). The Commission must find both that (1) the utility acted imprudently and (2) the imprudence resulted in harm to the utility's ratepayers to disallow a cost based on a finding that the cost was imprudently incurred. The Commission cited *State ex rel. Associated Natural Gas Co. v. Public Service Com'n of State of Mo.*, 954 S.W.2d 520, 529- 530 (Mo. App. W.D., 1997).

EO-2019-0067 **29 MPSC 3d 629**

§6. Weight, effect and sufficiency

The determination of witness credibility is left to the Commission, "which is free to believe none, part or all the testimony." *In Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service*, 509 S.W.3d 757, 764 (Mo. App. W.D. 2016), quoting internal quotations from *State*

ex rel Pub Counsel v. Mo. Pub. Serv. Com'n, 289 S.W.3d 240, 246-247 (Mo. App. W.D. 2009).
GO-2019-0058 & GO-2019-0059 **29 MPSC 3d 187**

§6. Weight, effect and sufficiency

There was not sufficient evidence to show that a claimed net operating loss was generated during the time frame of the Infrastructure System Replacement Surcharge (ISRS), thus it could not be included in the surcharge calculation.
WO-2019-0184 **29 MPSC 3d 260**

§6. Weight, effect and sufficiency

The Commission could not determine the existence of a present or future net operating loss (NOL) without supporting tax documentation and evidence in the utility's books.
WO-2019-0184 **29 MPSC 3d 260**

§6. Weight, effect and sufficiency

The determination of witness credibility is left to the Commission, "which is free to believe none, part or all of the testimony." *In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service and Midwest Energy Consumers' Group v. Missouri Public Service Commission*, 509 S.W.3d 757, 764 (Mo. App. W.D. 2016).
EC-2019-0168 **29 MPSC 3d 401**

§6. Weight, effect and sufficiency

Spire Missouri Inc. satisfactorily refuted Public Counsel's claims that errors in work orders make the eligibility of these projects suspect by explaining the complicated process of generating work orders and how inadvertent errors could occur. Additionally, there is no requirement that Spire Missouri provide evidence of testing or specific leak analysis

in order to prove that its pipes are in worn out or deteriorated condition.

GO-2019-0356 & GO-2019-0357 **29 MPSC 3d 576**

§6. Weight, effect and sufficiency

When considered in combination, the totality of the evidence supported a finding that the cast iron mains were in a worn out or in a deteriorated condition.

GO-2019-0356 & GO-2019-0357 **29 MPSC 3d 576**

§8. Stipulation

A nonunanimous stipulation and agreement was not approved in the Report and Order as it was objected to by a non-signatory party. The agreement, by rule, then becomes a statement of position of the signatory parties.

AO-2018-0179 **29 MPSC 3d 376**

§19. Records and books of utilities

There was not sufficient evidence to show that a claimed net operating loss was generated during the time frame of the Infrastructure System Replacement Surcharge (ISRS), thus it could not be included in the surcharge calculation.

WO-2019-0184 **29 MPSC 3d 260**

§19. Records and books of utilities

The Commission could not determine the existence of a present or future net operating loss (NOL) without supporting tax documentation and evidence in the utility's books.

WO-2019-0184 **29 MPSC 3d 260**

§23. Notice and hearing

A "contested case" means "a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing." Section 536.010 (4), RSMO. The "law" referred to in this definition includes any ordinance, statute, or constitutional provision

that mandates a hearing. No law “requires” that there be a hearing on the company’s application for designation as an eligible telecommunications carrier, and an application for such a designation is not a “contested” case.

DA-2019-0102 **29 MPSC 3d 005**

§23. Notice and hearing

The Commission need not hold a hearing if, after proper notice and opportunity to intervene, no party requests such a hearing. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

SA-2019-0161 **29 MPSC 3d 203**

§23. Notice and hearing

Where no party has requested an evidentiary hearing no law requires one, this action is not a contested case, and the Commission need not separately state its findings of fact. Citing *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989); and Section 536.010(4), RSMO 2016.

SA-2019-0334 **29 MPSC 3d 346**

§23. Notice and hearing

Section 394.312.5, RSMo 2016, provides the Commission must hold an evidentiary hearing on a proposed territorial agreement unless an agreement is made between the parties and no one requests a hearing. Since an agreement was made and no hearing was requested, the Commission may make a determination without an evidentiary hearing. *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).

EO-2019-0396 **29 MPSC 3d 370**

§24. Procedures, evidence and proof

In considering a motion to dismiss on the pleadings for failure to state a claim upon which relief may be granted, the Commission is only testing the adequacy of the petition and must assume all averments in the petition are true.

EC-2019-0200 **29 MPSC 3d 101**

§24. Procedures, evidence and proof

The Commission admitted into evidence exhibits containing calculations performed by Staff at the direction of the Commission after conclusion of the hearing where the parties were given an opportunity to respond to the verified calculations and to provide their own calculations.

GO-2019-0115 & GO-2019-0116 **29 MPSC 3d 417**

§26. Burden of proof

A complainant has the burden of proving the Company's alleged acts and/or omissions violated the law or its tariff. It is the Commission's decision, accordingly, that Ms. Beatty did not sustain her burden of proof that Ameren Missouri violated the Commission's deposit rule 4 CSR 240-13.030 (1) or its service discontinuance rule 4 CSR 240-13.050 (1) when the Company required a deposit and then discontinued service at the 3rd Street address on July 28, 2016. " It is the Commission's decision, accordingly, that Ms. Beatty failed to sustain her burden to show Ameren Missouri violated Commission Rule 4 CSR 240-13.050(9), the "existing medical emergency" rule, when it discontinued her service on July 28, 2016.

EC-2019-0168 **29 MPSC 3d 401**

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
- §8. Jurisdiction and powers of the Federal Commissions
- §9. Jurisdiction and powers of local authorities

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
- §20. Methods of estimating
- §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
- §30. Auditing and bookkeeping
- §31. Burglary loss
- §32. Casualty losses and expenses
- §33. Capital amortization
- §34. Collection fees

- §35. Construction
 - §36. Consolidation expense
 - §37. Depreciation
 - §38. Deficits under rate schedules
 - §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
-

EXPENSE

§10. Electric and power

The Commission authorized Union Electric Company d/b/a Ameren Missouri to use a deferral accounting mechanism to track the Electric Vehicle (EV) Charging Corridor Sub-Program costs and administrative expenses for possible recovery of those prudently incurred expenses in future rate cases.

ET-2018-0132 **29 MPSC 3d 011**

§16. Ascertainment of expenses generally

The Commission authorized Union Electric Company d/b/a Ameren Missouri to use a deferral accounting mechanism to track the Electric Vehicle (EV) Charging Corridor Sub-Program costs and administrative expenses for possible recovery of those prudently incurred expenses in future rate cases.

