REPORTS

OF THE

PUBLIC SERVICE COMMISSION

OF

THE STATE OF MISSOURI

_____

Volume 25 MPSC 3d

January 1, 2015 – December 31, 2015

_____

Morris Woodruff

Reporter of Opinions

_____

JEFFERSON CITY, MISSOURI

(2019)

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, 2015 through December 31, 2015. 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.

TABLE OF CONTENTS

THE COMMISSION

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

Robert S. Kenney	Stephen M. Stoll
William P. Kenney	Daniel Y. Hall
Scott Rupp	Maida Coleman

CURRENT COMMISSIONERS
AS OF JUNE 2019

RYAN A. SILVEY	WILLIAM P. KENNEY
DANIEL YVES HALL	SCOTT RUPP
MAIDA COLEMAN	

GENERAL COUNSEL
SHELLEY BRUEGGEMANN

SECRETARY
MORRIS L. WOODRUFF

ADMINISTRATION & REGULATORY POLICY
LOYD WILSON

REGULATORY ANALYSIS MANAGER
CHERLYN VOSS

ORGANIZATION

COMMISSION STAFF DIRECTOR
NATELLE DIETRICH

UTILITY SERVICES DIVISION DIRECTOR

STAFF COUNSEL

KEVIN A. THOMPSON
Chief Staff Counsel

STEVEN DOTTHEIM
Chief Deputy Counsel

JEFFREY KEEVIL
Deputy Counsel

NICOLE MERS
Deputy Counsel

WHITNEY PAYNE
Deputy Counsel

ROBERT BERLIN
Deputy Counsel

MARK JOHNSON
Deputy Counsel

ALEXANDRA KLAUS
Senior Counsel

CASI ASLIN
Legal Counsel

TRAVIS PRINGLE
Legal Counsel

RON IRVING
Legal Counsel

SARAH KLIETHERMES
RACHEL LEWIS
JOHN BORGMEYER
ALEXANDER ANTAL

CULLY DALE
AMY MOORE
AKAYLA JONES
NATHAN WILLIAMS

GENERAL COUNSEL

SHELLEY BRUEGGEMANN
Chief Litigation Counsel

RODNEY MASSMAN
Assistant General Counsel

JENNIFER HEINTZ
Chief Litigation Counsel

JOHN BORGMEYER
Litigation Counsel

CURTIS STOKES
Litigation Counsel

ADJUDICATION

MORRIS L. WOODRUFF
Chief RLJ

RONALD D. PRIDGIN
Deputy Chief RLJ

NANCY DIPPELL
Senior RLJ

JOHN S. CLARK
RLJ

PAUL GRAHAM
RLJ

CHARLES HATCHER
RLJ

Daniel Jordan
Kennard Jones
Michael Bushmann

Kim Burton

Reported Cases

-A-

-H-

-K-

-L-

-M-

-O-

-R-

-T-

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Staff of the Missouri Public Service Commission,	)	
Complainant,	)	
v.	)	File No. WC-2014-0018
Consolidated Public Water Supply District C-1 of Jefferson County, Missouri, and City of Pevely, Missouri,	)	
Respondents.	)	

REPORT AND ORDER

WATER. §6. Jurisdiction and powers generally. The Commission held that all territorial agreements between a city and a water district are subject to Commission approval, and ineffective without the Commission's approval, so the Commission ordered a territorial agreement between a city and a water district filed with the Commission.

NOTE: Order vacated on appeal.
Staff of Mo. Pub. Serv. Comm'n. v Cons. Pub. Water Supply Dist. C-1 of Jefferson Co., MO, 474 SW 3d 643 (Mo App 2015)

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Staff of the Missouri Public Service Commission, Complainant,	)	
v.	)	File No. WC-2014-0018
Consolidated Public Water Supply District C-1 of Jefferson County, Missouri, and City of Pevely, Missouri, Respondents.	)	

REPORT AND ORDER

Issue Date: **January 21, 2015**

Effective Date: **February 20, 2015**

TABLE OF CONTENTS

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Staff of the Missouri Public Service Commission, Complainant,	)	
v.	)	File No. WC-2014-0018
Consolidated Public Water Supply District C-1 of Jefferson County, Missouri, and City of Pevely, Missouri, Respondents.	)	

REPORT AND ORDER

APPEARANCES

PSC Staff

Kevin Thompson
P.O. Box 360
Jefferson City, MO 65102

Consolidated Public water Supply District C-1 of Jefferson County

Eden Bianca
P.O. Box 740
455 Maple Street
Hillsboro, MO 63050

City of Pevely, Missouri

Terrance Good
714 Locust Street
St. Louis, MO 63101

REGULATORY LAW JUDGE: Kim S. Burton

Procedural History

On July 19, 2013, the Staff of the Missouri Public Service Commission filed a complaint against Respondents Consolidated Public Water Supply District C-1 of Jefferson County, Missouri and the City of Pevely, Missouri (jointly, "Respondents"). Staff's complaint asserted Respondents had violated § 247.172, RSMo.[1] On September 20, 2013, Respondents filed a Joint Motion to Dismiss. The Commission denied Respondent's motion. On November 4, 2013, Respondents filed a Motion for Rehearing, which the Commission denied on November 26, 2013. Respondents then filed a writ of prohibition before the Missouri Western District Court of Appeals. The Commission suspended all actions on the complaint until after the court denied Respondents' request. An evidentiary hearing was held on June 11, 2014. Post hearing briefs and reply briefs were filed by the parties.

General Findings of Fact

1. The Consolidated Public Water Supply District No. C-1 of Jefferson County, Missouri ("District") is a public entity organized pursuant to the provisions of Chapter 247 of the Revised Statutes of Missouri.[2] District distributes potable water to customers within its corporate boundaries in Jefferson County.[3] Also located in

[1] All statutory references are to the 2013 Cumulative Supplement of the Revised Statutes of Missouri, unless otherwise indicated.

[2] Ex. 5, p. 1.

[3] § 247.020 RSMo. Affidavit James Busch; Schedule JAB-2-1.

Jefferson County, the City of Pevely ("Pevely"), a municipal corporation, provides its residents potable water as a municipal service.[4]

2. While disputing territorial parameters,[5] on November 12, 2007, Pevely and District entered into a written agreement ("Agreement").[6] Captioned, "Territorial Agreement between the Consolidated Public Water Supply District C-1 of Jefferson County, Missouri and the City of Pevely, Missouri," the Agreement detailed the geographical service areas for Respondents.[7] As part of the Agreement, Respondents stipulated that any future development within the corporate boundaries of both Pevely and District would be served by the District unless District assigned to Pevely in writing its rights to serve the development.[8] The Respondents intended for the Agreement to be a permanent determination as to which entity would provide water service in the area.[9]

3. Valle Creek Condominiums ("Valle Creek") was explicitly identified in the Agreement as a development located within the corporate boundaries of both Pevely and the District that would be served by District.[10] Valle Creek is operated by H&H Development Group, Inc. ("H&H").

4. Although Valle Creek was within District's service area, District's water mains did not extend to Valle Creek. However, Pevely's water mains did. On June 30,

[4] Ex. 5, Pevely is a city of the fourth class; Affidavit James Busch; Schedule JAB-2-1.

[5] Id. Respondents filed an action in St. Louis County Court, Case No. 23CV306-1286, but reached a settlement without requesting the court's approval. Tr. P. (Attorney for District's oral arguments).

[6] Ex. 1, Sch. JAB-2.

[7] Id.

[8] Id., ¶6.

[9] Id., ¶5.

[10] Id at ¶3 of the Agreement.

2008, H&H entered into a written agreement ("Main Extension Agreement") with District whereby H&H agreed to install at its expense a water main extension to connect Valle Creek to District's system. Until the installation of the water main extension, Valle Creek would be connected to Pevely's water service line, but billed through District's water meters.[11]

5. As part of a verbal agreement between Pevely and District, District billed H&H monthly for service to Valle Creek. District would then reimburse Pevely on a semi-annual basis for the cost of the water. This arrangement was meant to be a temporary arrangement until H&H constructed the water main extension. Under the terms of the Main Extension Agreement, if H&H failed to complete the main extension by March 1, 2009, then the water service line from Pevely would terminate and District's water meters would be removed.[12]

6. Despite H&H never completing the main extension, from June 30, 2008 until October 1, 2012, Pevely continued to provide water to Valle Creek, which District would then bill on its meters. In August of 2012, the St. Louis County Circuit Court appointed John Holborow the receiver for the management and operations of H&H. After a territorial dispute arose between Pevely and District, on October 1, 2012, Pevely removed District's meters from Valle Creek and replaced them with its own.[13]

7. In a letter to District, Pevely asserted that District was in violation of the terms of the Agreement by failing to either extend service to H&H or notify Pevely within

[11] Exhibit No. 3 - Affidavit of John Holborow.

[12] Exhibit No. 3 - Affidavit of John Holborow.

[13] Affidavit of John F. Holborow, ¶ 11.

60 days of its lack of ability to provide such service.[14] In the letter, dated August 28, 2012, Pevely's attorney assured District that, "Pevely will continue to honor the territorial agreement as we go forward."[15]

8. Pevely then billed H&H directly for the water service provided to Valle Creek.[16] District responded in April 2013 by removing Pevely's meters from Valle Creek and installing District's meters. District then recommenced billing H&H for the water service.[17] Also in April 2013, District sent a letter demanding H&H complete the main extension within 180 days or face termination.

9. Due to a lack of funds, H&H did not complete the water main extension.[18]

10. Respondents never sought the approval of the Commission before entering into the Agreement. In 2012, District filed suit in circuit court against Pevely for failure to comply with the terms of the Agreement. At no point did Respondents request the Commission resolve their dispute. The Staff of the Commission became aware of the Agreement and the dispute over service at Valle Creek in 2013.

CONCLUSIONS OF LAW

As a creature of statute, the Commission's authority is limited to what is specifically granted by statute or warranted by clear implication as necessary to implement a specifically granted power.[19] Pursuant to § 386.390, a complaint may be made by the Commission setting forth "any act or thing done or omitted to be done by

[14] Ex. 5, p. 134.
[15] Ex. 5, p. 135 (Letter from attorney David Korum to District).
[16] Id.
[17] Affidavit of John F. Holborow, ¶13.
[18] Affidavit of John F. Holborow, ¶¶ 8, 15.
[19] *State ex rel. Int'l Telecharge, Inc.* v. *Mo. Pub. Serv. Comm'n*, 806 S.W.2d 680, 686 (Mo.App. W.D. 1991).

any corporation, person or public utility…in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission….” In Commission Rule 4 CSR 240-2.070(1), the Commission authorized the Commission’s Staff to file complaints on its behalf. Respondents are both corporations since Pevely is a “body corporate” as defined in § 79.010 and District is a “political corporation” as described in § 247.020. Therefore, the Commission has the authority to hear the Complaint brought by Staff against Respondents.

In its Complaint, Staff alleges that Respondents violated § 247.172. The statute grants the Commission jurisdiction to approve certain territorial agreements for water service that the Commission finds not to be detrimental to the public interest.

Section 247.172 states:

> 1. Competition to sell and distribute water, **as between and among public water supply districts, water corporations subject to public service commission jurisdiction, and municipally owned utilities** may be displaced by written territorial agreements, but only to the extent hereinafter provided for in this section.
>
> 2. Such territorial agreements shall specifically designate the boundaries of the water service area of each water supplier subject to the agreement, any and all powers granted to a public water supply district by a municipality, pursuant to the agreement, to operate within the corporate boundaries of that municipality, notwithstanding the provisions of sections 247.010 to247.670 to the contrary, and any and all powers granted to a municipally owned utility, pursuant to the agreement, to operate in areas beyond the corporate municipal boundaries of its municipality.
>
> …
>
> 4. Before becoming effective, all territorial agreements entered into under the provisions of this section, including any subsequent amendments to such agreements, or the transfer or assignment of the agreement or any rights or obligations of any party to an agreement, shall receive the approval of the public service commission by report and order. Applications for commission

approval shall be made and notice of such filing shall be given to other water suppliers pursuant to the rules and regulations of the commission governing applications for certificates of public convenience and necessity. Unless otherwise ordered by the commission for good cause shown, the commission shall rule on such applications not later than one hundred twenty days after the application is properly filed with the secretary of the commission.

5. The commission shall hold evidentiary hearings to determine whether such territorial agreements should be approved or disapproved, except that in those instances where the matter is resolved by a stipulation and agreement submitted to the commission by all the parties, such hearings may be waived by agreement of the parties. The commission may approve the application if it determines that approval of the territorial agreement in total is not detrimental to the public interest. Review of commission decisions under this section shall be governed by the provisions of sections 386.500 to 386.550.

6. Commission approval of any territorial agreement entered into under the provisions of this section shall in no way affect or diminish the rights and duties of any water supplier not a party to the agreement to provide service within the boundaries designated in such territorial agreement. In the event any water corporation which is not a party to the territorial agreement and which is subject to the jurisdiction, control and regulation of the commission under chapters 386 and 393 has sought or hereafter seeks authorization from the commission to sell and distribute water or construct, operate and maintain water supply facilities within the boundaries designated in any such territorial agreement, the commission, in making its determination regarding such requested authority, shall give no consideration or weight to the existence of any such territorial agreement and any actual rendition of retail water supply services by any of the parties to such territorial agreement will not preclude the commission from granting the requested authority.

7. The commission shall have jurisdiction to entertain and hear complaints involving any commission-approved territorial agreement. Such complaints shall be brought and prosecuted in the same manner as other complaints before the commission. The commission shall hold an evidentiary hearing regarding such complaints, except that in those instances where the matter is resolved by a stipulation and agreement submitted to the commission by all the parties, such hearings may be waived by agreement of the parties. If the commission determines that a territorial agreement that is the subject of a complaint is no longer in the public interest, it shall have the authority to suspend or revoke the territorial agreement. If the commission determines that the territorial agreement is still in the public interest, such territorial agreement shall remain in full force and effect. Except as provided in this section, nothing in this section shall be construed as otherwise conferring upon the

> commission jurisdiction over the service, rates, financing, accounting, or management of any public water supply district or municipally owned utility, or to amend, modify, or otherwise limit the rights of public water supply districts to provide service as otherwise provided by law.
>
> 8. … Nothing in this section shall be construed as otherwise conferring upon the commission jurisdiction over the service, rates, financing, accounting or management of any public water supply district or municipally owned utility and except as provided in this section, nothing shall affect the rights, privileges or duties of public water supply districts, water corporations subject to public service commission jurisdiction or municipally owned utilities.
>
> 9. Notwithstanding any other provisions of this section, the commission may hold a hearing regarding any application, complaint or petition filed under this section upon its own motion. (Emphasis added.)

Respondents argue that § 247.172 does not apply to their Agreement and therefore the Commission does not have jurisdiction because a "water corporation subject to public service commission jurisdiction" is not a party to their territorial agreement. Respondents' argument disregards a key part of the statutory language in § 247.172.1. The Commission interprets the use of "as between and among" in the subsection to identify the statute's applicability to an agreement entered into by any two of the three recognized water distributers; not as a mandate of the participation of a Commission regulated water corporation before a territorial agreement is subject to the Commission's jurisdiction. It is presumed that the legislature intended every word, clause, sentence of provision of a statute to have meaning.[20] Respondents' interpretation of the statute presumes the inclusions of redundant language, which is not a reasonable construction.

[20] *State ex rel. Womack v. Rolf*, 173 S.W.3d 634, 638 (Mo. banc 2005).

When construing a statute it is appropriate to take into consideration statutes involving similar or related subject matter.[21] Respondents fail to show how under the facts presented, a different statute should apply. Chapter 247 offers three available actions when a municipality and water district dispute their water supply rights within the same service territory. First, under § 247.160, the parties may reach an agreement for a water supply district to operate a waterworks system within an area annexed by the municipality or for the district to sell or convey its equipment in that annexed territory to the municipality. Although Respondents disagree with this interpretation, claiming instead that § 247.160 grants them the authority to reach a territorial agreement without seeking the Commission's approval; reviewing courts have previously interpreted § 247.160 as enabling a district to transfer its facilities in an annexed area to a city.[22] That is not the situation that existed between Respondents. The Agreement does not involve the District leasing, contracting to sell, or conveying its equipment to Pevely. For this reason, § 247.160 does not apply.

Section 247.165 only applies to an agreement when part of a public water supply district's territory is annexed into the corporate limits of a municipality, but is not receiving water service at the time of the annexation. As Staff points out, no evidence was presented that the disputed area lacked service prior to its annexation.

Finally, § 247.170 provides for the detachment of an area of a public water supply district into the corporate limits of a city. A detachment would exclude the detached area from the district's service territory. No detachment action occurred

[21] *Citizens Elec. Corp. v. Dir. of Dep't of Revenue*, 766 S.W.2d 450, 452 (Mo. banc 1989).
[22] *Public Water Supply Dist. No.1 v. City of Poplar Bluff*, 12 S.W.3d 741 (Mo.App. S.D. 1999)(citing *Public Water Supply Dist. No. 16 v. City of Buckner*, 951 S.W.2d 743 (Mo.App. 1997).

between District and Pevely. Under the terms of the Agreement, Pevely agreed not to seek a detachment action without the written agreement of District.[23]

The Agreement entered into by Respondents was a "territorial agreement" under § 247.172. District is a public water supply district and Pevely is a municipally owned utility that entered into a written territorial agreement designating the boundaries of their water service area. The Agreement designated the powers granted to District by Pevely to operate within Pevely's boundaries and the powers granted to Pevely to operate outside of the municipality.

The Commission concludes that Respondents violated § 247.172 by: 1) failing to seek Commission approval of their territorial agreement before entering into it on November 12, 2007; 2) litigating the Agreement before a circuit court rather than seeking Commission resolution of the dispute; and, 3) failing to seek Commission approval of an amendment to their territorial agreement.

District argues that even if the Agreement is a territorial agreement as contemplated by § 247.172, the Commission does not have authority to require Respondents to file the agreement or to assess penalties against Respondents since the Agreement, as a matter of law, is void under the provisions of § 432.070. Section 432.070 states in pertinent part:

"No county, city, town, village…or other municipal corporation shall make any contract, unless the same shall be within the scope of its powers or be expressly authorized by law…." District argues that *if* § 247.172 applies, since the Agreement was not submitted for Commission approval, it is not authorized by law and is therefore void

[23] Ex. 1, Sch. JAB-2, ¶ 6.

and unenforceable. District ignores one key point; the Commission is not attempting to enforce the Agreement, but rather, determine if Respondents violated the requirements of § 247.172. As previously stated, Respondents did violate multiple requirements of the statute, beginning with the adoption of the Agreement and continuing through the circuit court action to revoke the Agreement.

The Commission's authority under § 247.172.9 extends to conducting hearings on any complaint filed under the statute. The inclusion of this language would be meaningless if, as Respondents assert, failure to comply with the statute results in ensuing actions being beyond review. Furthermore, § 386.570 authorizes the Commission to seek penalties against "[a]ny corporation, person or public utility which violates or fails to comply with any provisions…of this or any other law….subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense."

Section 386.570.2 states that every violation of a law is a separate and distinct offense, for which each day's continuing violation is deemed a separate and distinct offense.[24] For this reason, Respondents argument that the complaint is moot since Respondents are no longer attempting to enforce the Agreement is also unpersuasive. It ignores the duty of the Commission to insure safe and adequate service for the public and to determine if the violation of a law occurred.

Pevely failed to present facts supporting its equitable estoppel argument. In addition, while Pevely presents a Due Process argument by claiming § 247.172 is

[24] Pursuant to § 386.590, all penalties pursuant to Chapter 386 are cumulative.

unconstitutionally vague, the Commission is not a judicial body that can rule on a constitutional challenge.[25]

THE COMMISSION ORDERS THAT:

1. Consolidated Public Water Supply District C-1 of Jefferson County, Missouri and the City of Pevely, Missouri shall submit a territorial agreement for Commission approval no later than February 27, 2015.

2. Should the Respondents fail to comply with Paragraph 1 of this order, the Commission's Staff shall notify the Commission in a timely manner, so that the Commission may consider further action.

3. This order shall be effective on February 20, 2015.

BY THE COMMISSION

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney,
Hall, and Rupp CC., concur.

Burton, Regulatory Law Judge,

[25] See *Duncan v. Missouri Bd. for Architects, Professional Engineers and Land Surveyors*, 744 S.W.2d 524 (Mo. App. E.D. 1988). Since administrative agencies lack the jurisdiction to determine the constitutionality of statutes, the court found no logical reason to require a constitutional challenge to the validity of a statute before an administrative agency

Fred Sauer,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. EC-2015-0164**
	)	
Missouri Public Service Commission,	)	
And	)	
Union Electric Company d/b/a Ameren Missouri,	)	
	)	
Respondents.	)	

.

ORDER DISMISSING COMPLAINT AGAINST THE COMMISSION

Evidence, Practice, and Procedure.
§2. Jurisdiction and powers. The Commission has power to hear a complaint against a variety of entities, but has no power to hear a complaint against itself. **§22. Parties.** The Commission has power to hear a complaint against a variety of entities, but has no power to hear a complaint against itself.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 4th day of February, 2015.

Fred Sauer,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. EC-2015-0164**
	)	
Missouri Public Service Commission,	)	
	)	
And	)	
	)	
Union Electric Company d/b/a Ameren Missouri,	)	
	)	
Respondents.	)	

ORDER DISMISSING COMPLAINT AGAINST THE COMMISSION

Issue Date: February 4, 2015 Effective Date: February 14, 2015

On January 13, 2015, Fred Sauer filed a complaint with the Missouri Public Service Commission against Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri") and against the Missouri Public Service Commission. The complaint alleges that the Commission responded improperly to a request from Mr. Sauer for certain information under Missouri's "Sunshine Law" in Chapter 610, RSMo. The complaint also alleges that Ameren Missouri and the Commission's classification of this requested information as highly confidential under Commission Rule 4 CSR 240-2.135 was unlawful, unreasonable, and an abuse of discretion.

The Commission directed notice of the complaint to Ameren Missouri and to the Commission's Staff Counsel, requiring Staff to answer the complaint on behalf of the Commission. The Staff of the Commission responded on January 22, 2015, by filing a motion asking the Commission to dismiss the complaint against the Commission and Ameren Missouri. The Commission provided an opportunity for other parties to respond, but no parties objected or timely responded to Staff's motion.

As an administrative agency, the Commission has only those powers that are granted to it by statute. Section 386.390, RSMo 2000 authorizes the bringing of a complaint before the Commission against any "corporation, person, or public utility". Such a complaint must set forth "any act or thing done or omitted to be done … in violation, or claimed to be in violation, of any provision of law, or any rule or order or decision of the commission." That law is a very broad grant of authority to hear complaints, but that broad grant of authority must also be limited to hearing complaints against those persons and corporate entities that are subject to the Commission's jurisdiction.

Chapter 393 of the Missouri statutes gives the Commission authority to regulate electrical corporations, such as Ameren Missouri. However, there is nothing in Missouri's statutes that would give the Commission authority to consider a complaint against itself. Therefore, Mr. Sauer's complaint against the Commission must be dismissed. Since Staff reasonably requested expedited treatment to avoid having to answer the complaint unnecessarily, the Commission will make this order effective in ten days. The Commission will address the motion to dismiss the complaint against Ameren Missouri in a separate order.

THE COMMISSION ORDERS THAT:

1. Fred Sauer's complaint against the Missouri Public Service Commission is dismissed.

2. This order shall become effective on February 14, 2015.

BY THE COMMISSION

Morris L. Woodruff
Secretary

R. Kenney, Chm., W. Kenney,
Hall, and Rupp, CC., concur.
Stoll, C., absent.

Bushmann, Senior Regulatory Law Judge

Fred Sauer,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. EC-2015-0164**
	)	
Missouri Public Service Commission,	)	
	)	
and	)	
	)	
Union Electric Company d/b/a Ameren Missouri,	)	
	)	
Respondents.	)	

ORDER GRANTING MOTIONS TO DISMISS

EVIDENCE, PRACTICE AND PROCEDURE.
§2. Jurisdiction and powers. The statutes require State agencies to allow inspection and reproduction of public records, but impose no such requirement on a public utility. Therefore, a complaint alleging that a public utility failed to disclose records did not state a claim for which the Commission can grant relief.
§22. Parties. The statutes require State agencies to allow inspection and reproduction of public records, but impose no such requirement on a public utility. Therefore, a complaint alleging that a public utility failed to disclose records did not state a claim for which the Commission can grant relief.
PUBLIC UTILITIES.
§5. Obligation of the utility. The statutes require State agencies to allow inspection and reproduction of public records, but impose no such requirement on a public utility. Therefore, a complaint alleging that a public utility failed to disclose records did not state a claim for which the Commission can grant relief.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 25th day of February, 2015.

Fred Sauer,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. EC-2015-0164**
	)	
Missouri Public Service Commission,	)	
	)	
and	)	
	)	
Union Electric Company d/b/a Ameren Missouri,	)	
	)	
Respondents.	)	

ORDER GRANTING MOTIONS TO DISMISS

Issue Date: February 25, 2015 Effective Date: March 27, 2015

On January 13, 2015, Fred Sauer filed a complaint with the Missouri Public Service Commission against Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri") and against the Missouri Public Service Commission. The complaint alleges that the Commission responded improperly to a request from Mr. Sauer for certain information under Missouri's "Sunshine Law" in Chapter 610, RSMo. The complaint also alleges that Ameren Missouri and the Commission's classification of this requested information as highly confidential under Commission Rule 4 CSR 240-2.135 was unlawful, unreasonable, and an abuse of discretion.

The Commission directed notice of the complaint to Ameren Missouri and to the Commission's Staff Counsel, requiring Staff to answer the complaint on behalf of the Commission. The Staff of the Commission responded on January 22, 2015, by filing a motion asking the Commission to dismiss the complaint against the Commission and Ameren Missouri. Ameren Missouri answered the complaint and also filed a motion to dismiss the complaint. The Commission provided an opportunity for other parties to respond to the motions to dismiss, but no parties objected or responded to those motions. On February 4, 2015, the Commission issued an order dismissing the complaint against the Commission. The Commission will now consider the motions to dismiss Ameren Missouri.

The standard for review for consideration of a motion to dismiss has been clearly established by Missouri's courts as follows:

> A motion to dismiss for failure to state a cause of action is solely a test of the adequacy of the plaintiff's petition. It assumes that all of plaintiff's averments are true, and liberally grants to plaintiff all reasonable inferences therefrom. No attempt is made to weigh any facts alleged as to whether they are credible or persuasive. Instead, the petition is reviewed in an almost academic manner to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case.[1]

The Commission will assume that the facts alleged in the complaint are true for the purposes of considering the motions to dismiss the complaint against Ameren Missouri. Complainants are required to set forth in their complaint before the Commission "any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission."[2] Reading the complaint in the light most

[1] *Bosch v. St. Louis Healthcare Network*, 41 S.W.3d 462, 463-464 (Mo. banc 2001).
[2] Section 386.390.1, RSMo 2000.

favorable to Mr. Sauer, the Commission must assume, for purposes of consideration of the motions, that Ameren Missouri incorrectly classified certain information in renewable energy standard compliance reports provided to the Commission in File Nos. EO-2013-0462 and EO-2014-029 and this information was improperly withheld from Mr. Sauer in response to his request for disclosure under the Sunshine Law.

The complaint in general alleges a violation of the Sunshine Law, which applies only to public governmental bodies[3], but there is no allegation that Ameren Missouri is such a public governmental body. Moreover, that law is limited by a statute that pertains specifically to the Commission, which states that:

> No information furnished to the commission by a corporation, person or public utility, except such matters as are specifically required to be open to public inspection by the provisions of this chapter, or chapter 610, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. The public counsel shall have full and complete access to public service commission files and records. Any officer or employee of the commission or the public counsel or any employee of the public counsel who, in violation of the provisions of this section, divulges any such information shall be guilty of a misdemeanor.[4]

This statute governs the release of information by the Commission, but imposes no duties upon regulated companies, such as Ameren Missouri. Even assuming for the sake of argument that the Commission failed to properly disclose the requested information in its possession, the complaint fails to state a valid claim against Ameren Missouri. With regard to any possible violations of the Sunshine Law or Section 386.480, Mr. Sauer's proper course of action is to seek judicial enforcement in circuit court, not by filing a complaint with the Commission.

[3] Section 610.021, RSMo Supp. 2013.
[4] Section 386.480, RSMo 2000.

Mr. Sauer also states that Ameren Missouri incorrectly designated as highly confidential certain information reported to the Commission regarding the amount and price of renewable energy purchased from a wind farm and the value of certain renewable energy credits Ameren Missouri received from renewable energy generation. This information was provided to the Commission by Ameren Missouri in the context of two proceedings involving renewable energy standard compliance, File Nos. EO-2013-0462 and EO-2014-0291.[5] Commission Rule 4 CSR 240-2.135(12) provides a mechanism for such a designation to be challenged, stating, in part, as follows:

> Not later than ten (10) days after testimony is filed that contains information designated as proprietary or highly confidential, any party that wishes to challenge the designation of the testimony may file an appropriate motion with the commission.

Even assuming that the requested information was improperly classified in those previous proceedings, the Commission cannot grant Mr. Sauer the relief that he seeks. Mr. Sauer did not request to intervene in those proceedings, and Mr. Sauer did not timely challenge the classification under Commission rules. There is no alternate process by which Mr. Sauer can attack the classification of this information by way of a separate complaint proceeding. The Commission concludes that the complaint does not state claims upon which relief can be granted, and so must be dismissed.

THE COMMISSION ORDERS THAT:

1. Fred Sauer's complaint against Union Electric Company d/b/a Ameren Missouri is dismissed.

[5] Sauer complaint, Exhibit 2.

2. This order shall be effective on March 27, 2015.

3. This file shall be closed on or after March 28, 2015.

BY THE COMMISSION

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney,
Hall, and Rupp, CC., concur.

Bushmann, Senior Regulatory Law Judge

In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Electric Service	)))	**File No. ER-2014-0258** Tariff No. YE-2015-0003

ORDER APPROVING AMENDED STIPULATION AND AGREEMENT REGARDING CERTAIN REVENUE REQUIREMENT ISSUES

ACCOUNTING. §42. Accounting Authority Orders. The Commission approved a stipulation and agreement that provided for an accounting authority order allowing deferred recording for carrying costs associated with relicensing fees.

ELECTRIC. §43. Accounting Authority Orders. The Commission approved a stipulation and agreement that provided for an accounting authority order allowing deferred recording for carrying costs associated with relicensing fees.

NOTE: Commissioner Hall filed a concurring opinion on 6-11-15 which is attached to the above Order.

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 March, 2015.

In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Electric Service	)))	**File No. ER-2014-0258** Tariff No. YE-2015-0003

ORDER APPROVING AMENDED STIPULATION AND AGREEMENT REGARDING CERTAIN REVENUE REQUIREMENT ISSUES

Issue Date: March 19, 2015 Effective Date: March 19, 2015

On March 3, 2015, Union Electric Company d/b/a Ameren Missouri, the Office of the Public Counsel, the Midwest Energy Consumers Group, the Consumers Council of Missouri, and the Staff of the Commission filed a nonunanimous stipulation and agreement that would increase the revenue requirement proposed by Staff by $11 million to resolve certain described revenue requirement issues. The agreement also requires Ameren Missouri to take other described actions to resolve issues identified in this case.

The stipulation and agreement is nonunanimous in that it was not signed by all parties. However, Commission Rule 4 CSR 240-2.115(2) provides that other parties have seven days in which to object to a nonunanimous stipulation and agreement. If no party files a timely objection to a stipulation and agreement, the Commission may treat it as a unanimous stipulation and agreement. More than seven days have passed since the stipulation and agreement was filed, and no party has objected. Therefore, the

Commission will treat the stipulation and agreement as a unanimous stipulation and agreement.

After reviewing the stipulation and agreement, the Commission independently finds and concludes that the stipulation and agreement is a reasonable resolution of the issues addressed by the stipulation and agreement and that such stipulation and agreement should be approved.

One provision in the stipulation and agreement needs additional explanation and clarification. In paragraph 6 of that stipulation and agreement, the signatory parties agree:

> Ameren Missouri should be granted accounting authority to defer carrying costs (at its short-term interest rate) and amortization accruals related to the cost of the Callaway relicensing request balance at the effective date of the Report and Order in this case. The parties agree this accounting authority should be effective until rates are implemented in Ameren Missouri's next rate case. The parties agree Ameren Missouri should be allowed to recover the deferred costs beginning with the first rate case after the license extension is issued consistent with the authority granted in this case. Finally, the parties agree the costs should be amortized over the life of the license extension and that the deferred amounts should be included in rate base in a regulatory asset account in the first rate case after the license extension is issued.

It appears the parties included that provision in the stipulation and agreement because of uncertainty about when the Nuclear Regulatory Commission (NRC) would grant Ameren Missouri a long-anticipated twenty-year extension of the Callaway Energy Center's operating license.

In true-up direct testimony filed on March 17, Ameren Missouri's witness, Laura Moore, explained that the NRC issued the Callaway license extension on March 6, three days after the amended stipulation and agreement was filed on March 3. Because it now has a known and measurable amount of investment in the license extension through the end of the true-up period, Ameren Missouri has included the costs to obtain the license

extension, incurred through the end of the true-up period on December 31, 2014, in its trued-up rate base. Ms. Moore further explains that because the pre-January 1, 2015 costs are now included in rate base, the accounting authority contemplated in the stipulation and agreement would allow for the deferral of costs incurred between January 1 and May 30, 2015, the likely effective date of the report and order that the Commission will issue in this case.

Because of the uncertainty surrounding the interpretation of paragraph six of the stipulation and agreement, the Commission directed that any party wishing to be heard about this paragraph appear at this agenda meeting. Staff, Public Counsel, MIEC, and Ameren Missouri appeared at the agenda meeting by counsel, and indicated they disagree with Ameren Missouri's proposed treatment of the license extension costs.

After reviewing the matter of the agreed upon accounting authority order, the Commission independently finds and concludes that the relicensing costs that Ameren Missouri seeks to defer for ratemaking treatment in its next rate case are extraordinary, unusual and unique, and not recurring.[1] The Commission clarifies that all of the carrying costs (at Ameren Missouri's short-term interest rate) and amortization accruals related to the cost of the Callaway relicensing request balance at the effective date of the Report and Order in this case are appropriately deferred for consideration in the next rate case through use of an accounting authority order.

[1] That standard was announced by the Commission in what is often referred to as the Sibley decision, *In the Matter of the Application of Missouri Public Service for the Issuance of an Accounting Order Relating to its Electrical Operations. In the Matter of the Application of Missouri Public Service for the Issuance of an Accounting Order Relating to its Purchase Power Commitments.* 1 MPSC 3d 200, 205 (1991)

THE COMMISSION ORDERS THAT:

1. The Amended Nonunanimous Stipulation and Agreement Regarding Certain Revenue Requirement Issues, filed on March 3, 2015, is approved as a resolution of the issues 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.

2. Union Electric Company, d/b/a Ameren Missouri, is granted accounting authority to defer carrying costs (at its short term interest rate) and amortization accruals related to the cost of the Callaway relicensing request balance at the effective date of the Report and Order in this case.

3. This order shall be effective when issued.

BY THE COMMISSION

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney,
and Rupp, CC., concur;
Hall, C., concurs with separate concurring opinion to follow.

Woodruff, Chief Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Electric Service	)))	**File No. ER-2014-0258**

CONCURRING OPINION OF COMMISSIONER DANIEL I. HALL IN THE ORDER APPROVING AMENDED STIPULATION AND AGREEMENT REGARDING CERTAIN REVENUE REQUIREMENT ISSUES

On March 19, 2015, the Commission approved a nonunanimous stipulation and agreement, which the Commission treated as unanimous per Commission Rule 4 CSR 240-2.115(2). The approved stipulation resolved numerous previously contested issues, including the amount of rate case expense Ameren Missouri will recover in rates for pursuing and prosecuting its rate increase request. Specifically, it sets forth that "the revenue requirement in this case shall include the Company's prudently-incurred rate case expenses for this case . . . ."[1] Accordingly, under this stipulation, Ameren Missouri ratepayers, through the rates they pay for electric service, will be required to pay 100 percent of Ameren Missouri's prudently incurred rate case expenses. I believe the stipulation is a reasonable resolution of the vast majority of the issues addressed therein and, therefore, should be approved. However, I am not convinced it constitutes good public policy in general, or in this case in specific, to require customers to pay 100 percent of the utility's rate case expense.[2] For that reason, I write separately to express my disagreement with that portion of the stipulation.

---

[1] *Amended Nonunanimous Stipulation and Agreement Regarding Certain Revenue Requirement Issues*, p. 2, para. 3.

[2] Staff identified the final amount of rate case expense included in rates as $2,391,209, which will be amortized over two years and recovered at $1,366,975 per year. *Rate Case Expense*, EFIS No. 737, p. 1.

I acknowledge that, in one sense, rate case expense is like other common operational expenses, such as employee salaries, information technology upgrades and fuel costs. These are all expenses the utility must incur in order to provide utility service to customers. In order to prosecute a rate case, the utility must incur expenses for lawyers and consultants, and a rate case is the established process under Missouri law by which new just and reasonable rates are set. Accordingly, and because it is indisputable that customers benefit from having just and reasonable rates, it is appropriate for customers to bear some portion of the utility's cost of prosecuting a rate case.

However, rate case expense is also different from most other types of utility operational expenses. First, the rate case process is adversarial in nature, with the utility on one side and its customers on the other. During the hearing in this case, counsel for Ameren Missouri took issue with that observation, contending that Ameren Missouri does not view its customers as its adversaries. I appreciate that sentiment; I want that to be true. But that is not how it appears from where I sit. In the hearing room during the evidentiary hearing, the Office of Public Counsel and other customer organizations opposed Ameren Missouri on virtually every issue presented – the former taking positions that would lower rates, and the latter taking the positions that would result in increased rates. In addition, at local public hearings, customer after customer articulated the harmful effect of rising utility rates on their financial affairs, and pleaded with the Commission to take whatever action necessary to mitigate any future rate increase.

Second, unlike other operating expenses, rate case expense produces some direct benefits to the utility, more specifically, to its shareholders, that are not shared with customers. In a typical rate case, as in this one, the utility seeks a higher rate of return than customers are willing to support. While I agree it is absolutely necessary, both legally and from a public policy perspective, to ensure that the utility has the opportunity to recover a reasonable return on its investment, any amount sought over a reasonable rate of return is solely sought for the benefit of shareholders. This stands in contrast to typical operating expenses where there is a direct benefit to ratepayers – safe, adequate and reliable service.

Third, requiring 100 percent of rate case expense to be paid by ratepayers provides the utility with what appears to be an inequitable financial advantage over other participants in the rate case process. Staff and the Office of Public Counsel both operate within tight annual budgets, and the intervener consumer groups must pay their own legal expenses. In contrast, under the current system, the utility prosecutes its rate case with an unconstrained budget, receiving reimbursement from ratepayers for all of its expenses related thereto. This allows the utility, in some circumstances, to "out-gun" its opponents, investing resources other parties cannot match to engage numerous counsel and consultants, and conduct multiple rounds of depositions and written discovery.

Finally, full reimbursement of all rate case expense does nothing to encourage reasonable levels of cost containment. While Ameren Missouri insists it carefully scrutinizes and manages its costs, and that the prudency review these costs receive is designed to ensure that unnecessary and exorbitant rate case expenses are disallowed,

it is indisputable that the Commission has only rarely disallowed even a portion of a utility's rate case expense as imprudently incurred. This is because, in the context of rate case expense, a true prudency review would be cumbersome, time-consuming, resource intensive, and even impractical.[3] Simply put, it does not work as well as providing a direct financial incentive to the utility to minimize litigation costs.

Accordingly, I believe rate case expense should be shared by ratepayers and shareholders. Some parties have noted that there is no express authority in statute or rule to implement such a sharing mechanism, however, the Commission has the current legal authority to take such action. Under Missouri law, the Commission must set just and reasonable rates,[4] and rates that include 100 percent of the utility's rate case expense, for the reasons set forth above, may not be just or reasonable.[5] Moreover, this Commission has already found rate case expense sharing to be just and reasonable in at least one prior case. In a 1986 decision, *In the Matter of Arkansas Power and Light Company*,[6] the Commission "adopted Public Counsel's proposed

[3] Any after-the-fact review of rate case expense necessarily depends on the utility's ability to make available detailed, transparent records about costs related to experts and attorneys, which are often considered confidential to some degree. Furthermore, even if records are made available, by the nature of the subject matter, any review of those records is inherently so deferential it can sometimes become a perfunctory exercise. In this very case, Public Counsel alleged the information Ameren Missouri provided for rate case expense would be insufficient for a meaningful prudence review. Despite these challenges reviewing rate case expense for prudency, the Commission has disallowed, on rare occasions, portions of rate case expense when certain costs were deemed excessive. *See, In the Matter of Missouri Gas Energy*, Report and Order Case No. GR-2004-0209, 12 Mo. P.S.C. 3d 581, 623 (2004) and *In the Matter of Missouri-American Water Company*, Report and Order, Case No. WR-93-212, 2 Mo. P.S.C. 3d 446, 449 (1993).

[4] ". . . All charges made or demanded by any . . . electrical corporation . . . shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable charge . . . is prohibited." Section 393.130.1, RSMo 2000 as currently supplemented.

[5] Of course, there are rate cases where the utility does not have the means to absorb a portion of rate case expense, and requiring it to do so would ultimately harm customers. In such circumstances, it would appear just and reasonable that rates include the entire amount of rate case expense.

[6] Report and Order, Case No. ER-85-265, 28 Mo. P.S.C. (N.S.) 435, 447 (1986).

disallowance of one-half of rate case expense." It is also important to note that there are a number of other cases where the Commission acknowledged it had this authority.[7]

Some parties to this hearing suggested a workshop would be in order to examine and develop this concept. However, the Commission has already opened a working case precisely on this issue, File No. AW-2011-0330. This case was opened April 7, 2011, over four years ago, and is currently still open. In that case, Staff issued a comprehensive Staff Report, which concludes,

> Staff recommends that the Commission consider employing structural incentive measures in rate cases to provide utilities with stronger incentives to reasonably limit their rate case expenses to appropriate and necessary levels. . . These measures may include . . . sharing of rate case expense."[8]

As noted above, I believe the stipulation is reasonable and should be approved. I appreciate the parties' efforts to reach this agreement that includes a number of other complex issues beyond the rate case expense issue. In those negotiations, the parties (in particular the Office of Public Counsel, which has long supported rate case expense sharing) were unaware that some Commissioners were open to this concept; and it is not my intent to thwart the work that went into reaching this agreement. Going forward, I am heartened by Public Council's statements at the hearing that it would renew its pursuit of rate case expense sharing in future proceedings, and I am also encouraged

---

[7] *See, In the Matter of Kansas City Power & Light Company*, Report and Order, Case Nos. EO-85-185 and EO-85-224, 28 Mo. P.S.C. (N.S.) 229, 263 (1986), and *In the Matter of Missouri Gas Energy*, Report and Order, File No. GR-2009-0355, 19 Mo. P.S.C. 3d 245. 303, (2010).

[8] *Staff's Investigative Report on Rate Case Expense*, Sept. 4, 2013, p. 15. Counsel for Ameren Missouri complained at the hearing that the company had not yet been given a chance to fully respond to the idea of a rate sharing mechanism. However, any party interested in this issue had an opportunity to provide comments in AO-2011-0330, as the Commission order establishing the file provided, "[u]sing this file, any person with an interest in this matter may . . . submit any pertinent responsive comments or documents." *Order Directing Staff to Investigate and Opening a Repository File*, pp. 1-2. If Ameren Missouri was waiting for a more direct invitation to submit its input, this Concurrence constitutes such an invitation.

by the support some of my fellow Commissioners have expressed for considering a rate case expense sharing mechanism in future cases.

For the forgoing reasons, I concur.

Respectfully submitted,

Daniel Y. Hall
Commissioner

Commissioner Rupp joins this concurring opinion in its entirety.

Scott T. Rupp
Commissioner

Dated this 11th day of June, 2015
at Jefferson City, Missouri

Patricia Schuba and Dean Todd,	)	
	)	
Complainants,	)	
	)	
v.	)	File No. EC-2014-0342
	)	
Union Electric Company d/b/a Ameren Missouri,	)	
	)	
Respondent.	)	

ORDER DISMISSING COMPLAINT AND, IN THE ALTERNATIVE, GRANTING SUMMARY DETERMINATION

EVIDENCE, PRACTICE, AND PROCEDURE

§24. Procedures, evidence and proof. The Commission rules on a motion to dismiss for failure to state a claim by disregarding the mere conclusions unsupported by allegations, assuming that the complaint's allegations are true, and determining whether those allegations describe a claim.
§24. Procedures, evidence and proof. Dismissal for failure to state a claim and summary determination before the Commission are analogous to procedures in Missouri Supreme Court Rules 55.27(a)(6) and 74.04, respectively. Those two dispositions are not interchangeable. Proof that establishes facts supporting summary determination also supports dismissal because the quantum of proof is higher for summary determination than for dismissal: summary determination requires undisputed facts, but dismissal may occur despite factual disputes.
§24. Procedures, evidence and proof. A complaint seeking a remedy that is contrary to tariff is seeking a special rebate, or undue or unreasonable preference or advantage, contrary to statute.
§24. Procedures, evidence and proof. Summary determination was due when the party defending a complaint showed that the complainant could demonstrate a violation of any statute or Commission regulation, order, or tariff.
§27. Finality and conclusiveness. A collateral action is an action that challenges an order by means other than the exclusive remedy. That includes challenging a public utility practice that is in accord with a Commission decision that is beyond appeal; to challenge the practice is to challenge the decision.

§RATES.
§66. Filing of schedules reports and records. A tariff may take effect without personal notice to any specific customer and without any specific customer's participation in the process; all members of the public have representation through the Office of the Public Counsel.

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 March, 2015.

Patricia Schuba and Dean Todd,	)	
	)	
Complainants,	)	
	)	
v.	)	File No. EC-2014-0342
	)	
Union Electric Company d/b/a Ameren Missouri,	)	
	)	
Respondent.	)	

ORDER DISMISSING COMPLAINT AND, IN THE ALTERNATIVE, GRANTING SUMMARY DETERMINATION

Issue Date: March 19, 2915 Effective Date: April 18, 2015

The Commission is denying all relief sought in the complaint. The complaint seeks payment to Complainants and other unnamed persons on solar rebate applications ("applications") received by Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri"). The complaint charges that Ameren Missouri unlawfully denied applications and ceased to pay solar rebates ("payment") without any authorization lawfully issued. But Ameren Missouri has shown that it did not cease payment, and that it has complied with the tariff[1] governing applications and payment. Also, Commission orders are not subject to collateral attack. Therefore, the Commission is granting Ameren Missouri's motion to

[1] As used in Commission practice, a tariff is a schedule governing rates and other terms of service. It may mean the whole set of such documents, or the subset for one service territory, or a single page.

dismiss the complaint and, in the alternative, entering summary determination in favor of Ameren Missouri.

I. Jurisdiction and Authority

The Commission has authority to hear a complaint alleging a violation of a statute or a Commission regulation, order, or tariff ("violation") by any public utility.[2] The findings of fact below show that Ameren Missouri is a public utility,[3] specifically an electrical corporation. [4] Therefore, the Commission has jurisdiction to determine whether Ameren Missouri committed a violation.

II. Docket

Patricia Schuba and Dean Todd ("Complainants") filed the complaint. [5] Ameren Missouri filed an answer, [6] and the Commission's staff ("Staff") filed a recommendation. [7] The Commission was under a writ of prohibition that from the Circuit Court prevented the Commission from taking any action in this proceeding for ten weeks.[8] Meanwhile, Ameren Missouri filed a motion for summary determination ("motion")[9] with a supporting memorandum and affidavit. Complainants filed a response to the motion. [10] Ameren

[2] Section 386.390.1, RSMo 2000.

[3] Finding 1, Section 386.020(43), RSMo 2000.

[4] Finding 1, Section 386.020(15), RSMo 2000.

[5] Electronic Filing and Information System ("EFIS") No. 1, May 14, 2014, *Complaint*. References to EFIS indicate the content of this file except as otherwise noted.

[6] EFIS No. 8, June 16, 2014, *Answer*.

[7] EFIS No. 9, June 30, 2014, *Staff Recommendation to Deny Complaint*.

[8] From June 23, 2014, through August 15, 2014. *Save Our Lawfully Authorized Rebates, LLC, v. Missouri Public Service Comm'n*, Case No. 14AC-CC00316 (Cir. Ct. Cole County).

[9] EFIS No. 27, November 13, 2014, *Ameren Missouri's Motion for Summary Disposition*. From June 23, 2014, through August 15, 2014, the Circuit Court of Cole County prohibited the Commission from doing anything in this action. Case No. 14AC-CC00316.

[10] EFIS No. 30, December 12, 2014, *Response to Union Electric Company's Motion for Summary Determination*.

Missouri filed a reply.[11] The motion includes arguments that the complaint is a collateral attack on a Commission decision, and those arguments constitute a motion to dismiss for failure to state a claim.[12] Accordingly, the Commission will treat that part of the motion as a motion to dismiss for failure to state a claim.

III. Standards of Proof

Dismissal for failure to state a claim and summary determination before the Commission are analogous to procedures in Missouri Supreme Court Rules 55.27(a)(6) and 74.04, respectively.[13] Proof that establishes facts supporting summary determination also supports dismissal because the quantum of proof is higher for summary determination than for dismissal: summary determination requires undisputed facts, [14] but dismissal occurs despite factual disputes.[15]

The Commission has made its regulation on summary determination under the authority of Section 386.410, RSMo 2000, [16] which provides:

> 1. All hearings before the commission or a commissioner shall be governed by rules to be adopted and prescribed by the commission. And in all investigations, inquiries or hearings the commission or commissioner shall not be bound by the technical rules of evidence.
>
> 2. No formality in any proceeding nor in the manner of taking testimony before the commission or any commissioner shall invalidate any order, decision, rule or regulation made, approved or confirmed by the commission.

[11] EFIS No. 31, July 28, 2014, *Reply Memorandum in Support of Ameren Missouri's Motion for Summary Disposition*.

[12] 4 CSR 240-2.117(1).

[13] Where a regulation is sufficiently similar to a rule, cases discussing the rule are helpful in explaining the regulation. *Johnson v. Mo. Bd. of Nursing Adm'rs*, 130 S.W.3d 619, 626 (Mo. App., W.D. 2004).

[14] 4 CSR 240-2.117(1)(E).

[15] *Romero v. Kansas City Station Corp.*, 98 S.W.3d 129, 134 -135 (Mo. App., W.D. 2003).

[16] *State ex rel. Laclede Gas Co. v. Public Service Comm'n*, 392 S.W.3d 24, 35 (Mo. App., W.D. 2012).

Under that authority, summary determination is similar, though not identical, to summary judgment under Missouri Supreme Court Rule 74.04.

The affidavits, the Commission's official records,[17] admissions in the pleadings, and establish the following facts without dispute.

IV. Findings of Fact

1. Ameren Missouri is engaged in the business of manufacturing, transmitting, and distributing electricity[18] to customers including Complainants. [19]

2. On September 30, 2013, Ameren Missouri brought an action before the Commission,[20] in which Ameren Missouri filed a request to cease payments, with a proposed tariff.[21] Ameren Missouri filed a revised tariff ("tariff"). The tariff required Ameren Missouri to pay $91.9 million in rebates ("specified level")[22] in the order that they qualified ("queue") for calendar year 2013.[23] The Commission approved the tariff by decision issued on December 12, 2013 ("earlier decision").[24]

[17] *Envtl. Utilities, LLC v. Pub. Serv. Comm'n*, 219 S.W.3d 256, 265-66 (Mo. App., W.D. 2007).

[18] EFIS No. 8, June 16, 2014, *Answer*, page 1, paragraph 3.

[19] EFIS No. 8, June 16, 2014, *Answer*, page 1, paragraph 1.

[20] File No. ET-2014-0085, *In the Matter of Union Electric Company d/b/a Ameren Missouri's Application For Authorization To Suspend Payment of Solar Rebates*, EFIS No. 1, September 30, 2013, *Notice of Tariff Issue and Motion for Expedited Order*.

[21] File No. ET-2014-0085, *In the Matter of Union Electric Company d/b/a Ameren Missouri's Application For Authorization To Suspend Payment of Solar Rebates*, EFIS No. 4, October 3, 2013, *Application for Authority to Suspend Payment of Solar Rebates*.

[22] Ameren Missouri's tariff, *Mo. P.S.C. Schedule No. 6*, Sheet No. 88 (2nd Revised), *Availability*.

[23] Ameren Missouri's tariff, *Mo. P.S.C. Schedule No. 6*, Sheet No. 88.2 (1st Revised), *Reservation Queue*. The same provisions apply for 2014. *Mo. P.S.C. Schedule No. 6*, Sheet No. 88.2 (2nd Revised), *Reservation Queue.*

[24] File No. ET-2014-0085, EFIS No. 73, December 12, 2013, *Order Approving Tariff and Granting Variance*.

3. By mid-December 2013, Ameren Missouri had received applications for amounts totaling the specified level.[25] By November 13, 2014, what remained of the specified level covered only those applications received by December 20, 2013.[26] On December 23 and26, 2013, Ameren Missouri received applications from Patricia Schuba[27] and Deane Todd[28] respectively. Ameren Missouri continued to process applications in the queue. [29]

V. Conclusions of Law

The Commission must set forth its conclusions on the complaint.[30] The complaint alleges a violation of the Renewable Energy Standard's provisions on rebates for new or expanded solar electric systems.[31] Those provisions require electric corporations to pay up to a statutorily-described limit ("the specified level") as authorized by the Commission.[32]

The Commission issued that authorization upon a specified procedure.[33] Pending that procedure, electric corporations must continue to "process and pay" rebates.[34]

[25] EFIS No. 27, November 13, 2014, *Affidavit of Matt Michels*, page 2, paragraph 4.

[26] EFIS No. 27, November 13, 2014, *Affidavit of Matt Michels*, page 2, paragraph 5.

[27] EFIS No. 27, November 13, 2014, *Affidavit of Matt Michels*, page 2, paragraph 6.

[28] EFIS No. 27, November 13, 2014, *Affidavit of Matt Michels*, page 2, paragraph 7.

[29] EFIS No. 27, November 13, 2014, *Affidavit of Matt Michels*, page 2, paragraph 5, 6, and 7.

[30] Section 386.420.2, RSMo Supp. 2013.

[31] "As provided for in this section, [Ameren Missouri] shall make available to its retail customers a solar rebate for new or expanded solar electric systems sited on customers' premises [.]" Section 393.1030.3, RSMo Supp. 2013, first sentence. That subsection appears at full length in the Appendix.

[32] The Renewable Energy Standard names the amount "specified level retail rate increase" and relates the amount to the cost of Ameren Missouri's compliance with the Renewable Energy Standard. Section 393.1030.2(1), RSMo Supp. 2013. The Commission's regulations further describe the specified level at 4 CSR 240-20.100(5).

[33] "If [Ameren Missouri] determines the [specified level] will be reached in any calendar year, [Ameren Missouri] shall be entitled to cease paying rebates to the extent necessary to avoid exceeding the [specified level] if [Ameren Missouri] files with the commission to suspend its rebate tariff for the remainder of that calendar year at least sixty days prior to the change taking effect. [.]" Section 393.1030.3, RSMo Supp. 2013, fifth sentence.

[34] "[Ameren Missouri] shall continue to process and pay applicable solar rebates until a final commission ruling [.]" Section 393.1030.3, RSMo Supp. 2013, ninth sentence.

Whether the Commission authorizes cessation of payments depends on whether the electric corporation shows that it will pay out the specified level.[35] If so, the Commission must authorize the electric corporation to suspend the rebate payment tariff ("authorization").[36] If the Commission issues the authorization, the electric corporation must still process and pay rebates up to the specified level.[37]

The Commission must distinguish between dismissal and summary determination because those two dispositions are not interchangeable.

A. Dismissal

Ameren Missouri has shown that the complaint states no claim for relief because the statutes bar both the claim and the relief. As in a motion to dismiss under Missouri Supreme Court Rule 55.27(a)(6), Ameren Missouri has the burden on its motion.[38] The Commission rules on the motion by disregarding the mere conclusions unsupported by allegations[39] assuming that the complaint's allegations are true, and determining whether those allegations describe a claim.[40]

As to the claim, the allegations are that Ameren Missouri denied applications and ceased payments unlawfully because the earlier decision was issued without separately

[35] "The filing with the commission to suspend [Ameren Missouri's] rebate tariff shall include the calculation reflecting that the [specified level] will be reached and supporting documentation reflecting that the [specified level] will be reached." Section 393.1030.3, RSMo Supp. 2013, sixth sentence.

[36] "If the commission determines that the [specified level] will be reached, the commission shall approve the tariff suspension." Section 393.1030.3, RSMo Supp. 2013, eighth sentence.

[37] "[Ameren Missouri] shall be entitled to cease paying rebates to the extent necessary to avoid exceeding the [specified level.]" Section 393.1030.3, RSMo Supp. 2013, fifth sentence.

[38] *Saidawi v. Giovanni's Little Place, Inc.*, 987 S.W.2d 501, 504 (Mo. App., E. D. 1999), discussing Rule 55.27(a)(6), the analog of Commission regulation 4 CSR 240-2.070(7).

[39] *Ford Motor Credit Co. v. Updegraff*, 218 S.W.3d 617, 621 (Mo.App., W.D. 2007).

[40] *Gordon v. City of Kansas City*, 450 S.W.3d 793, 798 (Mo. App., W.D. 2014).

stated findings of fact. In response, Ameren Missouri cites Section 386.550, RSMo 2000, which bars any collateral attack on any Commission decision.

Section 386.550, RSMo 2000 provides:

> In all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive [.[41]]

Whether a decision is final, and whether an action constitutes a collateral attack on that decision, depends on the existence of an exclusive remedy.

The exclusive remedy for a Commission decision is an application for rehearing[42] and notice of appeal. [43] Those filings did not occur as to the earlier decision, so the decision is final, which makes it conclusive for any collateral action. A collateral action is an action that challenges an order by means other than the exclusive remedy.[44] That describes the complaints' prayer for relief from the decisions' effects. Each decision is final, and was the subject of no application for rehearing. Therefore, the complaint constitutes a collateral action in that it questions a final decision, so it seeks a claim for which relief cannot be granted. Complainants argue that the complaint does not challenge any order of the Commission, only Ameren Missouri's practices, but the courts have addressed that argument.

> [Complainant] contends that it is not attacking the order which the Commission made in 1985, but is simply attacking a [tariff] approved by the Commission. [Complainant] contends that the [tariff] is not the order of the Commission but is simply a [tariff]. However, [Complainant] fails to note that the only purpose of the order of the Commission in 1985 was the approval of [the

[41] Section 386.550, RSMo 2000.

[42] Section 386.500, RSMo 2000.

[43] Section 386.510, RSMo Supp. 2013.

[44] *State v. Kosovitz*, 342 S.W.2d 828, 830, (Mo. 1961).

> tariff]. Thus, it is impossible to separate [the tariff] from the order of the Commission. When [Complainant] attacks [the tariff], it must necessarily attack the order which enabled [the utility] to adopt and enforce [the tariff]. By § 386.550, [Complainant] cannot collaterally attack the order of the Commission by which [the tariff] was adopted. For that reason [Complainant] may not in this proceeding attack [the tariff] but is bound by the requirements of [the tariff.[45]]

When Complainants challenge the practice, Complainants challenge the decision and tariff requiring that practice.

Also, the relief sought is unlawful. The complaint seeks payment on all pending applications without regard to the tariff. That relief is unlawful because Section 393.130.3, RSMo Supp. 2013, bars Ameren Missouri from granting any special rebate, and any undue or unreasonable preference or advantage.

> 2. No . . . electrical corporation . . . shall directly or indirectly by any special . . . rebate . . . receive from any person . . . a greater or less compensation for . . . electricity . . . than it . . . receives from any other person . . . for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.
>
> 3. No . . . electrical corporation . . . shall make or grant any undue or unreasonable preference or advantage to any person . . . or subject any particular person . . . to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Relief contrary to the tariff would constitute a special rebate, and an undue or unreasonable preference or advantage.

The complaint does not state a claim for which relief may be granted, and the relief sought is unlawful, so Commission will grant the motion to dismiss as to the entire complaint.

[45] *State ex rel. Licata, Inc. v. Pub. Serv. Comm'n of Mo*, 829 S.W.2d 515, 518 (Mo. App., W.D. 1992).

B. Summary Determination

The regulation on summary determination provides the same burden of proof as the rule on summary judgment, so the burdens of any party— moving or non-moving, on a claim or defense, with or without the burden of proof—are the same and cases interpreting the rule are helpful as to Ameren Missouri's motion. Complainants have the burden of proof on their complaint. [46] Therefore, Ameren Missouri prevails on the motion if the facts it has established beyond genuine dispute negate, or show that Complainants cannot establish, an element of the complaint.[47] The regulation[48] also requires Ameren Missouri to show an element not found in the rule, [49] which is that granting the motion is in the public interest.[50]

1. Complainants Cannot Prove Elements of Their Claim

Complainants cannot prove the procedural errors they allege because the procedures cited did not apply. Separately stated findings of fact are necessary only in a contested case,[51] and the earlier action was not a contested case, so the decision need only set forth the Commission's conclusions,[52] which it did. Therefore, even if the complaint stated a claim, Complainants could not prove that claim.

2. The Record Negates Elements of the Complaint

The complaint alleges violation of the Renewable Energy Standard procedure for cessation of payment:

[46] *AG Processing, Inc. v. KCP & L Greater Missouri Ops. Co.*, 385 S.W.3d 511, 516 (Mo. App., W.D. 2012).

[47] 4 CSR 240-2.117(1)(E); *ITT Comm. Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 380-82 (Mo. banc 1993).

[48] 4 CSR 240-2.117(1)(B).

[49] Missouri Supreme Court Rule 74.04

[50] 4 CSR 240-2.117(1)(B).

[51] Section 536.090, RSMo 2000.

[52] Section 386.420.2, RSMo Supp. 2013.

> As provided for in this section, [Ameren Missouri] **shall make available** to its retail customers a solar rebate [. Ameren Missouri] shall be entitled to cease paying rebates to the extent necessary to avoid exceeding the maximum . . . if [Ameren Missouri] files with the commission to suspend [Ameren Missouri']s rebate tariff for the remainder of that calendar year [. Ameren Missouri] **shall continue to process and pay** applicable solar rebates until a final commission ruling [.[53]]

But Ameren Missouri has shown compliance with the amount of payments and the order of payment set forth in the queue system prescribed by the tariff.[54] The tariff has the force and effect of a statute.[55]

Complainants argue that Ameren Missouri must pay every application received before authorization issued. That premise is contrary to the plain language of the statute and the tariff, which recognize the practicalities of managing the rebate program. Pending authorization to cease, the Renewable Energy Standard expressly required Ameren Missouri, not just to pay, but to "continue to process [.]"[56]

Processing applications required Ameren Missouri to verify that the applicant was a current customer, had an account not delinquent or in default, met customer-generator status as defined in Ameren Missouri's qualified net metering units tariff, and many other requirements.[57] Paying without processing would have constituted a violation.

Complainants also argue that authorization to cease payment must occur each year under the following language:

[53] Section 393.1030.3, RSMo Supp. 2013, ninth sentence.

[54] Finding of Fact 3.

[55] *State ex rel. Missouri Pipeline Co. v. Missouri Pub. Serv. Comm'n*, 307 S.W.3d 162, 178 (Mo. App., W.D. 2009), as modified (Feb. 2, 2010).

[56] Section 393.1030.3, RSMo Supp. 2013, ninth sentence.

[57] Ameren Missouri's tariff, *MO. P.S.C. Schedule No. 6*, Sheet No. 88 (3rd Revised).

> If the electric utility determines the [specified level] will be reached in any calendar year, the electric utility shall be entitled to cease paying rebates to the extent necessary to avoid exceeding the [specified level] if the electrical corporation files with the commission to suspend its rebate tariff for the remainder of that calendar year at least sixty days prior to the change taking effect. [58]

Those words entitle Ameren Missouri to a yearly authorization but do not require authorization in every calendar year. [59]

Therefore, Ameren Missouri established facts showing that it did not cease payment and that it complied with the law, which negates the element of unlawful conduct, legally entitling Ameren Missouri to a favorable decision on the merits of the complaint.

3. Summary Determination is in the Public Interest

The public interest includes factors related to "public welfare, efficient facilities and substantial justice between patrons and public utilities [.]"[60] The public interest favors resolving the complaint because the decisions brought resolution to Ameren Missouri's solar rebate practice, the complaint cannot disturb that resolution, and no party shows any reason for protracting this procedure given the undisputed material facts.

Complainants argue that it is unfair to apply a tariff approved in an action to which they were not parties and of which they had no notice. Personal notice to Complainants is

[58] Section 393.1030.3, RSMo Supp. 2013.

[59] Ameren Missouri's later action for authorization to cease payments in 2014 thus represents an abundance of caution. File No. ET-2014-0350, *In the Matter of Ameren Missouri's Application for Authorization to Suspend Payment of Solar Rebates*. The tariff approved in that action changed only the time of cessation from "2013 and beyond" to "2014 and beyond [.]" Ameren Missouri's tariff, EFIS No. 7, *Order Regarding Tariff*, page 3, ordered paragraph 1; *MO. P.S.C. Schedule No. 6*, Sheet 88 (3rd Revised).

[60] Section 386.610, RSMo 2000.

irrelevant to the tariff governing Ameren Missouri. [61] Complainants' personal participation in the tariff action is not necessary for the tariff to govern. [62] Further, the Commission set the specified level in the decision:

> Ameren Missouri will not suspend payment of solar rebates in 2013 and beyond unless the solar rebate payments reach [the specified level.] If and when the solar rebate payments are anticipated to reach the specified level, Ameren Missouri . . . will file with the Commission an application under the 60-day process as outlined in section 393.1030.3 RSMo to cease payments beyond the specified level in the year in which the specified level is reached and all future calendar years. [63]

That decision announced the specified level.[64] Moreover, Complainants, like all the public, had representation in both actions through the Office of the Public Counsel.[65] And Public Counsel agreed to the decision.[66]

Therefore, the Commission will grant summary determination in Ameren Missouri's favor.

THE COMMISSION ORDERS THAT:

1. The motion to dismiss is granted and the complaint is dismissed.

2. In the alternative, the Commission grants summary determination and enters its decision on the merits in favor of Union Electric Company d/b/a Ameren Missouri.

3. All relief sought in the complaint is denied.

[61] *State ex rel. Harline v. Pub. Serv. Comm'n of Mo.*, 343 S.W.2d 177, 184 (Mo. App., K.C. 1960).

[62] *State ex rel. Licata, Inc. v. Pub. Serv. Comm'n of Mo.*, 829 S.W.2d 515, 518 (Mo. App., W.D. 1992).

[63] File No. ET-2014-0085, EFIS No. 65, November 13, 2013, *Order Approving Stipulation and Agreement*, page 3, ordered paragraph 1; incorporating EFIS No. 63, November 8, 2013, *Non-Unanimous Stipulation and Agreement*, page 3, paragraph II.7.a.

[64] Finding of Fact 2.

[65] Section 386.710.1(2), RSMo 2000; 4 CSR 240-2.010(1).

[66] File No. ET-2014-0085, EFIS No. 63, November 8, 2013, *Non-Unanimous Stipulation and Agreement*, page 1 and 10.

4. This order shall become effective on April 18, 2015.

BY THE COMMISSION

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney, Hall, and Rupp, CC., concur.

Jordan, Senior Regulatory Law Judge

R & S Home Builders, Inc., and Carol and Arvell Allman,	)	
Complainants,	)	
vs.	)	File No. EC-2014-0343
KCP&L Greater Missouri Operations Company,	)	
Respondent.	)	

ORDER DISMISSING COMPLAINT AND, IN THE ALTERNATIVE, GRANTING SUMMARY DETERMINATION

EVIDENCE, PRACTICE, AND PROCEDURE.

§24. Procedures, evidence and proof. The Commission rules on a motion to dismiss for failure to state a claim by disregarding the mere conclusions unsupported by allegations, assuming that the complaint's allegations are true, and determining whether those allegations describe a claim.

§24. Procedures, evidence and proof. Dismissal for failure to state a claim and summary determination before the Commission are analogous to procedures in Missouri Supreme Court Rules 55.27(a)(6) and 74.04, respectively. Those two dispositions are not interchangeable. Proof that establishes facts supporting summary determination also supports dismissal because the quantum of proof is higher for summary determination than for dismissal: summary determination requires undisputed facts, but dismissal may occur despite factual disputes.

§24. Procedures, evidence and proof. A complaint seeking a remedy that is contrary to tariff is seeking a special rebate, or undue or unreasonable preference or advantage, contrary to statute.

§24. Procedures, evidence and proof. Summary determination was due when the party defending a complaint showed that the complainant could demonstrate a violation of any statute or Commission regulation, order, or tariff.

§27. Finality and conclusiveness. A collateral action is an action that challenges an order by means other than the exclusive remedy. That includes challenging a public utility practice that is in accord with a Commission decision that is beyond appeal; to challenge the practice is to challenge the decision.

RATES.

§66. Filing of schedules reports and records. A tariff may take effect without personal notice to any specific customer and without any specific customer's participation in the process; all members of the public have representation through the Office of the Public Counsel.

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 March, 2015.

R & S Home Builders, Inc., and Carol and Arvell Allman, Complainants,	)	
vs.	)	File No. EC-2014-0343
KCP&L Greater Missouri Operations Company, Respondent.	)	

ORDER DISMISSING COMPLAINT AND, IN THE ALTERNATIVE, GRANTING SUMMARY DETERMINATION

Issue Date: March 19, 2014 Effective Date: April 18, 2015

The Commission is denying all relief sought in the complaint. The complaint seeks payment to Complainants and other unnamed persons on their solar rebate applications ("applications") received by KCP&L Greater Missouri Operations Company ("GMO"). The complaint charges that GMO unlawfully denied applications and ceased to pay solar rebates ("payment") without any authorization lawfully issued. But GMO has shown that it ceased payment only in compliance with the tariff[1] governing applications and payment, which constitutes authorization to cease payment. Also, Commission orders are not subject to collateral attack. Therefore, the Commission is granting GMO's motion to dismiss the complaint and, in the alternative, entering summary determination in favor of GMO.

[1] As used in Commission practice, a tariff is a schedule governing rates and other terms of service. It may mean the whole set of such documents, or the subset for one service territory, or a single page.

I. Jurisdiction and Authority

The Commission has authority to hear a complaint alleging a violation of a statute or a Commission regulation, order, or tariff ("violation") by any public utility.[2] The findings of fact below show that GMO is a public utility,[3] specifically an electrical corporation. [4] Therefore, the Commission has jurisdiction to determine whether GMO committed a violation.

II. Docket

Carol and Arvell Allman and R & S Home Builders, Inc., ("Complainants") filed the complaint. [5] GMO filed an answer. [6] The Commission was under a writ of prohibition from the Circuit Court that prevented the Commission from taking any action in this proceeding for ten weeks.[7] Meanwhile, the Commission's staff ("Staff") filed a recommendation with a supporting affidavit,[8] which it later updated. [9] GMO also filed a motion to dismiss for failure to state a claim, [10] and Staff's recommendation joined in GMO's arguments. Complainants

[2] Section 386.390.1, RSMo 2000

[3] Finding 1, Section 386.020(43), RSMo 2000.

[4] Finding 1, Section 386.020(15), RSMo 2000.

[5] Electronic Filing and Information System ("EFIS") No. 1, May 14, 2014, *Complaint*. References to EFIS refer to this file except as otherwise noted.

[6] EFIS No. 9, June 16, 2014, *Answer*.

[7] From June 23, 2014, through August 15, 2014. *Save Our Lawfully Authorized Rebates, LLC, v. Missouri Public Service Comm'n*, Case No. 14AC-CC00316 (Cir. Ct. Cole County).

[8] EFIS No. 13, June 30, 2014, *Staff Recommendation to Deny Complaint*.

[9] EFIS No. 14, July 16, 2014*, Staff Update to Report and Recommendation*.

[10] EFIS No. 10, June 16, 2014, *KCP&L Greater Missouri Operations Company's Motion to Dismiss*.

filed a response to the motion to dismiss. [11] GMO filed a reply.[12] The Commission issued its order granting in part, and denying in part, the motion to dismiss. [13]

GMO filed a motion for reconsideration. [14] Complainants also filed a motion for reconsideration, which included a response to GMO's motion for reconsideration. [15] GMO also filed a response to the Complainants' motion for reconsideration. [16] The Commission issued its order denying both motions for reconsideration. [17]

But GMO's motion for reconsideration included arguments addressing the merits of this action based on matters outside the pleadings. In substance, those arguments constitute a motion for summary determination. [18] Accordingly, the Commission determined to treat that part of GMO's motion for reconsideration "as a motion for summary determination as to the entire complaint," notified the parties, and gave Complainants the opportunity to file a response. [19] Complainants filed a response[20] and a substitute

[11] EFIS No. 15, July 16, 2014, *Response to KCP&L Greater Missouri OperationsCompany's Motion to Dismiss*.

[12] EFIS No. 16, July 28, 2014, *KCP&L Greater Missouri Operations Company's Reply to Complainants' Response to Motion to Dismiss*.

[13] EFIS No. 21, September 24, 2014, *Order Granting in Part Motion to Dismiss and Denying Motion to Amend*.

[14] EFIS No. 23, September 26, 2014, *Verified Application for Rehearing and/or Motion for Reconsideration*.

[15] EFIS No. 24, October 3, 2014, *Application for Rehearing*.

[16] EFIS No. 25, October 13, 2014, *GMO's Response In Opposition To Complainants' Application for Rehearing*.

[17] EFIS No. 29, December 29, 2014, *Order Denying Motions for Reconsideration and Rehearing*.

[18] 4 CSR 240-2.117(1).

[19] EFIS No. 29, December 29, 2014, *Order Denying Motions for Reconsideration and Rehearing*, page 6, last paragraph.

[20] EFIS No. 33, February 10, 2015, *Response in Opposition to Respondent's Motion for Reconsideration treated as a Motion for Summary Determination*.

response. [21] GMO filed a reply that renewed the motion to dismiss. [22] The Commission received no sur-reply.[23]

III. Standards of Proof

Dismissal for failure to state a claim and summary determination before the Commission are analogous to procedures in Missouri Supreme Court Rules 55.27(a)(6) and 74.04, respectively.[24] Proof that establishes facts supporting summary determination also supports dismissal because the quantum of proof is higher for summary determination than for dismissal: summary determination requires undisputed facts, [25] but dismissal occurs despite factual disputes.[26]

The Commission has made its regulation on summary determination under the authority of Section 386.410, RSMo 2000, [27] which provides:

> 1. All hearings before the commission or a commissioner shall be governed by rules to be adopted and prescribed by the commission. And in all investigations, inquiries or hearings the commission or commissioner shall not be bound by the technical rules of evidence.
>
> 2. No formality in any proceeding nor in the manner of taking testimony before the commission or any commissioner shall invalidate any order, decision, rule or regulation made, approved or confirmed by the commission.

[21] EFIS No. 34, February 11, 2015*, Response in Opposition to Respondent's Motion for Reconsideration treated as a Motion for Summary Determination*.

[22] EFIS No. 36, February 19, 2015, *GMO's Verified Reply to Complainants' Response in Opposition to Respondent's Motion for Summary Determination*.

[23] 4 CSR 240-2.080(13).

[24] Where a regulation is sufficiently similar to a rule, cases discussing the rule are helpful in explaining the regulation. *Johnson v. Mo. Bd. of Nursing Adm'rs*, 130 S.W.3d 619, 626 (Mo. App., W.D. 2004).

[25] 4 CSR 240-2.117(1)(E).

[26] *Romero v. Kansas City Station Corp.*, 98 S.W.3d 129, 134 -135 (Mo. App., W.D. 2003).

[27] *State ex rel. Laclede Gas Co. v. Public Service Comm'n*, 392 S.W.3d 24, 35 (Mo. App., W.D. 2012).

Under that authority, summary determination is similar to summary judgment under Missouri Supreme Court Rule 74.04, but is less formal and technical.

The court rule restricts evidentiary support for summary judgment to "pleadings, discovery, exhibits or affidavits" cited in the motion and responses. [28] The regulation allows the parties to establish or raise a genuine dispute as to any fact,[29] and allows the Commission to consider, all "the pleadings, testimony, discovery, affidavits, and memoranda on file [,]"[30] which includes verified filings.[31] The record establishes the following facts without genuine dispute through the Commission's official records,[32] GMO's verified application for rehearing,[33] GMO's verified reply in support of summary determination, [34] and the admissions in the pleadings.

IV. Findings of Fact

1. GMO is engaged in the business of manufacturing, transmitting, and distributing electricity[35] to customers including Complainants. [36]

2. On September 4, 2013, GMO brought an action before the Commission to cease payments ("earlier action").[37] In the earlier action, the Commission required GMO to pay

[28] *Holzhausen v. Bi-State Dev. Agency*, 414 S.W.3d 488, 494 (Mo. App., E.D. 2013).

[29] 4 CSR 240-2.117(1)(C).

[30] 4 CSR 240-2.117(1)(B).

[31] For example, 4 CSR 240-3.050(23), 4 CSR 240-3.140(1)(H), and 4 CSR 240-3.210(1)(C).

[32] *Envtl. Utilities, LLC v. Pub. Serv. Comm'n*, 219 S.W.3d 256, 265-66 (Mo. App., W.D. 2007).

[33] EFIS No. 23, September 26, 2014, *Verified Application for Rehearing and/or Motion for Reconsideration*.

[34] EFIS No. 36, February 19, 2015, *GMO's Verified Reply to Complainants' Response in Opposition to Respondent's Motion for Summary Determination*.

[35] EFIS No. 9, *Answer*, June 16, 2014, first page, paragraph 3.

[36] EFIS No. 9, *Answer*, June 16, 2014, first page, paragraph 1.

[37] File No. ET-2014-0059, *In the Matter of KCP&L Greater Missouri Operations Company's Application For Authorization To Suspend Payment of Certain Solar Rebates*, EFIS No. 1, September 4, 201, *Application for Authority to Suspend Payment of Solar Rebates*.

$50 million in rebates ("specified level").[38] That decision ("earlier decision") issued on October 30, 2013, [39] and no application for rehearing or notice of appeal was filed.

3. On November 20, 2013, GMO received an application from R&S Lawn & Sprinkler.[40]

4. By December 31, 2013, GMO had received applications totaling the specified level and 169 applications beyond that amount.[41]

5. On April 8, 2014, GMO received an application from Carol Allman[42] and GMO acknowledged receipt with an email ("the email"). [43]

6. On April 9, 2014, GMO brought another action before the Commission to cease payments ("later action").[44] In the later action, the Commission approved a tariff ("the tariff") that set a standard governing how GMO must process applications and pay solar rebates according to whether (a) GMO received the application by November 15, 2013, ("the deadline") and (b) GMO's payments reached the specified level. [45] That decision ("later

[38] File No. ET-2014-0059, October 30, 2013, EFIS No. 50, *Order Approving Stipulation and Agreement*, page 3, ordered paragraph 1; EFIS No. 42, October 3, 2013, *Non-Unanimous Stipulation and Agreement*, page 3, paragraph 7.

[39] File No. ET-2014-0059, October 30, 2013, EFIS No. 50, *Order Approving Stipulation and Agreement*.

[40] EFIS No. 23, September 26, 2014, *Verified Application for Rehearing and/or Motion for Reconsideration*, page 2, footnote 1, second sentence.

[41] File No. EO-2014-0290, *In the Matter of KCP&L Greater Missouri Operations Company's Submission of Its 2013 Renewable Energy Standard Compliance Report*, EFIS No. 1, April 15, 2014, *2013 Annual Renewable Energy Standard Compliance Report*, page 6, Section 2.11.

[42] EFIS No. 23, September 26, 2014, *Verified Application for Rehearing and/or Motion for Reconsideration*, page 2, footnote 1, second sentence.

[43] EFIS No. 36, February 19, 2015, GMO's *Verified Reply to Complainants' Response in Opposition to Respondent's Motion for Summary Determination*, Exhibit 1, first page, third paragraph, emphasis added.

[44] File No. ET-2014-0277, *In the Matter of KCP&L Greater Missouri Operations Company's Application For Authorization To Suspend Payment of Certain Solar Rebates*, EFIS No. 1, April 9, 2014, Application for Authority to Suspend Payment of Solar Rebates.

[45] GMO's tariff, *P.S.C. MO. No. 1*, Sheet No. R-62.19 (3rd Revised), Section 9.18.B.

decision") issued on May 28, 2014,[46] and no application for rehearing or notice of appeal was filed.

7. GMO continued to process applications in the queue. If received by the deadline, GMO paid regardless of the specified level.[47] If received after the deadline, GMO paid up to the specified level.[48]

8. By December 31, 2014, GMO's payments reached the specified level, and Complainants' applications were still in the queue, so GMO did not pay Complainants' applications. [49]

V. Conclusions of Law

The Commission must set forth its conclusions on the complaint.[50] The complaint alleges a violation of the Renewable Energy Standard's provisions on rebates for new or expanded solar electric systems.[51] Those provisions require electric corporations to pay up to a statutorily-described limit ("the specified level") as authorized by the Commission.[52]

[46] File No. ET-2014-0277, May 28, 2014, EFIS No. 10, *Order Approving Tariff*.

[47] EFIS No. 23, September 26, 2014, *Verified Application for Rehearing and/or Motion for Reconsideration,* page 2, the only full paragraph not indented, second sentence.

[48] EFIS No. 36, February 19, 2015, *GMO's Verified Reply to Complainants' Response in Opposition to Respondent's Motion for Summary Determination*, Exhibits 1 and 2.

[49] EFIS No. 23, September 26, 2014, *Verified Application for Rehearing and/or Motion for Reconsideration*, page 2, footnote 1, third sentence.

[50] Section 386.420.2, RSMo Supp. 2013.

[51] "As provided for in this section, [GMO] shall make available to its retail customers a solar rebate for new or expanded solar electric systems sited on customers' premises [.]" Section 393.1030.3, RSMo Supp. 2013, first sentence. That subsection appears at full length in the Appendix.

[52] The Renewable Energy Standard names the amount "specified level retail rate increase" and relates the amount to the cost of GMO's compliance with the Renewable Energy Standard. Section 393.1030.2(1), RSMo Supp. 2013. The Commission's regulations further describe the specified level at 4 CSR 240-20.100(5).

The Commission issues that authorization upon a specified procedure.[53] Pending that procedure, electric corporations must continue to "process and pay" rebates.[54] Whether the Commission authorizes cessation of payments depends on whether the electric corporation shows that it will pay out the specified level.[55] If so, the Commission must authorize the electric corporation to suspend the rebate payment tariff ("authorization").[56] If the Commission issues the authorization, the electric corporation must still process and pay rebates up to the specified level.[57]

The Renewable Energy Standard's novelty and relatively recent enactment present special challenges for the parties. The parties have accordingly refined and adjusted their arguments over the course of this action, addressing both dismissal and summary determination. The Commission must distinguish between dismissal and summary determination because those two dispositions are not interchangeable.

A. Dismissal

GMO argues that the complaint states no claim for relief because the statutes bar both the claim and the relief. As in a motion to dismiss under Missouri Supreme Court Rule

[53] "If [GMO] determines the [specified level] will be reached in any calendar year, [GMO] shall be entitled to cease paying rebates to the extent necessary to avoid exceeding the [specified level] if [GMO] files with the commission to suspend its rebate tariff for the remainder of that calendar year at least sixty days prior to the change taking effect. [.]" Section 393.1030.3, RSMo Supp. 2013, fifth sentence.

[54] "[GMO] shall continue to process and pay applicable solar rebates until a final commission ruling [.]" Section 393.1030.3, RSMo Supp. 2013, ninth sentence.

[55] "The filing with the commission to suspend [GMO's] rebate tariff shall include the calculation reflecting that the [specified level] will be reached and supporting documentation reflecting that the [specified level] will be reached." Section 393.1030.3, RSMo Supp. 2013, sixth sentence.

[56] "If the commission determines that the [specified level] will be reached, the commission shall approve the tariff suspension." Section 393.1030.3, RSMo Supp. 2013, eighth sentence.

[57] "[GMO] shall be entitled to cease paying rebates to the extent necessary to avoid exceeding the [specified level.]" Section 393.1030.3, RSMo Supp. 2013, fifth sentence.

55.27(a)(6), GMO has the burden on its motion.[58] The Commission rules on the motion by disregarding the mere conclusions unsupported by allegations[59] assuming that the complaint's allegations are true, and determining whether those allegations describe a claim.[60]

As to the claim, the allegations are that GMO denied applications and ceased payments unlawfully under the earlier decision because the earlier decision was issued without separately stated findings of fact. In response, GMO cites Section 386.550, RSMo 2000, which bars any collateral attack on any Commission decision.

Section 386.550, RSMo 2000 provides:

> In all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive [.[61]]

Whether a decision is final, and whether an action constitutes a collateral attack on that decision, depends on the existence of an exclusive remedy.

The exclusive remedy for a Commission decision is an application for rehearing[62] and notice of appeal. [63] Those filings did not occur as to either decision, so the decisions are final, which makes them conclusive for any collateral action. A collateral action is an action that challenges an order by means other than the exclusive remedy.[64] That describes the complaints' prayer for relief from the decisions' effects. Each decision is final,

[58] *Saidawi v. Giovanni's Little Place, Inc.*, 987 S.W.2d 501, 504 (Mo. App., E. D. 1999), discussing Rule 55.27(a)(6), the analog of Commission regulation 4 CSR 240-2.070(7).

[59] *Ford Motor Credit Co. v. Updegraff*, 218 S.W.3d 617, 621 (Mo.App., W.D. 2007).

[60] *Gordon v. City of Kansas City*, 450 S.W.3d 793, 798 (Mo. App., W.D. 2014).

[61] Section 386.550, RSMo 2000.

[62] Section 386.500, RSMo 2000.

[63] Section 386.510, RSMo Supp. 2013.

[64] *State v. Kosovitz*, 342 S.W.2d 828, 830, (Mo. 1961).

and was the subject of no application for rehearing. Therefore, the complaint constitutes a collateral action, in that it questions a final decision, so it seeks a claim for which relief cannot be granted.

Complainants argue that the complaint does not challenge any order of the Commission, only GMO's practices, but the courts have addressed that argument.

> [Complainant] contends that it is not attacking the order which the Commission made in 1985, but is simply attacking a [tariff] approved by the Commission. [Complainant] contends that the [tariff] is not the order of the Commission but is simply a [tariff]. However, [Complainant] fails to note that the only purpose of the order of the Commission in 1985 was the approval of [the tariff]. Thus, it is impossible to separate [the tariff] from the order of the Commission. When [Complainant] attacks [the tariff], it must necessarily attack the order which enabled [the utility] to adopt and enforce [the tariff]. By § 386.550, [Complainant] cannot collaterally attack the order of the Commission by which [the tariff] was adopted. For that reason [Complainant] may not in this proceeding attack [the tariff] but is bound by the requirements of [the tariff.[65]]

When Complainants challenge the practice, Complainants challenge the decision and tariff requiring that practice.

Also, the relief sought is unlawful. The complaint seeks payment on all pending applications without regard to the tariff. That relief is unavailable, GMO argues, because Section 393.130.3, RSMo Supp. 2013, bars GMO from granting any special rebate, and any undue or unreasonable preference or advantage.

> 2. No . . . electrical corporation . . . shall directly or indirectly by any special . . . rebate . . . receive from any person . . . a greater or less compensation for . . . electricity . . . than it . . . receives from any other person . . . for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

[65] *State ex rel. Licata, Inc. v. Pub. Serv. Comm'n of Mo*, 829 S.W.2d 515, 518 (Mo. App., W.D. 1992).

> 3. No . . . electrical corporation . . . shall make or grant any undue or unreasonable preference or advantage to any person . . . or subject any particular person . . . to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Relief contrary to the tariff would constitute a special rebate, and an undue or unreasonable preference or advantage.

The complaint does not state a claim for which relief may be granted, and the relief sought is unlawful, so Commission will grant the motion to dismiss as to the entire complaint.

B. Summary Determination

The regulation on summary determination provides the same burden of proof as the rule on summary judgment, so the burdens of any party— moving or non-moving, on a claim or defense, with or without the burden of proof—are the same and cases interpreting the rule are helpful as to GMO's motion. Complainants have the burden of proof on their complaint. [66] Therefore, GMO prevails on the motion if the facts it has established beyond genuine dispute negate, or show that Complainants cannot establish, an element of the complaint.[67] The regulation[68] also requires GMO to show an element not found in the rule,[69] which is that granting the motion is in the public interest.[70]

[66] *AG Processing, Inc. v. KCP & L Greater Missouri Ops. Co.*, 385 S.W.3d 511, 516 (Mo. App., W.D. 2012).

[67] 4 CSR 240-2.117(1)(E); *ITT Comm. Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 380-82 (Mo. banc 1993).

[68] 4 CSR 240-2.117(1)(B).

[69] Missouri Supreme Court Rule 74.04

[70] 4 CSR 240-2.117(1)(B).