ET-2018-0132 **29 MPSC 3d 011**

§17. Extraordinary and unusual expenses

Commission assessments are not extraordinary, unusual and unique, or nonrecurring. Rather, Commission found that assessments have been calculated and assessed to utilities according to statute for many years on a set schedule. The Commission further found that it is not unusual for assessments to increase substantially in the year following a rate case. And, Spire Missouri Inc. could have anticipated a larger increase in assessment amounts in the year following the large and contentious rate cases.

GU-2019-0011 **29 MPSC 3d 167**

§19. Future expenses

The Commission authorized Union Electric Company d/b/a Ameren Missouri to use a deferral accounting mechanism to track the Electric Vehicle (EV) Charging Corridor Sub-

Program costs and administrative expenses for possible recovery of those prudently incurred expenses in future rate cases.

ET-2018-0132 **29 MPSC 3d 011**

§22. Reasonableness generally

Union Electric Company d/b/a Ameren Missouri's \$6.88 million budgeted for its Charge Ahead Program included 44% dedicated to program administration, leaving only \$3.8 million for the actual incentives that were purported to provide the benefits to all customers. This high percentage of the budget allocated for administrative costs was unreasonable.

ET-2018-0132 **29 MPSC 3d 011**

§61. Payments to affiliated interests

A variance from the requirements of competitive bidding was approved by the Commission as the safeguards agreed to by the company offer similar consumer protections as those contained in the affiliate transaction rule.

AO-2018-0179 **29 MPSC 3d 376**

§61. Payments to affiliated interests

A variance from the requirements of competitive bidding was approved by the Commission, as the costs of issuing debt were less under the variance proposal.

AO-2018-0179 **29 MPSC 3d 377**

§61. Payments to affiliated interests

Approval of a money pool requires a rule variance. A rule variance requires the Commission find good cause. Here, parties testified to at least four substantial reasons showing good cause related to the requested waiver of the requirement of competitive bids anticipated: 1) lower borrowing interest cost; 2) lower borrowing administrative costs due to lower transactional and documentation

requirements; 3) higher interest and investment revenue from excess cash; and 4) having an immediately available line of credit.

AO-2018-0179 **29 MPSC 3d 377**

§67. Taxes

The Commission approved a stipulation and agreement that required Empire to establish a regulatory liability to account for tax savings associated with excess ADIT resulting from a tax rate reduction.

GR-2018-0229 **29 MPSC 3d 079**

§69. Administrative expense

The Commission authorized Union Electric Company d/b/a Ameren Missouri to use a deferral accounting mechanism to track the Electric Vehicle (EV) Charging Corridor Sub-Program costs and administrative expenses for possible recovery of those prudently incurred expenses in future rate cases.

ET-2018-0132 **29 MPSC 3d 011**

§69. Administrative expense

Union Electric Company d/b/a Ameren Missouri's \$6.88 million budgeted for its Charge Ahead Program included 44% dedicated to program administration, leaving only \$3.8 million for the actual incentives that were purported to provide the benefits to all customers. This high percentage of the budget allocated for administrative costs was unreasonable.

ET-2018-0132 **29 MPSC 3d 011**

§76. Matching revenue/expense/rate base

The use of deferral accounting mechanisms "should be limited because they violate the matching principle, tend to unreasonably skew ratemaking results, and dull the incentives a utility has to operate efficiently and productively

under the rate regulation approach employed in Missouri.” *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, 769 (Mo. Ct. App. 2016).

GU-2019-0011 **29 MPSC 3d 167**

§76. Matching revenue/expense/rate base

The evidence presented showed that Spire Missouri Inc.’s Commission assessment costs, while having increased 52% in FY 2019 over the FY 2018 assessment, was a normal, ordinary, and recurring cost. This recurring cost was not abnormal or significantly different from the ordinary and typical activities of the company, so it is not extraordinary and, therefore, not subject to deferral under the Uniform Standard of Accounts (USOA).

GU-2019-0011 **29 MPSC 3d 167**

§79. Infrastructure system replacement surcharge (ISRS) eligible expense

There was not sufficient evidence to show that a claimed net operating loss was generated during the time frame of the Infrastructure System Replacement Surcharge (ISRS), thus it could not be included in the surcharge calculation.

WO-2019-0184 **29 MPSC 3d 261**

§79. Infrastructure system replacement surcharge (ISRS) eligible expense

Cast iron and bare steel pipes were replaced to comply with state and federal safety requirements and the cost of their replacement was eligible for recovery under an ISRS.

GO-2019-0115 & GO-2019-0116 **29 MPSC 3d 418**

§79. Infrastructure system replacement surcharge (ISRS) eligible expense

Plastic components of gas mains and service lines were not shown to be deteriorated and the cost of their replacement could not be recovered under ISRS even when the plastic was replaced as part of the replacement of eligible cast iron and bare steel mains and service lines.

GO-2019-0115 & GO-2019-0116 **29 MPSC 3d 418**

§79. Infrastructure system replacement surcharge (ISRS) eligible expense

The controlling statute authorized one filing for an infrastructure system replacement surcharge (ISRS), but did not necessarily authorize the repeated filing of petitions to recover costs that the Commission had already determined were not ISRS-eligible.

GO-2019-0356 & GO-2019-0357 **29 MPSC 3d 577**

§79. Infrastructure system replacement surcharge (ISRS) eligible expense

Ineligible plastic pipes could not be made eligible by a systematic redesign and twelve project analyses were too few for the Commission to reasonably conclude there was no cost associated with the retirement of the plastic facilities.

GO-2019-0356 & GO-2019-0357 **29 MPSC 3d 577**

§79. Infrastructure system replacement surcharge (ISRS) eligible expense

The plain reading of 20 CSR 4240-40.030(15)(E) was clear that the rule required a single action – “cathodically protect or replace.” Spire Missouri Inc. was not prohibited from cathodically protecting and then replacing, but it was only required under the rule to do one or the other. Thus, the rule could not be used to meet the “required by state or federal

law” criteria for infrastructure system replacement surcharge (ISRS) eligibility.

GO-2019-0356 & GO-2019-0357 **29 MPSC 3d 577**

§79. Infrastructure system replacement surcharge (ISRS) eligible expense

Given the expedited nature of an infrastructure replacement surcharge (ISRS) case and the complexity of determining the appropriate overheads to include in construction costs, decisions varying from the methods in a general rate case are best handled during the course of a rate case when there is more time for a full examination and all rate factors are being reviewed.