1. Complainants Cannot Prove Elements of Their Claim

Complainants cannot prove the procedural errors they allege because the procedures cited did not apply. Separately stated findings of fact are necessary only in a contested case,[71] and neither action was a contested case,[72] so each decision need only set forth the Commission's conclusions,[73] which they did. Therefore, even if the complaint stated a claim, Complainants could not prove that claim.

2. The Record Negates Elements of the Complaint

The complaint alleges violation of the Renewable Energy Standard procedure for cessation of payment:

> As provided for in this section, [GMO] **shall make available** to its retail customers a solar rebate [. GMO] shall be entitled to cease paying rebates to the extent necessary to avoid exceeding the maximum . . . if [GMO] files with the commission to suspend [GMO']s rebate tariff for the remainder of that calendar year [. GMO] **shall continue to process and pay** applicable solar rebates until a final commission ruling [.[74]]

But GMO has shown a final commission ruling—the tariff's implementing provisions that authorize GMO to cease payment—and compliance with those provisions:

> [GMO] will pay solar rebates for all valid applications received by [GMO] by [the deadline], which are preapproved by [GMO] and which result in the installation and operation of a Solar Electric System pursuant to [GMO]'s rules and tariffs. Applications received after [the deadline] may receive a solar rebate payment if the total amount of solar rebates paid by

[71] Section 536.090, RSMo 2000.

[72] File No. ET-2014-0059, EFIS No. 50, *Order Approving Stipulation and Agreement*, issued on October 30, 2013, page 2, third paragraph. File No. ET-2014-0277, EFIS No. 10, *Order Approving Tariff*, issued on May 10, 2014, page 3-4.

[73] Section 386.420.2, RSMo Supp. 2013.

[74] Section 393.1030.3, RSMo Supp. 2013, ninth sentence.

> [GMO] for those applications received on or before [the deadline] are less than [the specified level.[75]]

GMO has shown compliance with the amount of payments and order of payment set forth in the queue system prescribed by statute.[76] The tariff has the force and effect of a statute.[77]

Complainants' premise is that GMO must pay every application received before authorization issued. That premise is contrary to the plain language of the statute and the tariff, which recognize the practicalities of managing the rebate program. Pending authorization to cease payment, the Renewable Energy Standard expressly required GMO, not just to pay, but to "continue to process [.]"[78]

Processing applications required GMO to verify that the applicant was a current customer, had an account not delinquent or in default, and met customer-generator status as defined in GMO's net metering rider electric tariff.[79] Paying without processing would have constituted a violation.

Complainants also argue that authorization to cease payment must occur each year under the following language:

> If the electric utility determines the [specified level] will be reached in any calendar year, the electric utility shall be entitled to cease paying rebates to the extent necessary to avoid exceeding the [specified level] if the electrical corporation files with the commission to suspend its rebate tariff for the

[75] GMO's tariff, *P.S.C. MO. No. 1*, Sheet No. R-62.19 (3rd Revised), Section 9.18(B).

[76] Finding of Fact 7.

[77] *State ex rel. Missouri Pipeline Co. v. Missouri Pub. Serv. Comm'n*, 307 S.W.3d 162, 178 (Mo. App., W.D. 2009), as modified (Feb. 2, 2010).

[78] Section 393.1030.3, RSMo Supp. 2013, ninth sentence.

[79] GMO's tariff, *P.S.C. MO. No. 1*, Sheet No. R-62.19 (3rd Revised), Section 9.18(B).

> remainder of that calendar year at least sixty days prior to the change taking effect. [80]

Those words entitle GMO to a yearly authorization but do not require authorization in every calendar year.

Therefore, GMO established facts showing that it did not cease payment except in compliance with the authorization issued according to law, which negates the element of unlawful conduct, legally entitling GMO to a favorable decision on the merits of the complaint.

a. The Compliance Report

Complainants attempt to raise a genuine issue as to when GMO ceased payment. Complainants cite GMO's compliance report for 2013:[81]

> **2.11 RULE (7)(A) 1 K**
>
> ***The total number of customers that were denied a solar rebate and the reason(s) for denial;***

	Total GMO
Denied	169
Reason	Funding commitments reached the $50M specified level.

The words "denied" and "denial" appeared in that recitation.

But that is only because the Commission's regulation phrased the inquiry that way:

> (7) Annual RES Compliance Report and RES Compliance Plan. Each electric utility shall file an RES compliance report no later than April 15 to report on the status of the utility's compliance with the renewable energy standard and the electric utility's compliance plan as described in this section for the most recently completed calendar year. . . . The plan shall be filed no later than April 15 of each year.

[80] Section 393.1030.3, RSMo Supp. 2013.

[81] File No. EO-2014-0290, EFIS No. 1, April 15, 2014, *2013 Annual Renewable Energy Standard Compliance Report*, page 6, Section 2.11.

> (A) Annual RES Compliance Report.
>
> 1. The annual RES compliance report shall provide the following information for the most recently completed calendar year for the electric utility:
>
> * * *
>
> K. The total number of customers that were **denied** a solar rebate and the reason(s) for **denial** [.[82]]

Thus, in context, the *2013 [RES] Compliance Report* does not raise a genuine issue as to whether GMO "ma[d]e available and "continue[d] to process and pay applicable solar rebates" in compliance with the statute and tariff.

And when GMO used its own words, GMO described the status of those claims differently, as shown in the email.

b. The Email

Complainants cite the email as evidence that GMO denied Carol Allman's application without authority, but a closer look at the email shows that it did not deny the application at all. It describes the queue:

> In terms of next steps, we will conduct an initial administrative review of your application to ensure all customer information is accurate and meets the application requirements. We will respond within 10 business days if there are any issues. Otherwise, we will **hold** your application **in the queue** and will notify you **if rebate funds become available** for you to receive a rebate. [[83]]

GMO further iterated that it was processing applications and paying rebates in the order received:

[82] 4 CSR 240-20.100(7)(A)K, emphasis added.

[83] EFIS No. 36, February 19, 2015, *GMO's Verified Reply to Complainants' Response in Opposition to Respondent's Motion for Summary Determination*, Exhibit 1, first page, fourth paragraph, emphasis added.

> [D]ue to the popularity of this program, at this point, KCP&L has committed rebate funds equal to the [specified level] in your service area. As a result, we will not be able to provide you with a solar rebate offer following your administrative review. However, if any solar rebate application submitted in your service area is rejected or approved applications not completed within the defined construction period, those **funds will be made available** to the next qualifying customer **in the queue** [.[84]]

That language shows that processing and payment were continuing when GMO received Carol Allman's application.

3. Summary Determination is in the Public Interest

The public interest includes factors related to "public welfare, efficient facilities and substantial justice between patrons and public utilities [.]"[85] The public interest favors resolving the complaint because the decisions brought resolution to GMO's solar rebate practice, the complaint cannot disturb that resolution, and no party shows any reason for protracting this procedure given the undisputed material facts.

Complainants argue that it is unfair to apply a tariff approved in an action to which they were not parties and of which they had no notice. Personal notice to Complainants is irrelevant to the tariff governing GMO. [86] Complainants' personal participation in the tariff action is not necessary for the tariff to govern. [87] Further, the Commission set the specified level in the earlier action:

> GMO will not suspend payment of solar rebates in 2013 and beyond unless the solar rebate payments reach [the specified level.] If and when the solar rebate payments are anticipated to reach the specified level, GMO . . . will file with the

[84] EFIS No. 36, February 19, 2015, *GMO's Verified Reply to Complainants' Response in Opposition to Respondent's Motion for Summary Determination*, Exhibit 1, first page, third paragraph, emphasis added.

[85] Section 386.610, RSMo 2000.

[86] *State ex rel. Harline v. Pub. Serv. Comm'n of Mo.*, 343 S.W.2d 177, 184 (Mo. App., K.C. 1960).

[87] State ex rel. Licata, Inc. v. Pub. Serv. Comm'n of Mo., 829 S.W.2d 515, 518 (Mo. App., W.D. 1992).

> Commission an application under the 60-day process as outlined in section 393.1030.3 RSMo to cease payments beyond the specified level in the year in which the specified level is reached and all future calendar years. [88]

That decision announced the specified level 14 months before payments reached the specified level.[89] Moreover, Complainants, like all the public, had representation in both actions through the Office of the Public Counsel.[90] And Public Counsel agreed to the earlier decision setting the specified level.[91]

Therefore, the Commission will grant summary determination in GMO's favor.

THE COMMISSION ORDERS THAT:

1. The motion to dismiss is granted and the complaint is dismissed.

2. In the alternative, the Commission grants summary judgment and enters its decision on the merits in favor of KCP&L Greater Missouri Operations Company.

3. All relief sought in the complaint is denied.

4. The evidentiary hearing is cancelled.

[88] File No. ET-2014-0059, EFIS No. 50, October 30, 2013, *Order Approving Stipulation and Agreement*, page 3, ordered paragraph 1; incorporating EFIS No. 42, October 3, 2013, *Non-Unanimous Stipulation and Agreement*, page 3, paragraph II.7.a.

[89] Finding of Fact 2.

[90] Section 386.710.1(2), RSMo 2000; 4 CSR 240-2.010(1).

[91] File No. ET-2014-0059, EFIS No. 42, October 3, 2013, *Non-Unanimous Stipulation and Agreement*, page 1 and 10.

5. This order shall become effective on April 18, 2015.

BY THE COMMISSION

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney,
Hall, and Rupp, CC., concur.

Jordan, Senior Regulatory Law Judge

In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Electric Service	)))	**File No. ER-2014-0258** Tariff No. YE-2015-0003

REPORT AND ORDER

ACCOUNTING.

§42. Accounting Authority Orders. The Commission has no authority to order an electric corporation to sell its street lights to a city.

ELECTRIC.

§9. Jurisdiction and powers of the State Commission. The Commission has no authority to order an electric corporation to sell its street lights to a city.

§43. Accounting Authority orders. Granting a public utility's accounting authority order for deferred recording of certain expenses does not entitle the utility to have those expenses included in rates.

RATES.

§44. Taxes. The Commission's affiliate transactions rule did not support using a hypothetical net operating loss carryover instead of the actual amount.

§101. Fuel clauses. The Commission included transmission costs in an electric corporation's fuel adjustment clause only to the extent that those costs related to the transmission of off-system sales outside its regional transmission organization and purchased power.

NOTE: At the time of publication, no opinion of Commissioner Stoll has been filed.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Electric Service	)))	**File No. ER-2014-0258** Tariff No. YE-2015-0003

REPORT AND ORDER

Issue Date: April 29, 2015

Effective Date: May 12, 2015

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Electric Service	)))	**File No. ER-2014-0258** Tariff No. YE-2015-0003

APPEARANCES

Wendy K. Tatro, Director and Asst. General Counsel, and **Matthew Tomc**, Corporate Counsel, Union Electric Company, d/b/a Ameren Missouri, P.O. Box 66149, St. Louis, Missouri 63103;

James B. Lowery, Attorney at Law, and **Sarah Giboney**, Attorney at Law, Smith Lewis, LLP, P.O. Box 918, Suite 200, City Centre Building, 111 South Ninth St. Columbia, Missouri 65205-0918; and

L. Russell Mitten, Attorney at Law, Brydon, Swearengen & England, 312 E. Capital Ave., Jefferson City, Missouri 65102.

For Union Electric Company, d/b/a Ameren Missouri.

Kevin Thompson, Chief Staff Counsel; **John D. Borgmeyer**, Deputy Staff Counsel; **Colleen M. "Cully" Dale**, Senior Staff Counsel; **Jeffrey A. Keevil**, Senior Staff Counsel; **Cydney D. Mayfield**, Senior Staff Counsel; **Alexander Antal**, Assistant Staff Counsel; and **Jamie Myers**, Rule 13 Certified Law Student, P.O. Box 360, 200 Madison Street, Jefferson City, Missouri 65102

For the Staff of the Missouri Public Service Commission.

Dustin J. Allison, Public Counsel; **Tim Opitz**, Legal Counsel; **Marc Poston**, Legal Counsel; and **Christina Baker**, Legal Counsel, P.O. Box 2230, 200 Madison Street, Suite 650, Jefferson City, Missouri 65102

For the Office of the Public Counsel and the Public.

Ollie Green, Senior Legal Counsel, P.O. Box 1157, Jefferson City, Missouri 65102

For the Missouri Department of Economic Development – Division of Energy.

David Woodsmall, Attorney at Law, Woodsmall Law Office, 308 East High St., Suite 204, Jefferson City, Missouri 65101

For the Midwest Energy Consumers Group.

Diana Vuylsteke, Attorney at Law; **Kenneth J. Mallin**, Attorney at Law; **Elizabeth Carver**, Attorney at Law; **Edward F. Downey**, Attorney at Law; and **Carol Iles**, Attorney at Law, Bryan Cave, LLP, 211 N. Broadway, Suite 3600, St. Louis, Missouri 63102

For Missouri Industrial Energy Consumers.

John B. Coffman, Attorney at Law, John B. Coffman, LLC, 871 Tuxedo Blvd, St. Louis, Missouri 63119-2044.

For the Consumers Council of Missouri.

Marc H. Ellinger, Attorney at Law; and **Stephanie S. Bell**, Attorney at Law, Blitz, Bardgett & Deutsch, L.C. 308 East High Street, Suite 301, Jefferson City, Missouri 65101.

For the Missouri Retailers Association.

Henry B. Robertson, Attorney at Law, Great Rivers Environmental Law Center, 705 Olive St., Suite 614, St. Louis, Missouri 63101;

Sunil Bector, Attorney at Law, Sierra Club, 85 Second St., 2nd Floor, San Francisco, California 94105; and

Thomas Cmar, Attorney at Law, Earthjustice, 5042 N. Leavitt St., Suite 1, Chicago, Illinois 60625.

For Sierra Club.

Sherrie A. Hall, Attorney at Law; **Emily R. Perez**, Hammond and Shinners, P.C. 7730 Carondelet Ave., Suite 200, St. Louis, Missouri 63105.

For International Brotherhood of Electrical Workers Local 1439.

Leland B. Curtis, Attorney at Law; **Carl J. Lumley**, Attorney at Law; and **Edward J. Sluys**, Attorney at Law, Curtis, Heinz, Garrett & O'Keefe, P.C., 130 S. Bemiston, Suite 200, St. Louis, Missouri 63105.

For the City of O'Fallon and the City of Ballwin.

David C. Linton, Attorney at Law, 314 Romaine Spring View, Fenton, Missouri 63026.

For United for Missouri, Inc.

Rick D. Chamberlain, Behrens, Wheeler & Chamberlain, 6 N.E. 63rd St., Suite 400, Oklahoma City, Oklahoma 73015, and

Marcos A. Barbosa, Baker Sterchi Cowden & Rice, LLC., 2400 Pershing Road, Suite 500, Kansas City, Missouri 64018.

For Wal-Mart Stores East, L.P. and Sam's East, Inc.

CHIEF REGULATORY LAW JUDGE: Morris L. Woodruff

REPORT AND ORDER

Table of Contents

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.

Summary

This order allows Ameren Missouri to increase the revenue it may collect from its Missouri customers by approximately $108 million, based on the data contained in the Revised True-up Reconciliation filed by the Missouri Public Service Commission Staff on March 28, 2015.[1] Approximately $103 million of that increase is related to Ameren Missouri's increased net fuel costs and would otherwise be recovered by the company through its fuel adjustment clause.

Procedural History

On July 3, 2014, Union Electric Company, d/b/a Ameren Missouri filed a tariff designed to implement a general rate increase for electric service. The tariff would have increased Ameren Missouri's annual electric revenues by approximately $264 million. The tariff revisions carried an effective date of August 2.

By order issued on July 11, the Commission suspended Ameren Missouri's general rate increase tariff until May 30, 2015, the maximum amount of time allowed by the controlling statute.[2] In the same order, the Commission directed that notice of Ameren Missouri's tariff filing be provided to interested parties and the public. The Commission also established July 31 as the deadline for submission of applications to intervene. The following parties filed applications and were allowed to intervene: The International Brotherhood of Electrical Workers Local 1439; The Missouri Industrial Energy Consumers (MIEC);[3] The Midwest Energy Consumers Group (MECG);[4] The Missouri Department of

[1] This number is only an estimate of the overall impact of the decisions described later in this report and order. This estimate does not in any way control or modify those decisions.

[2] Section 393.150, RSMo 2000.

[3] The members of MIEC are as follows: Anheuser-Busch Companies, Inc.; Ardagh Glass;

Economic Development – Division of Energy; The Consumers Council of Missouri; The Missouri Retailers Association; Sierra Club; The City of O'Fallon and the City of Ballwin; Earth Island Institute d/b/a Renew Missouri; the Natural Resources Defense Council; United for Missouri, Inc.; Wal-Mart Stores East, L.P. and Sam's East, Inc.; and United Steelworkers Union. On August 20, the Commission established the test year for this case as the 12-month period ending March 31, 2014, trued-up as of December 31, 2014. In its August 20 order, the Commission also established a procedural schedule leading to an evidentiary hearing.

In January 2015, the Commission conducted twelve local public hearings at various sites around Ameren Missouri's service area. At those hearings, the Commission heard comments from Ameren Missouri's customers and the public regarding Ameren Missouri's request for a rate increase.

In compliance with the established procedural schedule, the parties prefiled direct, rebuttal, and surrebuttal testimony. The evidentiary hearing began on February 23 and continued through March 12. The parties indicated they had no contested true-up issues and the Commission cancelled the scheduled true-up hearing. The parties filed post-hearing briefs on March 31, with reply briefs following on April 10.

The Partial Stipulations and Agreements

During the course of the evidentiary hearing, various parties filed nine non-unanimous partial stipulations and agreements resolving issues that would otherwise have

BioKyowa, Inc.; The Boeing Company; Doe Run; Enbridge Energy; General Motors Corporation; GKN Aerospace; Hussmann Corporation; JW Aluminum; Mallinckrodt; Monsanto; Nestlé Purina PetCare; Noranda Aluminum; and SunEdison Semiconductors.

[4] The members of MECG are Continental Cement Company, LLC; Buzzi Unicem USA; Missouri Ethanol LLC, d/b/a POET Biorefining – Laddonia; Cargill; Tyson Foods; Explorer Pipeline Company, Maritz Holdings, Inc.; and Wal-Mart Stores, Inc. Wal-Mart subsequently was granted intervention on its own behalf.

been the subject of testimony at the hearing. No party opposed seven of those partial stipulations and agreements. As permitted by its regulations, the Commission treated the unopposed partial stipulations and agreements as unanimous.[5] After considering the stipulations and agreements, the Commission approved them as a reasonable resolution of the issues addressed in those agreements. The issues resolved in those stipulations and agreements will not be further addressed in this report and order, except as they may relate to any unresolved issues.

The other two non-unanimous stipulations and agreements were objected to by one or more parties. As provided in the Commission's rules, the Commission will treat those stipulations and agreements as merely a position of the signatory parties to which no party is bound.[6] The issues that were the subject of those stipulations and agreements will be determined in this report and order.

Pending Motion

On April 7, the Department of Economic Development (DED) filed an *amicus curiae* brief, accompanied by a petition seeking leave to file the brief. DED is not a party to this case, although the Division of Energy within the Department is a party and filed its own brief. On April 10, two parties, MECG and United for Missouri, filed pleadings opposing DED's petition.

The filing of *amicus* briefs at the Commission is governed by Commission Rule 4 CSR 240-2.075(11), which, among other things, requires that the *amicus* brief be filed no later than the initial briefs of the parties. The initial briefs were filed in this case on March 31. DED delayed filing its amicus brief until April 7; only three days before reply briefs were

[5] Commission Rule 4 CSR 240-2.115(C).

[6] Commission Rule 4 CSR 240-2.115(2)(D).

filed, severely limiting the other parties' opportunity to respond to the *amicus* brief. DED's motion for leave to file *amicus* brief does not comply with the Commission's rule and will be denied.

Admission of True-Up Testimony

A true-up hearing to deal with issues arising from the true-up of Ameren Missouri's costs as of the end of the true-up period on December 31, 2014, was scheduled for March 25. Laura Moore filed Revised True-Up Direct testimony on behalf of Ameren Missouri, Matthew Barnes filed Second Corrected True-Up Direct testimony on behalf of Staff, and Ted Robertson filed True-Up Direct testimony on behalf of Public Counsel.

No party asked to cross-examine any witness, and the true-up hearing was canceled by order issued on March 24. The true-up testimony is assigned the following exhibit numbers and is admitted into evidence.

Moore Revised True-Up Direct	Exhibit 74
Barnes Second Corrected True-Up Direct	Exhibit 247
Robertson True-Up Direct	Exhibit 413

Overview

Ameren Missouri is an investor-owned integrated electric utility providing retail electric service to large portions of Missouri, including the St. Louis Metropolitan area. Ameren Missouri has approximately 1.2 million retail electric customers in Missouri, more than 1 million of whom are residential customers.[7] Ameren Missouri also operates a natural gas utility in Missouri, but the rates it charges for natural gas are not at issue in this case.

[7] Moehn Direct, Ex. 28, Page 4, Lines 5-6.

Ameren Missouri began the rate case process when it filed its tariff on July 3, 2014. In doing so, Ameren Missouri asserted it was entitled to increase its retail rates by approximately $264 million per year, an increase of approximately 9.7 percent.[8] Ameren Missouri claimed a rate increase was necessary due to (a) increases in net fuel costs, largely driven by decreases in off-system sales due to lower power prices; (b) significant investments in infrastructure; (c) increases in income taxes and other taxes; (d) amortizations of solar rebate payments; and (e) changes in depreciation rates to reflect the retirement of the Meramec Energy Center by 2022.[9] The company attributed $103 million of that increase to the rebasing of fuel costs that would otherwise be passed through to customers by operation of the company's existing fuel adjustment clause.[10]

Ameren Missouri set out its rationale for increasing its rates in the direct testimony it filed along with its tariff on July 3, 2014. In addition to its filed testimony, Ameren Missouri provided work papers and other detailed information and records to the Staff of the Commission, Public Counsel, and to the intervening parties. Those parties then had the opportunity to review Ameren Missouri's testimony and records to determine whether the requested rate increase was justified.

Where the parties disagreed, they prefiled written testimony to raise those issues to the attention of the Commission. All parties were given an opportunity to prefile three rounds of testimony – direct, rebuttal, and surrebuttal. The process of filing testimony and responding to the testimony filed by other parties revealed areas of agreement that resolved some issues and areas of disagreement that revealed new issues. On February

[8] Moehn Direct, Ex. 28, Page 5, Lines 8-9.

[9] Moehn Direct, Ex. 28, Page 5, Lines 10-20.

[10] Ameren Missouri Initial Post Hearing Brief, Page 2, Footnote 2.

18, the parties filed a list of the issues they asked the Commission to resolve. Some of the issues identified at that time were later resolved by unanimous stipulation and agreement. The unresolved issues will be addressed in this report and order.

Conclusions of Law Regarding Jurisdiction

A. Ameren Missouri is a public utility, and an electrical corporation, as those terms are defined in Section 386.020(43) and (15), RSMo (Cum. Supp. 2013). As such, Ameren Missouri is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo 2000.

B. Section 393.140(11), RSMo 2000, gives the Commission authority to regulate the rates Ameren Missouri may charge its customers for electricity. When Ameren Missouri filed a tariff designed to increase its rates, the Commission exercised its authority under Section 393.150, RSMo 2000, to suspend the effective date of that tariff for 120 days beyond the effective date of the tariff, plus an additional six months.

Conclusions of Law Regarding the Determination of Just and Reasonable Rates

A. In determining the rates Ameren Missouri may charge its customers, the Commission is required to determine that the proposed rates are just and reasonable.[11] Ameren Missouri has the burden of proving its proposed rates are just and reasonable.[12]

B. In determining whether the rates proposed by Ameren Missouri are just and reasonable, the Commission must balance the interests of the investor and the

[11] Section 393.150.2, RSMo 2000.

[12] Section 393.150.2, RSMo 2000.

consumer.[13] In discussing the need for a regulatory body to institute just and reasonable rates, the United States Supreme Court has held as follows:

> Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the services are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment.[14]

In the same case, the Supreme Court provided the following guidance on what is a just and reasonable rate:

> What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.[15]

The Supreme Court has further indicated:

> '[R]egulation does not insure that the business shall produce net revenues.' But such considerations aside, the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure

[13] *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603, (1944).

[14] *Bluefield Water Works & Improvement Co. v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 690 (1923).

[15] *Bluefield,* at 692-93.

> confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.[16]

C. In undertaking the balancing required by the Constitution, the Commission is not bound to apply any particular formula or combination of formulas. Instead, the Supreme Court has said:

> Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances.[17]

D. Furthermore, in quoting the United States Supreme Court in *Hope Natural Gas*, the Missouri Court of Appeals said:

> [T]he Commission [is] not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of 'pragmatic adjustments.' … Under the statutory standard of 'just and reasonable' it is the result reached, not the method employed which is controlling. It is not theory but the impact of the rate order which counts.[18]

The Rate Making Process

The rates Ameren Missouri will be allowed to charge its customers are based on a determination of the company's revenue requirement. Ameren Missouri's revenue requirement is calculated by adding the company's operating expenses, its depreciation on plant in rate base, taxes, and its rate of return multiplied by its rate base. The revenue requirement can be expressed as the following formula:

Revenue Requirement = E + D + T + R(V-AD+A)
Where: E = Operating expense requirement
D = Depreciation on plant in rate base
T = Taxes including income tax related to return

[16] *Federal Power Commission v. Hope Natural Gas Co.,* 320 U.S. 591, 603 (1944) (citations omitted).

[17] *Federal Power Commission v. Natural Gas Pipeline Co*. 315 U.S. 575, 586 (1942).

[18] *State ex rel. Associated Natural Gas Co. v. Pub. Serv. Comm'n*, 706 S.W. 2d 870, 873 (Mo. App. W.D. 1985).

R = Return requirement
(V-AD+A) = Rate base
For the rate base calculation:
V = Gross Plant
AD = Accumulated depreciation
A = Other rate base items

All parties accept the basic formula. Disagreements arise over the amounts that should be included in the formula.

The Issues

1. Regulatory Policy and Economic Considerations.

This is not a true issue in that the parties do not ask the Commission to resolve any questions regarding the particulars of Ameren Missouri's request for a rate increase. Instead, the parties presented testimony regarding general policy matters that affect the Commission's decision making regarding the detailed issues that will be addressed later in this report and order. Because this is only a general policy discussion, the Commission will not make findings of fact or conclusions of law about these policy matters.

Testimony was offered by the parties regarding the difficult economic situation that is currently facing individuals and businesses in Missouri in general and in Ameren Missouri's service territory in particular. Aside from the testimony offered at the evidentiary hearing, the Commission also heard that message from Ameren Missouri's customers during the twelve, well-attended, local public hearings the Commission conducted throughout Ameren Missouri's service territory.

The Commission was created to serve the public interest, and it takes that responsibility very seriously. The Commission serves the public interest by establishing just and reasonable rates, and the Commission has endeavored to do so in this report and order.

Many customers are already having a hard time paying their electric bills. Increasing Ameren Missouri's rates may make it even harder for some customers to pay their bills. However, a just and reasonable rate does not necessarily mean a lower rate.

2. Weather Normalization (SPS and LGS Classes)

What level of sales to Noranda should be assumed for the test year for purposes of establishing billing units?

Findings of Fact:

1. Although this issue is described as weather normalization, it has little to do with the weather. Rather it concerns the amount of electricity that Ameren Missouri sells to Noranda for its New Madrid smelter. Noranda is Ameren Missouri's largest customer, representing over ten percent of Ameren Missouri's retail sales. Historically, it has a very stable and consistent load that varies very little while the aluminum smelter is in full production.[19] Given its unique characteristics, Noranda has its own rate as the only member of the Large Transmission Service (LTS) rate class.

2. During the test year for this case, which was the twelve months ending March 31, 2014, Ameren Missouri sold Noranda approximately 4.2 million mega-watt hours (MWhs) of electricity. Staff proposes to use that figure to set Ameren Missouri's rate.[20]

3. Beginning in July 2014, Noranda began to experience a production slow-down due to an unusually high number of "pot" failures. The lower production means Noranda bought less electricity from Ameren Missouri during that period. However, Noranda anticipated returning to full production by the end of March 2015.[21]

[19] Wills Amended Rebuttal, Ex. 53, Pages 17-18, Lines 22-23, 1-2.

[20] Staff Report – Revenue Requirement, Ex. 202, Page 66, Lines 14-17.

[21] Phillips Surrebuttal, Ex. 516, Page 4, Lines 1-11.

4. Ameren Missouri is concerned about the drop in production and the corresponding drop in sales. In its rebuttal testimony, Ameren Missouri proposed to set the measure of sales to Noranda based on the actual sales in November and December of 2014, the last two months of the true-up period. That would result in an annual level of approximately 3.8 million MWhs.[22]

5. At the hearing, Ameren Missouri amended its position to propose the use of a three-year average to determine the level of sales. The three-year average would include the most recent year in which Noranda saw decreased production due to the pot failures. That would result in an annual level of approximately 4.1 million MWhs.[23]

6. As an alternative for the Commission's consideration, Ameren Missouri also offered a ten-year average calculation that results in an annual level of approximately 4.0 million MWhs.[24] However, that ten year average would include 2009 when Noranda's production was cut nearly in half by a power outage resulting from a severe ice storm.[25] Ameren Missouri suggested the ten-year average including the reduced production due to the ice storm would be appropriate if the Commission denies the company's request to recover costs deferred under an AAO related to that ice storm.[26]

Conclusions of Law:

The Commission makes no additional conclusions of law for this issue.

Decision:

In setting Ameren Missouri's volumetric rates to allow it to recover its costs to serve

[22] Wills Amended Rebuttal, Ex. 53, Page 20, Lines 1-11.
[23] Wills Surrebuttal, Ex. 54, Page 8, Table SMW-2.
[24] Wills Surrebuttal, Ex. 54, Page 8, Table SMW-2.
[25] Wills Surrebuttal, Ex. 54, Page 6, Table SMW-1.
[26] Wills Surrebuttal, Ex. 54, Page 7, Lines 11-16.

Noranda, the Commission must determine how many billing units the company is likely to sell to Noranda in a year. The costs are then divided over the billing units to set the rate. If Ameren Missouri is able to sell more billing units than were factored into the rate, it collects more money than its cost to serve. Conversely, if it sells fewer units than were factored into its rate, it will not cover its full cost.

The Commission anticipates that Noranda will return to full production while the rates set in this case remain in effect, which is also the production level experienced in the test year. Setting its rate based on the test year experience will allow Ameren Missouri a fair opportunity to recover its cost to serve Noranda. If the Commission were to set those rates based on an average number that includes the unusually reduced production resulting from the ice storm in 2009, or the elevated level of pot failures in 2014, Ameren Missouri would be in a position to collect a windfall if, as anticipated, Noranda returns to full production in 2015.

Of course, there is a possibility that Noranda will not return to full production as anticipated, but Ameren Missouri's shareholders should bear the business risk of reduced sales, not its ratepayers. The Commission will set the level of annual billing units at 4.2 million Mega-Watt hours (MWh) of electricity as recommended by Staff.

3. Income Tax

A. Should Ameren Missouri's Net Operating Loss Carryforward Related to ADIT be included in Ameren Missouri's rate base?

Findings of Fact:

1. This issue concerns Ameren Missouri's test year Net Operating Loss Carryforward (NOLC) associated with its Accumulated Deferred Income Tax (ADIT)

balance.

2. ADIT represents assets or liabilities for cumulative amounts of deferred income taxes resulting from differences between book accounting and income-tax accounting.[27] For example, tax law sometimes allows a company to claim accelerated depreciation in calculating its taxes.[28]

3. Since in the short term it pays less in taxes, the company is able to keep more cash. But, because the company can only depreciate its assets once, the accelerated depreciation will reduce the depreciation expense the company would otherwise use to reduce its taxes in future years. Essentially the ADIT allows the company to have the use of "free" cash between the time the ADIT is acquired and the time the increased taxes will come due.[29] Because the ADIT represents "free" cash to the company, ratepayers should not be required to pay for it and the company should not be allowed to earn a return on it. Thus ADIT is removed from the company's ratebase.[30]

4. However, when bonus depreciation and other tax deductions grow so large as to push the company's taxable income into the negative, the available tax deduction cannot offset any tax liability and no "free" cash is generated. In that circumstance, the company must record an offsetting deferred tax asset for Net Operating Loss Carryforward (NOLC). The NOLC offsets the ADIT, which would decrease the company's rate base, and therefore, the NOLC has the effect of increasing the rate base.[31]

5. For many years, Ameren Corporation, of which Ameren Missouri is an

[27] Brosch Direct, Ex. 501, Page 13, Lines 4-14.

[28] Brosch Direct, Ex. 501, Page 13, Lines 15-21.

[29] Warren Rebuttal, Ex. 48, Pages 11-12.

[30] Brosch Direct, Ex. 501, Page 15, Lines 1-17.

[31] Brosch Surrebuttal, Ex. 502, Page 5, Lines 18-23.

affiliate, has filed a consolidated tax return on behalf of itself and all its subsidiary corporations, including Ameren Missouri. Filing a consolidated return means that all tax losses of the group are used to offset the taxable income of the entire group.[32] Filing a consolidated tax return benefits Ameren Corporation and in most years benefits Ameren Missouri as well. Furthermore, once a company chooses to file a consolidated tax return, it cannot switch to filing separate returns for its affiliates except by special permission from the IRS.[33]

6. For tax years 2008 through 2012, the calculation of NOLC allocated to Ameren Missouri through the filing of a consolidated return had the effect of substantially increasing the NOLC allocated to Ameren Missouri, and thus decreasing the company's rate base.[34] In 2013 and 2014, Ameren Missouri produced a large amount of taxable income but could not use that accumulated NOLC because the Ameren group as a whole had a tax loss.[35] As a result, the NOLC is larger than it would otherwise be and rate base is approximately $51.1 million larger at the end of 2014 than it would be if Ameren Missouri had filed a separate tax return.[36] However, in future years, the balance could switch back, and Ameren Missouri's ratepayers would once again benefit from the use of the consolidated return.[37]

7. Rather than use Ameren Missouri's actual NOLC that was determined using the consolidated tax return actually filed, MIEC's witness, Michael Brosch, urges the

[32] Warren Rebuttal, Ex. 48, Page 18, Lines 12-17.
[33] Warren Rebuttal, Ex. 48, Page 23, Lines 14-18.
[34] Warren Rebuttal, Ex. 48, Page 26, Table VII.
[35] Brosch Direct, Ex. 501, Page 25, Lines 16-21.
[36] Brosch Surrebuttal, Ex. 502, Schedule MLB-10, page 2.
[37] Transcript, Page 360, Lines 4-10.

Commission to recalculate NOLC as if Ameren Missouri had filed a separate tax return.[38] However, he does not argue that the separate tax return, stand-alone, calculation should necessarily be used in future rate cases. Rather he argues the Commission should calculate NOLC in each future case by the method that creates the lowest NOLC rate base addition, to the benefit of ratepayers and the detriment of the company.[39]

8. Ameren Corporation and its affiliated companies have entered into a Tax Allocation Agreement that governs the allocation of consolidated annual income tax responsibility among the members of the consolidated tax group and defines the amounts recorded on the utility's books.[40]

9. There is no evidence in this case to show that Ameren's Tax Allocation Agreement is structured in a way that would be detrimental to Ameren Missouri and its ratepayers. Instead, for several years, Ameren Missouri's ratepayers benefited from a lower rate base because of the Tax Allocation Agreement. The Tax Allocation Agreement has not changed, but in more recent years ratepayers have not benefitted from that agreement, although that may change again in the future. That fluctuation does not mean the agreement is unreasonable, and there is no evidence the fluctuation was intentionally created in order to change who benefits from the Tax Allocation Agreement.

Conclusions of Law:

A. MIEC points to the Commission's affiliate transaction rule as support for its proposal to calculate NOLC in whichever manner results in the lower rate base for the company. Commission Rule 4 CSR 240-20.015(2) says:

[38] Brosch Direct, Ex. 501, Page 26, lines 14-18.

[39] Brosch Surrebuttal, Ex. 502, Page 6, Lines 19-25.

[40] Brosch Surrebuttal, Ex. 502, Page 6, Lines 8-12.

(2) Standards.

(A) A regulated electrical corporation shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated electrical corporation shall be deemed to provide a financial advantage to an affiliated entity if –

1. It compensates an affiliated entity for good or services above the lesser of –

A. The fair market price; or

B. The fully distributed cost to the regulated electrical corporation to provide the goods or services for itself; or

2. It transfers information, assets, goods or services of any kind to an affiliated entity below the greater of –

A. The fair market price; or

B. The fully distributed cost to the regulated electrical corporation.

B. Section 4 CSR 240-20.015(1)(B) defines affiliate transaction as:

Affiliate transaction means any transaction for the provision, purchase or sale of any information, asset, product or service, or portion of any product or service, between a regulated electrical corporation and an affiliated entity, …

C. The Commission's affiliate transaction rules do not apply in this situation because there is no transaction involved. The affiliate transaction rules are intended to control transfers of goods or services between regulated utilities and their affiliates. So for example, if Ameren Missouri wants to purchase legal services from an affiliate such as Ameren Services Company, it cannot pay more than the lesser of market cost or its cost to provide the services for itself. In that context that is a reasonable restriction to ensure the regulated utility is not giving a sweetheart contract to an affiliate at the ratepayers' expense.

D. But here, where there is no transaction, the restrictions of the rule have no meaning. How could the fair market price or the fully distributed cost even be calculated? MIEC can only fall back to the basic policy behind the affiliate transaction rule, which reasonably states that regulated utilities should not be allowed to structure corporate arrangements in a way that disadvantages regulated utilities and thereby disadvantages ratepayers.

Decision:

Ameren Missouri proposes to use the NOLC it has actually accumulated rather than a hypothetical NOLC proposed by MIEC and supported by Staff, MIEC advocates a policy that arrangements between affiliates should always be interpreted in a manner that benefits ratepayers, even if that results in a detriment to the utility. There is no basis in law or fact for such a policy. The Commission must balance the interests of ratepayers and shareholders to set just and reasonable rates. Ameren Missouri's position is fair and will be adopted.

B. Should the Company's IRC Section 199 Deduction be computed without regard to Net Operating Loss Carryovers from prior years in determining the Company's income tax expense?

Findings of Fact:

1. The Internal Revenue Code Section 199 deduction is also referred to as the domestic production deduction or DPD. The DPD is a tax incentive provided to manufacturers, including producers of electricity. It allows the tax payer to take a tax deduction equal to 9% of the lesser of certain qualified net income or the taxpayer's taxable income. Under the tax law, the DPD is calculated on a consolidated basis.[41] Recognition of a DPD would reduce Ameren Missouri's tax expense and would therefore reduce rates for ratepayers.

2. In its initial filing for this case, Ameren Missouri calculated a DPD of $30.8 million.[42] MIEC's witness, Michael Brosch recalculated that deduction at $36.9 million in

[41] Warren Rebuttal, Ex. 48, Page 31, Lines 6-12.

[42] Brosch Direct, Ex. 501, Page 9, Lines 21-23.

his direct testimony.[43]

3. In his rebuttal testimony, Ameren Missouri's witness, James Warren, testified that both Mr. Brosch and Ameren Missouri's initial calculation of the DPD are incorrect. Both calculations assumed that Net Operating Loss Carryforward (NOLC) was not includable. In fact, Mr. Warren explained that Treasury Regulations applicable to the DPD do allow for the consideration of NOLC in calculating DPD.[44] Including the NOLC in the calculations would reduce Ameren Missouri's taxable income and thereby reduce the DPD.[45]

4. Ameren Missouri has not utilized NOLC in its calculation of its DPD in past rate cases and only proposed to do so in rebuttal testimony offered in this case. Both MIEC[46] and Staff[47] contend the use of NOLC should not be allowed because it has not been used in the past. MIEC's witness, Michael Brosch, also expressed concern that the NOLC should not be used because of the uncertainty that Ameren Missouri will even have an NOLC in future years.[48]

5. As an alternative to totally eliminating consideration of NOLC in calculating the DPD, MIEC proposed a DPD calculation that uses only the NOLC that would be calculated assuming that Ameren Missouri had filed a separate tax return rather than the

[43] Brosch Direct, Ex. 501, Schedule MLB-4, Page 2.

[44] Warren Rebuttal, Ex. 48, Pages 32-33, Lines 11-25, 1-2.

[45] Hanneken Surrebuttal, Ex. 218, Page 14, Lines 11-13. The testimony calculates an amount of the deduction that is listed as highly confidential so will not be stated in this order.

[46] Brosch Surrebuttal, Ex. 502, Page 22, lines 5-8. See also, Transcript, Pages 410-411, Lines 17-25, 1.

[47] Hanneken Surrebuttal, Ex. 218, Page 15, Lines 1-6. *See also*, Transcript, Page 375, Lines 17-22.

[48] Transcript, Page 411, Lines 2-14.

consolidated return it actually files with Ameren Corporation and its affiliates. That calculation supported a DPD estimate of $7.9 million.[49]

6. The use of a hypothetical stand-alone tax return in place of the actual consolidated return is the same issue as was addressed in the previous income tax issue. All parties agree the question should be resolved in the same way for both sub-issues.

Conclusions of Law:

The Commission makes no additional conclusions of law for this sub-issue.

Decision:

Ameren Missouri demonstrated that the Internal Revenue Code allows for the use of NOLC in calculating Ameren Missouri's DPD. The Internal Revenue Code does not require the Commission to allow its use for regulatory purposes, but the fact that NOLC has not been included in that calculation in past rate cases is not a persuasive reason to forbid its inclusion in this case. MIEC's suggestion that inclusion of NOLC makes the DPD uncertain because Ameren Missouri may not have NOLC in the future is based only on speculation and on MIEC's failed effort to require NOLC to be calculated on a hypothetical stand-alone basis. The Commission concludes, consistent with its decision in the previous income tax issue, that Ameren Missouri's method for calculation of its DPD is appropriate.

4. Amortizations

A. Should the amount of solar rebates paid by Ameren Missouri and recorded to a solar rebate regulatory asset through the end of the true-up period be included in Ameren Missouri's revenue requirement using a 3-year amortization period?

Findings of Fact:

1. In a non-unanimous stipulation and agreement filed in Commission File No. ET-2014-0085, Ameren Missouri, Staff, Public Counsel, MIEC, and numerous other parties

[49] Brosch Surrebuttal, Ex. 502, Page 22-23, and Schedule MLB-4 Revised.

agreed that Ameren Missouri would continue to make the solar rebate payments required by Missouri's Renewable Energy Standard, Section 393.1030 RSMo (Cum. Supp. 2013), until a specified level of $91.9 million in rebates was incurred by the company. That agreement also provides for creation of a regulatory asset to be considered for recovery in rates after December 31, 2013, in a general rate case. Ameren Missouri was required to record to that asset the actual amount of solar rebates paid, not to exceed $91.9 million, plus 10 percent.[50] No one objected to that stipulation and agreement, and the Commission approved it in an order issued on November 13, 2013.[51]

2. Ameren Missouri has deferred and accumulated approximately $88.1 million of solar rebates through December 31, 2014. Coupled with a 10 percent added cost of $8.8 million as provided in the stipulation and agreement, Ameren Missouri is seeking to recover approximately $96.9 million. By terms of the stipulation and agreement, that amount is to be amortized over three years, so $32.3 million would be included in Ameren Missouri's rates to be established in this case.[52]

3. MIEC and Consumers Council contend Ameren Missouri should not be allowed to recover any additional revenues to recover any of the solar rebate expense deferred under the stipulation and agreement. They assert that Ameren Missouri's earnings from retail rates during the period when the rebate costs were incurred already covered those costs.[53] Essentially, they argue that Ameren Missouri over-earned during the period the costs were incurred, so it should not be allowed to again recover those costs

[50] Ex. 55.

[51] *In the Matter of Ameren Missouri's Application for Authorization to Suspend Payment of Solar Rebates*, Order Approving Stipulation and Agreement, File No. ET-2014-0085, November 13, 2013.

[52] Cassidy Surrebuttal, Ex. 211, Page 4, Lines 3-11.

[53] Meyer Direct, Ex. 513, Pages 11-12, Lines 18-21, 1-2.

in the rates to be established in this case.

4. As proof that Ameren Missouri has over-earned, MIEC and Consumers Council point to Ameren Missouri's raw, unadjusted surveillance reports to claim that for most of the period from August 2012 through September 2014, Ameren Missouri collected enough revenue above its authorized revenue level to fully recover its solar rebate payments.[54]

5. However, unadjusted, per-book surveillance reports have only a limited value.[55] In the recent rate complaint case, the complainants attempted to use the same, slightly adjusted surveillance reports as the basis for setting new rates. In rejecting that attempt, the Commission found:

> It is important to understand that the earnings levels reported in the surveillance reports are actual per book earnings of the utility and cannot be compared directly to an authorized return on equity to determine whether a utility is overearning. Actual per book earnings are often computed differently than earnings used for the purpose of establishing rates. When setting rates, the Commission looks at "normal" levels of ongoing revenues and expenses, while book earnings can be affected by abnormal, non-recurring and extraordinary events. A good example of this is the weather.[56]

In this case, MIEC's witness, Greg Meyer simply pointed to the surveillance reports, without making any adjustments, to claim that Ameren Missouri has been over-earning. The Commission finds that the unadjusted per-book surveillance reports are not sufficient to establish that Ameren Missouri over-earned during the period of deferral.

6. Even if the unadjusted per-book surveillance reports were accepted as the basis for a claim of over-earning, the over-earning they purport to show is not significant.

[54] Meyer Direct, Ex. 513, Page 13 and Schedule GRM-3.

[55] Transcript, Page 536, Lines 9-10.

[56] *Noranda Aluminum, Inc., et al. v. Union Electric Company*, File No. EC-2014-0223, Report and Order, October 1, 2014, Finding of Fact No. 13, Page 8.

For calendar year 2013, the per-book surveillance report showed that Ameren Missouri's actual earned return on equity was 10.34 percent, compared to an authorized return on equity of 9.8 percent.[57] For calendar year 2014, the per-book surveillance report showed that Ameren Missouri actual earned return on equity was 9.71 percent, again compared to an authorized return on equity of 9.8 percent.[58] Over the entire 2013 and 2014 period the per-book over-earning would amount to less than 0.50 percent.[59]

Conclusions of Law:

A. In 2008, Missouri voter adopted by initiative Proposition C, which creates a Renewable Energy Standard. That standard, which is codified in Sections 393.1025 and 393.1030 RSMo (Cum. Supp. 2013), requires investor-owned electric utilities, such as Ameren Missouri, to obtain a specified percentage of their electric generation from renewable energy resources, provided that the cost to do so does not raise retail rates by more than one percent. More specifically, Section 393.1030.3 requires investor-owned electric utilities to pay solar rebates to their customers who choose to install new or expanded solar energy generating facilities on their property.

B. Section 393.1030.2(4), RSMo (Cum. Supp. 2013), provides that the electric utility may seek to recover the costs of complying with the Renewable Energy Standard, including solar rebate payments, outside a regular rate case by means of a Renewable Energy Standard Rate Adjustment Mechanism (RESRAM). Ameren Missouri does not have a RESRAM, as will be explained later, but the inclusion of that possibility illustrates that the policy of the Renewable Energy Standard statute supports the recovery of those

[57] Ex. 524.

[58] Ex. 528.

[59] Transcript, Page 585, Lines 9-14.

costs by the utility.

C. Section 393.1030.3 of the statute allows the utility to petition the Commission to cease payment of the solar rebates if paying additional rebates will cause the utility to exceed the allowable one percent increase in retail rates. Ameren Missouri filed such a petition in the fall of 2013. That petition was assigned File No. ET-2014-0085 by the Commission.

D. File No. ET-2014-0085 was ultimately resolved by a stipulation and agreement[60] that was approved by the Commission in an order issued on November 13, 2013.[61]

E. The stipulation and agreement allowed Ameren Missouri to discontinue paying solar rebates after it had paid a total of $91.9 million for rebates incurred after July 31, 2012. It provides that such solar rebate payments, with an additional ten percent carrying charge, are to be included in a regulatory asset to be considered for recovery in rates after December 31, 2013 in a general rate case. The stipulation and agreement also provides that the costs are to be amortized over three years when they are recovered in rates.

F. In the stipulation and agreement, the signatories agree "not to object to Ameren Missouri's recovery in retail rates of prudently paid solar rebates." There is a footnote to that statement which says:

> Given the Signatories' agreement that the specified amount should be paid, the only questions in future general rate proceedings regarding the recovery of solar rebate payments is whether the claimed solar rebate payments have been made and whether they were prudently paid under the Commission's

[60] Ex. 55.

[61] *In the Matter of Ameren Missouri's Application for Authorization to Suspend Payment of Solar Rebates*, Order Approving Stipulation and Agreement, File No. ET-2014-0085, November 13, 2013.

> RES rules and Ameren Missouri's tariff. 'Prudently paid' relates only to whether Ameren Missouri paid the proper amount due to an applicant for a rebate, paid it to the proper person or entity, and paid it in accordance with the Commission's RES rules and Ameren Missouri's tariffs.

In return, as part of the stipulation and agreement, Ameren Missouri gave up its right under the statute to seek recovery of the solar rebate costs outside a rate case through a RESRAM.

G. MIEC signed the stipulation and agreement, Consumers Council did not. Ameren Missouri contends MIEC has violated the terms of the stipulation and agreement by challenging Ameren Missouri's recovery of the solar rebate payments in this case on a basis other than prudent payment. As a remedy, it asks the Commission to strike all the testimony and argument offered by MIEC on this issue. Consumers Council did not sign the stipulation and agreement, and Ameren Missouri concedes that it can argue against recovery of the solar rebates on any basis that it wishes. However, Ameren Missouri asserts that MIEC procured the services of Consumers Council's witness, James Dittmer, on behalf of Consumers Council and, on that basis, asks the Commission to strike his testimony as well.

H. Commission rule 4 CSR 240-20.090(10) requires each electric utility with a fuel adjustment clause (a rate adjustment mechanism or RAM within the words of the regulation) to submit a quarterly Surveillance Monitoring Report. The required contents of the quarterly report are described by Commission rule 4 CSR 240-3.161(6). That regulation also requires that such reports be treated as highly confidential.

I. Rate making is designed to be forward looking. The goal is to choose a representative test year to estimate what costs will be when rates are in effect, not to make

adjustments for past earning levels.[62] The practice of setting future rates to adjust for past earning levels is condemned as retroactive ratemaking that would deprive either the utility or its customers of their property without due process.[63]

J. The Commission only sets the rates that Ameren Missouri, or any other utility, may charge its customers. It does not determine a maximum or minimum return the utility may earn from those rates. Sometimes, the established rate will allow the utility to earn more than was anticipated when the rate was established. Sometimes, the utility will earn less than anticipated. But the rate remains in effect until it is changed by the Commission, and so long as the utility has charged the authorized rate, it cannot be made to refund any "over-earnings," nor can it be allowed to collect any "under-earnings" from its customers.[64]

Decision:

The Commission will fully address this issue on its merits and will not strike any testimony. This is not the proper forum to determine whether MIEC violated the terms of the stipulation and agreement or the order of the Commission that directed the signatories to comply with that agreement. If Ameren Missouri wishes to further pursue a remedy for what it believes to be a breach of the stipulation and agreement it may do so in a new proceeding of its choosing.

This issue is about the deferral of Ameren Missouri's solar rebate costs for consideration for recovery in this rate case. Generally, the Commission uses a test year to determine which of a utility's expenses will be considered when setting just and reasonable

[62] *State ex rel. Southwestern Bell Tele. Co. v. Pub. Serv. Comm'n*, 645 S.W.2d 44, 48 (Mo. App. W.D. 1982).

[63] *State ex rel. Util. Consumers Council of Mo, Inc. v. Pub. Serv. Comm'n*, 585 S.W.2d 41, 58 (Mo. banc 1979).

[64] *Straube v. Bowling Green Gas Co.,* 227 S.W.2d 666 (Mo. 1950).

rates for the future. But sometimes the utility incurs an expense that the Commission believes should be deferred for consideration for recovery in a future rate case. The classic example is a severe storm that causes the electric utility to incur unexpectedly large costs. If that storm occurs outside the test year for the next rate case, the company would never be able to recover those unexpected costs.

But storms are not the only reason a deferral may be allowed. There may be other public or regulatory policy reasons why a utility should be allowed to defer a cost for consideration for recovery in a future rate case. For this issue, the costs that have been deferred are the costs Ameren Missouri paid to give rebates to its customers who installed home solar power generating units. The people of Missouri imposed the solar rebate requirement by voting for Proposition C because they believe that renewable energy in general, and solar energy in particular, is important to the well-being of our state. That legislation required Ameren Missouri and Missouri's other investor-owned electric utilities to be the conduit to encourage individuals to invest in solar energy. Therefore, it is entirely appropriate to allow Ameren Missouri to defer those costs for recovery in its next rate case.

As has been said many times, the deferral of a cost is not ratemaking treatment. That is, the deferral of a cost does not guarantee recovery of that cost in future rates. The Commission must determine within the context of a rate case whether recovery of the deferred cost is appropriate. But, usually the policy reason that justified the deferral still applies when it comes time to decide whether the deferred costs should be included when determining a future rate.

MIEC and the Consumers Council argue for what is in essence an earnings test to be applied to all deferrals. Under such a test, the Commission would have to determine by

how many dollars a utility over-earned during the deferral and then, dollar for dollar, the Commission would have to deny recovery of every dollar deferred above the return authorized in the last rate case. Such an earnings test fundamentally misunderstands the ratemaking process and would be completely unworkable in practice.

The Commission sets rates in a forward looking process using a test year to evaluate the amount of revenue the utility needs to earn to recover its costs and to have a reasonable opportunity to earn a profit. The utility is not guaranteed a profit, just an opportunity to earn that profit. Sometimes, circumstances make it difficult for the utility to earn that profit. Perhaps the summer is cooler than normal and people do not use their air conditioners so the utility does not sell as much electricity as anticipated. Or, perhaps, a generating plant goes down, resulting in unanticipated capital expenditures for the utility. Sometimes, circumstances favor the utility and it is able to earn more revenue than was anticipated when its rates were set. Whether the utility earns more or less revenue than was anticipated when the Commission set its rates does not necessarily indicate over- or under-earnings such that the utility's rate are no longer just and reasonable, though that can be one relevant factor of many to consider when setting new rates. Thus, in most cases, mention of over- or under-earnings is just a shorthand way of discussing whether the Commission should examine a utility's existing rates to determine if they are still just and reasonable. If Staff or some other party looks at the utility's earnings and finds that the utility is consistently earning above the benchmark return on equity established in the last rate case, they may, by filing a complaint, petition the Commission to again undertake the process of re-determining the utility's just and reasonable rates. If the utility looks at its earnings and finds it is not earning what it believes it should, it can begin the rate review

process by filing a tariff to start the rate case process.

The surveillance reports that have been discussed extensively in this case were established to make that information about Ameren Missouri's earnings available to all interested stakeholders so that they could decide whether the process to establish a new rate should be undertaken. But those surveillance reports do not themselves determine what an appropriate rate should be, nor do they establish either a ceiling or a floor on the earnings of the utility. Most fundamentally, in isolation, surveillance reports do not establish that a utility has under or over earned for purposes of setting rates.

Ameren Missouri's solar rebate costs were appropriately deferred pursuant to the Commission order approving those costs and their deferral, and now may be recovered through the rates set in this rate case, amortized over three years. No offset for over-earnings is appropriate.

B. Should the amount of pre-MEEIA energy efficiency expenditures incurred by Ameren Missouri and recorded to a regulatory asset through the end of the true-up period be included in Ameren Missouri's revenue requirement and, if so, over what period should they be amortized?

Findings of Fact:

1. In previous rate cases, the Commission allowed Ameren Missouri to defer certain pre-MEEIA energy efficiency expenditures for subsequent recovery, amortized over several years. For this case, Ameren Missouri would defer and recover an additional $3.3 million in expenditures incurred between the July 31, 2012 true-up cutoff date and January 2, 2013 effective date of the report and order in Ameren Missouri's last rate case, ER-2012-0166, amortized over six years. Staff would also make certain adjustments to the

previously allowed deferrals.[65]

2. Ameren Missouri does not contest the treatment of these costs proposed by Staff.[66] MIEC once again opposes recovery of these deferrals because of the alleged over-earnings by Ameren Missouri.

Conclusions of Law:

A. The Missouri Energy Efficiency Investment Act,[67] generally known as MEEIA, is a statute designed to encourage electric utilities to invest in energy efficiency measures that will reduce the need to invest in energy production infrastructure. The goal of the statute is to make such investments profitable, and to that end, Section 393.1075.3 establishes the policy of the state to allow electric utilities to recover "all reasonable and prudent costs of delivering cost-effective demand-side programs."

Decision:

Public policy in Missouri, as indicated by MEEIA, favors allowing electric utilities to fully recover their expenditures on energy efficiency programs. As explained with regard to the Solar Rebate Payment Deferral issue, no offset for over-earnings is appropriate here. Deferral and recovery of the pre-MEEIA energy efficiency expenditures incurred by Ameren Missouri shall be made in the manner described by Staff.

C. Should the amount of Fukushima flood study costs incurred by Ameren Missouri and recorded to a regulatory asset be included in Ameren Missouri's revenue requirement and, if so, over what period should they be amortized?

[65] Staff Report Revenue Requirement, Ex. 202, Page 58, Lines 17-20, and Pages 120-121, Lines 27-31, 1-6.

[66] Transcript, Page 543, Lines 1-7.

[67] Section 393.1075, RSMo (Cum. Supp. 2013).

Findings of Fact:

1. After the Fukushima Tsunami, the Nuclear Regulatory Agency required all U.S. utilities that operate nuclear power plants to perform a study of the threat of flooding at those facilities.[68] Staff and Ameren Missouri agree the $926,561 cost of the study should be deferred for recovery over a ten-year amortization period.[69] MIEC once again opposes recovery of these deferrals because of the alleged "over-earnings" by Ameren Missouri.

2. The deferral of the cost of the study is consistent with applicable accounting standards.[70]

Conclusions of Law:

The Commission makes no additional conclusions of law for this issue.

Decision:

The deferral and recovery of the Fukushima study costs is consistent with good public and regulatory policy. Ameren Missouri may recover those costs, amortized over a ten-year period.

5. Noranda AAO

Should the sums authorized for deferral in Case No. EU-2012-0027 be included in Ameren Missouri's revenue requirement and, if so, over what period should they be amortized?

Findings of Fact:

1. On January 27-28, 2009, a major ice storm disrupted the power supply to Noranda's aluminum smelter. The molten aluminum hardened in two of the three

[68] Transcript, Page 509, Lines 5-13.

[69] Staff Report Revenue Requirement, Ex. 202, Page 122, Lines 4-6.

[70] Transcript, Page 543, Lines 8-16.

production lines, and Noranda's output was reduced for most of that year. As a result, Noranda bought much less electricity from Ameren Missouri than had been anticipated when Ameren Missouri's rates were set. Because Noranda purchased less power from Ameren Missouri, the company was unable to recover a portion of the revenue it would otherwise have recovered through the sale of electricity to Noranda.[71]

2. On the same day as the start of the ice storm, January 27, 2009, the Commission issued a report and order in Ameren Missouri's (then AmerenUE's) rate case. In that report and order, the Commission for the first time granted the company's request for a fuel adjustment clause.[72]

3. The existence of the fuel adjustment clause exacerbated the problem Ameren Missouri faced because of the Noranda outage. Ameren Missouri could resell at least part of the power it would otherwise have sold to Noranda on the off-system sales market. But as an off-system sale, 95 percent of the revenue derived from that sale would flow through the FAC to be netted against fuel costs, and would therefore benefit ratepayers rather than Ameren Missouri's shareholders.[73]

4. Ameren Missouri tried to rectify that problem by filing an application for rehearing in the rate case seeking to have the newly minted Fuel Adjustment Clause modified. That motion was opposed by the other parties, and on February 19, 2009, the Commission denied the motion for rehearing, pointing out that it was not possible to reopen the record to take additional evidence and still conclude the case before the March 1, 2009

[71] Cassidy Rebuttal, Ex. 210, Pages 2-3, Lines 15-23, 1-2.

[72] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service*, Report and Order, Case No. ER-2008-0318, 18 Mo.P.S.C.3d 306 (2009).

[73] Cassidy Rebuttal, Ex. 210, Page 3, Lines 2-9.

operation of law date.[74]

5. In an attempt to get around the effect of the Fuel Adjustment Clause it had just obtained, Ameren Missouri sold part of the power it would otherwise have sold to Noranda under long-term supply contracts to American Electric Power Operating Companies (AEP) and Wabash Valley Power Association, Inc. In making those sales, Ameren Missouri believed it could avoid having to run the replacement sales through its fuel adjustment clause (FAC). But in a subsequent prudence review of the Fuel Adjustment Clause the Commission disagreed, finding that the sales to AEP and Wabash were off-system sales that had to be run through the FAC. Thus, 95 percent of the benefit of those sales was allotted to Ameren Missouri's ratepayers by operation of the FAC, and was not available to allow Ameren Missouri to cover its fixed costs that would otherwise have been recovered through sales to Noranda.[75]

6. Ameren Missouri appealed the Commission's order in the prudence review cases, but the Western District Court of Appeals affirmed the Commission's decision.[76] After the Commission issued its decision in the first prudence review, and while the appeal of that decision was pending, Ameren Missouri applied to the Commission for an Accounting Authority Order (AAO) seeking to defer fixed costs to serve Noranda that were

[74] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service*, Order Denying AmerenUE's Application for Rehearing, Case No. ER-2008-0318, 18 Mo.P.S.C.3d 441 (2009).

[75] Cassidy Rebuttal, Ex. 210, Pages 3-4, Lines 19-23, 1-8. The two prudence reviews cases in which the Commission made those rulings are: *In the Matter of the First Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of Union Electric Company, d/b/a Ameren Missouri*, Report and Order, File No. EO-2010-0255, April 27, 2011; and *In the Matter of the Second Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of Union Electric Company, d/b/a Ameren Missouri*, Report and Order, File No. EO-2012-0074, July 31, 2013.

[76] *State ex rel. Union Elec. Co. v. Public Service Com'n*, 399 S.W.3d 467 (Mo. App. W.D.2013).

not recovered because of the reduced sales to Noranda resulting from the ice storm.[77]

7. On November 26, 2013, the Commission issued a Report and Order granting Ameren Missouri the AAO it sought.[78] Public Counsel and MIEC appealed that decision to the Western District Court of Appeals. On January 13, 2015, the court issued a *per curium* order that affirmed the Commission.[79] An application for transfer to the Missouri Supreme Court was denied on April 28, 2015.

8. In its Report and Order granting the requested AAO, the Commission found that revenue not collected by a utility to recover its fixed costs could be an item to be deferred and considered for later ratemaking treatment. It also determined that Ameren Missouri's loss of $35,561,503, which constitutes 8.5 percent of its net income in that year, is extraordinary and material. However, the report and order merely grants the AAO to permit Ameren Missouri to defer the costs for consideration in a future rate case. It does not make any finding or decision that would indicate the costs will ultimately be recovered in rates. Indeed, the report and order specifically says that "deferred recording does not guarantee recovery in any later rate action; recovery may be granted in whole, partially, or not at all."[80]

9. Between the time the deferred costs were incurred by Ameren Missouri and

[77] Barnes Rebuttal, Ex. 3, Page 61, Lines 12-15.

[78] *In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for the Issuance of an Accounting Authority Order Relating to its Electrical Operations*, Report and Order, File No. EU-2012-0027, November 26, 2013.

[79] The Court's Order is attached to Barnes Rebuttal, Ex. 3, Schedule LMB-R9.

[80] *In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for the Issuance of an Accounting Authority Order Relating to its Electrical Operations*, Report and Order, File No. EU-2012-0027, November 26, 2013.

the present, the Commission has adjusted Ameren Missouri's rates in several rate cases.[81]

10. For the period between June 2007, through September 2014, Ameren Missouri has reported positive earnings.[82]

Conclusions of Law:

A. The fact that an AAO has been granted to defer these costs for consideration in this rate case does not mean Ameren Missouri is entitled to recover those costs. The granting of an AAO is not ratemaking and creates no expectation of recovery.[83] In discussing that expectation of recovery, the Missouri Court of Appeals has said:

> The whole idea of AAOs is to defer a final decision on current extraordinary costs until a rate case is in order. At the rate case, the utility is allowed to make a case that the deferred costs should be included, but again there is no authority for the proposition put forth here that the PSC is bound by the AAO terms.[84]

B. The Commission's decision to grant the AAO is not based on the same standard it now must use to determine whether those costs should be recovered. In granting the AAO, the Commission only determined that uncollected revenue was an item that could be deferred under accounting standards and that Ameren Missouri's loss was extraordinary and material.[85] But now, in this rate case, the Commission must consider "all relevant factors," otherwise it would be engaging in impermissible single-issue

[81] File Nos. ER-2010-0036 and ER-2012-0166

[82] Meyer Direct, Ex. 513, Page 16, Lines 12-13.

[83] *State ex rel. Missouri Gas Energy v. Public Serv. Com'n*, 210 S.W.3d 330 (Mo. App. W.D. 2006)

[84] *Missouri Gas Energy v. Public Serv. Com'n*, 978 S.W.2d 434, 438 (Mo. App. W.D. 1998).

[85] *In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for the Issuance of an Accounting Authority Order Relating to its Electrical Operations*, Report and Order, File No. EU-2012-0027, November 26, 2013.

ratemaking.[86]

C. Staff, Public Counsel, and MIEC argue that Ameren Missouri's attempt to recover what it calls unrecovered fixed costs and what the opposing parties call unrecovered revenues or lost profit, constitutes an attempt at forbidden retroactive ratemaking. In arguing that recovery should not be allowed, the opposing parties point to a decision of the Missouri Supreme Court in *State ex rel. Utility Consumers Council of Missouri, Inc.,*[87] a decision that is frequently referred to as simply "*UCCM*" .

D. In *UCCM*, the Supreme Court struck down a Commission decision that allowed electric utilities to implement a fuel adjustment clause without supporting statutory authority. Having declared that the fuel adjustment clause was impermissible, the Supreme Court considered the legality allowing the electric utilities to collect a surcharge from customers to recover fuel costs from ratepayers for a period between the time an earlier fuel adjustment clause expired and before the challenged FAC went into effect. In refusing to allow the utilities to keep the money collected under the surcharge, the Court said:

> The utilities take the risk that rates filed by them will be inadequate or excessive, each time they seek rate approval. To permit them to collect additional amounts simply because they had additional past expenses not covered by either clause is retroactive rate making, i.e. 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.[88]

The Court then went on to find that the surcharge allowed the utilities to collect monies not collectible under the rate filed at the time the expenses were incurred, and the utilities had

[86] *State ex rel. Missouri Gas Energy v. Public Serv. Com'n*, 210 S.W.3d 330 (Mo. App. W.D. 2006)

[87] 585 S.W.2d 41 (Mo banc 1979).

[88] *State ex rel. Utility Consumers Council of Missouri, Inc. v. Pub. Serv. Com'n*, 585 S.W.2d 41, 59, (Mo banc 1979).

no vested right to keep the money.

E. Although the quoted language from *UCCM* is quite broad, the Court's actual holding is more narrow. In fact, earlier in its discussion of those costs, the Supreme Court hints that if the expenses in question had been "'current' expenses reasonably anticipated and intended under the old clause, to be recovered at some point and were simply uncollected 'revenues'", they might have been recoverable.[89]

F. Certainly, in subsequent appellate decisions, the Court of Appeals has been open to the idea of allowing deferred costs to be recovered through a subsequent rate case. For example, in a 1998 case concerning legality of the Purchase Gas Adjustment (PGA) established in the tariffs of Missouri's natural gas distribution companies, the Court of Appeals held that the PGA was not improper retroactive ratemaking of the sort disapproved by the Supreme Court in *UCCM* because the rate adjustments made under the PGA are applied only to future customers on future bills.[90]

G. Similarly, in considering an appeal of an earlier Ameren Missouri rate case, the Court of Appeals held that the future amortized recovery of costs deferred under the vegetation management tracker did not constitute retroactive rate making.[91]

Decision:

As explained in its Conclusions of Law, the Commission must now evaluate all relevant factors to determine whether it is appropriate to allow Ameren Missouri to

[89] *State ex rel. Utility Consumers Council of Missouri, Inc. v. Pub. Serv. Com'n*, 585 S.W.2d 41, 59, (Mo banc 1979).

[90] *State ex rel. Midwest Gas Users' Ass'n v. Pub. Serv. Com'n*, 976 S.W.2d 470, 481 (Mo. App. W.D. 1998).

[91] *State ex rel. Noranda Aluminum, Inc. v. Pub. Serv. Com'n* 356 S.W.3d 293, 319 (Mo. App. S.D. 2011).

recover the deferred unrecovered fixed costs in the rates that will be established in this case.

Ameren Missouri faced this problem of uncollected revenues because of the fuel adjustment clause through which it sought to reduce its risk from increasing net energy costs. If the fuel adjustment clause had not been in place following the 2009 ice storm and the resulting disruption to Noranda's production, Ameren Missouri could have recovered its fixed costs by the means it originally attempted, by selling the additional available power off-system. Unfortunately for the company, the fuel adjustment clause operated, as intended, and swept up 95 percent of those sales to be netted against rising energy costs, thereby reducing any cost recovery that would have occurred through the fuel adjustment clause. Thus, the fuel adjustment clause, from which the company expected to benefit, instead worked to the benefit of ratepayers.

Ameren Missouri did not foresee that result when the fuel adjustment clause was approved, but it is neither unjust nor unreasonable. When Ameren Missouri chose to provide service to a customer the size of Noranda, it understood that the profits it could earn from the business relationship came with a substantial risk. The risk that Noranda's production would fall and that it would be unable to sell as much electricity as it anticipated was a risk the company's shareholders, who benefit from the profits earned by serving Noranda, should bear. Ratepayers are not the insurers of Ameren Missouri's profits and should not have to bear the risk that those profits are not as great as anticipated because of a drop in production at Noranda. To now

alter the consequences of that drop in production would be to retroactively change the allocation of risk approved by the Commission for the fuel adjustment clause that was in effect at the time.

In addition to this concern, the AAO granting deferral of these costs is unique in that Ameren Missouri has pursued and been granted a rate increase between this case and the losses at issue in this AAO. In that rate case, all relevant factors were considered, and rates for the future were set based on a period of time. It is not preferable to set rates in this case based on losses that are separated from the current test year by a number of years and by an intervening rate case.

Finally, Ameren Missouri experienced more than sufficient earnings to cover its fixed costs during all time periods between the ice storm and this rate case. While not a determinative factor alone in deciding whether to grant recovery of any AAO, this is one of the relevant factors the Commission must consider in setting just and reasonable rates in this case.

After considering all relevant factors, the Commission decides that recovery of the amounts deferred under the previously established accounting authority order is not appropriate.

6. Storm Expense and Two-Way Storm Costs Tracker

A. Should the Commission continue a two-way storm restoration cost tracker whereby storm-related non-labor operations and maintenance ("O&M") expenses for major storms would be tracked against the base amount with expenditures below the base creating a regulatory liability and expenditures above the base creating a regulatory asset, in each case along with interest at the Company's AFUDC rate?

Findings of Fact:

1. In Ameren Missouri's last rate case, the Commission established a two-way tracker for recovery of major storm related non-labor operations and maintenance expenses that would be tracked around a base level. If costs exceeded the base level, Ameren Missouri would be allowed to defer them for future recovery. If costs fell below the base level, Ameren Missouri would return the difference to ratepayers in a future rate case.[92]

2. In establishing the major storm cost tracker in the last rate case, the Commission expressed general skepticism of proposed tracking mechanisms, and noted there is a legitimate concern that a tracker can reduce a company's incentive to aggressively control costs. At that time, the Commission believed that those concerns were outweighed by the benefits of the two-way tracker.[93]

3. Ameren Missouri contends the tracker has worked as anticipated and asks that it be continued in this case.[94] Staff, Public Counsel, and MIEC all oppose continuation of the tracker.

4. Standard ratemaking methods already exist apart from the tracker to address these non-labor operations and maintenance major storm costs without the need for a tracker. The standard practice is to establish an average amount of storm costs to be included in rates to cover the company's costs. If the actually incurred costs are less than that amount, the company gets to keep the difference. If the actually incurred costs are

[92] Boateng Rebuttal, Ex. 205, Page 3, Lines 17-26.

[93] *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase its Annual Revenues for Electric Service,* File No. ER-2012-0166, Report and Order, December 12, 2012, Page 96, Finding of Fact 11.

[94] Wakeman Rebuttal, Ex. 46, Page 4, Lines 7-17.

more than that amount, the company is at risk of suffering a shortfall. But if an extraordinary storm event occurs between rate cases, the company can request an accounting authority order to defer those extraordinary costs for possible inclusion in rates in a subsequent rate case.[95]

5. Using this combination of methods, before the tracker was implemented, Ameren Missouri was able to recover every dollar of expenses incurred for storm restorations between April 1, 2007, and September 30, 2014.[96]

6. Major storm costs are only a small part of Ameren Missouri's overall costs. During the test year, Ameren Missouri experienced approximately $6.8 million of non-labor storm restoration costs in comparison to approximately $2.6 billion of total operating expenses. That means the storm restoration costs are only 0.0026 percent of the company's total operating expenses.[97]

7. None of the other investor-owned electric utilities in Missouri have a storm restoration cost tracker.[98]

8. By their nature, cost trackers tend to reduce a utility's incentive to aggressively control costs by ensuring that all costs will be recovered.[99] Under a tracker, such costs would be subject to a prudence review, but a prudence review cannot control costs as efficiently as a strong economic incentive. Ameren Missouri obviously cannot control when its service area may be hit by a major storm, but it has at least some control

[95] Boateng Rebuttal, Ex. 205, Pages 4-5, Lines 12-22, 1-2.
[96] Boateng Rebuttal, Ex. 205, Page 8, Lines 11-13.
[97] Boateng Rebuttal, Ex. 205, Page 9, Lines 4-14.
[98] Boateng Rebuttal, Ex. 205, Page 10, Lines 19-23.
[99] Transcript, Page 853, Lines 9-12.

over how it spends money in response to such storms.[100]

9. Ameren Missouri indicates it will continue to provide prompt and efficient storm restoration services with or without a tracker,[101] and there have been no allegations that it has not provided good storm restoration services in the past. Nevertheless, good public policy still requires the extra incentive a utility faces without the protection of a tracker.

Conclusions of Law:

The Commission makes no additional conclusions of law for this issue.

Decision:

Storm costs have been shown to be relatively small and predictable. An exception to traditional ratemaking is not necessary to recover those costs. The Commission finds that eliminating the major storms cost tracker is good public policy.

B. If the storm cost tracker is not continued, what annualized level of major storm costs should the Commission approve in this case?

Findings of Fact:

1. With the major storm cost tracker having been eliminated, the Commission must now determine the amount of anticipated costs to be included in Ameren Missouri's rates. All parties agree the amount of major storm costs to be included in rates is $4.6 million, which is based on a 60-month normalization of such costs.

Conclusions of Law:

The Commission makes no additional conclusions of law for this issue.

[100] Robertson Surrebuttal, Ex. 408, Page 9, Lines 2-14. See also, Boateng Surrebuttal, Ex. 206, Page 5, Lines 6-23. .

[101] Transcript, Page 843, Lines 13-23.

Decision:

The Commission accepts the recommendation of the parties and will set the amount of major storm costs to be included in rates at $4.6 million.

C. Should an amount of major storm cost over-recovery by Ameren Missouri be included in Ameren Missouri's revenue requirement and, if so, over what period should it be amortized?

Findings of Fact:

1. During the test year, Ameren Missouri spent less on major storm restoration costs than the base amount that was included in the tracker. All parties agree the amount of over-recovery should be returned to ratepayers.

2. Public Counsel recommends the over-recovery be returned to ratepayers amortized over two years. Staff and Ameren Missouri recommend the over-recovery be amortized and returned over five years, which is the length of time generally used for such amortizations.

Conclusions of Law:

The Commission makes no additional conclusions of law for this issue.

Decision:

The Commission finds that a five year amortization is appropriate as that is the length of time that has generally been used for storm expense amortizations.

7. Vegetation Management and Infrastructure Inspection Trackers

B. Should the vegetation management and infrastructure inspection trackers be continued?[102]

[102] For the sake of clarity, the Commission is addressing sub-issue B before sub-issue A.

Findings of Fact:

1. Ameren Missouri's vegetation management and infrastructure inspection expense is closely associated with two Commission rules. Following extensive storm related service outages in 2006, the Commission promulgated new rules designed to compel Missouri's electric utilities to do a better job of maintaining their electric distribution systems. Those rules, entitled Electrical Corporation Infrastructure Standards[103] and Electrical Corporation Vegetation Management Standards and Reporting Requirements,[104] became effective on June 30, 2008.

2. The rules establish specific standards requiring electric utilities to inspect and replace old and damaged infrastructure, such as poles and transformers. In addition, electric utilities are required to more aggressively trim tree branches and other vegetation that encroaches on transmission lines. In promulgating the stricter standards, the Commission anticipated utilities would have to spend more money to comply. Therefore, both rules include provisions that allow a utility the means to recover the extra costs it incurs to comply with the requirements of the rule.

3. In an earlier rate case, ER-2008-0318,[105] the Commission allowed Ameren Missouri to recover a set amount in its base rates for vegetation management and infrastructure inspection costs. However, since the rules were new, the Commission found that Ameren Missouri had too little experience to know how much it would need to spend to comply with the vegetation management and infrastructure inspection rules. Because of

[103] Commission Rule 4 CSR 240-23.020.

[104] Commission Rule 4 CSR 240-23.030.

[105] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service*, Report and Order, Case No. ER-2008-0318, 18 Mo. P.S.C. 3d 306 (2009).

that uncertainty, the Commission established a two-way tracking mechanism to allow Ameren Missouri to track its vegetation management and infrastructure costs.

4. The order required Ameren Missouri to track actual expenditures over and under the base level. In any year in which Ameren Missouri spent below that base level, a regulatory liability would be created. In any year in which Ameren Missouri's spending exceeded the base level, a regulatory asset would be created. The regulatory assets and liabilities would be netted against each other and would be considered in a future rate case. The tracking mechanism contained a 10 percent cap so if Ameren Missouri's expenditures exceeded the base level by more than 10 percent it could not defer those costs under the tracking mechanism, but would need to apply for an additional accounting authority order. The Commission's order indicated the tracking mechanism would operate until new rates were established in Ameren Missouri's next rate case.[106]

5. The Commission renewed the tracking mechanism in Ameren Missouri's next three rate cases, ER-2010-0036, ER-2011-0028, and ER-2012-0166, finding that Ameren Missouri's costs to comply with the vegetation management and infrastructure inspection rules were still uncertain, as the company had not yet completed a full four/six year vegetation management cycle on its entire system. But in each case, the Commission indicated it did not intend to make the tracker permanent.[107]

[106] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service*, Report and Order, Case No. ER-2008-0318, 18 Mo. P.S.C. 3d 306, 339 (2009).

[107] *In the Matter of Union Electric Company, d/b/a Ameren UE's Tariffs to Increase its Annual Revenues for Electric Service, Report and Order*, File No. ER-2010-0036, 19 Mo. P.S.C. 3d 376 (2010); *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase its Annual Revenues for Electric Service,* Report and Order, File No. ER-2011-0028, July 13, 2011; and *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase its Annual Revenues for Electric Service,* Report and Order, File No. ER-2012-0166, December 12, 2012.

6. Ameren Missouri asks that the tracker be continued. Staff, Public Counsel, MIEC, and MECG contend the tracker is no longer necessary and urge the Commission to end it.

7. Ameren Missouri has been operating under the Commission's vegetation management and infrastructure inspection rules for over seven years and has completed its first four-year cycle for vegetation management work on urban circuits and its first six-year cycle of work on rural circuits under the requirements of the rules.[108]

8. Tracker mechanisms can be a useful regulatory tool in the correct circumstances, but they should be used sparingly because they can reduce the incentive of the utility to closely control its costs.[109]

Conclusions of Law:

A. Commission Rule 4 CSR 240-23.020 establishes standards requiring electrical corporations, including Ameren Missouri, to inspect its transmission and distribution facilities as necessary to provide safe and adequate service to its customers. Specifically, 4 CSR 240-23.020(3)(A) establishes a four-year cycle for inspection of urban infrastructure and a six-year cycle for inspection of rural infrastructure.

B. Commission Rule 4 CSR 240-23.020(4) establishes a procedure by which an electric utility may recover expenses it incurs because of the rule. Specifically, that section states as follows:

> In the event an electrical corporation incurs expenses as a result of this rule in excess of the costs included in current rates, the corporation may submit a request to the commission for accounting authorization to defer recognition and possible recovery of these excess expenses until the effective date of rates resulting from its next general rate case, filed after the

[108] Staff Report Revenue Requirement, Ex. 202, Page 110, Lines 15-18.

[109] Robertson Direct, Ex. 406, Pages 20-21, Lines 22-18, 1-10.

> effective date of this rule, using a tracking mechanism to record the difference between the actually incurred expenses as a result of this rule and the amount included in the corporation's rates … In the event that such authorization is granted, the next general rate case must be filed no later than five (5) years after the effective date of this rule. …

Ameren Missouri points to the mention of a tracking mechanism in this regulation to argue that the regulation recognizes the appropriateness of a tracker for the recovery of these costs. However, when read in context, it is clear that the tracker mentioned in the rule is intended to deal with the uncertainty of the cost of compliance with the new rule. The Commission established a tracker for just that purpose, but now the costs are well known and the tracker is no longer needed.

C. Commission Rule 4 CSR 240-23.030 establishes standards requiring electrical corporations, including Ameren Missouri, to trim trees and otherwise manage the growth of vegetation around its transmission and distribution facilities as necessary to provide safe and adequate service to its customers. Specifically, 4 CSR 240-23.030(9) establishes a four-year cycle for vegetation management of urban infrastructure and a six-year cycle for vegetation management of rural infrastructure. The vegetation management rule also includes a provision that allows Ameren Missouri to ask the Commission for authority to accumulate and recover its cost of compliance in its next rate case.[110]

Decision:

From the time this tracker was created, the Commission has said that it would only be a temporary expedient, needed only until a sufficient cost history could develop to allow for the accurate determination of normalized costs. A sufficient cost history now exists and the need for the tracker is at an end. The Commission finds that the vegetation

[110] Commission Rule 4 CSR 240-23.030(10).

management and the infrastructure inspection tracker are discontinued.

A. What amount should be included in the revenue requirement for Vegetation Management and Infrastructure Inspection?

C. If the vegetation management and infrastructure inspection trackers are not continued, what annualized level of vegetation management and infrastructure inspection costs should the Commission approve in this case?

Findings of Fact:

1. With the tracker having been eliminated, the Commission now must carefully establish the amount that Ameren Missouri may recover in its base rates for its vegetation management and infrastructure inspection costs.

2. Ameren Missouri proposes that the base rate level for vegetation management costs be set at approximately $56 million, with the base rate level for infrastructure inspections costs set at approximately $6.4 million. Those numbers are the actual incurred amount of costs through the true-up period.[111]

3. Staff proposes to use a three-year average of expenses to set the base rate cost level for vegetation management at $54,504,662 and $5,827,267 for infrastructure inspections.[112]

4. MIEC proposed a vegetation management cost level of $54 million, with $5.8 million allowed for infrastructure inspections.[113]

5. Public Counsel proposes to use a 62-months average covering the period of February 2009, through March 2014, adjusted for the true-up figures through December 31, 2014, to set the base level at $53,114,501 for vegetation management. Public Counsel

[111] Moore Surrebuttal, Ex. 32, Page 9, Lines 5-11.

[112] Hanneken Surrebuttal, Ex. 218, Page 9, Lines 8-12.

[113] Meyer Surrebuttal, Ex. 514, Page 20, Lines 8-11.

used a two-year average, adjusted for true-up figures to set the base level at $6,149,077 for infrastructure inspections.[114]

6. This is a chart of Ameren Missouri's annual vegetation management costs since 2008:

2008 $49.2 million
2009 $50.9 million
2010 $50.4 million
2011 $52.9 million
2012 $52.3 million
2013 $55.2 million[115]
2014 $56.0 million[116]

The chart shows some up and down variation from year to year, but it also shows a definite upward trend. An average of all years of cost as proposed by Public Counsel and MIEC would not be a good representation of future costs since it would not recognize the upward trend. On the other hand, Ameren Missouri's proposal to just use the updated test year amounts is also not reasonable because it fails to recognize that the costs do not increase in a straight line. Staff's three-year average recognizes both aspects of the cost trend and is the most reasonable.

7. In the first year that Ameren Missouri incurred infrastructure inspection costs, 2008, the Company incurred annual infrastructure inspection costs of $8,165,926. By the fourth year, 2011, those annual costs had dropped to $5,373,259. For the test year ending March 31, 2014, the costs were $5,924, 356. On that basis, Public Counsel recommended that the base cost be set at the average of the last two twelve-month periods ending March

[114] Robertson True-Up Direct, Ex. 413, Page 2, Lines 5-18.

[115] Meyer Direct Ex. 513, Page 18, Table 3.

[116] Moore Surrebuttal, Ex. 32, Page 9, Lines 5-11.

2013 and 2014.[117] In the update period those costs had risen to approximately $6.4 million.[118] In True-Up Direct testimony, Public Counsel updated its proposed amount to include the update period ending December 31, 2014. The two-year average, utilizing the twelve months ended December 2013 and 2014 is $6,149,077. Public Counsel recommends the infrastructure inspection amount included in base rates be set at that amount.[119]

Conclusions of Law:

The Commission makes no additional conclusions of law on this issue.

Decision:

The Commission establishes the base rate cost level for vegetation management at $54,504,662, which is the number recommended by Staff. The base rate cost level for infrastructure inspections is established at $6,149,077, the number recommended by Public Counsel. The Commission finds that the two-year average number recommended by Public Counsel appropriately captures the recent increases in costs while assuring that the increased expense numbers from the true-up period are not just an anomaly.

D. Should an amount of vegetation management and infrastructure inspection cost over-recovery by Ameren Missouri be included in Ameren Missouri's revenue requirement and, if so, over what period should they be amortized?

Findings of Fact:

1. Since the last rate case, the vegetation management half of the tracker resulted in a regulatory asset, meaning Ameren Missouri spent more for vegetation management than the base level established in the tracker. The infrastructure inspection

[117] Robertson Surrebuttal, Ex. 408, Page 14, Lines 4-17.

[118] Moore Surrebuttal, Ex. 32, Page 9, Lines 8-11.

[119] Robertson True-Up Direct, Ex. 413, Page 2, Line 5-18.

half of the tracker resulted in a regulatory liability, meaning Ameren Missouri spent less than the base amount established in the tracker. Under the terms of the tracker the two items are to be netted against each other and the resulting amount recovered from or returned to ratepayers. In addition, some amounts from the tracker ordered to be amortized in previous rate cases remain uncollected.[120] Staff, Public Counsel, and Ameren Missouri propose to combine all three figures and amortize that amount to be collected from ratepayers.

2. According to Staff's calculations, including true-up data, the revised total amount to be amortized and collected from ratepayers is $1,539,810. Amortized over three years as Staff and Ameren Missouri propose, that amounts to an annual figure of $513,270.[121]

3. Public Counsel proposed that the net over/under recovery amount be amortized over two years.[122]

4. The Commission has used a three-year amortization for tracked vegetation management and infrastructure inspection expenses in all previous Ameren Missouri rate cases in which the tracker was in place.[123]

5. MIEC opposes any collection of the regulatory asset resulting from under collections under the tracker because of its contention that Ameren Missouri over-earned during the period covered by the tracker.[124]

Conclusions of Law:

The Commission makes no additional conclusions of law on this issue.

[120] Staff Report Revenue Requirement, Ex. 202, Page 110, Lines 4-31.

[121] Hanneken Surrebuttal, Ex. 218, Page 10, Lines 5-8.

[122] Robertson Direct, Ex. 406, Page 27, Lines 19-23.

[123] Staff Report Revenue Requirement, Ex. 202, Page 110, Lines 9-10.

[124] Meyer Direct, Ex. 513, Page 20, Lines 8-13.

Decision:

Staff has established the appropriate amount of the under-recovery in the existing tracker and the Commission finds that Staff's recommended amount shall be recovered from ratepayers amortized over three years.

8. Union Proposals

A. Can the Commission mandate or require that the Company address its workforce needs in a particular manner and, if so, should it do so?

Findings of Fact:

1. This issue is raised by the International Brotherhood of Electrical Workers Local 1439, AFL-CIO. That local represents 703 members who work for Ameren Missouri. Local 1439 does not represent all unionized Ameren Missouri employees; some are represented by other locals or other unions.[125] For convenience, this report and order will refer to Local 1439 simply as the "Union."

2. The Union affirms that Ameren Missouri has been providing its customers with "consistently reliable and inexpensive power for decades."[126] But it is concerned about what it describes as an aging workforce and an aging infrastructure.

3. To address the aging workforce problem, to replace current employees who are moving toward retirement, the Union asks the Commission to allocate an extra $11.1 million to Ameren Missouri and require the company to use that extra money to induct a class of at least 37 apprentices in various job categories in 2015 and for the next two successive years. Further, the Union asks the Commission to demand that Ameren Missouri fill all jobs, internal or outsourced, first within its service territory, second in

[125] Walter Direct, Ex. 800, Page 2, Lines 1-17.

[126] Walter Direct, Ex. 800, Page 3, Lines 29-30.

Missouri, and never offshore[127]

4. The Union also expresses concern that Ameren Missouri is using too much contract labor rather than hiring additional internal workers because it believes the quality of the work provided by its members is superior to that provided by contract employees.[128] The Union's witness conceded there was no way to quantify that belief.[129]

5. Ameren Missouri has decreased the number of internal employees in recent years to improve efficiency and reduce costs.[130] But the company has completed all mandatory and scheduled maintenance work.[131] There is no evidence to suggest these reductions have prevented the company from offering safe and adequate service to its customers.

6. Ameren Missouri uses some contract labor to ensure efficient and effective completion of its work, particularly to meet short-term needs.[132] The company uses contract labor to do special projects that temporarily require a larger workforce. It would not be cost-effective to hire permanent employees to do that work if they would have to be laid-off when the special project was finished.[133]

7. Ameren Missouri is already planning to hire all the internal apprentices it believes it needs, and it does not want a special allocation for that purpose.[134]

8. The Union asks the Commission to address the aging infrastructure problem

[127] Walter Direct, Ex. 800, Page 9, Lines 16-23.
[128] Transcript, Pages 1040-1041, Lines 6-25, 1-11, and Ex. 801.
[129] Transcript, Page 1041, Lines 12-15.
[130] Wakeman Rebuttal, Ex. 46, Page 12, Lines 8-22.
[131] Wakeman Rebuttal, Ex. 46, Page 13, Lines 5-9.
[132] Wakeman Rebuttal, Ex. 46, Page 13, Lines 11-15.
[133] Transcript Pages 987-988, Lines 25, 1-23.
[134] Transcript, Pages 1015-1016, Lines 16-25, 1-10.

by giving the company an undefined special annual rate allocation in an undefined amount to allow the company to address its infrastructure needs.[135]

9. The Union's witness did not suggest any particular way the Commission might help Ameren Missouri meet its infrastructure needs, but in its brief, the Union suggested the Commission create a pool of money to allow the company to quickly be reimbursed for infrastructure expenditures or create an infrastructure system replacement surcharge such as authorized for other Missouri utilities.[136]

Conclusions of Law:

A. Section 393.130.1, RSMo (Cum. Supp. 2013), requires every electrical corporation, including Ameren Missouri, to "furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable."

B. Section 393.140.(1) gives this Commission general supervisory authority over all electrical corporations, again including Ameren Missouri. Subsection (2) of that statute authorizes the Commission to examine or investigate the operations of such utilities and to:

> order such reasonable improvements as will promote the public interest, preserve the public health and protect those using such … electricity …., 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 … electrical corporations … .

Based on the authority given by that statute, the Commission may exercise a great deal of control over Ameren Missouri's operations.

[135] Walter Direct, Ex. 800, Pages 9-10, Lines 31, 1-3.

[136] IBEW 1439's Post-Hearing Brief, Page 3, Fn. 1

C. But, while the Commission has authority to regulate Ameren Missouri to ensure the utility provides safe and adequate service, the Commission does not have authority to manage the company. In the words of the Missouri Court of Appeals;

> The powers of regulation delegated to the Commission are comprehensive and extend to every conceivable source of corporate malfeasance. Those powers do not, however, clothe the Commission with the general power of management incident to ownership. The utility retains the lawful right to manage its own affairs and conduct its business as it may choose, as long as it performs its legal duty, complies with lawful regulation, and does no harm to public welfare.[137]

Therefore, except as necessary to ensure the provision of safe and adequate service, the Commission does not have the authority to dictate to the company how many employees it must hire or whether it must use internal workforce rather than outside contractors to perform the work of the company.

D. The Commission's authority to assist Ameren Missouri in its efforts to direct capital expenditures toward aging infrastructure is also limited by statute. Section 393.135, RSMo 2000, prohibits the recovery in electric rates of the cost of construction work in progress or CWIP. That means Ameren Missouri cannot charge its customers to develop a fund to allow for quick recovery of the cost of unfinished capital projects. Similarly, the infrastructure system replacement surcharges that the Commission has established for water and gas utilities in Missouri are authorized by statute. No similar statutory authority exists for the creation of an ISRS for electric utilities.

Decision:

The evidence presented by the Union does not demonstrate that Ameren Missouri has failed to provide safe and adequate service. Therefore, the Commission will not

[137] *State ex rel. Harline v. Public Serv. Com'n*, 343 S.W.2d 177, 182 (Mo. App. 1960)

dictate to the company how many new employees it must hire, nor will it determine whether it must use its internal workforce or outside contractors to perform the company's work. Furthermore, there is no need for the Commission to direct Ameren Missouri to undertake any particular infrastructure replacement projects at this time.

B. Should the Commission require the additional reporting requested by Mr. Walters?

Findings of Fact:

1. The Union proposes that Ameren Missouri be required to provide additional quarterly reports to the Commission's Staff regarding its spending for infrastructure replacement and related to the special allocations proposed in the previous sub-issue.[138]

2. Ameren Missouri is ready to provide any information that Staff may request from it and believes that no additional reporting requirement is needed.[139]

Conclusions of Law:

The Commission makes no additional conclusions of law on this issue.

Decision:

The Commission finds there is no need to impose a new reporting requirement on Ameren Missouri as Staff can already obtain whatever information it needs from Ameren Missouri. Further, additional reporting requirements would ultimately increase costs for Ameren Missouri's ratepayers.

9. Return on Common Equity ("ROE")

In consideration of all relevant factors, what is the appropriate value for Return on Equity ("ROE") that the Commission should use in setting Ameren Missouri's Rate of Return?

[138] Walter Direct, Ex. 800, Page 9, Lines 25-31.

[139] Transcript, Page 1015, Lines 7-15.

Findings of Fact:

1. This issue concerns the rate of return Ameren Missouri will be authorized to earn on its rate base. Rate base is the value of the utility's assets such as generating plants, electric meters, wires and poles, and the trucks driven by Ameren Missouri's repair crews. In order to determine a rate of return, the Commission must determine Ameren Missouri's cost of obtaining the capital it needs.

2. The relative mixture of sources Ameren Missouri uses to obtain the capital it needs is its capital structure. Ameren Missouri's actual capital structure as of the true-up date, December 31, 2014 is:

Long-Term Debt	47.18%
Short-Term Debt	00.00%
Preferred Stock	01.07%
Common Equity	51.76%[140]

No party has raised an issue regarding capital structure, so the Commission will not further address this matter.

3. Similarly, no party has raised an issue regarding Ameren Missouri's calculation of the cost of its long-term debt and preferred stock.

4. Determining an appropriate return on equity is the most difficult part of determining a rate of return. The cost of long-term debt and the cost of preferred stock are relatively easy to determine because their rate of return is specified within the instruments that create them. In contrast, to determine a return on equity, the Commission must consider the expectations and requirements of investors when they choose to invest their money in Ameren Missouri rather than in some other investment opportunity. As a result, the Commission cannot simply find a rate of return on equity that is unassailably

[140] Murray Surrebuttal, Ex. 228, Page 4, Line 12.

scientifically, mathematically, or legally correct. Such a "correct" rate does not exist. Instead, the Commission must use its judgment to establish a rate of return on equity attractive enough to investors to allow the utility to fairly compete for the investors' dollar in the capital market without permitting an excessive rate of return on equity that would drive up rates for Ameren Missouri's ratepayers. To obtain guidance about the appropriate rate of return on equity, the Commission considers the testimony of expert witnesses.

5. Four financial analysts offered recommendations regarding an appropriate return on equity in this case. Robert B. Hevert testified on behalf of Ameren Missouri. Hevert is Managing Partner of Sussex Economic Advisors, LLC. He holds a Bachelor of Science degree in Finance from the University of Delaware and a Master of Business Administration with a concentration in finance from the University of Massachusetts.[141] He recommends the Commission allow Ameren Missouri a return on equity of 10.4 percent, within a range of 10.2 percent to 10.6 percent.[142]

6. Michael Gorman testified on behalf of MIEC. Gorman is a consultant in the field of public utility regulation and is a managing principal of Brubaker & Associates.[143] He holds a Bachelor of Science degree in Electrical Engineering from Southern Illinois University and a Masters Degree in Business Administration with a concentration in Finance from the University of Illinois at Springfield.[144] Gorman recommends the

[141] Hevert Direct, Ex. 16, Page 1, Lines 5-16.

[142] Hevert Direct, Ex. 16, Page 2, Lines 16-21.

[143] Gorman Direct, Ex. 510, Page 1, Lines 4-6.

[144] Gorman Direct, Ex. 510, Appendix A, Page 1, Lines 9-12.

Commission allow Ameren Missouri a return on equity of 9.30 percent, within a recommended range of 9.00 percent to 9.60 percent.[145]

7. Lance Schafer testified on behalf of the Public Counsel. Schafer is employed by the Office of the Public Counsel as a Public Utility Financial Analyst. He holds a Bachelor of Arts in English from the University of Missouri, Columbia; a Master of Arts in French from the University of California, Irvine; and a Master of Business Administration with a specialization in Finance from the University of Missouri, Columbia.[146]

8. Finally, David Murray testified on behalf of Staff. Murray is the Utility Regulatory Manager of the Financial Analysis Unit for the Commission. He holds a Bachelor of Science degree in Business Administration from the University of Missouri – Columbia, and a Masters degree in Business Administration from Lincoln University. Murray has been employed by the Commission since 2000 and has offered testimony in many cases before the Commission.[147] Murray recommends a return on equity of 9.25 percent, within a range of 9.00 percent to 9.50 percent.[148]

9. A utility's cost of common equity is the return investors require on an investment in that company. Investors expect to achieve their return by receiving dividends and through stock price appreciation.[149] To comply with standards established by the United States Supreme Court, the Commission must authorize a return on equity sufficient

[145] Gorman Direct, Ex. 510, Page 2, Lines 4-9.

[146] Schafer Direct, Ex. 409, Page 1, Lines 11-15.

[147] Staff Report Revenue Requirement Cost of Service, Ex. 202, Appendix 1, Page 61.

[148] Staff Report Revenue Requirement Cost of Service, Ex. 202, Page 11, Lines 1-11.

[149] Gorman Direct, Ex. 510, Page 11, Lines 17-19.

to maintain financial integrity, attract capital under reasonable terms, and be commensurate with returns investors could earn by investing in other enterprises of comparable risk.[150]

10. Financial analysts use variations on three generally accepted methods to estimate a company's fair rate of return on equity. The Discounted Cash Flow (DCF) method is based on a theory that a stock's current price represents the present value of all expected future cash flows. In its simplest form, the Constant Growth DCF model expresses the Cost of Equity as the discount rate that sets the current price equal to expected cash flows.[151] The analysts also use variations of the DCF model including the multi-stage growth DCF[152] and the sustainable growth DCF[153] The Risk Premium method assumes that the investor's required return on an equity investment is equal to the interest rate on a long-term bond plus an additional equity risk premium needed to compensate the investor for the additional risk of investing in equities compared to bonds.[154] The Capital Asset Pricing Method (CAPM) assumes the investor's required rate of return on equity is equal to a risk-free rate of interest plus the product of a company-specific risk factor, beta, and the expected risk premium on the market portfolio.[155] No one method is any more "correct" than any other method in all circumstances. Analysts balance their use of all three methods to reach a recommended return on equity.

11. Before examining the analyst's use of these various methods to arrive at a recommended return on equity, it is important to look at some other numbers. For 2014,

[150] Gorman Direct, Ex. 510, Page 12, Lines 1-11.
[151] Hevert Direct, Ex. 16, Page 14, Lines 5-8.
[152] Hevert Direct, Ex. 16, Page 19, Lines 7-14.
[153] Gorman Direct, Ex. 510, Pages 19-20
[154] Hevert Direct, Ex. 16, Page 28, Lines 4-14.
[155] Gorman Direct, Ex. 510, Pages 32-33, Lines 13-24, 1-13.

the average return on equity awarded to all electric utilities by state commissions in this country was 9.76 percent. For fully litigated rate cases, the average number dropped to 9.63 percent. But those numbers include distribution only companies in deregulated states. Excluding those companies and looking only at vertically integrated electric companies like Ameren Missouri, the average return on equity award in 2014 was 9.94 percent. Looking only at returns established in fully litigated rate cases, that average was 9.86 percent.[156]

12. The Commission mentions the average allowed return on equity because Ameren Missouri must compete with other utilities all over the country for the same capital. Therefore, the average allowed return on equity provides a reasonableness test for the recommendations offered by the return on equity experts.

13. In its decision regarding Ameren Missouri's last rate case, the Commission established an ROE of 9.8 percent.[157] Since 2012, when that case was decided, interest rates have declined by approximately 37 basis points.[158] Furthermore, utility stock prices have increased and their dividend yields have gone down. This indicates that utilities' cost of capital has decreased because they need to sell fewer shares to generate the capital they need to support their investments.[159] As MIEC's witness, Michael Gorman, explained: "Because the price of stock has gone up and the other parameters of the stock have not significantly changed, that's a clear indication that investors have reduced their required

[156] Gorman Surrebuttal, Ex. 512, Schedule MPG-SR-1.

[157] *In the Matter of Union Electric Company, d/b/a/ Ameren Missouri's Tariff to Increase its Annual Revenues for Electric Service,* File No. ER-2012-0166, Report and Order, December 12, 2012.

[158] Gorman Surrebuttal, Ex. 512, Page 7, Lines 1-2.

[159] Gorman Surrebuttal, Ex. 512, Page 7, Lines 7-10.

cost of capital which has bid up the stock price."[160] This suggests the ROE allowed to Ameren Missouri should also be decreased.

14. Similarly, Staff's witness, David Murray, believes that investor expectations for ROE have declined so that today investors would reasonably expect an ROE of 9.5 percent.[161]

15. Ameren Missouri's expert witness, Robert Hevert, supports an increased ROE at 10.4 percent. The Commission finds that such an ROE would be excessive. In large part, Hevert's ROE estimate is high because he based his multi-stage DCF analysis calculations on an optimistic nominal long-term GDP growth rate outlook of 5.71 percent.[162] As Gorman explains, that growth rate is substantially higher than consensus economists' forward-looking real GDP growth outlooks.[163] Adjusting Hevert's optimistic growth rate outlook to the consensus economist level reduces his multi-stage growth DCF return from 10.02 percent to 8.80 percent for his proxy group.[164]

16. Similarly, if Hevert's CAPM analysis is adjusted to use more reasonable projected returns on the market, that analysis would result in a range of 8.80 percent to 9.52 percent.[165]

17. Gorman, a reliable rate of return expert, recommends the Commission set ROE in a range between 9.0 percent and 9.6 percent. He recommended that the rate be set at the mid-point of that range, which is 9.3 percent, but he indicated that any rate within

[160] Transcript, Page 1269, Lines 6-10.
[161] Transcript, Page 1358, Lines 9-14.
[162] Hevert, Direct, Ex. 16, Pages 22-23, Lines 3-9, 1-10.
[163] Gorman Rebuttal, Ex. 511, Page 8, Lines 1-7.
[164] Gorman Rebuttal, Ex. 511, Page 10, Lines 10-13.
[165] Gorman Rebuttal, Ex. 511, Page 13, Lines 8-14.

his range would be reasonable and would be adequate to attract capital at reasonable terms, would be sufficient to ensure the company's financial integrity, and is commensurate with returns on investment in enterprises having corresponding risks.[166]

18. Public Counsel's witness, Lance Schafer, recommended an ROE of 9.01 percent, within a range of 8.74 percent to 9.22 percent. Aside from any technical criticism about Schafer's methodology, an ROE of 9.01 is too low because it is substantially below the average ROE awarded by other state commissions to similarly situated utilities. Obviously, this Commission is not bound to follow the lead of other commissions in setting an appropriate ROE. In fact, the ROE the Commission has found to be reasonable in this case is below the average. But the capital market in which Ameren Missouri must compete is competitive. An ROE set 80 to 100 basis point below the ROE set for similar electric utilities could limit the company's ability to attract capital and could violate the *Hope* and *Bluefield* standard described earlier in this order, which requires that rates be set at a level that will allow the utility a return on its investment comparable to that earned by other companies with "corresponding risks and uncertainties."[167]

Conclusions of Law:

A. In assessing the Commission's ability to use different methodologies to determine just and reasonable rates, the Missouri Court of Appeals has said:

> Because ratemaking is not an exact science, the utilization of different formulas is sometimes necessary. … The Supreme Court of Arkansas, in dealing with this issue, stated that there is no 'judicial mandate requiring the Commission to take the same approach to every rate application or even to consecutive applications by the same utility, when the commission in its expertise, determines that its previous methods are unsound or inappropriate

[166] Transcript, Page 1197, Lines 9-23.

[167] *Bluefield Water Works & Improvement Co. v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 692 (1923).

> to the particular application' (quoting Southwestern Bell Telephone Company v. Arkansas Public Service Commission, 593 S.W. 2d 434 (Ark 1980).[168]

Furthermore,

> Not only can the Commission select its methodology in determining rates and make pragmatic adjustments called for by particular circumstances, but it also may adopt or reject any or all of any witnesses' testimony.[169]

B. In another case, the Court of Appeals recognized that the establishment of an appropriate rate of return is not a "precise science":

> While rate of return is the result of a straight forward mathematic calculation, the inputs, particularly regarding the cost of common equity, are not a matter of 'precise science,' because inferences must be made about the cost of equity, which involves an estimation of investor expectations. In other words, some amount of speculation is inherent in any ratemaking decision to the extent that it is based on capital structure, because such decisions are forward-looking and rely, in part, on the accuracy of financial and market forecasts.[170]

Decision:

Based on the competent and substantial evidence in the record, on its analysis of the expert testimony offered by the parties, and on its balancing of the interests of the company's ratepayers and shareholders, as fully explained in its findings of fact and conclusions of law, the Commission finds that 9.53 percent is a fair and reasonable return on equity for Ameren Missouri. That rate is within expert witness Gorman's range, and only slightly above expert witness Murray's recommended range. The Commission finds that

[168] *State ex rel. Assoc. Natural Gas Co. v. Public Service Commission,* 706 S.W. 2d 870, 880 (Mo. App. W.D. 1985).

[169] *State ex rel. Assoc. Natural Gas Co. v. Public Service Commission,* 706 S.W. 2d 870, 880 (Mo. App. W.D. 1985).

[170] *State ex rel. Missouri Gas Energy v. Public Service Commission*, 186 S.W.3d 376, 383 (Mo App. W.D. 2005).

this rate of return will allow Ameren Missouri to compete in the capital market for the funds needed to maintain its financial health.

10. Class Cost of Service, Revenue Allocation and Rate Design

A. What methodology should the Commission use to allocate generation fixed costs among customer classes?

B. How should the non-fuel, non-labor components of production, operation and maintenance expense be classified and allocated?

G. What methodology should the Commission use to allocate off-system sales revenues among customer classes?

I. *What methodology should the Commission use to allocate fuel and purchased power costs among customer classes?*

H. What methodology should the Commission use to allocate income tax expense among customer classes?

Findings of Fact:

1. After the Commission determines the amount of rate increase that is necessary, it must decide how that rate increase will be spread among Ameren Missouri's customer classes. The basic principle guiding that decision is that the customer class that causes a cost should pay that cost.

2. The Class Cost of Service and Rate Design issue is similar to the ROE issue in that the method used to arrive at a number is less important than the reasonableness of the final number. Ameren Missouri, Staff, MIEC, and Public Counsel performed class cost of service studies using different methods with some different inputs. Each study is designed to measure how much each of the different rate classes contributes to Ameren Missouri's total cost of service. Rates should then be set so that each rate class contributes enough revenue to pay its fair share of those costs. But the class cost of service studies should not be taken as a precise mathematical calculation of correct

rates.[171] Rather, the Commission must use its judgment to set just and reasonable rates for the various rate classes.

3. Ameren Missouri's and MIEC's experts use an Average and Excess (A&E) four non-coincident peak production allocator methodology. That methodology conceptually splits the electric system into an average component and an excess component. The average component is the amount of capacity needed to produce the required energy if it were taken at the same demand rate each hour. The excess component measures the difference between average demand and peak demand at four non-coincident peaks.[172] The Commission has accepted the reasonableness of this methodology in past Ameren Missouri rate cases.

4. Staff's expert relied on several Base, Intermediate and Peak (BIP) class cost of service studies. As the name implies, the BIP studies attempt to divide class contributions to costs into three categories rather than the two used in the A&E methods. Despite the conceptual differences, Staff's BIP studies reach the same general conclusions as the A&E methods used by Ameren Missouri's and MIEC's experts.[173]

5. The one outlier method is the Peak and Average (P&A) methodology used as an alternative method by Public Counsel. The Commission has rejected the P&A methodology in past rate cases and Public Counsel offered an alternative A&E study in recognition of that previous rejection.[174]

6. The weakness with the P&A methodology is that after dividing the average

[171] Transcript, Page 3022, Lines 2-25.

[172] Brubaker Direct, Ex. 503, Pages 25-26, Lines 16-22, 1-7. See also, Davis Direct, Ex. 7.

[173] Staff Report Rate Design, Ex. 201, Page 8, Lines 3-9.

[174] Marke Direct, Ex. 403, Page 26, Lines 7-13.

and excess components, instead of allocating just the excess average demand to the cost-causing classes, it allocates the entire peak demand to the various classes. That has the effect of double counting the average demand and allocates more costs to large industrials that have a steady but high average demand that does not contribute as much to the system peaks. That method works to the benefit of the residential class whose usage varies more by time of day and time of year.[175]

7. Public Counsel does not propose to adjust rates for the classes based specifically on its P&A study, instead supporting the joint position described in the objected-to non-unanimous stipulation and agreement that all rate classes should be given the same percentage increase.[176]

Conclusions of Law:

The Commission makes no additional conclusions of law for this issue.

Decision:

The Commission will once again reject Public Counsel's P&A study because it has the effect of double counting average demand. Also, because the results of the A&E and BIP studies are similar, the Commission does not need to decide which particular study is most appropriate. Therefore, all the specific sub-issues involving the difference between those studies are moot and do not need to be addressed in this case. The Commission will need to decide whether inter-class rates should be adjusted based on those studies.

C. How should any rate increase be collected from the several customer classes?

Findings of Fact:

1. All of the A&E and BIP class cost of service studies indicate the residential

[175] Brubaker Rebuttal, Ex. 504, Page 6, Lines 1-21.

[176] Post-Hearing Brief of the Office of the Public Counsel, Page 39.

and large transmission service (Noranda) classes are currently providing below average returns. That means those classes should contribute a greater share of Ameren Missouri's revenues than they currently are if they are to match their class cost of service. All studies also show that the small general service, large general service and small primary service are providing above average returns. That means they are currently contributing a greater share of revenue than would be indicated by their class cost of service. The other rate classes contribute revenues close to their cost of service.[177]

2. Ameren Missouri, Public Counsel, MIEC, and all other signatories to the objected-to Noranda special rate stipulation and agreement suggest that no adjustments be made to the class contributions. Instead, they would apply any increases ordered in this case "across the board", in other words, equally to all the customer classes.

3. Staff, MECG, and Wal-Mart would make some adjustments to bring the classes closer to their cost of service. Staff proposes a six-step process to bring the rate classes closer to their cost of service: 1) the Residential and LTS classes would receive a positive .50% revenue neutral adjustment, meaning their rates would increase 0.50% even before any rate increase that would result from this case. The small general service, large general service and small primary service would receive a negative 0.63% revenue neutral adjustment. 2) The portion of the revenue increase or decrease that is attributable to the amortization of the energy efficiency programs from the pre-MEEIA program costs would be assigned directly to the applicable customer classes. 3) The amount of revenue increase awarded to Ameren Missouri that is not associated with step 2 would be determined. 4) Ameren Missouri's rate schedules would be made uniform for certain interrelationships

[177] For example, *see*, Warwick Direct, Ex. 49, Sch. WMW-1.

among the non-residential rate schedules that are integral to Ameren Missouri's rate design. 5) The residential customer charge would remain at $8.00. 6) After steps 1-5 are accomplished, any additional rate increase would apply across the board to all rate classes.[178]

4. MECG and Wal-Mart are particularly concerned about the large general service and small primary service classes. They presented evidence to show that the over-recovery from those classes has been long-standing, going back to the 2007 rate case.[179] To move toward actual cost of service, they ask the Commission to apply a 25% revenue neutral movement toward cost of service, while ensuring that no class receive a rate increase greater than 9.65%.[180]

5. Ameren Missouri has indicated that, aside from leaving the customer charge at $8.00, Staff's proposal is reasonable and would be acceptable. It also indicates that Wal-Mart's rate design proposal is reasonable.[181]

6. The small general service, large general service and small primary service rate classes have received negative rate adjustments in past Ameren Missouri rate cases, meaning the Commission has acted to move those classes closer to their cost of service. In ER-2010-0036, that negative adjustment was 0.61 percent, in ER-2011-0028 it was 1.78 percent, and in ER-2013-0166, it was 0.18 percent.[182]

7. The contribution collected from the various classes can change because of

[178] Scheperle Direct, Ex. 232, Pages 3-4, Lines 17-21, 1-32.

[179] Chriss Cost of Service Direct, Ex. 751, Page 6, Tables 2 and 3.

[180] Chriss Cost of Service Direct, Ex. 751, Pages 9-10, Lines 18-22, 1-6.

[181] Transcript, Page 1494, Lines 2-11.

[182] Fortson Rebuttal, Ex. 215, Schedule BJF-R1.

factors other than Commission action to adjust rates.[183] For example, even though the residential rate class is currently above its cost of service, over time, because of energy savings and the way the allocations work, they will move closer to their cost of service without any rate adjustments by the Commission.[184]

Conclusions of Law:

A. Commission Rule 4 CSR 240-2.115(2)(D) states:

> A nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it. All issues shall remain for determination after hearing.

Decision:

The Commission agrees with Staff, MECG, and Wal-Mart that the existing class contributions to rates are out of balance. The only question is how much of an adjustment should be made to move the rate classes toward their cost of service as shown in the class cost of service studies. The Wal-Mart proposal would move the large general service and small primary service classes to their cost of service more quickly than Staff's proposal, but it would also have a greater impact on the classes that would see larger than average increases, notably the residential class. To minimize rate shock for the classes that will see larger than system average increases, while still moving closer toward actual cost of service, the Commission will adopt Staff's six step proposal.

D. What should the Residential Class customer charge be?

Findings of Fact:

1. The customer charge is the set amount on every customer's bill that must be

[183] Transcript, Page 3022, Lines 2-25.

[184] Transcript, Page 1497, Lines 1-7.

paid even if the customer uses no electricity.

2. Customer-related costs are the minimum costs necessary to make electric service available to the customer, regardless of how much electricity the customer uses. Examples include meter reading, billing, postage, customer account service, and a portion of the costs associated with required investment in a meter, the service line drop, and other billing costs.[185] Customer-related costs are generally recovered through the customer charge while other costs are recovered through volumetric rates that vary with the amount of electricity used.

3. It is important to remember that determining an appropriate customer charge is a question of rate design, not a question of the company's revenue requirement. That means any increase in the company's customer charge would be accompanied by a decrease in volumetric rates so that, in theory, the company recovers the same amount of revenue.

4. In actual practice, because the amount collected from volumetric rates varies with the amount of electricity used, the company will collect less money from volumetric rates when customers use less electricity. Thus, for example, in a cool summer, when customers are using less air conditioning, the company runs the risk of collecting less revenue. For that reason, electric utilities prefer to lessen risk by collecting more of their charges through the fixed customer charge.

5. Ameren Missouri's current customer charge for residential customers is set at $8.00 per month. Staff's class cost of service study would support recovery of a customer

[185] Staff Report Rate Design, Ex. 201, Pages 43-44, Lines 29-31, 1-2.

charge of $8.11 but Staff recommends that the charge remain at $8.00.[186]

6. Ameren Missouri contends a customer charge of over $20 would be supported by the class cost of service studies,[187] but it only proposes to increase the residential customer charge by the same percentage as the overall rate increase that results from this case.[188] At Ameren Missouri's original rate increase that would have increased the customer charge to $8.77.[189] Since Ameren Missouri's requested increase is now lower, the customer charge increase request would be around $8.50. Since the Commission will not give Ameren Missouri the entire increase it has requested, the residential customer charge would be something less than $8.50 under Ameren Missouri's proposal.

7. Because no party is arguing that the customer charge should be based on the results of a particular class cost of service report, the Commission will not address the details of those reports. In any event, the Commission is not bound to set the customer charges based solely on the details of the cost of service studies. The Commission must also consider the public policy implications of changing the existing customer charges. There are strong public policy considerations in favor of not increasing the customer charges.

8. Residential customers should have as much control over the amount of their bills as possible so that they can reduce their monthly expenses by using less power, either for economic reasons or because of a general desire to conserve energy. Leaving the

[186] Staff Report Rate Design, Ex. 201, Page 43, Lines 26-28.

[187] Davis Rebuttal, Ex.9, Page 13, Line 1.

[188] Transcript, Page 1498, Lines 16-25.

[189] Davis Rebuttal, Ex. 9, Page 11, Lines 4-5.

monthly charge where it is gives the customer more control.

9. Since Ameren Missouri has not shown a strong reason to increase the customer charge and is seeking only a small, largely token increase, the Commission finds that the existing customer charges for the residential class should not be increased.

Conclusions of Law:

The Commission makes no additional conclusions of law for this issue.

Decision:

The Commission finds that Ameren Missouri's customer charges for residential customers shall remain at $8.00.

E. Should the Commission approve Wal-Mart's proposed shift to increase the demand component of the hours-use rate design for Large General Service and Small Primary Service?

Findings of Fact:

1. This sub-issue concerns rate design only within the large general service and small primary service class. Wal-Mart looked at Ameren Missouri's class cost of service study and noted that approximately 66.1% of non-energy efficiency base revenues for that class are demand-related, while 31.7% are energy related. However, under the "hours-use" intra-class rate design structure used by Ameren Missouri, a large portion of the class' demand-related costs are collected through energy charges.[190]

2. The large general service and small primary service class currently uses a declining three-block "hours-use" rate structure. As usage moves up to the next block, the rate declines. The "hours-use" rate structure has the effect of shifting demand cost

[190] Chriss Cost of Service Direct, Ex. 751, Page 11, Lines 15-22.

responsibility from lower load factor customers to those with higher load factors.[191] Wal-Mart is a higher load factor customer and does not want to subsidize other customers within its rate class.[192]

3. Ameren Missouri would spread the increase resulting from this rate case equally among the three blocks. Wal-Mart proposes that the second and third block energy rates remain at their current levels and that the customer charge for the class be increased by the percentage of overall revenue increase. Half of the remaining overall increase would be applied to the first block energy charge and the other half to the demand charge.[193]

4. Wal-Mart's proposal would have a large and unfavorable impact on lower load factor customers, possibly resulting in double digit percentage increases for those customers, in addition to whatever rate increase results from this case. Meanwhile, the proposal would reduce rates for higher load customers by only a few percentage points.[194]

5. The "hours-use" rate design has been in use in Missouri since 1990 when the Commission approved its use as part of a settlement of a revenue complaint case and a rate design case.[195]

6. All the other investor-owned electric utilities in Missouri use an "hours-use"

[191] Chriss Cost of Service Direct, Ex. 751, Page 12, Lines 1-14.

[192] Chriss Cost of Service Direct, Ex. 751, Page 13, Lines 1-7.

[193] Chriss Cost of Service Direct, Ex. 751, Page 17, Lines 14-20.

[194] Davis Rebuttal, Ex. 9, Page 9. Lines 4-15. *In the Matter of the Investigation of Union Electric Company's Class Allocation and Rate Design,* Report and Order, Case No. EO-87-175, 30 Mo. P.S.C. (N.S.) 406 (1990).

[195] Davis Rebuttal, Ex. 9, Pages 7-8, Lines 21-22, 1-10.

rate design for the non-residential customers.[196]

7. Staff recommends against accepting Wal-Mart's proposal because it believes more study is needed to assess the rate impact of the proposed changes on the 11,000 other customers in those rate classes.[197]

Conclusions of Law:

The Commission makes no additional conclusions of law for this issue.

Decision:

Wal-Mart is proposing a change in a long-standing rate structure that could have significant rate impact on 11,000 customers. There is not enough evidence in the record for this case to justify making that change at this time. The Commission is willing to examine this question in more detail in Ameren Missouri's next rate case and expects the parties to more fully develop the evidence at that time. The Commission will not adopt Wal-Mart's proposal at this time.

F. Should the Commission approve Wal-Mart's recommendation to require the Company to present analyses of alternatives to the hours-use rate design in its next rate case?

Findings of Fact:

1. As discussed in the previous sub-issue, Wal-Mart is generally dissatisfied with the "hours-use" rate design used by Ameren Missouri and all other electric utilities in Missouri. It asks the Commission to order Ameren Missouri to develop alternative rate designs for the large general service and small primary class that more closely reflect the company's cost of service and do not use the hours-use rate design for the energy charge. It asks that Ameren Missouri be ordered to present those alternatives in

[196] Fortson Rebuttal, Ex. 215, Pages 7-8, Lines 16-17, 1-2.

[197] Fortson Rebuttal, Ex. 215, Page 7, Lines 12-15.

its next base rate case.[198]

2. Ameren Missouri indicates it is satisfied with the current "hours-use" rate design and asserts that if Wal-Mart wants to see a change it has the ability to perform and pay for its own cost study.[199]

Conclusions of Law:

The Commission makes no additional conclusions of law for this issue.

Decision:

While the Commission is willing to look at this issue in the next rate case, it agrees that Wal-Mart has the resources to perform its own study and will not order Ameren Missouri to undertake the study proposed by Wal-Mart. Each party may perform its own study if it wishes to do so.

11. Economic Development Rate Design Mechanisms

A. Should the Commission expand the application of Ameren Missouri's existing Economic Development Riders?

Findings of Fact:

1. On October 20, 2014, the Commission issued an order in this case that directed the parties to address questions about rate design mechanisms that could be used to promote stability or growth of customer levels in geographic locations where existing infrastructure is underutilized. That order directed Staff to file testimony on that question and invited other parties to also address the issue.[200]

2. The responses from the parties to that question raised questions about the

[198] Chriss Cost of Service Direct, Ex. 751, Pages 17-18, Lines 20-21, 1-2.

[199] Initial Post-Hearing Brief of Ameren Missouri, Page 150.

[200] Order Directing Consideration of a Certain Rate Design Question, File No. ER-2014-0258, October 20, 2014

scope and effectiveness of Ameren Missouri's existing Economic Development Riders.

3. Staff's response to the Commission's questions described Ameren Missouri's existing economic development riders and provided additional ideas for new or expanded programs. Staff did not recommend the Commission take any action at this time but recommended the Commission form a collaborative to collect ideas for future action from all interested stakeholders.[201]

4. Public Counsel also filed testimony discussing Ameren Missouri's existing Economic Development Riders and suggesting ideas for new or expanded programs. In particular, Public Counsel compared Ameren Missouri's existing Riders to those currently offered by Kansas City Power & Light Company and The Empire District Electric Company.[202]

5. Ameren Missouri filed the supplemental direct testimony of William Davis in response to the Commission's order. Davis' testimony describes the company's existing Economic Re-Development Rider (ERR). That Rider has been in place since 2007 and is designed to encourage re-development of certain sites in the City of St. Louis. Eligibility for participation in the Rider is limited to industrial and large commercial rate classes.[203]

6. Staff and Public Counsel also describe a more general Ameren Missouri Rider known as the Economic Development and Retention Rider (EDRR).[204]

7. On March 9, several parties signed and filed a non-unanimous stipulation and agreement regarding class cost of service and rate design. The primary focus of the

[201] Staff Report Rate Design, Ex. 201, Page 45, Lines 18-20.

[202] Marke Direct, Ex. 403, Pages 3-23.

[203] Davis Supplemental Direct, Ex. 8.

[204] Marke Direct, Ex. 403, Page 18, and Staff Report Rate Design, Ex. 201, Page 48.

stipulation and agreement was the provision of a reduced rate for Noranda. But it also included an exemplar economic development tariff for Ameren Missouri. That proposed tariff was never discussed when evidence was presented at the hearing, as it was filed five days after the issue was heard. As a result, there is no evidentiary support for it in the record.

Conclusions of Law:

The Commission makes no additional conclusions of law for this issue.

Decision:

The Commission does not believe any action regarding Ameren Missouri's economic development riders is appropriate at this time. As will be noted subsequently in this order, the Commission will establish a collaborative to look at this issue more closely.

B. Should the Commission modify Ameren Missouri's existing Economic Development Riders to require recipients to participate in the Company's energy efficiency programs?

Findings of Fact:

1. The Division of Energy proposed that Ameren Missouri be directed to modify its existing economic development riders to require active participation in Ameren Missouri's MEEIA programs as a condition for participation in the riders.[205]

2. Ameren Missouri currently has two economic development riders in its tariffs. The Economic Re-Development Rider (ERR), which is designed to encourage re-development of certain sites in the City of St. Louis, and a more general Ameren Missouri Rider known as the Economic Development and Retention Rider (EDRR). Thus far only one customer has taken advantage of the EDRR.[206] No customers currently take service

[205] Lohraff Direct, Ex. 702, Page 2, Lines 10-13.

[206] Staff Report Rate Design, Ex. 201, Page 53, Lines 22-26.

under the ERR.[207]

3. MIEC, the party that represents many of the industrial-type customers who would be eligible to participate in the economic development riders opposed the idea of requiring participation in MEEIA as unnecessary and illegal.[208]

4. The other parties that responded to the request that participation in MEEIA be made a requirement to take service under an economic development rider raised questions and concerns about that proposal that can best be addressed through a collaborative process.[209]

Conclusions of Law:

A. The MEEIA statute, specifically section 393.1075.7, RSMo (Cum. Supp. 2013), allows certain large users of electricity to opt out of participation in MEEIA programs.

Decision:

Participation in Ameren Missouri's economic development riders is not robust at this time and adding criteria for participation will not encourage greater participation. The Commission will not make participation in MEEIA a requirement for receiving service through Ameren Missouri's economic development riders. As will be noted subsequently in this order, the Commission will establish a collaborative to look at this issue more closely.

C. Should the Commission open a docket to explore the role economic development riders have across regulated industries (i.e. water, electric, natural gas) and/or to further explore issues raised by parties in this case and issues the Commission

[207] Staff Report Rate Design, Ex. 201, Page 54, Lines 11-12.

[208] Brubaker Rebuttal, Ex. 504, Pages 25-26.

[209] *See,* Davis Rebuttal, Ex. 9, Pages 35-37.

inquired about at the beginning of the case?

Findings of Fact:

1. Staff suggested the Commission open a collaborative to allow all interested stakeholders to discuss possible changes to Ameren Missouri's existing economic development riders.

Conclusions of Law:

The Commission makes no additional conclusions of law for this issue.

Decision:

The Commission will establish a collaborative process to more closely examine the use of economic development riders. The Commission will open a new working case for that purpose, and the parameters of that collaborative will be established in an order that will be issued in that new case.

12. Street Lighting

A. Can the Commission mandate or require that the Company sell its streetlights to the Cities?

Findings of Fact:

1. Ameren Missouri offers electricity to power municipal streetlights under two different provisions of its tariff. Under rate schedule 5(M), the municipal customer pays for the electricity needed to power the lights, but Ameren Missouri installs, owns and maintains the light fixtures, poles, wires, and other connections needed to provide street lighting. Ameren Missouri recovers those costs through the rate it charges the customer. Under the alternative 6(M) rate schedule, the municipal customer installs, owns, and maintains the light fixtures, poles, wires, and other connections, and pays a rate sufficient to recover the

cost of the electricity needed to power the lights.[210]

2. The Cities of O'Fallon and Ballwin note that the 6(M) rate for municipally-owned streetlight fixtures is lower than the corresponding 5(M) rate for streetlight fixtures owned by the company. They would like to explore the possibility of moving from the 5(M) rate to the lower 6(M) rate, believing that by doing so they could save a substantial amount of money.[211]

3. Steve Bender, Director of Public Works for the City of O'Fallon testified that his city pays over a million dollars per year under the 5(M) rate, but would pay only $180,000 per year under the 6(M) rate.[212] Robert Kuntz, City Administrator for the City of Ballwin, testified that his city would also pay less under the 6(M) rate.[213] Neither witness testified as to any additional costs the Cities would incur if they took responsibility for maintenance of the street lighting facilities under the 6(M) rate.

4. To qualify for service under the 6(M) tariff, the Cities must own their own streetlight fixtures. To that end, they have asked Ameren Missouri to negotiate to sell the fixtures at a fair market price.[214] Ameren Missouri has refused to enter into such negotiations.[215] The Cities ask the Commission to force Ameren Missouri to negotiate for the sale of the streetlights and have proposed a tariff modification to make that happen.[216]

5. Ameren Missouri explains that it is not interested in selling the streetlight

[210] Davis Rebuttal, Ex. 9, Page 40, Lines 3-13.
[211] Bender Direct, Ex. 850, Page 3, Lines 6-12.
[212] Bender Direct, Ex. 850, Page 3, Lines 6-12.
[213] Kuntz Surrebuttal, Ex. 853, Page 4, Lines 8-12.
[214] Bender Direct, Ex. 850, Page 5, Lines 27-30.
[215] Wakeman Rebuttal, Ex. 46, Page 15, Lines 13-19.
[216] Bender Direct, Ex. 850, Attachment D.

fixtures to the Cities for two reasons. First, the company says it is in business to construct, own, and operate electrical distribution systems, including streetlights, not to build such systems for sale to other entities. Second, the company does not want to sell the streetlight fixtures because they are an integrated part of its electrical distribution system. [217]

6. David Wakeman, Ameren Missouri's Senior Vice President of Operations and Technical Services,[218] testified, and the Commission finds, that the component parts of the streetlight facilities are much more than just the light fixtures and poles visible from the street. As Wakeman explained, those components include: "streetlight fixtures, streetlight poles, cables supplying power to those streetlights and the supply to the cable, which can include transformers or secondary pedestals."[219]

7. The mere existence of these other components is not the only complicating factor. The real problem is that the other components are also used by Ameren Missouri to supply electric service to its other customers. The cables supplying power to the streetlights often share an underground trench with other distribution cables. The street light fixtures may be attached to poles that support other components of the overhead electric distribution system.[220]

8. For example, the electrical cable that feeds a streetlight might be fed out of a transformer that contains 12,000 volts of electricity and also serves the homes and businesses in the area.[221] Ameren Missouri's own technicians are trained to deal with that amount of electricity, but allowing other parties to have access to its electrical system would

[217] Wakeman Rebuttal, Ex. 46, Page 17, Lines 10-14.
[218] Wakeman Rebuttal, Ex. 46, Page 1, Lines 11-13.
[219] Wakeman Rebuttal, Ex. 46, Page 16, Lines 15-17.
[220] Wakeman Rebuttal, Ex. 46, Page 16, Lines 17-22.
[221] Transcript, Page 1809, Lines 18-25.

put them, as well as the system, at risk.[222]

9. To avoid that problem, if the Cities were to take ownership of the streetlights, Ameren Missouri would have to reconstruct the system to separate the streetlights from the electric system and install a disconnect switch so that the Cities could shut off power to the streetlights if they needed to perform maintenance work on them.[223]

10. Some cities do own street lights that are served under the 6(M) rates. Generally, such systems are installed by the developer of a new subdivision and are separated from the rest of the electric distribution system by a disconnecting device.[224] In fact, the City of O'Fallon has an ordinance that requires developers of new subdivisions to construct streetlights that would conform to Ameren Missouri's 6(M) lighting requirements.[225]

11. The Cities want to be able to move to the 6(M) rate because they contend the 5(M) rate for company owned facilities is clearly excessive. They believe the rate is excessive because the amount by which the 5(M) rate exceeds the 6(M) rate amounts to approximately $185.00 per fixture, per year. Over the 33-year life span for such fixtures established in the company's depreciation schedules, the Cities believe they would pay more than three times the value of each fixture.[226] The Cities imply that Ameren Missouri is refusing to sell the streetlights to them to keep them captive to what they believe to be an unreasonably high 5(M) rate.

12. The Cities misunderstand how the Commission sets rates for the street

[222] Wakeman Rebuttal, Ex. 46, Page 17, Lines 18-23.

[223] Transcript Page 1811, Lines 8-13.

[224] Transcript, Page 1822, Lines 19-24.

[225] Transcript, Page 1860, Lines 12-22.

[226] Bender Direct, Ex. 850, Page 3, Lines 13-28.

lighting class of customers. As is explained in more detail later in this order, Ameren Missouri and other parties to this case perform class cost of service analysis to determine the cost to serve each of the various rate classes. For purposes of those studies, the company-owned 5(M) service classification is combined with the customer-owned 6(M) classification into a single lighting class.[227] The class cost of service studies prepared by Ameren Missouri, Staff and MIEC all show that the lighting class as a whole currently pays rates that are close to Ameren Missouri's cost to serve that class.[228] That means that, in the long term, Ameren Missouri's overall income from the lighting class will be the same whether the Cities take service under the 5(M) or the 6(M) classification. If the Cities switch from the 5(M) classification to the 6(M) classification, rates will be adjusted between those classifications in a future rate case to account for that change to allow Ameren Missouri to recover its costs to serve the lighting class. Thus, Ameren Missouri does not have a financial incentive to "trap" its customers in the 5(M) classification.

13. Ameren Missouri's 5(M) tariff contains a provision that allows a street lighting customer to give notice to the company of its desire to discontinue receiving 5(M) service. Neither City has thus far given such notice to Ameren Missouri.[229] Much of the Cities' concern about Ameren Missouri's action is based on a fear that if they gave such notice, Ameren Missouri would scrap the existing streetlight fixtures rather than sell them to the Cities in place. They contend that such action by the company would be economically

[227] Warwick Direct, Ex. 49, Page 5, Lines 7-10. Warwick's testimony indicates the company has three lighting classes, including "Municipal Lighting – Incandescent 7(M). The 7(M) classification has no customers and is to be eliminated in the revised tariffs that will result from this case. *See*. Davis Rebuttal, Ex. 9, Page 52, Lines 1-13.

[228] Davis Rebuttal, Ex. 9, Page 39, Lines 16-19.

[229] Transcript, Page 1864, Lines 3-6, as to the City of Ballwin. There is no indication in the record that the City of O'Fallon has issued such a notice.

wasteful and should be prevented by the Commission.

14. Because neither City has actually given notice of its intent to discontinue receiving 5(M) service, its concerns about economic waste from the scrapping of still useful streetlight fixtures is largely hypothetical. Ameren Missouri's witness, David Wakeman, testified several times that he did not know what the company would actually do with the existing street lighting fixtures if the Cities chose to discontinue 5(M) service.[230]

15. This is not the first time the Cities have brought this matter to the Commission's attention. In April 2014, the Cities filed a complaint before the Commission seeking to force Ameren Missouri to negotiate the sale of its street lighting facilities. The Commission handled that complaint in File No. EC-2014-0316. In August 2014, the Commission dismissed that complaint for failure to state a claim upon which relief can be granted, finding that it has no authority to order Ameren Missouri to sell property that it does not wish to sell. The Cities' appeal of the dismissal of their complaint is currently pending before Missouri's Western District Court of Appeals.[231]

Conclusions of Law:

A. The Cities claim that Section 393.140(5), RSMo 2000, gives the Commission authority to order Ameren Missouri to negotiate the sale of its street lighting fixtures to the Cities. The relevant portion of that statute says:

> Whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that … the acts or regulations of any such persons or corporations are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law, the commission shall determine and prescribe … the just and reasonable acts and regulations to be done and observed.

[230] Transcript, Page 1797, Lines 13-24. *See also*, Page 1834, Lines 13-19.

[231] The pending appeal's file number at the Court of Appeals is WD78067.

On that basis, the Cities assert the Commission has authority to find that Ameren Missouri's refusal to negotiate the sale of the street lighting fixtures, and particularly its threat to scrap the fixtures rather than sell them to the Cities, is unjust and unreasonable and should be prohibited.

B. The specific statute that governs the transfer of utility property, Section 393.190.1, RSMo (Cum. Supp. 2013), in relevant part, says:

> 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.

While that statute declares what the utility must do if it wants to sell used and useful property, it does not declare that the Commission can order a utility to sell such property. The Commission has only the authority given it explicitly by statute or reasonably incidental to such authority.[232] Thus, from negative implication, the Commission has no such authority.

C. Further, Section 71.525, RSMo 2000, restricts the ability of a municipality to condemn the used and useful property of a public utility if the municipality will use the property for the same or substantially similar purpose as the public utility. Subsection 71.525.3 goes on to make it clear that the limitations on condemnation apply "no matter whether any other … provision of law appears to convey the power of condemnation of such property by implication." Essentially, the Cities are asking the Commission to condemn Ameren Missouri's property to allow them to operate a street lighting system in

[232] *State ex rel. Praxair v. Pub. Serv. Com'n*, 344 S.W.3d 178, 192 (Mo 2011).

the company's place. Such action is forbidden by the statute.[233]

D. The Cities cite a 1987 telephone case as an example of a Commission finding that it does have authority to force a utility to sell its property.[234] In that case, the Commission found that it had sufficient authority to require independent telephone companies to essentially sell the company-owned telephone equipment inside customer homes to the customers. The companies had been paid for that equipment through accelerate depreciation. However, the basis for the Commission's finding of authority was a mandate from the Federal Communications Commission to take such action to enable the development of competition in the telephone industry. There is no such federal mandate in this case, and the *Detariffing* case does not justify a finding of Commission authority to order the sale of the street lighting fixtures.

E. The Commission will take administrative notice of its decision in in File No. EC-2014-0316.

Decision:

There has been a great deal of confusion, misunderstanding, and frustration surrounding this issue. But the actual issue before the Commission is quite narrow. The Cities ask the Commission to order Ameren Missouri to implement a tariff that would compel the Company to negotiate the sale of its street lighting fixtures when demanded by its customers. After considering the evidence and the arguments presented by the parties, the Commission decides that the tariff proposed by the Cities is not appropriate.

Previously, when the Cities filed a complaint to bring this question before the

[233] *See also*, *City of Kirkwood v. Union Electric. Co*., 896 S.W.2d 946 (Mo. App. E.D. 1995).

[234] *Investigation of the Detariffing of Embedded Customer Premises Equipment (CPE) Owned by Independent Telephone Companies*, 29 Mo. P.S.C. (N.S.) 299 (1987).

Commission, the Commission concluded that the complaint should be dismissed without a hearing because the Commission does not have authority to force Ameren Missouri to sell its property. The Commission will not contradict that earlier conclusion.

Further, having now heard evidence about the factual basis for the Cities' claim to Ameren Missouri's property, the Commission also concludes that the Cities' claim must fail on its facts. Even if it is assumed that Section 393.140(5), RSMo 2000, gives the Commission authority to compel Ameren Missouri to negotiate to sell its street lighting fixtures to correct an unjust or unreasonable act or regulation of the company, the Cities have not shown that Ameren Missouri has done anything unjust or unreasonable.

The cornerstone of the Cities' argument is that Ameren Missouri would be acting unreasonably and would be wasting ratepayer money if it were to actually choose to scrap the street lighting fixtures rather than allow the Cities an opportunity to buy them. Certainly, the Commission would closely examine the prudence of that decision in any future rate case where the company sought to recover such costs in rates. But at this time that is purely a hypothetical concern rather than a basis for granting relief to the Cities. The Commission will not require Ameren Missouri to implement a tariff requiring it to negotiate to sell its property to the Cities.

B. Should the Commission approve a revenue-neutral adjustment between customer-owned and Company-owned lighting rates?

Findings of Fact:

1. As previously discussed, the class cost of service studies prepared by all the parties to this case showed that the revenue Ameren Missouri collects from the overall

lighting class closely matches the company's cost to serve that class of customers.[235] But in response to the Cities' claim that the 5(M) rate was unreasonable, Ameren Missouri's witness, William Davis, took a closer look at the intra-class balance of the 5(M) and 6(M) rates. In his rebuttal testimony, Davis reports that the 5(M) rates are currently above their costs of service, and the 6(M) rates are correspondingly below their cost of service.[236]

2. To adjust the 5(M) and 6(M) rate to make them match their actual cost of service would require a $3.9 million increase to the 6(M) rate schedule, with a corresponding $3.9 million decrease to the 5(M) rate. Because the 6(M) rate class is much smaller than the 5(M) rate class, the $3.9 million shift would roughly double the rates for the 6(M) rate class while reducing the rates for the 5(M) rate class by about 11 percent.[237] The shift would be revenue neutral for Ameren Missouri.

3. William Davis suggested the Commission might want to take steps in this rate case to move the 5(M) and 6(M) rate classifications closer to their actual costs of service. He proposes a gradual shifting of those costs to avoid a rate shock for the 6(M) customers, but did not actually propose such a shift in this case. Since he did not raise the possible rate shift until he filed his rebuttal testimony, the other parties did not have an opportunity to verify Davis' intra-class cost of service findings.

Conclusions of Law:

The Commission makes no additional conclusions of law for this sub-issue.

Decision:

The Commission is concerned that Ameren Missouri's cost recovery from the 5(M)

[235] Davis Rebuttal, Ex. 9, Page 39, Lines 16-19.

[236] Davis Rebuttal, Ex. 9, Page 40, Lines 16-21.

[237] Davis Rebuttal, Ex. 9, Pages 40-41, Lines 21-23, 1-2.

and 6(M) classification within the overall lighting class be balanced to match the company's cost to serve those classifications. However, the Commission is not willing to make such rate shifts until all parties have an opportunity to review the basis for such a shift.

The Commission will not order a rate shift between the 5(M) and 6(M) rate classifications at this time, but will direct Ameren Missouri to further study the appropriateness of the 5(M) rate compared to the 6(M) and to present the results of that study in its direct case for its next rate case.

C. Should the Commission eliminate the termination fees from the Ameren Missouri-owned lighting rate?

Findings of Fact:

1. The Cities challenge a provision in Ameren Missouri's current lighting tariffs that creates a $100 per lamp early termination fee applicable if a street lighting customer in the 5(M) classification asks the company to remove the fixtures within either three or ten years of the installation of the fixture, depending upon the type of fixture to be removed. The Cities denounced that early termination fee as an unreasonable barrier to their goal of migrating from the 5(M) classification to the 6(M) classification.[238]

2. The early termination fees would apply to about ten percent of the total streetlights in the two cities.[239]

3. The fee is not designed to recover the full cost of the street lighting fixtures that would be removed. Rather, the early termination fee is intended to give a customer pause before requesting a change in a lighting service. For example, it is designed to discourage a customer from initially requesting a mercury vapor light and three months

[238] Bender Direct, Ex. 850, Page 4, Lines 16-27.

[239] Transcript, Page 1861, Lines 20-24, and Page 1864, lines 15-18.

later asking to change to a high pressure sodium light.[240]

Conclusions of Law:

The Commission makes no additional conclusions of law for this issue.

Decision:

The early termination fee is a reasonable provision in Ameren Missouri's lighting tariff designed to ensure the costs incurred by the company are paid by the customers that cause that cost. The Commission will not order Ameren Missouri to remove that fee from its tariff.

13. Labadie ESPs

A. Should the Company's investment in electrostatic precipitators installed at the Labadie Energy Center be included in the Company's rate base?

Findings of Fact:

1. Ameren Missouri has installed electrostatic precipitators (ESPs)[241] at Units 1 and 2 of its coal-fired Labadie Energy Center to comply with the U.S. Environmental Protection Agency's (EPA's) Mercury and Air Toxics Standards (MATS) rule. [242] It now seeks to add the installation costs to its rate base.

2. Staff determined that the construction and testing requirements for the ESP's for Unit 2 were completed in August 2014 and for Unit 1 in December 2014. The ESPs for both units were fully operational and in-service before the December 31, 2014 end of the

[240] Davis Rebuttal, Ex. 9, Page 43, Lines 7-18.

[241] Staff describes the ESPs as "highly efficient filtration devices consisting of several chambers that contain numerous electro-statically charged steel plates that collect and remove fine particulate matter from flowing emission gases." Staff Revenue Requirement Report, Ex. 202, Page 49, Lines 14-16.

[242] Michels, Amended Rebuttal, Ex. 26, Page 2, Lines 13-16.

true-up period.[243]

3. Staff has reviewed the installation of the ESPs and has determined the trued-up costs pertaining to that project as of December 31, 2014.[244]

4. No party challenged the fact that the ESPs are used and useful or the amount of costs incurred to install the pollution control devices. However, Sierra Club challenged the prudence of Ameren Missouri's decision to install the ESPs. Sierra Club does not oppose pollution control devices in general but contends Ameren Missouri has not sufficiently studied the relative cost of immediately shutting down the Labadie coal-fired plant rather than incurring the cost to install the ESPs and additional pollution control devices that will need to be installed in the future, as well as the possibility that the plant will need to be shut down in the relatively near future to comply with the U.S. Environmental Protection Agency's proposed carbon limiting regulations.[245]

5. In response to Sierra Club's criticisms, Ameren Missouri offered the rebuttal testimony of Matt Michels, Ameren Missouri's Senior Manager of Corporate Analysis. Mr. Michels pointed to Ameren Missouri's recent Integrated Resource Plan (IRP) filing to demonstrate that installing the ESPs and keeping the plant in operation was cost effective.[246]

6. In response to Michels' rebuttal testimony, Sierra Club's witness, Dr. Hausman, narrowed his criticism of Ameren Missouri's Labadie analysis to two points.[247]

[243] Staff Revenue Requirement Report, Ex. 202, Page 49, Lines 17-28.

[244] Carle Surrebuttal, Ex. 208, Page 5, Lines 12-14. The precise cost is highly confidential.

[245] Hausman Direct, Ex. 900, Pages 5-13.

[246] Michels Rebuttal, Ex. 26.

[247] Sierra Club's briefs also delve into broader criticisms of Ameren Missouri's IRP filing. The overall adequacy of the IRP filing is not being litigated in this proceeding. The only issue before the

First, he disagrees with Ameren Missouri's modeling in its IRP of the cost of compliance with greenhouse gas restrictions that might be imposed by the EPA's proposed Clean Power Plan.[248] Second, he contends Ameren Missouri should have modeled the option of retiring either Labadie Unit 1 or Unit 2 individually rather than as the whole plant because perhaps one unit could be retired without requiring any investment in replacement generation or transmission upgrades, even if the entire plant could not.[249]

7. Because of these deficiencies, Hausman recommends the Commission refuse to allow Ameren Missouri to include the ESP installation costs in rate base until the company "resolves these deficiencies and presents the Commission with an adequate justification for the prudence of these expenditures."[250]

8. The EPA's proposed Clean Power Plan was proposed in June 2014, but it is not yet in final form and no one knows how the final regulation regulate carbon emissions. Ameren Missouri's IRP analysis assumed that there was an 85 percent chance that any carbon restricting regulation would require indirect regulation of carbon emissions rather than placing a specific price on such emissions.[251] The currently proposed regulations do not include a carbon tax or a cap and trade regime that would impose such direct costs.[252]

9. The alternative to imposition of a direct cost on carbon emissions is indirect regulation where instead of making carbon emissions more expensive directly, the regulation would require utilities to replace polluting generating sources with less polluting

Commission at this time is the prudence of Ameren Missouri's decision to install the ESPs at Labadie Units 1 and 2.

[248] Hausman Surrebuttal, Ex. 901, Pages 5-9.

[249] Hausman Surrebuttal, Ex. 901, Page 10, Lines 1-15.

[250] Hausman Surrebuttal, Ex. 901, Page 9, Lines 18-22.

[251] Transcript, Page 1937, Lines 12-25.

[252] Transcript, Pages 1942-1943, Lines 24-25, 1-3.

sources. So, for example, a coal-fired plant might be replaced by a natural gas-fired combined-cycle plant.[253] That also means that less efficient coal-fired plants, plants that produce more carbon dioxide because they are less efficient, would be retired before the Labadie plant, which is relatively efficient.[254] The retirement of less efficient coal fired plants would increase electricity prices, which would make the Labadie plant more profitable[255]

10. Based on that scenario, which Ameren Missouri reasonably found to be most likely, Ameren Missouri's IRP study concluded that investing in environmental controls, along with other investments and operating costs needed to keep Labadie operating until 2023 would save customers $3.6 billion.[256]

11. Ameren Missouri is required to comply with the MATS rule by April 16, 2016. Ameren Missouri needed to either install the ESPs by that time, or shut down the Labadie plant by that date to comply with the rule.[257] Shutting down the Labadie plant by April 2016 would require additional upgrades to the transmission grid to ensure reliability as well as the addition of new generating capacity.[258]

Conclusions of Law:

A. Sierra Club challenges the prudence of Ameren Missouri's decision to install ESP's at Units 1 and 2 of its Labadie Plant rather than shut down the plant by April 2016 in order to comply with the MATS standards. That challenge implicates what is described as

[253] Transcript, Page 1943, Lines 3-24.

[254] Transcript, Page 1949, Lines 10-25.

[255] Transcript, Page 1938, Lines 17-25.

[256] Michels Amended Rebuttal, Ex. 26, Page 12, Lines 6-10.

[257] Michels Amended Rebuttal, Ex. 26, Page 17, Lines 6-10. *See also*, Hausman Direct, Ex. 900, Page 9, Lines 1-13.

[258] Michels Amended Rebuttal, Ex. 26. Page 18, Lines 10-16.

the prudence standard. Missouri's courts have described that standard as follows:

> A utility's costs are presumed to be prudently incurred. The presumption does not, however, survive a showing of inefficiency or improvidence. If some other participant in the proceedings alleges that the utility has been imprudent in some manner, that participant has the burden of creating a serious doubt as to the prudence of the expenditure. If that is accomplished, the utility then has the burden of dispelling those doubts and proving the questioned expenditure was in fact prudent. The prudence test should not be based upon hindsight but upon reasonableness. The utility's conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the utility had to solve its problem prospectively rather than in reliance on hindsight. In effect, the PSC's responsibility is to determine how reasonable people would have performed the tasks that confronted the utility.[259]

Thus, Sierra Club has the burden of demonstrating a serious doubt about the prudence of Ameren Missouri's decision before Ameren Missouri must defend its prudence

Decision:

Sierra Club has not carried its burden of demonstrating a serious doubt about the prudence of Ameren Missouri's decision to install ESPs at Unit 1 and Unit 2 of its Labadie plant. Indeed, Sierra Club does not actually allege that the installation of the ESPs at Labadie was imprudent. Rather, it contends Ameren Missouri did not perform a sufficient analysis of costs and benefits to properly determine whether customers would have been better off if the company had immediately shut down one or more of the Labadie units to comply with an April 2016 deadline to comply with the EPA's MATS regulation. Yet, Ameren Missouri's IRP analysis demonstrated that ratepayers would save approximately $3.6 billion if the Labadie plant remains on line until 2023.

Sierra Club also speculates that Ameren Missouri did not perform a sufficient analysis to assess the possibility that future greenhouse gas regulations might make

[259] *Atmos Energy Corp. v. Office of Public Counsel*, 389 S.W.3d 224, 228 (Mo. App. W.D. 2012).

continued operation of the Labadie plant financially unviable. Ameren Missouri's analysis took into account its reasonable evaluation of what such regulations would likely require, but no such greenhouse gas regulations are currently in effect, and no one can know with any certainty what form such regulations might take in the future.

Sierra Club's criticisms of Ameren Missouri's cost-benefit analysis may be an appropriate topic to be raised when Ameren Missouri's IRP filing is discussed, but Ameren Missouri's decision to install the now fully operational and in-service ESPs is presumed to be prudent. Those costs identified in Staff's testimony may be included in Ameren Missouri's rate base.

14. Fuel Adjustment Clause ("FAC")

The parties identified several sub-issues regarding Ameren Missouri's fuel adjustment clause (FAC). Many of those issues regarded disputes between Public Counsel and Ameren Missouri about the sufficiency and timeliness of the evidentiary support the company offered to justify continuation of the FAC. During the course of the hearing, Public Counsel and Ameren Missouri filed a non-unanimous stipulation and agreement that resolved all disagreements between those parties and allowed for the continuation of the FAC with a few changes that were incorporated into a proposed tariff attached to the stipulation and agreement.[260]

Consumers Council objected to the stipulation and agreement because it presupposes that the FAC will be continued, a result it opposes. Because of Consumers Council's objection, the Commission cannot approve the non-unanimous stipulation and

[260] Non-Unanimous Stipulation and Agreement Regarding Some Fuel Adjustment Clause Issues. Filed March 6, 2015.

agreement[261] and must resolve the issues based on competent and substantial evidence. The non-unanimous stipulation and agreement becomes merely a joint position statement of the signatory parties to which they are not bound. However, both Ameren Missouri and Public Counsel have indicated their intent to adhere to that joint position.

Should Ameren Missouri be allowed to continue to use a fuel adjustment clause?

Findings of Fact:

1. Before addressing other issues regarding the implementation of Ameren Missouri's fuel adjustment clause, the Commission must address the fundamental issue of whether Ameren Missouri should be allowed to continue to use a fuel adjustment clause.

2. The Commission first allowed Ameren Missouri to implement a fuel adjustment clause in a previous Ameren Missouri rate case, ER-2008-0318. .[262] The approved fuel adjustment clause includes an incentive mechanism that requires Ameren Missouri to pass through to its customers 95 percent of any deviation in fuel and purchased power costs from the base level. The other 5 percent of any deviation is retained or absorbed by Ameren Missouri.[263] The Commission has approved the continuation of that fuel adjustment clause in each subsequent Ameren Missouri rate case.

3. In this case, Ameren Missouri proposed that the Commission allow it to continue to use its existing fuel adjustment clause.[264] Consumers Council did not present

[261] Commission Rule 4 CSR 240-2.115(D).

[262] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service*, Report and Order, Case No. ER-2008-0318, 18 Mo. P.S.C. 3d 306, 361, January 27, 2009.

[263] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service*, Report and Order, Case No. ER-2008-0318, 18 Mo. P.S.C. 3d 306, 366-367, January 27, 2009.

[264] Barnes Direct, Ex. 2, Pages 3-4, Lines 23,1-2.

any testimony on this issue, but it did cross examine witnesses presented by other parties and urged the Commission to discontinue Ameren Missouri's fuel adjustment clause. Consumers Council also asks the Commission to change the existing sharing mechanism to create a 50/50 split, with Ameren Missouri retaining or absorbing half of any deviation from the base level of fuel and purchased power costs. The Commission will address the proposed modification of the sharing mechanism in the next section of this report and order.

4. When it first allowed Ameren Missouri to implement a fuel adjustment clause in ER-2008-0318, the Commission found that Ameren Missouri should be allowed to establish a fuel adjustment clause because its fuel costs were substantial, beyond the control of the company's management, and volatile in amount. The Commission also found that Ameren Missouri needed a fuel adjustment clause to have a sufficient opportunity to earn a fair return on equity and to be able to compete for capital with other utilities that have a fuel adjustment clause.[265] In the same rate case, the Commission found that a 95/5 sharing mechanism would give Ameren Missouri a sufficient opportunity to earn a fair return on equity, while protecting customers by preserving the company's incentive to be prudent.[266]

5. Ameren Missouri's net energy costs have risen substantially since the last rate case to approximately $696 million, an increase of 23 percent.[267] Fuel and purchased

[265] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service*, Report and Order, Case No. ER-2008-0318, January 27, 2009, Pages 69-70.

[266] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service*, Report and Order, Case No. ER-2008-0318, January 27, 2009, Page 76.

[267] Barnes Rebuttal, Ex. 3, Page 21, Lines 5-8.

power costs, including transportation, are still the company's largest operating and maintenance (O&M) expense, comprising approximately 51 percent of its total O&M costs.[268] Coal costs have increased, and off-system sales have declined. Further increases in coal costs are anticipated, and no one knows what will happen to off-system sales revenue.[269] Those fuel and purchased power costs continue to be dictated by national and international markets and thus are outside the control of Ameren Missouri's management. Finally, these costs and revenues continue to be volatile.[270]

6. Ameren Missouri still needs a fuel adjustment clause to help alleviate the effects of regulatory lag as net fuel costs continue to rise. In addition, Ameren Missouri still must compete in the capital markets with other utilities, and the vast majority of those utilities have fuel adjustment clauses. The continued existence of a fuel adjustment clause is important to maintaining Ameren Missouri's credit worthiness.[271]

7. Finally, Consumers Council expresses concern that the existence of the FAC has contributed to "excessive" earnings by Ameren Missouri. That claim of past "excessive" earnings is based on the per-book quarterly surveillance reports that Ameren Missouri has filed since it was first allowed to have an FAC in 2009. Such surveillance reports merely provide a snapshot of unadjusted book earnings[272] and are not suitable to establish just and reasonable rates. In any event, those surveillance reports show that Ameren Missouri was earning less than its authorized return on equity more often than it

[268] Barnes Rebuttal, Ex. 3, Page 21, Lines 1-5.
[269] Barnes Rebuttal, Ex. 3, Page 22, Lines 11-19.
[270] Barnes Rebuttal, Ex. 3, Page 25, Lines 1-9.
[271] Rygh Rebuttal, Ex. 42, Pages 6-16.
[272] Reed Surrebuttal, Ex. 41, Page 16, Lines 4-7.

was earning more than its authorized return during the five years since Ameren Missouri was first allowed to implement an FAC.[273]

Conclusions of Law:

A. Section 386.266.1, RSMo (Cum. Supp. 2013), allows the Commission to establish and continue a fuel adjustment clause for Ameren Missouri.

B. Commission Rule 4 CSR 240-2.115(2)(D) states:

> A nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it. All issues shall remain for determination after hearing.

Decision:

Ameren Missouri still needs to have a fuel adjustment clause in place if it is to have a reasonable opportunity to earn a fair return on its investments. The Commission concludes Ameren Missouri should be allowed to continue to implement a fuel adjustment clause.

A. Did the Company fail to comply with the "complete explanation" provisions of 4 CSR 240-3.161(3)(H) and (I) and, if so, would this justify the elimination of the Company's fuel adjustment clause?

Findings of Fact:

1. As described in the conclusions of law for this issue, the Commission's rules regarding the FAC require that the electric utility seeking to continue an FAC file detailed information as part of its direct filing to institute the rate case. Public Counsel's witness, Lena Mantle, testified that Ameren Missouri failed to provide a complete explanation in its direct case of all the costs and revenues that it wanted to be included in its FAC.[274] On that basis, she urged the Commission to discontinue the FAC because the information Ameren

[273] Reed Surrebuttal, Ex. 41, Pages 14-15, Figures 1 and 2.

[274] Mantle Direct, Ex. 400, Pages 9-10, Lines 16-22, 1-2.

Missouri filed did not provide the Commission with the information needed to make an informed decision.[275]

2. Ameren Missouri purported to offer the required minimum filings in an attachment to the direct testimony of Lynn Barnes.[276] When Public Counsel challenged the sufficiency of that filing, Barnes responded by testifying that the level of detail in Ameren Missouri's filing matches that offered in previous rate cases and that those previous filings have been found to be sufficient by Staff and the Commission.[277]

3. In the objected-to stipulation and agreement, now the joint position of Ameren Missouri and Public Counsel, those parties agreed to meet no later than May 30, 2015, to discuss additional information that Ameren Missouri should provide about costs and revenues when it files a request to continue its FAC in its next rate case. Ameren Missouri and Public Counsel agree to file their agreed-upon account, subaccount and activity code descriptions in this case by August 1, 2015. With that understanding, they agree the FAC should be continued in this case.

Conclusions of Law:

A. Commission rule 4 CSR 240-3.161 establishes certain filing requirements for electric utilities that are seeking to continue a previously established FAC. Subsection (3) of that rule says:

> When an electric utility files a general rate proceeding following the general rate proceeding that established its RAM [another word for FAC] as described by 4 CSR 240-20.090(2) in which it requests that its RAM be continued or modified, the electric utility shall file with the commission and serve parties … the following supporting information as part of, or in addition

[275] Mantle Direct, Ex. 400, Pages 17-18, Lines 20-23, 1.

[276] Ex. 3.

[277] Barnes Rebuttal, Ex. 3, Page 7, Lines 1-16. *See also, In the Matter of the Tariffs of Aquila, Inc.,* Report and Order, File No. ER-20107-0004, 15 Mo. P.S.C. 3d 416, May 17, 2007.

> to, its direct testimony: …
> (H) A complete explanation of all the costs that shall be considered for recovery under the proposed RAM and the specific account used for each cost item on the electric utility's books and records;
> (I) A complete explanation of all the revenues that shall be considered in the determination of the amount eligible for recovery under the proposed RAM and the specific account where each such revenue item is recorded on the electric utility's books and records.

Decision:

The minimum filings Ameren Missouri made in this case are substantially similar to the filings it made in past rate cases and have never been challenged in the past. That does not mean those minimum filings cannot be improved in the future. Public Counsel and Ameren Missouri's agreement to meet to discuss those requirements is helpful, and the Commission anticipates the filing those parties intend to make by August 1. However, the dispute about the details of those filing is not a sufficient justification for the termination of the FAC. Ameren Missouri and Public Counsel have reached a reasonable settlement of their dispute, and the Commission will take no further action at this time.

B. Did the Company fail to provide information on the magnitude, volatility and the Company's ability to manage the costs and revenues that it proposes to include in its FAC and, if so, would this justify the elimination of the Company's fuel adjustment clause?

Findings of Fact:

1. In her direct testimony, Public Counsel's witness, Lena Mantle, testified that Ameren Missouri did not provide sufficiently detailed information about the magnitude, volatility and the company's ability to manage the costs and revenues that it proposes to include in its FAC.[278]

2. Ameren Missouri's witness, Lynn Barnes, offered limited, conclusory information about magnitude, volatility, and ability to manage costs and revenue within the

[278] Mantle Direct, Ex. 400, Pages 13-16.

FAC in her direct testimony.[279] In her rebuttal testimony, Barnes disagreed that detailed testimony was required when the utility is merely seeking to continue an existing FAC.[280] However, she then offered much more detailed testimony on that topic.[281]

3. Public Counsel and Ameren Missouri have entered into an objected-to stipulation and agreement which remains their joint position. In that joint position, Public Counsel drops its position that the FAC be eliminated.

Conclusions of Law:

A. In relevant part, Commission Rule 4 CSR 240-20.090(2)(C) says:

> In determining which cost components to include in a RAM, the commission will consider, but is not limited to considering, the magnitude of the costs, the ability of the utility to manage the costs, the volatility of the cost component and the incentive provided to the utility as a result of the inclusion or exclusion of a cost component. …

That regulation does not require the utility to file any specific information, nor does it require the utility to file such information in its direct case.

Decision:

The direct testimony offered by Ameren Missouri provided limited information about the continuing need for the FAC. However, when the sufficiency of that testimony was challenged by Public Counsel, Ameren Missouri responded with more extensive testimony in its rebuttal testimony. Ameren Missouri has provided sufficient information to allow the Commission to find that the FAC should be continued.

C. If the FAC continues should the sharing percentage be changed to 90%/10%?

[279] Barnes Direct, Ex. 2, Page 5, Lines 6-22.

[280] Barnes Rebuttal, Ex. 3, Page 13, Lines 5-10.

[281] Barnes Rebuttal, Ex. 3, Pages 21-29.

Findings of Fact:

1. Under the current FAC, Ameren Missouri passes 95 percent of eligible costs and revenues through the FAC. The remaining 5 percent is not passed through the FAC so that Ameren Missouri will retain an incentive to minimize its costs and maximize its revenue. Public Counsel initially urged the Commission to modify the sharing percentages incorporated in the FAC from a 95/5 split to a 90/10 split.[282] Consumers Council did not present any additional testimony on this question, but if the Commission does not totally eliminate the FAC, it advocates for a 50-50 split between rate payers and shareholders.

2. Public Counsel and Ameren Missouri have entered into an objected-to stipulation and agreement which remains their joint position. In that joint position, Public Counsel drops its position that the sharing mechanism be changed.

3. Since Ameren Missouri has had an FAC with a 95/5 sharing split, that 5 percent share amounts to $38 million of prudently incurred net fuel costs that the company will never be able to recover.[283] Even to a company as large as Ameren Missouri, $38 million is a significant incentive.

4. Giving Ameren Missouri a greater incentive to minimize its costs and maximize its off-system sales would be meaningless if there is little the company can actually do to minimize costs or maximize off-system sales. In general, Ameren Missouri's fuel costs are dictated by national and international markets that are largely beyond the company's control.[284]

[282] Mantle Direct, Ex. 400, Pages 23-25.

[283] Barnes Rebuttal, Ex. 3, Page 46, Lines 1-18.

[284] Barnes Rebuttal, Ex. 3, Page 53, Lines 18-22.

5. Most other utilities with FACs do not have a sharing mechanism at all.[285]

6. Ameren Missouri's existing FAC, with the 95/5, has allowed the company to borrow money at a lower cost. Ameren Missouri's witness, Gary Rygh, an investment banker with Barclays, PLC, explains:

> Since 2009 [when the FAC began] Ameren Missouri has raised approximately $1.2 billion of debt, and each time the cost of that debt came in below the prevailing index at the time instead of above the cost of the index which was the case in prior Ameren Missouri debt offerings. The savings total about $8.6 million in interest costs every year for the life of the bonds that Ameren Missouri issued.

Over the life of the bonds, the savings amount to approximately $210 million, which ends up reducing customer rates.[286]

7. Furthermore, changing the sharing percentage without a good reason to do so could erode investor confidence in the utility and in the state regulatory process.[287]

Conclusions of Law:

A. Section 386.266.1, RSMo (Cum. Supp. 2013), the statute that allows the Commission to establish a fuel adjustment clause provides as follows:

> Subject to the requirements of this section, any electrical corporation may make an application to the commission to approve rate schedules authorizing an interim energy charge or periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased-power costs, including transportation. The commission may, in accordance with existing law, include in such rate schedules features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities.

[285] Barnes Rebuttal, Ex. 3, Page 52, Lines 7-11.

[286] Rygh Rebuttal, Ex. 42, Page 20, Lines 14-21.

[287] Barnes Rebuttal, Ex. 3, Page 53, Lines 1-3. See also, Rygh Rebuttal, Ex. 42, Pages 14-19.

Subsection 4 of that statute sets out some of the provisions that must be included in a fuel adjustment clause as follows:

> The commission shall have the power to approve, modify, or reject adjustment mechanisms submitted under subsections 1 to 3 of this section only after providing the opportunity for a full hearing in a general rate proceeding, including a general rate proceeding initiated by complaint. The commission may approve such rate schedule after considering all relevant factors which may affect the cost or overall rates and charges of the corporation, provided that it finds that the adjustment mechanism set forth in the schedules:
>
> **(1) Is reasonably designed to provide the utility with a sufficient opportunity to earn a fair return on equity;**
>
> (2) Includes provisions for an annual true-up which shall accurately and appropriately remedy any over- or under-collections, including interest at the utility's short-term borrowing rate, through subsequent rate adjustments or refunds;
>
> (3) In the case of an adjustment mechanism submitted under subsections 1 and 2 of this section, includes provisions requiring that the utility file a general rate case with the effective date of new rates to be no later than four years after the effective date of the commission order implementing the adjustment mechanism. …
>
> (4) In the case of an adjustment mechanism submitted under subsections 1 or 2 of this section, includes provisions 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. (emphasis added)

Subsection 4(1) is emphasized because that is the key requirement of the statute. Any fuel adjustment clause the Commission allows Ameren Missouri to implement must be reasonably designed to allow the company a sufficient opportunity to earn a fair return on equity.

B. Subsection 7 of the fuel adjustment clause statute provides the Commission with further guidance, stating the Commission may:

> take into account any change in business risk to the corporation resulting from implementation of the adjustment mechanism in setting the corporation's allowed return in any rate proceeding, in addition to any other changes in business risk experienced by the corporation.

Finally, subsection 9 of that statute requires the Commission to promulgate rules to "govern the structure, content and operation of such rate adjustments, and the procedure for the submission, frequency, examination, hearing and approval of such rate adjustments." In compliance with the requirements of the statute, the Commission promulgated Commission Rule 4 CSR 240-3.161, which establishes in detail the procedures for submission, approval, and implementation of a fuel adjustment clause.

C. Specifically, Commission Rule 4 CSR 240-3.161(3) establishes minimum filing requirements for an electric utility that wishes to continue its fuel adjustment clause in a rate case subsequent to the rate case in which the fuel adjustment clause was established. Ameren Missouri has met those filing requirements.

Decision:

There is no sufficient reason to change the existing 95/5 sharing percentage under which Ameren Missouri has operated for the past several years. Imposing a significant financial burden on the company simply to experiment with an alternative sharing percentage would be unfair to the company. The Commission finds there is no reason to change the sharing percentages in the fuel adjustment clause The Commission will retain the current 95%-5% sharing mechanism included in Ameren Missouri's fuel adjustment clause.

D. What transmission charges should be included in the FAC?

Findings of Fact:

1. As will be discussed in more detail in the Conclusions of Law for this issue, the Missouri statute that allows the Commission to establish a fuel adjustment clause limits the application of the fuel adjustment clause to increases and decreases in fuel and

purchased-power costs, including transportation.[288]

2. Ameren Missouri currently includes all the MISO wholesale transmission expense it incurs in the fuel adjustment clause, as it was allowed to do by the Commission in the last Ameren Missouri rate case.[289]

3. The Commission's decision in the last rate case was challenged on appeal by several parties, including MIEC. The Commission's decision was upheld, but MIEC's argument that transmission costs for "purchased power" should not include transmission costs related to self-generated power was found by the court to have been raised for the first time at the appellate court. Thus it was not preserved for appeal and was not addressed by the court.[290] MIEC now raises that argument to the Commission for the first time.

4. By the terms of MISO's tariff, Ameren Missouri, as a result of its participation in the MISO market, sells all the power it generates into the MISO market and then purchases back all the power it needs to serve its native load from the MISO market.[291] That fact is not disputed by any party.

5. In other contexts, Ameren Missouri recognizes the distinction between serving its native load and making off-system sales. For example, when accounting for fuel costs, the company separates fuel expense to serve native load from fuel expense to make off-system sales.[292]

[288] Section 386.266.1, RSMo (Cum. Supp. 2013).

[289] In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase its Annual Revenues for Electric Service, Report and Order, File No. ER-2012-0166, December 12, 2012.

[290] *In re Union Elec. Co.,* 422 S.W.3d 358 (Mo. App. W.D. 2013).

[291] Haro Rebuttal, Ex. 14, Page 18, Lines 1-17.

[292] Dauphinais Surrebuttal, Ex. 509, Page 9, Lines 1-13. *And see* Exhibits. 524-528

6. In addition to the distinction between serving native load and making off-system sales, Ameren Missouri can also purchase power from MISO or other third parties to supplement its self-generated power.[293] All three scenarios are reasons why Ameren Missouri could incur wholesale transmission costs under FERC Account 565, and these are the transmission costs Ameren Missouri seeks to pass through its FAC.[294]

7. Furthermore, under FERC Order 668, public utilities must net their MISO-cleared load and generation in each hour and report that net amount as either: (i) sale for resale (i.e. off-system sale under account 447 when the utility's cleared generation exceeds the cleared load, or (ii) a power purchase under Account 555 when the utility's cleared load exceeds its cleared generation. That order states "Netting accurately reflects what participants would be recording on their books and records in the absence of the use of an RTO market to serve their native load."[295] That means that for accounting purposes, Ameren Missouri is required to recognize the distinction between off-system sales, power purchased to supplement its generation and self-generated power .

8. The transmission charges that Ameren Missouri is incurring from MISO are rapidly rising. This is principally due to MISO Schedule 26-A charges, which recover the cost of regionally funded Multi-Value Transmission Projects (MVPs). The Schedule 26-A rate was zero four years ago, but is expected to be $0.58 per MWh in 2015 and is forecasted to rise to $1.65 per MWh by 2021. Such an increase could increase the charges to Ameren Missouri by $40 million or more.[296]

[293] Dauphinais Direct, Ex. 508, Page 4, Lines 12-17.

[294] Dauphinais Direct, Ex. 508, Page 4, Lines 9-12, and Page 6, Lines 19-20.

[295] Dauphinais Surrebuttal, Ex. 509, Page 10, Lines 7-22, and Ex. 66.

[296] Dauphinais Direct, Ex. 508, Page 5, Lines 1-13.

9. Ameren Missouri will be allowed to recover those increased costs in its future rates, but unless those costs are flowed through the FAC it will not be able to recover the increases that occur between rate cases.[297]

10. Only 3.5 percent of the MISO transmission charges incurred by Ameren Missouri to serve its load are related to true purchased power. The other 96.5 percent are incurred to transport power from Ameren Missouri's own generation to serve its own native load.[298]

11. The Commission has approved a unanimous stipulation and agreement on Net Base Energy Costs, which establishes how those transmission costs and revenues will be treated as well as the amount of costs that will be added to base rates if MISO transmission charges are not flowed through the FAC.[299]

Conclusions of Law:

A. Section 386.266.1, RSMo (Cum. Supp. 2013), the statute that allows the Commission to establish a fuel adjustment clause provides as follows:

> Subject to the requirements of this section, any electrical corporation may make an application to the commission to approve rate schedules authorizing an interim energy charge or periodic rate adjustments outside of general rate proceedings **to reflect increases and decreases in its prudently incurred fuel and purchased-power costs, including transportation.** The commission may, in accordance with existing law, include in such rate schedules features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities. (emphasis added)

The emphasized clause limits the costs that can be flowed through the FAC for recovery

[297] Dauphinais Direct, Ex. 508, Page 5, Lines 13-21.

[298] Dauphinais Direct, Ex. 508, Page 11, Lines 1-18.

[299] Non-Unanimous Stipulation and Agreement Regarding Class Kilowatt-Hours, Revenues and Billing Determinants, Net Base Energy Costs, and Fuel Adjustment Clause Tariff Sheets, Filed March 5, 2015. Approved by Order issued on March 19, 2015.

between rate cases. It allows for recovery of transportation costs, which has been determined to include transmission costs, but such transmission costs are limited to those connected to purchased power costs.

Decision:

The evidence demonstrated that for purposes of operation of the MISO tariff, Ameren Missouri sells all the power it generates into the MISO market and buys back whatever power its needs to serve its native load. From that fact, Ameren Missouri leaps to its conclusion that since it sells all its power to MISO and buys all that power back, all such transactions are off-system sales and purchased power within the meaning of the FAC statute. The Commission does not accept this point of view.

The drafters of the FAC statute likely did not envision a situation where a utility would consider all its generation purchased power or off-system sales. In fact, the policy underlying the FAC statute is clear on its face. The statute is meant to insulate the utility from unexpected and uncontrollable fluctuations in transportation costs of purchased power. At the time the statute was drafted, and even in our more complex present-day system, the costs of transporting energy in addition to the energy generated by the utility or energy in excess of what the utility needs to serve it load are the costs that are unexpected and out of the utility's control to such an extent that a deviation from traditional rate making is justified.

Therefore, of the three reasons Ameren Missouri incurs transmission costs cited earlier, the costs that should be included in the FAC are 1) costs to transmit electric power it did not generate to its own load (true purchased power) and 2) costs to transmit excess electric power it is selling to third parties to locations outside of MISO (off-system sales).

Any other interpretation would expand the reach of the FAC beyond its intent.

E. If the FAC continues, what costs and revenues should be included in the Company's FAC?

1. Should only fuel and purchased power costs, transportation of the fuel commodity, transmission associated with purchased power costs and off-system sales revenues be included?
2. If costs and revenues other than those listed in item 1 above are included in the FAC, should cost or revenue types in which the Company has incurred less than $360,000 in the test year be included, and what charges and revenues from MISO should be included?

Findings of Fact:

1. In her rebuttal testimony,[300] Public Counsel's witness, Lena Mantle, described in detail what costs and revenues she believed should be flowed through the FAC. The objected-to stipulation and agreement, which is now the joint position of Public Counsel and Ameren Missouri, contains a sample tariff that incorporates the agreement between Public Counsel and the company regarding the costs and revenues to be flowed through the FAC.[301]

2. Consumers Council objected to the continuation of the FAC at a higher level, but did not file any testimony or make any argument at this level of granularity.

Conclusions of Law:

The Commission makes no additional conclusions of law for this issue.

Decision:

The sample tariff that was included as part of the joint position of Ameren Missouri and Public Counsel is a reasonable resolution of the question and may be used in so far as it is consistent with the other stipulations and agreements approved by the Commission.

[300] Ex. 401.

[301] Non-Unanimous Stipulation and Agreement Regarding Some Fuel Adjustment Clause Issues, filed March 6, 2015.

3. Should transmission revenues continue to be included in the FAC?

This sub-issue was resolved by stipulation and agreement.[302]

15. Noranda Rate Proposal

A. Is Noranda experiencing a liquidity crisis such that it is likely to cease operations at its New Madrid smelter if it cannot obtain relief of the sort sought here?

1. If so, would the closure of the New Madrid smelter represent a significant detriment to the economy of Southeast Missouri, to local tax revenues, and to state tax revenues?

2. If so, can the Commission lawfully grant the requested relief?

3. If so, should the Commission grant the requested relief?

B. Would rates for Ameren Missouri's ratepayers other than Noranda be lower if Noranda remains on Ameren Missouri's system at the reduced rate?