GO-2019-0356 & GO-2019-0357 **29 MPSC 3d 577**

GAS

I. IN GENERAL

- §1. Generally
- §2. Obligation of the utility
- §3. Certificate of convenience and necessity
- §4. Abandonment or discontinuance
- §5. Liability for damages
- §6. Transfer, lease and sale

II. JURISDICTION AND POWERS

- §7. Jurisdiction and powers of the State Commission
- §8. Jurisdiction and powers of the Federal Commissions
- §9. Jurisdiction and powers of local authorities

III. CONSTRUCTION AND EQUIPMENT

- §10. Construction and equipment generally
- §11. Leakage, shrinkage and waste
- §12. Location
- §13. Additions and betterments
- §14. Extensions
- §15. Maintenance
- §16. Safety

IV. OPERATION

- §17. Operation generally
- §17.1. Purchased Gas Adjustment (PGA)
- §17.2. Purchased Gas-incentive mechanism
- §18. Rates
- §19. Revenue
- §20. Return
- §21. Service
- §22. Weatherization
- §23. Valuation
- §24. Accounting
- §25. Apportionment
- §26. Restriction of service
- §27. Depreciation
- §28. Discrimination
- §29. Costs and expenses
- §30. Reports, records and statements
- §31. Interstate operation
- §32. Financing practices
- §33. Billing practices
- §34. Accounting Authority orders
- §35. Safety

V. JOINT OPERATIONS

- §36. Joint operations generally
- §37. Division of revenue
- §38. Division of expenses
- §39. Contracts
- §40. Transportation
- §41. Pipelines

VI. PARTICULAR KIND OF EXPENSES

- §42. Particular kinds of expenses generally
- §42.1. Infrastructure system replacement surcharge (ISRS) eligible expense
- §43. Accidents and damages
- §44. Additions and betterments
- §45. Advertising, promotion and publicity
- §46. Appraisal expense
- §47. Auditing and bookkeeping
- §48. Burglary loss
- §49. Casualty losses and expenses
- §50. Capital amortization
- §51. Collection fees
- §52. Construction
- §53. Consolidation expense
- §54. Depreciation
- §55. Deficits under rate schedules

- §56. Donations
- §57. Dues
- §58. Employee's pension and welfare
- §59. Expenses relating to property not owned
- §60. Expenses and losses of subsidiaries or other departments
- §61. Expenses of non-utility business
- §62. Expenses relating to unused property
- §63. Expenses of rate proceedings
- §64. Extensions
- §65. Financing costs and interest
- §66. Franchise and license expense
- §67. Insurance and surety premiums
- §68. Legal expense
- §69. Loss from unprofitable business
- §70. Losses in distribution
- §71. Maintenance and depreciation; repairs and replacements
- §72. Management, administration and financing fees
- §73. Materials and supplies
- §74. Purchases under contract
- §75. Office expense
- §76. Officers' expenses
- §77. Political and lobbying expenditures
- §78. Payments to affiliated interests
- §79. Rentals
- §80. Research
- §81. Salaries and wages
- §82. Savings in operation
- §83. Securities redemption or amortization
- §84. Taxes
- §85. Uncollectible accounts
- §86. Administrative expense
- §87. Engineering and superintendence expense
- §88. Interest expense
- §89. Preliminary and organization expense
- §90. Expenses incurred in acquisition of property
- §91. Demand charges
- §92. Expenses incidental to refunds for overcharges
- §93. Infrastructure system replacement surcharge (ISRS) eligible expense

GAS

§1. Generally

The evidence showed a 100-year old home with at least eighteen windows, with only two covered in plastic, plus an

increase in the number of heating degree days directly impacted gas usage at a residential home.
GC-2019-0331 **29 MPSC 3d 704**

§7. Jurisdiction and powers of the State Commission

Spire Missouri Inc. was asking the Commission to make a new decision on the same costs that it previously found ineligible for infrastructure system replacement surcharge (ISRS) recovery. Additionally, since those costs were under appeal to the Court of Appeals, the Commission lost jurisdiction to the Court once an appeal was filed. Therefore, the Commission could not modify or alter its order and could not issue a new order regarding those costs.
GO-2019-0356 & GO-2019-0357 **29 MPSC 3d 577**

§7. Jurisdiction and powers of the State Commission

A complaint may be filed against a natural gas utility which is under the jurisdiction of the Commission. The Commission granted the request of the complainant to deem certain information as non-confidential in order to let other customers know they have a right to file a complaint.
GC-2019-0331 **29 MPSC 3d 704**

§18. Rates

The Commission approved a stipulation and agreement that required Empire to establish a regulatory liability to account for tax savings associated with excess ADIT resulting from a tax rate reduction.

GR-2018-0229 **29 MPSC 3d 079**

§29. Costs and expenses

Spire Missouri Inc. was asking the Commission to make a new decision on the same costs that it previously found ineligible for infrastructure system replacement surcharge (ISRS) recovery. Additionally, since those costs were under appeal to the Court of Appeals, the Commission lost

jurisdiction to the Court once an appeal was filed. Therefore, the Commission could not modify or alter its order and could not issue a new order regarding those costs.
GO-2019-0356 & GO-2019-0357 **29 MPSC 3d 577**

§29. Costs and expenses

The controlling statute authorized one filing for an infrastructure system replacement surcharge (ISRS), but did not necessarily authorize the repeated filing of petitions to recover costs that the Commission had already determined were not ISRS-eligible.

GO-2019-0356 & GO-2019-0357 **29 MPSC 3d 577**

§32. Financing practices

A variance from the requirements of competitive bidding was approved by the Commission as the safeguards agreed to by the company offer similar consumer protections as those contained in the affiliate transaction rule.

AO-2018-0179 **29 MPSC 3d 377**

§32. Financing practices

A variance from the requirements of competitive bidding was approved by the Commission as the costs of issuing debt were less under the variance proposal.

AO-2018-0179 **29 MPSC 3d 377**

§32. Financing practices

Approval of a money pool requires a rule variance. A rule variance requires the Commission find good cause. Here, parties testified to at least four substantial reasons showing good cause related to the requested waiver of the requirement of competitive bids anticipated: 1) lower borrowing interest cost; 2) lower borrowing administrative costs due to lower transactional and documentation requirements; 3) higher interest and investment revenue

from excess cash; and 4) having an immediately available line of credit.

AO-2018-0179 **29 MPSC 3d 377**

§34. Accounting Authority orders

Trackers have traditionally been used in the context of a rate case to track future expenses and have been used for a particular policy reason, whereas, accounting authority orders (AAOs) have traditionally been implemented to account for a past expense that would not otherwise be possible to be recovered in rates. Therefore, because the request for a tracker was the same as a request for an AAO, the Commission should apply the same analysis to either deferral mechanism.

GU-2019-0011 **29 MPSC 3d 167**

§34. Accounting Authority orders

The use of deferral accounting mechanisms “should be limited because they violate the matching principle, tend to unreasonably skew ratemaking results, and dull the incentives a utility has to operate efficiently and productively under the rate regulation approach employed in Missouri.” *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, 769 (Mo. Ct. App. 2016).