C. Would it be more beneficial to Ameren Missouri's ratepayers other than Noranda for Noranda to remain on Ameren Missouri's system at the requested reduced rate than for Noranda to leave Ameren Missouri's system entirely?

D. Is it appropriate to redesign Ameren Missouri's tariffs and rates on the basis of Noranda's proposal, as described in its Direct Testimony and updated in its Surrebuttal Testimony?

1. If so, should Noranda be exempted from the FAC?

2. If so, should Noranda's rate increases be capped in any manner?

3. If so, can the Commission change the terms of Noranda's service obligation to Ameren Missouri and of Ameren Missouri's service obligation to Noranda?

4. If so, should the resulting revenue deficiency be made up by other rate payers in whole or in part?

5. If so, how should the amount of the resulting revenue deficiency be calculated?

6. If so, can the resulting revenue deficiency lawfully be allocated between ratepayers and Ameren Missouri's shareholders?

i. How should the revenue deficiency allocated to other ratepayers be allocated on an interclass basis?

ii. How should the revenue deficiency allocated to other ratepayers be allocated on an intra-class basis?

7. If so, what, if any conditions or commitments should the Commission require of Noranda?

[302] Non-Unanimous Stipulation and Agreement Regarding Class Kilowatt-Hours, Revenues and Billing Determinants, Net Base Energy Costs, and Fuel Adjustment Clause Tariff Sheets, filed on March 5, 2015, Paragraph 7.

E. What is Ameren Missouri's variable cost of service to Noranda?

1. Should this quantification of variable cost be offset by an allowance for Off-System Sales Margin Revenue?

2. What revenue benefit or detriment does the Ameren Missouri system receive from provision of service to Noranda at a rate of $32.50/MWh?

F. Should Noranda be served at a rate materially different than Ameren Missouri's fully distributed cost to serve them? If so, at what rate?

G. Is it appropriate to remove Noranda as a retail customer as proposed by Ameren Missouri in its Rebuttal Testimony?

1. Can the Commission cancel the Certificate of Convenience and Necessity that was granted for Ameren Missouri to provide service to Noranda and, if so, would the cancellation of the CCN be in the public interests?

2. Can the Commission grant Ameren Missouri's proposal since notification regarding the impact of this proposal on its other customers' bills was not provided to Ameren Missouri's customers?

3. If the Commission grants Ameren Missouri's proposal, should the costs and revenues flow through the FAC?

4. Can Ameren Missouri and Noranda end their current contract without approval of all of the parties to the Unanimous Stipulation and Agreement in the case in which Ameren Missouri was granted the CCN to serve Noranda?

The parties identified many decision points related to Noranda Aluminum's request to receive a rate less than Ameren Missouri's fully distributed cost to serve it. While most of those decision points will need to be addressed, the Commission finds that the entire issue should be addressed as a single issue rather than as several sub-issues.

Findings of Fact:

1. Noranda Aluminum, Inc. operates an aluminum smelter in New Madrid, Missouri, that takes electric service from Ameren Missouri. The smelter has been in operation since 1971 and annually produces approximately 260,000 metric tonnes of aluminum. That amounts to approximately 0.5 percent of the world's aluminum production and about 5 percent of the United States' aluminum production.[303] It employs approximately 900 workers.

[303] Boyles Direct, Ex. 600, Page 4, Lines 1-14.

2. Noranda uses approximately 4.2 million MegaWatt Hours (MWh) of electricity from Ameren Missouri in a year to make aluminum. Noranda uses 480 MWs of power, 24 hours per day, 7 days per week, 52 weeks per year. Every dollar per MWh change in Ameren Missouri's electricity rate represents a $4.2 million change in the pre-tax cash flow of Noranda.[304]

3. If Noranda were to close, the Missouri economy would forego approximately $9 billion in economic activity over the next twenty-five years. State and local tax revenue would be reduced by approximately $350 million over those same twenty-five years. Additional unemployment benefits resulting from the closure could be as high as $9.4 million.[305]

4. Noranda also has a tremendous positive impact on the Southeast region of Missouri, one of the poorest regions in the country, providing the few high paying jobs in the area.

5. Noranda is by far Ameren Missouri's largest customer, representing over ten percent of the total retail sales made by the utility.[306]

6. Noranda's current average base rate is $37.95 per MWh. It is also subject to operation of the FAC. Adding the current FAC of $4.40 brings the total rate to $42.35 per MWh.[307] Noranda's current rate is based on Ameren Missouri's fully allocated cost of service.

7. At the start of this case, Noranda proposed that it be given an initial total rate

[304] Boyles Direct, Ex. 600, Page 8, Lines 16-20.

[305] Haslag Direct, Ex. 606, Pages 4-5, Lines 11-24, 1-16.

[306] Wills Amended Rebuttal, Ex. 53, Page 17, Lines 22-23.

[307] Brubaker Direct, Ex. 503, Page 40, Lines 1-9.

of $32.50 per MWh, to be increased by one percent annually, with that rate structure to remain in place for seven years.[308]

8. On March 9, 2015, just before this issue was heard, several consumer parties joined with Noranda in a non-unanimous stipulation and agreement.[309] Among other things, that stipulation and agreement would set the base rate for Noranda at $34.00 per MWh, would exempt Noranda from operation of the FAC, and would increase Noranda's future rates by half of the percentage increase that Ameren Missouri might obtain in any future rate case. Under the stipulation and agreement, that rate structure would remain in place for ten years.

9. Several parties objected to the stipulation and agreement, and according to the Commission's rule, the stipulation and agreement cannot be approved if any party objects to it. However, the stipulated position may remain the joint position of the parties that signed the stipulation and agreement. The Commission can approve that position if it finds that it is supported by competent and substantial evidence.[310]

10. The first step to determining whether either of the reduced rates proposed by Noranda is reasonable is to determine Ameren Missouri's incremental cost to serve Noranda. The experts also refer to incremental cost as Ameren Missouri's avoided cost, meaning the cost that Ameren Missouri would avoid if the Noranda smelter shuts down.[311] Either term means the point at which other ratepayers would benefit from Noranda's presence on the system. At any price above that point, Noranda is making a contribution

[308] Boyles Direct, Ex. 600, Page 3, Lines 9-13.

[309] The parties that signed the stipulation and agreement were Public Counsel, Noranda, Consumers Council, the Missouri Retailers Association, and MIEC.

[310] 4 CSR 240-2.115(2)(D).

[311] Transcript, Page 2792, Lines 23-25.

to Ameren Missouri's fixed costs.[312] At a price below that point, Noranda would not be making a contribution to Ameren Missouri's fixed costs and Ameren Missouri's other ratepayers would be better off without Noranda on the system.[313]

11. Incremental cost is largely influenced by the amount at which Ameren Missouri could sell power on the open market if it could no longer sell that power to Noranda.[314] MIEC's witness, James Dauphinais, testified that the incremental cost would be between $28.03 and $29.39 per MWh.[315] Staff's witness, Sarah Kliethermes, calculated incremental cost at $31.50 per MWh.[316] In his rebuttal testimony, Ameren Missouri's witness, Matt Michels, calculated that point at either $32.77 per MWh or $34.13 per MWh.[317] At the hearing, he testified that for the period through May of 2017, the incremental cost would likely remain below $32.50 per MWh.[318]

11. The actual future incremental cost is uncertain because it depends on the spot energy market prices and annual capacity market prices that will occur in the future.[319] 12. In setting a rate for Noranda, it is important that the rate be set, and remain, above the incremental cost. Below that cost, Noranda would not be covering any part of Ameren Missouri's fixed costs. If Noranda is not making any contribution to fixed

[312] Transcript, Page 2793, Lines 11-19.

[313] Transcript, Page 2793, Lines 7-10.

[314] Dauphinais Direct, Ex. 508, Page 16, Lines 13-23.

[315] Dauphinais Direct, Ex. 508, Page 17, Lines 20-23.

[316] Transcript, Page 3003, Lines 14-22.

[317] Michels Amended Rebuttal, Ex. 26, Page 26, Lines 3-12. In his testimony, Michels describes those numbers as the Actual Net Energy Cost, or ANEC. At the hearing explained that ANEC is another name for incremental cost or avoided cost. See Transcript, Pages 2956-2957, Lines 22-25, 1-6.

[318] Transcript, Page 2946, Lines 10-18.

[319] Dauphinais Surrebuttal, Ex. 509, Page 25, Lines 14-18.

costs, there is no justification for allowing it to pay a reduced rate and other ratepayers would be better off if the smelter closed. But, so long as Noranda's rate remains above the incremental cost, Noranda will make a contribution to Ameren Missouri's fixed costs and other customers will pay a lower rate than they would if the smelter closed and went off Ameren Missouri's system.[320]

13. A rate below fully allocated cost of service and above incremental cost of service is only appropriate if the smelter will likely leave Ameren Missouri's system if not allowed a lower electric rate. The future viability of the smelter, and thus the likelihood Ameren Missouri would retain Noranda's load, is largely dependent on the price of aluminum metal on the world market.[321]

14. The world's aluminum price is established by trading on the London Metal Exchange (LME), which includes a U.S. Midwest premium applicable to the aluminum produced at the Noranda smelter.[322]

15. The price of aluminum is highly volatile. Over the last 30 years, the annual percentage changes in price vary from plus 44 percent to minus 33 percent. Large positive changes can be quickly followed by large negative changes. On the whole, the average annual percentage of change in price per year is 15.9 percent.[323] Removing the effect of general inflation, aluminum prices have trended downward since 1982 by an average of 0.3 percent per year.[324]

16. Demand for aluminum tends to be cyclical following the general business

[320] Transcript, Page 3003, Lines 4-13.

[321] Fayne Surrebuttal, Ex. 603, Pages 4-5, Lines 9-22, 1-12.

[322] Pratt Direct, Ex. 608, Page 3, Lines 5-12.

[323] Pratt Direct, Ex. 608, Page 3, Lines 18-24.

[324] Pratt Direct, Ex. 608, Page 5, Lines 5-7.

cycle and is concentrated in industrial sectors that experience large swings in demand. Swings in demand are amplified by an inventory cycle.[325]

17. The other side of the pricing equation, supply, tends to be inelastic because production capacity cannot be increased in the short term. Occasionally that results in large upward spikes in price. But more commonly supply is unresponsive on the downside. Aluminum smelters need to work at full capacity to minimize costs so small adjustments in production are not practical. So producers tend to keep producing even when demand falls, causing inventories to grow and prices to fall.[326]

18. The demand for aluminum is also affected by major price shocks caused by the effects of financial crises, wars, or other major world events. Such crises are certain to occur, but their timing is unpredictable.[327] As a result, forecasts of future aluminum prices can be unreliable.[328] There is little ability to predict the timing of an aluminum cycle beyond a year or two, and even a short-term prediction can be significantly wrong.[329]

19. To test its ability to survive the volatility of the aluminum market, Noranda ran several scenarios to "stress test" the smelter's ability to survive. Based on those scenarios, Noranda believes that at some point, unless it receives a lower electric rate, it will exhaust its available credit and cash and will not be able to attract new investment. At that time, it will face a "substantial likelihood of imminent closure."[330]

20. Ameren Missouri criticized the scenarios chosen by Noranda as

[325] Pratt Direct, Ex. 608, Pages 6-7, Lines 15-16, 1-13.

[326] Pratt Direct, Ex. 608, Page 7-8, Lines 15-26, 1-10.

[327] Pratt Direct, Ex. 608, Pages 9-10, Lines 1-14, 1-2.

[328] Pratt Direct, Ex. 608, Pages 16-20.

[329] Pratt Surrebuttal, Ex. 609, Page 6, Lines 1-4.

[330] Boyles Direct, Ex. 600, Page 20, Lines 4-11. See also, Boyles Surrebuttal, Ex. 601, Page 9, Lines 5-23.

unrepresentative of the most likely aluminum price forecasts. For example, if Noranda had used the future aluminum prices forecasted by CRU, a commodity sector consultancy, based in London[331] in its scenarios, it would not face a liquidity shortage.[332]

21. However, the scenarios are not intended to be forecasts of likely aluminum prices. Rather they are scenarios of what could happen to the smelter if certain aluminum prices develop.[333] And there is a substantial possibility of encountering a significant price downturn in at least one of the next six years. Such a downturn of at least 14.7 percent has occurred in every six-year period since 1982.[334]

22. Experts do rely on scenarios such as these to stress test business plans, assess ability to service loans, and assess ability to pay for power.[335] More importantly, lenders also use such stress testing to determine whether to loan money to a company. Banks and institutional lenders look at scenarios that use conservative forecasts when determining whether it is safe to loan money to a borrower.[336]

23. And the need to consider the views of lenders is important because Noranda will need to refinance substantial amounts of debt in the near future. Noranda's revolving asset based loan facility allows the company to obtain cash to run its day to day business operations. It will need to be refinanced in February 2017.[337] In addition, Noranda has a large amount of existing debt that comes due in 2019, which it will need to start refinancing

[331] Humphreys Rebuttal, Ex. 19, Page 3, Lines 8-9.
[332] Mudge Rebuttal, Ex. 33, Page 17, Lines 1-7.
[333] Pratt Surrebuttal, Ex. 609, Page 6, Lines 14-22.
[334] Pratt Surrebuttal, Ex. 609, Page 7, Lines 14-21.
[335] Pratt Surrebuttal, Ex. 609, Page 8, Lines 1-11.
[336] Harris Surrebuttal, Ex. 605, Page 2, Lines 4-23.
[337] Boyles Direct, Ex. 600, Page 21, Lines 17-22.

in 2018.[338]

24. Steven Schwartz, an economist who testified for Noranda, explained that Noranda's operating performance in 2015 and expectations about 2016 will "color the way that potential lenders evaluate Noranda."[339] Schwartz further explained: "Creditors will lend Noranda money if its prospects seem likely to improve. Absent prospects for improvement, however, Noranda is an unattractive borrower."[340] If it is to improve its prospects, Noranda immediately needs a lower electric rate to improve its cash flow.

25. Noranda's refinancing difficulties are not just theoretical. Noranda has already been unable to obtain financing for construction of a new rod mill at the New Madrid smelter, causing a further drain on its cash resources.[341]

26. Tom Harris, a banker specializing in leverage finance for corporations, testified for Noranda that based upon his experience as a banker and leveraged financier, "Noranda will be unable to raise capital without first fundamentally improving its cash flow and thereby demonstrating its long-term viability".[342]

27. Noranda is heavily in debt. Its current leverage ratio is nearly seven times its last twelve-months' earnings.[343] Its debt to equity ratio was at 87 percent at the end of 2013.[344] Moody's and Standard & Poors have recently downgraded Noranda's credit

[338] Boyles Direct, Ex. 600, Page 22, Lines 20-23.
[339] Schwartz Direct, Ex. 610, Page 17, Lines 19-23.
[340] Schwartz, Direct, Ex. 610, Page 17, Lines 13-15.
[341] Harris Direct, Ex. 604, Page 3, Lines 13-22.
[342] Harris Direct, Ex. 604, Page 5, Lines 4-14.
[343] Harris Direct, Ex. 604, Page 5, lines 16-21.
[344] Mudge Rebuttal, Ex. 33, Page 37, Lines 8-9.

rating to a “highly speculative” grade of risk.[345]

28. In large part, Noranda’s current financial plight is due to its heavy debt load, much of which was imposed upon it when it was acquired by Apollo, a private equity firm, in a leveraged buyout transaction in 2007. Apollo borrowed funds to buy Noranda, using the company’s assets as collateral. It then used Noranda’s assets to borrow more money to recoup its equity investment in the company and to pay itself additional dividends.[346]

29. Apollo no longer is the sole owner of Noranda. It is now a publicly traded company, although Apollo continues to own a third of its outstanding shares.[347]

30. Electricity is Noranda’s largest single cost to make aluminum, comprising 31.8 percent of the total cost.[348] However, electricity is not the only cost to produce electricity, and Noranda has advantages over some other smelters for those costs.[349] If Noranda was granted the $32.50 rate it originally requested, it would have the lowest total production cost of any aluminum producer in the country.[350]

31. A chart prepared by Noranda witness, Henry Fayne, from data provided by CRU, shows that Noranda’s current cost of electricity, at $42.50 per MWh, is the second highest among the nine remaining smelters in the United States. At a rate of $34 per MWh as proposed in the joint position, its rate would drop to the second lowest in the country.

Conclusions of Law:

A. Commission Rule 4 CSR 240-2.115(2)(D) states:

[345] Boyles Direct, Ex. 600, Page 23, Lines 10-13.

[346] Mudge Rebuttal, Ex. 33, Pages 36-37, Lines 7-18, 1-9.

[347] Transcript, Page 2436, Lines 15-25.

[348] Schwartz Direct, Ex. 610, Page 8, lines 7-17.

[349] Mudge Rebuttal, Ex. 33, Page 49, Lines 8-19.

[350] Mudge Rebuttal, Ex. 33, Page 54, Lines 1-3.

> A nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it. All issues shall remain for determination after hearing.

B. Section 393.130, RSMo (Cum. Supp. 2013), establishes the requirements for the provision of service by regulated utilities. In general, it requires that all charges for utility service must 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.

C. In sum, the statute says that utilities cannot give any "undue or unreasonable" preference to any particular customer, or class of customers. The most cited case interpreting the meaning of "undue or unreasonable" preference is *State ex rel. Laundry v. Public Service Commission*,[351] a 1931 decision by the Missouri Supreme Court. The *Laundry* decision arose from a complaint brought before the Commission by two laundry companies contending that they should be allowed to receive water service at the same reduced rate made available to ten manufacturing customers. The court found that the

[351] 34 S.W.2d 37 (Mo 1931)

special manufacturing rate had been put in place by the utility to try to draw more business into its service area. In its decision, the Supreme Court found that the laundries were similarly situated to the manufacturing customers and should have been allowed to take water at the reduced manufacturer's rate.

D. The *Laundry* decision merely decides that in the facts described in that case, the laundries should have qualified for the industrial rate. As a result, the Laundry court's views of economic development rates are largely dicta. However, Ameren Missouri cites to an even earlier Commission decision that the *Laundry* court quoted extensively for the proposition that all economic development rates are forbidden by the controlling statute. That Commission decision, *Civic League of St. Louis v. City of St. Louis*,[352] does indeed sharply criticize a water rate imposed by the City of St. Louis for the purpose of encouraging manufacturing enterprises to locate within the city and orders the city to revise those rates to avoid discrimination. However, the criticism was that the rates imposed by the City of St. Louis were set below the cost of service and that they were unreasonably low. In the words of that Commission:

> The establishment of the truth of such averment (that rates to manufacturers were below the cost of service) would reveal not only unquestionably unjust discrimination, but also an unreasonable low rate to this class (the manufacturers), and intolerable oppression upon the general metered water users in that they would be compelled to pay in part for water and service furnished to the favored class. The exercise of power crystallized into legislation that unjustly discriminates between users of water in this manner, in effect deprives those discriminated against of the use of their property without adequate compensation or due process of law, and turns it over to the favored class. It is in essence a species of taxation which takes the private property of the general or public metered water users for the private use of metered water users engaged in manufacturing. This is an abuse of power.[353]

[352] 4 Mo. P.S.C. 412 (1916).

[353] *Civic League* at 455-456.

While this decision speaks more directly to the propriety of below-cost rates, it does not necessarily contradict the principle set forth in *Laundry* that the Commission may set preferential rates as long as the preference is reasonably related to the cost of service and is not unduly or unreasonably preferential.[354] No party has identified any subsequent court decision that would go as far as proscribing all economic development or load retention type rates.

E. Instead, 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 and this is what the Commission must do here.[355]

F. The evidence in this case shows that Noranda is a unique customer because it uses much more electricity than any other Ameren Missouri customer. It uses that electricity at a very high load factor. It is so unique that it has had its own rate classification for many years. G. Under these circumstances, a rate for Noranda that is less than its fully allocated cost[356], but more than its incremental cost is just and reasonable within the meaning of Section 393.130, RSMo (Cum. Supp. 2013), and is not unduly or unreasonably preferential.

Decision:

[354] ". . . that principle of equality does forbid any difference in charge which is not based upon difference in service, and, even when based upon difference of service, must have some reasonable relation to the amount of difference, and cannot be so great as to produce an unjust discrimination." *Laundry* at 45.

[355] *For example see, State ex rel. City of Joplin v. Pub. Serv. Comm'n,* 186 S.W.3d 290 (Mo. App. W.D. 2005).

[356] Ameren Missouri's fully allocated cost to serve Noranda would include an allocation of all fixed and variable costs. Noranda's current rate represents its fully allocated cost of service.

The Commission will start from a premise that no one really disputes; Noranda is significant to this state, to Ameren Missouri, and to its customers. Noranda's aluminum smelter near New Madrid, Missouri has a huge economic impact on a region of the state, known as the Bootheel, that is economically depressed. It buys staggeringly large amounts of electricity every hour of every day. It is by far Ameren Missouri's largest customer, by itself buying over ten percent of all the electricity Ameren Missouri sells. For many years, Noranda has come before this Commission in every Ameren Missouri rate case and proclaimed that it needs low cost electricity to remain viable. Sometimes the Commission has made decisions that Noranda would find favorable; sometimes it has not. Most recently, less than a year ago, the Commission denied Noranda's request for a reduced rate in a complaint case decided while this case was pending. The Commission denied that request because Noranda failed to meet its burden of proof to show that its current rate was not just and reasonable. But Noranda continued its quest for a lower rate in this rate case, again asking for a rate that is below Ameren Missouri's fully allocated cost to serve. This time the Commission reaches a different result because additional evidence and argument was presented. The additional evidence describes a looming problem for Noranda: it must seek to refinance its existing debt in 2017 and 2019. Noranda presented various scenarios based on the price of aluminum in which it would run out of liquidity (cash and available credit) in the next few years. Those scenarios were criticized a not the most likely to occur, and indeed, they are not intended to be forecasts of aluminum prices. Rather, they are scenarios of what would happen if aluminum prices, which are volatile, were to drop. They are worst case scenarios, but sometimes the worst happens.

Lenders do not look at a borrower and accept promises that everything will be alright if aluminum prices stay as high as the analysts think they will. Investors asked to loan millions of dollars to Noranda will want to know whether the company will be able to survive and pay back its debts even if things do not go as well as planned. Therefore, lenders will stress test the company by looking at unfavorable scenarios. Wall Street agrees that Noranda has a problem as the company's credit rating was recently downgraded to a highly speculative grade of risk. Unless Noranda's cash flow improves, it will likely be unable to refinance its debt and could be forced to close.

In this case, Noranda and the other parties presented evidence sufficient to convince the Commission that Noranda is in danger of discontinuing operations at its New Madrid smelter in the absence of a load retention rate. As a result, it is in the interest of all ratepayers for the Commission to allow Noranda a lower rate to keep it as a customer of Ameren Missouri.

In part, Noranda's precarious financial situation is the result of Apollo Management's decision to milk massive amounts of cash out of the company when it purchased it in 2007. Certainly, Noranda would be better off today if it still had the hundreds of millions of dollars that Apollo borrowed against the assets of the company to give to itself as a special dividend. Apollo no longer owns all the shares of Noranda, but it still owns a third of its shares and can influence its board of directors.

The Commission is not tasked with protecting private interests, and it does not want to reward Apollo's behavior in any way, but it must protect the public interest and set just and reasonable rates. In these circumstances, the public interest encompasses more than the economic concerns of Noranda's employees, the Bootheel, or even the state of

Missouri. Specifically, and of greatest import to this Commission's mandate, is the effect of Noranda's closure on Ameren Missouri's other customers. It is important to understand that a customer in St. Louis who has no connection to the Bootheel, will pay higher electric rates if Noranda closes its smelter. Right now, Noranda pays a large portion of Ameren Missouri's fixed costs, costs that will not go away just because Noranda no longer buys electricity. If Noranda closes its smelter, those costs will still be there, but then all Ameren Missouri's other customers will have to pick up the bill for those fixed costs. Thus, Ameren Missouri's other customers will benefit from retaining Noranda's load for Ameren Missouri.

As with everything else involving Noranda, the numbers are large. Noranda argues that the incremental cost to provide power to Noranda, that is the price at which Ameren Missouri could sell that power on the off-system market, is approximately $28 per MWh. If Noranda pays a rate of $36 per MWh and buys 4 million MWhs per year, it would contribute roughly $32 million per year towards Ameren Missouri's fixed costs. That is $32 million per year that Ameren Missouri's other customers will have to pay if the smelter shuts down. Even if it is assumed that the incremental cost is $31.50 per MWh as estimated by Staff, Noranda would still be contributing $18 million per year to Ameren Missouri's fixed costs at a rate of $36 per MWh. It is true Ameren Missouri's other customers will have to pay extra to make up for the lower rate given to Noranda. But they will have to pay even more if the smelter shuts down and Noranda contributes nothing to Ameren Missouri's fixed costs.

During the hearing, Noranda and several consumer groups, including the Public Counsel, filed a non-unanimous stipulation and agreement to which several parties objected. Because the stipulation and agreement is not unanimous, the Commission

cannot approve it. However, the stipulation and agreement remains the joint position of the signatory parties and the Commission can use it as a starting point toward crafting a revised rate for Noranda.

The non-unanimous stipulation and agreement - now the joint position - has some good features, but the Commission is not willing to adopt that position in its entirety. First, the $34 per MWh rate proposed is too low. The Commission wants to ensure that Noranda remains competitive with other smelters in this country but does not want to require other customers to support a rate for Noranda that would make it the lowest overall cost smelter in the country.

Second, the ten-year term of the joint position is too long, and is largely illusory. Ten years is a very long time, and the market for electricity may look very different by that time. Attempting to set a rate at that distance, even with escalator clauses and opt-out measures, would not be prudent. Additionally, while a stipulation and agreement can be binding on its signatories for ten years, the Commission cannot bind future Commissions, 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.

Since the Commission cannot, and will not, approve the joint position in its entirety, it will need to explain in detail the rate that will be established for service to Noranda:

1. For a period of three years, a new class of Ameren Missouri electric service ratepayer is authorized for Industrial Aluminum Smelters (IAS).
2. The existing tariff and rates for the LTS class will remain in effect and will be updated in this and future rate cases. If Noranda is not willing to accept the terms of service for the IAS class, or if it violates the conditions

set forth in this order, it shall revert to the LTS class.

3. An effective base rate of $36.00 per MWh is set for the IAS class, to become effective when new rates go into effect resulting from this case.
4. The new IAS class shall remain subject to the Rider FAC, but any increase in rates due to operation of the Rider FAC shall not exceed $2.00 per MWh.
5. The IAS class will not be subject to any rate increase resulting from this case.
6. If Ameren Missouri files any additional rate cases during the three-year existence of the IAS class, it is the intent of this Commission that the IAS class shall receive 50 percent of the system average increase and zero percent of any system average decrease resulting from such rate cases. When the FAC is rebased in such rate proceeding, the IAS shall once again be subject to no more than a $2.00 per MWh rate increase due to the Rider FAC. The intent of this Commission is not binding on a future Commission, and such future Commission must decide those cases based on the competent and substantial evidence presented in those cases.
7. The IAS class may retain its existence and rate after the expiration of the three-year term until such time as the Commission establishes a new rate in a general rate proceeding.
8. The IAS class shall be subject to 100 percent of any new surcharge, adjustment mechanism, or any other mechanism that seeks to change or

impose new rates between rate cases that takes effect during the three-year term as a result of any new Missouri legislation passed and taking effect after the implementation date of rates resulting from this case.

9. The new IAS class shall not be subject to charges, rates, or surcharges that were not in effect at the implementation date of rates resulting from this case unless specifically enumerated in this order.
10. The resulting deficiency in retail base rate revenue associated with the creation of the IAS class shall be applied among all remaining classes paying for Ameren Missouri's electric service by changing base rate revenue in proportion to current base rate revenue minus LTS base rate revenue. Any change in FAC revenues associated with the rate for the IAS class shall flow automatically through the FAC to all remaining classes paying for Ameren Missouri's electric service.
11. As a condition to access the reduced rate structure available to the IAS class, the IAS customer shall provide the Commission's Staff and all parties to this rate case the following information regarding employment at the New Madrid smelter:

    The IAS customer shall file a monthly certification of compliance and quarterly surveillance reports demonstrating that the customer has fulfilled the requirement that employment at the New Madrid smelter meets or exceeds a daily average of 850 full-time equivalent personnel, either direct employees or contract personnel, and specifically noting instances where the employee count goes below

the required average because employees have voluntarily left the customer's employ and the IAS customer is actively seeking to fill those positions, or due to *force majeure* or other events considered by the Commission to be outside the IAS customer's control.

The information provided shall be classified as Highly Confidential.

12. As a condition to access the reduced rate structure available to the new IAS class, and the limited exemption from the FAC, the IAS customer shall expend $35 million in capital, as defined by accounting principles generally accepted in the United States (USGAAP), at the New Madrid smelter in the first year of the term, and shall provide the Commission Staff and all parties to this rate case an annual surveillance report, which shall be designated as Highly Confidential, detailing the nature and scope of work performed to meet the $35 million requirement with discrete expenditures accounted for by amount of capital expended.
13. As a condition to access the reduced rate structure available to the new IAS class, and the limited exemption from the FAC, after the first year of the term and through the period that the reduced base rate is in effect, the IAS customer shall expend an annual inflation adjusted $35 million in capital as defined by USGAAP at the New Madrid smelter, utilizing the general Consumer Price Index as published by the US Bureau of Labor Statistics, compounded annually, in the second through final years the reduced base rate is in effect, and a pro-rated inflation-adjusted monthly capital expenditure for each full months the reduced base rate is in effect

after the term to the extent there are any partial-year terms, and to provide the Commission Staff and all parties to this rate case an annual surveillance report, which shall be designated Highly Confidential, detailing the nature and scope of work the customer performed to meet the required aggregate capital investment level with discrete expenditures accounted for by amount of capital expended.

14. The IAS customer may elect to invest an amount greater than $35 million in capital per year, as defined above, as set forth in paragraphs 12 and 13, with a corresponding reduction in its capital spending obligation in the later years of this period, but in no event shall the IAS customer's capital investment spending credited at the end of each year be less than the compounded inflation-adjusted expenditure requirement for that same period as set forth in paragraphs 12 and 13.
15. As a condition to access the reduced rate structure available to the IAS class, and the limited exemption from the FAC, the IAS customer shall not issue any special dividend, aside from its regular, customary penny per share dividend, until after the first rate case following the expiration of the three-year term.
16. The IAS customer may remain in the IAS class only so long as it remains a stand-alone entity. Membership in the IAS class shall not be assigned to, or assumed by, any successor company, whether through direct ownership, through a holding company, or otherwise unless such assignment or assumption is approved by the Commission.

17. If the IAS customer believes that it will have to discontinue operations at the New Madrid smelter, it shall provide notice to the Commission and to all parties to this case without delay and as soon as reasonably possible.
18. As a term of the IAS tariff, if the IAS customer should materially fail – as determined by the Commission – to comply with any term or condition required to access the reduced rate provided by this order, the IAS customer shall no longer have access to the rate structure outlined herein, and the customer's rate structure shall revert to the rate structure set for the LTS class at that time, with the resulting difference in retail revenue to be allocated to the benefit of the remaining customer classes in equal proportion to their then-current contribution to retail revenue less the LTS class. Since Ameren Missouri's rates to other customers cannot be changed except through a general rate case, Ameren Missouri shall retain the extra payments collected from Noranda in that event in a regulatory liability to be returned to customers with interest in Ameren Missouri's next general rate case.
19. The Commission Staff or any party to this case may file a petition asking the Commission to determine whether the IAS customer has failed materially to comply with any term or condition required to access the reduced rate structure. Upon the filing of such a petition, the Commission shall hold a hearing or make a determination based on verified pleading within 30 days of the filing of the petition.
20. At such a hearing, the IAS customer shall bear the burden to show that it

has not failed to meet any term or condition required to access the IAS class rate structure; why its failure to meet any term or condition required to access the IAS class rate structure is immaterial; or why it should continue to access the IAS class rate structure despite a material failure to meet any term or condition required to access the IAS class rate structure.

21. In assessing whether a violation of any term or condition is material, the Commission shall weigh all relevant factors, including:

    (a) Any evidence of *force majeure*;

    (b) With regard to an alleged violation of an employment level condition, whether the violation is the *de minimis* result of the quarterly-average calculation and whether the IAS customer has actively sought, or is actively seeking, to fill those vacant positions.

In future rate cases, the Commission will once again assess whether Noranda should be allowed to continue to receive a reduced load retention rate, and may continue this rate and these conditions as it finds appropriate based on the competent and substantial evidence presented in such cases, including the economic conditions at the time of that case. In such future rate case, the Commission would consider extending the term of the special rate with additional conditions and consumer protections, including a possible price trigger based on aluminum prices on the London Metals Exchange.

THE COMMISSION ORDERS THAT:

1. The tariff sheets filed by Union Electric Company, d/b/a Ameren Missouri on July 3, 2014, and assigned tariff number YE-2015-0003, are rejected.

2. Union Electric Company, d/b/a Ameren Missouri is authorized to file a tariff sufficient to recover revenues as determined by the Commission in this order.

3. Union Electric Company, d/b/a Ameren Missouri shall file the information required by Section 393.275.1, RSMo 2000, and Commission Rule 4 CSR 240-10.060 no later than May 15, 2015.

4. The Department of Economic Development's Petition for Leave to File Amicus Brief is denied.

5. This report and order shall become effective on May 12, 2015.

BY THE COMMISSION

Morris L. Woodruff
Secretary

R. Kenney, Chm., W. Kenney, Hall, and
Rupp, CC., concur;
Stoll, C., dissents, with separate dissenting opinion attached.

Dated at Jefferson City, Missouri,
on this 29th day of April, 2015.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a Ameren Missouri's Tariff to Increase Its Revenue for Electric Service	))))	Case No. ER-2014-0258

DISSENTING OPINION OF COMMISSIONER STEPHEN M. STOLL

This commissioner dissents from the majority in its order in Case No. ER-2014-0258 because the order establishes a rate structure that is unlawful, confiscatory, arbitrary and capricious.

A foundational cornerstone of regulatory law is provided by the United States Supreme Court in its decision in *Bluefield Water Works v. Public Service Comm'n 262 U.S. 679 (1923).* The order in ER-2014-0258 is remarkably similar to the order overturned by the Supreme Court in *Bluefield* in that it sets rates for a utility service that are less than the cost of providing the utility service.

In *Bluefield*, Justice Butler wrote:

> "The question in this case is whether the rates prescribed by the commission's order are confiscatory, and therefore beyond legislative power. Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service are unjust, unreasonable, and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment."[1]

The Order lowers the rates of a single customer, Noranda, in a single class, Large Transmission Service, to a level less than the cost of providing service that constitutes 10 percent of the Utility's total load under the pretense that the loss of this single LTS customer would detrimentally affect all other customers of this utility. Therefore, this order would in effect raise the rates of all customers in all classes to subsidize rates of the largest customer to avoid presumably even higher costs should Noranda fail.

It is here that the Order creates a confiscatory dilemma from which it cannot escape: If the losses resulting from the below-service-cost rates approved for Noranda are not spread across other customer classes – residential, commercial and industrial – the Order unlawfully confiscates the value of the service from the Utility; if the Utility is made whole by spreading the subsidized costs of Noranda's below-cost rate to other ratepayers, the money of the customers in all the other classes is being unlawfully confiscated because they are forced to pay costs *higher* than those actually necessary to provide utility service to them.

In the face of this conundrum, the Order arbitrarily departs from the known and measurable costs the Utility has incurred within the test year established in ER-2014-0258. This departure assumes costs that *could* be incurred at some point *outside the test year if* Noranda's management can't make a profit and its board votes to close the New Madrid facility.

Capriciously, this order then builds those assumptions into rates and transmission charges paid by all other customers to subsidize the electric rate for Noranda.

---

[1] Bluefield Water Works v. Public Service Comm'n 262 U.S. 679, 262 (1923)

The projections on which these assumptions are based are speculative at best because it is extremely difficult to accurately calculate the benefits or costs of surplus generation that would result from closing the New Madrid plant. The possibilities range from ratepayers bearing the costs of the surplus generation to ratepayers enjoying the profits of the generation if it is sold off-system.

The difficulty of calculating the off-system sales benefits to ratepayers – who would get all profits normally going to the Utility if Noranda fails and that load is sold off-system – becomes impossible in the face of significant, but unknown costs anticipated under new Clean Air Act restrictions.

Absent a crystal ball, we cannot measure the costs or benefits of a rule restricting the CO2 output of coal plants used to generate electricity before the rule is completed. The costs of shutting down heavy CO2 emitting coal plants netted against costs resulting from the closure of an aluminum smelter that consumes 500 megawatts of electricity every hour cannot be calculated until the CO2 limits and costs are finalized.

For more than 100 years this Commission – and the voters of Missouri through adopting prohibitions against electric utilities recovering plant construction costs before the plant is used and useful – have ensured that risks associated with operating utilities are borne, appropriately, by the investors – the owners – of the utilities, and *not* the rate-paying customers of the utility.

The management of business is, fundamentally, the management of risk at a level acceptable to attract and retain investors necessary to finance the operation of the business. In a United States Supreme Court decision in a case emanating this state, *Missouri ex rel Southwestern Bell Telephone Co. v. Public Service Commission of Missouri* 262 US 267 (1923) the Court drew a bright line between regulation and management:

> "It must never be forgotten that, while the state may regulate with a view to enforcing reasonable rates and charges, it is not the owner of the property of public utility companies, and is not clothed with the general power of management incident to ownership."[2]

This Order arbitrarily goes beyond the Supreme Court's prohibition against this Commission managing utilities it regulates to, in effect, managing an aluminum smelter over which it has no authority. It does this by shifting the risk for an aluminum smelting venture from the investors who own it and profit from it to the backs and pocketbooks of utility customers who neither own nor manage it.

No one, especially this commissioner, disputes the importance of Noranda to this state, Noranda employees and all Missouri citizens. We all want to support this company and to see it succeed in producing a product that is important for our state and nation. This support rightly should be borne not just by one utility or its customers, but by all Missourians. And, the steps Missouri takes to help this company should be more sound than a utility rate structure that is unlawful, arbitrary, capricious and confiscatory.

For this reason, and those reasons outlined above, I DISSENT in ER-2014-0258.

Respectfully,

Stephen M. Stoll, Commissioner

---

[2] *State of Missouri ex rel. Southwestern Bell Tel. Co. v. Pub. Serv. Comm'n of Missouri,* 262 U.S. 267, 289 (1923)

In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Electric Service	)))	**File No. ER-2014-0258** Tariff No. YE-2015-0003

NOTICE OF UPDATED CALCULATION OF FINANCIAL EFFECT OF REPORT AND ORDER

ELECTRIC

§22. Revenue
In a general rate action, after the issuance of the decision on the merits, the Commission's staff filed revised information on revenue requirement and Net Base Energy Charge, which the Commission memorialized by notice issued in that case.

§ RATES
§40. Revenues
In a general rate action, after the issuance of the decision on the merits, the Commission's staff filed revised information on revenue requirement and Net Base Energy Charge, which the Commission memorialized by notice issued in that case.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Electric Service	)))	**File No. ER-2014-0258** Tariff No. YE-2015-0003

NOTICE OF UPDATED CALCULATION OF FINANCIAL EFFECT OF REPORT AND ORDER

Issue Date: May 1, 2015

In its Report and Order issued on April 29, 2015, the Commission included a summary paragraph in which it estimated that the decisions described in the Report and Order would have the effect of increasing the amount of revenue Ameren Missouri could collect from its customers by approximately $108 million. Approximately $103 million of that amount was described as related to Ameren Missouri's increased net fuel costs. The summary explained that those numbers were based on the Revised True-Up Reconciliation filed by Staff. A footnote to the summary paragraph further explained that those numbers were only an estimate that did not control or modify the decisions described in the Report and Order.

On April 30, Staff filed reconciled final accounting schedules and a final reconciled net base energy charge calculation. Staff's more detailed and updated calculation showed that the final reconciled revenue requirement figure resulting from the decisions described in the Report and Order is $121,544,750 and the final reconciled Net Base Energy Charge (NBEC) is $109,100,000. Staff's updated calculations are based on the terms described in the Report and Order and do not control or modify any of those terms.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Dated at Jefferson City, Missouri,
on this 1st day of May, 2015.

Woodruff, Chief Regulatory Law Judge

In the Matter of the Application of Ameren Transmission Company of Illinois for Other Relief or, in the Alternative, a Certificate of Public Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain and Otherwise Control and Manage a 345,000-volt Electric Transmission Line in Marion County, Missouri, and an Associated Switching Station Near Palmyra, Missouri.	))))))))	**File No. EA-2015-0145**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES.

§11. When a certificate is required generally.
The Public Service Commission Act provides that the Commission has jurisdiction over any entity that owns or operates electric plant, including transmission lines, devoted to public use. Public use is not limited to retail sales to the general public, and includes any integral link in the sale and distribution of electricity to the public, like transmission lines. The Federal Energy Regulatory Commission has not pre-empted State authority over the siting of electric plant.

§42. Electric and power.
The Public Service Commission Act provides that the Commission has jurisdiction over any entity that owns or operates electric plant, including transmission lines, devoted to public use. Public use is not limited to retail sales to the general public, and includes any integral link in the sale and distribution of electricity to the public, like transmission lines. The Federal Energy Regulatory Commission has not pre-empted State authority over the siting of electric plant.

ELECTRIC.

§3. Certificate of convenience and necessity.
The Public Service Commission Act provides that the Commission has jurisdiction over any entity that owns or operates electric plant, including transmission lines, devoted to public use. Public use is not limited to retail sales to the general public, and includes any integral link in the sale and distribution of electricity to the public, like transmission lines. The Federal Energy Regulatory Commission has not pre-empted State authority over the siting of electric plant.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 2nd day of June, 2015.

In the Matter of the Application of Ameren Transmission Company of Illinois for Other Relief or, in the Alternative, a Certificate of Public Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain and Otherwise Control and Manage a 345,000-volt Electric Transmission Line in Marion County, Missouri, and an Associated Switching Station Near Palmyra, Missouri.	)))))))	**File No. EA-2015-0145**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: June 2, 2015 Effective Date: June 12, 2015

Procedural History

On February 20, 2015[1], Ameren Transmission Company of Illinois ("ATXI") asked the Commission to either find that it does not have jurisdiction over this project or, in the alternative, to grant ATXI a certificate of convenience and necessity to build it. In particular, ATXI wants to build a 345,000 volt transmission line about seven miles long that runs from Palmyra, Missouri and across the Mississippi River to the Missouri state line.

The Commission provided notice and set a deadline for applications to intervene. The Commission received timely intervention requests from United for Missouri, Inc., and Missouri Industrial Energy Consumers, which the Commission granted.

The Staff of the Commission filed its Recommendation on April 20. Staff recommends that the Commission grant the certificate, subject to certain conditions. Staff

[1] Calendar references are to 2015.

further recommends the Commission grant certain rule waivers to ATXI, as requested in the application.

ATXI responded on April 24, accepting Staff's conditions. No party has objected to Staff's Recommendation or to ATXI's acceptance of the Recommendation.

Decision

ATXI is an electrical corporation and a public utility subject to Commission jurisdiction. ATXI's Missouri facilities, according to its application, are electric plant that will be used for the transmission of electricity that will be used for light, heat or power.[2]

The Commission may grant an electrical corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either "necessary or convenient for the public service."[3] The Commission has stated five criteria that it will use:

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]

Based on the verified application and the verified recommendation of Staff, the Commission finds that granting ATXI's application for a certificate of convenience and

[2] Section 386.020(14), (15), (43).
[3] Section 393.170, RSMo.
[4] *In re Tartan Energy Company*, 3 Mo. P.S.C. 173, 177 (1994).

necessity to provide electrical service meet the above listed criteria.[5] The application will be granted. Because the application is unopposed, and because the Commission does not wish to cause undue delay, this order will be given a ten-day effective date.

THE COMMISSION ORDERS THAT:

1. Ameren Transmission Company of Illinois is granted permission, approval, and a certificate of convenience and necessity to construct, install, own, operate, control, manage, and maintain electrical plant for its existing facilities in Missouri and its new facilities in Missouri, as more particularly described in its application and Staff Recommendation.

2. As requested by Ameren Transmission Company of Illinois, and agreed upon by Staff, the Commission waives the reporting requirements of Commission Rule 4 CSR 240-3.145 (rate schedule filing), 4 CSR 240-3.175 (depreciation) and Commission Rule 4 CSR 240-3.190(1), (2) and (3)(A)-(D) (generation).

3. As requested by Staff, and agreed upon by Ameren Transmission Company of Illinois, Ameren Transmission Company of Illinois shall file with the Commission the annual report it files with the Federal Energy Regulatory Commission.

[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).

4. This order shall become effective on June 12, 2015.

5. This file shall be closed on June 13, 2015.

BY THE COMMISSION

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney,
Hall, and Rupp, CC., concur.

Pridgin, Deputy Chief Regulatory Law Judge

In the matter of the Petition of	)	
Missouri-American Water Company for	)	File No. WO-2015-0211
Approval to Change its Infrastructure	)	Tracking No. YW-2015-0267
System Replacement Surcharge (ISRS)	)	

REPORT AND ORDER

RATES

§81. Surcharges.

The Commission approved an application and tariff to govern the applicant's infrastructure replacement surcharge, which allowed the applicant to recover its costs at the risk of over-collection, conditioned on the filing of a notice when the applicant approached over-collection.

WATER

§14. Maintenance

The Commission approved an application and tariff to govern the applicant's infrastructure replacement surcharge, which allowed the applicant to recover its costs at the risk of over-collection, conditioned on the filing of a notice when the applicant approached over-collection.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the matter of the Petition of	)	
Missouri-American Water Company for	)	File No. WO-2015-0211
Approval to Change its Infrastructure	)	Tracking No. YW-2015-0267
System Replacement Surcharge (ISRS)	)	

REPORT AND ORDER

Issue Date: June 17, 2015

Effective Date: June 27, 2015

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the matter of the Petition of	)	
Missouri-American Water Company for	)	File No. WO-2015-0211
Approval to Change its Infrastructure	)	Tracking No. YW-2015-0267
System Replacement Surcharge (ISRS)	)	

REPORT AND ORDER

Issue Date June 17, 2015 Effective Date June 27, 2015

The Missouri Public Service Commission is granting the petition and approving the tariff.[1] The tariff proposes to increase the Infrastructure System Replacement Surcharge for St. Louis County customers of Missouri-American Water Company by 0.7 percent.

Procedural History

Missouri-American Water Company ("MAWC") filed the petition and tariff.[2] Staff filed its recommendation to deny the petition and reject the tariff.[3] MAWC filed a reply to the recommendation.[4] The Commission issued notice of a contested case.[5] MAWC and Staff filed a list of issues.[6] The Commission received position statements from MAWC,[7]

[1] As used in Commission practice, a tariff is a schedule governing rates, charges, and other terms of public utility service. The term may refer to such document as approved by the Commission or as proposed by the utility. It may also refer to all such documents, or the subset addressing one subject matter, or a single page.

[2] EFIS No. 1 (February 27, 2015) *MAWC's Petition to Change its Infrastructure Replacement Surcharge*.

[3] EFIS No. 7 (April 28, 2015) *Staff Recommendation to Reject Tariff and Proposed Increase to the Infrastructure Replacement Surcharge*.

[4] EFIS No. 8 (May 4, 2015) *Response and Objection to Staff Recommendation, Request for Regulatory Asset, and Motion to Establish Procedural Schedule*.

[5] EFIS No. 14 (May 7, 2015) *Notice of Contested Case*.

[6] EFIS No. 21 (May 22, 2015) *List of Issues, List and Order of Witnesses, Order of Opening and Order of Cross-Examination*.

Staff,[8] and OPC. [9] The Commission convened an evidentiary hearing on the petition and tariff.[10] The parties filed post-hearing briefs.[11]

ISRS

The petition and tariff seek an increase in MAWC's Infrastructure System Replacement Surcharge ("ISRS"). The ISRS produces revenue in addition to compensation set in a general rate action.[12] In Commission practice, a general rate action typically compensates MAWC only for expenses based on an historical test year, occurs only every few years, and takes eleven months to decide. The ISRS recovers eligible costs between general rate actions, so it constitutes an incentive for MAWC to pursue infrastructure projects. An ISRS lasts no more than three years ("ISRS cycle") with some flexibility for a general rate action to address infrastructure system replacement costs.[13]

The statutes prescribe the mechanics and limitations of the ISRS. Those provisions:

- Describe the projects and the expenses eligible for compensation through the ISRS ("eligible costs"),[14]

[7] EFIS No. 24 (May 26, 2015) *MAWC's Statement of Position*.

[8] EFIS No. 23 (May 26, 2015) *Staff Statements of Position*.

[9] EFIS No. 22 (May 26, 2015) *The Office of the Public Counsel's Position Statement*.

[10] EFIS No. 25 (June 5, 2015) *Transcript-Volume 1*.

[11] EFIS No. 32 (June 12, 2015) *Staff's Post-Hearing Brief*; EFIS No. 33 (June 12, 2015) *MAWC's Brief*; EFIS No. 34 (June 12, 2015) *The Office of the Public Counsel's Statement in Support of Staff*.

[12] Section 393.1006.7, RSMo Supp. 2013.

[13] Section 393.1003.2 and .3, RSMo Supp. 2013.

[14] Section 393.1006(4), RSMo Supp. 2013.

- Require MAWC to bill customers who benefit from the projects per gallon of water ("billing determinants"),[15] and
- Cap the revenue that the ISRS produces ("maximum revenue"). [16]

The maximum revenue is ten percent of MAWC's base level revenue as determined in MAWC's most recent general rate action.[17]

To keep the ISRS on target, the statutes provide that MAWC may file a new ISRS tariff every six months,[18] and that MAWC's ISRS revenue is subject to a reconciliation every twelve months[19] ("reconciliation period"). The reconciliation determines whether any over-production or under-production ("reconciliation amount") has occurred and adjusts the next ISRS tariff by the reconciliation amount.[20] If the reconciliation amount is an over-recovery, the amount projected for the upcoming reconciliation period is decreased by the reconciliation amount.[21] If the reconciliation amount is an under-recovery, the amount projected for the upcoming reconciliation period is increased by the reconciliation amount.[22] No over-recovery is at issue in this action, but under-recoveries are at issue.

[15] Section 393.1006.5, RSMo Supp. 2013

[16] Section 393.1003.1, RSMo Supp. 2013; 4 CSR 240-3.650.

[17] Section 393.1003(1), RSMo Supp. 2013.

[18] Section 393.1006.3, RSMo Supp. 2013.

[19] Section 393.1006.5(2), RSMo Supp. 2013.

[20] Section 393.1006.5(2), RSMo Supp. 2013.

[21] Section 393.1006.5(2), RSMo Supp. 2013.

[22] Section 393.1006.5(2), RSMo Supp. 2013.

Standards of Proof

MAWC has the burden of proving the allegations in its petition[23] and the propriety of the tariff.[24] The quantum of evidence by which MAWC must carry its burden is the preponderance of the evidence.[25] The preponderance means the evidence that weighs more in favor[26] than against[27] the petition and tariff.

The Commission does not specifically discuss matters that are not dispositive. The Commission makes each ruling on consideration of each party's allegations and arguments, and has considered the substantial and competent evidence on the whole record. Where the evidence conflicts, the Commission must determine which is most credible and may do so implicitly.[28] The Commission's findings reflect its determinations of credibility, and no law requires the Commission to make any statement as to which portions of the record the Commission believes or disbelieves.[29]

Under that standard, the Commission makes the following findings of fact.

Findings of Fact

1. MAWC sells water and service for gain in Missouri.[30] MAWC's base level revenue, as set in MAWC's most recent general rate action,[31] is $258,926,618 and ten percent of that amount is $25,892,662.[32]

[23] *Heidebur v. Parker*, 505 S.W.2d 440, 443 (Mo. App., St.L.D. 1974).

[24] Section 393.150.1, RSMo 2000.

[25] *Spencer v. Zobrist*, 323 S.W.3d 391, 398 (Mo. App., W.D. 2010).

[26] *State Board of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App., W.D. 2000).

[27] *Hager v. Director of Revenue*, 284 S.W.3d 192, 197 (Mo. App., S.D. 2009).

[28] *Stone v. Missouri Dept. of Health & Senior Services*, 350 S.W.3d 14, 26 (Mo. banc 2011).

[29] *Stith v. Lakin*, 129 S.W.3d 912, 919 (Mo. App., S.D. 2004).

[30] EFIS No. 1, (February 27, 2015) *Missouri-American Water Company's Petition to Change its*

2. MAWC's ISRS became effective on September 25, 2012.[33] The ISRS assumed more customer usage than occurred, so the ISRS generated less revenue than expected, so reconciliations determined under-recoveries. The Commission included those reconciliation amounts in ISRS revenues that the Commission authorized MAWC to recover.[34]

3. As of the reconciliation period ending in September 2014, under-recoveries totaled $1,665,202; and the Commission authorized MAWC's ISRS to produce $25,637,873. But, due to declining sales, MAWC recovered only $23,972,670 in ISRS revenues as of September 2014. That amount is $1,919,991 short of $25,892,662. [35]

4. Between October 1 and March 31, 2015, MAWC incurred enough in eligible costs for an ISRS that produces more than $25,892,662.

Conclusions of Law

The Commission has jurisdiction to rule on the petition and must determine the propriety of the tariff. [36] Generally, any tariff's propriety depends on whether it will support service that is "safe and adequate"[37] at rates that are "just and reasonable [.]"[38]

Infrastructure System Replacement Surcharge and Tariff Revision, page 1 to 2, paragraph 1, incorporated into EFIS No. 28 (June 8, 2015) Exhibit 1, *Direct Testimony of Jeanne M. Tinsley on Behalf of [MAWC]*, page 3.

[31] File No. WR-2011-0337, *In the Matter of Missouri-American Water Company's Request for Authority to Implement a General Rate Increase for Water and Sewer Service Provided in Missouri Service Areas.*

[32] EFIS No. 28 (June 8, 2015) Exhibit 1, *Direct Testimony of Jeanne M. Tinsley on Behalf of [MAWC]*, page 3; EFIS No. 30 (June 8, 2015) Exhibit 3, *Direct Testimony of Mark L. Oligschlaeger*, page 4.

[33] EFIS No. 25 (June 5, 2015) *Transcript-Volume 1*, page 58.

[34] EFIS No. 28 (June 8, 2015) Exhibit 1, *Direct Testimony of Jeanne M. Tinsley on Behalf of [MAWC]*, page 7.

[35] EFIS No. 28 (June 8, 2015) Exhibit 1, *Direct Testimony of Jeanne M. Tinsley on Behalf of [MAWC]*, page 7.

[36] Sections 393.1003, RSMo Supp. 2014 and 393.150, RSMo 2000.

[37] Section 393.130.1, RSMo Supp. 2013.

That standard is subject to many considerations of law, fact, and policy in a general rate action but, in this action, the considerations are simplified.

Authorized, Produced, Recovered

The General Assembly has set forth the just and reasonable rates for safe and adequate service in the context of infrastructure system replacement. The ISRS statutes compensate infrastructure system replacement through a surcharge that produces revenue between a minimum and a maximum:

> [A]n ISRS, on an annualized basis, must produce ISRS revenues of at least one million dollars but not in excess of ten percent of the water corporation's base revenue level approved by the commission in the water corporation's most recent general rate proceeding. [39]

MAWC and Staff have shown without dispute that the maximum revenue is $25,892,662, and that MAWC has invested enough in infrastructure system replacement to earn the maximum revenue. Therefore, MAWC and Staff agree that the maximum revenue is the target.

But, on the way to that target, MAWC and Staff part ways. MAWC asks for authorization to produce the difference between the maximum revenue and the revenue it has recovered so far.

Maximum Revenue - Revenue Produced to 09-14 = Tariff Revenue

$25,892,662 - $23,972,670 = $1,919,991

That amount authorizes over-production of revenue, Staff notes.

Revenue Authorized to 09-14 + Tariff Revenue = MAWC's Total

$25,637,873 + $1,919,991 = $27,557,864

[38] Section 393.130.1, RSMo Supp. 2013; and Section 393.150.2, RSMo 2000.

[39] Section 393.1003.1, RSMo Supp. 2013; 4 CSR 240-3.650.

$27,557,864 > $25,892,662

MAWC's Total > Maximum Revenue

Staff argues that the Commission must authorize revenue only to the maximum revenue. Staff also argues that the maximum revenue is the sum of the amount of revenue collected by MAWC through the ISRS as of September 2014, the amounts under-recovered from prior ISRS filings, and the new ISRS eligible costs:

Maximum Revenue - Revenue Authorized to 09-14 = Staff's Proposal

$25,892,662 - $25,637,873 = $254,789

MAWC has consistently experienced declining sales that result in it recovering less than its Commission authorized ISRS revenues. However, Staff is correct that, if sales increase, MAWC will produce more; and if sales increase enough, the tariff will authorize MAWC to recover more than the maximum revenue.

The Commission is persuaded by MAWC's argument and calculation in this matter for the following reasons. The statutes provide that the ISRS must:

> . . . allow for the adjustment of the water corporation's rates and charges to provide for the **recovery** of costs for eligible infrastructure system replacements. [40]

The statute further provides:

> If the commission finds that a petition complies with the requirements of sections 393.1000 to 393.1006, the commission shall enter an order authorizing the water corporation to impose an ISRS that is sufficient to **recover** appropriate pretax revenues, as determined by the commission pursuant to the provisions of sections 393.1000 to 393.1006. [41]

40 Section 393.1003.1, RSMo Supp. 2013 (emphasis added).

41 Sections 393.1006(4), RSMo Supp. 2013.

MAWC also cites the Missouri Court of Appeals' opinion in *In re Laclede Gas Co.*[42]

> [T]he obvious legislative intent . . . is to permit the . . . company to timely **recover** its costs for government-mandated infrastructure system replacement projects via a rate adjustment outside of a general rate case for a limited period of time.[43]

Staff's proposal does not meet that standard.

Revenue Recovered to 09-14 + Staff's Proposal = Staff's Total

$23,972,670 + $254,789 = $24,227,459

$24,227,459 < $25,892,662

Staff's Total < Maximum Revenue

Staff's proposal includes reconciliation amounts, which according to the statute should not be included.

Staff offers a variety of aids to statutory construction, including presentations for professional associations and a fiscal note review, but there is no ambiguity in the provisions that guide this report and order. "Proper statutory construction starts with the words of the statute. In most cases, it ends there, as well."[44] Staff offers no persuasive authority to count the reconciliation amounts toward the maximum revenue, which is how the parties frame their dispute, as follows.

Authorized Surcharge v. Reconciliation Amounts

MAWC and Staff differentiate their arguments by their treatment of reconciliation amounts. Staff's proposal uses revenue authorized, of which the components include reconciliation amounts, so Staff's proposal "includes" reconciliation amounts. MAWC

[42] *In re Laclede Gas Co.,* 417 S.W.3d 815 (Mo. App., W.D. 2014).

[43] *In re Laclede Gas Co.,* 417 S.W.3d 815, 823 (Mo. App., W.D. 2014) (emphasis added).

[44] *In re M.D.R.*, 124 S.W.3d 469, 472 (Mo. banc 2004).

"excludes" reconciliation amounts because reconciliation amounts are—by definition—amounts not recovered, and the tariff uses the term "recovered."

From this perspective, also, MAWC's arguments are more persuasive because they stand on the plain language of the statutes. The statutes describe the two components of an ISRS—eligible costs and reconciliation amounts—separately. The statutes also prescribe differing treatments for each component during the ISRS cycle and at the ISRS cycle's end.

The first component is the eligible costs. The statutes initially establish an ISRS based on eligible costs:

> At the time that a water corporation files a petition with the commission seeking to establish or change an ISRS, it shall submit proposed ISRS rate schedules and its supporting documentation regarding the calculation of the proposed ISRS with the petition, and shall serve the office of the public counsel with a copy of its petition, its proposed rate schedules and its supporting documentation.[45]

The statutes list eligible costs but do not include reconciliation amounts in that list:

> "ISRS costs", depreciation expenses and property taxes that will be due within twelve months of the ISRS filing [.[46]]

During the ISRS cycle, the statutes allow "changes" in that initially established ISRS:

> A water corporation may effectuate a change in its rate pursuant to this section no more often than two times every twelve months.[47]

At the end of the ISRS cycle, the statutes treat eligible costs as part of rates in the next general rate action:

[45] Section 393.1006.1(1), RSMo Supp. 2013.

[46] Section 393.1000(5), RSMo Supp. 2013.

[47] Section 393.1006.3, RSMo Supp. 2013.

> An eligible water utility that has implemented an ISRS shall file revised ISRS rate schedules to reset the ISRS to zero when new base rates and charges become effective following a commission order establishing customer rates in a general rate proceeding that **incorporates eligible costs** previously reflected in an ISRS **into** the subject utility's **base rates**. [48]

The eligible costs, initially established or changed, under that plain language do not include reconciliation amounts.

The second component is any reconciliation amount—positive or negative. The statutes define reconciliation amounts as:

> . . . the **differences** between the revenues resulting from an ISRS and the appropriate pretax revenues as found by the commission for that period [.[49]]

During the ISRS cycle, the statutes provide for an under-recovery or subtract an over-recovery respectively by requiring MAWC to:

> . . . submit the reconciliation and a proposed ISRS adjustment to the commission for approval to recover or refund the difference, as appropriate, through **adjustment** of an ISRS. [50]

These differences show that reconciliation amounts are separate from, not a part of, the eligible costs of which recovery counts toward maximum revenue.

Moreover, the statutes' provisions for treatment during the ISRS cycle show the flaw in Staff's proposal:

> . . . recover or refund the difference, as appropriate, through **adjustment** of an ISRS. [51]

48 Section 393.1006.6(1), RSMo Supp. 2013 (emphasis added).

49 Section 393.1006.5(2), RSMo Supp. 2013 (emphasis added).

50 Section 393.1006.5(2), RSMo Supp. 2013 (emphasis added).

51 Section 393.1006.5(2), RSMo Supp. 2013 (emphasis added).

That language shows that the "appropriate . . . adjustment" for an under-recovery is for MAWC to "recover" the difference by increasing the ISRS in the next tariff. Staff's proposal accomplishes the reverse by counting the under-recovery toward the maximum revenue, thus decreasing the ISRS in the next tariff. Decreasing the ISRS in the next tariff is the treatment provided by statute for an over-recovery to "refund" the difference to customers. As MAWC notes, Staff's proposal compounds the under-recovery instead of applying the "appropriate" remedy that the General Assembly prescribed.

Staff also cites *In re Laclede Gas Co*.[52] That opinion addresses only the time in which the Commission may establish an ISRS and the time in which the Commission may approve changes after that. *In re Laclede Gas Co.* does not address the components of an ISRS or the reconciliation process.

Therefore, the Commission will grant the petition and approve the tariff.

Over-Recovery and Deferred Recording

The Commission emphasizes that Staff's concern with over-recovery is thoroughly justified because the risk of over-recovery under the ISRS statutes is real. The Commission's conclusions in this case do not diminish that concern. This case highlights that, in certain circumstances, there is no mechanism built into the ISRS statutes that both allows MAWC a real opportunity to recover the maximum revenue the statute prescribes and also prevents MAWC from recovering more than the maximum revenue. The one mechanism to address over or under recovery in the ISRS rules

[52] *In re Laclede Gas Co.,* 417 S.W.3d 815 (Mo. App., W.D. 2014).

applies only to recovery of amounts above or under the Commission-approved ISRS revenues, including ordered refunds.

> . . . If an over or under recovery of ISRS revenues, including any commission ordered refunds, exists after the ISRS has been reset to zero, the amount of over or under recovery shall be tracked in an account and considered in the water utility's next ISRS filing that it submits pursuant to the provisions of section (2) of this rule.[53]

This does not explicitly cover a situation where it was necessary to authorize ISRS rates that could eventually recover more than the maximum revenue in order to be sure those rates can produce revenues up to the maximum amount.

Therefore, in order to effectuate the intent of the ISRS statutes and allow MAWC a real opportunity to recover the maximum revenue but not allow MAWC to recover more than the maximum revenue, the Commission will order that MAWC track its ISRS revenues.[54] No later than 60 days before MAWC expects to reach the maximum revenue allowed under the ISRS statutes, which is $25,892,662 in this instance, MAWC must file a new tariff designed to discontinue any ISRS charges associated with the revenues the Commission is authorizing in this case

The Commission's determination renders MAWC's alternative request for relief moot. A matter is moot when it seeks a ruling that would have no practical effect on any

[53] 4 CSR 240-3.650(17)

[54] Section 393.140(8), RSMo 2000, authorizes the Commission to prescribe by order, after hearing, the accounts in which MAWC shall record particular outlays and receipts. No statute or regulation restricts, or sets any standard for, the Commission's exercise of that authority vis-à-vis the uniform system of accounts that the Commission has prescribed for all water companies under Section 393.140(8), RSMo 2000, at Regulation 4 CSR 240-2.030(1), which otherwise governs deferred recording. The facts as described constitute good cause to require MAWC to track ISRS revenue that MAWC recovers in excess of maximum revenue.

then-existing controversy.[55] MAWC's alternative request is to defer recording of any revenue denied, and no revenue is denied, so no deferred recording is possible. Therefore, the Commission will make no ruling on MAWC's request for deferred recording.

Effective Date

The Commission will set an effective date for this report and order less than 30 days after issuance.[56] Also, that effective date is part of the procedural schedule to which MAWC and Staff agreed, the Commission set, and no party objected to. Those facts show good cause for an effective date less than 30 days after issuance of this report and order. [57]

THE COMMISSION ORDERS THAT:

1. The relief requested in *MAWC's Petition to Replace its Infrastructure Replacement Surcharge* is granted.

2. The tariff assigned tracking no. YW-2015-0267 is approved. The approved tariff sheet is:

P.S.C. MO NO. 13
6th Revised Sheet No. RT 10 Canceling 5th Revised Sheet No. RT 10

3. ISRS revenues resulting from this order shall be recorded as described in this report and order.

[55] *State ex rel. Reed v. Reardon*, 41 S.W.3d 470, 473 (Mo. banc 2001) (quoting *Shelton v. Farr*, 996 S.W.2d 541, 543 (Mo. App. W.D. 1999)).

[56] *Harter v. Missouri Pub. Serv. Comm'n*, 361 S.W.3d 52, 58 (Mo. App., W.D. 2011).

[57] Section 386.490.3, RSMo Supp. 2013.

4. No later than 60 days before MAWC expects to reach the maximum revenue amount of $25,892,662, MAWC must file a new tariff designed to discontinue all ISRS charges associated with the revenues resulting from this order.

5. This order shall be effective on June 27, 2015.

BY THE COMMISSION

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney,
Hall, and Rupp, CC., concur;
and certify compliance with
Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 17th day of June, 2015.

Appearances

For Missouri-American Water Company:

Dean L. Cooper
Brydon, Swearingen & England, P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102-0456

Timothy W. Luft
Missouri American Water Company
727 Craig Road
St. Louis, MO 63141

For the Staff of the Missouri Public Service Commission:

Cydney D. Mayfield, Senior Counsel,
Missouri Public Service Commission,
P.O. 360
Jefferson City, MO 65102

For the Office of the Public Counsel:

Christina L. Baker, Deputy Public Counsel
P.O. Box 2230
Jefferson City, MO 65102

Daniel Jordan, Senior Regulatory Law Judge.

In the Matter of The Empire District Electric Company for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Company's Missouri Service Area	)))))	**File No. ER-2014-0351** Tracking No. YE-2015-0074

REPORT AND ORDER

RATES. §101. Fuel clauses. The Commission included transmission costs in an electric corporation's fuel adjustment clause only to the extent that those costs related to the transmission of off-system sales outside its regional transmission organization and purchased power.

NOTE: At the time of publication, no opinion of Commissioner Rupp has been filed.

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 June, 2015.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of The Empire District Electric Company for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Company's Missouri Service Area	)))))	**File No. ER-2014-0351** Tracking No. YE-2015-0074

REPORT AND ORDER

Issue Date: June 24, 2015

Effective Date: July 24, 2015

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of The Empire District Electric Company for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Company's Missouri Service Area	)))))	**File No. ER-2014-0351** Tracking No. YE-2015-0074

REPORT AND ORDER

Table of Contents

APPEARANCES

For The Empire District Electric Company:
Diana Carter, Attorney at Law, and **Dean Cooper**, Attorney at Law
Brydon, Swearengen & England, P.C.,
312 East Capitol
Jefferson City, MO 65102

For Midwest Energy Consumers Group:
David Woodsmall, Attorney at Law
Woodsmall Law Office,
308 East High St., Suite 204
Jefferson City, MO 65101

For Midwest Energy Users' Association:
Stuart Conrad, Attorney at Law
Finnegan, Conrad & Peterson
3100 Broadway
1209 Penntower Office Center
Kansas City, MO 64111

For City of Joplin:
Marc Ellinger, Attorney at Law
Blitz, Bardgett & Deutsch
308 East High Street, Suite 301
Jefferson City, MO 65101

For the Missouri Department of Economic Development, Missouri Division of Energy
Ollie Green, Senior Legal Counsel, and **Alex Antal**, Legal Counsel
Department of Economic Development
301 West High Street
Jefferson City, MO 65102

For the Staff of the Missouri Public Service Commission:
Robert Berlin, Senior Counsel, and **Jeff Keevil**, Senior Counsel
200 Madison Street, Jefferson City, Missouri 65102

For the Office of the Public Counsel and the Public
Dustin J. Allison, Public Counsel, and **Christina Baker**, Assistant Public Counsel
Office of the Public Counsel
P.O. Box 2230
200 Madison Street, Suite 650
Jefferson City, MO 65102

REGULATORY LAW JUDGE: Kim S. Burton

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 August 29, 2014, the Empire District Electric Company ("Empire") filed a tariff to increase the general rate for electric service. The submitted tariff would have increased Empire's annual electric revenues by approximately $24.3 million dollars (approximately 5.5%). The tariff (Tracking No. YE-2015-0074) had a September 28, 2014 effective date. The Commission issued an order on September 4, 2014, suspending the tariff until July 26, 2015.[1] The Commission also directed notice be provided to interested parties and set a deadline for applications to intervene. The following parties filed applications to intervene that were granted by the Commission: the Missouri Department of Economic Development—Division of Energy ("DED"); the City of Joplin, Missouri ("Joplin"); Midwest Energy Users' Association ("MEUA");[2] and Midwest Energy Consumers Group ("MECG").[3]

[1] § 393.150, RSMo 2000 authorizes the Commission to suspend the effective date of proposed tariff sheets for 120 days, plus an additional 6 months to allow for a hearing.

[2] MEUA is an unincorporated ad-hoc association of large commercial and industrial electricity users, with current participants, Explorer Pipeline Company and Enbridge Pipelines (Ozark) L.L.C.

On October 28, 2014, the Commission issued a procedural schedule and set the Test Year to run from May 2013 through April 2014, with an updated test year of August 31, 2014, and a true-up date of December 31, 2014. The Commission conducted three local public hearings; two in Joplin and one in Reeds Spring, Missouri. Consistent with the procedural schedule, the parties filed direct, rebuttal and surrebuttal testimony.

An evidentiary hearing was held on April 14 and April 17, 2015, for the purpose of hearing testimony on the disputed issues. The Commission admitted into the record all pre-filed witness testimony, including exhibits and other attachments.[4] In total, the Commission admitted 98 exhibits into evidence. The Commission cancelled the scheduled true-up hearing upon the request of the parties. The parties filed initial post hearing briefs on May 15, 2015 and reply briefs on May 29, 2015.

General Findings of Fact

1. Empire is a Kansas Corporation with its principal place of business in Joplin, Missouri. Empire is engaged in the business of the manufacture, transmission and distribution of electricity. Empire provides electrical utility services in Missouri, Kansas, Arkansas, and Oklahoma. Empire's service area includes approximately 10,000 square miles in southwest Missouri and the adjacent corners of the three surrounding states.

[3] MECG is an unincorporated association of large users of electricity provided by Empire. Members of MECG include: Praxair, Inc., General Mills, Walmart Stores, Inc., Sam's Club East, LLC, Jasper Products, LLC, Tyson Foods, Inc., Tamko Building Products, Inc., George's Processing, Inc. and, Simmons Feed Ingredients, Inc.

[4] At hearing, Empire objected to the admission of page 6, lines 1-15 of the Surrebuttal Testimony of MECG's witness Kavita Maini (Exhibit #702). On May 5, the Commission issued a written order overruling Empire's objection and admitting Ms. Maini's Surrebuttal Testimony in its entirety.

Empire is regulated by the utility regulatory commissions in all four states and by the Federal Energy Regulatory Commission ("FERC"). [5]

2. Empire mainly serves smaller communities, with the largest city in its service territory—Joplin, Missouri—having a population of approximately 50,000. The company's service territory includes small to medium manufacturing operations, medical, agricultural, entertainment, tourism, and retail interests. In Missouri, Empire serves approximately 125,750 residential customers, 21,463 commercial customers, 276 industrial customers, 1,845 public authority and street and highway customers, and 3 wholesale customers.[6]

3. Empire solely owns and operates four power plants: the Asbury Power Plant, the Riverton Power Plant, the Energy Center Power Plant, and the Ozark Beach Dam and Hydroelectric Plant. Empire also operates and jointly owns the State Line Power Plant.[7]

4. Empire owns 12% of the Iatan Power Station and 7.52% of the Plum Point facility.[8]

5. Empire filed tariffs with the Commission (Tracking No. YE-2015-0074) requesting an overall increase of $24.3 million in Missouri jurisdictional revenue, exclusive of applicable fees or taxes—an increase of 5.5%. Environmental improvement costs at its Asbury generating unit as well as increased Regional Transmission Organization

[5] Exhibit 102, Beecher Direct, pg. 2.

[6] *Id.* at pg. 3. Empire also provides regulated water service in Missouri, and natural gas service through its wholly-owned subsidiary, The Empire District Gas Company. Water and gas rates are not at issue in this case.

[7] Exhibit 112, Mertens Direct, pg. 3. Empire solely owns State Line Unit 1 and jointly owns State Line Combined Cycle with Westar Energy.

[8] *Id.* at 7.

("RTO") charges, and a new maintenance contract for the Riverton 12 generating unit were factors in Empire's request for a rate increase.[9]

6. As part of Empire's plan to comply with EPA standards, Empire installed a scrubber, fabric filter, and power activated carbon injection system at its Asbury plant ("AQCS"). The AQCS improvements at the Asbury plant were completed in December 2014, after the test year. The budgeted costs from the project ranged from $112 million to $130 million.[10]

7. Empire is completing the construction and conversion of Riverton Unit 12 to a combined cycle unit, which should be completed in mid-2016.[11] Empire is expected to file another general rate case within a year to recover what are primarily environmental compliance costs associated with the Riverton Unit 12 improvements.[12]

Conclusions of Law Regarding Jurisdiction

Empire is an electric corporation and public utility, as defined in § 386.020, and is subject to Commission regulations pursuant to Chapters 386 and 393, RSMo.[13] Section 393.140(11) authorizes the Commission to regulate the rates Empire charges its customers. When seeking to increase the rates it charges its customers,

[9] Exhibit 132, Walters Direct, pg. 2-3.

[10] Exhibit 102, Beecher Direct, pg. 4-5.

[11] *Id.* at pg. 6.9

[12] *Id.*

[13] All statutory references are to the 2000 Missouri Revised Statutes, as cumulatively supplemented.

Empire has the burden of proof to show by a preponderance of the evidence that increased rates are just and reasonable.[14]

When evaluating if rates are just and reasonable, the Commission will balance the interests of Empire's investors in making a reasonable return with the interest of the consumers.[15] The Commission is not bound to the use of any single formula when determining just and reasonable rates.[16] It is the results reached, not the method employed which are controlling.[17]

THE ISSUES

I. Revised Agreement

Prior to the evidentiary hearing, Empire, Staff, OPC, Joplin, DED, and MEUA (jointly referred to as, the "Signatories") submitted a joint agreement, *Revised Stipulation and Agreement and List of Issues*, (hereinafter, "Revised Agreement").[18] On that same day, April 8, the Signatories also filed a *Non-Unanimous Stipulation and Agreement on Certain Issues*. MECG filed notice of its non-objection to the Revised Agreement and a separate objection to the *Non-Unanimous Stipulation and Agreement on Certain Issues* ("Position Statement").

[14] Section 393.150. *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, (Mo.App. 2007).

[15] *Federal* Power *Commission v. Hope Natural Gas Co*., 320 U.S. 591 (1944).

[16] State *ex rel. Associated Natural Gas Co. v. Pub. Serv. Comm'n*, 706 S.W.2d 870, (Mo.App. W.D. 1985).

[17] *Id*.

[18] On April 3, 2015, the Signatories jointly filed their initial agreement, *Global Stipulation and Agreement.* On April 5, MECG filed its *Objection to Non-Unanimous Stipulation* and its *Notice Regarding Need for Hearing.* The Signatories then filed the Revised Agreement on April 8, 2015, to replace the *Global Stipulation and Agreement*.

The Revised Agreement resolves all but three disputed issues in the following manner:

1. Empire will be authorized to file tariffs designed to increase the company's revenues by $17,125,000 (3.9%), exclusive of any applicable license, occupation, franchise, gross receipts taxes, or similar fees or taxes. It is also agreed that Staff's billing determinants and current revenues, shown in Exhibit B, should be used in the setting of rates in this case.

2. Depreciation of Riverton Unit 7 and Asbury Unit 2 will be discontinued, with Empire directed to use the depreciation rates shown in Exhibit C of the Revised Agreement.

3. Empire will discontinue its Vegetation Management Tracker, with the balance to be trued up in Empire's next general rate case.

4. Empire will discontinue the Iatan 2/Iatan Common/Plum Point O&M Trackers, with the accumulated balances to be trued up in Empire's next general rate case.

5. A Riverton 12 Long-Term Maintenance Tracker shall be established, with the base set at $2.7 million, Missouri jurisdictional. Fluctuations in actual charges above or below this annual level of expense will be recorded in a regulatory asset/liability account. The balance recorded in the regulatory asset/liability account should be amortized over three years, with the revenue requirement associated with this tracker considered during Empire's next Missouri general rate case.

6. Empire will continue its current Energy Efficiency Programs—excepting the low-income weatherization program—at current funding levels and with the current recovery mechanism, until Empire has an approved Pre-Missouri Energy Efficiency

Investment Act ("MEEIA") compliance plan or until the effective date of rates in Empire's next general rate case.

7. Empire will continue its Low-Income Weatherization program, with an annual budget of $225,000. If the budget amount is not spent in any given Empire budget year, the balance will roll over to be spent in a future Empire budget year. Going forward, the low-income weatherization program is not a "demand side measure" or program for purposes of § 393.1075.7.[19] Costs for this program are built into and will be recovered through the agreed-upon revenue requirement.

8. Empire will be authorized to continue its Fuel Adjustment Clause ("FAC") with modifications. Southwest Power Pool ("SPP") Schedule 1A and 12 charges will be excluded from the FAC. Empire's FAC will also exclude Empire's labor, administrative, and convention costs from Acct. 501. For the FAC tariff, the Missouri jurisdictional energy allocation factor will be used in the allocation of off-system sales revenues (accounts 447133 and 447830), and Renewable Energy Credits ("REC") revenues (account 456073). Empire agrees to work with stakeholders to develop descriptions of the costs and revenues flowing through the FAC, to be filed with the Commission in the next general rate case.

9. No changes will be made to the Economic Development Rider.

10. Empire will include the following language regarding Standby Service into its tariffs: "Any 'qualifying facility' as defined in 4 CSR 240-20.060(1)(G) shall be provided, upon request, stand-by power at the otherwise applicable standard rates which would apply if the Company provided energy at the customer's full service requirements."

[19] Unless indicated otherwise, all statutory references are to the Missouri Revised Statutes, as cumulatively supplemented

11. Empire also agrees to work towards submitting a Standby Tariff in its next general rate case that will incorporate concepts agreed to by the parties.[20] Empire also agrees to conduct a standby service cost study before its next general rate case filing, unless the Signatories agree additional time is necessary.

12. The Residential Customer Charge will not be increased in this rate case.

13. Empire will continue the use of a tracker mechanism for pension and OPEB expenses, with the annual level of ongoing Missouri jurisdictional pension and OPEBs expenses at $6,909,482 and $883,144, respectively. The Accounting Standards 715-30 and 715-6- (FAS 87/106) tracker language shall continue in effect. The impact of the expiration of the "substantive plan agreement" amortization on OPEB expenses will continue to be reflected in Empire's ongoing tracker balance calculations.

14. Empire will provide monthly quality of service reporting and will continue submitting monthly revenue and usage reports to Staff. Empire will also continue providing information in its monthly reports, as agreed to in the Non-Unanimous Stipulation and Agreement filed May 12, 2010, in File No. ER-2010-0130).[21]

15. The extension policy proposed by Empire will be implemented.

16. The Commission will adopt Staff's recommended in-service criteria and find the Asbury AQCS to be fully operational and used for service. Any party to Empire's next general rate case may argue the book value of Asbury AQCS. No party is precluded in Empire's next rate case from seeking any disallowance.

17. Empire will make the following total company depreciation reserve adjustments to reflect the unitization of Iatan 2 plant:

[20] *See* Revised Agreement; pg. 5, ¶15.
[21] *See* Revised Agreement; pg. 6, ¶18.

Account #	Account Description	Depreciation Reserve Adjus
311I2	Structures and Improvements	$101,450.83
312I2	Boiler Plant Equipment	$1,494,664.97
314I2	Turbogenerator Units	$963,628.98
315I2	Accessory Electrical Equip	($281,415.67)
316I2	Misc Power Plant Equip	($2,278,329.11)

18. Empire will make the following adjustments to the additional amortization balances recorded in separate subaccounts in reserves to reflect the unitization of Iatan 2 plant balances:

Account #	Account Description	Depreciation Reserve Adju
311.05	Structures and Improvements	($361,914.88)
312.05	Boiler Plant Equipment	$5,814,553.61
314.05	Turbogenerator Units	$5,401,677.38
315.05	Accessory Electrical Equip	($809,308.39)
316.05	Misc Power Plant Equip	($10,045,007.72)

19. Empire will continue amortization of the DSM regulatory asset for costs incurred during the Regulatory Plan for a total term of 10 years.

20. Empire will continue amortization for the DSM program costs incurred after the end of the Regulatory Plan and prior to any program implementation under MEEIA for a total term of six years.

21. Empire will continue to flow the Southwest Power Administration ("SWPA") payment associated with the capacity restrictions to be implemented for Ozark Beach hydro facility, net of tax, back to the customers over a 10 year period, which began on the effective date of rates in File No. ER-2011-0004, pursuant to a tracker mechanism; for an annual reduction of expense of approximately $1.365 million on a Missouri jurisdictional basis.

22. Empire will refund through rates, beginning with the effective date of rates in this case, the ITC over-collection balance as of December 31, 2014, of $205,593. The refund will be through an amortization over 24 months. Additional over-recovery of the ITC from January 2015 through the effective dates of rates for this case will be reviewed during Empire's next general rate case.

Decision:

Since MECG did not object to the Revised Agreement, pursuant to 4 CSR 240-2.115(2)(C), the Commission may treat it as a unanimous agreement. The Commission is not required to separately state its findings of fact or conclusions of law for those issues disposed of by stipulation and agreement.[22] The evidence admitted into the record is substantial and competent. Based upon the Commission's independent review of the record and the Revised Agreement, the Commission finds that the Revised Agreement is consistent with the public interest and provides Empire with a sufficient

[22] §536.090.

cash flow to provide safe and adequate service. The $17,125,000 (3.9%), increase in Empire's revenues is just and reasonable.

The Commission will authorize Empire to file tariffs in compliance with the Revised Agreement. The Commission will also incorporate the terms of the Revised Agreement into this Report and Order and direct all parties to comply with the terms of the Revised Agreement.

II. Class Cost of Service

a. How do Empire's residential and industrial rates compare with national averages?
b. What, if any, revenue neutral interclass shifts are supported by Class Cost of Service Studies?
c. What, if any, revenue neutral interclass shifts should be made in designing the rates resulting from this case?
d. What, if any, changes to the Commercial and Industrial customer charges are supported by CCOSS?
e. What, if any, changes to the Commercial and Industrial customer charges should be made in designing the rates resulting from this case?
f. What, if any, changes to the LP tail block rate are supported by CCOSS?
g. What, if any changes to the LP tail block rate should be made in designing the rates from this case?

Findings of Fact:

8. Under the terms of the Revised Agreement, the parties agreed to an increase in Empire's revenue requirement of approximately 3.9% and no increase in the residential customer charge from its current amount of $12.52.[23] The average bill for an Empire residential customer is $131 per month.[24]

[23] Transcript, Volume 6, pg. 131, ln. 24- pg. 132, ln. 5; Ex. 210, R. Kliethermes Rebuttal, pg. 2.

[24] Transcript, Volume 6, pg. 135, lnb. 10-12.

9. A cost of service analysis provides the revenue requirement necessary for a utility to recover prudently incurred costs of providing service, including a return of and on the capital needed to provide services.[25] If it correctly calculates class cost causation, a cost of service ("CCOS") study can be useful to allocate costs among customer classes and to determine rates that allow a utility a reasonable opportunity to earn the allowed return.[26] A CCOS study approach to rates aims to allocate costs to the causing class.[27]

10. Staff submitted a CCOS study using the Base and Intermediate Peak of analysis method ("BIP"). Staff's CCOS study is based on a test year of May 1, 2013, through April 30, 2014, updated through August 31, 2014.[28] Of the four CCOS studies submitted by the parties, Staff's most reasonably recognizes the relationship between the cost of the plant required to serve various levels of demand and energy requirements and the cost of producing energy.[29]

11. Staff's CCOS recommendation shows that residential rates are 8.06% below costs, while large power ("LP") rates are 8.35% above costs[30] and general power ("GP") rates are 7.9% above costs.[31] All four CCOS studies filed by the

[25] Exhibit 115, Overcast Direct, pg. 3.
[26] *Id*.
[27] *Id.* at pg. 16.
[28] Ex. 701, Maini Rebuttal, pg. 10. BIP uses three non-weighted components:1) fixed production related costs associated with base load generation that are allocated to classes based on average demand; 2) fixed production related costs associated with intermediate generation that is allocated on the basis of 12CP minus average demand; and, 3) fixed production related costs associated with peaking generation allocated on the basis of 4 CP minus intermediate demand.

[29] Exhibit 204 Staff CCOS Report, pg. 9-11.

[30] Transcript, Volume 6, pg. 107, ln. 6- pg. 108, ln. 13.

[31] Ex. 210, R. Kliethermes Rebuttal, pg. 5; Transcript Volume 6, pg. 122 ln. 14-21. Transcript Volume 6, pg. 107, ln. 4- pg. 108, ln. 13.

parties show that the residential class is contributing below its share of the rate of return.[32]

12. Based on Staff's CCOS results, Signatories to the Position Statement recommend an increase/decrease to the current base retail revenue on a revenue neutral basis to the various classes of customers.[33]

13. "Revenue neutral" means that the revenue shifts among classes do not change the utility's total system revenues. This term is used to compare revenue deficiencies between customer classes and makes it easier to determine the shifts needed between the classes of customers, when appropriate.[34]

14. Shifting customer costs from variable volumetric rates—that a customer can reduce through energy efficiency—to fixed customer charge will reduce incentive efforts to conserve energy.[35] While Staff's CCOS study supports an increase to residential and all other customer charges by the average increase for each applicable class, the Signatories agreed in the Revised Agreement to not increase the residential customer charge.[36]

15. Staff's CCOS study, supported by the Signatories to the Position Statement, recommends the residential service ("RG") class receive a positive 0.75% adjustment

[32] Transcript, Volume 6, pg. 109, ln. 1- pg. 110, ln. 1. While MECG refers to this discrepancy as a "residential subsidy" the evidence shows that the residential class is currently covering its fixed costs, however, it is not contributing the same level towards Empire's rate of return as other classes.

[33] EFIS Item No. 182, File No. ER-2014-0351.

[34] Exhibit 204, *Staff's* Rate Design and Class Cost of Service Report, pg. 9.

[35] *Id.* at 44.

[36] *Id.* While not one of the Signatories, MECG did not object to the Revised Agreement.

and the total electric billing ("TEB"), GP, and LP classes receive a negative adjustment of approximately 0.85%.[37]

16. After making the revenue neutral interclass adjustments, Staff's CCOS report supports assigning to applicable customer classes the portion of the revenue increase/decrease attributable to the energy efficiency programs from MEEIA program costs. Staff's CCOS results support no retail increase for the feed mill ("PFM") and combined lighting classes as existing revenues received from these classes are providing more revenue to Empire than Empire's cost to serve. After applying these steps, Staff's CCOS Report supports each rate component of each class being increased across-the-board for each class on an equal percentage to recover the $17,125,000 increase in revenue agreed to in the Revised Agreement. [38]

17. The Signatories to the Position Statement recommend a revenue neutral shift that includes a 0.75 %increase for the residential class and a 0.85 %decrease for the LP, TEB, and GP classes.[39] Even though the residential class rates are approximately 8.1% below the class cost of service, the Signatories only recommend a 0.75% increase in the residential rates.[40]

18. Retail rates are pricing signals that drive customer behavior. Empire's average industrial rates are 16% above the national average, while its residential rates are 3.5% below the national average.[41] Based on Staff's CCOS study, the residential class needs an 8.1% revenue neutral adjustment in order to cover the costs incurred to serve the

[37] Exhibit 204, Staff's Rate Design and Class Cost of Service Report, pg. 3.