GU-2019-0011 **29 MPSC 3d 167**

§35. Safety

Spire Missouri Inc. was required by 20 CSR 4240.40-030(13)(B) and the corresponding portions of 49 CFR part 192 to maintain its pipeline and to replace, repair, or remove it from service if it becomes unsafe.

GO-2019-0356 & GO-2019-0357 **29 MPSC 3d 578**

§35. Safety

Spire Missouri Inc. was required by 20 CSR 4240.40-030(15) and the corresponding portions of 49 CFR part 192 to implement a program to replace unprotected steel service and yard lines and cast iron transmission lines, feeder lines, or mains. Commission Rule 20 CSR 4240-40.030(15)(D) required the systematic replacement program be prioritized to identify and eliminate pipelines that present the greatest potential for hazard. Finally, 20 CSR 4240.40-030(15) also required Spire Missouri to develop a program that identified and prioritized unprotected steel pipe and to cathodically protect or replace it in an expedited manner.

GO-2019-0356 & GO-2019-0357 **29 MPSC 3d 578**

§35. Safety

Spire Missouri Inc. is required by 20 CSR 4240.40-030(17) and the corresponding portions of 49 CFR part 192 to develop an integrity management plan that must identify and implement measures to address risks including corrosion and materials.

GO-2019-0356 & GO-2019-0357 **29 MPSC 3d 578**

§35. Safety

Commission orders required Spire Missouri Inc. to establish cast iron pipe replacement programs in accordance with 20 CSR 4240-40.030 and Spire Missouri West's replacement program approved in File No. GO-2002-50 also addressed the replacement of cathodically protected steel mains.

GO-2019-0356 & GO-2019-0357 **29 MPSC 3d 578**

§35. Safety

Even though Spire Missouri was not required to replace the cathodically protected steel mains under 20 CSR 4240-40.030(15)(E) or under its Commission-approved replacement programs, it was required to replace the

cathodically protected steel mains under the regulation requiring the development and implementation of an integrity management plan in 20 CSR 4240-40.030(17). Specifically, subsection (D)4 of section (17) required the company to “[i]dentify and implement measures to address the risks” and “[d]etermine and implement measures designed to reduce the risks from failure of its gas distribution pipeline.”
GO-2019-0356 & GO-2019-0357 **29 MPSC 3d 578**

§35. Safety

Spire Missouri Inc. is required by Section 393.130, RSMo, to provide safe and adequate service and is required by 20 CSR 4240-40.030(13), (15), and (17) to implement an integrity management plan and to repair or replace unsafe pipeline facilities, including cast iron mains. Therefore, the cast iron pipes were replaced to comply with state or federal safety requirements.

GO-2019-0356 & GO-2019-0357 **29 MPSC 3d 578**

§35. Safety

Under 20 CSR 4240- 40.030(13)(B), Spire Missouri Inc. was required to have maintenance plans in place to proactively keep the system in a safe condition. Thus, if Spire Missouri did not replace the cathodically protected steel mains until its entire system was “unsafe” it would not be complying with the law.

GO-2019-0356 & GO-2019-0357 **29 MPSC 3d 578**

§42.1. Infrastructure system replacement surcharge (ISRS) eligible expense

Cast iron and bare steel pipes were replaced to comply with state and federal safety requirements and the cost of their replacement was eligible for recovery under an ISRS.
GO-2019-0115 & GO-2019-0116 **29 MPSC 3d 418**

§42.1. Infrastructure system replacement surcharge (ISRS) eligible expense

Plastic components of gas mains and service lines were not shown to be deteriorated and the cost of their replacement could not be recovered under ISRS even when the plastic was replaced as part of the replacement of eligible cast iron and bare steel mains and service lines.

GO-2019-0115 & GO-2019-0116 **29 MPSC 3d 418**

§78. Payments to affiliated interests

A variance from the requirements of competitive bidding was approved by the Commission as the safeguards agreed to by the company offer similar consumer protections as those contained in the affiliate transaction rule.

AO-2018-0179 **29 MPSC 3d 377**

§78. Payments to affiliated interests

A variance from the requirements of competitive bidding was approved by the Commission as the costs of issuing debt were less under the variance proposal.

AO-2018-0179 **29 MPSC 3d 377**

§78. Payments to affiliated interests

Approval of a money pool requires a rule variance. A rule variance requires the Commission find good cause. Here, parties testified to at least four substantial reasons showing good cause related to the requested waiver of the requirement of competitive bids anticipated: 1) lower borrowing interest cost; 2) lower borrowing administrative costs due to lower transactional and documentation requirements; 3) higher interest and investment revenue from excess cash; and 4) having an immediately available line of credit.

AO-2018-0179 **29 MPSC 3d 377**

§84. Taxes

The Commission approved a stipulation and agreement that required Empire to establish a regulatory liability to account for tax savings associated with excess ADIT resulting from a tax rate reduction.

GR-2018-0229 **29 MPSC 3d 079**

MANUFACTURED HOUSING**I. IN GENERAL**

- §1. Generally
- §2. Obligation of the manufacturers and dealers
- §3. Jurisdiction and powers of Federal authorities
- §4. Jurisdiction and powers of the State Commission
- §5. Reports, records and statements

II. WHEN A PERMIT IS REQUIRED

- §6. When a permit is required generally
- §7. Operations and construction

III. GRANT OR REFUSAL OF A PERMIT

- §8. Grant or refusal generally
- §9. Restrictions or conditions
- §10. Who may possess
- §11. Public safety

IV. OPERATION, TRANSFER, REVOCATION OR CANCELLATION

- §12. Operations under the permit generally
 - §13. Duration of the permit
 - §14. Modification and amendment of the permit generally
 - §15. Transfer, mortgage or lease generally
 - §16. Revocation, cancellation and forfeiture generally
 - §17. Acts or omissions justifying revocation or forfeiture
 - §18. Necessity of action by the Commission
 - §19. Penalties
-

MANUFACTURED HOUSING

No headnotes in this volume involved the question of Manufactured Housing.

PUBLIC UTILITIES

I. IN GENERAL

- §1. Generally**
- §2. Nature of**
- §3. Functions and powers**
- §4. Termination of status**
- §5. Obligation of the utility**

II. JURISDICTION AND POWERS

- §6. Jurisdiction and powers generally**
- §7. Jurisdiction and powers of the State Commission**
- §8. Jurisdiction and powers of the Federal Commissions**
- §9. Jurisdiction and powers of local authorities**

III. FACTORS AFFECTING PUBLIC UTILITY CHARACTER

- §10. Tests in general**
- §11. Franchises**
- §12. Charters**
- §13. Acquisition of public utility property**
- §14. Compensation or profit**
- §15. Eminent domain**
- §16. Property sold or leased to a public utility**
- §17. Restrictions on service, extent of use**
- §18. Size of business**
- §19. Solicitation of business**
- §20. Submission to regulation**

- §21. Sale of surplus**
- §22. Use of streets or public places**

IV. PARTICULAR ORGANIZATIONS-PUBLIC UTILITY CHARACTER

- §23. Particular organizations generally**
 - §24. Municipal plants**
 - §25. Municipal districts**
 - §26. Mutual companies; cooperatives**
 - §27. Corporations**
 - §28. Foreign corporations or companies**
 - §29. Unincorporated companies**
 - §30. State or federally owned or operated utility**
 - §31. Trustees**
-

PUBLIC UTILITIES

§1. Generally

The Commission established the assessment amount for fiscal year 2020.