[38] *Id.*

[39] Transcript Volume 6, pg. 56, ln. 17-23.

[40] Transcript, Volume 6, pg. 135, ln. 2- pg. 136, ln. 3.

[41] Ex. 700, Maini Direct, pg. 4.

class. An adjustment of a 0.75% increase for the residential class, it would take numerous rate cases with similar adjustments over several years for the residential rates to reach cost of service while other classes pay a disproportionate share.[42]

19. Competitive industrial rates are important for the retention and expansion of industries within Empire's service area.[43] If businesses leave Empire's service area, Empire's remaining customers bear the burden of covering the utility's fixed costs with a smaller amount of billing determinants. This may result in increased rates for all of Empire's remaining customers.[44]

20. Attempting to completely eradicate the 8.1% residential rate class discrepancy in this rate case would be too punitive to the customers in that class.[45] A revenue neutral adjustment of 25% of the 8.1% needed adjustment would increase the residential rates by approximately 2%. This 2% increase, in additional to the 3.9% revenue requirement increase, agreed to by the parties in the Revised Agreement, would raise the average residential customer's monthly bill by approximately 5.9%. Since the average monthly bill for an Empire residential customer is $131, this would increase the monthly bill by approximately $7.73 ($131 * 5.9% = $7.73). In comparison, with the .75% revenue neutral increase for the residential class supported by the Signatories in the Joint Position, the average monthly bill for an Empire residential customer would increase by approximately $6.09 ($131 * [3.9% + .75%] = $6.09.

[42] Exhibit 701, Maini Rebuttal, pg. 14-15.

[43] *Id.* at 14.

[44] *Exhibit 700, Maini Direct, pg.* 14-15.

[45] Exhibit 701, Maini Rebuttal, pg. 14-15.

21. A 2% revenue neutral adjustment for the residential class is not punitive to the residential class and helps to eliminate any residential subsidy in a shorter timeframe.[46]

22. The current tail block rate for the LP class is 0.0363 per kWh in the summer (3.63 cents a kWh) and 3.5 cents a kWh in the summer.[47] Despite MECG's argument to the contrary, the cost of energy for the LP tail block is not below the current tail block rate.[48]

23. Staff's CCOS study supports the Signatories' position that each rate component of each class be increased across the board for each class on an equal percentage basis, including the tail block rates for the LP class.[49]

Conclusions of Law:

Since MECG objected to the Position Statement, it is a nonunanimous stipulation and agreement of those issues it resolves. Pursuant to Commission Rule 4 CSR 240-2.115(2)(D) the Commission will only consider such a stipulation as the position of the Signatories, except that no party is bound by it, and the Commission must still make a determination after hearing of all remaining issues. "Not only can the Commission select its methodology in determining rates and make pragmatic adjustments called for by

[46] *Id*.

[47] Transcript, Volume 7, pg 193, ln. 24 – pg. 194, ln. 1-7.

[48] Transcript Volume 6, pg. 57, ln. 15-22.

[49] Transcript, Volume 6, pg. 58, ln. 1-6. Ex. 204, Staff's Rate Design and Class Cost of Service Report, pg. 29.Staff's filed recommendation included an increase to the residential customer charge, however the Signatories agreed in the Revised Agreement to not change the residential customer charge. This excludes the residential customer charge that the parties stated in the Revised Agreement should not be increased. Other portions of the rate element for the residential class will be increased The residential rate schedule consists of the following: 1) residential service rates; 2) customer charge; 3) energy charge-per kWh per season; 4) fuel adjustment – per kWh; and, 5) energy efficiency program charge – per kWh per season.

particular circumstances, but it also may adopt or reject any or all of any witnesses' testimony."[50]

Decision:

Staff's CCOS study supports the position of the Signatories that each rate component for each class be increased across the board for each class on an equal percentage basis.[51] The Signatories also recommend a neutral adjustment recommended by the Signatories (a 0.75% increase for the residential class) to address the recognized 8.1% residential rate class discrepancy. MECG recommends an increase to residential rates by 25% of the needed 8.1% revenue neutral adjustment in order to send a more accurate pricing signal to all of Empire's customers and take a significant step towards moving the residential class closer to its cost of service. The difference between the two is not of such a significant amount as to cause "rate shock." The Commission finds that the increase to residential rates by 25% of the needed 8.1% revenue neutral adjustment is just and reasonable.

Additionally, MECG recommends removing all fixed costs from the second energy block for the LP rate class by adjusting that tail block rate down to coincide with the base costs of fuel. The Signatories oppose this option and instead recommend that each rate component of each class be increased across the board for each class on an

[50] *State ex rel. Assoc. Natural Gas Co.* v. *Public Service Commission*, 706 S.W. 2d 870, 880 (Mo.App. W.D. 1985). See also *State ex rel. Missouri Office of Public Counsel v. Public Service Comm'n of State*, 293 S.W.3d 63, 80 (Mo. App. 2009)(An administrative agency, as fact finder, also receives deference when choosing between conflicting evidence.)

[51] This is excluding the residential rate class customer charge, for which the Commission is not approving a change, consistent with the terms of the Revised Agreement.

equal percentage basis. The evidence presented by MECG does not support a change in the LP tail block rate.

The Commission finds Staff's CCOS study supports the position of the Signatories to increase each rate component across the board on an equal percentage basis to be just and reasonable.

III. Large Power Rate Design

Should Empire be required to submit a Large Power rate schedule in its next rate case that recognizes a time differentiated facilities demand charge?

Findings of Fact:

24. Empire currently has 38 customers in its LP rate class.[52] Those Customers have demand meters.[53]

25. Empire offers a time differentiated billing demand charge for its special transmission rate classes (SC-P and SC-T), but not for its LP rate class.[54] Time differentiation of the billing demand sends pricing signals that encourage industrial customers to shift their operation away from peak to off-peak periods. By offering a time differentiated billing demand charge for the LP rate schedule, Empire will send the proper capacity price signals regarding transmission and generation infrastructure costs. If members of the LP rate class shift their operations based on capacity price signals, Empire may be able to postpone or cancel future capacity additions.[55]

[52] Exhibit 204, Staff CCOS Report.

[53] Transcript, Volume 7, pg. 197, ln. 2-4.
[54] Exhibit 702, Maini Surrebuttal, pg. 17-18.
[55] *Id.*

26. Empire may need to manually enter the billing determinants for those customers in the LP class if they are billed on a time-differentiated demand charge, but the amount of this added expense is unknown. Signatories to the Position Statement opposed MECG's request for the submission of a LP rate design in Empire's next general rate case that recognizes a time differentiated demand charge; however, no substantive testimony was offered opposing it.[56]

Conclusions of Law:

The Commission makes no additional conclusions of law.

Decision:

The Commission recognizes the importance of minimizing the collection of fixed costs through the energy charge. Empire opposes the possibility of a large power rate design due to what it asserts are manual tabulation charges to calculate. Empire provided no evidence to demonstrate the unfeasibility of these additional costs, especially if the LP class is to be the class assigned the expense for covering those costs. From a policy perspective, the ability to incentivize members of the LP class to adjust the timing of their use, when possible, will benefit all ratepayers if it postpones or avoids the not insignificant costs of increasing capacity. The Commission will direct Empire to work with Staff and other parties prior to the filing of their next general rate case to

[56] Transcript, Volume 6, pg. 56, ln. 10-16.

determine the feasibility of an LP rate schedule that will recognize a time differentiated facilities demand charge, including its costs and benefits.

IV. Fuel Adjustment Clause

Should SPP Transmission Costs and Revenues be included? If so, what transmission costs and revenues should be included?

Findings of Fact:

27. An FAC is a mechanism established in a general rate proceeding that allows periodic adjustments, outside a general rate case, to reflect increases and decreases in prudently incurred fuel and purchased power costs.[57] An FAC moves the risk of changes in fuel and transportation costs from the electric utility to that utility's ratepayers. An FAC is a deviation from the usual prohibition against single issue ratemaking.[58]

28. In 2008, the Commission first authorized the use of an FAC by Empire (File No. ER-2008-0093). Since then, the Commission has authorized the continuation, with modifications, of Empire's FAC in three subsequent rate cases.[59]

29. As part of this general rate case, Empire requests that its FAC continue with the current 95 percent/5 percent recovery/return sharing mechanism.[60] Under this FAC sharing level, Empire absorbs (if the energy costs are above the base) or returns (for energy costs below the base) 5% of the over/under balance.[61]

[57] 4 CSR 240-20.090(1)(c).

[58] Ex. 303, Mantle Direct, pg. 23.

[59] Exhibit 303, Mantle Direct, pg. 5-6. (File Nos. ER-2010-0130, ER-2011-0004, and ER-2012-0345).

[60] Exhibit 303, Mantle Direct, pg. 11.

[61] Exhibit 126, Tarter Rebuttal, pg. 28.

30. Empire currently recovers RTO related transmission costs in base rates that are determined in a rate case test year and annualized for any known and expected changes.[62] Empire is a member of the Southwest Power Pool ("SPP"), an RTO. Empire wants to include in its FAC the net transmission costs and charges from SPP's Integrated Marketplace ("IM").[63]

31. In March 2014, SPP began operating its IM. The SPP IM is an energy market with a day-ahead market, real-time balancing market, and transmission congestion market.[64] Empire is registered in the SPP IM as both a generating and load-serving entity.[65] Empire offers all of its generation into the SPP IM and bids its entire load from the SPP IM. [66]

32. The SPP IM replaced the Energy Imbalance Market ("EIM"). In the SPP IM, Empire's entire native load is supplied from the SPP IM at locational marginal prices. Empire bids in its resources, and if requested by SPP, sells its generation into the SPP IM and receives the revenue. [67]

33. This change in procedure has not made Empire's fuel and purchased power costs more or less subject to Empire's control or predictable.[68]

34. Staff's CCOS study includes purchased power costs and revenues in FERC accounts 555, 565, and 456, which includes purchased power costs as well as costs and revenues from SPP's energy and transmission service markets.[69]

[62] Exhibit 103, Doll Direct, pg 6.

[63] Ex. 126, Tarter Rebuttal, pg. 2.

[64] *Id.* at 7&10.

[65] Exhibit 103, Doll Direct, pg. 3.

[66] Tr. Volume 7, pg-170, ln. 7-14.

[67] Ex. 126 Tarter Rebuttal, pg 4-5.

[68] Exhibit 305, Mantle Surrebuttal, pg. 3-4.

35. No change in Empire's FAC is required due to the SPP IM. Fuel costs are still accounted for; off-system sales and purchased power can be determined. Transmission costs for off-system sales and true purchased power can be determined.[70]

36. SPP's Schedule 1A transmission rate is designed to recover costs associated with administration of SPP's Open Access Transmission Tariff and is used by SPP for tariff administration. Schedule 12 transmission costs are those costs allocated by SPP on behalf of FERC to recover FERC administration costs for transmission services.[71] SPP Schedule 1-A (Tariff Administration Service) and SPP Schedule 12 (FERC Assessment Charge) are not fluctuating fuel and purchased power costs, but rather, administrative costs.[72]

37. The projected five year SPP related transmission expansion costs are expected to increase, but do not demonstrate volatility.[73]

38. Empire's Missouri jurisdictional RTO transmission costs are reasonably projected and thus not volatile.[74]

Conclusions of Law:

Section 386.266 authorizes the use by an electrical corporation of an interim energy charge or periodic rate adjustment outside of a general rate proceeding to reflect

[69] Exhibit 204, Staff CCOS Report, pg. 36-37. Staff's report supports the inclusion of SPP Schedules 1,2,7,8,9,10,and 11. Staff' points out that these transmission costs and revenues are, "very similar to the type of transmission costs and revenues that are in the Ameren Missouri FAC tariff sheets." Staff appears to be basing these inclusions on the Commission's Report and Order and Order Approving Compliance Tariff Sheets in Ameren Missouri's general rate case in File No. ER-2012-0166; not the Commission's decision in the most recent Ameren Missouri rate case.

[70] Ex. *305*, Mantle Surrebuttal, pg. 7.

[71] Ex. *105*, Doll Rebuttal, pg. 3-4.

[72] *Id.* at 36-37.

[73] Exhibit 702, Maini Surrebuttal, pg. 3-4.

[74] Ex. 702 Maini Surrebuttal, pg. 4-05.

increases and decreases in prudently incurred fuel and purchased-power costs, including transportation. The statute authorizes the Commission to include features in an FAC designed to provide an electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities. This FAC is not a statutory right granted to electric utilities; it is granted based on the Commission's discretion after examination of the expenses.

Under Commission Rule 4 CSR 240-20.090(2), the Commission may approve the establishment, continuation or modification of an FAC and associated rate schedules. In determining what cost components to include in the FAC, the Commission will consider the magnitude of the costs, the ability of the utility to manage the costs, the volatility of the cost components and the incentive provided to the utility as the result of an inclusion or exclusion of a cost component. The Commission is not limited to only those considerations when evaluating a requested FAC. It is within the Commission's discretion to determine what portions of prudently incurred fuel and purchased power costs may be recovered in the FAC and what portion shall be recovered in base rates.

However, Section 386.266.1 provides as follows:

> Subject to the requirements of this section, any electrical corporation may make an application to the commission to approve rate schedules authorizing an interim energy charge or periodic rate adjustments outside of general rate proceedings **to reflect increases and decreases in its prudently incurred fuel and purchased-power costs, including transportation.** The commission may, in accordance with existing law, include in such rate schedules features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities. (emphasis added)

The emphasized clause limits the costs that can be flowed through the FAC for recovery between rate cases. It allows for recovery of transportation costs, which has been

determined to include transmission costs, but such transmission costs are limited to those connected to purchased power costs.

Decision:

Through approval of the Revised Agreement, the Commission approves the continuing use of an FAC by Empire.

Empire's position is that net fuel and purchased power ("FPP") cost would be the cost to serve native load from the SPP IM, plus the cost of Empire's FPP cost to generate energy for the market, minus revenue received from the SPP IM market sales. Empire's interpretation of "purchased power" under the SPP IM includes the power that Empire generates and then offers through the SPP IM, even if it is used for its native load.

The Commission recently issued a Report and Order in an Ameren Missouri rate case, File No. ER-2014-0258, where it determined it is unlikely the drafters of the FAC envisioned a situation where a utility would consider all its generation either purchased power or off-system sales. In fact, the policy underlying the FAC statute is clear on its face: § 386.266, "…is meant to insulate the utility from unexpected and uncontrollable fluctuations in transportation costs of purchased power."[75] Nowhere in the record do the facts support a finding that all SPP IM related transmission costs are unexpected and uncontrollable. Furthermore, as has been the case since the FAC statute was created, the costs of transporting energy in addition to the energy generated by the utility or energy in excess of what the utility needs to serve its load are the costs that are

[75] Report and Order, In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Electric Service (File No. ER-2014-0258)(Issued on April 29, 2015 and Effective on May 12, 2015.) pg. 115.

unexpected and out of the utility's control to such an extent that a deviation from traditional rate making is justified. Therefore, the costs Empire incurs related to transmission that are appropriate for the FAC, from a policy perspective and by statute, are:

1) Costs to transmit electric power it did not generate to its own load ("true purchased power"); or
2) Costs to transmit excess electric power it is selling to third parties to locations outside of its RTO ("Off-system sales").

Empire argues that the Commission cannot make the same determination that it made in the Ameren Missouri rate case (File No. ER-2014-0258) since the parties did not present factual evidence related to such an argument. Empire is incorrect. The determination the Commission made in Ameren Missouri's rate case was based on its legal analysis of the FAC statutes, and the analysis in that case applies equally to the question of what transmission costs should be included in Empire's FAC. The legal analysis does not change with the facts submitted. .

Empire also argues that, "no party raised the legal issue of whether transmission costs for purchased power should or should not include transmission costs related to self-generated power"[76] and presents this argument as another reason why the Commission cannot make the same determination in this case that it made in the Ameren Missouri rate case. While the exclusion of RTO transmission costs for native load may not have been specifically addressed in the pre-filed testimony in this case, counsel for MECG argued for this position at the evidentiary hearing and in post-hearing

[76] See The Empire District Electric Company's Statement Regarding Transmission Costs and the FAC, pg. 2.

briefs. At the time of the evidentiary hearing in this case, the Commission was beginning to deliberate on the Ameren Missouri rate case. During opening statements at the April 14 evidentiary hearing, MECG's counsel stated, "…we want you, whatever decision you make in the Ameren case, we want it applied to Empire as well. There's an issue in Ameren to disallow transmission costs within the fuel adjustment clause, and we agree with that."[77]

A general rate case is a long process wherein issues are expected to arise that are not always anticipated by the parties at the early stages. Empire's use of an FAC and the costs eligible for recovery through the FAC are issues presented for consideration in this case, and the parties' choice to submit certain legal arguments and not others cannot preclude the Commission from interpreting the law as it determines is most appropriate.

Based on the Commission interpretation of § 386.266, its discretion under the Commission's rules to determine what rates will be recovered in an FAC, and the facts presented, the Commission finds it appropriate to exclude those transmission expenses that do not fall within the two categories described above.

Empire's transmission costs to be included in the FAC are:

1) costs to transmit electric power it did not generate to its own load (true purchased power); and,

2) costs to transmit excess electric power it is selling to third parties to locations outside of SPP (off-system sales).

[77] Tr. Volume 6: pg. 88, ln. 24- pg. 89, ln. 5.

Costs in the FAC will continue to be collected on a per kWh basis. Empire's current FAC 95%/5% recovery/return sharing mechanism will continue.

THE COMMISSION ORDERS THAT:

1. The tariff sheets filed by The Empire District Electric Company on August 29, 2014, and assigned Tracking No. YE-2015-0074, are rejected.

2. The *Revised Stipulation and Agreement and List of Issues*, filed on April 8, 2015, is approved and incorporated into this order as if fully set forth herein. The parties shall comply with the terms of the Revised Agreement. A copy of the Revised Agreement is attached to this order as Attachment 1.

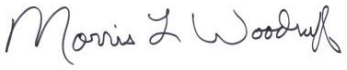
3. The Empire District Electric Company is authorized to file a tariff sufficient to recover revenues as determined by the Commission in this order no later than July 7, 2015.

4. Before its next general rate proceeding, The Empire District Electric Company shall work with Staff and other interested parties to determine whether implementing a Large Power rate schedule that recognizes a time differentiated facilities demand charge is feasible, and if so, what would be the costs and benefits of doing so for the Commission's consideration.

5. The Empire District Electric Company shall file the information required by § 393.275.1, and Commission Rule 4 CSR 240-10-060 no later than August 14, 2015.

6. This report and order shall become effective on July 24, 2015.

BY THE COMMISSION



Morris L. Woodruff
Secretary

R. Kenny, Chm., Stoll, C., concur;
Hall, and Rupp, CC., concur with separate concurring opinions to follow;
and certify compliance with the
provisions of Section 436.080,RSMo.

Dated at Jefferson City, Missouri,
on this 24th day of June, 2015

Burton, Regulatory Law Judge.

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

In the Matter of the Empire District Electric Company for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Company's Missouri Service Areas	)))))	**File No. ER-2014-0351**

CONCURRING OPINION OF COMMISSIONER DANIEL Y. HALL

On June 24, 2015, the Commission issued a Report and Order in this case approving a rate increase for Empire District Electric Company. The Report and Order included approval of a unanimous stipulation that resolved, among other things, the parties' dispute regarding the amount of rate case expense Empire will recover in rates for pursuing and prosecuting its rate increase request.[1] Specifically, the signatories to the stipulation agreed that Empire should be authorized to file tariffs designed to increase its revenues by $17,125,000 and also that rate case expense was no longer a contested issue.[2]

The parties do not specify in their agreement what amount of rate case expense will be recovered through the agreed upon revenue requirement.[3] However, Empire witness W. Scott Keith testified that the company supports including the entirety of rate

---

[1] "The *Revised Stipulation and Agreement and List of Issues*, filed on April 8, 2015, is approved and incorporated into this order as if fully set forth herein." *Report and Order*, p. 30. All parties to this case either signed the stipulation or did not oppose it.

[2] *Revised Stipulation and Agreement and List of Issues*, EFIS No. 181, p. 2 sets the revenue requirement. The document also includes reference as to the remaining contested issues, which do not include rate case expense, and dismisses all witnesses related to rate case expense.

[3] Because the parties reached a "blackbox" settlement of the revenue requirement issue, it is not possible to determine the amount of rate case expense to be included in rates and, correspondingly, whether ratepayers are being asked to cover all or just a portion of Empire's rate case expense. As of February 28, 2015, Empire had incurred approximately $128,536.00 in rate case expense. Sarver Surrebuttal, Ex. 224, p. 3. In its *Statements of Position*, filed March 31, 2015, Staff indicated a two-year normalization of rate case expense, or an annual amount of $64,251, was an appropriate amount to include in rates, and Staff stated that this number was "consistent with the settled position." EFIS No. 164 p. 4.

case expense in the calculation of Empire's revenue requirement,[4] and estimated its total rate case expense at the time it filed this rate case to be $357,000.[5] It is Empire's position that the company's ratepayers, through the rates they pay for electric service, should be required to pay 100 percent of Empire's prudently incurred rate case expenses. I am not convinced it constitutes good public policy in general, or in this case in specific, to require customers to pay 100 percent of the utility's rate case expense. For that reason, I write separately to express my disagreement with the Commission's Report and Order approving the stipulation to the extent the stipulation is consistent with Empire's position on this issue and relegates all rate case expense to customers.

I acknowledge that, in one sense, rate case expense is like other common operational expenses, such as employee salaries, information technology upgrades, and fuel costs. These are all expenses the utility must incur in order to provide utility service to customers. In order to prosecute a rate case, the utility must incur expenses for lawyers and consultants, and a rate case is the established process under Missouri law by which new just and reasonable rates are set. Accordingly, and because it is indisputable that customers benefit from having just and reasonable rates, it is appropriate for customers to bear some portion of the utility's cost of prosecuting a rate case.

However, rate case expense is also different from most other types of utility operational expenses. First, the rate case process is adversarial in nature, with the utility on one side and its customers on the other. Some utilities have taken issue with that observation, contending that utilities do not view their customers as adversaries. I

[4] Keith Rebuttal, Ex. 108, pp. 2 – 9.
[5] Roth Rebuttal, Ex. 308, p. 19.

appreciate that sentiment; I want that to be true. But that is not how it appears from where I sit. During evidentiary hearings, the Office of Public Counsel and other customer organizations often oppose the utilities on virtually every issue presented – the former taking positions that would lower rates, and the latter taking the positions that would result in increased rates. In this case, Public Counsel specifically advocated for rate case expense sharing while the company opposed the idea. In addition, at local public hearings, customers regularly articulate the harmful effect of rising utility rates on their financial affairs and plead with the Commission to take whatever action necessary to mitigate any future rate increase.

Second, unlike other operating expenses, rate case expense produces some direct benefits to the utility, more specifically, to its shareholders, that are not shared with customers. In a typical rate case, as in this one, the utility seeks a higher rate of return than customers are willing to support. While I agree it is absolutely necessary, both legally and from a public policy perspective, to ensure that the utility has the opportunity to recover a reasonable return on its investment, any amount sought over a reasonable rate of return is solely sought for the benefit of shareholders. This stands in contrast to typical operating expenses where there is a direct benefit to ratepayers – safe, adequate and reliable service.

Third, requiring 100 percent of rate case expense to be paid by ratepayers provides the utility with what appears to be an inequitable financial advantage over other participants in the rate case process. Staff and the Office of Public Counsel both operate within tight annual budgets, and the intervener consumer groups must pay their own legal expenses. In contrast, under the current system, the utility prosecutes its rate

case with an unconstrained budget, receiving reimbursement from ratepayers for all of its expenses related thereto. This allows the utility, in some circumstances, to "out-gun" its opponents, investing resources other parties cannot match to engage numerous counsel and consultants, and conduct multiple rounds of depositions and written discovery.

Finally, full reimbursement of all rate case expense does nothing to encourage reasonable levels of cost containment. While utilities insist they carefully scrutinize and manage their costs, and that the prudency review these costs receive is designed to ensure that unnecessary and exorbitant rate case expenses are disallowed, it is indisputable that the Commission has only rarely disallowed even a portion of a utility's rate case expense as imprudently incurred. This is because, in the context of rate case expense, a true prudency review would be cumbersome, time-consuming, resource intensive, and even impractical.[6] Simply put, it does not work as well as providing a direct financial incentive to the utility to minimize litigation costs.

Accordingly, I believe rate case expense should be shared by ratepayers and shareholders. Some have noted in past cases that there is no express authority in statute or rule to implement such a sharing mechanism, however, the Commission has the current legal authority to take such action. Under Missouri law, the Commission

[6] Any after-the-fact review of rate case expense necessarily depends on the utility's ability to make available detailed, transparent records about costs related to experts and attorneys, which are often considered confidential to some degree. Furthermore, even if records are made available, by the nature of the subject matter, any review of those records is inherently so deferential it can sometimes become a perfunctory exercise. Despite these challenges reviewing rate case expense for prudency, the Commission has disallowed, on rare occasions, portions of rate case expense when certain costs were deemed excessive. *See, In the Matter of Missouri Gas Energy*, Report and Order Case No. GR-2004-0209, 12 Mo. P.S.C. 3d 581, 623 (2004) and *In the Matter of Missouri-American Water Company*, Report and Order, Case No. WR-93-212, 2 Mo. P.S.C. 3d 446, 449 (1993).

must set just and reasonable rates,[7] and rates that include 100 percent of the utility's rate case expense, for the reasons set forth above, may not be just or reasonable.[8] Moreover, this Commission has already found rate case expense sharing to be just and reasonable in at least one prior case. In a 1986 decision, *In the Matter of Arkansas Power and Light Company*,[9] the Commission "adopted Public Counsel's proposed disallowance of one-half of rate case expense." It is also important to note that there are a number of other cases where the Commission acknowledged it had this authority.[10]

Some parties in other cases have suggested a workshop would be in order to examine and develop this concept. However, the Commission has already opened a working case precisely on this issue, File No. AW-2011-0330. This case was opened April 7, 2011, over four years ago, and is currently still open. In that case, Staff issued a comprehensive Staff Report, which concludes,

> Staff recommends that the Commission consider employing structural incentive measures in rate cases to provide utilities with stronger incentives to reasonably limit their rate case expenses to appropriate and necessary levels. . . These measures may include . . . sharing of rate case expense."[11]

---

[7] ". . . All charges made or demanded by any . . . electrical corporation . . . shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable charge . . . is prohibited." Section 393.130.1, RSMo 2000 as currently supplemented.

[8] Of course, there are rate cases where the utility does not have the means to absorb a portion of rate case expense, and requiring it to do so would ultimately harm customers. In such circumstances, it would appear just and reasonable that rates include the entire amount of rate case expense.

[9] Report and Order, Case No. ER-85-265, 28 Mo. P.S.C. (N.S.) 435, 447 (1986).

[10] *See, In the Matter of Kansas City Power & Light Company*, Report and Order, Case Nos. EO-85-185 and EO-85-224, 28 Mo. P.S.C. (N.S.) 229, 263 (1986), and *In the Matter of Missouri Gas Energy*, Report and Order, File No. GR-2009-0355, 19 Mo. P.S.C. 3d 245. 303, (2010). Interestingly, and as Public Counsel points out, Missouri is not the only jurisdiction that has considered and even implemented rate case expense sharing. Roth Rebuttal, Ex. 308, pp. 17-18.

[11] *Staff's Investigative Report on Rate Case Expense*, Sept. 4, 2013, p. 15. Any party interested in this issue had an opportunity to provide comments in AO-2011-0330, as the Commission order establishing the file provided, "[u]sing this file, any person with an interest in this matter may . . . submit any pertinent responsive comments or documents." *Order Directing Staff to Investigate and Opening a Repository File*,

As noted above, I believe the stipulation is reasonable and should be approved. I appreciate the parties' efforts to reach this agreement that includes a number of other complex issues beyond the rate case expense issue. Going forward, I am heartened by Public Council's pursuit of rate case expense sharing in this case and by both Public Counsel and Staff advocating for rate case expense sharing in the Kansas City Power & Light rate case that is currently pending before this Commission. I am also encouraged by the support some of my fellow Commissioners have expressed for considering a rate case expense sharing mechanism in future cases.

For the forgoing reasons, I concur.

Respectfully submitted,

Daniel Y. Hall
Commissioner

Commissioner Rupp joins this concurring opinion in its entirety.

Scott T. Rupp
Commissioner

Dated this 17th day of July, 2015
at Jefferson City, Missouri

pp. 1-2. If Empire or other utilities were waiting for a more direct invitation to submit their input, this Concurrence constitutes such an invitation.

In the Matter of the Application of Ozark Shores Water Company, North Suburban Public Utility Company and Camden County Public Water Supply District Number Four for an order authorizing the Sale, Transfer and Assignment Water Assets to Camden County Public Water Supply District Number Four and in connection therewith certain other related transactions.	)))))))	File No. WM-2015-231

ORDER GRANTING APPLICATION

WATER.
§4. Transfer, lease and sale.
The Commission granted the application of a water corporation to sell its assets to a public water district, notwithstanding allegations of financial detriment to the public water district, because the Commission has no jurisdiction over the financial health of a public water district.
§8. Jurisdiction and powers of the State Commission. The Commission granted the application of a water corporation to sell its assets to a public water district, notwithstanding allegations of financial detriment to the public water district, because the Commission has no jurisdiction over the financial health of a public water district.

EVIDENCE, PRACTICE, AND PROCEDURE.
§23. Notice and hearing. The Commission's staff was not entitled to a pre-hearing decision because staff had no interest protected by the due process of law, and no party having such an interest was suffering any impairment under the Commission's order, so the application did not constitute 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 24th day of June, 2015.

In the matter of the Application of Ozark Shores Water Company, North Suburban Public Utility Company and Camden County Public Water Supply District Number Four for an order authorizing the Sale, Transfer and Assignment Water Assets to Camden County Public Water Supply District Number Four and in connection therewith certain other related transactions.	) File No. WM-2015-0231

ORDER GRANTING APPLICATION

Issued: June 24, 2015 Effective: July 3, 2015

The Commission grants the application for transfer of assets and the motion for expedited treatment.

Applicants

The assets at issue are those of Ozark Shores Water Company ("the Company"),[1] a Missouri corporation,[2] a public utility and a water company, [3] whose sole owner is North Suburban Public Utility Company ("Owner"), an Illinois corporation. [4] The buyer is Camden County Public Water Supply District Number Four ("the District"), a

[1] Electronic Filing and Information System ("EFIS") No. 9 (May 5) *Staff Recommendation to Deny Transfer of Assets and Request for Local Public Hearing,* Memorandum, first page. All dates are in 2015.

[2] EFIS No. 1 (March 25) *Joint Application for Approval of Transfer of Assets*, Exhibit 2.

[3] EFIS No. 9 (May 5) *Staff Recommendation to Deny Transfer of Assets and Request for Local Public Hearing,* Memorandum, page 2 first and third paragraphs.

[4] EFIS No. 1 (March 25) *Joint Application for Approval of Transfer of Assets*, Exhibit 2.

public water supply district.[5] The Owner, the Company, and the District are the applicants.[6] The purchase price is $5,252,781.[7] The transaction also includes the Owner selling to the District certain tracts of land and buildings used by the Company. [8]

Filings and Issuances

The applicants filed the application[9] and supplemented the application with a list of affected counties.[10]

The Commission gave notice of the application and set a time for filing an application to intervene.[11] The Commission received one application to intervene: that of the Missouri Attorney General ("Attorney General").[12] The applicants filed a response[13] and the Attorney General filed a reply.[14] The Commission granted intervention to the Attorney General, stayed proceedings pending the Attorney General's investigation, and set a date for the Attorney General to file a status report.[15]

[5] EFIS No. 9 (May 5) *Staff Recommendation to Deny Transfer of Assets and Request for Local Public Hearing,* Memorandum, first page.

[6] EFIS No. 1 (March 25) *Joint Application for Approval of Transfer of Assets*, page 5 to 6.

[7] EFIS No. 9 (May 5) *Staff Recommendation to Deny Transfer of Assets and Request for Local Public Hearing,* Memorandum, page 2 last paragraph.

[8] EFIS No. 9 (May 5) *Staff Recommendation to Deny Transfer of Assets and Request for Local Public Hearing,* Memorandum, page 2 last paragraph.

[9] EFIS No. 1 (March 25) *Joint Application for Approval of Transfer of Assets*.

[10] EFIS No. 3 (April 7) *Response to Order*. Any county containing any part of any political subdivision in which any asset subject to the transaction is located.

[11] EFIS No. 4 (April 8) *Order Directing Notice and Setting Time for Filing*.

[12] EFIS No. 15 (May 20) *Attorney General's Application to Intervene Out of Time*.

[13] EFIS No. 17 (May 22) *Objection to Missouri Attorney General's Application to Intervene Out Of Time.*

[14] EFIS No. 20 (June 1) *Missouri Attorney General's Reply in Support of His Application to Intervene Out of Time*.

[15] EFIS No. 21 (June 2) *Order Granting Intervention, Directing Filing, and Staying Proceedings*.

The Attorney General filed the status report, stating that his concerns about the propriety of the transaction have been resolved.[16]

The Commission granted[17] Staff's request for more time[18] to file a recommendation, and the applicants sought reconsideration of that order.[19] Staff filed its recommendation,[20] the applicants filed a response to the recommendation,[21] and Staff filed a reply including a motion for a pre-hearing conference.[22] Staff filed a motion for an evidentiary hearing and supporting suggestions. The applicants filed the affidavits resulting from the Attorney General's investigation as prepared testimony and renewed their motion for expedited treatment.[23] The Commission lifted the stay for that filing and any responses.[24] Staff filed a response to the testimony. [25] Staff's response to the prepared testimony renews its request for a pre-hearing conference.

Procedure

The Commission has jurisdiction to rule on the application under the following provision:

[16] EFIS No. 30 (June 9) *Status Report of the Missouri Attorney General*.

[17] EFIS No. 6 (April 29) *Order Extending Time For Recommendation.*

[18] EFIS No. 5 (April 29) *Status Report and Motion for Extension of Time to File Staff Recommendation*.

[19] EFIS No. 7, (April 30) *Motion for Reconsideration of Order Approving Extension of Time*.

[20] EFIS No. 9 (May 5) *Staff Recommendation to Deny Transfer of Assets and Request for Local Public Hearing*.

[21] EFIS No. 11 (May 7) *Response to Staff Recommendation and Motion for Expedited Treatment*.

[22] EFIS No. 14 (May 15) *Staff's Motion for Prehearing Conference and Renewed Motion for Local Public Hearing*.

[23] EFIS No. 22 (June 4) *Joint Applicants' Motion to Lift Stay for Purposes of Receiving Written Testimony* page 2 paragraph 5.

[24] EFIS No. 29 (June 5) *Order Lifting Stay and Directing Expedited Response*.

[25] EFIS No. 31 (June 11) *Response to Testimony*.

> No . . . water corporation . . . shall hereafter sell . . . its . . . works or system . . . without having first secured from the commission an order authorizing it so to do. [26]

The statutes governing the Commission's actions are to be construed with a view to:

> . . . the public welfare, efficient facilities and substantial justice between patrons and public utilities. [27]

That standard, in the context of the transaction, equates to the public interest, and requires the Commission to:

> . . . see that no such change shall be made as would work to the public detriment. 'In the public interest,' in such cases, can reasonably mean no more than 'not detrimental to the public [.28]

The Commission's regulations codify that standard:

> [A]pplications for authority to sell, assign, lease or transfer assets shall include:
>
> * * *
>
> (D) The reasons the proposed sale of the assets is not detrimental to the public interest [.29]

The burden of proof is with the applicants. [30]

Staff seeks a hearing and a pre-hearing conference based on Staff's argument that this action is a contested case. In support, Staff cites *State ex rel. Yarber*,[31] which relies on the statutory definition of contested case:

[26] Section 393.190.1, RSMo 2000).

[27] Section 386.610 RSMo 2000.

[28] *State ex rel. City of St. Louis v. Public Service Comm'n of Missouri*, 73 S.W.2d 393, 400 (Mo.1934).

[29] 4 CSR 240-3.605(1).

[30] *Love 1979 Partners v. Pub. Serv. Comm'n of Missouri*, 715 S.W.2d 482, 489-90 (Mo. banc 1986).

[31] *State ex rel. Yarber*, 915 S.W.2d 325, 328 (Mo. banc 1995).

> . . . a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing [.[32]]

State ex rel. Yarber holds that the law requiring a pre-decision hearing includes not only the explicit directives in statutes but also implicit directives in the constitutional provision for due process. [33] Because Missouri law created a substantive property interest in a semester of high school credit of sufficient magnitude, before a school district could adversely affect a significant amount—a semester—of that interest, the due process of law required an evidentiary hearing. [34]

An evidentiary hearing is not required before the Commission grants the application.[35] The statute that governs the application does not require a hearing[36] and Staff cannot assert a right to due process, such as would require a hearing. Staff cites the applicants' property interests—to buy and sell the Company's assets— as a basis for its claimed right to a hearing, but the applicants' interests suffer no adverse effect under this order.[37] Also, neither *Yarber*, nor any other authority cited by Staff, provides that any party is entitled to a hearing by asserting someone else's interests. That holding must apply even more so when Staff asserts those interests to adversely affect the interests of a party that has not requested a hearing.

[32] Section 536.010(4), RSMo Supp. 2013.

[33] *State ex rel. Yarber*, 915 S.W.2d 325, 328 (Mo. banc 1995).

[34] *State ex rel. Yarber*, 915 S.W.2d 325, 328 (Mo. banc 1995).

[35] A contested case commences when someone, including the Commission, "seeks such action as by law can be taken by the [Commission] only after opportunity for hearing [.]" Section 536.063(1), RSMo Supp. 2013. The application seeks the Commission's approval of the transaction.

[36] Section 393.190.1, RSMo 2000).

[37] Also, the Commission may commence a contested case to make a record for judicial review. Section 536.063(1), RSMo Supp. 2013.

On the contrary, under *Yarber*, standing to seek a hearing depends on movant's possession of an interest.

> In order to be entitled to a hearing under due process of law, a plaintiff must have either a life, liberty, or property interest protected by the Constitution."[38]

Unlike the applicants, Staff possesses no substantive interest of its own,[39] Nor is Staff an agency statutorily charged to advocate an interest like the Office of the Public Counsel.[40] On the contrary, Staff's unique—and crucial—value to the Commission is that Staff is above any specific interest. Staff provides the Commission with neutral, yet expert, advice on public interest and detriment. But the statutes delegate the decision on the application to the Commission,[41] and thus delegate the determination of a public interest and detriment to the Commission. [42]

Staff cites *State ex rel. Rex Deffenderfer Ent., Inc.* [43] for the proposition that the Commission must convene a hearing unless Staff waives a hearing. In *Deffenderfer*, no party requested any hearing of any kind and the Court of Appeals held that the Commission did not err in deciding an application based on verified pleadings. As to who would have been entitled to institute a contested case, the opinion is silent.

Therefore, the Commission concludes that this action is not a contested case. The Commission may, on its own motion, dispose of a case on the pleadings whenever

[38] *State ex rel. Yarber*, 915 S.W.2d 325, 328 (Mo. 1995)

[39] This is the reason that Staff cannot apply for a rehearing under Section 386.500, RSMo 2000, and cannot appeal under Section 386.500, RSMo Supp. 2013.

[40] The Office of the Public Counsel ("OPC") is a party to this action but has exercised its discretion to enter no appearance.

[41] Section 393.190.1, RSMo 2000).

[42] *State ex rel. City of St. Louis v. Public Service Comm'n of Missouri*, 73 S.W.2d 393, 400 (Mo.1934).

[43] *State ex rel. Rex Deffenderfer Ent., Inc.,* 776 S.W.2d 494 (Mo. App., W.D. 1989).

such disposition is not otherwise contrary to law or contrary to the public interest.[44] Such is the case here: disposition on the pleadings is not contrary to law and is in the public interest. The Commission will deny Staff's motions for an evidentiary hearing, a pre-hearing conference, and a local public hearing; and will decide this action based on the verified filings[45] as a non-contested case without separately stating its findings of fact.

The Application's Merits

Staff's recommendation argued that the Commission should deny the application. In support, Staff expressed concern over suspected self-dealing among leadership of the applicants, which made Staff apprehensive of an inflated purchase price, a possible future rate increase in the District, and the issuance of weak District bonds. The Attorney General intervened to investigate the suspected self-dealing among leadership of the applicants.

In the course of the investigation, the Attorney General procured the affidavits that the applicants filed as their prepared testimony. [46] The affidavits support a finding that the District board members had no financial or familial conflict of interest related to the approval of the transaction, [47] and that the former general manager of the Company and the District did not participate in the valuation analysis and did not attempt to influence the final price of the assets. [48] That testimony is "sufficient to allay the conflict

[44] 4 CSR 240-2.117(2).

[45] *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n,* 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

[46] EFIS No. 30 (June 9) *Status Report of the Missouri Attorney General* page 2 paragraph 4.

[47] EFIS No. 30 (June 9) *Status Report of the Missouri Attorney General* page 2 paragraph 4.

[48] EFIS No. 30 (June 9) *Status Report of the Missouri Attorney General* page 3 paragraph 5.

of interest concerns raised in" [49] the Attorney General's motion to intervene. Staff's response to the affidavits is that "Staff is not opposed to" the transaction.[50]

Nevertheless, Staff continues to express concern that approval of the application may cause a public detriment. Staff alleges the potential for a Hancock Amendment violation and a rate increase in the District. But Staff cites no authority showing that the Commission has any authority over those events when they occur within a public water supply district. On those bases, and on the basis of the other filings, the Commission independently concludes that the application is not detrimental to the public. Therefore, the Commission will grant the application.

Expedited Treatment and Effective Date

The applicants seek expedited treatment. In support, applicants cite the timing of the financing for the transaction. The Commission will set an effective date ten days from the issuance of this order.[51]

THE COMMISSION ORDERS THAT:

1. *Staff's Motion for Evidentiary Hearing* and requests for a pre-hearing conference and a local public hearing are denied.

2. The *Joint Application for Approval of Transfer of Assets* ("application") is granted and the transaction described in the application is authorized.

[49] EFIS No. 30 (June 9) *Status Report of the Missouri Attorney General* page 2 to 3 paragraph 3 and 4.

[50] EFIS No. 31 (June 11) *Response to Testimony* page 1 paragraph 1.

[51] Section 386.490.2, RSMo Supp. 2013; *Harter v. Missouri Pub. Serv. Comm'n*, 361 S.W.3d 52, 58 (Mo. App., W.D. 2011).

3. This order shall be effective on July 3, 2015.

BY THE COMMISSION

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, Hall, and Rupp, CC., concur;
W. Kenney, C., absent

In the Matter of the Assessment Against	)	
the Public Utilities in the State of Missouri	)	**Case No. AO-2015-0344**
for the Expenses of the Commission for the	)	
Fiscal Year Commencing July 1, 2015	)	

ASSESSMENT ORDER FOR FISCAL YEAR 2016

Public Utilities. §1 Generally. The Commission established the assessment amount for fiscal year 2015.

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 June, 2015.

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, 2015	))))	**Case No. AO-2015-0344**

ASSESSMENT ORDER FOR FISCAL YEAR 2016

Issue Date: June 24, 2015 Effective Date: July 4, 2015

Pursuant to 386.370, RSMo, the Commission estimates the expenses to be incurred by it during the fiscal year commencing July 1, 2015. These expenses are reasonably attributable to the regulation of public utilities as provided in Chapters 386, 392 and 393, RSMo and amount to $20,915,543. 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 $11,954,798. 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 $8,960,745.

The Commission estimates that the amount of Federal Gas Safety reimbursement will be $550,000. The unexpended balance in the Public Service Commission Fund in the hands of the State Treasurer on July 1, 2015, is

estimated to be $1,969,622. The Commission deducts these amounts and estimates its Fiscal Year 2016 Assessment to be $18,395,921. 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 2014, 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 .....…	$ 10,780,754
Gas .....…	$ 4,066,168
Steam/Heating	$ 64,673
Water & Sewer.....	$ 2,064,686
Telephone.....	$ 1,419,640
Total .....…	$18,395,921

The Commission will collect an assessment for the Office of Public Counsel which is included in the total assessment amount of $18,395,921.

The Commission allocates a proportionate share of the $18,395,921 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 and Regulatory Policy shall render a statement of such assessment to each public utility on or before July 1, 2015. The assessment shall be due and payable on or before July 15, 2015, or at the option of each public utility, it may be paid in equal quarterly installments on or before July 15, 2015, October 15, 2015, January 15, 2016, and April 15, 2016. 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 2016 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 and Regulatory Policy shall render a statement of such assessment to each public utility on or before July 1, 2015.

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 4, 2015.

BY THE COMMISSION

Morris L Woodruff

Morris Woodruff
Secretary

R. Kenney, Chm., Stoll,
Hall, and Rupp, CC., concur.

W. Kenney, C. absent.

Woodruff, Chief Regulatory Law Judge

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 345 kV Transmission Line	)))))))	**File No. EA-2014-0207**

REPORT AND ORDER

CERTIFICATES.

§21. Grant or refusal of certificate generally.
The Commission denied an application for a line certificate when the applicant did not show that the project was needed and economically feasible.

§21.1. Public interest.
The Commission denied an application for a line certificate when the applicant did not show that the project was needed and economically feasible.

§21.4. Economic feasibility of proposed service.
The Commission denied an application for a line certificate when the applicant did not show that the project was needed and economically feasible.

§25. Ability and prospects of success.
The Commission denied an application for a line certificate when the applicant did not show that the project was needed and economically feasible.

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 345 kV Transmission Line	)	**File No. EA-2014-0207**

REPORT AND ORDER

Issue Date: July 1, 2015

Effective Date: July 31, 2015

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 345 kV Transmission Line	)	**File No. EA-2014-0207**

APPEARANCES

GRAIN BELT EXPRESS CLEAN LINE, LLC:

Karl Zobrist, Jonathan Steele, and **Lisa A. Gilbreath**, Dentons US LLP, 4520 Main Street, Suite 1100, Kansas City, Missouri 64111.

Cary J. Kottler, General Counsel, and **Erin Szalkowski,** Corporate Counsel, Clean Line Energy Partners, LLC, 1001 McKinney Street, Suite 700, Houston, Texas 77002.

STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:

Nathan Williams, Deputy Counsel, **Alex Antal**, Assistant Staff Counsel, **Whitney Hampton,** Associate Legal Counsel, and **Cydney Mayfield,** Senior Counsel, Post Office Box 360, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

MISSOURI LANDOWNERS ALLIANCE and DAVID AND JACKIE McKNIGHT:

Paul A. Agathen, Esq., 485 Oak Field Ct., Washington, Missouri 63090.

EASTERN MISSOURI LANDOWNERS ALLIANCE d/b/a SHOW ME CONCERNED LANDOWNERS and MISSOURI FARM BUREAU FEDERATION:

Terry M. Jarrett, Healy & Healy, Attorneys at Law, LLC, 514 E. High Street, Suite 22, Jefferson City, Missouri 65101.

MATTHEW AND CHRISTINA REICHERT and RANDALL AND ROSEANNE MEYER:

Gary Drag, Law Office of Gary Drag, 3917A McDonald Ave., St. Louis, Missouri 63116.

ROCKIES EXPRESS PIPELINE LLC:

Colly J. Durley and **Sarah E. Giboney,** Smith Lewis, LLP, Suite 200,111 South Ninth Street, PO Box 918, Columbia, Missouri 65205-0918

SIERRA CLUB:

Henry B. Robertson, Great Rivers Environmental Law Center, 705 Olive Street, Suite 614, St. Louis, Missouri 63101.

THE WIND COALITION and WIND ON THE WIRES:

Steven C. Reed, Esq., PO Box 579, Holts Summit, Missouri 65043.

INFINITY WIND POWER:

Terri Pemberton, Cafer Pemberton LLC, 3321 SW Sixth Avenue, Topeka, Kansas 66606.

UNITED FOR MISSOURI, INC.:

David C. Linton, Esq., 314 Romaine Spring View, Fenton, Missouri 63026

TRADEWIND ENERGY, INC.:

Christopher L. Kurtz, Steve Willman and **Darren Neil,** Douthit Frets Rouse Gentile & Rhodes, LLC, 5250 W. 116th Place, Suite 400, Leawood, Kansas 66211.

IBEW LOCAL UNIONS 2, 53, and 1439:

Sherrie Hall and **Emily R. Perez,** Hammond and Shinners, P.C., 7730 Carondelet Avenue, Suite 200, St. Louis, Missouri 63105.

SENIOR REGULATORY LAW JUDGE: Michael Bushmann

REPORT AND ORDER

I. Procedural History

On March 26, 2014, Grain Belt Express Clean Line LLC ("GBE") filed an application with the Missouri Public Service Commission ("Commission") 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, Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners, Missouri Farm Bureau Federation, David and Jackie McKnight, Matthew and Christina Reichert, Randall and Roseanne Meyer, Rockies Express Pipeline LLC, Sierra Club, The Wind Coalition, Wind on the Wires, Infinity Wind Power, United for Missouri, Inc., Missouri Department of Economic Development – Division of Energy, Missouri Industrial Energy Consumers, Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company, TradeWind Energy, Inc., International Brotherhood of Electrical Workers Locals 2, 53 and 1439, and Transource Missouri LLC. The Commission granted the petition of Energy for Generations, LLC to file an amicus curiae brief. The Office of the Public Counsel filed a notice stating that it did not intend to participate in the evidentiary hearing.

Several of the intervenors stated their opposition to the GBE application, and at the unopposed request of an intervenor the Commission held a prehearing conference and

established a procedural schedule. 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.[1] The Commission held an evidentiary hearing on November 10, 12, 13, 14 and 21, 2014.[2] During the evidentiary hearing, the parties presented evidence relating to the following three unresolved issues previously identified by the parties: (1) Does the evidence establish that the high-voltage direct current transmission line and converter station for which GBE is seeking a certificate of convenience and necessity are necessary or convenient for the public service? (2) If the Commission grants the CCN, what conditions, if any, should the Commission impose? (3) If the Commission grants the CCN, should the Commission exempt GBE 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)? Final post-hearing briefs were filed on December 22, 2014, and the case was deemed submitted for the Commission's decision on that date when the Commission closed the record.[3]

On February 11, 2015, the Commission directed GBE to file additional information for its review, but subsequently decided that the supplemental information requested was not necessary to make a decision and did not receive any supplemental information into the record of the hearing. On June 10, 2015, GBE filed a request for the Commission to hold this proceeding in abeyance to allow time for GBE to provide the Commission with additional information and analysis in support of its application for a certificate of

[1] Transcript, Vols. 2-9. The Commission admitted 50 exhibits into evidence that were submitted during the local public hearings.
[2] Transcript, Vols. 10-17. The Commission admitted the testimony of 40 witnesses and 126 exhibits into evidence during the evidentiary hearing.
[3] "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).

convenience and necessity. This request is still pending and will be ruled on in this Report and Order. GBE recommends in its motion that the Commission refrain from issuing a Report and Order now and permit the company additional time to gather information that was not provided in its response to the Commission's Order Directing Filing of Additional Information issued on February 11, 2015.

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. Grain Belt Express Clean Line LLC is a limited liability company organized under the laws of the State of Indiana. GBE 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, a Delaware limited liability company.[4]

2. The Staff of the Missouri Public Service Commission ("Staff") is a party in all Commission investigations, contested cases and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.[5] Staff participated in this proceeding.

[4] Ex.100, Skelly Direct, p. 3.
[5] Commission Rules 4 CSR 240-2.010(10) and (21) and 2.040(1).

Description of the Project

3. The transmission line proposed to be constructed by GBE in the application is an approximately 750-mile, overhead, multi-terminal +600 kilovolt ("kV") high-voltage, direct current ("HVDC") transmission line and associated facilities (collectively, the "Project").[6]

4. The Project would extend approximately 370 miles from near Dodge City, Kansas to the Kansas-Missouri border where it would cross the Missouri River and continue approximately 206 miles in Missouri. It would then proceed approximately 200 miles in Illinois, where it would interconnect with the Sullivan 765 kV substation in southwestern Indiana near the Illinois/Indiana border.[7]

5. 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.[8]

6. The Missouri portion of the Project encompasses:

(a) Approximately 206 miles of an HVDC transmission line that would cross the Missouri River south of St. Joseph and continue across the state in an easterly direction to south of Hannibal in Ralls County, where the line would cross the Mississippi River into Illinois, and

[6] Ex. 100, Skelly Direct, p. 8.
[7] Ex. 111, Galli Direct, p. 4; Ex. 100, Skelly Direct, p. 3-4.
[8] Ex. 111, Galli Direct, p. 4-5.

(b) An associated converter station and AC interconnecting facilities in Ralls County.[9]

7. The Project would offer point-to-point transmission service from its western converter station in Ford County, Kansas to its two points of interconnection located in Missouri and at the Illinois/Indiana border.[10]

8. In Missouri, the Project would interconnect with the Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri") system along an AC transmission line connecting the Maywood 345 kV substation and the Montgomery 345 kV substation. The connection would be made via a single 345 kV circuit from the converter station to a nearby tap point along the transmission line connecting Maywood to the Montgomery 345 kV substation. This Missouri interconnection would allow the delivery of up to 500 megawatts ("MW") of power into the MISO energy market. [11]

9. In Indiana, the Project would interconnect with the Indiana Michigan Power system, a subsidiary of American Electric Power Company, at the Sullivan substation located near the Illinois/Indiana border. This final point of interconnection would provide direct access to the 765 kV network in PJM via two 345/765 kV transformers in AEP's Sullivan 765 kV substation. This interconnection point would enable the delivery of up to 3,500 MW of power into the PJM energy market.[12]

10. The tower structures for the Project would consist of either traditional self-supporting lattice structures, tubular steel monopole structures, self-supporting lattice mast structures, or guyed "vee" and guyed lattice mast structures, depending on specific

[9] Ex. 104, Gaul Direct, Schedule TGB-2, p. 157.
[10] Ex. 111, Galli Direct, p. 4.
[11] Ex. 111, Galli Direct, p. 4-5.
[12] *Id.*

conditions at particular locations or in particular segments of the Project. The current designs for lattice towers and tubular steel monopoles allow for up to 1,500-foot spans for lattice towers and up to 1,200-foot spans for tubular steel monopoles or self-supporting lattice mast structures. There would typically be four lattice structures per mile or five tubular steel monopoles or lattice masts per mile. Most structures would be between 110 to 150 feet tall, with taller structures likely required at river crossings and in certain other situations where longer span lengths are required.[13]

11. In conducting a route selection study to determine the proposed route of the transmission line in Missouri, GBE and its consultants solicited and received input from community members, local officials, federal and state government agencies, and non-governmental organizations and associations. Twenty-four meetings of community leaders were held with more than 250 participants attending from more than 40 counties. Thirteen open house meetings for the general public were held with more than 1,200 people attending.[14]

Applicant's qualifications and financial resources

12. Michael P. Skelly is the president of GBE and chief executive officer of Clean Line Energy Partners LLC, the GBE parent company. Mr. Skelly has been involved in the renewable energy business for over 20 years and has significant experience in evaluating and developing wind energy resources.[15]

13. Dr. Wayne Galli is the executive vice president of transmission and technical services for Clean Line Energy Partners LLC and oversees the planning, engineering, design, construction and other technical activities for the Project. Dr. Galli has over

[13] *Id.* at p. 7-8 and Schedule AWG-2 at p. 2-3.
[14] Ex. 101, Lawlor Direct, p. 7-11; Ex. 104, Gaul Direct, p. 7-8.
[15] Ex. 100, Skelly Direct, p. 1.

15 years of experience in the electric transmission industry. Dr. Galli has developed HVDC transmission lines in Texas and served as the supervisor of operations engineering at Southwest Power Pool.[16]

14. GBE secured the services of POWER Engineers, Inc. to serve as consulting engineer for the Project. POWER Engineers, Inc. is a consulting firm founded in 1976 that has significant experience in the design and construction of transmission facilities throughout the United States.[17]

15. The owners of Clean Line Energy Partners LLC are GridAmerica Holdings, Inc., Clean Line Investor Corp., Michael Zilkha, and Clean Line Investment, LLC. GridAmerica Holdings, Inc.is a subsidiary of National Grid USA, which is a subsidiary of National Grid plc. National Grid plc and its affiliates are one of the largest investor-owned utility companies in the world with $75 billion in assets and over $22 billion in annual revenue. It has extensive experience building, owning, and operating transmission networks in the United States and the United Kingdom. National Grid plc. has made and continues to make available to GBE its engineering, procurement, safety, construction and project management skills and resources.[18]

16. National Grid plc made a $48.2 million equity investment in Clean Line Energy Partners LLC to develop HVDC transmission projects in exchange for an ownership interest.[19]

17. Clean Line Investor Corp. is a subsidiary of ZAM Ventures, L.P., which is one of the principal investment vehicles for ZBI Ventures, LLC. ZAM Ventures, L.P. has a

[16] Ex. 111, Galli Direct, p. 1-2.
[17] Ex. 111, Galli Direct, p. 7-8.
[18] Ex. 100, Skelly Direct, p. 8-9; Ex. 103, Blazewicz Surrebuttal, p. 3-5.
[19] Ex. 103, Blazewicz Surrebuttal, p. 5.

consolidated net worth of $500 million based on U.S. GAAP measurements. ZBI Ventures, LLC is owned by Ziff Brothers, a multi-billion dollar family investment fund.[20]

18. Michael Zilkha and his family have a proven track record of making successful and productive investments in the energy industry.[21]

19. GBE estimates that the total cost of the Project would be approximately $2.2 billion, with $500 million of this estimate attributable to the portion of the project to be located in Missouri.[22]

20. The initial development of the Project has being financed by equity investors, but once the Project reached the point of beginning construction it would be financed at the project level against the strength of its future, contracted revenues.[23]

21. GBE would rely on specific revenue contracts with shippers or transmission service customers in order to support the financing of the Project. The Project is a merchant, "shipper pays" transmission line whose costs would probably not be recovered through either the SPP, MISO, or PJM cost allocation processes. GBE would ultimately recover its Project costs by selling transmission service to wind generators and/or load-serving entities that use the line.[24]

22. GBE does not currently have any memorandums of understanding with potential utility purchasers of wind energy from the Project[25], and has no commitments of any kind from any load-serving utilities to buy capacity on the proposed transmission line.[26]

[20] Ex. 204, Murray Rebuttal, p. 4-5.
[21] Ex. 100, Skelly Direct, p. 9.
[22] *Id.* at p. 8.
[23] Ex. 118, Berry Direct, p. 37-38.
[24] *Id.* at p.5-7; *But see*, Ex. 202, Stahlman Rebuttal, p. 7.
[25] Transcript, Vol. 10, p. 152-153.
[26] Transcript, Vol. 12, p. 417.

23. The Project would be unique and novel in Missouri, since GBE is proposing to build a transmission line that crosses parts of three regional transmission organizations based on a business model, not an identified reliability need.[27]

Need for the Project

24. GBE alleges that the Project is necessary in order for Missouri electric utilities to meet the requirements of the Missouri Renewable Energy Standard ("RES"), for other utilities to meet the renewable energy portfolio standard requirements of other states in MISO and PJM, and for providing transmission capacity for wind generators in Kansas to reach electricity markets in MISO and PJM.[28]

25. In general, the RES is a Missouri state law requiring investor-owned electric utilities to generate or purchase electricity generated from renewable energy resources in the amount of at least 10% of its sales each calendar year beginning in 2018 and 15% of sales beginning in 2021.[29] Missouri investor-owned utilities can meet the RES requirements using renewable energy credits ("RECs"), and those RECs do not have to be associated with energy that is delivered to or generated in Missouri.[30]

26. The RES sets a rate impact limit on any renewable energy of not increasing retail rates by more than one percent.[31] GBE did not submit evidence comparing the rate impact of the Project to an alternative resource plan to demonstrate that the Project meets the requirements of the RES 1% rate cap.[32]

[27] Ex. 201, Beck Rebuttal, p. 2; Transcript, Vol. 17, p. 1746.
[28] Ex. 118, Berry Direct, p. 3.
[29] Sections 393.1025(3) and 393.1030.1, RSMo Supp. 2013; Commission Rule 4 CSR 240-20.100. All statutory references are to the Missouri Revised Statutes (2000), as amended and cumulatively supplemented.
[30] Ex. 201, Beck Rebuttal, p. 9.
[31] Section 393.1050, RSMo; Commission Rule 4 CSR 240-20.100(5).
[32] Ex. 401, Proctor Surrebuttal, p. 7-10.

27. Three of the four investor-owned electric utilities in Missouri (The Empire District Electric Company, Kansas City Power & Light Company, and KCP&L Greater Missouri Operations Company) have existing capacity and new contracts that are projected to not only supply enough RECs for each to meet the 15% RES requirement for 2021, but also for each to have excess RECs to sell.[33]

28. The fourth Missouri utility, Ameren Missouri, stated in its 2014 Integrated Resource Plan that it needs a total of 400 MW of additional wind energy by 2026.[34] Ameren Missouri plans to meet its need for additional wind energy through wind resources located within MISO, including areas in Missouri.[35] Ameren Missouri has the ability to meet its 2021 RES requirements without purchasing renewable energy transported over the Project.[36]

29. While the injection of wind energy via the Project would improve the reliability of the Missouri bulk electric system[37], that system is not currently unreliable and Missouri utilities are not now violating any reliability standards.[38] It would be cheaper and take less time to build a medium-size natural gas plant in Missouri to achieve the same capacity benefit as the Project.[39]

30. GBE did not submit the Project to the MISO regional planning process for evaluation of need and effectiveness. This process identifies high-voltage transmission projects that will provide value in excess of cost under a variety of future policy and

[33] Ex. 201, Beck Rebuttal, p. 9
[34] Ex. 334, section 9, p. 7, Table 9.3.
[35] Ex. 137, section 1.3, p. 8.
[36] Transcript, Vol. 15, p. 1158.
[37] Ex. 109, Zavadil Direct, p. 3.
[38] Transcript, Vol. 12, p. 702.
[39] *Id.* at 701-702.

economic conditions. Since GBE elected not to participate, the Project has not been evaluated for need and effectiveness in the MISO footprint.[40]

31. MISO has a robust transmission planning process which is effective at planning and building transmission.[41] In 2011, MISO approved 17 high-voltage transmission projects intended to facilitate the development of wind energy within the MISO footprint.[42]

32. Illinois and the parts of MISO to the west of that state have some of the best wind energy resources in the United States. North Dakota, South Dakota, Minnesota, Missouri, and Iowa, combined, have enough wind resources (2.838 million MWs) to meet the current electricity needs of the United States at least two times over.[43]

Economic feasibility of the Project

33. GBE has not finished the SPP, MISO and PJM study processes, which would provide a complete estimate of the expenditures necessary to construct the Project.[44]

34. Several of the SPP, MISO, and PJM studies already completed are insufficient because they were based on GBE's original project design and are inconsistent with the Project's current design, which was changed after the studies were completed.[45]

35. Transmission upgrades in addition to the $2.2 billion construction estimate for the Project will be necessary to connect the Project to MISO and PJM. The cost of those transmission upgrades is currently unknown, but unless GBE absorbs those costs they

[40] Ex. 301, Gray Rebuttal, p. 6-7; Ex. 302, Gray Surrebuttal, p. 1.
[41] Transcript, Vol. 14, p. 942-943.
[42] Ex. 301, Gray Rebuttal, p. 6.
[43] Transcript, Vol. 14, p. 962-963.
[44] Ex. 202, Stahlman Rebuttal, p. 7.
[45] *Id.*

would either be passed through to utility customers via regional transmission organization cost allocations or would increase the delivery rate of wind energy to Missouri.[46]

36. GBE has not yet developed operational, maintenance, or emergency restoration plans for the Project, which adds uncertainty to the estimates of routine costs.[47]

37. Staff witness Sarah Kliethermes testified credibly that the production modeling studies performed by GBE to support its claim of economic feasibility were insufficient and unreasonable because GBE failed to consider a number of important factors and data inputs.[48]

38. The GBE production modeling studies do not support the GBE allegation that the Project would result in lower retail electric rates for consumers.[49]

39. Construction of the Project would create transmission congestion in Missouri, which leads to wasted fuel and fuel expense, and also increase other costs related to wind integration and ramping capacity.[50]

40. Levelized cost analysis provides a way to compare investment alternatives that have differing investment costs, expenses, and asset lives. In regulated utility analysis, levelized costs represent the per-year revenue requirement to cover the return of and on investment as well as annual expenses over the life of the asset. It is an appropriate method to use in comparing resources that run at 100% of their capacity, which are sometimes called base-loaded generation resources.[51]

[46] *Id.* at p. 9-12.
[47] *Id.* at 11.
[48] Ex. 206, Kliethermes Rebuttal, p. 3-4, 19-20; Ex. 401, Proctor Surrebuttal, p. 7.
[49] Ex. 206, Kleithermes Rebuttal, p. 5-11.
[50] *Id.* at pp 17-18, 23-30.
[51] Ex. 400, Proctor Rebuttal, p. 2.

41. GBE witness David Berry used levelized cost analysis as a screening tool to determine which base-loaded resources are most economic.[52]

42. Witness Michael Proctor testified on behalf of Show Me Concerned Landowners. Dr. Proctor received a PhD in economics from Texas A&M University, taught economics and management science at Purdue University and the University of Missouri, and worked from 1977-2009 at the Missouri Public Service Commission, where he was the Chief Economist.[53]

43. Witness Proctor's analysis of levelized cost and economic feasibility of the Project is more credible than the testimony of witness Berry because Dr. Proctor's assumptions and analysis are more reasonable and persuasive, including, but not limited to, matters such as calculation of levelized energy costs, capacity costs, capacity factors, annual expenses, revenue requirement credits, transmission costs and losses, and comparing Kansas wind resources to combined cycle generation and MISO wind resources.

44. Only if the levelized cost of the Project is lower than all other alternatives could the Project possibly be included in the least-cost generation mix for meeting Ameren Missouri's need for capacity and energy without the Missouri RES being imposed as a condition.[54]

45. Only if the levelized cost of the Project is lower than all other renewable energy alternatives could the Project possibly be included in the least-cost generation mix

[52] *Id.* at p. 3.
[53] *Id.* at p. 1.
[54] Ex. 401, Proctor Surrebuttal, p. 10.

for meeting Ameren Missouri's need for capacity and energy with the Missouri RES being imposed as a condition.[55]

46. Compared to wind energy resources from either Kansas or Missouri, such as the Project, levelized cost analysis shows that natural gas-fired combined cycle generation is the most cost-effective generation alternative for meeting Ameren Missouri's need for base-load generation.[56]

47. Areas within MISO, such as northwest Iowa and eastern South Dakota, have a higher capacity factor wind than what can be found in the best wind regions of Missouri.[57]

48. Wind energy generated within the MISO footprint, but not in Missouri, is a lower cost alternative to wind energy generated by the Project.[58]

49. The purchase of RECs by a Missouri electric utility is a more economical way of meeting the RES requirements in Missouri than by purchasing wind energy generated from a wind farm in Kansas and transmitted via the Project.[59]

Public interest

50. As of November 20, 2014, the Commission had received approximately 7,200 public comments regarding the proposed transmission line, most of which opposed the Project. Only one or two other cases before the Commission have ever generated a comparable volume of public comments.[60]

[55] *Id.*
[56] Ex. 400, Proctor Rebuttal, p. 23.
[57] *Id.* at p. 26.
[58] *Id.* at p. 36.
[59] Ex. 401, Proctor Surrebuttal, p. 3.
[60] Ex. 200, Dietrich Rebuttal, p. 3; Transcript, Vol. 17, p. 1646.

51. At the local public hearings conducted in the eight counties through which the proposed transmission line was proposed to cross, the Commission heard testimony from approximately 280 witnesses, the majority of whom opposed it.[61]

52. For one landowner, the proposed transmission line would be 400 feet from the front door of her bed and breakfast business and would mar the view of the farm landscape for guests.[62] For another landowner, the proposed line would run through the only suitable site for a home on that parcel of property.[63]

53. Farmers on whose property the Project is proposed to be constructed could experience problems relating to soil compaction, interference with irrigation equipment, aerial applications to crops and pastures, and problems maneuvering large equipment around towers.[64]

54. The study by GBE witness David Loomis alleging economic benefits from the Project to Missouri did not address the displacement of jobs and energy production in Missouri due to the Project. The Project would probably make Missouri-based wind projects less likely to be constructed.[65]

55. The study performed by witness Loomis did not attempt to identify any negative economic impacts to Missouri as a result of the construction of the Project.[66]

56. Wind energy is currently accessible to buyers in MISO and PJM. MISO wind capacity and output continue to grow, generating 7.4% of all energy for MISO in 2013 compared to 3.5% just three years earlier.[67]

---

[61] Transcript, Vols. 2-9.
[62] Ex. 552, Reichert Rebuttal, p. 7-10; Transcript, Vol. 17, p. 1637.
[63] Ex. 575, Meyer Rebuttal, p. 3.
[64] Ex. 403, Kruse Rebuttal, p. 2-14; Ex. 304, McElwain Rebuttal, p. 3-4.
[65] Ex. 202, Stahlman Rebuttal, p. 16.
[66] Transcript, Vol. 17, p. 1465-1478; Ex. 301, Gray Rebuttal, p. 12-13.
[67] Ex. 206, Kleithermes Rebuttal, Sch. SLK 2 and SLK-4-21.

57. The U.S. Environmental Protection Agency's Clean Power Plan is currently in the preliminary stages of development before a specific rule is proposed. The amount and to what degree the Project would help Missouri comply with those guidelines will not be known until after the EPA rule is proposed in 2015, the state compliance plan is developed, reviewed and accepted by the EPA, and Missouri state rules are promulgated by the Missouri Department of Natural Resources in 2016.[68]

III. Conclusions of Law

GBE filed its application for a certificate of convenience and necessity. The Commission's authority to approve the Project when necessary or convenient for the public service, including the authority to impose reasonable conditions, is stated in Section 393.170, RSMo.[69] GBE is an "electrical corporation"[70] and "public utility"[71] owning,

[68] Ex. 208, Lange Surrebuttal, p. 2; Transcript, Vol. 17, p. 1714-15.

[69] 1. No gas corporation, electrical corporation, water corporation or sewer corporation shall begin construction of a gas plant, electric plant, water system or sewer system without first having obtained the permission and approval of the commission.

2. No such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised, or the exercise of which shall have been suspended for more than one year, without first having obtained the permission and approval of the commission. Before such certificate shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission, together with a verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities.

3. The 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. Unless exercised within a period of two years from the grant thereof, authority conferred by such certificate of convenience and necessity issued by the commission shall be null and void.

[70] "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. (emphasis added).

[71] "Public utility" includes every pipeline corporation, gas corporation, electrical corporation, telecommunications company, water corporation, heat or refrigerating corporation, and sewer corporation, as these terms are defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this chapter.

operating, controlling or managing "electric plant"[72]. While the Commission only has authority over facilities that are devoted to public use[73], an entity that constructs and operates a transmission line bringing electrical energy from electrical power generators to consumers is a "necessary and important link" in the distribution of electricity and qualifies as a public utility[74].

Missouri Landowners Alliance and Show Me Concerned Landowners have raised a legal issue in the briefs that questions the Commission's statutory authority to grant a CCN in this case. Those parties point to subsection 2 of section 393.170, RSMo, which requires that "[b]efore such certificate shall be issued…a verified statement of the president and secretary of the corporation [shall be filed with the commission], showing that it has received the required consent of the proper municipal authorities". The relevant consent mentioned in this section refers to section 229.100, RSMo, which requires assent of the county commission before a company may erect poles for the suspension of electric light or power wires under or across the public roads or highways of that county.[75] Those two parties allege that some of the required consents have been rescinded. As a result of the

[72] "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 conductors used or to be used for the transmission of electricity for light, heat or power. (emphasis added)

[73] *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).

[74] *The Empire District Electric Company v. Progressive Industries, Inc.,* Report and Order, 13 Mo.P.S.C. (N.S.) 659, 669 (April 2, 1968); *State ex rel. Buchanan County. Power Transmission Co. v. Baker*, 9 S.W.2d at 592.

[75] "No person or persons, association, companies or corporations shall erect poles for the suspension of electric light, or power wires, or lay and maintain pipes, conductors, mains and conduits for any purpose whatever, through, on, under or across the public roads or highways of any county of this state, without first having obtained the assent of the county commission of such county therefor; and no poles shall be erected or such pipes, conductors, mains and conduits be laid or maintained, except under such reasonable rules and regulations as may be prescribed and promulgated by the county highway engineer, with the approval of the county commission."

Commission's decision below, the Commission need not address this question of statutory authority at this time.

Since GBE brought the application, it bears the burden of proof.[76] The burden of proof is the preponderance of the evidence standard.[77] In order to meet this standard, GBE must convince the Commission it is "more likely than not" that its allegations are true.[78]

The first issue for determination is whether the evidence establishes that the high-voltage direct current transmission line and converter station for which GBE is seeking a certificate of convenience and necessity are necessary or convenient for the public service. 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. [79]

[76] "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).
[77] *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).
[78] *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).
[79] *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).

It is important to note that these factors have been developed and implemented by the Commission itself, not by the legislature or the courts, so the Commission is not bound to strictly follow past decisions where it is reasonable to deviate from those standards.

With regard to GBE's qualifications and financial ability to provide the service, GBE has provided competent and substantial evidence to support its claim. No party seriously disputed these two factors, so the Commission concludes that GBE has met its burden of proof demonstrating that GBE is qualified and has the financial ability to provide the service described in its application for a certificate of convenience and necessity.

Need for the Project

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".[80] The Commission finds that it is more appropriate to consider aspects of the Project related to the effect on Missouri utilities and consumers rather than how it might affect Kansas wind developers or utilities and consumers from other states.[81]

GBE asserts that its project is necessary for Missouri investor-owned utilities to meet the renewable energy standards of Sections 393.1020 and 1030, RSMo. This law requires that those utilities obtain 15% of their electricity from renewable resources by 2021. However, the evidence showed that the Project is not needed for Missouri investor-owned utilities to meet the requirements of the RES. The Empire District Electric Company, Kansas City Power & Light Company, and KCP&L Greater Missouri Operations Company

[80] *State ex rel. Intercon Gas, Inc. v. Pub. Serv. Commission of Missouri*, 848 S.W.2d 593, 597 (Mo. Ct. App. 1993).
[81] "The PSC is a state agency established by the Missouri General Assembly to regulate public utilities operating within the state." *State ex rel. Atmos Energy Corp. v. Pub. Serv. Comm'n of State*, 103 S.W.3d 753, 756 (Mo. 2003).

have existing renewable energy capacity and new contracts that are projected to supply enough RECs to meet the RES requirements and have excess RECs to sell. Ameren Missouri states in its 2014 IRP that it needs 400 MW of additional wind energy to comply with the RES, but its plan anticipates obtaining that wind energy within MISO. In addition, GBE has not presented sufficient evidence to show that increases to retail rates for Ameren Missouri customers for wind energy provided by the Project would fall within the RES one percent rate cap. All the investor-owned electric utilities in Missouri have the ability to meet the 2021 RES requirements without purchasing renewable energy transported over the Project.

The Project is not needed for grid reliability because GBE did not submit the Project to the regional planning process, has not identified any existing deficiency or inadequacy in the grid that the project addresses, and has not shown that the project is the best or least-cost way to achieve more reliability. Although GBE elected not to submit the Project to the MISO regional transmission process, MISO has an effective planning process to enable states in the MISO footprint, which includes portions of Missouri, to meet RES requirements using renewable wind resources. Since areas of MISO have some of the best wind energy resources in the United States, it is more likely that the large amount of available MISO wind can satisfy the needs of Missouri utilities for wind energy compared to the smaller amount of Kansas wind that GBE proposes to inject into MISO at the Missouri converter station. The Commission concludes that GBE has failed to meet its burden of proof to demonstrate that the service it proposes in its application for a certificate of convenience and necessity is needed in Missouri.

Economic Feasibility of the Project

GBE has not presented adequate evidence to show that the Project is economically feasible. Staff made credible criticisms of the GBE studies and pointed out the large amount of important information that is not known about the impact of the Project on Missouri. Interconnection studies with SPP, MISO and PJM have not been completed or are inconsistent with the Project's current design, plans for operations, maintenance or emergency restoration have not yet been developed by GBE, and GBE production modeling studies do not support GBE's claims that retail electric rates would decrease. In addition, there is a good chance that Project costs would increase beyond what was estimated by GBE due to transmission upgrades, congestion, wind integration and the need for additional ramping capacity.

Dr. Michael Proctor presented credible evidence that Ameren Missouri would have lower-cost alternatives than the Project for meeting its need for capacity and energy, both with and without considering the renewable energy requirements of the Missouri RES. GBE failed to perform adequate studies and present sufficient evidence on this analysis, which the Commission would need to properly evaluate economic feasibility of the Project. Dr. Proctor's analysis showed that natural gas-fired combined cycle generation is the most cost-effective generation alternative, and that wind energy from areas of MISO or through the purchase of RECs are a lower cost alternative to wind energy generated by the Project. Therefore, the Project is not the least-cost alternative for meeting Missouri's future needs for either energy and capacity or renewable energy, so it is highly unlikely to meet the Commission's rule for 1% rate impact limitation from renewable energy. It is more likely that a reasonable and prudent Missouri electric utility, such as Ameren Missouri, would

choose to obtain wind energy either within MISO or through the purchase of RECs rather than from the Project. The Commission concludes that GBE has failed to meet its burden of proof that the service described in its application for a certificate of convenience and necessity is economically feasible.

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.[82] The public interest is a matter of policy to be determined by the Commission.[83] It is within the discretion of the Public Service Commission to determine when the evidence indicates the public interest would be served.[84] Determining what is in the interest of the public is a balancing process.[85] In making such a determination, the total interests of the public served must be assessed.[86] This means that some of the public may suffer adverse consequences for the total public interest.[87] Individual rights are subservient to the rights of the public.[88] The "public interest" necessarily must include the interests of both the ratepaying public and the investing public[89].

[82] *Fleshner v. Pepose Vision Institute, P.C.*, 304 S.W.3d 81, 96 (Mo. banc 2010).
[83] *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).
[84] *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).
[85] *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.).
[86] *Id*.
[87] *Id*.
[88] *State ex rel. Mo. Pac. Freight Transport Co. v. Public Service Commission*, 288 S.W.2d 679, 682 (Mo. App. 1956).
[89] The Missouri Supreme Court has previously held that the Commission must consider the interests of the investing public and that failure to do so would deny them a right important to the ownership of property. *State ex rel. City of St. Louis v. Public Service Com'n of Missouri*, 73 S.W.2d 393 (Mo. banc 1934).

The *Tartan* case stated that the public interest determination "is in essence a conclusory finding as there is no specific definition of what constitutes the public interest. Generally speaking, positive 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."[90] Since the Commission has concluded that GBE has not met two of the *Tartan* factors, by that standard GBE cannot show that the Project promotes the public interest. However, the Commission will also consider further some of the specific public benefits of the Project claimed by GBE.

As Staff witnesses point out, as a result of GBE's inadequate production modeling studies, GBE's claims that the Project would lead to lower renewable energy compliance costs, lower wholesale electric prices, lower retail electric rates, and reduce the need to generate electricity from fossil-fueled power plants are not sufficiently supported by the record. Moreover, the Project is not needed to satisfy the Missouri RES requirements. Although GBE argues that the Project will make wind energy more accessible to MISO and PJM customers, the evidence shows that wind energy is already accessible in those regions and, at least in MISO, has more than doubled as a percentage of total energy generated in the last three years. GBE alleges that the Project would result in economic benefits, but its studies are not reliable, as they fail to consider any negative economic impacts resulting from job displacement and energy production. Finally, GBE touts the Project as a way for Missouri to access affordable clean energy as increasing environmental regulations increase costs for coal plants. It is too soon to say what the impact of the proposal will be on Missouri.

[90] *In re Tartan Energy,* 3 Mo.P.S.C. 3d at 189.

The Commission acknowledges the substantial opposition to the Project expressed by business owners, farmers, and individual landowners across whose properties the Project was proposed to cross. The volume of public comments received in this case demonstrates the level of involvement of individuals who may be affected by this Project. Additionally, several people testified sincerely about their concerns relating to the Project. Those concerns were conveyed by farmers who could experience problems related to soil compaction, interference with irrigation equipment, aerial applications to crops and pastures and difficulty in moving large equipment around the towers proposed as part of the Project. For one landowner who owns a bed and breakfast, the view of that business would be marred for any guests staying at the bed and breakfast. In this case the evidence shows that any actual benefits to the general public from the Project are outweighed by the burdens on affected landowners. The Commission concludes that GBE has failed to meet its burden of proof to demonstrate that the Project as described in its application for a certificate of convenience and necessity promotes the public interest.

The remaining two disputed issues in this case each assumed that GBE was granted a certificate of convenience and necessity. In its conclusions of law above, the Commission determined that GBE has not met the criteria for obtaining such a certificate, so the Commission need not consider the remaining two disputed issues.

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 GBE has failed to meet, by a preponderance of the evidence,

its burden of proof to demonstrate that the Project as described in its application for a certificate of convenience and necessity is necessary or convenient for the public service. Therefore, the Commission will deny the GBE application and the motion to hold the case in abeyance.[91]

THE COMMISSION ORDERS THAT:

1. Grain Belt Express Clean Line LLC's request to hold the case in abeyance filed on June 10, 2015, is denied.

2. Grain Belt Express Clean Line LLC's application for a certificate of convenience and necessity filed on March 26, 2014, is denied.

3. This order shall become effective on July 31, 2015.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Stoll, W. Kenney, and Rupp, CC., concur;
R. Kenney, Chm., and Hall, C., dissent,
with separate dissenting opinions to follow;
and certify compliance with the provisions
of Section 536.080, RSMo.

Bushmann, Senior Regulatory Law Judge

[91] As some parties have recently noted, GBE has the option to file a new application for a CCN at any point if it eventually gathers information it feels would make a better case for this project or a new project. *See Staff's Response to the Recommendation of Grain Belt Express Clean Line LLC*, EFIS No. 544, and *Response of the Missouri Landowners Alliance to Recommendation of Grain Belt Express to Hold Case in Abeyance*, EFIS No. 540.

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 345 kV Transmission Line	)))))))	Case No. EA-2014-0207

CHAIRMAN ROBERT S. KENNEY'S DISSENTING OPINION

I dissent from the Report and Order denying Grain Belt Express Clean Line LLC ("Grain Belt Express" or the "Company") a certificate of convenience and necessity ("CCN") because Missouri does, in fact, need the project Grain Belt Express was proposing; because the project is economically feasible; and because the project is most assuredly in the public interest.

The evidence in the case demonstrates that the project would fulfill many needs in Missouri. The evidence also establishes that the project is economically feasible. Finally, the project is in the public interest.

Grain Belt Express proposes to build a high voltage direct current ("HVDC") transmission line that would begin in Kansas, crossing Missouri and Illinois, and ending in Indiana. Grain Belt Express also proposed constructing an associated converter station in Ralls County, Missouri and alternating current ("AC") interconnection facilities, delivering 500 megawatts of power to Missouri.[1] A purpose of the Project is to facilitate the delivery of low-cost western wind energy to Missouri, Illinois, Indiana, and other states.[2]

[1] Collectively the HVDC line and converter station will be referred to as the "Project".
[2] See, generally, Application of Grain Belt Express Clean Line LLC for a Certificate of Convenience and Necessity

The Report and Order recites the five factors the Commission has traditionally applied when determining whether to grant or deny a certificate of convenience and necessity.[3] Applying the five *Tartan* factors, the applicant has the burden of demonstrating that: 1. there is a need for the Project; 2. the applicant is qualified to undertake the Project; 3. the applicant has the financial ability to undertake the Project; 4. the Project is financially feasible; and 5. the Project is in the public interest. The Report and Order correctly notes that two of the five factors can be easily resolved in Clean Line's favor.[4] Grain Belt Express met its burden of proving that it is qualified and has the financial ability to construct, manage, own, operate, and maintain the Project. All that remains is to determine whether Grain Belt Express met its burden of proving that it satisfies the other three factors.

I. The Project is Needed

Whether the project is needed is not a matter of determining whether it is "essential" or "absolutely indispensable." Rather, the proper test is whether the Project will enhance or improve the delivery of public utility services such that its cost is justified. Importantly, the cost of the Project would not be borne by Missouri consumers.

The Project would facilitate and enhance investor owned utilities' abilities to comply with Missouri's Renewable Energy Standard. Additionally, the Project would facilitate and enhance compliance with the Clean Power Plan and other environmental regulations. The Project would also enhance and improve the reliability of the regional transmission grid. Without needed

[3] *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 Associated Converter Station Providing an Interconnection on the Maywood – Montgomery 345 kV Transmission Line,* File No. EA-2014-0207, Report and Order Dated July 1, 2015, page 20, *citing In re Tartan Energy Co., L.C.*, 3 Mo.P.S.C.3d 173, Case No. GA-94-127, 1994 WL 762882 (Sept. 16, 1994).
[4] *Id.* at page 21.

transmission infrastructure, wind energy cannot be moved to markets. The project is, therefore, needed.

The Report and Order notes that it is "more appropriate to consider aspects of the Project related to the effect on Missouri utilities and consumers rather than how it might affect Kansas wind developers or utilities and consumers from other states."[5] Regrettably, this analysis is narrow and parochial. Moreover, it does not apply the first *Tartan* criteria correctly. Because Missouri's regulated utilities participate in regional wholesale markets, it is appropriate to look at the effects on the wholesale, regional markets and market participants; examining the effect of the Project on generators operating in other states would be appropriate in determining whether the Project is needed. Examining the wholesale markets, rather than narrowly focusing on Missouri, is perfectly appropriate where Missouri utilities participate in two regional transmission organizations, buying and selling power in these wholesale markets.

II. The Project is Economically Feasible

The Report and Order incorrectly analyzes "feasibility" and then proceeds to apply this flawed analysis to the facts of this case. The analysis in the Report and Order incorrectly focuses on the lack of interconnection studies with SPP, MISO, and PJM. The Report and Order also incorrectly focuses on production cost modeling studies to reach the conclusion that the Project's impact on retail rates is unknown. But this analysis is inconsistent with what is required by *Tartan*.

Grain Belt Express's analysis demonstrates that the project is feasible when examined through the lenses of the correct definition of the word. As Grain Belt Express correctly notes,

[5] *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 Associated Converter Station Providing an Interconnection on the Maywood – Montgomery 345 kV Transmission Line*, File No. EA-2014-0207, Report and Order Dated July 1, 2015, page 21.

the *Tartan* analysis looks at economic feasibility as a test of whether the Project is economically achievable and who bears the burden if the Project fails. In the *Tartan* case, the Commission found that the project was economically feasible where Tartan bore "most of the risk if it has underestimated the economic feasibility of its project . . . ."[6] As in the *Tartan* case, Grain Belt Express is financially able to undertake and complete the project. And, because costs will be recovered through bilateral contracts with those using the transmission capacity on the line, Missouri consumers bear no risk. The Project, therefore, is economically feasible.

III. The Project is in the Public Interest

Whether the Project is in the public interest is largely a public policy determination left to the Commission's sound judgment. There is "no specific definition."[7] And where the first four factors of the Tartan analysis have been resolved in the applicant's favor, the public interest determination should also be resolved in the applicant's favor.[8]

Here, the Commission should have found this factor in Grain Belt Express's favor because it should have found the first four factors in Grain Belt Express's favor. But even analyzed as a stand-alone factor, the public interest determination should have been resolved in Grain Belt Express's favor.

The Project represents a first of its kind deployment of a cutting edge technology. The economic development impact is undeniable. The record is replete with evidence of the jobs that would be created and the tax revenue that would be generated. And there was testimony at the local public hearings and at the evidentiary hearings about the need for these jobs and this tax revenue in virtually all of the affected counties.

---

[6] *In re Tartan Energy Co., L.C.*, 3 Mo.P.S.C.3d 173, Case No. GA-94-127, 1994 WL 762882 (Sept. 16, 1994).

[7] *Id.*

[8] *Id.*

The Project's ability to facilitate the deployment of low cost renewable energy will have quantifiable public health and environmental benefits of great significance. The interregional nature of the Project will enhance reliability in three Regional Transmission Organizations. The Project would serve to lower wholesale market prices, reducing congestion costs and locational marginal prices. There is no question but that the Project would serve the public interest in a multitude of ways.

There were concerns about private property rights and the potential use of eminent domain to take easements and rights of way. These concerns are legitimate and not to be discounted. But these concerns were also amenable to mitigation. This Commission could certainly have imposed reasonable conditions on the routing of the line or it could have established a methodology by which the Company would have been limited in its use of eminent domain authority. The concerns of many landowners were heard over eight very respectful local public hearings. And it is important to give those concerns their due hearing. But these concerns should not be the basis for closing a market to a viable market participant. This is particularly so when this Commission could have creatively managed these concerns.

Grain Belt Express met its burden of establishing that the Project would serve the public interest.

IV. Conclusion

The Commission should have granted Grain Belt Express a certificate of convenience necessity. The Project is needed, is economically feasible, and is in the public interest. Denying the CCN sends the wrong message about the great state of Missouri.

In denying the CCN we are, like the Luddites of the nineteenth century, telling the world that we do not embrace new technologies. We are telling the world that we prefer central

planning to free markets. We are telling the world that new businesses models will be looked at with more than healthy skepticism; indeed new business models will be frowned upon and will be unwelcome. These are wrong messages to send. The Commission should have granted the CCN. And for the aforementioned reasons, I respectfully dissent.

Respectfully Submitted,

_____
Robert S. Kenney
Chairman

Dated at Jefferson City, Missouri
On this 7th Day of August, 2015

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 345 kV Transmission Line	)))))))	**File No. EA-2014-0207**

DISSENTING OPINION OF COMMISSIONER DANIEL Y. HALL IN THE REPORT AND ORDER

I respectfully dissent.

In the Report and Order issued on July 1, 2015, a majority of the Commission denied the application of Grain Belt Express Clean Line LLC ("Grain Belt Express") for a certificate of convenience and necessity ("CCN").The majority concluded that Grain Belt Express failed to meet its burden of proof to demonstrate that the project described in its application to construct and operate a high voltage, direct current transmission line across Missouri ("Project") was necessary or convenient for the public service. I disagree, and would grant that application.

I believe the majority misapplied Missouri law, failed to properly consider the evidence presented and ignored overarching policy considerations. Moreover, the majority adopted an overly narrow and parochial interpretation of the public interest, and in so doing, missed an opportunity to build "a bridge to our energy future."[1] Simply put, this ruling puts Missouri on the wrong side of history.

[1] Tr. 10:28–29.

When making a determination of whether an applicant or project is convenient or necessary, the Commission applies 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.[2]

The majority concluded that Grain Belt Express failed to present sufficient evidence to demonstrate need, economic feasibility, and public interest.

The majority based its conclusions regarding need and economic feasibility primarily upon the testimony of Michael Proctor, who expressed the opinion that the Project was not needed and not economically feasible because Ameren Missouri, as the sole Missouri investor-owned electric utility in MISO, could obtain lower-cost wind energy from areas within MISO or through the purchase of renewable energy credits. While the majority takes great stock in Dr. Proctor's testimony, I found the testimony of other witnesses to be more persuasive.

Michael Goggin and Matt Langley testified in support of the Grain Belt Express Project. Goggin and Langley have extensive experience regarding the development of wind energy and transmission and grid integration issues.[3] Those witnesses testified credibly that, contrary to the opinion of Dr. Proctor, wind energy from within MISO is not the lowest-

[2] *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).

[3] Ex. 700, Goggin rebuttal, p. 1; Ex. 875, Langley rebuttal, p. 2-3.

cost option for utilities needing renewable energy. Wind energy generated in the northwestern MISO area, where new wind development would occur, is not a viable alternative to the Grain Belt Express Project because this area is experiencing severe transmission congestion that is causing limited wind deliverability and widespread wind curtailment.[4] Since wind energy from within MISO is not the lowest-cost option, then the analysis by witness David Berry shows that wind energy generated in Kansas and transmitted to Missouri via the Project could fulfill a need for Missouri utilities looking to purchase renewable energy.[5] Missouri courts have stated that in evaluating an application for a CCN, the "term 'necessity' does not mean 'essential' or 'absolutely indispensable', but that an additional service would be an improvement justifying its cost".[6] Under this standard, Grain Belt Express has clearly demonstrated that there is a need for the Project.

Similarly, this analysis also shows that the Project is economically feasible.[7] Grain Belt Express presented a levelized cost of energy analysis from witness Berry to show that the cost to bring wind energy from western Kansas to Missouri and eastward using the Project is the lowest-cost resource option compared to Missouri wind, coal generation, combined cycle gas and solar power.[8] Grain Belt Express has presented sufficient evidence to show that its Project is economically feasible.

---

[4] Ex. 701, Goggin surrebuttal, p. 5-6; Langley surrebuttal, p. 3-5; Transcript, Vol. 14, p. 947.

[5] Ex. 118, Berry direct, p. 11-26

[6] *State ex rel. Intercon Gas, Inc. v. Pub. Serv. Commission of Missouri*, 848 S.W.2d 593, 597 (Mo. Ct. App. 1993).

[7] Ex. 118, Berry direct, p. 11-26.

[8] Ex. 120, Berry surrebuttal, p. 19-22.

It is worthwhile noting that the original *Tartan* case also involved a situation where the company investors, not the ratepayers, bore the economic risk of the proposed project. In concluding that the Tartan project was viable, that Commission said that "Tartan bears most of the risk if it has underestimated the economic feasibility of its project, and the public benefit outweighs the potential for underestimating these costs."[9] Grain Belt Express similarly presented credible evidence that the company and its investors, not Missouri ratepayers, bear the risks associated with recovering the costs of the Project.[10] The Grain Belt Express shareholders are willing to risk $2.2 billion of their own money, of which approximately $500 million would be invested in Missouri, because they believe that the Project is economically feasible.[11] Since there is no risk to Missouri ratepayers and evidence demonstrated that the Project would actually reduce electric rates,[12] I would prefer to allow Grain Belt Express to build the Project and have faith in the competitive free market system to determine whether the Project is feasible.

The majority also concluded that the Project does not promote the public interest because any actual benefits are outweighed by the burdens on affected landowners. Those landowners who appeared before the Commission during local public hearings were sincere in their concerns about the Project, and I am sympathetic with those concerns. However, many of these concerns could have been addressed though conditions placed upon the CCN. And, it is the Commission's responsibility to balance the interests of the affected landowners with the overall interests of the public, which, as correctly noted by the

---

[9] *In re Tartan Energy,* 3 Mo.P.S.C. 3d at 189.

[10] Ex. 120, Berry surrebuttal, p. 49; Transcript, Vol. 15, p. 1297-98.

[11] Ex. 100, Skelly direct, p.8.

[12] Ex. 118, Berry direct, p. 4.

majority, means that some of the public may suffer adverse consequences for the total public interest.[13] Individual rights must sometimes give way to the rights of the public.[14]

The evidence in the case convinced me that the Project will create both short-term and long-term benefits to ratepayers and all the citizens of the state. In my view, the benefits of the Project to the entire state of Missouri far outweigh the interests of the individual landowners. The majority decision failed to adequately consider important public policy considerations that weigh in favor of granting the Grain Belt Express application. Public policy must be found in a constitutional provision, a statute, a regulation promulgated pursuant to statute, or a rule created by a governmental body.[15] Missouri law has established such a policy through the law on renewable energy standards that encourages the use of renewable energy resources.[16] This Commission stated in a recent Report and Order that an important policy goal is encouraging renewable energy, and that "[r]enewable energy generation provides a direct benefit to the public because it can reduce the problems associated with conventional sources of electricity, such as coal, oil, natural gas, and nuclear."[17]

Grain Belt Express presented substantial evidence that its Project would provide a number of benefits to Missouri, including access to low-cost wind energy to provide

---

[13] *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.).

[14] *State ex rel. Mo. Pac. Freight Transport Co. v. Public Service Commission*, 288 S.W.2d 679, 682 (Mo. App. 1956).

[15] *Fleshner v. Pepose Vision Institute, P.C.*, 304 S.W.3d 81, 96 (Mo. banc 2010).

[16] Section 393.130, RSMo Supp. 2013.

[17] In the Matter of Union Electric Company d/b/a Ameren Missouri's Voluntary Green Program/Pure Power Program Tariff Filing, *Report and Order,* p. 14, File No. EO-2013-0307, issued April 24, 2013.

cost-effective compliance with renewable energy standards, reduction in wholesale and retail electricity prices, the addition of construction, manufacturing and operations jobs for Missouri workers and business, and a reduction in the need to generate electricity from fossil-fueled power plants which would reduce carbon dioxide, sulfur dioxide, nitrous oxide and mercury emissions.[18] This last benefit will be vitally important for Missouri in the near and foreseeable future as our utilities face large reductions in their carbon emissions that are being imposed by the U.S. government in the EPA rule under 111(d) of the Clean Air Act that was issued on August 3, 2015. This rule will require Missouri to cut its carbon emissions rate by about 37% in the electric sector[19], causing enormous challenges for utilities in this state. By ignoring the imminent effects of this rule on Missouri utilities, the majority has prevented our utilities from having timely access to another valuable source of renewable energy.

As a state, as a nation, and as a planet, we are witnessing a long-term comprehensive movement towards renewable energy, including wind energy. I believe that wind energy holds great promise as a source of affordable, reliable, safe, and environmentally-friendly energy. While people, businesses, governmental entities, and other organizations may disagree about the extent of the speed, nature and benefits of such a movement, no one can doubt its existence. As a Commission, we can either facilitate the movement towards renewable energy or temporarily hinder it. It was my hope that this case would be our opportunity to facilitate it, but, unfortunately, the majority chose a different path.

---

[18] Ex. 118, Berry direct, p. 4.

[19] Under the final Clean Power Plan, Missouri must reduce its CO_2 emissions rate (lbs/Net MWH) from the 2012 baseline rate of 2,008 to a 2030 rate of 1,272, which is a 36.7% reduction.

As the Report and Order in this case notes, Grain Belt Express has the option to file a new application for a CCN at any point if it eventually gathers information it feels would make a better case for the Project or for a new Project. I encourage Grain Belt Express to do so. While the Commission has come down on the wrong side of history here, I have hope that, with time, the Commission can right this wrong and do its part in creating a more sustainable energy future for all Missourians.

For the reasons set forth above, I would grant Grain Belt Express a certificate of convenience and necessity.

Respectfully submitted,

_____

Daniel Y. Hall

Dated at Jefferson City, Missouri,
on this 13th day of October, 2015.

In the Matter of The Empire	)	
District Electric Company for Authority	)	**File No. ER-2014-0351**
to File Tariffs Increasing Rates for	)	Tracking No. YE-2015-0074
Electric Service Provided to Customers	)	
in the Company's Missouri Service Area	)	

ORDER CLARIFYING REPORT AND ORDER

RATES

§64. Reduction of rates.
The Commission clarified that a revenue-neutral increase for one customer class does not require corresponding increases or decreases for other classes.

§119. Rate design, class cost of service for electric utilities
The Commission clarified that a revenue-neutral increase for one customer class does not require corresponding increases or decreases for other classes.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 1st day of July, 2015.

In the Matter of The Empire District Electric Company for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Company's Missouri Service Area	)))))	**File No. ER-2014-0351** Tracking No. YE-2015-0074

ORDER CLARIFYING REPORT AND ORDER

Issue Date: July 1, 2015 Effective Date: July 1, 2015

On June 24, 2015, the Commission issued a Report and Order with a July 24 effective date. In the Report and Order, the Commission determined that rates for the Residential rate class should be increased by 25% of the needed 8.1% revenue neutral rate adjustment (an approximate increase of 2% before the approved revenue rate increase is applied.)[1] On June 26, The Empire District Electric Company ("Empire") and the Staff of the Commission filed a *Joint Motion for Clarification of Report and Order* ("Motion"). In the Motion, Empire and Staff seek clarification on the rate design for the other rate classes as a result of the increase to the Residential class. Specifically, Empire and Staff seek an explanation of how the rate design supported by Midwest Energy Consumers Group ("MECG") should be applied to Staff's BIP[2] Class Cost of Service Study ("CCOSS").[3]

[1] EFIS Item No. 313; Report and Order pg. 8, ¶1 and pg. 20. The approximate 8.1% revenue neutral increase for the residential class was supported by Staff's Class Cost of Service Study.

[2] Base and Intermediate Peak analysis method.

[3] EFIS Item No. 313; Report and Order, pg. 15, ¶10; the Commission found Staff's BIP Class Cost of Service Study to most reasonably recognize the relationship between the cost to serve and the cost of producing energy.

Empire and Staff assert that based on Staff's Base and Intermediate Peak ("BIP") CCOSS, the Commission intended the Small Heating ("SH"), Commercial Building ("CB"), Large power ("LP"), Total Electric Building ("TEB"), and General Power ("GP") rate classes to receive off-setting revenue neutral decreases of approximately 25% of the over-contribution identified for each class in Staff's BIP CCOSS. Under the interpretation supported by Empire and Staff, the revenue requirement for the Special Contract-Praxair ("SC-P") rate class will be held constant on a revenue neutral basis, even though Staff's CCOSS supports a slight increase.[4]

MECG filed a response to the Motion on June 30 stating its belief that the Commission only intended for the LP, TEB and GP rate classes to receive a revenue neutral decrease. MECG does not contradict Empire and Staff's position that the Commission intended for the SC-P rates class to be held constant on a revenue neutral basis. To the extent that the CB and SH rate classes are contributing more than Empire's cost to serve those classes according to Staff's CCOSS, they are entitled to a revenue neutral decrease to their revenue requirement by approximately 25% of the over-contribution.

The Commission will grant the Motion and clarify that based on Staff's CCOSS, which the Commission found in its Report and Order to most reasonably recognize the relationship between the cost to serve and the cost of producing energy, no decrease on a revenue neutral basis shall occur for the SC-P rate class. Consistent with Staff's CCOSS recommendations, no rate increases shall occur for the Feed Mill & Grain Elevator Service ("PFM") and Lighting and Miscellaneous rate classes.

[4] Exhibit 210, R. Kliethermes Rebuttal, pg. 5. Staff's CCOSS supports approximately 2.7% revenue neutral increase for the SC-P class.

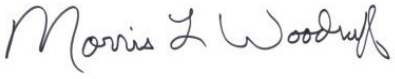
THE COMMISSION ORDERS THAT:

1. The *Joint Motion for Clarification of Report and Order* is granted.

2. The Commission clarifies that the rate design approved in its June 24, 2015 Report and Order is consistent with the results in Column F of Appendix A to the *Joint Motion for Clarification of Report and Order*, which will be incorporated into this order. The revenue requirement for the SC-P rate class will be held constant on a revenue neutral basis and the PFM and Lighting and Miscellaneous rate classes will receive no rate increase.

3. This order shall be effective when issued.

BY THE COMMISSION



Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney,
Hall, and Rupp, CC., concur.

Kim S. Burton, Regulatory Law Judge,
by delegation of authority
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 1st day of July, 2015.

In the Matter of the Application of Ameren Transmission Company of Illinois for Other Relief or, in the Alternative, a Certificate of Public Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain and Otherwise Control and Manage a 345,000-volt Electric Transmission Line in Marion County, Missouri, and an Associated Switching Station Near Palmyra, Missouri.	))))))))	**File No. EA-2015-0145**

REVISED ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES.

§11. When a certificate is required generally.

The Public Service Commission Act provides that the Commission has jurisdiction over any entity that owns or operates electric plant, including transmission lines, devoted to public use. Public use is not limited to retail sales to the general public, and includes any integral link in the sale and distribution of electricity to the public, like transmission lines. The Federal Energy Regulatory Commission has not pre-empted State authority over the siting of electric plant.

§42. Electric and power.

The Public Service Commission Act provides that the Commission has jurisdiction over any entity that owns or operates electric plant, including transmission lines, devoted to public use. Public use is not limited to retail sales to the general public, and includes any integral link in the sale and distribution of electricity to the public, like transmission lines. The Federal Energy Regulatory Commission has not pre-empted State authority over the siting of electric plant.

ELECTRIC.

§3. Certificate of convenience and necessity

The Public Service Commission Act provides that the Commission has jurisdiction over any entity that owns or operates electric plant, including transmission lines, devoted to public use. Public use is not limited to retail sales to the general public, and includes any integral link in the sale and distribution of electricity to the public, like transmission lines. The Federal Energy Regulatory Commission has not pre-empted State authority over the siting of electric plant.

NOTE: This case was appealed (In Re: WD78939).

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 22nd day of July, 2015.

In the Matter of the Application of Ameren Transmission Company of Illinois for Other Relief or, in the Alternative, a Certificate of Public Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain and Otherwise Control and Manage a 345,000-volt Electric Transmission Line in Marion County, Missouri, and an Associated Switching Station Near Palmyra, Missouri.	)))))))	**File No. EA-2015-0145**

REVISED ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: July 22, 2015 Effective Date: August 1, 2015

Procedural History

On February 20, 2015[1], Ameren Transmission Company of Illinois ("ATXI") asked the Commission to either find that it does not have jurisdiction over this project or, in the alternative, to grant ATXI a certificate of convenience and necessity to build it. In particular, ATXI wants to build a 345,000 volt transmission line about seven miles long that runs from Palmyra, Missouri and across the Mississippi River to the Missouri state line.

The Commission provided notice and set a deadline for applications to intervene. The Commission received timely intervention requests from United for Missouri, Inc., and Missouri Industrial Energy Consumers, which the Commission granted.

[1] Calendar references are to 2015.

The Staff of the Commission filed its Recommendation on April 20. Staff recommends the Commission grant the certificate, subject to certain conditions. Staff further recommends the Commission grant certain rule waivers to ATXI, as requested in the application.

ATXI responded on April 24, accepting Staff's conditions. No party has objected to Staff's Recommendation or to ATXI's acceptance of the Recommendation.

The Commission issued an Order Granting Certificate of Convenience and Necessity on June 2. ATXI filed an application for rehearing on June 11, contending that the Commission order did not sufficiently explain the basis for the Commission's decision that it has jurisdiction over this project. The Commission is issuing this revised order to address ATXI's contention.

Findings of Fact

ATXI wants to build a 345,000 volt electric transmission line about seven miles long through a portion of Missouri.[2] As described in the Application, "(t)he Project is a portion of the portfolio of multi-value projects (MVPs) approved by the Midcontinent Independent System Operator, Inc. (MISO) in 2011, and is a part of a new transmission line approximately 385 miles in length along a path running generally from Palmyra, Missouri, then continuing through northeastern Missouri, across the Mississippi river and continuing east across Illinois to western Indiana (identified by ATXI in its entirety as the Illinois Rivers Project)."[3]

"This project will provide for the integration of wind energy in Missouri to increase the amount of electricity available from renewable resources, including wind energy that would

[2] Application, ¶ 5 (filed February 20, 2015).
[3] *Id.* at ¶ 6.

be transported to aid Missouri public utilities in complying with Missouri's Renewable Energy Standard."[4] "The Project is also part of improvements to the regional transmission system under MISO's functional control and will improve the overall reliability of the regional transmission system and reduce transmission system congestion."[5]

Conclusions of Law

Section 393.140.1, RSMo 2000, gives the Commission general supervisory authority over all "electrical corporations." That statute specifically applies to electrical corporations that have authority "for the purpose of furnishing *or transmitting* electricity for light, heat, or power"(emphasis added).

Section 386.020(15), RSMo (Cum. Supp. 2013) 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, 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 for its own use or the use of its tenants and not for sale to others.

That is a complex sentence, but stripped to its essentials, it provides that an electrical corporation is any owner or operator of electric plant, unless the electric plant exists only for its own use and not for the sale of electricity to others.

Section 386.020(14), RSMo (Cum. Supp. 2013) defines "electric plant" as including:

> 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

[4] *Id.* at ¶ 13.
[5] *Id.*

> property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power (emphasis added).

ATXI's proposed electric transmission line falls within that definition.

ATXI's proposed transmission line is electric plant within the meaning of the statute. As the owner of that electric plant, ATXI is an electrical corporation. As an electrical corporation, ATXI is subject to regulation by this Commission. Finally, Section 393.170, RSMo 2000 requires that an electrical corporation obtain approval from this Commission before beginning construction of electric plant. Thus, ATXI needs permission from this Commission to construct its transmission line and the Commission has jurisdiction to address that matter.

Despite the clarity of the statutes, ATXI argues that Missouri's courts have construed these statutes in a way that exempts it from regulation by the Commission. Specifically, ATXI argues that to be an electrical corporation under the jurisdiction of the Commission, the entity must serve or otherwise hold itself out to indiscriminately provide electric service to the general public at retail. In support of that assertion, ATXI primarily cites a Missouri Supreme Court decision from 1918, *State ex rel. M. O. Danciger & Co. v. Pub. Serv. Comm'n*.[6] A review of the *Danciger* decision reveals that it does not support ATXI's argument.

In the *Danciger* case, Danciger was part owner of a pre-prohibition brewery operating in Weston, Missouri. The company built its own electrical generating plant to provide power to the brewery, and Danciger, through a company created for that purpose, sold the excess electricity to friendly businesses in the town, including the local newspaper.

[6] 205 S.W. 36 (Mo. 1918).

However, Danciger abruptly cut the power line to the newspaper and other customers[7] and they brought a complaint before the Commission arguing that Danciger's electrical business was a public utility subject to the Commission's regulation. The Commission found that Danciger's company was operating as a public electric utility and ordered it to restore service to all its customers.

On appeal, the Missouri Supreme Court held that the brewery was not a public electric utility. In doing so, the court relied on the United States Supreme Court decision that paved the way for all state regulation of public utilities, *Munn v. Illinois.*[8] That decision held that state regulation of a private business was permissible only if the owner of the business had devoted the business to a "public use" for which the public interest justified public regulation. In the words of the Missouri Supreme Court:

> the operation of the electric plant must of necessity be for a public use, and therefore be coupled with a public interest; otherwise the Commission can have no authority whatever over it. The electric plant must, in short, be devoted to a public use before it is subject to public regulation.[9]

That then is the *Danciger* test; whether the electric plant has been devoted to the public use. Contrary to ATXI's assertion, there is no requirement that the alleged public utility indiscriminately provide electric service to the general public at retail.

Although ATXI will not be selling electricity at retail to the public, its application establishes that the electric transmission line it proposes to build and operate will be an integral link in the sale and distribution of electricity to the public. In fact, the transmission line's importance to that public purpose is the basis for ATXI's claim that the line is needed. Under the circumstances, the Commission finds that the electric transmission line that ATXI

[7] The Commission's decision on the complaint explains that Danciger cut off electricity to those customers who advocated for prohibition in a local election. *Roach v. M.O. Danciger & Co.* 4 Mo. P.S.C. 650 (1916)
[8] 94 U.S. 113 (1876).
[9] *Danciger,* at 40.

proposes to build will be dedicated to the public service and is subject to regulation by this Commission under the *Danciger* test.

As an alternative, ATXI argues that its transmission line in Missouri is not subject to regulation by this Commission because the Commission's jurisdiction is limited to intrastate operations of public utilities and does not extend to utilities engaged only in interstate commerce. ATXI points to section 386.030, RSMo 2000, which states:

> 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.

So the issue becomes whether the Federal Energy Regulatory Commission (FERC), which generally regulates the interstate transmission of electricity, has preempted the Commission's regulation of ATXI under state authority.

While FERC has authority over the transmission of electricity in interstate commerce,[10] it does not claim jurisdiction over the siting of transmission facilities. On the contrary, "[S]tates have traditionally assumed all jurisdiction to approve or deny permits for the siting and construction of electric transmission facilities."[11] The Commission concludes that federal law does not preempt this Commission's authority to require ATXI to obtain permission, in the form of a certificate of convenience and necessity, before constructing electric plant in this state.

Decision

The Commission may grant an electrical corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either

[10] 16 U.S.C. §824(a)(1).
[11] *Piedmont Envtl. Council v. F.E.R.C.,* 558 F. 3d 304, 310 (4th Cir. 2009).

"necessary or convenient for the public service."[12] The Commission has stated five criteria that it will use to make that 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.[13]

Based on the verified application and the verified recommendation of Staff, the Commission finds that granting ATXI's application for a certificate of convenience and necessity to provide electrical service meet the above listed criteria.[14] The application will be granted. Because the application is unopposed, and because the Commission does not wish to cause undue delay, this order will be given a ten-day effective date.

THE COMMISSION ORDERS THAT:

1. Ameren Transmission Company of Illinois is granted permission, approval, and a certificate of convenience and necessity to construct, install, own, operate, control, manage, and maintain electrical plant for its existing facilities in Missouri and its new facilities in Missouri, as more particularly described in its application and Staff Recommendation.

[12] Section 393.170, RSMo.
[13] *In re Tartan Energy Company*, 3 Mo. P.S.C. 173, 177 (1994).
[14] The requirement for a hearing is met when the opportunity for hearing is provided and no proper party requests the opportunity to present evidence. No party requested a hearing in this matter; thus, no hearing is necessary. *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Missouri*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

2. As requested by Ameren Transmission Company of Illinois, and agreed upon by Staff, the Commission waives the reporting requirements of Commission Rule 4 CSR 240-3.145 (rate schedule filing), 4 CSR 240-3.175 (depreciation) and Commission Rule 4 CSR 240-3.190(1), (2) and (3)(A)-(D) (generation).

3. As requested by Staff, and agreed upon by Ameren Transmission Company of Illinois, Ameren Transmission Company of Illinois shall file with the Commission the annual report it files with the Federal Energy Regulatory Commission.

4. This order shall become effective on August 1, 2015.

5. This file shall be closed on August 2, 2015.

BY THE COMMISSION

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney,
Hall, and Rupp, CC., concur.

Pridgin, Deputy Chief Regulatory Law Judge

In the Matter of Union Electric Company d/b/a Ameren Missouri's 2nd Filing to Implement Regulatory Changes in Furtherance of Energy Efficiency as Allowed by MEEIA	))))	**File No. EO-2015-0055**

REPORT AND ORDER

RATES. §23. Efficiency of operation and management. The Commission rejected a plan filed under the Missouri Energy Efficiency Initiative Act because those tariffs assumed savings and benefits without evaluation, measurement, and verification; compensated the applicant without saving energy; and that would provide little benefit to ratepayers.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a Ameren Missouri's 2nd Filing to Implement Regulatory Changes in Furtherance of Energy Efficiency as Allowed by MEEIA	))))	**File No. EO-2015-0055**

REPORT AND ORDER

Issue Date: **October 22, 2015**

Effective Date: **November 21, 2015**

TABLE OF CONTENTS

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a Ameren Missouri's 2nd Filing to Implement Regulatory Changes in Furtherance of Energy Efficiency as Allowed by MEEIA	))))	**File No. EO-2015-0055**

REPORT AND ORDER

APPEARANCES

Matthew R. Tomc, Esq., and **Wendy K, Tatro, Esq.**, Corporate Counsel and Assistant General Counsel, 1901 Chouteau Avenue, MC 1310, P.O. Box 66149, St. Louis, Missouri 63109, for Union Electric Company d/b/a Ameren Missouri.

James B. Lowery, Esq., Smith Lewis, LLP, 111 South 9th Street, Columbia, Missouri 65201, for Union Electric Company d/b/a Ameren Missouri.

L. Russell Mitten, Esq., Brydon Swearengen & England, PC, 312 East Capitol Avenue, Jefferson City, Missouri 65102, for Union Electric Company d/b/a Ameren Missouri.

Henry B. Robertson, Esq., Great Rivers Environment Center, 319 N. Fourth Street, Suite 800, St. Louis, Missouri 63102, for Natural Resources Defense Council.

David C. Linton, Esq., 314 Romaine Spring View, Fenton, Missouri 63026, for United for Missouri, Inc.

Alexander Antal, Esq., Associate General Counsel, 301 West High Street , Jefferson City, Missouri, 65102, for the Missouri Division of Energy.

Edward Downey, Esq., Bryan Cave, LLP, 221 Bolivar Street, Suite 101, Jefferson City, Missouri, 65101, for the Missouri Industrial Energy Consumers.

Jill Tauber, Esq. and Chinyere Osuala, Esq., Earthjustice, 1625 Massachusetts Ave., N.W., Suite 702, Washington, D.C. 20036, for Sierra Club.

Maxine I. Lipeles, Esq., Washington University in St. Louis, One Brookings Drive, St. Louis, Missouri, 63130, for Sierra Club.

Andrew Linhares, Esq., 1216 Subella Drive , Columbia, Missouri, 65201 for Earth Island Institute, d/b/a Renew Missouri and for The National Housing Trust and Tower Grove Neighborhoods Community Development Corporation.

David Woodsmall, Esq., 308 East High Street, Jefferson City, Missouri 65101, for Midwest Energy Consumers Group.

Andrew Zellers, Esq., General Counsel, Brightergy, LLC, 1712 Main Street, Sixth Floor, Kansas City, Missouri 65108, for Brightergy, LLC.

Tim Opitz, Esq., Assistant 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.

Marcella L. Mueth, Esq., Whitney Payne, Esq., Bob Berlin, Esq., Associate Staff 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: Ronald D. Pridgin, Deputy Chief.

Procedural History

On December 22, 2014, Union Electric Company d/b/a Ameren Missouri applied to the Commission for approval of certain demand-side programs, a Technical Resource Manual (TRM), and a Demand-Side Investment Mechanism (DSIM) (collectively, "the Utility Plan") as contemplated by the Missouri Energy Efficiency Investment Act (MEEIA) and the Commission's implementing regulations. The Commission provided notice and set a deadline of January 13, 2015, for applications to intervene.

The Commission received timely intervention requests from: The Missouri Division of Energy; Midwest Energy Consumers Group; Brightergy, LLC; Missouri Industrial Energy Consumers; Earth Island Institute d/b/a Renew Missouri; United for Missouri; Natural Resources Defense Council; Sierra Club; Kansas City Power & Light Company; KCP&L Greater Missouri Operations Company; National Housing Trust; and Tower Grove Neighborhood Community Development Corporation. Responses to those applications were due January 20, 2015. The Commission received no responses and, thus, granted those requests.

The Commission held an evidentiary hearing on July 20-22, 2015. Parties filed briefs on August 13, 2015, and reply briefs on August 26, 2015.

Background

In 2009, the Missouri legislature set Missouri's regulated utilities and this Commission on the path to increasing energy efficiency by enacting MEEIA, setting forth, "It shall be the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs."[1] In essence, MEEIA is designed to encourage Missouri's investor-owned utilities to offer and promote energy efficiency programs and projects designed to reduce the amount of electricity used by the utility's customers. The law recognizes that under traditional regulation, a utility has a strong financial incentive to sell as much electricity to its customers as possible because more sales result in greater profits. MEEIA creates an opportunity to change that financial incentive to better align the utility's financial interest with the public interest in encouraging the efficient use of energy.

Under MEEIA and with Commission approval, electric utilities may offer demand-side programs and special incentives to participating customers designed to put demand-side initiatives on equal footing with traditional supply-side resources. In order to accomplish that equal footing, the law requires the Commission to do three things:

> (1) Provide timely cost recovery for utilities;
> (2) Ensure that utility financial incentives are aligned with helping customers to use energy more efficiently and in a manner that sustains or enhances utility customers' incentives to use energy more efficiently; and
> (3) Provides timely earnings opportunities associated with cost-effective measurable and verifiable savings.[2]

[1] Section 393.1075.3. RSMo.
[2] Section 393.1075.3 RSMo.

MEEIA is permissive in nature and, by its express language, does not require utilities to offer demand-side programs. MEEIA allows such demand-side programs only so long as those programs are approved by the Commission, result in measurable demand or energy savings, and are beneficial to all customers. The Commission is thus responsible for reviewing a utility's MEEIA plan and determining whether the plan accomplishes the goals of MEEIA.

The Commission promulgated rules to implement MEEIA.[3] The Commission's rules provided for a mechanism designed to allow cost recovery between rate cases, which is termed a Demand Side Investment Mechanism (DSIM). The rule provides default parameters that govern the operation of the mechanism and includes provisions that allow both lost revenue and incentive recovery. The Missouri Court of Appeals upheld the Commission's MEEIA rules, finding that MEEIA allows for adjustment between rate cases, and also finding that utility lost revenues are a cost within the context of MEEIA.[4]

In 2012, Ameren Missouri filed its first MEEIA case. This was also the first MEEIA case before the Commission. Following a collaborative process involving Ameren Missouri and other stakeholders, the Commission approved the largest utility-sponsored investment in energy efficiency programs in Missouri history.

Part of what the Commission approved in that case was a DSIM. Consistent with MEEIA, Ameren's DSIM was designed to align the interests of the utility with helping its customers use energy more efficiently. The DSIM also removed significant barriers to Ameren Missouri's pursuit of cost-effective energy savings. The Commission applauds

[3] Commission Rule 4 CSR 240-20.093, .094.
[4] *State ex. rel. Public Counsel v. PSC*, 397 S.W.3d 441, 450-52 (Mo. App. W.D. 2015).

the efforts of Ameren Missouri, and all of the other parties, in negotiating the 2012-2015 "Cycle 1" MEEIA Plan.

Discussion

The case before the Commission now involves Ameren Missouri's "Cycle 2" MEEIA Plan, which would cover the years 2016-2018. Ameren Missouri, KCP&L, GMO, The Missouri Division of Energy, Natural Resources Defense Council, and United for Missouri filed a Non-Unanimous Stipulation and Agreement on June 30 ("Utility Stipulation"). Some highlights of that stipulation are:

> The total Plan energy savings target will be increased by approximately 37% to a total savings equivalent of 583,563 megawatt-hours ("MWh").
>
> The program budget will be increased to $197,209,859 (an approximately 47% increase over the original Plan).
>
> The Signatories agree that the overall budget for Low-Income ("LI") programs will be increased by 58% reaching a total overall budget for LI energy efficiency programs of $10.75 million. The entire LI program budget of $10.75 million will be utilized to deliver energy efficiency services to Ameren Missouri customers who are owners and operators of multi-family low-income ("MFLI") properties.
>
> The Signatories agree that the Company will add a Small Business Direct Install program as part of its overall portfolio. The target energy savings for this program will equal 30,000 MWh, and its target budget will equal $9.9 million. The program will target small business customers that are difficult to reach through traditional energy efficiency programs.
>
> A two-tiered Throughput Disincentive-Net Shared Benefit. Tier 1 is a fixed value designed to insure a percentage of revenues are accrued. Tier 2 is a sharing percentage adder calculated after the entire three-year cycle and based on the rate case interval in that time period and the amount of rate increase granted in future rate cases.
>
> A Performance Incentive based on EM&V using deemed energy savings, performed after each of the three program years. Ameren Missouri will be allowed to recover $30 million if it achieves its energy savings targets.

On July 7, Earth Island Institute, Midwest Energy Consumers Group, Missouri Industrial Energy Consumers, Renew Missouri, Staff, and OPC filed a competing Non-Unanimous Stipulation and Agreement ("Non-Utility Stipulation"). On July 8, those same parties filed an amended stipulation. Some of the highlights of the amended stipulation are:

> Multi-Family Low Income ("MFLI") and Small Business Direct Install ("SBDI") programs the same as or substantially similar to the programs listed in the utility stipulation.
>
> By October 31, 2015, Ameren Missouri shall issue a request for proposal (RFP) for a third-party mediator who shall select a panel of experts to recommend possible increases in the projected kWh savings of the total portfolio for 2017 and 2018, with particular focus on program participation rates.
>
> The Signatories agree to the inclusion of a Throughput Disincentive Mechanism to make the utility indifferent as to any reduction in sales of energy because of programs' measures installed under MEEIA. The Signatories agree to necessary waivers to effectuate this section. Each month Ameren Missouri will bill 66.67% of the unrealized revenue value.
>
> Following the determination of realized kWh savings, Ameren Missouri will potentially recover additional revenues associated with kWh savings for that program year:
> i. If the determination of realized kWh savings indicates that the measures performed at a level of efficacy greater than 66.67% of the initially projected kWh savings associated with that measure, further revenues will be provided to match the level of realized kWh savings found, up to 133.33% of the projected kWh savings.
> 1. If it is determined that additional revenues are appropriate, the MEEIA rate for each rate class will be adjusted to provide these revenues over the following 12 billing months.
> ii. Recovery will be limited to 133.33% of initially projected savings.
> iii. If a program is found through study to have actually generated kWh savings below 66.67% of the projected kWh savings, no refunding will be required.

In its September 9, 2015 Agenda meeting, the Commission directed the parties to report to the Commission whether they could continue negotiating a MEEIA plan that would include retrospective Evaluation, Measurement, and Verification ("EM&V") in calculating the

throughput disincentive and that would also include a Performance Incentive that has a component recognizing supply-side investment reductions associated with energy savings caused by MEEIA. The parties were unable to negotiate such a plan.[5]

By rule, the Commission must approve Ameren Missouri's plan, approve the plan with modifications acceptable to Ameren Missouri, or reject the plan.[6] In this case, Ameren Missouri has presented several modifications to its plan that it would find acceptable[7] and made clear that it does not find the modifications presented in the Non-Utility Stipulation acceptable. Therefore, the Commission must decide whether it can approve the Utility Plan in any of its iterations. For the reasons set forth below, the Commission cannot approve the Utility Plan.

Evaluation, Measurement, and Verification

Electric utilities make money by selling energy. Consequently, a utility has a natural disincentive to promote energy efficiency programs that would reduce its sales. This is known as a throughput disincentive.[8]

To combat this disincentive and fulfill the MEEIA directive that utility financial incentives be aligned with helping customers use energy more efficiently, DSIM must have some sort of mechanism to compensate utilities for the lost sales that result from implementing MEEIA programs. In Ameren's MEEIA Cycle 1, parties stipulated to deeming

[5] Ameren Missouri filed a pleading on September 25, 2015 that contained a proposal to address the concerns stated in the Commission's September 9, 2015 order. Staff and OPC objected to the proposal.
[6] Commission Rule 4 CSR 240-20.094(3).
[7] The first set of modifications Ameren Missouri would find acceptable came in the form of the Utility Stipulation. Following the hearing, in its *Response to Commission Order* filed September 22, 2015, Ameren Missouri proposed additional modifications to the Utility Plan as modified by the Utility Stipulation. The Commission was not persuaded that these proposed modifications addressed the Commission's concerns.
[8] Ex. 703, p. 2

the annual energy and demand savings and annual net shared benefits ("NSB") that Ameren would recover using a throughput disincentive-net shared benefits ("TD-NSB") mechanism.[9] Looking at that mechanism after the fact, it is clear that Ameren Missouri benefitted significantly from deeming the savings and benefits rather than using EM&V to determine the actual energy and demand savings and actual annual NSB amounts.[10]

Comparing to Cycle 1, Cycle 2 under the Utility Plan would increase Ameren's earnings and reduce verification of actual energy savings. In fact, under the Utility Plan, Ameren Missouri could be over-compensated by nearly $25 million for its 2014 Net Throughput Disincentive ("NTD") compared to what the NTD would be if the 2014 NTD was based upon the utility's portion of annual net shared benefits achieved and documented through EM&V reports.[11]

In total, Ameren Missouri could collect an NTD valued at $60 million over the course of three years.[12] That NTD would have no retrospective true-up or EM&V audit.[13] Instead, the "deemed" values for each efficiency measure would act as a static baseline for determining annual energy and demand savings and would be based on "deemed" annual energy savings, "deemed" annual demand savings, and "deemed" avoided costs for each measure. Customers would have no guarantee of receiving a return of net benefits from these measures.[14]

---

[9] Commission File No. EO-2012-0142; Ex. 709, p. 31.
[10] Ex. 709, pp. 31-32; Ex. 800, p. 7; Ex. 801, p. 13.
[11] Ex. 710, p. 17.
[12] Tr. 351-52.
[13] Ameren Missouri argues it cannot, due to Generally Accepted Accounting Principles (GAAP), use retrospective EM&V for the throughput disincentive. Tr. 493-94. However, Staff witness Mark Oligschlaeger testified credibly that there is nothing in the GAAP accounting principles that prohibits the Commission from setting rates based on a retrospective review and true-up of the throughput disincentive. Tr. 839.
[14] Ex. 712, pp. 8-9.

Without retrospective EM&V to true-up the energy and demand savings that actually occurred, the "deeming" of savings for each installed efficiency measure protects only Ameren Missouri by shifting all risk of whether those savings benefits ever occur to Ameren Missouri customers during a 20 year period.[15] Furthermore, Ameren Missouri would collect its program costs, a share of projected/deemed net savings benefits from its throughput disincentive, and any earned performance incentive award all upfront in the first 6 years of that 20 year period.[16]

Performance Incentive

As noted above, under MEEIA, the Commission shall "[p]rovide timely earnings opportunities associated with cost-effective measurable and verifiable efficiency savings."[17] This gives Ameren Missouri's shareholders an earnings opportunity to compensate for foregone supply-side investment opportunity. This earnings opportunity is a performance incentive.

The sole purpose of a "performance incentive" under MEEIA is to give the company an earnings opportunity to place shareholders in a financial position comparable to the earnings opportunity they would have had if those shareholders made a future supply-side investment. A successfully implemented performance incentive would accomplish the policy goal of valuing equally supply-side and demand-side investments.[18]

[15] Tr. pp. 794-95.
[16] Id.
[17] Section 393.1075.3 RSMo
[18] Id.

Such an earnings opportunity may be based on different performance measures. A prime example of how those measures can vary, and what their impacts can be, is shown in the competing stipulations filed in this case.[19]

The Utility Stipulation bases its proposal on kilowatt hour savings, which looks at the total number of kWh of energy saved following the implementation of an energy efficiency measure. Reducing annual sales of kWh can benefit ratepayers. But, not all kWh are the same.

Utility capacity requirements are driven chiefly by the maximum amount of usage in a single hour during the year, known as “peak demand.” Even if thousands of kWh were saved, if the summer peak demands are the same with and without a MEEIA Cycle 2, then Ameren Missouri would likely require the same capacity. Thus, it would not forego a future supply-side investment opportunity.

In other words, such a performance incentive would compensate Ameren Missouri for foregone earnings opportunities that are not actually foregone. For example, unless Ameren Missouri’s MEEIA portfolio results in energy and demand reductions such that construction of a power plant would be cancelled or materially postponed, the shareholders will not have experienced a foregone supply-side earnings opportunity.

The kWh-based approach proposed in the Utility Stipulation would assume the same supply-side impact from a kWh saved under a nighttime lighting program as from a kWh saved under an air-conditioner recycling program. The distortions possible under this assumption would result in customers providing Ameren Missouri with a MEEIA earnings

[19] The Non-Utility Stipulation bases its performance incentive on kW, rather than kWh.

opportunity (under the guise of reducing future supply-side investment opportunities) without Ameren Missouri actually reducing any future supply-side investment opportunities.

This is not a matter of Ameren Missouri's ability to predict the future; this is a matter of building in a double-recovery windfall for Ameren Missouri. That double-recovery comes from ratepayers paying depreciation and return on equity on supply side investments and then paying again for performance incentives on demand-side programs.

But, if an electric utility successfully reduces its future capacity requirements by reducing customer electricity usage, it may be able to avoid or postpone installation of additional costly generation. It is those demand savings that actually reduce investments necessary for the utility to meet its peak demand requirements. That, in turn, reduces future revenue requirements paid by customers, as well as future earnings opportunities made available to investors.

Overall benefits versus costs

The Cycle 2 portfolio offers significantly lower projected energy and demand savings than Cycle 1.[20] A Cost/benefit comparison of the Cycle 1 portfolio, the Cycle 2 Utility Plan portfolio, and the Cycle 2 Utility Stipulation portfolio shows that the Utility Stipulation provides for even higher costs and relatively lower net benefits for the customers as a whole and for non- participating customers than even the initial Cycle 2 Utility Plan.[21]

These costs, to be borne by Ameren Missouri ratepayers, are upwards of $250 to $300 million over 3 years. The program cost would be approximately $197M.[22] The

[20] Tr. pp. 748-49.
[21] Ex. 712, p. 6.
[22] Utility Stipulation, p. 3.

Throughput Disincentive would be approximately $60 million.[23] And the Performance Incentive could run from $23 million to $48 million.[24] Clearly, these are not insignificant amounts.

Conclusions of Law

1. 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. The Commission will assign the appropriate weight to the testimony of each witness based upon their qualifications, expertise and credibility with regard to the attested-to subject matter.[25]

2. In making its determination, the Commission may adopt or reject any or all of any witnesses' testimony.[26] Testimony need not be refuted or controverted to be disbelieved by the Commission.[27] The Commission determines what weight to accord to the evidence adduced.[28] "It may disregard evidence which in its judgment is not credible, even though there is no countervailing evidence to dispute or contradict it."[29] The

[23] Tr. 351-52.
[24] Utility Stipulation, App. A.
[25] Witness credibility is solely within the discretion of the Commission, who is free to believe all, some, or none of a witness' testimony. *State ex. rel. Missouri Gas Energy v. Public Service Comm'n*, 186 S.W.3d 376, 389 (Mo. App. 2005).
[26] *State ex rel. Associated Natural Gas Co. v. Public Service Commission,* 706 S.W.2d 870, 880 (Mo. App., W.D. 1985).
[27] *State ex rel. Rice v. Public Service Commission,* 220 S.W.2d 61, 65 (Mo. banc 1949).
[28] *Id.*
[29] *Id.*

Commission may evaluate the expert testimony presented to it and choose between the various experts.[30]

3. Where the evidence conflicts, the Commission determines which evidence is most credible. No law requires the Commission to expound upon which portions of the record the Commission accepted or rejected.[31]

4. The Missouri Energy Efficiency Investment Act states, in pertinent part:

> 393.1075. 3. It shall be the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs. In support of this policy, the commission shall:
>
> (1) Provide timely cost recovery for utilities;
>
> (2) Ensure that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that sustains or enhances utility customers' incentives to use energy more efficiently; and
>
> (3) Provide timely earnings opportunities associated with cost-effective measurable and verifiable efficiency savings.
>
> 4. The commission shall permit electric corporations to implement commission-approved demand-side programs proposed pursuant to this section with a goal of achieving all cost-effective demand-side savings. Recovery for such programs shall not be permitted unless the programs are approved by the commission, result in energy or demand savings and are beneficial to all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers. The commission shall consider the total resource cost test a preferred cost-effectiveness test. Programs targeted to low-income customers or general education campaigns do not need to meet a cost-effectiveness test, so long as the commission determines that the program or campaign is in the public interest. Nothing herein shall preclude the approval of demand-side programs that do not meet the test if the costs of the program above the level determined to be cost-effective are funded by the customers participating in the program or through tax or other governmental credits or incentives specifically designed for that purpose.

[30] *Associated Natural Gas, supra,* 706 S.W.2d at 882.
[31] *Stith v. Lakin*, 129 S.W.3d 912, 919 (Mo. App., S.D. 2004).

5. Commission Rule 4 CSR 240-20.094(3) states that the Commission must approve Ameren Missouri's plan, approve the plan with modifications acceptable to Ameren Missouri, or reject the plan. It also says that the Commission must do so after providing the opportunity for hearing. But even if a hearing is required, this case does not rise to the level of a contested case.

This is because . . . "The MAPA defines a "contested case" as "a proceeding before an agency in which legal rights, duties, or privileges of specific parties are required by law to be determined after hearing."[32]. The "law" referred to in this definition includes any ordinance, statute, or constitutional provision that mandates a hearing.[33]

Here, no legal rights, duties, or privileges are required by law to be determined after hearing, because no party has a legal right to receive, or a duty to give, energy efficiency programs. That energy efficiency is optional is evidenced by the statute that says "The commission shall permit electric corporations to implement commission-approved demand-side programs proposed pursuant to this section with a goal of achieving all cost-effective demand-side savings."[34] And because this is a non-contested case, the Commission is not required to make findings of fact.[35]

Decision

Simply put, the Commission would approve a MEEIA plan if non-participating ratepayers would be better off paying to help some ratepayers reduce usage than they

[32] § 536.010(2) RSMo.
[33] *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).
[34] Section 393.1075.4.
[35] *State ex. rel. Public Counsel v. Public Service Com'n,* 210 S.W.3d 344, 355 (Mo. App. W.D. 2006).

would be paying a utility to build a power plant. Unfortunately, that is not the case here.[36] The evidence in this case shows that most Ameren Missouri customers will likely receive very little, if any, overall net benefits from the Utility Plan.[37] Approximately 87% of Ameren Missouri's customers are residential customers.[38] And a vast majority of those do not participate in MEEIA.[39]

Staff's analysis estimates that residential customers who are non-participants will pay $112 million with the expectation that they will receive benefits of $119 million as a result of the programs and DSIM in the Utility Stipulation. Thus, the net benefits non-participating residential customers are expected to receive are only worth an estimated $7 million and the costs/benefit ratio is only 1.06.[40] This benefit is down from a 2.07 benefits to cost ratio from the Cycle I Plan.[41]

Furthermore, the Utility Stipulation lacks retrospective EM&V. Without it, Ameren Missouri would have the perverse incentive to implement programs with high deemed energy reductions, but low actual energy reductions. Perhaps more importantly, it is clear Ameren Missouri has been over-compensated under Cycle 1, and it is almost certain the over-compensation would be exacerbated under the Utility Plan. However, without retrospective EM&V, it would be impossible for anyone to know how much Ameren Missouri collects from customers for energy savings that never materialized.

[36] The Non-Utility Stipulation filed on July 7, 2015, and amended on July 8, 2015, addresses the Commission's concerns, though the provisions of that stipulation are certainly not the only way to address the Commission's concerns.
[37] Ex. 712, p. 7.
[38] Id.
[39] Id.
[40] Id.
[41] Ex. 712, Sch. JAR-1.

Finally, the performance incentive in the Utility Stipulation lacks a component relating to a reduction of supply-side investment. Without such a component, ratepayers could continue to pay depreciation and rate of return on supply side investments, and then pay again for performance incentives on demand-side programs. This subverts the purpose of the performance incentive. When a company is successful in promoting energy efficiency, the performance incentive should be high. The company should absolutely be rewarded for such an accomplishment given the structure and goals of MEEIA. But the converse should be true as well; MEEIA was never intended to be a blank check.

The Commission is well aware of the value of MEEIA and continues to support the policies MEEIA established for the state of Missouri. Ameren Missouri's Cycle 1 Plan laid the groundwork for MEEIA implementation in all Missouri's regulated utilities, and the company is to be commended for that leadership. However, the Commission cannot approve a MEEIA plan in this case that results in ratepayers paying for more energy savings than the MEEIA plan actually causes. Furthermore, even if the proposed plan included a mechanism for measuring actual energy savings, the Commission cannot approve a plan that rewards the company for reductions in demand without requiring the company to show it has foregone supply-side earnings related to that reduction in demand.

The Commission appreciates the time and effort the parties expended on trying to arrive at a negotiated plan. However, the Commission finds the plan offered by Ameren Missouri does not comply with the purposes or provisions of MEEIA. Thus, the Commission must reject Ameren Missouri's proposed MEEIA plan. It is the Commission's hope that Ameren Missouri will consider this decision and present a new MEEIA plan that all parties and this Commission can support.

THE COMMISSION ORDERS THAT:

1. The Cycle 2 MEEIA Plan, as modified by the Non-Unanimous Stipulation and Agreement filed on June 30, 2015, and further modified on September 25, 2015, is rejected.

2. All pending motions and other requests for relief not granted are denied.

3. This Report and Order shall become effective on November 21, 2015.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney,
Rupp, and Coleman, CC., concur
and certify compliance with the
provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 22nd day of October, 2015.

In the Matter of Kansas City Power & Light	)	**File No. ER-2014-0370 *et al.***
Company's Request for Authority to Implement a	)	YE-2015-0194
General Rate Increase for Electric Service	)	YE-2015-0195

REPORT AND ORDER

EVIDENCE, PRACTICE AND PROCEDURE.

§18. Record and evidence in other proceedings. The Commission is entitled to interpret its own orders, and agreements incorporated in to those orders, and its interpretations constitute findings of fact.

§24 Procedures, evidence and proof. The Commission excluded prepared testimony offered for the first time on surrebuttal.

RATES.

§101. Fuel clauses. When an electrical corporation agreed not to file a proposed tariff seeking a fuel adjustment clause until a certain date, the date referenced was the effective date of a proposed tariff, not the filing date of the proposed tariff.

§101. Fuel clauses. The Commission concluded that an electrical corporation met the qualifications for a fuel adjustment clause and determined the parameters of the fuel adjustment clause.

§101. Fuel clauses. The Commission included transmission costs in an electric corporation's fuel adjustment clause only to the extent that those costs related to the transmission of off-system sales outside its regional transmission organization and purchased power.

ACCOUNTING.

§§42. Accounting Authority Orders. The Commission denied an accounting authority order to allow deferred accounting, sometimes called a "tracker," for future expenses that the applicant knew were likely to increase because deferred accounting is for unpredictable events.

ELECTRIC.

§43. Accounting Authority orders. The Commission denied an accounting authority order to allow deferred accounting, sometimes called a "tracker," for future expenses that the applicant knew were likely to increase because deferred accounting is for unpredictable events.

EXPENSE.

§51. Legal expense. In a general rate action, the Commission awarded the applicant the full cost, recovered over five years, of the depreciation study that the Commission's regulations require every five years; and, of the amount of attorney fees requested, awarded the same proportion as the amount of revenue requirement awarded compared to the amount requested.

NOTE: Affirmed on Appeal.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Kansas City Power & Light	)	**File No. ER-2014-0370 *et al.***
Company's Request for Authority to Implement a	)	YE-2015-0194
General Rate Increase for Electric Service	)	YE-2015-0195

REPORT AND ORDER

Issue Date: September 2, 2015

Effective Date: September 15, 2015

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Kansas City Power & Light	)	**File No. ER-2014-0370 *et al.***
Company's Request for Authority to Implement a	)	YE-2015-0194
General Rate Increase for Electric Service	)	YE-2015-0195

REPORT AND ORDER

TABLE OF CONTENTS

APPEARANCES

KANSAS CITY POWER & LIGHT COMPANY:

Robert J. Hack and **Roger W. Steiner**, Kansas City Power & Light Company, 1200 Main Street, 16th Floor, Kansas City, Missouri 64105.

Karl Zobrist and **Lisa A. Gilbreath**, Dentons US LLP, 4520 Main Street, Suite 1100, Kansas City, Missouri 64111.

James W. Fischer, Fischer & Dority, 101 Madison St., Suite 400, Jefferson City, Missouri 65101.

STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:

Kevin A. Thompson, Chief Staff Counsel, **Steven Dottheim,** Chief Deputy Staff Counsel, **Nathan Williams**, Deputy Counsel, **Colleen M. "Cully" Dale,** Senior Staff Counsel, **Jeffrey A. Keevil,** Senior Staff Counsel, **Cydney D. Mayfield,** Senior Staff Counsel, **Nicole Mers,** Assistant Staff Counsel, **Marcella Mueth,** Assistant Staff Counsel, **Whitney Payne,** Assistant Staff Counsel, Post Office Box 360, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

OFFICE OF THE PUBLIC COUNSEL:

Marc D. Poston, Deputy Public Counsel, **Timothy Opitz,** Assistant Public Counsel, PO Box 2230, Jefferson City, Missouri 65102.

MISSOURI DEPARTMENT OF ECONOMIC DEVELOPMENT- DIVISION OF ENERGY:

Alexander Antal, Associate General Counsel, PO Box 1157, Jefferson City, Missouri 65102.

MIDWEST ENERGY CONSUMERS GROUP:

David L. Woodsmall, Woodsmall Law Office, 308 E. High St., Suite 204, Jefferson City, Missouri 65101.

MISSOURI INDUSTRIAL ENERGY CONSUMERS:

Edward F. Downey, Carole L. Iles, 221 Bolivar St., Suite 101, Jefferson City, Missouri 65109, and **Diana M. Vuylsteke,** 211 N. Broadway, Suite 3600, St. Louis, Missouri 63102.

UNITED STATES DEPT. OF ENERGY AND THE FEDERAL EXECUTIVE AGENCIES:

Sean Tshikororo, 1000 Independence Ave. SW, Washington, D.C., 20585.
Robert E. Sauls, 625 E. 26th St., Kansas City, Missouri 64108.

SIERRA CLUB:

Henry B. Robertson, Great Rivers Environmental Law Center, 705 Olive Street, Suite 614, St. Louis, Missouri 63101.

Sunil Bector, Sierra Club, 85 Second St., 2nd Floor, San Francisco, California 94105.

Lisa K. Perfetto, Earthjustice, 48 Wall St., 19th Floor, New York, New York 10005, and **Thomas Cmar,** 1101 Lake St., Suite 405B, Oak Park, Illinois 60301.

CONSUMERS COUNCIL OF MISSOURI:

John B. Coffman, 871 Tuxedo Blvd., St. Louis, Missouri 63119-2044.

BRIGHTERGY, LLC:

Andrew J. Zellers, General Counsel, 1712 Main St., Kansas City, Missouri 64108.

UNION ELECTRIC COMPANY d/b/a AMEREN MISSOURI:

James B. Lowery, Smith Lewis, LLP, 111 S. Ninth St., Columbia, Missouri 65201.

CITY OF KANSAS CITY, MISSOURI:

Mark W. Comley, 601 Monroe St., Suite 301, Jefferson City, Missouri 65102.

SENIOR REGULATORY LAW JUDGE: Michael Bushmann

REPORT AND ORDER

I. Procedural History

A. Tariff Filings, Notice, and Intervention

On October 30, 2014, Kansas City Power & Light Company ("KCPL") filed tariff sheets designed to implement a general rate increase for utility service. The tariff sheets bore an effective date of November 29, 2014. In order to allow sufficient time to study the effect of the tariff sheets and to determine if the rates established by those sheets are just, reasonable, and in the public interest, the tariff sheets were suspended until September 29, 2015. The Commission directed notice of the filings and set an intervention deadline. The Commission granted intervention requests from the following entities: the Missouri Department of Economic Development- Division of Energy, Midwest Energy Consumers Group, Missouri Industrial Energy Consumers, Brightergy, LLC, Sierra Club, Consumers Council of Missouri, U.S. Department of Energy and Federal Executive Agencies, Union Electric Company d/b/a Ameren Missouri, Missouri Gas Energy, the City of Kansas City, Missouri, and the International Brotherhood of Electrical Workers Local Unions No. 412, 1464, and 1613. On January 30, 2015, the Commission consolidated this case with a related matter in File No. EU-2015-0094.

B. Test Year and True-Up

The test year is a central component in the ratemaking process. Rates are usually established based upon a historical test year which focuses on four factors: (1) the rate of return the utility has an opportunity to earn; (2) the rate base upon which a return may be earned; (3) the depreciation costs of plant and equipment; and (4) allowable operating

expenses.[1] From these four factors is calculated the "revenue requirement," which, in the context of rate setting, is the amount of revenue ratepayers must generate to pay the costs of producing the utility service they receive while yielding a reasonable rate of return to the investors.[2] A historical test year is used because the past expenses of a utility can be used as a basis for determining what rate is reasonable to be charged in the future.[3]

The parties agreed to, and the Commission adopted, a test year of twelve months ending on March 31, 2014, updated through December 31, 2014. The Commission also established the true-up period to run through May 31, 2015, to reflect any significant and material impacts on KCPL's revenue requirement. The use of a true-up audit and hearing in ratemaking is a compromise between the use of a historical test year and the use of a projected or future test year.[4] It involves adjustment of the historical test year figures for known and measurable subsequent or future changes.[5] However, the true-up is generally limited to only those accounts necessarily affected by some significant known and measurable change, such as a new labor contract, a new tax rate, or the completion of a new capital asset. The true-up is a device employed to reduce regulatory lag, which is "the lapse of time between a change in revenue requirement and the reflection of that change in rates."[6]

C. Local Public Hearings

On December 3, 2014, some of the parties filed a *Joint Proposed Procedural Schedule*, which included a recommendation for the dates and locations for local public

[1] *State ex rel. Union Electric Company v. Public Service Comm'n*, 765 S.W.2d 618, 622 (Mo. App. 1988).
[2] *State ex rel. Capital City Water Co. v. Public Service Comm'n*, 850 S.W.2d 903, 916 n. 1 (Mo. App. 1993).
[3] *See State ex rel. Utility Consumers' Council of Missouri, Inc. v. Public Service Comm'n*, 585 S.W.2d 41, 59 (Mo. banc 1979).
[4] *St. ex rel. Missouri Public Service Comm'n v. Fraas,* 627 S.W.2d 882, 887-888 (Mo. App. 1981).
[5] *Id.* at 888.
[6] *In the Matter of St. Louis County Water Company*, Case No. WR-96-263 (*Report & Order*, issued December 31, 1996), at p. 8; 5 Mo. P.S.C. 3d 341, 346.

hearings to give KCPL's customers an opportunity to respond to the requested rate increase. The Commission conducted local public hearings in Kansas City, Belton, Marshall, and Gladstone.[7]

D. Stipulations and Agreements

On June 26, 2015, some of the parties filed a *Non-Unanimous Stipulation and Agreement Regarding Pension and Other Post-Employment Benefits*. On July 1, 2015, some of the parties filed a *Partial Non-Unanimous Stipulation and Agreement as to Certain Issues* and a *Partial Non-unanimous Stipulation and Agreement as to True Up, Depreciation and Other Miscellaneous Issues.* Although these stipulations and agreements were not signed by all parties, they became unanimous stipulations and agreements because no party filed a timely objection.[8] These stipulations and agreements resolved a number of the issues in dispute between the parties. The Commission found the stipulations and agreements to be reasonable and approved them on July 17, 2015. The issues resolved in these three partial stipulations and agreements will not be addressed further in this report and order, except as they may relate to any unresolved issues.

On June 16, 2015, some of the parties filed a *Non-Unanimous Stipulation and Agreement on Certain Issues* ("Rate Design Agreement"), which addressed issues relating to class cost of service, rate design, and tariffs. On August 3, 2015, Staff and KCPL filed a *Non-Unanimous Stipulation and Agreement Regarding Class Kilowatt-Hours, Revenues and Billing Determinants, and Rate Switcher Revenue Adjustments* ("True-Up Agreement"), which attempted to 1) resolve all issues relating to weather normalization, rate revenues, and the resulting class billing determinants used in developing rates for all rate classes, and 2) assign a revenue shortfall of $500,000 for rate switchers in the LGS and LP rate

[7] Transcript, Vols 3, 4, 6-8.
[8] Commission Rule 4 CSR 240-2.115(2).

classes in order to account for any of those customers migrating to a different rate schedule to receive more advantageous pricing as a result of the Rate Design Agreement. KCPL objected to the Rate Design Agreement and the Office of Public Counsel objected to the True-Up Agreement, so those two stipulations and agreements became joint position statements of the signatory parties, and all the issues addressed in the Rate Design Agreement and True-Up Agreement remain for determination after hearing.[9]

E. Evidentiary Hearing

The evidentiary hearing was held on June 15-19, 29 and 30, 2015, and July 1, 2015.[10] A true-up hearing was held on July 20, 2015.[11] During the hearings, the parties presented evidence relating to the unresolved issues previously identified by the parties.

F. Case Submission

During the evidentiary hearing and true-up hearing held at the Commission's offices in Jefferson City, Missouri, the Commission admitted the testimony of 61 witnesses, received 179 exhibits into evidence, and took official notice of certain matters.[12] Post-hearing briefs were filed according to the post-hearing procedural schedule. The final post-hearing briefs were filed on August 3, 2015, and the case was deemed submitted for the Commission's decision on that date.[13]

[9] Commission Rule 4 CSR 240-2.115(2)(D).
[10] Transcript, Vols 9-20.
[11] Transcript, Vols 21 and 22.
[12] At the hearing, the regulatory law judge took official notice of the following: 1) Commission's Report & Order in File No. TO-97-397, 2) Commission's Report & Order in File No. ER-2014-0258, 3) Commission's Report & Order in File No. ER-2014-0351,4) Commission's Report & Order in File No. ER-2010-0356, and 5) the legislative history of Senate Bill 179 contained in Exhibit 152.
[13] "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).

II. General Matters

A. General Findings of Fact

1. Kansas City Power & Light Company ("KCPL"), founded in 1882, is a wholly-owned subsidiary of Great Plains Energy Incorporated, both of which are headquartered in Kansas City, Missouri.[14] KCPL is a vertically-integrated, regulated electric utility that provides generation, transmission, and distribution service as part of its sale of electricity to retail and wholesale customers in Missouri and Kansas.[15]

2. The Office of the Public Counsel ("Public Counsel") is a party to this case pursuant to Section 386.710(2), RSMo[16], and by Commission Rule 4 CSR 240-2.010(10).

3. The Staff of the Missouri Public Service Commission ("Staff") is a party to this case pursuant to Section 386.071, RSMo, and Commission Rule 4 CSR 240-2.010(10).

4. KCPL provides electric service to approximately 519,000 customers, including approximately 457,700 residences, 59,300 commercial firms, and 2,100 industrials, municipalities, and other electric utilities, in the Kansas City metropolitan area and surrounding cities.[17]

5. KCPL's base load generating capacity consists of ownership in four large coal-fired generating stations, the Wolf Creek nuclear power generating station, 2,200 megawatts (MW) of natural gas and oil-fired peaking capacity, and 149 MW of wind generating capacity. In 2011 and 2013, KCPL negotiated long-term power purchase agreements for additional wind and hydro generation. KCPL operates and maintains

[14] Ex. 114, Heidtbrink Direct, p. 3.
[15] Ex. 210, Featherstone Direct, p. 11.
[16] Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2000 and subsequently revised or supplemented.
[17] Ex. 114, Heidtbrink Direct, p. 3.

approximately 12,000 miles of distribution lines and 1,800 miles of transmission lines to serve its customers.[18]

6. The proposed tariffs filed by KCPL in this case were designed to generate an aggregate revenue increase of approximately $120.9 million, or 15.75%, based on a current Missouri jurisdictional base retail revenue of $767.4 million.[19]

7. In order to determine the appropriate level of utility rates, the Commission must calculate a revenue requirement for KCPL, which is the increase or decrease in revenue KCPL needs in order to provide safe and reliable service, as measured using KCPL's existing rates and cost of service.[20]

8. The revenue requirement calculation can be identified by a formula as follows:[21] Revenue Requirement = Cost of Providing Utility Service or RR= O + (V - D) R where,

RR	=	Revenue Requirement;
O	=	Operating Costs; (such as fuel, payroll, maintenance, etc., Depreciation and Taxes);
V	=	Gross Valuation of Property Used for Providing Service;
D	=	Accumulated Depreciation Representing the Capital Recovery of Gross Property Investment.
(V – D)	=	Rate Base (Gross Property Investment less Accumulated Depreciation = Net Property Investment)
R	=	Overall Rate of Return or Weighted Cost of Capital
(V - D) R	=	Return Allowed on Net Property Investment

9. A test year is a historical year used as the starting point for determining the basis for adjustments that are necessary to reflect annual revenues and operating costs in calculating any shortfall or excess of earnings by the utility. Adjustments, such as annualization and normalization adjustments, are made to the test year results when the

[18] *Id.* at p. 3-4.
[19] *Id.* at p. 12.
[20] Ex. 210, Featherstone Direct, p. 26.
[21] *Id*. at p. 26-27.

unadjusted results do not fairly represent the utility's most current annual level of existing revenue and operating costs.[22]

10. The test year for this case is the twelve months ending March 31, 2014, updated to December 31, 2014.[23]

11. The Commission also selected a true-up period ending May 31, 2015, in order to account for any significant changes in KCPL's cost of service that occurred after the end of the test year period but prior to the tariff operation of law date.[24]

12. A normalization adjustment is an adjustment made to reflect normal, on-going operations of the utility. Revenues or costs that were incurred in the test year that are determined to be atypical or abnormal will get specific rate treatment and generally require some type of adjustment to reflect normal or typical operations. The normalization process removes abnormal or unusual events from the cost of service calculations and replaces those events with normal levels of revenues or costs.[25]

13. An annualization adjustment is made to a cost or revenue shown on the utility's books to reflect a full year's impact of that cost or revenue.[26]

14. The calculated total revenue requirement is then compared to net income available from existing rates to determine the incremental change in KCPL's rate revenues required to cover its operating costs and provide a fair return on investment used in providing utility service.[27]

15. 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

[22] *Id.* at p. 18.
[23] *Id.* at p. 20.
[24] *Id.* at p. 20-21.
[25] *Id.* at p. 23-24.
[26] *Id.* at p. 22.
[27] *Id.* at p. 27.

Commission gives each item or portion of a witness's testimony individual weight based upon the detail, depth, knowledge, expertise, and credibility demonstrated with regard to that specific testimony. Consequently, the Commission will make additional specific weight and credibility decisions throughout this order as to specific items of testimony as is necessary.[28]

16. Any finding of fact reflecting that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.[29]

B. General Conclusions of Law

KCPL is an "electrical corporation" and a "public utility" as defined in Sections 386.020(15) and 386.020(43), RSMo, respectively, and as such is subject to the personal jurisdiction, supervision, control and regulation of the Commission under Chapters 386 and 393 of the Missouri Revised Statutes. The Commission's subject matter jurisdiction over KCPL's rate increase request is established under Section 393.150, RSMo.

Sections 393.130 and 393.140, RSMo, mandate that the Commission ensure that all utilities are providing safe and adequate service and that all rates set by the Commission are just and reasonable. Section 393.150.2, RSMo, makes clear that at any hearing involving a requested rate increase the burden of proof to show the proposed increase is just and reasonable rests on the corporation seeking the rate increase. As the party

[28] Witness credibility is solely a matter for the fact-finder, "which is free to believe none, part, or all of the testimony". *State ex rel. Public Counsel v. Missouri Public Service Comm'n*, 289 S.W.3d 240, 247 (Mo. App. 2009).

[29] 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)

requesting the rate increase, KCPL bears the burden of proving that its proposed rate increase is just and reasonable. In order to carry its burden of proof, KCPL must meet the preponderance of the evidence standard.[30] In order to meet this standard, KCPL must convince the Commission it is "more likely than not" that KCPL's proposed rate increase is just and reasonable.[31]

In determining whether the rates proposed by KCPL are just and reasonable, the Commission must balance the interests of the investor and the consumer.[32] In discussing the need for a regulatory body to institute just and reasonable rates, the United States Supreme Court has held as follows:

> Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the services are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment.[33]

In the same case, the Supreme Court provided the following guidance on what is a just and reasonable rate:

> What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate,

[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), citing to, *Addington v. Texas*, 441 U.S. 418, 423, 99 S.Ct. 1804, 1808, 60 L.Ed.2d 323, 329 (1979).
[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 v. Suzuki Motor Corp*., 936 S.W.2d 104, 109 -111 (Mo. banc 1996); *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).
[32] *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603, (1944).
[33] *Bluefield Water Works & Improvement Co. v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 690 (1923).

> under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.[34]

The Supreme Court has further indicated:

> '[R]egulation does not insure that the business shall produce net revenues.' But such considerations aside, the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.[35]

In undertaking the balancing required by the Constitution, the Commission is not bound to apply any particular formula or combination of formulas. Instead, the Supreme Court has said:

> Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances.[36]

Furthermore, in quoting the United States Supreme Court in *Hope Natural Gas*, the Missouri Court of Appeals said:

> [T]he Commission [is] not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of 'pragmatic adjustments.' … Under the statutory standard of 'just and reasonable' it is the result reached, not the method employed which is controlling. It is not theory but the impact of the rate order which counts.[37]

---

[34] *Bluefield,* at 692-93.
[35] *Federal Power Commission v. Hope Natural Gas Co.,* 320 U.S. 591, 603 (1944) (citations omitted).
[36] *Federal Power Commission v. Natural Gas Pipeline Co*. 315 U.S. 575, 586 (1942).
[37] *State ex rel. Associated Natural Gas Co. v. Pub. Serv. Comm'n*, 706 S.W. 2d 870, 873 (Mo. App. W.D. 1985).

III. Disputed Issues

A. Cost of capital

Findings of Fact

17. Four financial analysts offered recommendations regarding an appropriate cost of capital in this case. Robert B. Hevert testified on behalf of KCPL. Hevert is Managing Partner of Sussex Economic Advisors, LLC. He holds a Bachelor of Science degree in Finance from the University of Delaware and a Master of Business Administration with a concentration in finance from the University of Massachusetts. He also holds the Chartered Financial Analyst designation.[38] He recommends the Commission allow KCPL a return on equity of 10.3 percent, within a range of 10.0 percent to 10.6 percent.[39]

18. Michael Gorman testified on behalf of Missouri Industrial Energy Consumers ("MIEC") and Midwest Energy Consumers Group ("MECG"). Gorman is a consultant in the field of public utility regulation and is a managing principal of Brubaker & Associates. He holds a Bachelor of Science degree in Electrical Engineering from Southern Illinois University and a Master's Degree in Business Administration with a concentration in Finance from the University of Illinois at Springfield.[40] Gorman recommends the Commission allow KCPL a return on equity of 9.10 percent, within a recommended range of 8.80 percent to 9.40 percent.[41]

19. Maureen L. Reno testified on behalf of the U.S. Department of Energy and the Federal Executive Agencies. Reno holds a Bachelor of Arts in Economics from the University of Maine at Orono, Maine and a Master of Arts in Economics from the University of New Hampshire in Durham, New Hampshire. She is employed as an independent

[38] Ex. 115, Hevert Direct, p. 1; Attachment A.
[39] Ex. 116, Hevert Rebuttal, p. 2.
[40] Ex. 550, Gorman Direct, p. 1; Attachment A.
[41] *Id.* at p. 2.

consultant.[42] Reno recommends the Commission allow KCPL a return on equity of 9.0 percent, within a recommended range of 8.2 percent to 9.6 percent.[43]

20. Zephania Marevangepo testified on behalf of Staff. Marevangepo is employed by the Commission as a Utility Regulatory Auditor III in the Financial Analysis Unit. Marevangepo holds a Bachelor of Science degree in Business Administration from Columbia College in Columbia, Missouri and a Masters of Business Administration from Lincoln University in Jefferson City, Missouri.[44] Marevangepo recommends a return on equity of 9.25 percent, within a range of 9.00 percent to 9.50 percent.[45]

21. An essential ingredient of the cost-of-service ratemaking formula is the rate of return, which is premised on the goal of allowing a utility the opportunity to recover the costs required to secure debt and equity financing. If the allowed rate of return is based on the costs to acquire capital, then it is synonymous with the utility's weighted average cost of capital, which is calculated by multiplying each component ratio of the appropriate capital structure by its cost and then summing the results. In order to arrive at a rate of return, the Commission must examine an appropriate ratemaking capital structure, KCPL's embedded cost of debt, and KCPL's cost of common equity, or return on equity.[46]

22. The actual capital structure of Great Plains Energy Incorporated ("GPE") as of May 31, 2015, was 50.090 percent common equity, .552 percent preferred stock, and 49.358 percent long-term debt.[47] This capital structure is consistent with the capital structure of utility operating companies held by proxy companies.[48]

[42] Ex. 700, Reno Direct, p. 1.
[43] *Id.* at p. 4.
[44] Ex. 200, Staff Report- Revenue Requirement Cost of Service, Appendix 1, p. 75.
[45] Ex. 200, Staff Report- Revenue Requirement Cost of Service, p. 19.
[46] Ex. 200, Staff Report- Revenue Requirement Cost of Service, p. 18, 37.
[47] Ex. 166, Klote True-Up Rebuttal, p. 2.
[48] Ex. 115, Hevert Direct, p. 54-55.

23. In KCPL's last rate case, File No. ER-2012-0174, the Commission used a consolidated capital structure and embedded cost of debt for KCPL consistent with that of GPE, KCPL's parent company.[49]

24. In KCPL's most recent retail rate case in Kansas, the Kansas Corporation Commission approved the use of a capital structure based on the GPE consolidated capital structure.[50]

25. All of the expert witnesses on this issue recommended using the GPE capital structure for KCPL, except for witness Maureen Reno.[51] Ms. Reno used KCPL's actual capital structure as of December 31, 2014, which included short-term debt.[52]

26. The consolidated cost of long-term debt of GPE as of May 31, 2015, was 5.557 percent.[53] KCPL's weighted average coupon rate for KCPL's debt instruments is consistent with the prevailing market conditions at the time of issuance.[54]

27. Excluding short-term debt from the capital structure is consistent with the Federal Energy Regulatory Commission ("FERC") Order 561, which set forth the formula for calculating the allowance for funds used during construction. Since short-term debt is first used to fund construction work in progress, that same debt cannot be included in the regulatory capital structure without double-counting that debt.[55]

28. A utility's cost of common equity is the return investors require on an investment in that company. Investors expect to achieve their return by receiving dividends and through stock price appreciation. To comply with standards established by the United States Supreme Court, the Commission must authorize a return on equity sufficient to

[49] Ex. 200, Staff Report- Revenue Requirement Cost of Service. p. 37; Ex. 115, Hevert Direct, p. 53.
[50] Ex. 116, Hevert Rebuttal, p. 64; Transcript, Vol. 9, p. 235.
[51] Transcript, Vol. 9, p. 234-35.
[52] Ex. 700, Reno Direct, p. 10.
[53] Ex. 166, Klote True-Up Rebuttal, p. 2.
[54] Ex. 700, Reno Direct, p. 52.
[55] Ex. 116, Hevert Rebuttal, p. 64.

maintain financial integrity, attract capital under reasonable terms, and be commensurate with returns investors could earn by investing in other enterprises of comparable risk. [56]

29. Financial analysts use variations on three generally accepted methods to estimate a company's fair rate of return on equity. The Discounted Cash Flow ("DCF") method is based on a theory that a stock's current price represents the present value of all expected future cash flows. In its simplest form, the Constant Growth DCF model expresses the cost of equity as the discount rate that sets the current price equal to expected cash flows.[57] The analysts also use variations of the DCF model including the multi-stage growth DCF and the sustainable growth DCF.[58] The Risk Premium method is based on the principle that investors require a higher return to assume a greater risk. Common equity investments have greater risk than bonds because bonds have more security of payment in bankruptcy proceedings than common equity and the coupon payments on bonds represent contractual obligations.[59] The Capital Asset Pricing Method ("CAPM") assumes the investor's required rate of return on equity is equal to a risk-free rate of interest plus the product of a company-specific risk factor, beta, and the expected risk premium on the market portfolio.[60] No one method is any more correct than any other method in all circumstances. Analysts balance their use of all three methods to reach a recommended return on equity.

30. State public utility commissions in the country are reducing authorized returns on equity to follow the significant decline in capital market costs. A comparison of industry authorized returns on equity indicates that they have been steadily declining over the last

[56] Ex. 550, Gorman Direct, p. 11.
[57] Ex. 115, Hevert Direct, p. 15.
[58] Ex. 550, Gorman Direct, p. 11.
[59] *Id.* at p. 27.
[60] *Id.* at p. 33.

several years. In calendar year 2014, the industry authorized return on equity for fully litigated cases was 9.63 percent. In the first quarter of 2015, the industry authorized return on equity for fully litigated cases was 9.57 percent.[61] Witness Gorman states credibly that based on returns awarded by other commissions, a reasonable finding for a return on equity in this case is conservatively at 9.5 percent or less.[62]

31. The Commission mentions the industry authorized return on equity because KCPL must compete with other utilities all over the country for the same capital. Therefore, the industry authorized return on equity provides a reasonableness test for the recommendations offered by the return on equity experts.

32. In its decision regarding KCPL's last rate case, the Commission established a return on equity of 9.7 percent.[63] Over the last four years, the market capital costs for Missouri electric utilities are significantly lower, due to increases in utility stock prices and decreases in bond yields and utility dividend yields.[64]

33. KCPL's expert witness, Robert Hevert, supports an increased return on equity at 10.3 percent. The Commission finds that such a return on equity would be excessive. Hevert's return on equity estimate is high because 1) his constant growth DCF results are based on excessive and unsustainable long-term growth rates, 2) his multi-stage DCF is based on a flawed accelerated dividend cash flow timing and an inflated gross domestic product growth estimate as a proxy for long-term sustainable growth, 3) his CAPM is based

[61] Ex. 552, Gorman Surrebuttal, p. 3, Schedule MPG-SR-1.
[62] Ex. 552, Gorman Surrebuttal, p. 4.
[63] Report and Order, *In the Matter of Kansas City Power & Light Company's Request for Auth. to Implement A Gen. Rate Increase for Elec. Serv. & in the Matter of KCP&L Greater Missouri Operations Company's Request for Auth. to Implement A Gen. Rate Increase for Elec. Serv.*, ER-2012-0174, 2013 WL 299322 (Jan. 9, 2013).
[64] Transcript, Vol. 9, p. 265, 279-80.

on inflated market risk premiums, and 4) his bond yield plus risk premium is based on inflated utility equity risk premiums.[65]

34. If a fuel adjustment clause is implemented in this case, it will reduce KCPL's prospective investment risk, and this risk reduction should be considered in establishing a reasonable return on equity for KCPL.[66]

35. Since April 2015, some capital market and general economic indicators have changed, indicating expanding macroeconomic growth and increased required returns.[67]

36. The return on equity recommendations of witnesses Gorman, Marevangepo, and Reno are all reasonable and an accurate estimate of the current market cost of capital for KCPL, as those recommendations rely on verifiable and independent market data and accepted market-based rate of return models. Gorman testified credibly that these return on equity recommendations demonstrate that KCPL's current cost of equity is 9.5 percent or less.[68]

Conclusions of Law and Decision

In determining the rate of return, the Commission must first consider KCPL's capital structure and cost of debt. This Commission has historically used the actual capital structure of GPE in determining the capital structure of KCPL, as has the Kansas Corporation Commission when setting KCPL's rates in that state. It is appropriate to use a consistent capital structure across all regulatory jurisdictions to avoid disagreements about one operating company's capital structure having more or less equity than another operating company. Ms. Reno's testimony was not persuasive that short-term debt should be included in the capital structure. The Commission concludes that in calculating KCPL's

[65] Ex. 551, Gorman Rebuttal, p. 6-7, 9-24.
[66] Ex. 552, Gorman Surrebuttal, p. 13.
[67] Ex. 117, Hevert Surrebuttal, p. 46-47.
[68] Ex. 552, Gorman Surrebuttal, p. 2.

cost of capital, the correct capital structure to use is the actual capital structure of GPE as of May 31, 2015, which was 50.090 percent common equity, .552 percent preferred stock, and 49.358 percent long-term debt. The use of short-term debt is not appropriate, so the correct cost of debt for KCPL is its actual cost of long-term debt as of May 31, 2015, which was 5.557%.

In order to set a fair rate of return for KCPL, the Commission must determine the weighted cost of each component of the utility's capital structure. One component at issue in this case is the estimated cost of common equity, or the return on equity. Estimating the cost of common equity capital is a difficult task, as academic commentators have recognized.[69] Determining a rate of return on equity is imprecise and involves balancing a utility's need to compensate investors against its need to keep prices low for consumers.[70]

Missouri court decisions recognize that the Commission has flexibility in fixing the rate of return, subject to existing economic conditions.[71] "The cases also recognize that the fixing of rates is a matter largely of prophecy and because of this commissions, in carrying out their functions, necessarily deal in what are called 'zones of reasonableness', the result of which is that they have some latitude in exercising this most difficult function."[72] Moreover, the United States Supreme Court has instructed the judiciary not to interfere when the Commission's rate is within the zone of reasonableness.[73]

---

[69] See Phillips, *The Regulation of Public Utilities*, Public Utilities Reports, Inc., p. 394 (1993).
[70] *State ex rel. Pub. Counsel v. Pub. Serv. Comm'n*, 274 S.W.3d 569, 574 (Mo. Ct. App. 2009).
[71] *State ex rel. Laclede Gas Co. v. Public Service Commission*, 535 S.W.2d 561, 570-571 (Mo. App. 1976).
[72] *State ex rel. Laclede Gas Co. v. Public Service Commission*, 535 S.W.2d 561, 570 -571 (Mo. App. 1976). In fact, for a court to find that the present rate results in confiscation of the company's private property, that court would have to make a finding based on evidence that the present rate is outside of the zone of reasonableness, and that its effects would be such that the company would suffer financial disarray. *Id*.
[73] *State ex rel. Public Counsel v. Public Service Commission*, 274 S.W.3d 569, 574 (Mo. App. 2009). *See, In re Permian Basin Area Rate Cases,* 390 U.S. 747, 767, 88 S.Ct. 1344, 20 L.Ed.2d 312 (1968) ("courts are without authority to set aside any rate selected by the Commission [that] is within a 'zone of reasonableness' ").

The evidence shows that return on equity recommendations of witnesses Gorman, Marevangepo, and Reno are all reasonable and an accurate estimate of the current market cost of capital for KCPL. The ranges of those recommendations overlap, and the upper end of those ranges is between 9.4 percent and 9.6 percent. The Commission finds that witness Gorman testified credibly and persuasively that KCPL's current cost of equity is 9.5 percent or less. The Commission has considered other factors, such as recent indicators of growth that may suggest an increased return, and the reduction of investment risk to KCPL by approving a fuel adjustment clause, which suggests a reduced return. However, based on the competent and substantial evidence in the record, on its analysis of the expert testimony offered by the parties, and on its balancing of the interests of the company's ratepayers and shareholders, the Commission concludes that 9.5 percent is a fair and reasonable return on equity for KCPL. This rate of return will allow KCPL to compete in the capital market for the funds needed to maintain its financial health.

B. Fuel adjustment clause

2005 stipulation and agreement

Findings of Fact

37. A fuel adjustment clause ("FAC") is a mechanism established in a general rate case that allows periodic rate adjustments, outside a general rate proceeding, to reflect increases and decreases in an electric utility's prudently incurred fuel and purchased power costs.[74]

38. While the three other investor-owned electric utilities in Missouri have FACs in place, KCPL does not have an FAC.[75] In File No. EO-2005-0329, the Commission approved

[74] Commission Rule 4 CSR 240-20.090(1)(C).
[75] Ex. 134, Rush Direct, p. 9.

a stipulation and agreement which included an Experimental Regulatory Plan ("2005 Stipulation"). That 2005 Stipulation included a provision that stated:

> KCPL agrees that, prior to June 1, 2015, it will not seek to utilize any mechanism authorized in current legislation known as "SB 179" or other change in state law that would allow riders or surcharges or changes in rates outside of a general rate case based upon a consideration of less than all relevant factors. In exchange for this commitment, the Signatory Parties agree that if KCPL proposes an Interim Energy Charge ("IEC") in a general rate case filed before June 1, 2015 in accordance with the following parameters, they will not assert that such proposal constitutes retroactive ratemaking or fails to consider all relevant factors:…[76] (emphasis added)

39. The 2005 Stipulation, including the above provision, was approved by the Commission in its Report and Order issued on July 28, 2005. The Report and Order directed that the signatory parties, including KCPL, shall abide by all of the terms and requirements in the 2005 Stipulation.[77]

40. Senate Bill 179 was passed by the Missouri General Assembly, signed by the Governor, and became effective on January 1, 2006. This bill became section 386.266, RSMo, which authorizes electrical corporations to apply to the Commission for an FAC.[78]

41. In Missouri, public utilities must file tariff sheets with the Commission with a specific effective date that determines when rates can first be charged or programs contained on those tariff sheets can be implemented.[79] The tariff sheets KCPL filed in this case for an FAC cannot be used by KCPL until the Commission approves an FAC tariff.[80]

[76] Ex. 200, Staff Report, Revenue Requirement Cost of Service, p. 189-90; Ex. 153.
[77] Report and Order, EO-2005-0329, *In Re Kansas City Power & Light Co.*, 13 Mo. P.S.C. 3d 568, 242 P.U.R.4th 492 (July 28, 2005).
[78] Ex. 152.
[79] Transcript, Vol. 18, p. 1652.
[80] *Id.* at p. 1653-54.

42. Since KCPL's last rate increase went into effect on January 26, 2013, KCPL's costs related to fuel, purchased power, and transmission have all increased substantially, while actual revenues have decreased. KCPL had to absorb these increased costs.[81]

43. While the Commission authorized a return on equity of 9.7% for KCPL's Missouri operations, KCPL was only able to earn a return on equity of 6.5% in 2013, primarily as a result of increases in fuel, purchased power and transmission costs.[82]

44. Without an adequate mechanism to timely recover these cost increases, KCPL will not have a reasonable opportunity to earn its authorized return on equity in the foreseeable future.[83] Because of regulatory lag, it is unlikely that these cost increases could be recovered through a normal rate case.[84]

45. KCPL competes for credit with other vertically-integrated electric utilities in the Midwest and throughout the country, the vast majority of which already have FACs. KCPL's inability to recover its costs, over time, could undermine its financial health and compromise cash flows, which would jeopardize its ability to compete for capital, maintain service levels, and invest in its system. The resulting increased capital costs could potentially lead to increased costs to customers.[85]

46. On June 10, 2015, Missouri Industrial Energy Consumers and the Office of the Public Counsel filed a Motion to Strike Pleadings, Reject Tariff Sheets, and Strike Testimony, to remove from the record portions of KCPL's evidence and reject tariff its sheets in support of its request for an FAC, based on the allegation that KCPL violated the 2005 Stipulation and the Commission's Report and Order in EO-2005-0329. At the

[81] Ex. 134, Rush Direct, p. 6, 12.
[82] *Id.* at p. 12.
[83] *Id.* at p. 7.
[84] *Id.* at p. 14.
[85] *Id.* at p. 8.

evidentiary hearing, the regulatory law judge deferred a ruling on the motion and took the motion with the case.[86]

Conclusions of Law and Decision

All parties other than KCPL have expressed the position that KCPL has violated the terms of the 2005 Stipulation provision stated above that prohibits KCPL from seeking to utilize a mechanism such as an FAC prior to June 1, 2015. They argue that by filing the rate case and tariff sheets requesting approval of an FAC before June 1, 2015, KCPL is improperly seeking to utilize an FAC before that date. KCPL argues that it has complied with the 2005 Stipulation because if the Commission authorizes an FAC for KCPL, any tariff approving the use of that FAC will not become effective until after June 1, 2015.