AO-2019-0394 **29 MPSC 3d 277**

§7. Jurisdiction and powers of the State Commission

Spire Missouri Inc. was asking the Commission to make a new decision on the same costs that it previously found ineligible for infrastructure system replacement surcharge (ISRS) recovery. Additionally, since those costs were under appeal to the Court of Appeals, the Commission lost jurisdiction to the Court once an appeal was filed. Therefore, the Commission could not modify or alter its order and could not issue a new order regarding those costs.

GO-2019-0356 & GO-2019-0357 **29 MPSC 3d 579**

§10. Tests in general

Indiscriminate transmission service provided by an entity that constructs and operates a transmission line bringing electrical energy from electrical power generators to public utilities that serve consumers meets the statutory definition of a public utility.

EA-2016-0358 **29 MPSC 3d 111**

§17. Restrictions on service, extent of use

Indiscriminate transmission service provided by an entity that constructs and operates a transmission line bringing electrical energy from electrical power generators to public utilities that serve consumers meets the statutory definition of a public utility.

EA-2016-0358 **29 MPSC 3d 111**

RATES

I. JURISDICTION AND POWERS

- §1. Jurisdiction and powers generally
- §2. Jurisdiction and powers of Federal Commissions
- §3. Jurisdiction and powers of the State Commission
- §4. Jurisdiction and powers of the courts
- §5. Jurisdiction and powers of local authorities
- §6. Limitations on jurisdiction and power
- §7. Obligation of the utility

II. REASONABLENESS-FACTORS AFFECTING REASONABLENESS

- §8. Reasonableness generally
- §9. Right of utility to accept less than a reasonable rate
- §10. Ability to pay
- §11. Breach of contract
- §12. Capitalization and security prices
- §13. Character of the service
- §14. Temporary or emergency
- §15. Classification of customers
- §16. Comparisons
- §17. Competition
- §18. Consolidation or sale
- §19. Contract or franchise rate
- §20. Costs and expenses
- §21. Discrimination, partiality, or unfairness
- §22. Economic conditions
- §23. Efficiency of operation and management
- §24. Exemptions
- §25. Former rates; extent of change
- §26. Future prospects
- §27. Intercorporate relations
- §28. Large consumption
- §29. Liability of utility
- §30. Location
- §31. Maintenance of service
- §32. Ownership of facilities
- §33. Losses or profits
- §34. Effects on patronage and use of the service
- §35. Patron's profit from use of service
- §36. Public or industrial use
- §37. Refund and/or reduction
- §38. Reliance on rates by patrons
- §39. Restriction of service
- §40. Revenues
- §41. Return
- §42. Seasonal or irregular use
- §43. Substitute service

- §44. Taxes
- §45. Uniformity
- §46. Value of service
- §47. Value of cost of the property
- §48. Violation of law or orders
- §49. Voluntary rates
- §50. What the traffic will bear
- §51. Wishes of the utility or patrons

III. CONTRACTS AND FRANCHISES

- §52. Contracts and franchises generally
- §53. Validity of rate contract
- §54. Filing and Commission approval
- §55. Changing or terminating-contract rates
- §56. Franchise or public contract rates
- §57. Rates after expiration of franchise
- §58. Effect of filing new rates
- §59. Changes by action of the Commission
- §60. Changes or termination of franchise or public contract rate
- §61. Restoration after change

IV. SCHEDULES, FORMALITIES AND PROCEDURE RELATING TO

- §62. Initiation of rates and rate changes
- §63. Proper rates when existing rates are declared illegal
- §64. Reduction of rates
- §65. Refunds
- §66. Filing of schedules reports and records
- §67. Publication and notice
- §68. Establishment of rate base
- §69. Approval or rejection by the Commission
- §70. Legality pending Commission action
- §71. Suspension
- §72. Effective date
- §73. Period for which effective
- §74. Retroactive rates
- §75. Deviation from schedules
- §76. Form and contents
- §77. Billing methods and practices
- §78. Optional rate schedules
- §79. Test or trial rates

V. KINDS AND FORMS OF RATES AND CHARGES

- §80. Kinds and forms of rates and charges in general
- §81. Surcharges
- §82. Uniformity of structure
- §83. Cost elements involved
- §84. Load, diversity and other factors
- §85. Flat rates and charges

- §86. Mileage charges
- §87. Zone rates
- §88. Transition from flat to meter
- §89. Straight, block or step-generally
- §90. Contract or franchise requirement
- §91. Two-part rate combinations
- §92. Charter, contract, statutory, or franchise restrictions
- §93. Demand charge
- §94. Initial charge
- §95. Meter rental
- §96. Minimum bill or charge
- §97. Maximum charge or rate
- §98. Wholesale rates
- §99. Charge when service not used; discontinuance
- §100. Variable rates based on costs-generally
- §101. Fuel clauses
- §102. Installation, connection and disconnection charges
- §103. Charges to short time users

VI. RATES AND CHARGES OF PARTICULAR UTILITIES

- §104. Electric and power
- §105. Demand, load and related factors
- §106. Special charges; amount and computation
- §107. Kinds and classes of service
- §108. Gas
- §109. Heating
- §110. Telecommunications
- §111. Water
- §112. Sewers
- §113. Joint Municipal Utility Commissions

VII. EMERGENCY AND TEMPORARY RATES

- §114. Emergency and temporary rates generally
- §115. What constitutes an emergency
- §116. Prices
- §117. Burden of proof to show emergencies

VIII. RATE DESIGN, CLASS COST OF SERVICE

- §118. Method of allocating costs
 - §119. Rate design, class cost of service for electric utilities
 - §120. Rate design, class cost of service for gas utilities
 - §121. Rate design, class cost of service for water utilities
 - §122. Rate design, class cost of service for sewer utilities
 - §123. Rate design, class cost of service for telecommunications utilities
 - §124. Rate design, class cost of service for heating utilities
-

RATES

§8. Reasonableness generally

The Electric Vehicle (EV) Charging Corridor Sub-Program was “just and reasonable, reasonable as a business practice, economically feasible and compensatory, and reasonably calculated to benefit both the utility and its customers.” (20 CSR 4240-14.030(1).) The EV Charging Corridor Sub-Program would “not offer or grant any undue or unreasonable preference or advantage” or “subject any person to an undue or unreasonable prejudice or disadvantage.” (20 CSR 4240-14.030(2).) For those reasons, Union Electric Company d/b/a Ameren Missouri’s EV Charging Corridor Sub-Program was in the public interest.