The Commission is a body of limited jurisdiction and has only such powers as are expressly conferred upon it by the statutes and powers reasonably incidental thereto.[87] The Commission cannot enforce, construe or annul contracts,[88] nor can it declare or enforce principles of law or equity.[89] However, the "Commission is entitled to interpret its own orders and to ascribe to them a proper meaning and, in so doing, the Commission does not act judicially but as a fact-finding agency".[90] The Commission's Report and Order in EO-2005-0329 approved the 2005 Stipulation and ordered the signatory parties, including KCPL, to abide by its terms. In determining whether KCPL has complied with that Commission order to abide by the terms of the 2005 Stipulation, the Commission has the authority to interpret the meaning of the provision of the 2005 Stipulation in dispute.

---

[86] Transcript, Vol. 9, p. 19.
[87] *State ex rel. & to Use of Kansas City Power & Light Co. v. Buzard*, 350 Mo. 763, 766, 168 S.W.2d 1044, 1046 (1943).
[88] *Wilshire Const. Co. v. Union Elec. Co.*, 463 S.W.2d 903, 905 (Mo. 1971).
[89] *State ex rel. Cass County v. Pub. Serv. Comm'n,* 259 S.W.3d 544, 547 (Mo. App. 2008).
[90] *State ex rel. Beaufort Transfer Co. v. Public Service Commission of Missouri,* 610 S.W.2d 96, 100 (Mo. App. 1980).

The 2005 Stipulation was a settlement agreement, and Missouri courts generally treat settlement agreements as contracts.[91] "The primary rule in the interpretation of a contract is to ascertain the intent of the parties and to give effect to that intent."[92] "Where there is no ambiguity in the contract, the intent of the parties is to be gathered from it alone, and the court will not resort to construction where the intent of the parties is expressed in clear and unambiguous language as there is nothing to construe. The intent of the parties shall be determined from the instrument alone."[93] "Contract language is ambiguous when there is uncertainty as to its meaning and it is fairly susceptible to more than one meaning so that reasonable persons may fairly and honestly differ on construction of its terms."[94] "Words are not ambiguous merely because their meaning and application confound the parties."[95]

KCPL argues that "seek to utilize" is not ambiguous, and that under the plain and ordinary meaning of those words, it means in the context of a rate case that KCPL is prohibited from having an FAC go into effect prior to June 1, 2015, regardless of when the request is filed. The other parties argue that KCPL's interpretation is incorrect, and that by filing its rate case on October 30, 2014, KCPL was improperly seeking to utilize an FAC in violation of the 2005 Stipulation. The dictionary is a good source for finding the plain and ordinary meaning of contract language, but it is important to consider the contract's context in applying the appropriate definition.[96] The dictionary defines "seek" as "to make an

[91] *State ex rel. Missouri Cable Telecommunications Ass'n v. Missouri Pub. Serv. Comm'n*, 929 S.W.2d 768, 774 (Mo. Ct. App. 1996).
[92] *Speedie Food Mart, Inc. v. Taylor,* 809 S.W.2d 126, 129 (Mo.App.1991).
[93] *Marshall v. Pyramid Dev. Corp.*, 855 S.W.2d 403, 406 (Mo. Ct. App. 1993), citing *Wickham v. Wickham,* 750 S.W.2d 544, 546 (Mo.App.1988) and *Republic Nat. Life Ins. Co. v. Missouri State Bank & Trust Co.,* 661 S.W.2d 803, 808 (Mo.App.1983).
[94] *DCW Enterprises, Inc. v. Terre du Lac Ass'n, Inc.*, 953 S.W.2d 127, 130 (Mo. App. 1997), citing *Clampit v. Cambridge Phase II Corp.,* 884 S.W.2d 340 (Mo.App.1994).
[95] *Bailey v. Federated Mut. Ins. Co.*, 152 S.W.3d 355, 357 (Mo. App. 2004).
[96] *Id.*

attempt: TRY – used with an infinitive"[97], and "utilize" is defined as "to make useful … make use of".[98] So, under those definitions, seeking to utilize an FAC means to "try to make use of" an FAC. In the context of a rate case, it is clear that KCPL cannot try to make use of an FAC until the Commission has approved tariffs authorizing that mechanism. If the Commission issues a report and order authorizing an FAC, KCPL will file tariffs in compliance with that order to implement the FAC. Those compliance tariffs would both be requested and have an effective date after June 1, 2015.

The Commission finds that terms of the 2005 Stipulation are not ambiguous, so there is no need to apply the rules of contract construction. Using the plain and ordinary meaning of the words in the 2005 Stipulation provision at issue, the filing of KCPL's rate case on October 30, 2014, did not seek to utilize an FAC prior to June 1, 2015. Therefore, the Commission concludes that KCPL did not violate the terms of the 2005 Stipulation, and it has not violated the Commission's Report and Order approving that agreement. As a result of this conclusion, the Commission will deny the Motion to Strike Pleadings, Reject Tariff Sheets, and Strike Testimony filed by Missouri Industrial Energy Consumers and the Office of the Public Counsel.

Even assuming for the sake of argument that KCPL violated the 2005 Stipulation, the Commission is not a signatory to that agreement and is not bound by its terms. The Commission may determine for reasons of public policy and public interest that KCPL should be granted an FAC even if it did violate the 2005 Stipulation. The evidence shows that KCPL's costs related to fuel, purchased power, and transmission have all increased substantially while actual revenues have decreased, resulting in KCPL's inability to earn its authorized return on equity. KCPL's inability to recover its costs, over time, could

[97] Webster's Third New International Dictionary-Unabridged, 2055 (1986).
[98] *Id.* at p. 2525.

undermine its financial health and compromise cash flows, which would jeopardize its ability to compete for capital, maintain service levels, and invest in its system. The resulting increased capital costs could potentially lead to increased costs to customers. Since an FAC is a mechanism that would help KCPL to timely recover its increased costs for fuel, purchased power and transmission and to avoid the negative consequences of regulatory lag, the Commission concludes that, for reasons of public policy, if KCPL meets the criteria for an FAC it should be granted such authority.

FAC criteria

Findings of Fact

47. Fuel used by KCPL to generate electricity is comprised mainly of coal, nuclear, natural gas and oil, and its costs for fuel and transportation alone are of such a magnitude that they would materially impact the utility.[99]

48. The price of coal, natural gas, nuclear fuel, and oil, as well as the associated transportation costs, are established by national or international markets, so KCPL does not have control over commodity prices.[100] KCPL cannot control the fundamentals that drive the short and long-term fuel markets, so fuel costs are beyond the control of KCPL's management.[101]

49. Since January 2004, the price for natural gas has ranged from $1.91/million British thermal units ("MMBtu") to $15.38, which is a range of seven times the lowest price. In April 2012, natural gas prices were as low as $1.91/MMBtu, but by February 2014 those

[99] Ex. 200, Staff Report-Revenue Requirement Cost of Service, p. 197.
[100] *Id.*
[101] Ex. 103, Blunk Direct, p. 23-24.

prices had more than tripled to $6.15. In the six months from February to August of 2015 the price for natural gas dropped almost 40%.[102]

50. Coal prices experienced price changes similar to natural gas. In June 2012, coal prices were $.40/MMBtu. In fewer than two years, the price had almost doubled to $.76/MMBtu. Just a few months after reaching that high in April 2014, the price had dropped 17% to $.63/MMBtu.[103]

51. KCPL's hedging program can manage some of the short-term volatility in coal prices, but this does not protect against long-term market shifts or trends.[104]

52. For the period of 2016 through 2019, the approximate time that an FAC would operate, only a fraction of KCPL's coal requirements are currently under contract.[105]

53. KCPL's net energy costs were more volatile than 13 of the 14 companies in the proxy group used in KCPL's cost of capital analysis, and more volatile than Missouri's three other electric utilities that have FACs.[106]

Conclusions of Law and Decision

Section 386.266.1, RSMo, allows the Commission to establish an FAC for KCPL. Commission Rule 4 CSR 240-20.090(2)(C) states, in part, that:

> In determining which cost components to include in a RAM[107], the commission will consider, but is not limited to only considering, the magnitude of the costs, the ability of the utility to manage the costs, the volatility of the cost component and the incentive provided to the utility as a result of the inclusion or exclusion of the cost component.

The evidence shows that KCPL's fuel and transportation costs are of such a magnitude that they would materially impact the utility, that those fuel costs are beyond the

[102] *Id.* at p. 21-22.
[103] *Id.* at p. 22.
[104] Id.
[105] Ex. 104, Blunk Rebuttal, p. 9-10.
[106] *Id.* at 23-24.
[107] A "RAM" is a rate adjustment mechanism.

control of KCPL's management, and that its fuel costs are volatile. In addition, Section 386.266.4, RSMo, provides that an FAC must be "reasonably designed to provide the utility with a sufficient opportunity to earn a fair return on equity". Permitting KCPL to establish an FAC will assist the company in earning its authorized return on equity. The Commission concludes that KCPL has met the criteria for the Commission to authorize an FAC and, therefore, KCPL should be allowed to establish a fuel adjustment clause.

FAC tariff provisions

1. **What percentage (customers/company) of changes in costs and revenues should the Commission find appropriate to flow through the fuel adjustment clause?**

Findings of Fact

54. KCPL is requesting 100% recovery of the costs included in its proposed FAC.[108]

55. Staff is recommending 95%/5% sharing, where customers would be responsible for, or receive the benefit of, 95% of any deviation in fuel and purchased power costs as defined in the FAC tariff from the base amount included in rates.[109]

56. The other three regulated electric utilities in Missouri have FACs that provide for 95%/5% sharing from the customers of those companies.[110]

57. Customers are the parties with the least amount of control over the cost of acquisition and supply of fuel used to generate electricity. KCPL's requested 100% recovery of costs might act as a disincentive to manage its fuel expense properly.[111]

[108] Ex. 208, Eaves Rebuttal, p. 8.
[109] *Id.*
[110] *Id.*
[111] *Id.*

Conclusions of Law and Decision

Under Missouri law, the Commission is authorized to approve rate schedules for an FAC and may include "features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities".[112] The Commission finds that allowing KCPL to have 100% recovery of its costs in an FAC would act as a disincentive for KCPL to control those costs. A 95%/5% sharing mechanism, where customers would be responsible for, or receive the benefit of, 95% of any deviation in fuel and purchased power costs would provide KCPL a sufficient opportunity to earn a fair return on equity while protecting KCPL's customers by providing the company an incentive to control costs. KCPL's FAC shall include an incentive clause providing that 95% of any deviation in fuel and purchased power costs from the base level shall be passed to customers and 5% shall be retained by KCPL.

2. **Should the costs and revenues that are to be included in the FAC be approved by the Commission and explicitly identified along with the FERC account, subaccount and the resource code in which KCPL will record the actual cost/revenue? If so, what costs and revenues should be included and what are their corresponding FERC accounts, subaccounts and resource codes?**

3. **Should the FAC tariff sheets reflect the accounts, subaccounts, resource codes, and the cost/revenue description?**

Findings of Fact

58. No additional findings of fact are necessary, as this is essentially a policy question for Commission determination.

Conclusions of Law and Decision

No party disagrees that the Commission should approve costs and revenues to be included in the FAC. The Commission determines that the FAC tariff sheets should identify

[112] Section 386.266.1, RSMo.

costs and revenues by FERC account and subaccount, but that the use of corporate resource codes is not necessary.

4. Should Southwest Power Pool ("SPP") and other regional transmission organization/independent system operator transmission fees be included in the FAC, and at what level?

Findings of Fact

59. KCPL is a member of SPP, a regional transmission organization ("RTO"). As of March 1, 2014, SPP implemented its Integrated Marketplace ("IM"), in which SPP is responsible for the market operations of its participants and generating resources.[113]

60. KCPL buys back energy from SPP to meet the needs of its customers. The price at which KCPL purchases energy from the market will be at a rate set by SPP that reflects a market price.[114]

61. On a daily basis, KCPL sells all of the power it generates into the SPP market and purchases from SPP 100% of the electricity it sells to its retail customers.[115]

62. KCPL requests that transmission costs associated with the charges and revenues from SPP billings, and transmission costs to buy and sell energy, be recovered in rates through the FAC mechanism. KCPL is proposing that standard point-to-point transmission charges and base plan funding in FERC account 565 be included.[116]

63. KCPL is proposing to place all of its wholesale transmission expenses and revenues into its FAC, not just those that are for the transportation of purchased power.[117]

[113] Ex. 200, Staff Report-Revenue Requirement Cost of Service, p. 198.
[114] *Id.*
[115] Ex. 107, Carlson Rebuttal, p. 9.
[116] Ex. 134, Rush Direct, p. 17, 22.
[117] Ex. 557, Dauphinais Rebuttal, p. 7-8.

64. The only transportation costs for purchased power that KCPL incurs are its wholesale transmission expenses that are incurred to transmit power it has purchased from SPP or other third parties.[118]

65. KCPL's wholesale transmission expenses incurred to transmit power from its own generation resources to its own load are not incurred for transportation of fuel or purchased power.[119]

66. KCPL generally does not incur wholesale transmission expenses to make off-system sales to SPP or to any third party located within SPP. Pursuant to the SPP tariff, KCPL generally only incurs wholesale transmission expenses for off-system sales when those sales are to third parties located outside of SPP.[120]

67. Only approximately 7.3% of KCPL's total SPP wholesale transmission expenses can be reasonably classified as being for transportation of fuel or purchased power.[121]

68. KCPL's transmission costs have been rising, and projections show that these expenses will continue to increase at a significant rate from 2014 through 2019.[122]

69. While KCPL's transmission costs are increasing, those costs are known, measurable, and not unpredictable, so the costs are not volatile.[123]

Conclusions of Law and Decision

Section 386.266.1, RSMo, allows an electric utility to make periodic rate adjustments only to "reflect increases and decreases in its prudently incurred fuel and purchased-power costs, including transportation". This limits the costs that can be flowed through an FAC for

[118] *Id.* at p.8.
[119] *Id.*
[120] *Id.* at p. 10.
[121] *Id.* at p.12.
[122] Ex. 134, Rush, Direct, p. 20.
[123] *Id.* at p. 11, line 2; Ex. 200, Staff Report-Revenue Requirement Cost of Service, p. 199; Eaves Rebuttal, p. 208; Ex. 209, Eaves Surrebuttal, p. 1-5..

recovery. Transportation costs have been determined to include transmission costs, but limited only to those connected to purchased power costs.[124]

KCPL argues that all of its SPP transmission fees should be included in the FAC because those fees are mandatory, increasing in amount, and volatile. In addition, KCPL states that since all of its power generation is sold into the SPP market and purchased from that market, all SPP expenses and revenues related to those individual sales and purchases of transmission service must be included in the FAC.

The Commission has addressed this issue in recent rate cases. In the Report and Order issued in File No. ER-2014-0258 for Ameren Missouri, the Commission stated:

> The evidence demonstrated that for purposes of operation of the MISO tariff, Ameren Missouri sells all the power it generates into the MISO market and buys back whatever power its needs to serve its native load. From that fact, Ameren Missouri leaps to its conclusion that since it sells all its power to MISO and buys all that power back, all such transactions are off-system sales and purchased power within the meaning of the FAC statute. The Commission does not accept this point of view.
>
> The drafters of the FAC statute likely did not envision a situation where a utility would consider all its generation purchased power or off-system sales. In fact, the policy underlying the FAC statute is clear on its face. The statute is meant to insulate the utility from unexpected and uncontrollable fluctuations in transportation costs of purchased power. At the time the statute was drafted, and even in our more complex present-day system, the costs of transporting energy in addition to the energy generated by the utility or energy in excess of what the utility needs to serve it load are the costs that are unexpected and out of the utility's control to such an extent that a deviation from traditional rate making is justified.
>
> Therefore, of the three reasons Ameren Missouri incurs transmission costs cited earlier, the costs that should be included in the FAC are 1) costs to transmit electric power it did not generate to its own load (true purchased power) and 2) costs to transmit excess electric power it is selling to third parties to locations outside of MISO (off-system sales). Any other interpretation would expand the reach of the FAC beyond its intent.[125]

[124] *In re Union Elec. Co.*, 422 S.W.3d 358, 367 (Mo. App. 2013).
[125] Report and Order, ER-2014-0258, *In the Matter of Union Elec. Co., d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Elec. Serv.*, 320 P.U.R.4th 330 (Apr. 29, 2015).

Similarly, in a subsequent rate case for The Empire District Electric Company, which is also a member of SPP, the Commission concluded:

> Furthermore, as has been the case since the FAC statute was created, the costs of transporting energy in addition to the energy generated by the utility or energy in excess of what the utility needs to serve its load are the costs that are unexpected and out of the utility's control to such an extent that a deviation from traditional rate making is justified. Therefore, the costs Empire incurs related to transmission that are appropriate for the FAC, from a policy perspective and by statute, are: 1) Costs to transmit electric power it did not generate to its own load ("true purchased power"); or 2) Costs to transmit excess electric power it is selling to third parties to locations outside of its RTO ("Off-system sales").[126]

The evidence shows in this case that on a daily basis, KCPL sells all of the power it generates into the SPP market and purchases from SPP 100% of the electricity it sells to its retail customers. However, based on the Commission's analysis in the two cases cited above, it would not be lawful for KCPL to recover all of its SPP transmission fees through the FAC. In addition, while KCPL's transmission costs are increasing, those costs are known, measurable, and not unpredictable, so the costs are not volatile. The Commission concludes that the appropriate transmission costs to be included in the FAC are 1) costs to transmit electric power it did not generate to its own load (true purchased power); and 2) costs to transmit excess electric power it is selling to third parties to locations outside of SPP (off-system sales).

5. Should SPP and FERC Administrative fees (SPP Schedule 1-A and 12) be included in the FAC?

Findings of Fact

70. SPP Schedule 1-A fees are for SPP expenses associated with administering its Open Access Transmission Tariff. These expenses cover regional scheduling, planning,

[126] Report and Order, ER-2014-0351, *In the Matter of the Empire Dist. Elec. Co. for Auth. to File Tariffs Increasing Rates for Elec. Serv. Provided to Customers in the Company's Missouri Serv. Area*, ER-2014-0351, 2015 WL 4036220 (June 24, 2015)

and market-monitoring services provided to facilitate the transportation of energy on the transmission system.[127]

71. SPP Schedule 12 fees are an assessment charged by FERC related to KCPL's membership in SPP.[128]

72. Schedule 1-A and 12 fees are administrative in nature and not directly linked to fuel and purchased power costs. These fees support the operation of SPP and are not needed for KCPL to buy and sell energy to meet the needs of its customers.[129]

73. RTO administrative fees, such as Schedule 1-A and 12 fees, are not included in the FACs of other regulated utilities in Missouri.[130]

74. Schedule 1-A and 12 fees are variable, but not volatile in nature.[131]

Conclusions of Law and Decision

KCPL has requested that SPP Schedule 1-A and 12 fees be included in its FAC. The Commission finds that these fees are administrative in nature and not directly linked to fuel and purchased power costs. These fees support the operation of SPP and are not needed for KCPL to buy and sell energy to meet the needs of its customers. These fees are neither fuel and purchased power expenses nor transportation expenses incurred to deliver fuel or purchased power. The Commission concludes that including such fees would be unlawful under Section 386.266.1, RSMo, and, therefore, Schedule 1-A and 12 fees should not be included in the FAC. These fees are appropriate for recovery in base rates.

[127] Ex. 107, Carlson Rebuttal, p. 10.
[128] Ex. 106, Bresette Surrebuttal, p. 6.
[129] Ex. 208, Eaves Rebuttal, p. 9-10.
[130] *Id.*
[131] *Id.*

6. Should all realized gains and losses from KCPL's hedging and/or cross hedging practices be included in the FAC?

Findings of Fact

75. KCPL has a hedging program to manage the price risk of coal and natural gas. The coal price hedging program involves a strategy of laddering into a portfolio of forward contracts for coal. Laddering refers to purchasing multiple products with different maturity dates. The natural gas hedging program involves the purchase of futures contracts to lock in a future price.[132]

76. KCPL's hedging programs for both of these fuels has helped to avoid much of the volatility in the coal market, as well as exposure to natural gas market price risk.[133]

77. An example of cross-hedging is the use of natural gas futures contracts to hedge electricity prices, since there is not a good market for electricity hedging instruments and the price of each have a strong relationship and move in tandem.[134]

78. Cross-hedges are the best means for hedging power purchases or sales.[135]

79. KCPL has used cross-hedging to achieve a balance in its hedging programs to reduce risk and volatility but does not do so at this time.[136]

Conclusions of Law and Decision

KCPL has requested that its realized gains and losses from its hedging programs be included in the FAC. Hedging programs help to avoid volatility in the coal market and limit exposure to natural gas market price risk. Staff does not object to hedging, but opposes cross-hedging power transactions with natural gas because KCPL does not currently utilize cross-hedges. KCPL is persuasive that having the option of using both hedging and cross-

[132] Ex. 103, Blunk Direct, p. 24-32.
[133] *Id.* at p. 25, 31.
[134] Transcript, Vol. 18, p. 1600.
[135] Ex. 104, Blunk Rebuttal, p. 34.
[136] Transcript, Vol. 18. P. 1601-2.

hedging would be valuable to reduce risk and volatility. The Commission concludes that all realized gains and losses from KCPL's hedging and/or cross-hedging practices should be included in the FAC.

7. Should SO2 amortizations, bio fuels, propane, accessorial charges, broker commissions, fees and margins, be included in the FAC?

Findings of Fact

80. Accessorial charges are a necessary part of transporting coal by rail, including switching and the release and pick-up of locomotive power. This type of charge is included in railroad tariffs.[137]

81. KCPL does not have unique account numbers or resource codes for these costs, so excluding them would increase the administrative and audit burden of the company.[138]

82. SO_2 amortizations are collected in FERC account 509.[139]

Conclusions of Law and Decision

KCPL has requested that charges for SO_2 amortizations, bio fuels, propane, accessorial charges, broker commissions, fees, and margins should be included in the FAC. Staff objects that these terms are not adequately defined, which KCPL has agreed to do. Including an appropriate description of these terms would enable KCPL to operate and Staff to audit the FAC correctly. Since accessorial charges are included in railroad tariffs and SO_2 amortizations are collected in FERC account 509, the Commission finds that SO_2 amortizations, bio fuels, propane, accessorial charges, broker commissions, fees, and margins should be included in the FAC, but should also be specifically defined within the FAC tariff.

[137] Ex. 104, Blunk Rebuttal, p. 34.
[138] *Id.*
[139] Ex. 135, Rush Rebuttal, p. 26, responding to Ex. 309, Mantle Direct, p. 30.

8. Should the FAC include costs and revenues that KCPL is not currently incurring or receiving other than insurance recoveries, subrogation recoveries and settlement proceeds related to costs and revenues included in the FAC?

Findings of Fact

83. Allowing new costs and revenues to flow through an FAC would be a modification to the FAC that the Commission approved.[140]

84. Including a cost or revenue in the FAC that KCPL does not currently incur or record clouds the transparency of the FAC and unnecessarily complicates it.[141]

85. Insurance recoveries, subrogation recoveries and settlement proceeds related to costs and revenues included in the FAC are revenues typically related to an unexpected incident or accident. If these types of revenues do occur, it is likely that at some point in time, prior to the receipt of the recovery or settlement, there were increased costs or reduced revenues due to that circumstance that have been included in the fuel adjustment rates paid by customers.[142]

Conclusions of Law and Decision

KCPL argues that the FAC should include all costs and revenues relating to net fuel and purchased power costs, whether or not they are currently being incurred. However, allowing a new cost or revenue to flow through an FAC is a modification to that FAC, which under Section 386.266, RSMo, only the Commission has the authority to modify. It is the Commission that should make the determination as to what costs or revenues should flow through the FAC, not the electric utility. An exception to this would be insurance recoveries, subrogation recoveries and settlement proceeds related to costs and revenues included in the FAC because such revenue increases are likely the result of circumstances that already

[140] Ex. 309, Mantle Direct, p. 33.
[141] *Id.* at p. 34.
[142] *Id.*

caused additional costs or reduced revenues in the FAC. The Commission concludes that the FAC should not include costs and revenues that KCPL is not currently incurring or receiving, other than insurance recoveries, subrogation recoveries and settlement proceeds related to costs and revenues included in the FAC.

9. Does the FAC need to have exclusionary language added to insure that NERC and FERC penalties are not included?

Findings of Fact

86. Staff proposed a change to KCPL's exemplar tariff sheet for an FAC to include a statement that all penalties related to NERC and FERC compliance standards shall be excluded.[143]

87. The FERC Uniform System of Accounts ("USoA") provides guidance that such charges should be recorded in account 557, which is not includible in the FAC, so there could be no recovery of such penalties even if the language proposed by Staff were not included.[144]

Conclusions of Law and Decision

Staff and OPC take the position that it would be preferable to include language to exclude NERC and FERC penalties from the FAC to make that completely clear. The Commission concludes that it is not necessary to include this language because the FERC USoA specifically provides that these penalties are not to be included. The proposed language should not be included in the FAC.

[143] Ex. 135, Rush Rebuttal, p. 18-19.
[144] *Id.*

10. Should the phrase "miscellaneous SPP IM charges, including but not limited to," be included in KCPL's FAC tariff?

Findings of Fact

88. KCPL has proposed including in the FAC the phrase "miscellaneous SPP IM charges, including but not limited to," to account for any changes to SPP IM market charge types directed by SPP. The inclusion of the word "miscellaneous" referring to charges is vague.[145]

89. The Commission takes administrative notice of the FAC tariff for Union Electric Company d/b/a Ameren Missouri, which tariff sheets are titled MO. P.S.C. Schedule No. 6, Original Sheet No. 70.1through Original Sheet No. 73.11 and filed with the Commission.

Conclusions of Law and Decision

The Commission finds that the language proposed by KCPL, which includes the phrase "miscellaneous SPP IM charges, including but not limited to," in the FAC tariff, is too vague and open-ended. The Commission concludes that the FAC tariff for KCPL should include language regarding changes in the SPP IM market charge types substantially similar to the FAC tariff language on that subject found in the FAC tariff for Ameren Missouri in MO. P.S.C. Schedule No. 6, Original Sheet No. 70.1through Original Sheet No. 73.11.

11. How should OSSR be defined?

Findings of Fact

90. KCPL has proposed a definition of revenues from off-system sales ("OSSR"), as follows:

[145] Ex. 209, Eaves Surrebuttal, p. 9.

> The following revenues or costs reflected in FERC Account Number 447: all revenues from off-system sales. This includes charges and credits related to the SPP Integrated Marketplace including, energy, make whole and out of merit payments and distributions, Over collected losses payments and distributions, TCR and ARR settlements, virtual energy costs, revenues and related fees where the virtual energy transaction is a hedge in support of physical operations related to a generating resource or load, generation/export charges, ancillary services including non- performance and distribution payments and charges and other miscellaneous SPP Integrated Market charges including, but not limited to, uplift charges or credits. It does not include sales for resale – private utilities or sales for resale – municipalities.[146]

91. Staff has proposed a different definition of OSSR, as follows:

> OSSR = Revenues from Off-System Sales:
> The following revenues or costs reflected in FERC Account Number 447: all revenues from off-system sales. This includes charges and credits related to the SPP Integrated Marketplace including, energy, ancillary services, revenue sufficiency and neutrality payments and distributions, Over collected losses payments and distributions, TCR and ARR settlements, demand reductions, virtual energy costs, revenues and related fees where the virtual energy transaction is a hedge in support of physical operations related to a generating resource or load, generation/export charges, ancillary services including non- performance and distribution payments and SPP uplift revenues or credits. Off-system sales revenues from full and partial requirements sales to municipalities that are served through bilateral contracts in excess of one year shall be excluded from OSSR component.[147]

92. Staff's definition of OSSR struck "make whole and out of merit payments and distributions", but added ancillary services, revenue sufficiency, and neutrality.[148]

93. Staff's terminology more accurately describes the type of revenue that should be included in an FAC.[149]

[146] Ex. 134, Rush Direct, Schedule TMR-4.
[147] Ex. 202, Staff Rate Design & Class Cost of Service Report and erratum, Schedule DEE-1-3.
[148] Ex. 135, Rush Rebuttal, p. 20.
[149] Ex. 209, Eaves Surrebuttal, p. 10.

Conclusions of Law and Decision

The Commission finds that Staff's definition of OSSR more accurately and specifically describes the type of revenue that should be included in an FAC. The Commission concludes that KCPL's FAC tariff should include Staff's definition of OSSR.

12. How should the "J" component be defined, i.e., how should "Net System Input" be defined for KCPL's operations?

Findings of Fact

94. The "J" component refers to the definition of KCPL's jurisdictional allocation calculation. KCPL proposes that the "J" component be defined as: J = Missouri Retail Energy Ration = Missouri Retail kWh Sales/Total Retail kWh Sales (KS and MO) + Sales for Resale (Account 447.100 – Municipals).[150]

95. Staff proposes that the "J" component be defined as: Missouri Retail Energy Ration = Missouri Retail kWh sales/ Total Net System Input (NSI), where NSI is defined as [Retail Sales (KS+MO) + Sales for Resale + Border Customers + Firm Wholesale + Losses].[151]

96. KCPL's Kansas customers are mostly residential and Missouri customers include more commercial and industrial customers. Typically, a service area composed of residential customers will experience higher line loss percentage than that of a system with a mixture of residential, commercial and industrial customers, such as the Missouri service territory.[152]

Conclusion of Law and Decision

KCPL's recommendation would be appropriate if line losses are proportional to kWh sales, but line losses between Missouri and Kansas are not proportional based on the

[150] Ex. 135, Rush Rebuttal, p. 20.
[151] *Id.*; Ex. 209, Eaves Surrebuttal, p. 10-11.
[152] Ex. 209, Eaves Surrebuttal, p. 10-11.

current customer mix (residential v. commercial/ industrial). The Commission concludes that Staff's proposed definition of the "J" component is more appropriate and should be included in KCPL's FAC tariff.

13. Should the rate schedules implementing the FAC have an amount for the Base Factor when the Commission initially approves them, or not until after the end of the first FAC accumulation period?

Findings of Fact

97. Both KCPL and Staff agree that an FAC Base Factor must be set in this case and that the Base Factor must be stated in the FAC tariff.[153]

98. Staff recommends that the Base Factor be included both in the body of the FAC tariff and on the "formula" sheet.[154]

99. The actual calculation of the Base Factor will need to be modified to reflect the Commission's final decision in this case.[155]

Conclusion of Law and Decision

The Commission concludes that the Base Factor, as modified to reflect the Commission's decision in this case, shall be included both in the body of the FAC tariff and on the "formula" sheet.

14. How many different voltage levels of service should be recognized for purposes of applying loss factors?

Findings of Fact

100. KCPL provided to Staff a loss study dated October 29, 2014, which contains system loss calculations and determinations based on data collected during calendar year 2013.[156]

[153] Ex. 209, Eaves Surrebuttal, p. 11; Transcript, Vol. 18, p. 1630-31.
[154] Ex. 202, Staff Rate Design & Class Cost of Service Report and erratum, Schedule DEE-1-6.
[155] Ex. 209, Eaves Surrebuttal, p. 11.
[156] Ex. 200, Staff Report-Revenue Requirement Cost of Service, p. 200.

101. Staff used the information in this loss study in developing its recommended two primary and secondary voltage level adjustment factors.[157]

102. Midwest Energy Consumers Group proposes that KCPL's FAC include four voltage levels, primary, secondary, substation, and transmission.[158]

103. KCPL's loss study does not contain applicable data for losses at the substation level, which is one of the voltage level distinctions recommended by MECG, so that recommendation is not based on the data in the loss study.[159]

Conclusion of Law and Decision

Commission Rule 4 CSR 240-20.090(9) requires an electric utility that desires to implement a rate adjustment mechanism, such as an FAC, to complete a jurisdictional system loss study of the corresponding energy losses experienced in its delivery of electricity. This study must be conducted within 24 months prior to the general rate case in which it requests its rate adjustment mechanism. KCPL's line loss study, required by this Commission rule, does not contain applicable data for losses experienced at the substation level, so recognition of more than two voltage levels is not currently supported by a necessary study. The Commission concludes that for this rate case two different voltage levels of service should be recognized for purposes of applying loss factors.

KCPL is directed to include in its line loss study for its next general rate case the information necessary to allow the parties to consider and evaluate if any additional voltage level adjustment factors should be incorporated into the design of the FAC tariff in KCPL's next rate case.

[157] *Id.* at p. 200-201.
[158] Ex. 554, Brubaker Direct, p. 7-9.
[159] Ex. 204, Bax Rebuttal, p. 2-3 and Schedule ABJ-1.

15. What are the appropriate recovery periods and corresponding accumulation periods for the FAC?

Findings of Fact

104. KCPL has proposed recovery periods of October through September and April through March with the corresponding accumulation periods of January through June and July through December. [160] KCPL has indicated that neither Staff nor OPC have any objections to this proposal.

Conclusion of Law and Decision

The parties that expressed a position on this issue have agreed that recovery periods of October through September and April through March with the corresponding accumulation periods of January through June and July through December should be included in the FAC. The Commission agrees that these recovery periods and accumulation periods are reasonable and should be included in the FAC.

16. Should FAC costs and revenues be allocated in the accumulation period's actual net energy cost in a manner consistent with the allocation methodology utilized to set permanent rates in this case?

Findings of Fact

105. KCPL, Staff and OPC agree that FAC costs and revenues should be allocated consistently with the allocation methodology used to set permanent rates.[161]

Conclusion of Law and Decision

All parties have agreed that costs and revenues should be allocated consistently with the allocation methodology used to set permanent rates in this case. The Commission concludes that FAC costs and revenues should be allocated in the accumulation period's

[160] Ex. 135, Rush Rebuttal, p. 27.
[161] KCPL initial brief at p. 58; Staff initial brief at p. 58; OPC initial brief at p. 41-42.

actual net energy cost in a manner consistent with the allocation methodology used to set permanent rates in this case.

17. If the Commission authorizes KCPL to have a fuel adjustment clause, what FAC-related reporting requirements should it order KCPL to comply with?

Findings of Fact

106. Staff has proposed that the following information be provided due to the accelerated Staff review process necessary with FAC adjustment filings:

- As part of the information KCPL submits when it files a tariff modification to change its Fuel and Purchased Power Adjustment rate, include KCPL's calculation of the interest included in the proposed rate;
- Maintain at KCPL's corporate headquarters or at some other mutually-agreed-upon place and make available within a mutually-agreed-upon time for review, a copy of each and every coal and coal transportation, natural gas, fuel oil and nuclear fuel contract KCPL has that is in or was in effect for the previous four years;
- Within 30 days of the effective date of each and every coal and coal transportation, natural gas, fuel oil and nuclear fuel contract KCPL enters into, provide both notice to the Staff of the contract and opportunity to review the contract at KCPL's corporate headquarters or at some other mutually-agreed-upon place;
- Provide a copy of each and every KCPL hedging policy that is in effect at the time the tariff changes ordered by the Commission in this rate case go into effect for Staff to retain;
- Within 30 days of any change in a KCPL hedging policy, provide a copy of the changed hedging policy for Staff to retain;
- Provide a copy of KCPL's internal policy for participating in the Southwest Power Pool's Integrated Market;
- Maintain at KCPL's corporate headquarters or at some other mutually-agreed-upon place and make available within a mutually-agreed-upon time for review, a copy of each and every bilateral energy or demand sales/purchase contract;
- If KCPL revises any internal policy for participating in the Southwest Power Pool, within 30 days of that revision, provide a copy of the revised policy with the revisions identified for Staff to retain; and
- The monthly as-burned fuel report supplied by KCPL required by 4 CSR 240-3.190(1)(B) shall explicitly designate fixed and variable components of the average cost per unit burned including commodity, transportation, emission, tax, fuel blend, and any additional fixed or variable costs

> associated with the average cost per unit reported (Staff is willing to work with KCPL on the electronic format of this report).[162]

107. KCPL has agreed to provide this information to Staff.[163]

Conclusion of Law and Decision

Since KCPL does not object to providing the reporting requirements recommended by Staff and listed above, the Commission determines that KCPL shall comply with those reporting requirements.

18. If the Commission authorizes KCPL to have an FAC, should KCPL be allowed to add cost and revenue types to its FAC between rate cases?

Findings of Fact

108. Allowing new cost and revenues types to flow through an FAC would be a modification to the FAC that the Commission approved.[164]

109. Staff has proposed the following FAC tariff language that would permit changes to cost and revenue types:

> Should FERC require any item covered by components FC, E, PP, TC, OSSR or R to be recorded in an account different than the FERC accounts listed in such components, such items shall nevertheless be included in component FC, E, PP, TC, OSSR or R. In the month that the Company begins to record items in a different account, the Company will file with the Commission the previous account number, the new account number and what costs or revenues that flow through the Rider FAC are to be recorded in the account.[165]

Conclusion of Law and Decision

KCPL should not be able to add cost and revenue types to its FAC between rate cases unless the FAC tariff provides for those changes. The Commission concludes that

[162] Ex. 202, Staff Rate Design & Class Cost of Service Report, p. 42-43.
[163] Ex. 135, Rush Rebuttal, p. 17; Transcript, Vol. 18, p. 1700-01.
[164] Ex. 309, Mantle Direct, p. 33.
[165] Ex. 202, Staff Rate Design & Class Cost of Service Report, p. 37 and erratum, Schedule DEE-1.

the tariff provision proposed by Staff above is reasonable and should be included in KCPL's FAC tariff.

19. If the Commission authorizes KCPL to have a FAC, should KCPL be required to clearly differentiate itself from GMO on customer bills?

Findings of Fact

110. When KCPL and KCP&L Greater Missouri Operations Company ("GMO") were brought under GPE, that company decided to use a single brand, KCPL, for both. At this time, GMO bills only indicate the KCPL brand name.[166]

111. The customer's rate code is present on the bill and would serve to direct the customer to the correct tariffs for each individual company. Customer service employees are available to help customers identify the applicable tariff sheets.[167]

112. Changing the bill language and presentation would not be a trivial undertaking, as space on the bill is limited and can impact various systemic billing processes.[168]

113. There is no evidence in the evidentiary record that demonstrates customer confusion regarding which company provides service.

Conclusion of Law and Decision

The evidence shows that although bills for GMO customers do not have that company name on them, there is other information on the bill that would direct a customer to the correct tariff for that company. In addition, customer service employees are available to provide that information, and changing the bills would cause hardship to KCPL. Since there is no evidence of customer confusion, the Commission concludes that KCPL should not be required to clearly differentiate itself from GMO on customer bills.

[166] Transcript, Vol. 18, p. 1632-33.
[167] Ex. 135, Rush Rebuttal, p. 64.
[168] *Id.*

C. Transmission fee expense

Findings of Fact

114. In Missouri, rates are usually established based upon a historical test year where the company's expenses and the rate base necessary to produce the revenue requirement are synchronized. The deferral of costs from a prior period results in costs associated with the production of revenues in one period being charged against the revenues in a different period, which violates the "matching principle" required by Generally Accepted Accounting Principles (GAAP) and the Uniform System of Accounts approved by the Commission. The matching principle is a fundamental concept of accrual basis accounting, which provides that in measuring net income for an accounting period, the costs incurred in that period should be matched against the revenue generated in the same period. Such matching creates consistency in income statements and balance sheets by preventing distortions of financial statements which present an unfair representation of the financial position of the business. One type of deferral accounting, a "tracker", has the effect of either increasing or decreasing a utility's earnings for a prior period by increasing or decreasing revenues in future periods, which violates the matching principle.[169]

115. A tracker is a rate mechanism under which the amount of a particular cost of service item actually incurred by a utility is tracked and compared to the amount of that item currently included in a utility's rate levels. Any over-recovery or under-recovery of the item in rates compared to the actual expenditures made by a utility is then booked to a regulatory asset or liability account and would be eligible to be included in the utility's rates in its next general rate proceeding through an amortization to expense.[170]

[169] Ex. 312, Robertson Surrebuttal, p. 5-6.
[170] Ex. 235, Oligschlaeger Rebuttal, p. 3.

116. The broad 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.[171]

117. KCPL requested a tracker for transmission fees it incurs to send and receive power ("transmission") through the territory of RTOs such as the Southwest Power Pool ("SPP").[172]

118. KCPL's transmission costs have increased over the past several years, but administrative fees charged by SPP are projected to decrease in the future.[173]

119. KCPL's transmission costs are normal, ordinary and recurring operating costs, and not extraordinary.[174]

120. KCPL's correct annualized levels of transmission expense and revenue to recognize in its revenue requirement on a Missouri jurisdictional basis are the highly confidential amounts stated in Ex. 256 HC, Lyons True-Up Rebuttal, p. 14, lines 13-14. These amounts do not include any transmission costs charged to KCPL by reason of Independence Power & Light becoming a member of SPP.

121. In surrebuttal testimony, KCPL requested for the first time that for SPP transmission fees not included in an FAC or afforded tracker treatment, $5 million of annual estimated Missouri jurisdiction SPP transmission fees expense should be added to the revenue requirement above the base amount of Missouri jurisdiction SPP transmission fees. If the forecast amount recognized in revenue requirement exceeds actual SPP

[171] Ex. 235, Oligschlaeger Rebuttal, p. 7.
[172] Ex. 135, Rush Rebuttal, p. 11
[173] Ex. 223, Lyons Surrebuttal, p. 6
[174] Ex. 223, Lyons Surrebuttal, p. 9.

transmission fee expense during the period rates are in effect, such amounts should be credited to customers in a subsequent rate case.[175]

Conclusions of Law and Decision

The Commission has the statutory authority to prescribe methods for electrical corporations to keep their accounts, records and books.[176] The Commission has set forth such proper methods in Commission Rule 4 CSR 240-20.030, which requires every electrical corporation to keep all accounts in conformity with the Uniform System of Accounts ("USoA") as prescribed by FERC and published at 18 CFR Part 101 (2013). In the USoA, Accounts 182.3 and 254, other regulatory assets and liabilities, describe accounts for recording an item outside the year of occurrence ("deferral") for determination in a later action.[177] The USoA allows deferral 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 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.[178]

[175] Ex. 136, Rush Surrebuttal, p. 9.
[176] Section 393.140(4), RSMo.
[177] 18 C.F.R. § Pt. 101, Definition 31. Regulatory Assets and Liabilities are assets and liabilities that result from rate actions of regulatory agencies. Regulatory assets and liabilities arise from specific revenues, expenses, gains, or losses that would have been included in net income determination in one period under the general requirements of the Uniform System of Accounts but for it being probable:
A. that such items will be included in a different period(s) for purposes of developing the rates the utility is authorized to charge for its utility services; or
B. in the case of regulatory liabilities, that refunds to customers, not provided for in other accounts, will be required.
[178] 18 C.F.R. § Pt. 101, General Instruction No. 7; See also, Report and Order, ER-2012-0174, *In the Matter of Kansas City Power & Light Company's Request for Auth. to Implement A Gen. Rate Increase for Elec. Serv. & in the Matter of KCP&L Greater Missouri Operations Company's Request for Auth. to Implement A Gen. Rate Increase for Elec. Serv.*, 2013 WL 299322 (Jan. 9, 2013); Report and Order, *In the Matter of the Application of S. Union Co. for the Issuance of an Accounting Auth. Order Relating to Its Natural Gas Operations & for A Contingent Waiver of the Notice Requirement of 4 CSR 240-4.020(2)*, GU-2011-0392, 2012 WL 363727 (Jan. 25, 2012).

KCPL has requested that the Commission approve the use of a particular deferral accounting method, a tracker. This type of deferral accounting to defer costs which may be incurred in the future is similar to an accounting authority order that defers expenses incurred as a result of a past event, in that neither constitute ratemaking. Missouri courts have stated that the granting of an accounting authority order is not ratemaking and creates no expectation of recovery.[179] For example, in a recent rate case, the Commission refused to allow recovery of amounts deferred under a previous accounting authority order.[180] Like an accounting authority order, a tracker simply defers a cost for determination in a future rate case where the Commission may determine whether that cost should be recovered in rates after considering all relevant factors.[181]

KCPL also requested a transmission tracker in its most recent rate case, ER-2012-0174, under a very similar fact situation. That Commission denied that requested tracker, finding that KCPL had failed to demonstrate that the projected cost increases were extraordinary:

> "Rare" does not describe cost increases in the utility business generally. Specifically, Applicants' evidence shows the following as to transmission. Transmission is an ordinary and typical, not an abnormal and significantly different, part of Applicants' activities. Also, Applicants showed that paying more for transmission than in the previous year is a foreseeably recurring event, not an unusual and infrequent event. Thus, "items related to the effects of" transmission cost increases are not rare and, therefore, are not extraordinary.[182]

---

[179] *State ex rel. Missouri Gas Energy v. Public Serv. Com'n*, 210 S.W.3d 330, 336 (Mo. App. W.D. 2006); *Missouri Gas Energy v. Public Serv. Com'n*, 978 S.W.2d 434, 438 (Mo. App. W.D. 1998). See also, Commission Rule 4 CSR 240-20.030(4), which states, in part, that "[i]n prescribing this system of accounts, the commission does not commit itself to the approval or acceptance of any item set out in any account for the purpose of fixing rates or in determining other matters before the commission."

[180] Report and Order, ER-2014-0258, *In the Matter of Union Elec. Co., d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Elec. Serv.*, 320 P.U.R.4th 330 (Apr. 29, 2015).

[181] Commission Rule 4 CSR 240-20.030(5) does allow the Commission to waive or grant a variance from the provisions of the USoA for good cause shown, but KCPL did not request such a waiver or variance.

[182] Report and Order, ER-2012-0174, *In the Matter of Kansas City Power & Light Company's Request for Auth. to Implement A Gen. Rate Increase for Elec. Serv. & in the Matter of KCP&L Greater Missouri*

The evidence presented in this case showed that KCPL's transmission costs, while having increased in recent years, are normal, ordinary and recurring operation costs. These recurring costs are not abnormal or significantly different from the ordinary and typical activities of the company, so they are not extraordinary and, therefore, not subject to deferral under the USoA. The Commission concludes that KCPL has not met its burden of proof to demonstrate that projected transmission cost increases are extraordinary, so its request for a transmission tracker will be denied.

KCPL's correct annualized levels of transmission expense and revenue to recognize in its revenue requirement on a Missouri jurisdictional basis are the amounts stated in Ex. 256 HC, Lyons True-Up Rebuttal, p. 14, lines 13-14. These amounts do not include any transmission costs charged to KCPL by reason of Independence Power & Light becoming a member of SPP. KCPL has also requested that the Commission add to this amount an additional amount of $5 million, which it claims is an estimate of its increased transmission costs, subject to refund in a future rate case. Since this request was first submitted in surrebuttal testimony, it violates Commission Rule 4 CSR 240-2.130(7)(A), which requires that "[d]irect testimony shall include all testimony and exhibits asserting and explaining that party's entire case-in-chief." By submitting the request for the first time in surrebuttal, KCPL has prevented other parties from having a sufficient opportunity to conduct discovery or provide testimony on that matter. The Commission also finds that KCPL failed to adequately explain how it arrived at its estimate and how the Commission has the legal authority to grant such relief. For all these reasons, the Commission concludes that KCPL's request for an additional $5 million added to the approved base amount of revenue requirement should be denied.

Operations Company's Request for Auth. to Implement A Gen. Rate Increase for Elec. Serv., 2013 WL 299322 (Jan. 9, 2013).

D. Property tax expense

Findings of Fact

122. KCPL requests that the Commission authorize a tracker mechanism for its expenses related to property taxes determined by Missouri state assessors. Those expenses would be deferred for consideration by the Commission to include in rates in KCPL's next rate case.[183]

123. A property tax tracker, as with other types of trackers, would create an inconsistent matching over time of investments, revenues and expenses.[184]

124. KCPL's property tax expenses have been increasing for the last five years, and may continue to increase in the future.[185]

125. Property taxes are normal operating costs that will continue to occur every year, and an annualized level of such expenses to include in rates can be reasonably calculated. KCPL's property taxes are not rare or unusual.[186]

126. KCPL's correct level of property tax expense to recognize in its revenue requirement on a total company basis is $91,616,599.[187]

127. In surrebuttal testimony, KCPL requested for the first time that for property tax expenses not afforded tracker treatment, $5.6 million of annual estimated Missouri jurisdiction property tax expense should be added to the revenue requirement above the base amount of Missouri jurisdiction property taxes. If the forecast amount recognized in revenue requirement exceeds actual property tax expenses during the period rates are in effect, such amounts should be credited to customers in a subsequent rate case.[188]

[183] Ex. 134, Rush Direct, p. 28-29.
[184] Ex. 222, Lyons Rebuttal, p. 8.
[185] Ex. 124, Klote Direct, p. 75.
[186] Ex. 223, Lyons Surrebuttal, p. 23-24.
[187] Ex. 259, Revised True-Up Accounting Schedules, Income Statement Detail, p. 7.
[188] Ex. 136, Rush Surrebuttal, p. 16-17.

Conclusions of Law and Decision

KCPL has requested that the Commission approval the same type of deferral mechanism for property tax expenses that it requested for transmission fee expenses. For that reason, the Commission incorporates herein the analysis contained in the conclusions of law and decision section from the transmission fee expense issue discussed above. The Commission concludes that KCPL has not met its burden of proof to demonstrate that projected property tax increases are extraordinary, so its request for a property tax tracker will be denied.

KCPL's correct level of property tax expense to recognize in its revenue requirement on a total company basis is $91,616,599. KCPL has also requested that the Commission add to this amount an additional amount of $5.6 million, which it claims is an estimate of its increased property tax costs, subject to refund in a future rate case. Since this request was first submitted in surrebuttal testimony, it violates Commission Rule 4 CSR 240-2.130(7)(A), which requires that "[d]irect testimony shall include all testimony and exhibits asserting and explaining that party's entire case-in-chief". By submitting the request for the first time in surrebuttal, KCPL has prevented other parties from having a sufficient opportunity to conduct discovery or provide testimony on that matter. The Commission also finds that KCPL failed to adequately explain how it arrived at its estimate and how the Commission has the legal authority to grant such relief. For all these reasons, the Commission concludes that the KCPL's request for an additional $5.6 million added to the approved base amount of revenue requirement should be denied.

E. CIP/cyber-security expense

Findings of Fact

128. In 2007, the FERC designated the North American Regulatory Commission ("NERC") as the electric reliability organization under the Federal Power Act and subsequently approved NERC's reliability standards, which include the Critical Infrastructure Protection ("CIP") standards. CIP addresses the security of cyber assets essential to the reliable operation of the electric grid and is continuously evolving due to the fluid nature of security threats to critical infrastructure. CIP has recently been updated with Version 5, which includes new standards. KCPL is subject to these CIP standards.[189]

129. KCPL is requesting that the Commission authorize a tracker for the costs related to compliance with CIP and other cyber-security efforts. Those expenses would be deferred for consideration by the Commission to include in rates in KCPL's next rate case.[190]

130. A cyber-security tracker, as with other types of trackers, would create an inconsistent matching over time of investments, revenues and expenses.[191]

131. KCPL's CIP/cyber-security costs are projected to increase as a result of the addition of new employees and capital additions, primarily in 2015. Thereafter, those costs will decrease for the next two years.[192]

132. Compliance with CIP and cyber-security standards will be an ongoing cost for KCPL for the foreseeable future.[193]

[189] Ex. 118, Ives Direct, p. 27-28.
[190] Ex. 134, Rush Direct, p. 34.
[191] Ex. 222, Lyons Rebuttal, p. 28.
[192] Ex. 222, Lyons Rebuttal, p. 27.
[193] Transcript, Vol. 18, p. 1855.

133. KCPL's correct level of CIP/cyber-security expense to recognize in its revenue requirement on a Missouri jurisdictional basis are the highly confidential amounts stated in Ex. 256 HC, Lyons True-Up Rebuttal, p. 16, lines 1-2.

134. In surrebuttal testimony, KCPL requested for the first time that for CIP/cyber-security costs not afforded tracker treatment, $3.5 million of annual estimated Missouri jurisdiction CIP/cyber-security expense should be added to the revenue requirement above the base amount of Missouri jurisdiction CIP/cyber-security expense. If the forecast amount recognized in revenue requirement exceeds actual CIP/cyber-security expense during the period rates are in effect, such amounts should be credited to customers in a subsequent rate case.[194]

Conclusions of Law and Decision

KCPL has requested that the Commission approval the same type of deferral mechanism for CIP/cyber-security expenses that it requested for transmission fee expenses. For that reason, the Commission incorporates herein the analysis contained in the conclusions of law and decision section from the transmission fee expense issue discussed above. The Commission concludes that KCPL has not met its burden of proof to demonstrate that projected CIP/cyber-security increases are extraordinary, so its request for a tracker will be denied.

KCPL's correct annualized levels of transmission expense and revenue to recognize in its revenue requirement on a Missouri jurisdictional basis are the amounts stated in Ex. 256 HC, Lyons True-Up Rebuttal, p. 16, lines 1-2. KCPL has also requested that the Commission add to this amount an additional amount of $3.5 million, which it claims is an estimate of its increased CIP/cyber-security costs, subject to refund in a future rate case.

[194] Ex. 136, Rush Surrebuttal, p. 15-16.

Since this request was first submitted in surrebuttal testimony, it violates Commission Rule 4 CSR 240-2.130(7)(A), which requires that "[d]irect testimony shall include all testimony and exhibits asserting and explaining that party's entire case-in-chief". By submitting the request for the first time in surrebuttal, KCPL has prevented other parties from having a sufficient opportunity to conduct discovery or provide testimony on that matter. The Commission also finds that KCPL failed to adequately explain how it arrived at its estimate and how the Commission has the legal authority to grant such relief. For all these reasons, the Commission concludes that KCPL's request for an additional $3.5 million added to the approved base amount of revenue requirement should be denied.

F. La Cygne environmental retrofit project

Findings of Fact

135. The La Cygne generating station is comprised of two coal-fired units, Unit 1 and Unit 2. KCPL owns 50% of La Cygne, and Kansas Gas and Electric Company, a wholly-owned subsidiary of Westar Energy, Inc., owns the other 50% share. Pursuant to the ownership agreement, KCPL is responsible for operating both La Cygne units.[195]

136. KCPL installed emission control equipment to reduce emissions from La Cygne by June 1, 2015, in order to comply with the Regional Haze Agreement that KCPL entered with the Kansas Department of Health and Environment. The emission control equipment is also required for compliance with the Mercury and Air Toxics Rule, the Cross-State Air Pollution Rule, and the National Ambient Air Quality Standards.[196]

137. The emissions control equipment that was installed at La Cygne included limestone-based, wet scrubber flue gas desulfurization systems, fabric filters, mercury

[195] Ex. 102, Bell Direct, p. 7.
[196] Ex. 127, Ling Direct, p. 2-3.

control systems on both Units 1 and 2, and low NO_x burners, over-fired air, and selective catalytic reduction system on Unit 2.[197]

138. KCPL successfully achieved the in-service criteria for La Cygne. As of March 24, 2015, Unit 2 was in-service, and as of April 30, 2015, Unit 1 was in-service.[198]

139. The projected cost of the entire retrofit project was $1.23 billion. While the final project costs are not yet determined, there is an indication that the project will be completed at some level below the estimated cost. Commission's Staff conducted a construction audit and prudence review of the project, and concluded that no adjustments should be proposed regarding the costs KCPL is requesting to be included in rates in this case. Staff determined that the prudently incurred costs to include in KCPL's Missouri rate base for the La Cygne project were $292,620,121.[199]

140. Before making the decision to proceed with the La Cygne environmental retrofit project, in 2010 KCPL conducted a multi-faceted analysis of a series of alternative long-term resource plans to assess the risk associated with various critical factors, such as natural gas prices, retail customer load growth, and carbon dioxide costs. The end result of this process resulted in an expected 25-year net present value of revenue requirement ("NPVRR") that evaluates the risks associated with uncertain factors in the electric utility industry.[200]

141. The results of this analysis completed in early 2011 demonstrated that the most cost-effective solution was the retrofitting of La Cygne Units 1 and 2.[201] KCPL's decision to retrofit La Cygne was supported by its determination that retiring the La Cygne

[197] Ex. 102, Bell Direct, p. 9.
[198] Ex. 162, Bell True-Up Direct, p. 1-2.
[199] Ex. 252, Hyneman True-Up Direct, p. 5-21.
[200] Ex. 109, Crawford Direct, p. 17, 20.
[201] Ex. 109, Crawford Direct, p. 24-25; Transcript, Vol. 12, p. 792-93.

units and replacing them with combined-cycle natural gas generation would have resulted in a significant reliance on the relatively more volatile natural gas market.[202]

142. KCPL submitted its analysis of whether to retire or retrofit La Cygne to the Kansas Corporation Commission on February 23, 2011, as part of a petition for predetermination, which sought authorization to recover expenditures on the La Cygne retrofits.[203] The Kansas commission granted KCPL's petition on August 19, 2011.[204]

143. Sierra Club's witness Rachel Wilson alleges that KCPL was imprudent in 1) failing to consider missing elements in its calculations that would have raised the costs to retrofit La Cygne, and 2) deciding to continue with the retrofit project in 2011 and 2012. She argues that while natural gas prices were declining during this period of time, KCPL should have re-evaluated its analysis using 2011 and 2012 forecasts from the Energy Information Administration's Annual Energy Outlook ("AEO"). Wilson alleges that using this AEO forecast would have revealed that retirement of La Cygne units would have been the more economic choice.[205]

144. KCPL did not fail to consider a reasonable level of cost-effective energy efficiency or a full range of options for addressing regulations such as non-gas supply options. The net benefits in KCPL's original analysis significantly exceeded other alternative plans considered. KCPL did not consider the conversion from a wet to a dry bottom ash system for Unit 2, but the projected costs would not have meaningfully changed the results.[206]

[202] Ex. 109, Crawford Direct, p. 22-24; Ex 110, Crawford Rebuttal, p. 2.
[203] Ex. 402, Wilson Direct, p. 6.
[204] *Id.* at p. 27.
[205] Ex. 402, Wilson Direct, p. 3-5.
[206] Ex. 110, Crawford Rebuttal, p. 3-5.

145. In KCPL's original analysis, it utilized several long-term forecasts regarding gas prices, which produces better results over time than using a single forecast.[207] KCPL did not use the single AEO forecast alone because that forecast does not take into account future regulations that can produce upward pressure on gas prices.[208]

146. KCPL re-evaluated whether it was appropriate to retrofit the La Cygne units on four occasions, once each in 2012, 2013, 2014 and 2015, as part of KCPL's integrated resource planning ("IRP") process. The 2012 IRP planning work started in the summer of 2011, included the 2012 AEO forecast, and assumed that no project costs had been committed.[209]

147. Witness Burton Crawford testified credibly that the results of each re-evaluation of the La Cygne analysis during the IRP processes demonstrated that continuing with the retrofit project resulted in lower overall costs than resource plans that included retiring those units.[210]

Conclusions of Law and Decision

In rate cases, there is initially a presumption that a utility's expenditures incurred in providing utility service, which are one component of its revenue requirement, are prudent.[211] This presumption can be rebutted upon a showing of serious doubt as to the prudence of the expenditure, at which point the utility must dispel this doubt and prove the questioned expenditure is prudent.[212] The Commission has interpreted this process as follows:

---

[207] *Id.* at p. 6.
[208] *Id.* at p.9-10.
[209] *Id.* at p. 7; Transcript, Vol. 12, p. 783-84.
[210] *Id;* Transcript, Vol. 12, p. 777.
[211] *State ex rel. Public Counsel v. Public Service Comm'n*, 274 S.W.3d 569, 586 (Mo. App. 2009).
[212] *Id.*; *State ex rel. Associated Natural Gas Company v. Public Service Commission of the State of Missouri,* 954 S.W.2d 520, 528 (Mo.App.1997); *In the Matter of Union Electric Company*, 27 Mo.P.S.C. (N.S.) 183, 193

> In the context of a rate case, the parties challenging the conduct, decision, transaction, or expenditures of a utility have the initial burden of showing inefficiency or improvidence, thereby defeating the presumption of prudence accorded the utility. The utility then has the burden of showing that the challenged items were indeed prudent. Prudence is measured by the standard of reasonable care requiring due diligence, based on the circumstances that existed at the time the challenged item occurred, including what the utility's management knew or should have known. In making this analysis, the Commission is mindful that "[t]he company has a lawful right to manage its own affairs and conduct its business in any way it may choose, provided that in so doing it does not injuriously affect the public.[213]

Testimony on behalf of Sierra Club from Ms. Wilson raised a serious doubt about KCPL's decision to proceed with the La Cygne retrofit project following authorization of the project by the Kansas Corporation Commission. Natural gas prices did fall shortly after KCPL completed its original analysis showing that the retrofit project was a lower-cost option than retirement of the units, and that original analysis did not take into account an AEO forecast showing those lower gas prices. Ms. Wilson alleges that KCPL waited too long to re-evaluate its original decision, and if it had done so it would have found that retirement was actually the lower-cost option after considering the lower gas prices.

KCPL's witnesses testified credibly, however, that the 2012 re-evaluation process was started just a few months after the release of the 2012 AEO forecast, that they included that forecast, in addition to several other more reliable forecasts, in their planning process, and that the result of the 2012 IRP process yielded the same result as the original KCPL analysis that was approved in Kansas. When the retrofit project was re-evaluated each year in 2012-2015, those studies showed that the retrofit project resulted in lower overall costs than resource plans that included retiring those units. In addition, the evidence

---

(1985) (*quoting Anaheim, Riverside, etc. v. Federal Energy Regulatory Commission*, 669 F.2d 779, (D.C. Cir. 1981)).

[213] *State ex rel. City of St. Joseph v. Public Service Commission*, 30 S.W.2d 8, 14 (Mo. banc 1930); In the Matter of Missouri-American Water Company's Tariff Sheets, *Report and Order*, Case No. WR-2000-281 (August 31, 2000), 9 Mo. P.S.C. 3d 254.

shows that KCPL did not fail to consider missing elements in its calculations that would have raised the costs to retrofit La Cygne.

The Commission concludes that KCPL has met its burden of proof to demonstrate that, based on the circumstances that existed at the time, KCPL was prudent in choosing to proceed with the La Cygne environmental retrofit project. The correct and prudently incurred costs to include in KCPL's Missouri rate base for the La Cygne project are $292,620,121.

G. Rate case expense

Findings of Fact

148. Rate case expense can be defined as all incremental costs incurred by a utility directly related to an application to change its general rate levels.[214]

149. KCPL's total rate case expense as of August 12, 2015, is $1,024,304.[215]

150. Rate case expense can benefit both utility shareholders and customers, though often in different ways. A utility and its shareholders directly benefit from this expense because generally these costs are incurred in order to increase a utility's revenues and, ultimately, its profitability. Customers benefit generally from being served by financially healthy utilities, which is bolstered in part by the ability of a utility to periodically seek increased rates to recover increasing expenses and earn a return on investments in their systems.[216]

151. The rate case process can be adversarial in nature, with the utility and ratepayers on opposing sides.[217]

[214] Ex. 243, p. 1.
[215] Ex. 169 and 216. OPC's rate case expense amount in Ex. 319 differed from that of both KCPL and Staff, and so is found to be less credible.
[216] Ex. 243, p. 11.
[217] Transcript, Vol. 13, p. 1022.

152. KCPL engaged several outside experts and consultants in this case. Witness Spanos performed the depreciation study required by Commission rules. Mr. Hevert performed a cost of capital/capital structure analysis using industry-wide data. Witness Rogers did a highly-specialized study to determine the cost of dismantling non-nuclear generating units. Mr. Overcast testified on the topic of regulatory mechanisms. These types of testimonies and studies are generally performed by outside experts in rate cases in Missouri.[218]

153. Staff and OPC propose that the expenses of KCPL witness Overcast be disallowed as duplicative of testimony given by other witnesses.[219]

154. KCPL retained the services of witness Overcast to respond to other parties opposed to KCPL's requests for a fuel adjustment clause and trackers. Mr. Overcast was hired to provide a nationwide view of how other jurisdictions have approached such alternative regulatory mechanisms.[220]

155. KCPL was represented in this case by both in-house and external legal counsel. KCPL used two in-house attorneys and employed two outside attorneys. The two outside attorneys have represented KCPL in numerous rate cases and other Commission proceedings in the past to supplement the in-house legal team.[221]

156. OPC witness Addo proposed adjustments to rate case expenses, including reducing the hourly rates of KCPL outside attorneys to $200/hour, based on the rates one attorney charged Ameren Missouri and the results of a 2013 survey of hourly rates by the Missouri Bar.[222]

[218] Ex. 120, Ives Rebuttal, p. 25.
[219] Ex. 226, Majors Surrebuttal, p. 62-63; Ex. 308, Addo Surrebuttal, p. 27-28.
[220] Transcript, Vol. 13, p. 970-71.
[221] Ex. 120, Ives Rebuttal, p. 26.
[222] Ex. 308, Addo Surrebuttal, p. 26-30.

157. Mr. Addo did not compare the background and experience of the KCPL attorneys with that of the Ameren Missouri attorney, and he did not calculate the number of hours or examine the tasks that Ameren Missouri's counsel performed on a prior rate case.[223]

158. In Missouri, almost all utilities hire witnesses to sponsor their rate of return/return on equity positions in rate cases and often hire consultants to handle other issues, as well.[224]

159. In a rate case, a utility chooses how many and what type of consultants it will engage, what issues to pursue, and what legal strategies it will employ, and therefore, the extent of rate case expense is largely at KCPL's discretion.[225]

160. The expenses in this case are driven primarily by issues raised by KCPL, which has complete control over the content and methodologies proposed in its rate cases. For example, KCPL has requested several trackers, two of which have never been requested before in Missouri and two of which were first presented in rebuttal testimony[226], and has requested recovery in rates of the expenses from the Clean Charge Network.

161. KCPL has requested that all costs and expenses associated with legal representation, consultants, and expert witnesses be included in its increased revenue requirement.[227]

162. All consumer groups were represented by hired counsel in this case, and some also engaged expert witnesses. While KCPL is able to recoup the costs of its legal counsel and expenses through utility service rates, OPC, the entity representing

[223] Transcript, Vol. 13, p. 1068-72.
[224] Ex. 243, p. 1-2.
[225] Transcript, Vol. 13, p. 1062; Ex. 226, Majors Surrebuttal, p. 57-58.
[226] Ex. 226, Majors Surrebuttal, p. 60-61.
[227] Ex. 169HC; Ex. 261HC.

ratepayers, operates within a tight annual budget, and interveners pay their own legal expenses.[228]

163. Prudency reviews, by their nature, are not a strong incentive to control costs. The utility holds all the information a challenging party needs to prove imprudence, and it is not likely a challenging party could identify all instances of imprudence, even when engaged in a conscientious prudence review.[229]

164. Awarding a utility all of its incurred rate case expenses could provide that utility with a significant financial advantage over other participants in the rate case process, who may be constrained by budgetary and other financial restrictions. Such a practice does not encourage reasonable levels of cost containment in the utility's rate case expense decisions.[230]

165. An incentive for a utility to limit its rate case expense is to tie a utility's percentage recovery of rate case expense to the percentage of its rate increase request that the Commission finds just and reasonable. Use of this approach would directly tie a utility's recovery of rate case expense to both the reasonableness of its issue positions and the dollar value sought from customers in a rate case.[231]

166. KCPL previously filed rate cases in 2006, 2007, 2009, 2010, and 2012.[232] In recent rate cases, KCPL has incurred rate case expenses substantially higher than historical levels and higher than other utilities in Missouri.[233]

[228] Ex. 200, Staff Report- Revenue Requirement Cost of Service, p. 132-33.
[229] Transcript, Vol. 18, p. 1745-46; Transcript, Vol. 16, p. 1520-21.
[230] Ex. 243, p. 11-12.
[231] *Id.* at p. 14; Ex. 236, Oligschlaeger Surrebuttal, p. 9-11; Transcript, Vol. 13, p. 1056-58.
[232] Ex. 200, Staff Report- Revenue Requirement Cost of Service, p. 3-4.
[233] Transcript, Vol. 13, p. 1063; Ex. 243, p. 6-8.

167. Prudence is not the only consideration in determining what costs should be included in rates; the benefit to customers must also be considered when deciding what costs are reasonable for customer rates.[234]

168. KCPL has pursued issues in this case that benefit only the shareholders, such as La Cygne construction accounting and some elements of the rate of return recommendation.[235] Utility expenses that are highly discretionary and do not benefit customers, such as charitable donations, political lobbying expenses, and incentive compensation tied to earnings per share, are typically allocated entirely to shareholders.[236]

169. Staff and OPC recommend that the Commission require shareholders and ratepayers to share the rate case expense costs equally.[237] Staff also proposes, as an alternative to equal sharing of expenses, that KCPL receive rate recovery of rate case expenses in proportion to the amount of rate relief it is granted compared to the amount of its original rate increase request.[238]

Conclusion of Law and Decision

In a rate case, the Commission has broad discretion to determine which expenses a utility may recover from ratepayers. The Missouri Supreme Court has stated that the Commission's statutory power and authority to set rates "necessarily includes the power and authority to determine what items are properly includable in a utility's operating expenses and to determine and decide what treatment should be accorded such expense

[234] Transcript, Vol. 13, p. 1050.
[235] Transcript, Vol. 13, p. 1033-34.
[236] Ex. 200, Staff Report- Revenue Requirement Cost of Service, p. 133-34; Ex. 226, Majors Surrebuttal, p. 57-58.
[237] Ex. 226, Majors Surrebuttal, p. 55; Ex. 307, Addo Rebuttal, p. 46.
[238] Ex. 236, Oligschlaeger Surrebuttal, p. 10-11.

items."[239] The Commission's authority extends to allocating an expense between certain classes or groups of ratepayers[240] and to requiring company shareholders to bear expenses the Commission finds to be unreasonable or unnecessary.[241]

As stated above, there is initially a presumption that a utility's expenditures incurred in providing utility service, which are one component of its revenue requirement, are prudent.[242] This presumption can be rebutted upon a showing of serious doubt as to the prudence of the expenditure, at which point the utility must dispel this doubt and prove the questioned expenditure is prudent.[243]

Staff and OPC allege that the expenses of witness Overcast should be disallowed because his testimony was duplicative and those expenses were imprudent. Similarly, OPC and MECG argue that the fees of KCPL's outside attorneys were imprudent and should be reduced to $200/hour or disallowed entirely. These expenses for experts, consultants, and attorneys do not lend themselves to review for prudence. Unlike industry standards for pipe size or transmission line capacity, there is no accessible appropriate standard for determining whether one consultant's analysis was truly unnecessary or if one attorney's expertise is worth more than another's. The evidence does not reveal a bright line solution to this problem, and the Commission will not disallow these or any other rate case expenses in this case.

---

[239] *State ex rel. City of W. Plains v. Pub. Serv. Comm'n*, 310 S.W.2d 925, 928 (Mo. 1958). See also, *State ex rel. KCP & L Greater Missouri Operations Co. v. Missouri Pub. Serv. Comm'n*, 408 S.W.3d 153, 166 (Mo. App. 2013).
[240] *State ex rel. City of W. Plains v. Pub. Serv. Comm'n*, 310 S.W.2d at 934.
[241] *State ex rel. KCP & L Greater Missouri Operations Co. v. Missouri Pub. Serv. Comm'n*, 408 S.W.3d at 164-165.
[242] *State ex rel. Public Counsel v. Public Service Comm'n*, 274 S.W.3d 569, 586 (Mo. App. 2009).
[243] *Id.*; *State ex rel. Associated Natural Gas Company v. Public Service Commission of the State of Missouri,* 954 S.W.2d 520, 528 (Mo.App.1997); *In the Matter of Union Electric Company*, 27 Mo.P.S.C. (N.S.) 183, 193 (1985) (*quoting Anaheim, Riverside, etc. v. Federal Energy Regulatory Commission*, 669 F.2d 779, (D.C. Cir. 1981)).

Instead, the Commission will consider whether it is reasonable that KCPL shareholders cover a portion of KCPL's rate case expense. In one sense, rate case expense is like other common operational expenses that a utility must incur to provide utility services to customers. Since customers benefit from having just and reasonable rates, it is appropriate for customers to bear some portion of the utility's cost of prosecuting a rate case.

However, rate case expense is also different from most other types of utility operational expenses, in that 1) the rate case process is adversarial in nature, with the utility on one side and its customers on the other; 2) rate case expense produces some direct benefits to shareholders that are not shared with customers, such as seeking a higher return on equity; 3) requiring all rate case expense to be paid by ratepayers provides the utility with an inequitable financial advantage over other case participants; and 4) full reimbursement of all rate case expense does nothing to encourage reasonable levels of cost containment.

The Commission has the legal authority to apportion rate case expense between ratepayers and shareholders. Under Missouri law, the Commission must set just and reasonable rates[244], and rates that include all of the utility's rate case expense, for the reasons set forth above, may not be just or reasonable.[245] Moreover, this Commission has already found rate case expense sharing to be just and reasonable in at least one prior case. In a 1986 decision, *In the Matter of Arkansas Power and Light Company*, the Commission "adopted Public Counsel's proposed disallowance of one-half of rate case

[244] Section 393.130.1, RSMo, "…All charges made or demanded by any…electrical corporation … shall be just and reasonable and not more than allowed by law or by order or decision of the commission…"
[245] There are rate cases where the utility does not have the means to absorb a portion of rate case expense and requiring it to do so would ultimately harm customers. In such circumstances, it would appear just and reasonable that rates include the entire amount of rate case expense.

expense."[246] It is also important to note that there are a number of other cases where the Commission acknowledged it has this authority.[247]

KCPL argues that it would be unlawful for the Commission to adopt a new policy related to the recovery of rate case expense without conducting a rulemaking proceeding under Chapter 536, RSMo. The Commission agrees that it cannot prospectively change its statement of general applicability that implements, interprets or prescribes law or policy, or that describes the organization, procedure, or practice requirements before this agency.[248] Agencies cannot engage in this type of rulemaking by an adjudicated order.[249] However, the Commission is not announcing a general change in policy regarding rate case expense for all utilities in this Report and Order. Rather, the Commission is setting just and reasonable rates under the particular facts of this case, so the Commission is not engaging in improper rulemaking.

The evidence shows that the expenses in this case are driven primarily by issues raised by KCPL, which has complete control over the content and methodologies proposed when it files its rate cases. In this case, KCPL has requested three new trackers, two of which have never been requested before in Missouri. KCPL has also requested recovery in rates of the expenses from the Clean Charge Network, which is a type of expense that has never been raised in a rate case before this Commission. Each of these issues are unique to KCPL, and while KCPL always has the opportunity to pursue new and unique issues in a

[246] Report and Order, File No. ER-85-265, 28 Mo. P.S.C. (N.S.) 435, 447 (1986),
[247] See, *In the Matter of Kansas City Power & Light Company,* Report and Order, File Nos. EO-85-185 and EO-85-224, 28 Mo. P.S.C. (N.S.) 229, 263 (1986), and *in the Matter of Missouri Gas Energy,* Report and Order, File No. GR-2009-0355, 19 Mo. P.S.C. 3d 245, 303 (2010).
[248] Section 536.010(6) defines a rule as "each agency statement of general applicability that implements, interprets, or prescribes law or policy." In other words, a rule is "[a]n agency statement of policy or interpretation of law of future effect which acts on unnamed and unspecified persons or facts." *Missourians for Separation of Church and State v. Robertson,* 592 S.W.2d 825, 841 (Mo.App.1979). *HTH Companies, Inc. v. Missouri Dept. of Labor and Indus. Relations*, 157 S.W.3d 224, 228 -229 (Mo. App. 2004); *Greenbriar Hills Country Club v. Director of Revenue*, 47 S.W.3d 346, 357 (Mo. banc 2001).
[249] Greenbriar Hills Country Club v. Director of Revenue, 47 S.W.3d 346, 357 (Mo. banc 2001).

rate case, the decision to do so is entirely with KCPL's power. In addition, KCPL has pursued some issues that only directly benefit shareholders, such as the La Cygne accounting authority and, of course, a higher ROE. In recent rate cases, KCPL has incurred rate case expenses substantially higher than historical levels and higher than other utilities in Missouri.

The Commission finds that in order to set just and reasonable rates under the facts in this case, the Commission will require KCPL shareholders to cover a portion of KCPL's rate case expense. One method to encourage KCPL to limit its rate case expenditures would be to link KCPL's percentage recovery of rate case expense to the percentage of its rate increase request the Commission finds just and reasonable.[250] The Commission determines that this approach would directly link KCPL's recovery of rate case expense to both the reasonableness of its issue positions and the dollar value sought from customers in this rate case.[251]

The Commission concludes that KCPL should receive rate recovery of its rate case expenses in proportion to the amount of revenue requirement it is granted as a result of this Report and Order, compared to the amount of its revenue requirement rate increase originally requested. This amount should be normalized over three years. The Commission also finds that it is appropriate to require a full allocation to ratepayers of the expenses for KCPL's depreciation study, recovered over five years, because this study is required under Commission rules to be conducted every five years.

[250] This method can be expressed as: (Revenue Requirement Approved / Original Revenue Requirement Requested) X 100 = allowable percentage of rate case expense.

[251] It is understood that some of the issues litigated in this case do not directly affect the overall revenue requirement granted by the Commission; but it is also clear that the vast majority of the litigated issues do have a direct or indirect impact on the revenue requirement. Accordingly, percentage sharing is a reasonable approach to correlating recovery of rate case expense to the relationship between the amount of litigation that benefited both ratepayers and shareholders and that which benefited only shareholders.

H. Management audit

Findings of Fact

170. KCPL's Administrative & General ("A&G") costs from 2011 through 2013 were higher than three other utilities operating in this region. While the reasons for this are unknown, it may be due to a structural problem.[252]

171. Staff's analysis of KCPL's A&G expenses, which examined the peer group utilities that KCPL used to determine executive compensation, credibly demonstrated that KCPL has some of the highest A&G expenses of its national peers and Missouri utilities. Of the group examined, KCPL has the highest A&G costs per customer, per dollar of revenue, and compared to its operations and maintenance expense, and the third highest A&G expense per megawatt hour of electricity sold. [253]

172. A management audit focused on identifying and achieving efficiencies and cost reductions should benefit both KCPL's customers and shareholders.[254]

Conclusions of Law and Decision

MECG and MIEC witness Kollen has recommended that the Commission direct KCPL to undergo a management audit by an independent auditor to identify cost savings and efficiencies. The evidence showed that KCPL's A&G expenses are significantly higher than its peers, but that the cause for this discrepancy is unknown. The Commission finds that it would benefit both customers and shareholders to find efficiencies and reduce costs, so a management audit is a reasonable mechanism to accomplish this result. However, rather than charge the costs of such an audit to KCPL's customers or shareholders, such an audit could be performed by the Commission's Staff. The Commission will initiate a

[252] Ex. 500, Kollen Direct, p. 8-15.
[253] Ex. 226, Majors Surrebuttal, p. 40-54.
[254] Ex. 501, Kollen Surrebuttal, p. 12.

separate case after this case is concluded that directs the Commission's Staff[255] to audit KCPL's A&G expenses.

I. Clean Charge Network

Findings of Fact

173. On January 26, 2015, KCPL publicly announced that it had launched a joint initiative ("Clean Charge Network") with KCP&L Greater Operations Company to install and operate more than 1,000 electric vehicle charging stations throughout the greater Kansas City region. The charging stations would be capable of supporting more than 10,000 electric vehicles and upon completion would be the largest such utility-owned installation in the United States.[256]

174. During a two-year pilot period, the Clean Charge Network would offer free charging on every station to all electric vehicle drivers. Any electricity costs for charging station usage would be paid by partnering organizations during the pilot period.[257]

175. KCPL has initiated the Clean Charge Network to promote environmental sustainability, reduce carbon emissions, and help the Kansas City region attain EPA regional ozone standards.[258]

176. KCPL has requested that the charging stations placed in service in its Missouri service territory as of May 31, 2015, be included in rate base as a part of the revenue requirement for this case.[259] As of that date, KCPL has invested $732,559 in its Clean Charge Network in Missouri, but plans to invest a total of $7-8 million.[260]

[255] The Commission's Staff includes a unit that specializes in management services and that has conducted management audits of varying scope in the past at the Commission's discretion.
[256] Ex. 119, Ives Supplemental Direct, p. 1-2.
[257] *Id.* at p. 2.
[258] *Id.* at p. 3.
[259] *Id.* at p. 5.
[260] Transcript, Vol. 11, p. 567, 600.

177. KCPL developed the Clean Charge Network project without soliciting input from any of the parties to this case, including those parties representing customers who would bear the costs of the project if the Commission includes those costs in KCPL's revenue requirement.[261]

178. KCPL has not established any criteria by which it proposes to measure the success of the Clean Charge Network, and has not conducted studies concerning the five areas of alleged public benefit – beneficial electrification, environmental benefits, economic development, customer programs, and cost and efficiency benefits.[262]

179. Important program details relating to ratepayer subsidies, program goals, income distribution, public participation, tariffs, program design, scope of the investment, risk shifting, cost-benefit analysis, participating organizations, host sites, free electricity offerings, anti-competitive subsidies, and proper performance-based measures to determine effectiveness are all missing from KCPL's proposal and would be best addressed in a separate working case.[263]

180. A KCPL witness agreed that a working case would be a good place to address long-term policy issues relating to the Clean Charge Network, including potential impacts on both customers and the company.[264]

Conclusions of Law and Decision

KCPL's proposed Clean Charge Network is an important first step in creating an infrastructure to serve the increasing number of customers who choose to purchase electric vehicles, and the Commission commends KCPL for its efforts to anticipate this future demand and for its commitment to environmental sustainability. However, this issue was

[261] *Id.* at p. 626-27.
[262] *Id.* at p. 577-83.
[263] Ex. 304, Dismukes Rebuttal, p. 11-39.
[264] Transcript, Vol. 11, p. 577.

raised for the first time more than three months after KCPL first filed this case and without seeking input from this Commission or other parties to the case. The proposal currently lacks important information that is critical to designing and implementing a program unlike any other existing in the state. While the Commission believes that it would be beneficial to move forward with the Clean Charge Network, it is premature to require KCPL's customers to bear the costs of the program. The Commission concludes that KCPL has failed to meet its burden of proof to demonstrate that the charging stations placed in service in its Missouri service territory as of May 31, 2015, should be included in rate base as a part of the revenue requirement for this case, so that request will be denied. The Commission will establish a working case in order to address the legal and long-term policy issues relating to the Clean Charge Network.

J. Income tax issues

CWIP-related ADIT

Findings of Fact

181. Accumulated deferred income taxes ("ADIT") are assets or liabilities that represent the cumulative amounts of additional income taxes that are estimated to become receivable or payable in future periods. Future income taxes are impacted by tax returns filed today because of differences between book accounting and income tax accounting regarding the timing of revenue or expense recognition.[265]

182. Specific provisions within GAAP require recognition of income tax impacts from these book/tax timing differences, by recording ADIT assets or liabilities. ADIT assets generally occur when revenue taxation occurs prior to book recognition of the revenues or when the tax deductibility for expenses is subsequent to the book recognition of the

[265] Ex. 502, Brosch Direct-Revenue Requirement, p. 46.

expense. ADIT liabilities, on the other hand, represent delayed taxation of revenues or advance deduction of expenses, in relation to the timing of the same transactions on the books. ADIT balances exist to recognize that certain tax expenses are determinable today, but actually become payable in the future whenever book/tax timing differences ultimately reverse.[266]

183. From a ratemaking perspective, a utility's persistently large credit ADIT balances caused by the deferred payment of recorded tax expenses represent a significant source of capital to the utility. ADIT balances represent a form of zero-cost capital to the utility created by the income tax savings permitted under tax laws and regulations that are not immediately "flowed through" to ratepayers and would benefit only shareholders unless properly recognized as a rate base reduction. ADIT balances are normally included in rate base as reductions by regulators, so as to limit the utility to only a return on the net amount of investor-supplied capital to support rate base assets.[267]

184. KCPL records ADIT that is associated with Construction Work in Progress ("CWIP") reflected on its books and records. This ADIT represents a free source of capital funds available for use by the utility before the construction project is completed and included in plant-in-service. CWIP is excluded from the rate base on which KCPL earns a return in the ratemaking process. Although CWIP is not included in rate base, KCPL is allowed to earn an Allowance for Funds Used During Construction ("AFUDC") before the property under construction is added to rate base. AFUDC is accrued during the construction of the asset and included in rate base when the plant is placed into service. The amount of AFUDC is included in depreciation and rate base over the life of the plant. For the calculation of AFUDC, there is no consideration for ADIT as a reduction to the base

[266] *Id.* at p. 47.
[267] *Id.* at p. 48.

on which it is calculated; the AFUDC is calculated on the "gross" amount, with no consideration of ADIT.[268]

185. Because ADIT is not considered in the calculation of AFUDC, the benefit must be accounted for by an offset to rate base for ADIT associated with CWIP balances.[269]

186. KCPL ratepayers provide fully-normalized income taxes in the cost of service regardless of the actual amount paid to the IRS. Even if KCPL is not realizing all the benefits of accelerated depreciation due to a net operating loss position, it does not invalidate the fact that ratepayers are providing several million dollars in cash income taxes.[270]

Conclusions of Law and Decision

KCPL excluded the ADIT liability related to CWIP since the capital expenditures have not been included in rate base. KCPL argues that since CWIP cannot be included in rates in Missouri, KCPL's shareholders, not its customers, are paying the costs associated with plant under construction. KCPL states that it is unfair to include the ADIT offset to rate base when the CWIP itself may not be included.

The Commission considered this issue recently in another rate case. In reaching the conclusion that it is appropriate to reduce rate base for CWIP-related ADIT balances, that Commission stated that:

> CWIP related ADIT balances must be accounted for in rate base because AFUDC is applied to Ameren Missouri's gross investment in CWIP, with no recognition given to the CWIP-related ADIT amounts that serve to reduce the company's actual net capital requirements for CWIP… In other words, failure to recognize the CWIP-related ADIT balance in the company's rate base will overstate the companies AFUDC costs and future rate base, essentially

[268] Ex. 200, Staff Report-Revenue Requirement Cost of Service, p. 178.
[269] Ex. 226, Majors Surrebuttal, p. 64.
[270] Ex. 226, Majors Surrebuttal, p. 64-65.

allowing the company to earn AFUDC and a return on capital supplied by ratepayers.[271]

KCPL asserts that its situation is different than that of the utility at issue in File No. ER-2012-0166 because KCPL has a net operating loss and, as a consequence, KCPL has more deductions than it has revenues during the applicable period, so it has not and will not receive a cash tax benefit. However, KCPL ratepayers provide fully-normalized income taxes in cost of service regardless of whether KCPL pays those taxes concurrently to the IRS. Even if KCPL is not realizing all the benefits of accelerated depreciation due to a net operating loss position, it does not invalidate the fact that ratepayers are providing several million dollars in cash income taxes. The Commission concludes that the amount of ADIT related to CWIP should be an additional reduction to KCPL's rate base.

1KC Place lease ADIT

Findings of Fact

187. KCPL occupies leased office space in downtown Kansas City in a building known as 1 KC Place and has received certain lease abatement benefits in connection with its lease agreement. On its books, KCPL has recorded a significant liability balance to recognize the delayed obligation to make additional lease payments. In connection with this liability balance, a large and offsetting deferred tax asset was recorded to recognize that accrued but unpaid future lease costs are not currently deductible for income tax purposes. KCPL proposes to include in rate base the debit ADIT item to increase rate base, but not the corresponding accrued lease liability balance that would reduce rate base if recognized.[272]

[271] Report and Order, *In the Matter of Union Elec. Co., d/b/a Ameren Missouri's Tariff to Increase Its Annual Revenues for Elec. Serv.*, ER-2012-0166, 2012 WL 6643105 (Dec. 12, 2012).
[272] Ex. 502, Brosch Direct-Revenue Requirement, p. 55.

188. The accrued liability for the deferred rent payments on the 1KC Place lease has not been included in rate base, but this accrued liability is being amortized as a reduction to rent expense.[273]

189. This reduced rent expense is included in the cash voucher line within the expense lead day calculations of KCP&L's lead lag study. Although there has not been a separate lead lag computation on the 1KC Lease directly, the reduction in rent expense is included in the overall cash working capital computations and in the rent expense included in cost of service.[274]

Conclusions of Law and Decision

A proposed adjustment concerns the ADIT asset related to the 1KC Place lease. This ADIT increases rate base, unlike the ADIT related to CWIP. Because the deduction for the 1KC Place lease has not been taken on a tax return, but has been taken for financial and regulatory purposes, the ADIT asset represents tax benefits that the ratepayers have received in computing income tax expense but that KCPL has not received on its tax returns.

KCPL has not included the accrued liability for the deferred rent payments on the 1KC Place lease in rate base. This exclusion is appropriate because the accrued liability is being amortized monthly as a reduction to rent expense in cost of service. This reduced rent expense is also included in KCPL's lead lag computation of cash working capital. The Commission concludes that the impact of this liability has been included in the case, and the ADIT asset related to this liability should be included in rate base, so no adjustment should be made.

[273] Ex. 112, Hardesty Rebuttal, p. 6.
[274] *Id.* at p. 6-7.