ET-2018-0132 **29 MPSC 3d 011**

§8. Reasonableness generally

Union Electric Company d/b/a Ameren Missouri’s Business Solutions Program was not reasonable or in the public interest because it included two equipment categories that did not need incentives; Ameren Missouri did not provide sufficient information in the cost-benefit analysis to demonstrate that the program would realize the benefits for which it was created or that proper controls would prevent free riders; and presented a program with very high administrative costs.

ET-2018-0132 **29 MPSC 3d 011**

§12. Capitalization and security prices

Since Spire Missouri allocated overhead costs consistently with how these costs were allocated in its last general rate cases, it did not add arbitrary percentages or amounts to its overhead costs. Spire Missouri’s treatment of overheads for purposes of these cases is allowable according to the Uniform System of Accounts (USOA). Further, Section (4) of

20 CSR 4240-40.040 allowed the Commission to vary from the USOA where appropriate.

GO-2019-0356 & GO-2019-0357 **29 MPSC 3d 579**

§12. Capitalization and security prices

Given the expedited nature of an infrastructure replacement surcharge (ISRS) case and the complexity of determining the appropriate overheads to include in construction costs, decisions varying from the methods in a general rate case are best handled during the course of a rate case when there is more time for a full examination and all rate factors are being reviewed.

GO-2019-0356 & GO-2019-0357 **29 MPSC 3d 579**

§15. Classification of customers

Complainant alleges that Empire failed to uniformly assess multiple customer charge fees to multi-unit apartment buildings in the Joplin, Missouri area, which were billed at the residential rate. Specifically, complainant asserts that Empire bills him multiple customer charges for a single meter building while other single meter apartment building owners are only being billed one customer charge, making his rates unjust and unreasonable.

EC-2018-0033 **29 MPSC 3d 498**

§21. Discrimination, partiality, or unfairness

A special rate for a high use customer, taking electricity at a high load factor, that is less than its fully allocated cost, but more than its incremental cost is just and reasonable and is not unduly or unreasonably preferential.

EO-2019-0244 **29 MPSC 3d 657**

§24. Exemptions

Complainant requested the Commission provide a credit to any property owner who paid customer charges in excess of a single fee per meter from 1978 to date, and a revision of

the Residential Service portion of Empire's tariff. While complainant has presented evidence that Empire previously charged a customer a rate different from its Commission approved rate, Empire remedied the situation as soon as it became aware of it.

EC-2018-0033 **29 MPSC 3d 498**

SECURITY ISSUES

I. IN GENERAL

- §1. Generally
- §2. Obligation of the utility
- §3. Authorization by a corporation
- §4. Conversion, redemption and purchase by a corporation
- §5. Decrease of capitalization
- §6. Sinking funds
- §7. Dividends
- §8. Revocation and suspension of Commission authorization
- §9. Fees and expenses
- §10. Purchase by utility
- §11. Accounting practices

II. JURISDICTION AND POWERS

- §12. Jurisdiction and powers in general
- §13. Jurisdiction and powers of Federal Commissions
- §14. Jurisdiction and powers of the State Commission
- §15. Jurisdiction and powers of local authorities

III. NECESSITY OF AUTHORIZATION BY THE COMMISSION

- §16. Necessity of authorization by the Commission generally
- §17. Installment contracts
- §18. Refunding or exchange of securities
- §19. Securities covering utility and nonutility property
- §20. Securities covering properties outside the State

IV. FACTORS AFFECTING AUTHORIZATION

- §21. Factors affecting authorization generally
- §21.1. Effect on bond rating
- §22. Equity capital
- §23. Charters
- §24. Competition
- §25. Compliance with the terms of a mortgage or lease

- §26. Definite plans and purposes
- §27. Financial conditions and prospects
- §28. Use of proceeds
- §29. Dividends and dividend restrictions
- §30. Improper practices and irregularities
- §31. Intercorporate relations
- §32. Necessity of issuance
- §33. Revenue
- §34. Rates and rate base
- §35. Size of the company
- §36. Title of property
- §37. Amount
- §38. Kind of security
- §39. Restrictions imposed by the security

V. PURPOSES AND SUBJECTS OF CAPITALIZATION

- §40. Purposes and subjects of capitalization generally
- §41. Additions and betterments
- §42. Appreciation or full plant value
- §43. Compensation for services and stockholders' contributions
- §44. Deficits and losses
- §45. Depreciation funds and requirements
- §46. Financing costs
- §47. Intangible property
- §48. Going value and good will
- §49. Stock dividends
- §50. Loans to affiliated interests
- §51. Overhead
- §52. Profits
- §53. Refunding, exchange and conversion
- §54. Reimbursement of treasury
- §55. Renewals, replacements and reconstruction
- §56. Working capital

VI. KINDS AND PROPORTIONS

- §57. Bonds or stock
- §58. Common or preferred stock
- §59. Stock without par value
- §60. Short term notes
- §61. Proportions of stock, bonds and other security
- §62. Proportion of debt to net plant

VII. SALE PRICE AND INTEREST RATES

- §63. Sale price and interest rates generally
- §64. Bonds
- §65. Notes
- §66. Stock
- §67. Preferred stock

§68. No par value stock

VIII. FINANCING METHODS AND PRACTICES

§69. Financing methods and practices generally

§70. Leases

§71. Financing expense

§72. Payment for securities

§73. Prospectuses and advertising

§74. Subscriptions and allotments

§75. Stipulation as to rate base

IX. PARTICULAR UTILITIES

§76. Telecommunications

§77. Electric and power

§78. Gas

§79. Sewer

§80. Water

§81. Miscellaneous

SECURITY ISSUES

§50. Loans to affiliated interests

A variance from the requirements of competitive bidding was approved by the Commission as the safeguards agreed to by the company offer similar consumer protections as those contained in the affiliate transaction rule.

AO-2018-0179 **29 MPSC 3d 377**

§50. Loans to affiliated interests

A variance from the requirements of competitive bidding was approved by the Commission as the costs of issuing debt were less under the variance proposal.

AO-2018-0179 **29 MPSC 3d 377**

§50. Loans to affiliated interests

Approval of a money pool requires a rule variance. A rule variance requires the Commission find good cause. Here, parties testified to at least four substantial reasons showing

good cause related to the requested waiver of the requirement of competitive bids anticipated: 1) lower borrowing interest cost; 2) lower borrowing administrative costs due to lower transactional and documentation requirements; 3) higher interest and investment revenue from excess cash; and 4) having an immediately available line of credit.

AO-2018-0179 **29 MPSC 3d 378**

§51. Overhead

Since Spire Missouri allocated overhead costs consistently with how these costs were allocated in its last general rate cases, it did not add arbitrary percentages or amounts to its overhead costs. Spire Missouri's treatment of overheads for purposes of these cases is allowable according to the Uniform System of Accounts (USOA). Further, Section (4) of 20 CSR 4240-40.040 allowed the Commission to vary from the USOA where appropriate.

GO-2019-0356 & GO-2019-0357 **29 MPSC 3d 579**

SERVICE

I. IN GENERAL

- §1. **Generally**
- §2. **What constitutes adequate service**
- §3. **Obligation of the utility**
- §4. **Abandonment, discontinuance and refusal of service**
- §5. **Contract, charter, franchise and ordinance provisions**
- §6. **Restoration or continuation of service**
- §7. **Substitution of service**
- §7.1. **Change of suppliers**
- §8. **Discrimination**

II. JURISDICTION AND POWERS

- §9. **Jurisdiction and powers generally**
- §10. **Jurisdiction and powers of the Federal Commissions**
- §11. **Jurisdiction and powers of the State Commission**
- §12. **Jurisdiction and powers over service outside of the state**

- §13. Jurisdiction and powers of the courts
- §14. Jurisdiction and powers of local authorities
- §15. Limitations on jurisdiction
- §16. Enforcement of duty to serve

III. DUTY TO SERVE

- §17. Duty to serve in general
- §18. Duty to render adequate service
- §19. Extent of profession of service
- §20. Duty to serve as affected by contract
- §21. Duty to serve as affected by charter, franchise or ordinance
- §22. Duty to serve persons who are not patrons
- §23. Reasons for failure or refusal to serve
- §24. Duty to serve as affected by inadequate revenue

IV. OPERATIONS

- §25. Operations generally
- §26. Extensions
- §27. Trial or experimental operation
- §28. Consent of local authorities
- §29. Service area
- §30. Rate of return
- §31. Rules and regulations
- §32. Use and ownership of property
- §33. Hours of service
- §34. Restriction on service
- §35. Management and operation
- §36. Maintenance
- §37. Equipment
- §38. Standard service
- §39. Noncontinuous service

V. SERVICE BY PARTICULAR UTILITIES

- §40. Gas
- §41. Electric and power
- §42. Heating
- §43. Water
- §44. Sewer
- §45. Telecommunications

VI. CONNECTIONS, INSTRUMENTS AND EQUIPMENT

- §46. Connections, instruments and equipment in general
 - §47. Duty to install, own and maintain
 - §48. Protection, location and liability for damage
 - §49. Restriction and control of connections, instruments and equipment
-

SERVICE

§29. Service area

Missouri American Water Company requested a service area much larger than the subdivision it was requesting to acquire. The Commission did not agree that the larger service area best served the public interest. The Commission found that it was reasonable and necessary to limit the service area of the certificate of convenience and necessity to encompass only the Timber Springs Estates Subdivision. The Commission determined that there was no immediate harm from approving the smaller service, and that the company could apply for consideration by the Commission to increase its service area as it contracts for additional sewer or water systems.

SA-2019-0183 **29 MPSC 3d 211**

SEWER

I. IN GENERAL

- §1. Generally
- §2. Certificate of convenience and necessity
- §3. Obligation of the utility
- §4. Transfer, lease and sale

II. JURISDICTION AND POWERS

- §5. Jurisdiction and powers generally
- §6. Jurisdiction and powers of the Federal Commissions
- §7. Jurisdiction and powers of the State Commission
- §8. Jurisdiction and powers of local authorities
- §9. Territorial agreements

III. OPERATIONS

- §10. Operation generally
- §11. Construction and equipment
- §12. Maintenance
- §13. Additions and betterments
- §14. Rates and revenues
- §15. Return

§16.	Costs and expenses
§17.	Service
§18.	Depreciation
§19.	Discrimination
§20.	Apportionment
§21.	Accounting
§22.	Valuation
§23.	Extensions
§24.	Abandonment or discontinuance
§25.	Reports, records and statements
§26.	Financing practices
§27.	Security issues
§28.	Rules and regulations
§29.	Billing practices
§30.	Eminent domain
§31.	Accounting Authority orders

SEWER

§26. Financing practices

A variance from the requirements of competitive bidding was approved by the Commission as the safeguards agreed to by the company offer similar consumer protections as those contained in the affiliate transaction rule.

AO-2018-0179 **29 MPSC 3d 378**

§26. Financing practices

A variance from the requirements of competitive bidding was approved by the Commission as the costs of issuing debt were less under the variance proposal.

AO-2018-0179 **29 MPSC 3d 378**

§26. Financing practices

Approval of a money pool requires a rule variance. A rule variance requires the Commission find good cause. Here, parties testified to at least four substantial reasons showing good cause related to the requested waiver of the requirement of competitive bids anticipated: 1) lower

borrowing interest cost; 2) lower borrowing administrative costs due to lower transactional and documentation requirements; 3) higher interest and investment revenue from excess cash; and 4) having an immediately available line of credit.

AO-2018-0179 **29 MPSC 3d 378**

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
- §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
- §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
- §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

IV. RELATIONS BETWEEN CONNECTING COMPANIES

- §46. Relations between connecting companies generally
- §47. Physical connection
- §48. Contracts
- §49. Records and statements

STEAM

No headnotes in this volume involved the question of Steam.

TELECOMMUNICATIONS

I. IN GENERAL

- §1. Generally
- §2. Obligation of the utility
- §3. Certificate of convenience and necessity
- §3.1. Certificate of local exchange service authority
- §3.2. Certificate of interexchange service authority
- §3.3. Certificate of basic local exchange service authority
- §4. Transfer, lease and sale

II. JURISDICTION AND POWERS

- §5. Jurisdiction and powers of local authorities
- §6. Jurisdiction and powers of Federal Commissions
- §7. Jurisdiction and powers of the State Commission

III. OPERATIONS

- §8. Operations generally
- §9. Public corporations
- §10. Abandonment or discontinuance
- §11. Depreciation
- §12. Discrimination
- §13. Costs and expenses
- §13.1. Yellow Pages
- §14. Rates
- §14.1 Universal Service Fund
- §15. Establishment of a rate base
- §16. Revenue
- §17. Valuation
- §18. Accounting
- §19. Financing practices
- §20. Return
- §21. Construction
- §22. Maintenance
- §23. Rules and regulations
- §24. Equipment
- §25. Additions and betterments
- §26. Service generally
- §27. Invasion of adjacent service area
- §28. Extensions
- §29. Local service
- §30. Calling scope
- §31. Long distance service
- §32. Reports, records and statements
- §33. Billing practices
- §34. Pricing policies
- §35. Accounting Authority orders

IV. RELATIONS BETWEEN CONNECTING COMPANIES

- §36. Relations between connecting companies generally
- §37. Physical connection
- §38. Contracts
- §39. Division of revenue, expenses, etc.

V. ALTERNATIVE REGULATION AND COMPETITION

- §40. Classification of company or service as noncompetitive, transitionally, or competitive
- §41. Incentive regulation plans

- §42. Rate bands
- §43. Waiver of statutes and rules
- §44. Network modernization
- §45. Local exchange competition
- §46. Interconnection Agreements
- §46.1 Interconnection Agreements-Arbitrated
- §47. Price Cap

TELECOMMUNICATIONS

§1. Generally

The Commission granted Wisper ISP Inc. designation as an eligible telecommunications carrier in Missouri.

CA-2019-0196 **29 MPSC 3d 059**

§7. Jurisdiction and powers of the State Commission

Wisper was a successful participant in a Connect America Fund II reverse auction held by the Federal Communications Commission to support programs designed to accelerate the expansion of broadband services to rural areas and any areas which presently lack sufficient broadband infrastructure. Intervenors asserted that Wisper's technology was incapable of meeting federal performance requirements. The Commission determined that eligible telecommunications carrier applications are not designed to evaluate a company's technology or broadband capabilities, and that the Federal Communications Commission will separately evaluate Wisper's technology prior to releasing federal funding.

CA-2019-0196 **29 MPSC 3d 059**

VALUATION

I. IN GENERAL

- §1. Generally**
- §2. Constitutional limitations**
- §3. Necessity for**
- §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 Commissions**
- §8. Jurisdiction and powers of local authorities**

III. METHODS OR THEORIES OF VALUATION

- §9. Methods or theories generally**
- §10. Purpose of valuation as a factor**
- §11. Rule, formula or judgment as a guide**
- §12. Permanent and tentative valuation**

IV. ASCERTAINMENT OF VALUE

- §13. Ascertainment of value generally**
- §14. For rate making purposes**
- §15. Purchase or sale price**
- §16. For issuing securities**

V. FACTORS AFFECTING VALUE OR COST

- §17. Factors affecting value or cost generally**
- §18. Contributions from customers**
- §19. Appreciation**
- §20. Apportionment of investment or costs**
- §21. Experimental or testing cost**
- §22. Financing costs**
- §23. Intercorporate relationships**
- §24. Organization and promotion costs**
- §25. Discounts on securities**
- §26. Property not used or useful**
- §27. Overheads in general**
- §28. Direct labor**
- §29. Material overheads**
- §30. Accidents and damages**
- §31. Engineering and superintendence**
- §32. Preliminary and design**
- §33. Interest during construction**
- §34. Insurance during construction**
- §35. Taxes during construction**
- §36. Contingencies and omissions**

- §37. Contractor's profit and loss
- §38. Administrative expense
- §39. Legal expense
- §40. Promotion expense
- §41. Miscellaneous

VI. VALUATION OF TANGIBLE PROPERTY

- §42. Buildings and structures
- §43. Equipment and facilities
- §44. Land
- §45. Materials and supplies
- §46. Second-hand property
- §47. Property not used and useful

VII. VALUATION OF INTANGIBLE PROPERTY

- §48. Good will
- §49. Going value
- §50. Contracts
- §51. Equity of redemption
- §52. Franchises
- §53. Leases and leaseholds
- §54. Certificates and permits
- §55. Rights of way and easements
- §56. Water rights

VIII. WORKING CAPITAL

- §57. Working capital generally
- §58. Necessity of allowance
- §59. Factors affecting allowance
- §60. Billing and payment for service
- §61. Cash on hand
- §62. Customers' deposit
- §63. Expenses or revenues
- §64. Prepaid expenses
- §65. Materials and supplies
- §66. Amount to be allowed
- §67. Property not used or useful

IX. DEPRECIATION

- §68. Deprecation generally
- §69. Necessity of deduction for depreciation
- §70. Factors affecting propriety thereof
- §71. Methods of establishing rates or amounts
- §72. Property subject to depreciation
- §73. Deduction or addition of funds or reserve

X. VALUATION OF PARTICULAR UTILITIES

- §74. Electric and power
- §75. Gas
- §76. Heating
- §77. Telecommunications
- §78. Water
- §79. Sewer

VALUATION**§27. Overheads in general**

Since Spire Missouri allocated overhead costs consistently with how these costs were allocated in its last general rate cases, it did not add arbitrary percentages or amounts to its overhead costs. Spire Missouri's treatment of overheads for purposes of these cases is allowable according to the Uniform System of Accounts (USOA). Further, Section (4) of 20 CSR 4240-40.040 allowed the Commission to vary from the USOA where appropriate.

GO-2019-0356 & GO-2019-0357 **29 MPSC 3d 579**

WATER**I. IN GENERAL**

- §1. Generally
- §2. Certificate of convenience and necessity
- §3. Obligation of the utility
- §4. Transfer, lease and sale
- §5. Joint Municipal Utility Commissions

II. JURISDICTION AND POWERS

- §6. Jurisdiction and powers generally
- §7. Jurisdiction and powers of the Federal Commissions
- §8. Jurisdiction and powers of the State Commission
- §9. Jurisdiction and powers of local authorities
- §10. Receivership
- §11. Territorial Agreements

III. OPERATIONS

- §12. Operation generally
- §13. Construction and equipment
- §14. Maintenance
- §15. Additions and betterments
- §16. Rates and revenues
- §17. Return
- §18. Costs and expenses
- §19. Service
- §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

WATER**§16. Rates and revenues**

There was not sufficient evidence to show that a claimed net operating loss was generated during the time frame of the Infrastructure System Replacement Surcharge (ISRS), thus it could not be included in the surcharge calculation.

WO-2019-0184 **29 MPSC 3d 261**

§28. Financing practices

A variance from the requirements of competitive bidding was approved by the Commission as the safeguards agreed to by the company offer similar consumer protections as those contained in the affiliate transaction rule.

AO-2018-0179 **29 MPSC 3d 378**

§28. Financing practices

A variance from the requirements of competitive bidding was approved by the Commission as the costs of issuing debt were less under the variance proposal.

AO-2018-0179 **29 MPSC 3d 378**

§28. Financing practices

Approval of a money pool requires a rule variance. A rule variance requires the Commission find good cause. Here, parties testified to at least four substantial reasons showing good cause related to the requested waiver of the requirement of competitive bids anticipated: 1) lower borrowing interest cost; 2) lower borrowing administrative costs due to lower transactional and documentation requirements; 3) higher interest and investment revenue from excess cash; and 4) having an immediately available line of credit.

AO-2018-0179 **29 MPSC 3d 378**