Employee compensation ADIT

Findings of Fact

190. Certain elements of employee compensation are paid much later than they are earned, requiring the Company to recognize an accrued liability for such deferred compensation and bonus pay that is owed to its employees.[275]

191. The accrued liability for the employee compensation and bonus pay has not been included in rate base.[276]

192. This accrued liability is for two different items. One item is the ADIT asset for the deferred compensation, where certain executives have elected to defer the payout of a portion of their salary and incentive compensation to a future period. The second item is the ADIT asset for the incentive compensation (bonus pay) that is accrued during the year, but is not paid out in cash until March 15 of the following year. For both of these items, the salary and incentive compensation is included in cost of service expense and in the total payroll or cash voucher line on the lead day calculations of KCP&L's lead lag study. Although there has not been a separate lead lag computation on these liabilities directly, the salary and incentive compensation is included in the overall cash working capital computations and in the payroll expense included in cost of service.[277]

Conclusions of Law and Decision

The proposed adjustment to exclude the ADIT asset related to employee compensation and bonus pay from rate base would also decrease the revenue requirement. The proposed adjustment, which is similar to the proposal for the 1KC Place lease, is based on an argument that the liability for the accrued employee compensation

[275] Ex. 502, Brosch Direct-Revenue Requirement, p. 56.
[276] Ex. 112, Hardesty Rebuttal, p. 7.
[277] *Id.* at p. 6-7.

and bonus pay is not in rate base so the ADIT asset related to this tax timing difference should also be excluded. However, both deferred compensation and bonus pay are included in the overall cash working capital computations, and the payroll expense is included in cost of service. Therefore, since the impact of this liability has been included in this case, the Commission concludes that the ADIT asset related to this liability should be included in rate base and no adjustment should be made.

Net operating tax losses

Findings of Fact

193. KCPL files its taxes as part of a consolidated group, consisting of GPE and its affiliated companies. Consolidated filing benefits the entire group, but it is the nature of a consolidated filing that any given member may be better off in some years and worse off in other years as a result of consolidated filing.[278]

194. A net operating loss ("NOL") is created when, in any year, a taxpayer reports more deductions than it has taxable income. Under the generally applicable tax rules, an NOL can be carried back two years or forward 20 years. In the year in which it is carried to, an NOL is treated like an additional deduction, reducing the taxable income otherwise produced in that year. When an NOL must be carried forward, a portion of the deductions claimed by the taxpayer in the year that the NOL is created will not offset taxable income and not reduce the taxpayer's tax liability – thus, no cost-free capital was received for the amount of NOL that did not reduce the tax liability.[279]

195. In KCPL's rate case application, it reflected the impact of its NOL carryforward for tax purposes as an ADIT asset (a deferred tax asset) of approximately $37.8 million.

[278] Ex. 112, Hardesty Rebuttal, p. 9, 16.
[279] *Id.* at p. 11-12.

This had the effect of increasing rate base by that amount (by decreasing the overall ADIT balance which reduces rate base).[280]

196. KCPL reduces its rate base by its net ADIT liability balance (sum of deferred tax assets and deferred tax liabilities) as a result of timing differences between deductions for tax purposes and financial statement purposes. The net deferred tax liability is used to reduce rate base because it represents a source of cost-free capital (a reduction in the amount of cash paid for tax purposes) that KCPL has received as a consequence of claiming certain tax deductions. In a year that KCPL generates a net operating loss for tax purposes that is carried forward, the NOL carryforward reduces the amount of cost-free capital it received. Therefore, KCPL has reflected in its rate base computation the actual impact its NOL has had on the amount of cost-free capital it received using the method prescribed under the Internal Revenue Service regulations to allocate losses to companies within a consolidated group.[281]

197. KCPL computes the amount of NOLs allocated to each subsidiary based on when and how the NOLs are used by the consolidated group in accordance with the Tax Allocation Agreement Among Great Plains Energy Incorporated and Affiliates ("Tax Allocation Agreement"). The Tax Allocation Agreement was put in place to ensure that each subsidiary received benefit for all tax attributes when used by the consolidated group and to ensure that all subsidiaries paid any tax liabilities it incurred or got benefit for any tax credits or NOLs it generated, but only when incurred or used by the consolidated group. This method most accurately represents the economics and the cash flow that actually occurs when a consolidated return is filed.[282]

[280] *Id.* at p.8.
[281] *Id.* at p. 8-9.
[282] *Id.* at p. 16.

198. In its calculations, KCPL has used the actual amount of cost-free capital it actually received; it has used the amounts reflected on its financial records. These amounts reflect the actual cash that KCPL has received in connection with the claiming of its tax deductions.[283]

199. MECG proposes to reduce the NOL carryforward ADIT asset by computing the NOL amounts on a KCPL "stand-alone" basis instead of using the amounts computed under the Tax Allocation Agreement. This proposed adjustment would involve imputing an additional amount of cost-free capital equal to the additional amount that would have been received as of the end of the true-up period had KCPL filed in this stand-alone basis. This approach would produce more cost-free capital than KCPL actually received, thereby reducing the amount of deferred tax asset included in rate base.[284]

Conclusions of Law and Decision

MECG has proposed an adjustment that would reduce KCPL's rate base amount as a result of reducing the NOL carryforward ADIT asset by computing the NOL amounts on a KCPL "stand-alone" basis instead of using the amounts computed under the Tax Allocation Agreement. MECG suggests that the Commission's affiliate transaction rule may be used to justify a change in the way the NOL deferred tax assets are computed for KCPL. Commission Rule 4 CSR 240-20.015(2) states:

> (2) Standards.
> (A) A regulated electrical corporation shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated electrical corporation shall be deemed to provide a financial advantage to an affiliated entity if –

[283] *Id.* at p. 14
[284] *Id.*

1. It compensates an affiliated entity for good or services above the lesser of –
   A. The fair market price; or
   B. The fully distributed cost to the regulated electrical corporation to provide the goods or services for itself; or
2. It transfers information, assets, goods or services of any kind to an affiliated entity below the greater of –
   A. The fair market price; or
   B. The fully distributed cost to the regulated electrical corporation.

Section 4 CSR 240-20.015(1)(B) defines affiliate transaction as:

> B. Affiliate transaction means any transaction for the provision, purchase or sale of any information, asset, product or service, or portion of any product or service, between a regulated electrical corporation and an affiliated entity, …

The Commission has ruled on this issue in a recent case with a very similar fact situation. In that case, the Commission stated that "[t]he Commission's affiliate transaction rules do not apply in this situation because there is no transaction involved. The affiliate transaction rules are intended to control transfers of goods or services between regulated utilities and their affiliates… where there is no transaction, the restrictions of the rule have no meaning."[285] The Commission finds that the affiliate transaction rule does not apply to this situation.

In that prior case, where Ameren Missouri used the consolidated NOL as allocated to the utility under a tax allocation agreement between the subsidiaries of a consolidated group, the Commission stated that:

> Ameren Missouri proposes to use the NOLC [net operating loss carryforward] it has actually accumulated rather than a hypothetical NOLC proposed by MIEC and supported by Staff, MIEC advocates a policy that arrangements between affiliates should always be interpreted in a manner that benefits ratepayers, even if that results in a detriment to the utility. There is no basis in law or fact for such a policy. The Commission must balance the interests of ratepayers and shareholders to set just and reasonable rates. Ameren Missouri's position is fair and will be adopted.

[285] Report and Order, ER-2014-0258, *In the Matter of Union Elec. Co., d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Elec. Serv.*, 320 P.U.R.4th 330 (Apr. 29, 2015).

MECG attempts to distinguish the prior case by alleging that the Tax Allocation Agreement to which KCPL is obligated does not benefit KCPL or its ratepayers. Even if no benefits have accrued to KCPL in the recent past, that does not mean that KCPL and its ratepayers will not benefit in the future. There is no evidence in the record showing that KCPL has attempted to manipulate its tax obligations to take advantage of ratepayers, and the Commission will not question management decisions made by the company with regard to its tax filings under such a tax allocation agreement. The Commission concludes the proposed adjustment to the computation of ADIT assets related to net operating losses should be rejected.

K. Class cost of service, rate design, and tariff rules

1. **Class cost of service-production plant- What methodology should the Commission use to allocate fixed production plant costs among customer classes?**
2. **Rate design**
   a. **What methodology is most reasonable for allocating net cost of service among the customer classes in this case?**
   b. **How should any revenue increase be allocated among rate schedules?**
   c. **What, if any, interclass shift in revenue responsibilities should the Commission make?**

Findings of Fact

200. A class cost of service study is a method by which utility costs and revenues are reconciled across different customer classes. In general, utilities incur three categories of costs: 1) customer-related costs, which are costs associated with connecting customers to the distribution system, metering usage and other customer support functions; 2) energy-related costs, which are costs that tend to change with the amount of electricity sold; and 3) demand-related costs, which are costs associated with meeting maximum electricity demands.[286]

[286] Ex. 303, Dismukes Direct, p. 4-6.

201. KCPL has invested almost $8.7 billion in its various production, transmission and distribution facilities. Of this, over 63 percent is associated with KCPL's investment in its various methods of generating electricity. [287]

202. Separate class cost of service studies were provided by KCPL, Staff, OPC, MECG/MIEC, and the U.S. Department of Energy.[288]

203. The Commission benefits from the presentation of alternative class cost of service studies, but those study results should only be used as a guide.[289]

204. On June 16, 2015, some of the parties filed a *Non-Unanimous Stipulation and Agreement on Certain Issues* ("Rate Design Agreement"), which addressed issues relating to class cost of service, rate design, and tariffs. That Rate Design Agreement stated, in part, that:

> **Class Cost of Service, Production Plant:** The Signatories agree that the Commission should allocate any increase to revenue requirement resulting from this case as an equal percentage increase to all the classes. Given that an equal percent revenue allocation is consistent with some party recommendations contained on the record, the Signatories do not believe that the Commission needs to make specific findings as to the appropriate methodology for allocating production plant costs among the customer classes.
>
> **Rate Design:** The Signatories agree that the appropriate methodology, in this case, for most reasonably allocating net cost of service among the customer classes, for allocating revenue increase among rate schedules, and for interclass shifts in revenue responsibilities, should be an equal percentage increase to all customer classes.

The Rate Design Agreement is attached hereto as Attachment A and incorporated herein. KCPL objected to the Rate Design Agreement.

[287] Ex. 201, Staff Accounting Schedules, Schedule 2, p. 6-7.
[288] Ex. 135, Rush Rebuttal, p. 45.
[289] Ex. 220, S. Kliethermes Surrebuttal, p. 1.

Conclusions of Law and Decision

Based on the evidence in this case, the Commission finds that acceptance of the provisions of the Rate Design Agreement on these issues is a fair and reasonable resolution of these issues, since an equal percent revenue allocation is consistent with some party recommendations. The Commission adopts the provisions of the Rate Design Agreement stated above.

3. Residential customer charge- At what level should the Commission set KCPL's residential customer charge?

Findings of Fact

205. The residential customer charge is designed to include those costs necessary to make electric service available to the customer, regardless of the level of electric service utilized. Examples of such costs include monthly meter reading, billing, postage, customer accounting service expenses, a portion of costs associated with meter investment, and the service line.[290]

206. KCPL proposes to increase the customer charge for the residential class from $9.00 to $25.00, an increase of approximately 178 percent for those customers.[291]

207. KCPL's residential customer-related costs are $11.88 per month, which is based on the results of Staff's class cost of service study.[292]

208. KCPL requests that the Commission include as part of the customer charge additional costs for local facility equipment, which are costs for the secondary distribution system and line transformers.[293]

[290] Ex. 202, Staff Rate Design and Class Cost of Service Report, p. 34.
[291] Ex. 303, Dismukes Direct, p. 14.
[292] Ex. 247, Affidavit of R. Kliethermes to correct testimony.
[293] Ex. 135, Rush Rebuttal, p. 20-22.

209. KCPL's proposal to include local facility equipment costs in the residential customer charge is inconsistent with its own class cost of service study. That study defines local facility equipment as demand-related, and those types of costs are typically recovered through a demand charge for those customers that are demand-metered. However, residential customers are not demand-metered, so their demand-related costs are usually recovered through energy charges, not monthly customer charges.[294]

210. The signatory parties to the Rate Design Agreement recommended that the Commission decline to increase the current customer charge of $9.00 per month.

Conclusions of Law and Decision

Customer-related costs are generally recovered through the customer charge, which serves to prevent higher usage customers from subsidizing lower usage customers, sends all customers more accurate energy pricing signals, and provides more stable and predictable funding for utilities' fixed costs. Other costs are recovered through volumetric rates that vary with the amount of electricity used. Staff's class cost of service study determined that the costs related to residential customers are $11.88 per month. While KCPL requests that additional costs related to local facility equipment be included in the customer charge, the Commission finds that inclusion of those additional costs would be inappropriate because that request is inconsistent with KCPL's own class cost of service study.

Determining an appropriate customer charge is a question of rate design, not a question of the company's revenue requirement. Any increase in the company's customer charge should be accompanied by a decrease in volumetric rates so that, in theory, the company recovers the same amount of revenue. The Commission considers that an

[294] Ex. 305, Dismukes Surrebuttal, p. 8, See also, Ex. 218, R. Kliethermes Surrebuttal, p. 2-4.

important goal of rate design is to recover costs from those who cause the costs to be incurred. Therefore, the Commission concludes that the appropriate residential customer charge is $11.88 per month, based on Staff's cost of service study.

4. Residential energy charge- At what level should the Commission set KCPL's residential energy charges?

Findings of Fact

211. In KCPL's rate design proposal for the residential class, the company has made a number of adjustments, particularly to the winter rate block structures. In KCPL's last rate case, off-peak winter rate schedules were providing less than their cost of service. The Commission ordered that certain rates blocks within the class should be increased by an additional five percent.[295]

212. In this case, KCPL is proposing to decrease some of the very rates that the Commission previously ordered to increase. Because a class cost of service study shows that the off-peak winter rate schedules are providing a higher return than the on-peak summer rate schedules, decreasing the rates at this time may have unintended results.[296]

213. In the Rate Design Agreement, the signatory parties agreed that, "[w]ith regard to the residential energy charge, the Signatories agree that after accounting for the continuation of the existing customer charges, the residential energy charges will be increased by the same percentages to achieve required revenues."

Conclusions of Law and Decision

The Commission finds that KCPL's proposed adjustments regarding the residential energy charges are inappropriate due to possible unintended results. The Commission finds that acceptance of the provisions of the Rate Design Agreement on this issue is a fair

[295] Ex. 303, Dismukes Direct, p. 40.
[296] *Id.* at p. 41.

and reasonable resolution of the issue. Since the Commission has decided to increase the residential customer charge, that provision will need to be modified slightly. The Commission concludes that after accounting for the increase in the existing customer charges, the residential energy charges will be increased by the same percentages to achieve required revenues.

5. **Time of day – should the time of day rate be frozen from the addition of future customers (KCPL proposal) or should KCPL be required to file modified time of day tariff provisions in its next rate case?**
6. **Special rates-two-part time-of-use- Should the two-part time of use rate be eliminated from the addition of future customers (KCPL proposal) or should KCPL file a modified two-part time of use tariff provisions in its next rate case?**
7. **Real time pricing tariffs – should the real time pricing rate be frozen from the addition of future customers or should KCPL file modified real time pricing tariff provisions in its next rate case?**

Findings of Fact

214. KCPL proposes to freeze availability of the residential time-of-use rate because it only has 38 customers and does not perform as it should.[297] KCPL also proposes to freeze two special rates, the two-part time-of-use and real time pricing tariffs, because they are not used or no longer functional.[298]

215. KCPL opposes imposing a new time-of-use rate because it is beginning two projects that will fundamentally impact a time-of-use design, the AMI metering roll-out and the implementation of a new billing system. KCPL cannot commit to a schedule for a new time-of-use tariff because it needs more information about these new system projects and possible impacts to integrated resource planning and MEEIA programs.[299]

[297] Ex. 134, Rush Direct, p. 66.
[298] *Id.* at p. 59.
[299] Ex. 135, Rush Rebuttal, p. 61.

216. The Division of Energy proposes that two-part time-of-use and real time pricing tariffs remain available and that KCPL be required to submit revised tariffs and supporting documentation in its next rate case.[300]

217. In the Rate Design Agreement, the signatory parties agreed that:

> Regarding time of day rates, the Signatories agree that current residential and other special two-part time-of-day or real time pricing tariffs remain available, and the Signatories would request that the Commission order Kansas City Power & Light Company to complete a study regarding these issues within 2 years in which no party is obligated to support the findings of that study or any proposed tariff design as a result of that study.

Conclusions of Law and Decision

KCPL has requested that the Commission freeze the residential time-of-use rates, two-part time-of-use, and real time pricing tariffs in this proceeding and not require KCPL to file new tariffs in its next rate case. The Commission agrees that these rates should be frozen from the addition of future customers for the present time. However, it is clear that all of these rates need to be redesigned, and at least the time-of-use tariff is far too important in meeting the goals of MEEIA and providing customer choices for energy efficiency and bill savings to redesign at an unknown time in the future. The Commission concludes that KCPL should complete a study regarding all of these issues within two years of the effective date of this order.

8. Should the ResB rate structure be changed to make it consistent with ResA and ResC rate structures?

Findings of Fact

218. The residential class has three main sub-class rate classifications – general use (ResA), one meter general use and space heat (ResB), and two meter rate with general use on one meter and a separate meter for space heating (ResC).[301]

[300] Ex. Hyman Rebuttal, p. 32.

219. Staff has recommended a rate structure change to ResB to make it consistent with ResA and ResC rate structures, to which KCPL agrees.[302]

220. In the Rate Design Agreement, the signatory parties stated that "[t]he Signatories agree to allow modification to the structure of the ResB rate to add an intermediate block rate which will be set equal to the first block rate to make it consistent with the ResA and ResC rate structures."

Conclusions of Law and Decision

Based on the evidence in this case, the Commission finds that acceptance of the provisions of the Rate Design Agreement on this issue is a fair and reasonable resolution of the issue. The Commission adopts the provisions of the Rate Design Agreement stated above.

9. Commercial and industrial –
- **a. SG, MG, LP and LGS energy charges – at what level should the Commission set KCPL's SG, MG, LP and LGS energy charges?**
- **b. SG, MG, LP and LGS separate meter space heating energy charges and the first energy block rate for the winter rates – at what level should these energy charges be set?**
- **c. Should the Commission adopt MIEC/MECG's rate design proposal for the LGS and LP rate classes, or some a variant of it?**

Findings of Fact

221. KCPL's Large General Service ("LGS") and Large Power Service ("LP") tariffs consist of a series of charges differentiated by voltage level. There are separate charges for service at secondary voltage, service at primary voltage, service at substation voltage, and service at transmission voltage. The rates charged at the higher voltage levels are

[301] Ex. 202, Staff Rate Design and Class Cost of Service Report, p. 3.
[302] *Id.*

lower than the rates charged at the lower voltage levels in order to recognize differences in cost of service.[303]

222. In KCPL's LGS and LP rate schedules, the specific energy charges to be applied to a particular customer's usage decrease as the customer's load factor increases. Energy usage is charged in a sequential manner, so that energy is first billed at the initial 180 hour energy block; any usage in excess of this is billed at the second 180 hour energy block; and any remaining usage is billed at the tail block rate. In order to receive the benefit of the lower energy charges in the second energy block and the tail block, customers must first fill the preceding blocks and pay for energy at the associated higher energy rate.[304]

223. These tariffs collect revenue through, among others, a demand and energy charge, but KCPL is currently collecting a large portion of its fixed costs through LGS and LP energy charges, rather than just collecting its variable costs.[305]

224. In the Rate Design Agreement, the signatory parties agreed as follows:

> Except as provided in the following paragraph, as rate design relates to Commercial and Industrial classes the Signatories agree with the following as it relates to section B(e)(1)-(3) and section (B)(f)(1) and (3) in the *Issues List*: the following rate components of each class be increased across-the-board for each class on an equal percentage basis after:
> • Increasing the first winter energy block rate of the frozen All-Electric Service rate schedules for the SGS, MGS, and LGS rate classes increasing by an additional 5%;
> • Changing the winter second and third SGS all electric block rates to match the winter second and third general service SGS block rates.
>
> As explained in the pre-filed Direct Cost of Service and Rate Design testimony of Maurice Brubaker, at pages 32-33, the general service LGS and LP second block energy rates shall receive 75% of the applicable class percentage increases and there shall be no increase to the tail blocks of the general service LGS and LP energy rates. Any remaining increase in revenue requirement for these classes shall be collected through an equal percentage increase in the customer, demand and first energy blocks.

[303] Ex. 554, Brubaker Direct-Rate Design, p. 28.
[304] *Id.* at p. 29.
[305] *Id.* at p. 30-31.

Conclusions of Law and Decision

Based on the evidence in this case, the Commission finds that acceptance of the provisions of the Rate Design Agreement on these issues is a fair and reasonable resolution of the issues. The Commission adopts the provisions of the Rate Design Agreement stated in paragraph 225 above.

10. Special interruptible – should the special interruptible rate be frozen from the addition of future customers?

Findings of Fact

225. KCPL has proposed to freeze or eliminate the special interruptible rate.[306]

226. In the Rate Design Agreement, the signatory parties state that "[t]he Signatories do not oppose Kansas City Power & Light Company's request to eliminate the special interruptible rate."

Conclusions of Law and Decision

Based on the evidence in this case, the Commission finds that acceptance of the provisions of the Rate Design Agreement on this issue is a fair and reasonable resolution of the issue. The Commission adopts the provisions of the Rate Design Agreement stated above, and the special interruptible rate is eliminated.

11. Tariff rules and regulations- Should the return check charge be applied to payment forms beyond checks (electronic payments)?

Findings of Fact

227. KCPL has a large number of customers who no longer use paper checks for payment, but instead use electronic payment methods.[307]

228. KCPL has proposed to revise its tariff to extend the return payment charge to all forms of payment received by the company in the event of insufficient funds.[308]

[306] Ex. 134, Rush Direct, p. 59.
[307] Ex. 135, Rush Rebuttal, p. 63.

229. Staff supports KCPL's proposal[309], and no other party has provided testimony or evidence on this issue.

Conclusions of Law and Decision

KCPL's request to extend the return payment charge to all forms of payment received by the company in the event of insufficient funds is reasonable. The Commission concludes that KCPL's tariff should be revised such that the return check charge shall be applied to payment forms beyond checks.

12. Tariff rules and regulations- Should the collection charge be increased to reflect the cost of this service?

Findings of Fact

230. KCPL has proposed to revise its tariff to increase the collection charge from $25 to $30 for in-field payments to reflect the cost of the service and to make the charge consistent with the current GMO collection charge.[310]

231. Staff supports KCPL's proposal[311], and no other party has provided testimony or evidence on this issue.

Conclusions of Law and Decision

KCPL requests to increase the collection charge for in-field payments. KCPL argues that this increase is to reflect the cost of the service and to make the charge consistent with the current GMO collection charge. The Commission concludes that KCPL has not adequately explained the need for this increased charge, and so has failed to meet its burden of proof to demonstrate that the increase is necessary. The Commission denies the request to increase the collection charge, and it will remain at $25.00.

---

[308] *Id.*
[309] Ex. 233, Murray Surrebuttal, p. 2.
[310] Ex. 135, Rush Rebuttal, p. 63.
[311] Ex. 233, Murray Surrebuttal, p. 2.

13. Economic development rider/urban core development rider – Should the Commission approve the Division of Energy's proposal to link MEEIA participation to receipt of EDR and UCD incentives?

Findings of Fact

232. KCPL's economic development rider ("EDR") is designed to encourage industrial and commercial business development in Missouri and retain existing load where possible. The urban core development rider ("UCD") has the purpose of encouraging industrial and commercial business development within a specific section of KCPL's service territory.[312] Only four KCPL customers participate in the EDR rider.[313]

233. Division of Energy proposes that KCPL's EDR and UCD riders be changed to require that customers participate in applicable MEEIA programs to be eligible for taking service under the special EDR and UCD rates.[314] The Division of Energy altered its proposal to make it easier for customers to opt-out of MEEIA programs and still receive the special EDR and UCD rates.[315]

234. The EDR was re-designed in October 2013 to make the rider more functional for customers.[316]

235. The Division of Energy's proposal would be nearly impossible to administer because the proposal requires participation in all cost-effective energy efficiency programs.[317]

Conclusions of Law and Decision

The Division of Energy recommends that the Commission require KCPL to link MEEIA participation with the receipt of EDR and UCD incentives. The MEEIA statute,

[312] Ex. 354, Lohraff Direct, p. 8-9.
[313] Ex. 555, Brubaker Rebuttal, p. 23.
[314] *Id.* at p. 4.
[315] Ex. 355, Lohraff Surrebuttal, p. 5.
[316] Ex. 136, Rush Surrebuttal, p. 30.
[317] Ex. 135, Rush Rebuttal, p. 65.

Section 393.1075.7, RSMo, allows certain large users of electricity to opt out of participation in MEEIA programs, and the Division of Energy has amended its proposal to make it easier for such customers to opt-out and still receive EDR and UCD rates. However, the evidence showed that this proposal would be difficult for KCPL to administer. The EDR and UCD programs do not have high participation at this time, and adding further restrictions to this recently re-designed program would be counter-productive. In a recent Ameren Missouri rate case, File No. ER-2014-0258, this Commission rejected a very similar proposal and instead decided to establish a collaborative to examine this issue more closely. The Commission concludes that this proposal should be rejected, as well.

14. Should KCPL be required to establish a working group to review its Standby Service Tariff to ensure that rates are cost-based and reflect best practices?

Findings of Fact

236. Properly designed standby rates can facilitate efficiency gains, energy independence and demand-side management opportunities associated with combined heat and power ("CHP") technologies. Standby rates are a key factor in determining the cost-effectiveness of such CHP projects.[318]

237. KCPL has a standby rate tariff, which went into effect in 1997 and was revised in 2013.[319]

238. Standby rate tariffs for The Empire District Electric Company and Ameren Missouri are currently under review by stakeholders.[320]

239. In the Rate Design Agreement, the signatory parties agreed that "a working group should be formed to review KCP&L's Standby Service Tariff for the purposes of 1) ensuring that the design of standby rates and the terms and conditions of service are

[318] Ex. 354, Lohraff Direct, p. 12.
[319] *Id.*
[320] *Id.*

consistent with best practices and 2) to develop recommendations on cost-based rate levels. Signatories request that the Commission order KCP&L to file a new Standby Service Tariff in its next general rate case."

Conclusions of Law and Decision

While the standby rate is important for CHP projects, there has been no adequate showing that the existing KCPL tariff is deficient. The Commission finds it is not mandatory that KCPL to file a new standby rate tariff in its next general rate case. The Commission will not adopt the provision above in the Rate Design Agreement. However, since the standby rate tariffs of other electric utilities are currently under review, the Commission concludes that KCPL should complete a study regarding this issue within two years of the effective date of this order.

L. Revenues

Findings of Fact

240. In Section K, subsection 9 above, the Commission adopted provisions of the Rate Design Agreement regarding rate design for the LGS and LP classes for commercial and industrial customers. This provision recovers the bulk of the LGS and LP class revenue increase from this case through the second block energy rates for those classes, but has no increase for the third block energy rates.

241. This provision creates the potential for some customers to benefit from switching to a different and more advantageous rate schedule.[321]

242. KCPL should have the opportunity to earn its revenue requirement when customers are switching rates schedules due to rate design shifts.[322]

[321] Ex. 238, Scheperle Rebuttal, p. 14; Transcript, Vol. 10, p. 447-48.
[322] *Id.*

243. Staff estimated that an adjustment of no more than $250,000 should be made for possible LGS customers switching rates.[323]

244. KCPL estimated that the company could lose revenues of approximately $590,000 due to rate switching from the rate design provision in the Rate Design Agreement. KCPL's estimate is more credible than the Staff estimate because KCPL looked at all commercial and industrial customers who may switch rates, while Staff only looked at the Large Power Class.[324]

245. On August 3, 2015, Staff and KCPL filed a *Non-Unanimous Stipulation and Agreement Regarding Class Kilowatt-Hours, Revenues and Billing Determinants, and Rate Switcher Revenue Adjustments* ("True-Up Agreement"), which attempted to 1) resolve all issues relating to weather normalization, rate revenues, and the resulting class billing determinants used in developing rates for all rate classes, and 2) assign a revenue shortfall of $500,000 for rate switchers in the LGS and LP rate classes in order to account for any of those customers migrating to a different rate schedule to receive more advantageous pricing as a result of the Rate Design Agreement. Since OPC objected to the True-Up Agreement, it is a joint position statement, but Staff and KCPL urge the Commission to adopt its terms. OPC only objected to the provision relating to rate switching. The True-up Agreement is attached hereto as Attachment B and incorporated herein by reference.

Conclusions of Law and Decision

KCPL's estimate was that it would lose revenues of approximately $590,000 if certain customers switched to a rate with more advantageous pricing. The True-Up Agreement proposed an adjustment of $500,000 to account for rate switching customers which is a more reasonable estimate, as not all customers would be likely to switch rates at

[323] Ex. 253, R. Kliethermes True-Up Direct, p. 5.
[324] Ex. 167, Rush True-Up Rebuttal, p. 2-3.

the same time. Based on the evidence in this case, the Commission finds that acceptance of all the provisions of the True-Up Agreement on the issues contained therein is a fair and reasonable resolution of those issues. The Commission adopts the provisions of the True-Up Agreement in their entirety as stated in Attachment A to this Report and Order.

M. Low income weatherization

Findings of Fact

246. The Commission has authorized KCPL to participate in a program to weatherize homes of low-income residents called the Income Eligible Weatherization Program ("Program"). KCPL operates the Program independently of a similar federal weatherization program and provides funding to community action agencies that deliver such services within KCPL's service territory.[325]

247. In Missouri, only KCPL and GMO operate their weatherization programs under the Missouri Energy Efficiency Investment Act ("MEEIA"). Other regulated electric utilities fund their weatherization services through customer contributions in base rates. Base rate recovery is preferable to recovery through MEEIA because regulated electric utilities offer MEEIA on a voluntary basis, and there is no guarantee that weatherization programs will be offered if a utility does not participate in MEEIA.[326]

248. Ninety-nine percent of MEEIA weatherization funds go to single-family homes. Funding the Program through KCPL's base rates would allow Program funds to be made available to multi-family homes.[327]

[325] Ex. 350, Buchanan Direct, p. 9.
[326] *Id.* at p. 10-11.
[327] Transcript, Vol. 20, p. 1970-71.

249. Before collecting Program funds through MEEIA, KCPL collected Program funds through base rates. KCPL presently has a surplus of Program funds previously collected through base rates.[328]

Conclusions of Law and Decision

Since the Program is an important service that benefits low-income residents, the Commission considers continuity of the Program to be a valuable goal. To avoid any continuity problems in the future, the Commission finds that collecting Program funds through base rates to be preferable. This will also provide for consistency across the state, as most other regulated electric utilities collect weatherization funds through base rates. The Commission concludes that KCPL should resume recovery of low-income weatherization program costs in base rates following the conclusion of KCPL's MEEIA Cycle 1 and cease recovery of these costs in future MEEIA applications. With regard to any surplus Program funds recovered previously through base rates, the unexpended low-income weatherization program funds collected through KCPL's base rates should be used to offset any expenditures relating to the Program.

N. Economic Relief Pilot Program

Findings of Fact

250. KCPL originally established the Economic Relief Pilot Program ("ERPP") to deliver energy affordability benefits to KCPL's qualifying low-income customers. The ERPP currently provides up to $50 in bill credit for up to 1,000 participants. One half of the funding for the ERPP comes from shareholders and the other half from ratepayers. Between

[328] Ex. 200, Staff Report-Revenue Requirement Cost of Service, p. 138-39.

January 2013 and September 2014, the average number of monthly participants was approximately 949, and 20,355 customer bills received an ERPP credit.[329]

251. In this case, KCPL proposes to double the amount of ERPP funding to $630,000 for shareholders and $630,000 for ratepayers. KCPL is also proposing to raise the current limit of participants to 1,500 and increase the available monthly bill credit to $65.[330]

252. Currently any unused ERPP funds are to be used to offset demand-side management programs. KCPL recently received approval to offer its demand-side management programs under MEEIA, so KCPL proposes to direct any future unused ERPP funds to its Dollar-Aide program, which helps families pay heating, cooling and water bills during difficult financial times.[331] Staff recommends that any unspent funds be made available for future ERPP expenditures.[332]

253. The current ERPP tariff makes the program available to customers with an annual household income no greater than 185 percent of the Federal Poverty Level. Due to the Federal Poverty Level increasing in 2009, Staff recommends that KCPL change the eligibility requirement to 200 percent of the Federal Poverty Level.[333]

254. KCPL does not oppose Staff's recommendations to expand the eligibility requirements and make unspent ERPP funds available for future ERPP expenditures.[334]

Conclusions of Law and Decision

The ERPP is an important and valuable program to assist low-income customers with bill affordability. KCPL should be commended for establishing this program and

[329] Ex. 134, Rush Direct, p. 42-43.
[330] *Id.*
[331] *Id.* at p. 44.
[332] Ex. 200, Staff Report- Revenue Requirement Cost of Service, p. 138.
[333] Ex. 200, Staff Report- Revenue Requirement Cost of Service, p. 137.
[334] Ex. 135, Rush Rebuttal, p. 6.

recommending that it be expanded. The Commission concludes that the ERPP should be expanded as proposed by KCPL by doubling the funding, increasing the number of participants, and increasing the available bill credit. The eligibility requirements should be changed to 200 percent of the Federal Poverty Level, and any unspent ERPP funds should be made available for future ERPP expenditures to ensure these funds are used as they were intended and not for some other purpose.

O. True-up issues

Findings of Fact

255. KCPL has proposed two adjustments to its revenue requirement for events that occur outside of the true-up period in this case: 1) KCPL has proposed to remove two capacity agreements that expire on September 30, 2015; and 2) KCPL has included the potential cost increases for transmission expenses from Independence Power & Light's membership in SPP.[335]

256. In this case, the true-up period ended on May 31, 2015. A true-up is used to include the impacts of known and measurable material events that occur after the update period and that are much closer to when rates are going to be in effect to be reflected in the determination of rates.[336] The term "known and measurable" relates to items or events affecting a utility's cost of service that must have been realized (known) and must be calculable with a high degree of accuracy (measurable).[337]

257. On April 13, 2015, SPP filed with the FERC, on behalf of the City of Independence, Missouri, revisions to its Open Access Transmission Tariff to implement the annual transmission revenue requirement for Independence Power & Light ("IPL") to be

[335] Ex. 251, Featherstone True-Up Rebuttal, p. 3.
[336] *Id.* at p. 5, 7.
[337] Ex. 256, Lyons True-Up Rebuttal, p. 11.

included in KCPL's transmission pricing zone. On June 12, 2015, FERC approved those tariff revisions, subject to refund, with an effective date of June 1, 2015.[338]

258. FERC has not yet determined if SPP's tariff will result in just and reasonable rates, which further decision is subject to additional hearing and settlement procedures.[339]

259. KCPL has protested the FERC decision and continues to argue in the ongoing FERC proceeding that it should not be required to pay any increased net transmission expenses resulting from IPL's membership in SPP. KCPL intends to challenge the assignment of IPL's costs to KCPL up to and including a final non-reviewable FERC order.[340]

260. KCPL has made estimates of the impact of this FERC decision on its transmission revenues and expenses, but KCPL has not received an invoice from SPP with specific costs related to the addition of IPL in KCPL's SPP pricing zone and does not expect to receive such an invoice until at least September 2015.[341]

261. KCPL has two capacity sales agreements with the Kansas Municipal Energy Agency ("KMEA") that will expire on September 30, 2015. By these agreements, KCPL agreed to provide energy service to KMEA on a firm capacity basis.[342]

262. The net impact on KCPL's cost of service from these two contracts is $1.453 million (total company basis).[343]

Conclusions of Law and Decision

KCPL has proposed that the Commission should include in its revenue requirement costs incurred from IPL's membership in SPP and exclude revenues from KCPL's

[338] *Id.* at p. 6.
[339] *Id.*
[340] Ex. 164, Ives True-Up Rebuttal, p. 8, 10.
[341] Ex. 256, Lyons True-Up Rebuttal, p.7; Transcript, Vol. 21, p. 2030-31.
[342] Ex. 251, Featherstone True-Up Rebuttal, p. 12.
[343] Ex. 163, Crawford True-Up Rebuttal, p. 7.

agreements with the KMEA. For such true-up adjustments, those costs and revenues must be known and measurable. The IPL costs imposed on KCPL are not yet known and measurable because KCPL is continuing to fight those costs in FERC's ongoing proceedings, and FERC has not yet provided KCPL with an invoice that specifies any cost increases. The revenues that KCPL will lose at the expiration of the KMEA contracts on September 30, 2015, are known and measurable because as of May 31, 2015 it was known that the contracts will expire on September 30, and the amount of revenues lost is measurable with accuracy. The Commission concludes that any increased costs KCPL may incur related to IPL's membership in SPP should be excluded from the revenue requirement and that the revenues from the expiration of the KMEA contracts should also be excluded.

Decision Summary

In making this decision as described above, the Commission has considered the positions and arguments of all of the parties. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the material was not dispositive of this decision.

Additionally, KCPL provides safe and adequate service, and the Commission concludes, based upon its independent review of the whole record, that the rates approved as a result of this order support the provision of safe and adequate service. The revenue increase approved by the Commission is no more than what is sufficient to keep KCPL's utility plants in proper repair for effective public service and provide to KCPL's investors an opportunity to earn a reasonable return upon funds invested.

By statute, orders of the Commission become effective in thirty days, unless the Commission establishes a different effective date.[344] In order that this case can proceed expeditiously, the Commission will make this order effective on September 15, 2015.

THE COMMISSION ORDERS THAT:

1. The Motion to Strike Pleadings, Reject Tariff Sheets, and Strike Testimony filed by Missouri Industrial Energy Consumers and the Office of the Public Counsel on June 10, 2015, is denied.

2. The tariff sheets submitted on October 30, 2014, by Kansas City Power & Company, assigned Tariff Nos. YE-2015-0194 and YE-2015-0195, are rejected.

3. Kansas City Power & Light Company is authorized to file tariff sheets sufficient to recover revenues approved in compliance with this order. Kansas City Power & Light Company shall file its compliance tariff sheets no later than September 8, 2015.

4. Kansas City Power & Light Company shall file the information required by Section 393.275.1, RSMo 2000, and Commission Rule 4 CSR 240-10.060 no later than September 8, 2015.

5. The Staff of the Missouri Public Service Commission shall file its recommendation concerning approval of Kansas City Power & Light Company's compliance tariff sheets no later than September 14, 2015.

6. Any other party wishing to respond or comment regarding Kansas City Power & Light Company's compliance tariff sheets shall file the response or comment no later than September 14, 2015.

[344] Section 386.490.3, RSMo.

7. The *Non-Unanimous Stipulation and Agreement on Certain Issues* filed by some of the parties on June 16, 2015, is attached hereto as Attachment A and incorporated herein by reference.

8. Staff and Kansas City Power & Light Company's *Non-Unanimous Stipulation and Agreement Regarding Class Kilowatt-Hours, Revenues and Billing Determinants, and Rate Switcher Revenue Adjustments* filed on August 3, 2015, is attached hereto as Attachment B and incorporated herein by reference.

9. This Report and Order shall become effective on September 15, 2015, except that Ordered Paragraphs 3, 4, 5 and 6 shall become effective upon issuance.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney, and Rupp, CC., concur and certify compliance with the provisions of Section 536.080, RSMo.
Coleman, C., abstains.

Dated at Jefferson City, Missouri, on this 2nd day of September, 2015

In The Matter of the Revised Tariff Sheets for the Laclede Gas and Missouri Gas Energy Operating Units of Laclede Gas Company	)))	**File No. GT-2016-0026**

ORDER DENYING STAFF'S MOTION TO REJECT TARIFFS

RATES.

§69. Approval or rejection by the Commission. On the filing of a tariff that changes the rates a public utility may charge, the Commission must consider all factors relevant to that charge-not just the upward pressure that the public utility cites in seeking a rate increase, but downward pressures and other matters affecting a just and reasonable charge. Not so with a tariff to change terms and conditions of service.

§71. Suspension. On the filing of a tariff that changes the rates a public utility may charge, the Commission must consider all factors relevant to that charge-not just the upward pressure that the public utility cites in seeking a rate increase, but downward pressures and other matters affecting a just and reasonable charge. Not so with a tariff to change terms and conditions of service.

§77. Billing methods and practices. On the filing of a tariff that changes the rates a public utility may charge, the Commission must consider all factors relevant to that charge—not just the upward pressure that the public utility cites in seeking a rate increase, but downward pressures and other matters affecting a just and reasonable charge. Not so with a tariff to change terms and conditions of service.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its Office in Jefferson City on the 2nd day of September, 2015.

In The Matter of the Revised Tariff Sheets for the Laclede Gas and Missouri Gas Energy Operating Units of Laclede Gas Company	)))	**File No. GT-2016-0026**

ORDER DENYING STAFF'S MOTION TO REJECT TARIFFS

Issue Date: September 2, 2015 Effective Date: September 12, 2015

On August 5, 2015, Staff filed a motion asking the Commission to reject three tariff filings made by Laclede Gas Company. Laclede filed the tariffs on July 21 and they carry a September 8 effective date. Staff's motion explained the tariffs would change budget billing procedures, bill estimating procedures and line extension provisions for the company's Laclede and MGE operating units. Staff contended those changes can only be made as part of a general rate case where all relevant factors affecting billing can be examined. Staff's motion also indicated it had not yet completed a technical review of the tariffs to determine whether they are objectionable on some basis in addition to Staff's legal argument that they can only be implemented within a general rate case.

In response to Staff's motion, the Commission directed Laclede to respond to Staff's motion by August 13. Any other party wishing to respond was directed to do so by August 13. Laclede filed its response on August 12. No other party responded.

Following the Commission's discussion of Staff's motion at its August 19 agenda meeting, the Commission ordered Staff to complete its technical review of the tariffs and to report its findings. Staff was also directed to reply to the legal arguments Laclede made in its August 12 response.

Staff filed its reply on August 24.[1] That reply includes a memorandum prepared by Staff's Energy Department indicating that Staff has performed its technical review of the proposed tariffs. Staff reports the proposed tariffs do not conflict with any Commission rule other than Staff's legal argument that the tariffs can only be changed as part of a general rate case. As a result, Staff's legal argument is the only matter before the Commission.

The Legal Argument

Staff acknowledges the Commission has discretion to allow a tariff to go into effect by operation of law without holding a hearing, but contends the Commission must first consider all relevant factors. Thus, Staff contends, Laclede's tariffs that affect its terms and conditions of service can only be considered in the context of a general rate case where all relevant factors can be considered.

Laclede explains it has two purposes in proposing the revised tariffs. The first is to align the budget billing, bill estimating, and main extension processes and practices of its Laclede and MGE operating units.[2] The second is to bring the tariffs of both units in line with the changes made to the Commission's Chapter 13 billing rules in 2014.

[1] Laclede filed a response to Staff's reply on August 25 and Staff replied to Laclede's response later that day. Both pleadings merely reiterated earlier arguments.
[2] Laclede Gas Company recently acquired the former Missouri Gas Energy company in a transaction approved by the Commission in File No. GM-2013-0254.

Laclede indicates none of the tariff changes will increase the rates or charges paid by any customer of either operating unit.

Laclede rejects Staff's single-issue ratemaking argument, contending the Commission has routinely approved similar tariff changes for Laclede and other companies, frequently with Staff's approval, without being concerned about a single-issue ratemaking argument. Laclede points to Section 393.150, RSMo, 2000, as giving the Commission authority to consider these tariff changes outside the confines of a general rate case. Laclede further argues that the changes it is proposing in these tariffs do not fall within the applicable prohibition against single-issue ratemaking established by the courts because these tariff changes are not changing the amounts a customer will pay for gas service. Finally, Laclede contends that if Staff's argument is accepted, no utility could change any of its terms of service without filing a general rate case, a position that was rejected by the Court of Appeals in a 2006 decision upholding the Commission decision to amend its Cold Weather Rule.[3]

Laclede also explains there is an urgent need to allow its tariff revisions to go into effect quickly. As part of its efforts to consolidate its Laclede and MGE operating units, Laclede is planning to convert MGE from its old customer service system to the newer Customer Care and Billing system that has been used by Laclede since 2013. That conversion will be simpler and less expensive if the customer service provisions of MGE and Laclede are made consistent with each other through the proposed tariff revisions. Laclede wants to make that conversion over the Labor Day weekend, but will be unable to do so if its tariffs are rejected or suspended. Laclede says that if the conversion is

[3] *State ex rel. Missouri Gas Energy v. Public Serv. Com'n*, 210 S.W. 3d 330, 334 (Mo. App. W.D. 2006).

delayed, it may be unable to complete the conversion before the start of the winter heating season, and the delay could require it to run duplicative customer service systems at an additional cost to ratepayers.

Decision

Staff contends the Commission has three options when reviewing a tariff submitted by a utility: 1) it can take no action and allow the tariff to take effect by its terms, 2) it can suspend the tariff and conduct a contested case hearing to determine the propriety of the tariff, or 3) it can summarily reject the tariff if the tariff can only be approved after a consideration of all relevant factors that can only occur in a general rate case. The first two options are clearly implied in section 393.150.1, RSMo 2000, which authorizes, but does not require, the Commission to suspend and conduct a hearing to consider a tariff filed by a utility. Staff derives its third option by reference to case law that indicates the Commission must consider all relevant factors when deciding whether to suspend a tariff or allow it to go into effect.[4] However, Staff's insistence on the need for consideration within a full rate case incorrectly assumes that consideration of all relevant factors affecting these tariffs can only take place within a rate case.

The tariffs in question do not change the amount Laclede and MGE can charge their customers for natural gas service, but they would change the terms and conditions by which the companies offer that gas service to their customers. Staff claims that

[4] Staff cites *State ex rel. Utility Consumers Council of Missouri, Inc. v. Pub. Serv. Com'n*, 585 S.W.2d 41 (Mo. banc 1979), and *State ex rel. Laclede Gas Co v. Pub. Serv. Com'n,* 535 S.W.2d 561 (Mo. App. 1976) for that proposition.

those changes will affect "how much is billed, when and to whom" and contends that is sufficient to require review of the tariffs through the rate case process. Staff is incorrect.

In examining this very question, the Missouri Court of Appeals has accepted the difference between tariff changes that affect the amounts charged to customers and tariff changes that only affect the terms and conditions of service. In 2006, several utilities challenged the Commission's promulgation of an emergency cold weather rule that significantly expanded the impact of that rule. One of the arguments the utilities made against the rule was that the changes made by the emergency cold weather rule revision affected the utilities rates and could only be made through the rate case process. In rejecting that argument, the Court of Appeals stated

> [t]he ECWR [emergency cold weather rule] does not affect how much the utility may charge for its services, but only how much of that total amount owed by a customer the utility is allowed to collect in order to prevent disconnection or allow reconnection of gas services during the three-month winter window.[5]

On that basis, the court found that including the cold weather rule in the Utilities' tariffs does not make it a rate whose adjustment would require contested case procedures.

Tariffs that change terms and conditions of service are different than tariffs that change the rates charged by the utility. As a result, the relevant factors to consider regarding those tariffs are also different, and do not fall within the prohibited practice of single-issue ratemaking. The reason single-issue ratemaking is prohibited is a concern that in setting rates based on a change in a single cost, the Commission could be overlooking other costs that have changed in a different direction, leading to rates that do not reflect the utility's true cost of service. Since Laclede's tariffs do not change the

[5] *State ex rel. Mo Gas Energy v. Pub. Serv. Com'n*, 210 S.W.3d 330, 334 (Mo. App. W.D. 2006).

rates charged by the utility, concerns about single-issue ratemaking are misplaced, and the utility's cost of service is not a relevant factor the Commission must consider when deciding whether to suspend or reject these tariffs.

In evaluating these tariffs, the Commission has considered that allowing Laclede to apply consistent customer service practices and standards to its Laclede and MGE divisions is an appropriate goal and will likely result in cost savings to the utility's customers. Most importantly, the Commission has considered that Staff's review indicates the tariffs do not conflict with any Commission regulation, aside from Staff's concern that the rules can only be changed in the context of a rate case. The Commission finds that these, not the utility's cost of service, are the relevant factors. Based on its review of those factors, the Commission finds that Staff's motion to reject tariff sheets should be denied.[6]

For purposes of allowing sufficient time for the filing of an application for rehearing, the Commission will make this order denying Staff's motion effective ten days after it is issued. However, because the Commission is taking no action to suspend or reject Laclede's tariffs, they will go into effect on their designated effective date of September 8.

[6] Staff's reply to Laclede's response suggests the Commission's decision that Laclede's tariff should not be suspended or rejected must be based on competent and substantial evidence. Staff is incorrect. Nothing requires the Commission to undertake a hearing before deciding whether to suspend or reject a tariff, therefore, this is a non-contested case. The Missouri Court of Appeals in *State ex rel Public Counsel v. Pub. Serv. Com'n* 210 S.W.3d 344 (Mo. App. W.D. 2006) specifically found that the Commission's decision in a non-contested case to not suspend challenged tariffs does not have to be supported by competent and substantial evidence.

THE COMMISSION ORDERS THAT:

1. Staff's Motion to Reject Tariff Sheets is denied.

2. This order shall be effective on September 12, 2015.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Woodruff, Chief Regulatory Law Judge

Summit Investment, LLC	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. SC-2014-0214**
	)	
Osage Water Company	)	
	)	**File No. WC-2014-0215**
	)	
Respondent.	)	

REPORT AND ORDER

SERVICE.

§3. Obligation of the utility. A water and sewer corporation under receivership violated statutes and its tariff in refusing additional service and improvement within its certificated area of service, so the Commission directed the corporation to seekk authority for that service and improvement, and inquire of the circuit court what the corporation could do without specific authorization from the circuit court.

§4. Abandonment, discontinuance and refusal of service. A water and sewer corporation under receivership violated statutes and its tariff in refusing additional service and improvement within its certificated area of service, so the Commission directed the corporation to seek authority for that service and improvement, and inquire of the circuit court what the corporation could do without specific authorization from the circuit court.

§13. Jurisdiction and powers of the courts. A water and sewer corporation under receivership violated statutes and its tariff in refusing additional service and improvement within its certificated area of service, so the Commission directed the corporation to seek authority for that service and improvement, and inquire of the circuit court what the corporation could do without specific authorization from the circuit court.

WATER.

§10. Receivership. A water and sewer corporation under receivership violated statutes and its tariff in refusing additional service and improvement within its certificated area of service, so the Commission directed the corporation to seek authority for that service and improvement, and inquire of the circuit court what the corporation could do without specific authorization from the circuit court.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Summit Investment, LLC	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. SC-2014-0214**
	)	
Osage Water Company	)	
	)	**File No. WC-2014-0215**
	)	
Respondent.	)	

REPORT AND ORDER

Issue Date: October 22, 2015

Effective Date: November 21, 2015

TABLE OF CONTENTS

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

Summit Investment, LLC	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. SC-2014-0214**
	)	
Osage Water Company	)	
	)	**File No. WC-2014-0215**
	)	
Respondent.	)	

REPORT AND ORDER

APPEARANCES

Summit Investment, LLC
Jeffrey E. Green
Kay, Green & Associates, LLC
4558 Osage Beach Parkway, Suite 106
Osage Beach, MO 65065

Osage Water Company
Gary V. Cover
Cover & Weaver, LLC
137 West Franklin
P.O. Box 506
Clinton, MO 64735

PSC Staff
Kevin Thompson
P.O. Box 360
Jefferson City, MO 65102

REGULATORY LAW JUDGE: Kim S. Burton

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Summit Investment, LLC	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. SC-2014-0214**
	)	
Osage Water Company	)	
	)	**File No. WC-2014-0215**
	)	
Respondent.	)	

REPORT AND ORDER

Issue Date: October 22, 2015 Effective Date: November 21, 2015

FINDINGS OF FACT:

1. Summit Investment Co., LLC ("Summit"), a developer, has been in business since 1996. Around 1998, Summit began planning and work on the development of its Eagle Woods Subdivision ("Eagle Woods") in Camden County, Missouri. The development of Eagle Woods was to occur through four phases.[1]

2. Osage Water Company ("Osage") is a Missouri corporation authorized by the Commission to provide water and sewer service in an area located along and off State Highway KK in Camden County.[2] Osage began operations as a regulated water and sewer utility with Commission approval in Case No. WM-89-73, when Osage acquired the assets

[1] Ex. AA, ¶ 1. Partial Stipulation of Facts and Ex. T, Staff Report of Investigation, pg. 3.

[2] Ex. T, Staff Report of Investigation, pg. 2.

and Certificate of Convenience and Necessity ("CCN") of Oak Trees, Inc., a regulated water and sewer utility.[3]

3. On or about January 12, 1999, Summit and Osage entered into a Water and Sewer Supply Contract ("Contract") to provide water and sewer services to Eagle Woods. The Contract states Summit, contemplating the construction of 53 residential houses, and desiring public water and sewer utility service for present and future residents of its property, desired to contract with Osage for said public water and sewer utility service.[4]

4. By the terms of the Contract, Osage agreed to provide water and sewer service to Eagle Woods.[5] In accordance with the Contract, Summit conveyed to Osage its ownership in all infrastructure, water well, pump and storage plant and equipment, real estate and associated easements and all permits in its name for all the facilities supplying sewer and water services to Eagle Woods.[6]

5. On September 21, 1999, DNR issued a construction permit (26-3075a) authorizing the construction of sewers, septic tanks, a recirculating sand filter, and appurtenant facilities to serve 25 lots in Eagle Woods.[7]

6. The Commission granted Osage a CCN to construct, install, own, control, manage and maintain a water and sewer system for the public located in Eagle Woods. The CCN became effective on January 5, 2001, approximately two years after Summit and Osage signed the Contract.[8]

[3] Ex. T, Staff Report of Investigation, pg. 2.
[4] Ex. A, Ex. AA.
[5] Ex. A, ¶ 7.
[6] Ex. S, ¶ 5.
[7] Ex. AA, ¶ 5-6 and Ex. C.
[8] Ex. AA, ¶ 2, Exhibit E. The Report and Order granting the CCN became effective on January 5, 2001.

7. Osage was also authorized by the Commission to provide water and sewer service to the Golden Glade Subdivision ("Golden Glade"), located in Camden County and adjacent to the Eagle Woods residential development.[9]

8. On September 21, 1999, DNR issued a construction permit (26-3273) to Golden Glade Homeowners Association for a sewer extension in Golden Glade. The permit specifically stated that it did not permit operation of the sewer services until an approved wastewater treatment facility was operational, and that the treatment plant then under construction was designed only for the 25 lots in Eagle Woods.[10]

9. On October 13, 2000, DNR issued State Operating Permit No. MO-0123170 authorizing Osage to operate waste water treatment facilities that were constructed pursuant to the earlier DNR construction permit for Eagle Woods (26-3075a). As requested by Osage, the permit did not identify a subdivision to be served by the facilities.[11]

10. Osage allowed the allocations from the DNR issued State Operating Permit (MO-0123170) to be used for lots in Golden Glade.[12]

11. On January 25, 2001, DNR issued a construction permit to Osage (26-3467) authorizing Osage to complete the sewer extension previously authorized in the construction permit for Golden Glade (26-3273). This permit authorized the construction of a second recirculating sand filter and appurtenant facilities to serve 25 lots in Eagle Woods and 25 lots in Golden Glade.[13] Osage completed construction of that facility and DNR subsequently issued an operating permit that authorized Osage to operate the expanded wastewater treatment facility.[14]

[9] Ex. AA, ¶ 2.
[10] Ex. AA, ¶ 7, Exhibit D
[11] Ex. F, Ex. AA, ¶ 9.
[12] *See* Summit's Formal Complaint.
[13] Ex G, Ex. AA, ¶ 11.
[14] *See* Osage's Response to Complaint.

12. On July 18, 2001, DNR issued another construction permit to Osage that would have authorized the expansion of the wastewater treatment facility by constructing two additional recirculating sand filters and appurtenant structures. This proposed expansion was to serve all 52 lots in Eagle Woods and 47 lots in Golden Glade. This expansion was never built.[15]

13. Osage was not able to complete the project to provide sewer and water for the rest of Summit's lots in Eagle Woods due to financial difficulties.[16]

14. On December 10, 2002, the Commission issued a Report and Order in Case No. WC-2003-0134, finding that Osage had been effectively abandoned by its owners, and that it was unable or unwilling to provide safe and adequate service to its customers. A petition was filed in Camden County Circuit Court seeking the appointment of a receiver for Osage. On October 21, 2005, the court issued a judgment in Case No. CV102-965CC. The court found that Osage failed to provide safe and adequate service to its customers and appointed Gary V. Cover as a receiver for Osage.[17]

15. The court's Order Appointing Receiver directed the receiver to liquidate the assets of Osage as soon as practicable on terms that protect the interests of the customers of Osage, "and allow them to continue to receive utility service from the assets that have been put in place to serve them."[18]

16. On July 14, 2006, DNR renewed State Operating Permit No. MO-0123170 to Osage. The permit authorized Osage to operate the facilities that were constructed

[15] Ex. AA, ¶ 12-13.

[16] Transcript, Volume 3 pg. 33, ln. 12-16, 21-24. This finding was based on statements made by counsel for Summit to which counsel for Osage concurred. Unsworn statements by counsel are not evidence of the facts asserted, except where facts asserted are conceded to be true by the adversary party. *State ex rel. Dixon v. Darnold*, 939 S.W.2d 66, 69 (Mo. App. 1997). Transcript, Volume 3, pg. 51, ln 5-10.

[17] Ex. AA, ¶14, 18, Ex.I, Ex. N.

[18] Ex. N, pg. 4-5.

pursuant to Construction Permit NO. 26-3075a. The permit specified that service was to be limited to any 50 lots platted in Eagle Woods and Golden Glades, and that the addition of lots in excess of 50 would require an expansion of the wastewater treatment plant or authority from DNR to add lots to the current permit.[19]

17. It is possible that Osage's current sewer system could handle an additional forty customers, based on rough estimates of flow, but Osage would need to determine if this is accurate before deciding if it could serve that many new customers without investing in the system.[20]

18. Osage currently has an Operating Permit issued by DNR that restricts service to no more than the fifty lots currently connected to the wastewater treatment facility. In order to provide additional service, an expansion of the wastewater treatment plant will be needed or DNR must give authority to add lots to the current Operating Permit.

19. Alternatively, to resolve capacity issues, the City of Osage Beach may be able to provide sewer services, either through retail or wholesale sewage treatment for Osage. Connecting to the City of Osage Beach would also require additional investment in the system.[21]

20. Around 2004, and prior to the appointment of a receiver by the court in CV102-965CC, Summit applied to DNR for its own permit to complete the plant for the Eagle Woods subdivision, but the application was denied by DNR because Osage was already permitted to provide the service and Osage refused to give an authority waiver.[22]

[19] Exhibit No. AA, ¶ 19.

[20] Ex. T, Staff Report of Investigation, pg. 4-7.

[21] Id.

[22] Hearing Transcript Volume 3, pg. 33, ln. 17-21; pg. 38, ln. 22- pg. 39, ln. 7.

21. Osage currently uses a well located in Eagle Woods to provide water service to customers in the system. The current well can meet the needs of all fifty-three Eagle Woods lots and still be within DNR's recommended design one-day storage volume. The current well has not been approved by DNR.[23]

22. The current flow through distribution system for the water system is inadequate because under some use conditions, the houses farthest away from the well and at the highest elevation have inadequate water pressure. This problem could be made worse if additional homes were constructed and connected. While resolution of the water pressure problem is possible, it would require capital funding.[24]

23. Osage currently provides waste water service to 23 Golden Glade lots and 33 Eagle Woods customers.[25] Summit has approximately 25 remaining undeveloped lots in Eagle Woods that have not been connected to water or sewer services due to Osage's refusal to provide connection.[26]

24. Summit filed a Petition against Osage in the Circuit Court of Camden County, Missouri in 2011 (Case No. 11CM-CC00113) seeking damages for breach of contract and specific performance.[27]

CONCLUSIONS OF LAW

Osage is a public utility that provides water and sewer services, and is therefore subject to the Commission's jurisdiction pursuant to section 386.200, RSMo.[28] The question before the Commission is whether Osage violated the terms of its CCN or of its

[23] Ex. T, Staff Report of Investigation, pg. 4-5.

[24] Ex. T, Staff Report of Investigation, pg. 5.

[25] Tr.: pg. 57; ln. 4-7.

[26] Ex. S, Affidavit of Ron Westenhaver, ¶17-18.

[27] Exhibit AA-attachment Exhibit R. Case No. 11CM-CC00113 is stayed pending resolution of this case.

[28] All statutory references are to RSMo 2000, as cumulatively supplemented.

water or sewer tariffs. 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."[29] Therefore, Summit has the burden of proving the violations alleged in its complaint.

The Commission is limited to those powers expressly granted by statute or by clear implication, necessary to carry out the powers specifically granted to it.[30] The Commission is a creature of statute and only has those powers expressly conferred upon it by statutes or reasonably incidental thereto.[31] The dominating purpose for the creation of the Commission was to promote the public welfare.[32] The Commission however cannot determine damages or award pecuniary relief and has no authority to interpret or enforce contracts, or to declare or enforce any principle of equity.[33]

While it does not have the authority to determine if Osage violated the terms of the Contract with Summit, the Commission does have the statutory authority to determine if Osage violated its statutory obligation to provide its customers safe and adequate service in compliance with the terms of the tariffs and its CCN.[34]

Osage was granted a CCN by the Commission in 2001 to provide water and sewer service to a service territory that includes the Eagle Woods subdivision. A CCN is a mandate to provide service to the area covered by it.[35] "[I]t is the utility's duty, within

[29] *State ex rel. GS Technologies Operating Co., Inc. v. Public Service Comm'n*, 116 S.W.3d 680, 693 (Mo. App. 2003).

[30] *Utilicorp* United*, Inc. v. Platte-Clay Elec. Co-op, Inc.*, 799 S.W.2d 108 (Mo. App. W.D. 1990).

[31] *State ex rel. Harline v. Public Service Commission of Mo.* 343 S.W.2d 177 (Mo. App. 1960) citing *State ex rel. Kansas City Power & Light Co. v. Buzard*, 168 S.W.2d 1044 (Mo. 1943).

[32] Id. at 181.

[33] *State ex rel Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466 (Mo. App. 1980).

[34] *Demaranville v. Fee Fee Trunk Sewer, Inc.,* 573 S.W.2d 674 (Mo. App. 1978).

[35] *State ex rel. Harline v. Pub. Serv. Comm'n of Mo.*, 343 S.W.2d 177 (Mo. Ct. App. 1960).

reasonable limitations, to serve all persons in an area it has undertaken to serve."[36] It is recognized in Missouri that when a corporation devotes its property to a public use, it may not selectively choose which portions of the covered service area it will serve, thereby restricting the development of the remaining portions by leaving the remaining inhabitants without service that the company alone can render.[37] Therefore, when a utility refuses service, the Commission will review its actions with heightened scrutiny.

Once the CCN was granted in 2001, Osage became obligated to provide service to those entities within its service territory that requested service, pursuant to the terms of its tariffs. There is no disputing that all of Eagle Woods' lots are within Osage's service territory and that Summit has requested service. Since the first disputed issue before the Commission is whether Osage was and continues to be obligated to provide water and sewer service to the undeveloped lots in Eagle Woods, the Commission must now consider Osage's obligations to those non-connected lots under the terms of the company's tariffs.

A tariff details the manner in which a utility will provide service. "A tariff is a document which lists a public utility's services and the rates for those services."[38] Osage's tariff for water service, Form No. 13 P.S.C. MO. No. 1 Sheet 7, establishes the definitions for Osage Water Company and defines "Customer" under Rule 1(b) as follows:

> The "Customer" is any person, firm, corporation or governmental body which has contracted with the Company for water service or is receiving service from Company, or whose facilities are connected for utilizing such service.[39]

[36] *Id.*

[37] *State v. Public Service Commission*, 229 S.W. 782, (Mo. 1921).

[38] *Pub. Serv. Comm'n of State v. Missouri Gas Energy*, 388 S.W.3d 221, 227 (Mo. Ct. App. 2012).

[39] *Similarly*, Osage's tariff for sewer service, P.S.C.Mo. No. 1 Original Sheet No. 12 Rule 1(c) defines "Customer" as: The "Customer" is any person, individual, partnership, association, corporation or governmental body which has contracted with the Company for sewer service from the Company, or whose facilities are connected for utilizing sewer service."

Under the terms of its tariffs, Osage must provide service to those entities within its service territory that are considered a “Customer.” A “Customer” is not limited to an entity that is already receiving service. It also includes those entities that are already connected or that have contracted with Osage for service. Summit meets that requirement to be considered “Customer” under Osage’s tariffs, since it contracted in 1999 for utility services to all lots in Eagle Woods.

While Summit may fit within the meaning of “Customer” under the terms of the tariff, it is unclear if the Camden County Circuit Court’s use of the term ‘customer’ also encapsulates those undeveloped lots in Eagle Woods. Although the Commission has the authority to enforce a CCN or ensure a utility’s compliance with the terms of its tariffs, this is recognizably a unique situation, due to Osage’s receivership. Osage’s ability to perform its obligations under the terms of its tariff may currently be limited by the Court’s order establishing the receivership.

The Commission previously had concerns about Osage’s ability to provide safe and adequate service - a condition for granting a CCN - in 2002. As authorized by section 393.145, RSMo, the Commission successfully petitioned the Camden County Circuit Court to appoint a receiver for Osage in 2005.[40] The court appointed Gary Cover as receiver for Osage. Mr. Cover remains the receiver to this day. The powers, rights, and authority of a receiver are enumerated in section 393.145.6,RSMo, which states in pertinent part:

> The receiver shall give bond, and have the same powers and be subject to all the provisions, as far as they may be applicable, enjoined upon a receiver appointed by virtue of the law providing for suits by attachment. The receiver shall operate the utility so as to preserve the assets of the utility and to serve the best interests of its customers. A receiver is not

[40] Case No. CV102-965CC.

> the owner of the property; he is merely the custodian.[41] (Emphasis added).

Under section 393.145.7, RSMo, a receiver normally holds a utility until such time that it can, in the best interests of its customers, be returned to the utility owners. The court, however, has the discretion to determine that the utility should never be returned to its owners, and instead order the receiver to sell or liquidate its assets. The Camden County Circuit Court elected the latter option by directing the receiver to find a buyer for Osage in its entirety or to "liquidate the assets of the company as soon as practicable on terms that protect the interest of the customers of the Company and allow them to continue to receive utility service from the assets that have been put in place to serve them" (emphasis added).[42]

Osage asserts that it is not capable of providing service to the remaining unconnected lots in Eagle Woods since it was bound by the circuit court's Order Appointing Receiver to only provide service to those customers receiving service. The Commission must determine if this language in the circuit court's order is a "reasonable limitation" to Osage's CCN that prevents it from adding service to the twenty-five undeveloped lots in Eagle Woods.

To evaluate the reasonableness of Osage's receiver relying on the Order Appointing Receiver as a restriction to expanding service to the additional Eagle Woods lots, the Commission must first evaluate the authority of a receiver. A receiver is merely a ministerial officer of the court, and is limited by the language of the court order appointing him.[43] A

[41] *Jennings Sewer Dist. of St. Louis County v. Pitcairn*, 187 S.W.2d 750 (Mo.App. 1945).

[42] Case No. CV102-965CC.

[43] *Wheelock v. Cantley*, 50 S.W.2d 731 (Mo. 1932).

receiver must obtain court approval before entering into any contract, incurring indebtedness, or expending the monies of the receivership estate.[44]

Summit may argue that the cases discussing restrictions on receivers entering into contracts can be distinguished from the present scenario since Summit and Osage entered into the Contract before the appointment of a receiver. Yet the timing of the contract in relation to the receivership does not change the fact that performance under the contract or tariff requires additional expenditures after the receivership's creation. If expenses are to be incurred *after* the receivership is established, court approval is still necessary.[45] No one disputes that in order to provide service to the additional lots in Eagle Woods, Osage must incur additional debt. Therefore, Osage's receiver could not act to provide the expansion requested by Summit without first obtaining authority from the court, which it can do but has not yet done. Osage may seek the court's approval generally or specifically, at the discretion of Osage and the court.

Staff's report indicates that absent improvements to the water system, the expansion of service will exacerbate the existing water pressure issue. Counsel for Summit acknowledges that the current permit from DNR for Osage's sewer treatment is at capacity and that he doesn't believe there are any additional sewer connections available under the current permit.[46] Staff is correct that the court order does not prohibit the receiver from undertaking improvements; improvements are simply a matter of scale. No one would argue the receiver could not replace a pipe that is leaking under his authority to preserve the assets of the utility to the best interests of its customers. However, improvements on

[44] *Naslund v. Moon Motor Car Co.*, 134 S.W.2d 103 (Mo. 1939).

[45] *Scott v. Home Mut. Tel. Co.*, 488 S.W.2d 922 (Mo. App. 1972)(Court found that when a receiver paid attorney's fees without prior court approval, he acted at his peril).

[46] Volume 3, Hearing Transcript, pg. 42, ln.21-pg. 43, ln. 4.

the scale of a system expansion to serve new customers in the certificated area would constitute a major management decision and the entering into of binding obligations by the utility.

By the current terms of the circuit court's order, the receiver may not be authorized to make the improvements to the system necessary to serve its territory without first receiving specific authorization or at least clarification of the court's order.

While the Commission has the authority to regulate a public utility and ensure compliance with the terms of a utility's tariffs and CCN, the Commission does not have the authority to order Osage to disregard a court's order. By this order, the Commission is not doing so. On the contrary, as the circuit court likely intended when staying the parties' contract dispute, the Commission is resolving here the issues within its expertise and over which it has authority so that the parties, including the receiver, can know how to proceed with their claims and obligations.

While Osage could have sought direction on its authority from the court when this conflict first arose, Osage's past reliance on the court's Order Appointing Receiver may have been reasonable. However, the Commission now will direct Osage to seek clarification from the court as to the extent of its ability to act without first seeking specific authorization for each action. The court has the power to direct Osage to take what steps are necessary to serve the area Osage is obligated to serve in a manner that protects the assets of the utility and serves the best interests of its customers. The utility's tariff will determine the responsibilities of Osage and Summit as they relate to additional facilities being required to serve the undeveloped Eagle Woods lots. Any costs incurred by Osage to expand the utility's system or to serve new customers can be addressed in a rate case before this Commission. What other actions are necessary related to providing service to

Summit or related to DNR's authority over Osage are properly left to the receiver and the court to resolve as the custodians of the utility.

Therefore, the Commission does find Osage to be in violation of its tariffs, but as a result of the Order Appointing Receiver in 2005, the company may currently be limited in its options. The Commission recognizes that an expansion of the system to provide additional service will be a financial burden to Osage, yet no evidence was presented as to the level of those additional costs, and such evidence would not relieve Osage from its obligations under its tariffs. Camden County Circuit Court has the authority to order Osage's receiver to incur those costs in order to provide safe and adequate service to those additional Eagle Woods lots. The Commission will direct its Staff to work with Osage to determine what steps are necessary to provide services to the undeveloped Eagle Woods lots and bring Osage into compliance with its tariffs and CCN.

THE COMMISSION ORDERS THAT:

1. Osage shall seek clarification from the Camden County Circuit Court in case number 26V10200965CC as to the extent of its authority to take the necessary steps to connect the twenty-five lots in Eagle Woods. Osage shall seek all authority it deems necessary to fulfill its duties under its certificate and its tariffs as those duties are explained in this order.

2. The Staff of the Missouri Public Service Commission shall work with Osage to determine what steps are necessary to expand services to the undeveloped lots in Eagle Woods. Staff shall file a status update on its efforts by February 1, 2016.

3. Osage shall file a status report with the Commission no later than March 15, 2016, on its progress towards connecting the undeveloped lots owned by Summit in Eagle Woods.

4. This order shall be effective on November 21, 2015.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney,
Rupp, and Coleman, CC., concur;
and certify compliance with the
provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 22nd day of October, 2015.

In the Matter of the Application of	)	
Branson Cedars Resort Utility Company LLC for	)	File No. WA-2015-0049
Certificates of Convenience and Necessity	)	
Related to Water and Sewer Systems	)	

ORDER GRANTING CERTIFICATES OF CONVENIENCE AND NECESSITY WITH CONDITIONS

CERTIFICATES. §22. Restrictions and conditions. The Commission issued an order, granting an application for a certificate of convenience and necessity, conditioned on the filing of tariffs as further described in the order.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 26th day of August, 2015.

In the Matter of the Application of Branson Cedars Resort Utility Company LLC for Certificates of Convenience and Necessity Related to Water and Sewer Systems	))))	File No. WA-2015-0049

ORDER GRANTING CERTIFICATES OF CONVENIENCE AND NECESSITY WITH CONDITIONS

Issue Date: August 26, 2015 Effective Date: September 5, 2015

The Missouri Public Service Commission is granting the *Application*[1] of Branson Cedars Resort Utility Company LLC's ("BCRU") for a certificate of convenience and necessity ("certificate") to provide sewer service ("sewer application"). The Commission is also granting BCRU's *First-Amended Application*[2] for a certificate to provide water service ("water application"). The Commission is conditioning both certificates on the filing of tariffs and a rate case.

The standard for deciding the sewer application and the water application ("the applications") is public convenience and necessity,[3] and the Commission may impose

[1] Electronic Filing Information System ("EFIS"), File No. SA-2015-0107, No. 1 (October 29, 2014) *Application*. The Commission consolidated that file with this file. EFIS No. 4 (November 6, 2014) *Order Extending Time To File Recommendation, Consolidating Actions, and Amending Style*. All other EFIS entries refer to this File No. WA-2015-0049.

[2] EFIS No. 8 (October 29, 2015) *First-Amended Application*. Earlier applications for a water certificate named a different entity as applicant.

[3] Section 393.170.3, RSMo 2000.

reasonable and necessary conditions on the certificates.[4] The Commission will base its rulings on the verified documents in the file. On that basis, the Commission independently finds and concludes as follows.

BCRU is a Missouri limited liability company.[5] BCRU proposes to serve an area in Taney County south of the City of Hollister ("service territory") that includes 52 rental cabins and 12 commercial customers, and a planned build-out ultimately of 400 units.[6] BCRU's proposed services are necessary and convenient for the public, so the Commission will grant the applications.

Staff recommends conditioning the certificates on the filing of tariffs as described in Staff's revised recommendation[7] and a "rate review" within 18 months of the effective date of this order. [8] BCRU and the Office of the Public Counsel ("OPC") voice no objection, but OPC suggests a general rate action in lieu of the rate review.[9] No party disagreed with that suggestion, and the intervenor, lot-owners' association Branson Cedars, Inc.,[10] endorsed OPC's suggestion,[11] adding only that the general rate action should occur no sooner than 12 months from the effective date of this order.[12] No party objected to that additional condition.

[4] Section 393.170.3, RSMo 2000.

[5] EFIS No. 8 (October 29, 2014) *First-Amended Application* first page, paragraph 2.

[6] EFIS No. 34 (August 3, 2015) *Staff's Revised Recommendation* page 5 paragraph a; EFIS No. 19 (March 31, 2015) *Staff's Recommendation* page 10 paragraph a, Attachment A, and Attachment B.

[7] EFIS No. 34 (August 3, 2015) *Staff's Revised Recommendation* page 6, paragraph b through h.

[8] EFIS No. 34 (August 3, 2015) *Staff's Revised Recommendation* page 4 through 5.

[9] EFIS No. 37 (August 10, 2015) *Office of the Public Counsel's Response to Staff's Revised Recommendation* page 2, paragraphs 5 through 10.

[10] EFIS No. 14 (December 17, 2014) *Order Granting Intervention*.

[11] EFIS No. 39 (August 14, 2015) *Branson Cedars, Inc.'s Response to Staff's Revised Recommendation*.

[12] EFIS No. 39 (August 14, 2015) *Branson Cedars, Inc.'s Response to Staff's Revised Recommendation* second paragraph.

Therefore, the Commission will grant the applications, and order the filing of tariffs and rate cases, as follows.[13]

THE COMMISSION ORDERS THAT:

1. The applications, as described in the body of this order, are approved. Certificates of convenience and necessity ("certificates") shall be issued to Branson Cedars Resort Utility Company LLC ("BCRU") for water service and sewer service as described in the applications. The certificates shall be conditioned on BCRU's compliance with paragraphs 2 and 3 of this order.

2. BCRU shall file new complete tariffs for water service and sewer service within 20 days after the effective date of this order. The provisions of the tariffs shall include the following.

a. Monthly residential flat rates of $56.29 for water service and $48.26 for sewer service, with factored flat rates for various commercial customers; and a metered rate consisting of $37.14 monthly customer charge and $13.79 per 1,000 gallons commodity charge for one specific existing customer with established historical water usage; all as shown on Attachment B to the revised recommendation described in the body of this order;

b. Service charges that include a $5 optional late charge applicable to either a water bill or combined water and sewer bill; a $25 trip charge for turn-on, turn-off, or service or investigative work undertaken by BCRU; and actual

[13] The Commission's regulations for a small utility rate action are at 4 CSR 240-3.050.

cost of emergency or requested repair work to a customer-owned sewer STEP unit undertaken by BCRU or a contractor hired by BCRU;

c. A master meter on each of BCRU's two wells, and water meters for all commercial customers, within six months after the effective date of this order; monthly meter reading; retaining meter plant records; and maintenance of meter read records for each metered customer;

d. A proposed 30-day effective date;

e. Water and sewer depreciation rates as included with Staff's initial recommendation of March 31, 2015;

f. Financial books and records for plant-in-service and operating expenses kept in accordance with the NARUC Uniform System of Accounts; and

g. Operations records including those for customer complaints or inquiries, vehicle, equipment and telephone use records, maintenance activity, service calls and customer account records.

3. BCRU shall file general rate actions, which may be small utility rate actions, between 12 and 18 months after the effective date of this order.

4. Nothing in this order shall preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the subject certificates, including expenditures related to the certificated service territory, in any later proceeding.

5. This order shall be effective on September 5, 2015.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney,
and Rupp, CC., concur;
Coleman, C., absent.

Jordan, Senior Regulatory Law Judge

In the Matter of the Application of Ridge Creek Water Company, LLC for a Certificate of Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Control, Manage, and Maintain a Water System for the Public Located in an Unincorporated Area in Pulaski County, Missouri.	))))))	**File No. WA-2015-0182**

ORDER APPROVING NONUNANIMOUS STIPULATION AND AGREEMENT

CERTIFICATES. 22. Restrictions and conditions. The Commission issued an order granting an application for a certificate of convenience and necessity to operate a water system conditioned on the filing of a tariff within 20 days to the order's effective date.

WATER. §2. Certificate of convenience and necessity. The Commission issued an order granting an application for a certificate of convenience and necessity to operate a water system conditioned on the filing of a tariff within 20 days to the order's effective date.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 2nd day of September, 2015.

In the Matter of the Application of Ridge Creek Water Company, LLC for a Certificate of Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Control, Manage, and Maintain a Water System for the Public Located in an Unincorporated Area in Pulaski County, Missouri.	))))))	**File No. WA-2015-0182**

ORDER APPROVING NONUNANIMOUS STIPULATION AND AGREEMENT

Issue Date: September 2, 2015 Effective Date: September 12, 2015

On February 4, 2015, Ridge Creek Water Company, LLC ("Ridge Creek") filed an application with the Missouri Public Service Commission seeking a certificate of convenience and necessity ("CCN") authorizing it to construct, install, own, operate, control, manage, and maintain a water system in an unincorporated area in Pulaski County, Missouri. The Commission directed notice be provided of Ridge Creek's application and set a deadline for the filing of applications to intervene.

The Missouri Department of Natural Resources ("DNR") applied and was granted authority to intervene. A local public hearing was held on April 29. At the request of Ridge Creek and Staff, the Commission issued a procedural schedule with an evidentiary hearing scheduled for September 16. On August 5, DNR filed Direct Testimony stating that Ridge Creek and DNR had entered into an Administrative Order

on Consent.[1] Staff filed a motion requesting the Commission suspend the procedural schedule, since an agreement had been reached between Ridge Creek and Staff. The Commission granted Staff's request and suspended the procedural schedule.

On August 17, Ridge Creek, DNR and Staff (collectively, "Signatories") filed a *Non-Unanimous Stipulation and Agreement*. Pursuant to Commission Rule 4 CSR 240-2.115(2), if a party fails to object to a nonunanimous stipulation and agreement within seven days, the Commission may deem it a full waiver of that party's right to a hearing and treat the agreement as a unanimous stipulation and agreement. On August 24, the Office of the Public Counsel ("OPC") filed a response to the non-unanimous agreement. OPC stated that while it may not agree with the annual revenue requirement used as a basis for the proposed rates, it will not oppose the *Non-Unanimous Stipulation and Agreement*.

Since there are no objections to the agreement, the Commission may decide this matter without convening a hearing.[2] The Commission is not required to separately state its findings of fact or conclusions of law.[3]

Section 393.170 requires a water corporation receive Commission approval to operate a water system. The Commission may grant a 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 stated five criteria that it will use:

[1] EFIS Item No. 34.
[2] Section 536.060, RSMo Cum.Supp.2013. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission,* 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

[3] Section 536.090, RSMo Cum.Supp.2013. All statutory references are to the Missouri Revised Statutes as cumulatively supplemented unless indicated otherwise.

[4] Section 393.170.3

1) There must be a need for the service;

2) The applicant must be qualified;

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 application, the recommendation of Staff, the testimony provided at the local public hearing, DNR's direct testimony, and the *Nonunanimous Stipulation and Agreement*, the Commission finds that granting Ridge Creek's application for a certificate of convenience and necessity to provide water service meets the above-listed criteria. The application will be granted.

The Commission reminds Ridge Creek that failure to comply with its regulatory obligations may result in the assessment of penalties against it. These regulatory obligations include, but are not limited to, the following:

A) The Obligation to file an annual report, as established by section 393.140(6), RSMo (2000). Failure to comply with this obligation will make the utility liable for a penalty of $100 and an additional $100 per day that the violation continues. Commission Rule 4 CSR 240-3.640 requires water utilities to file their annual report on or before April 15 of each year.

B) The obligation to pay an annual assessment fee established by the Commission, as required by section 386.370, RSMo (2000). Because assessments are facilitated by order of the Commission, failure to comply with the order will subject the company to penalties ranging from $100 to $2,000 for each day of noncompliance pursuant to section 386.570, RSMo (2000).

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

C) The obligation to provide safe and adequate service at just and reasonable rates, pursuant to section 393.130.

D) The obligation to comply with all relevant state and federal laws and regulations, including but not limited to, rules of this Commission, the Department of Natural Resources, and the Environmental Protection Agency.

E) The obligation to comply with orders issued by the Commission. If the company fails to comply, it is subject to penalties for noncompliance ranging from $100 to $2,000 per day of noncompliance, pursuant to § 386.570, RSMo (2000).

F) The obligation to keep the Commission informed of its current address and telephone number.

The certificate is granted conditioned upon the compliance of the company with all of these obligations, as well as the obligations listed below in the ordered paragraphs.

Moreover, if the Commission finds, upon conducting a hearing, that Ridge Creek fails to provide safe and adequate service, or has defaulted on any indebtedness, the Commission shall petition the circuit court for an order attaching the assets, and placing the company under the control of a receiver, as permitted by § 393.145. As a condition of granting this certificate, the company hereby agrees that in the future, should the Commission determine a receiver process is appropriate, the company consents to the appointment of an interim receiver until such time as the circuit court grants or denies the petition for receivership.

Ridge Creek is also placed on notice that § 386.310.1, RSMo (2000), provides that the Commission can, without first holding a hearing, issue an order in any case, “in which the commission determines that the failure to do so would result in the likelihood of imminent threat of serious harm to life or property.”

Furthermore, the company is reminded that, as a corporation, its officers may not represent the company before the Commission. Instead, the corporation must be represented by an attorney licensed to practice in Missouri.

After reviewing the record and the unopposed *Nonunanimous Stipulation and Agreement*, the Commission will approve the agreement and order all parties to comply with its terms. Since Ridge Creek's application is unopposed, the Commission finds good cause exists for this order to take effect less than thirty days after issuance.

THE COMMISSION ORDERS THAT:

1. Ridge Creek Water Company, LLC is granted permission, approval, and a certificate of convenience and necessity to construct, install, own, operate, control, manage, and maintain a water system for the public in an unincorporated area in Pulaski County, Missouri, as more particularly described in its application.

2. The certificate of convenience and necessity is granted upon the conditions set out in the body of this order.

3. The *Nonunanimous Stipulation and Agreement*, filed on August 17, 2015, is approved and incorporated into this order as if fully set forth herein. The parties shall comply with the terms of the agreement. A copy of the agreement is attached to this order as Attachment 1.

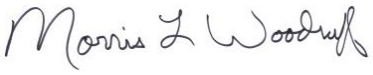
4. Ridge Creek shall submit for Commission approval a complete tariff for water service, as a 30-day filing, within 20 days after the effective date of this order.

5. Ridge Creek shall file a general rate case within 30 days of the first anniversary of the effective date of this order.

6. The evidentiary hearing scheduled for September 16, 2015 is canceled.

7. This order shall be effective on September 12, 2015.

BY THE COMMISSION



Morris L. Woodruff
Secretary

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

Kim Burton, Regulatory Law Judge.

In the Matter of the Staff Investigation into the Adequacy of the Call Centers Serving Missouri-American Water Company	)))	**File No. WO-2014-0362**

ORDER ACCEPTING STAFF'S REPORT, DIRECTING MISSOURI-AMERICAN TO TAKE CERTAIN ACTIONS, AND CLOSING FILE

SERVICE.

§18. Duty to render adequate service. The Commission ordered a water company to improve service at its call center by improving employee training, recording, processing, classification, specialization, follow-up, and documentation.

§35. Management and operation. The Commission ordered a water company to improve service at its call center by improving employee training, recording, processing, classification, specialization, follow-up, and documentation.

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 August, 2015.

In the Matter of the Staff Investigation into the Adequacy of the Call Centers Serving Missouri-American Water Company	)))	**File No. WO-2014-0362**

ORDER ACCEPTING STAFF'S REPORT, DIRECTING MISSOURI-AMERICAN TO TAKE CERTAIN ACTIONS, AND CLOSING FILE

Issue Date: August 19, 2015 Effective Date: August 29, 2015

On June 25, 2014, the Commission directed its Staff to investigate the adequacy of the customer service call centers operated by Missouri-American Water Company. Staff requested authority to conduct that investigation because of its concern about a number of complaints from customers about the courtesy and knowledge of call center personnel. Staff conducted an extensive investigation and filed a final report on June 15, 2015.

Staff's report made the following recommendations for action to be taken by Missouri-American to address problems identified by Staff:

A. Ensure that Customer Service Representatives are sufficiently trained to respond in a timely manner to all customer inquiries, including those regarding customer billing statements, service territories served, and other inquiries. Evaluate training materials periodically. Evaluate the manner in which Call Center representatives are trained regarding issues such as billing

calculations, wastewater usage calculations, and service territories. Make improvements when necessary.

B. Implement methods to ensure that the Company's Call Escalation Policy is followed, and reviewed periodically, to ensure compliance for all Missouri calls.

C. Perform a comprehensive operational audit of the American Water Works Company, Inc. Call Centers that serve Missouri-American customers. The audit should commence in calendar year 2016 and include, but not be limited to, operational areas such as: call quality control; adherence to Company Call Center policies and procedures; accurate and timely responses to customer inquiries, including those regarding billing; appropriate call escalation to supervisory personnel; verification of return calls to customers; accurate calculation of bills from multiple Missouri service territories with differing tariffs; and call center performance metrics.

D. Design and implement a procedure to ensure all Missouri-American customers requesting a return or follow-up phone call from the Company's Call Center, including those requested from supervisory personnel, have their calls returned.

E. Ensure that all Missouri-American customer calls to the Company's Call Center are documented with detail on the customer's account, including steps and Company commitments made to obtain resolution.

F. Develop a system to monitor the types of inbound calls received at the Company's Call Center so the Company can identify critical customer reported trends and respond with corrective action if necessary.

G. Evaluate the benefits of reducing the number of regulated utilities within American Water Works Company, Inc., in which Call Center representatives are required to be experts. Analyze the merits of specializing Call Center representatives into fewer states.

H. Inform the Staff and the Office of the Public Counsel promptly when significant operational or service quality performance changes are planned or occur.

I. Record one hundred percent of all customer calls between Call Center Representatives and Missouri-American customers. Archive recorded phone calls for a period of no less than 12 months, in a manner that they may be retrieved and reviewed by the Company, Staff, and Public Counsel.

The Commission directed Missouri-American to respond to Staff's recommendations, which it did on July 20.

Missouri-American's response indicated it would comply with all of Staff's recommendations, and on August 5, Staff replied that it was satisfied with Missouri-American's response. Staff advised the Commission to close this file, but asked the Commission to first order Missouri-American to submit certain status reports and additional studies, analysis and audits to document compliance with Staff's recommendations. Missouri-American responded on August 12, indicating its willingness to comply with Staff's requests.

The Commission will accept Staff's Final Report as a resolution of this investigation and will direct Ameren-Missouri to comply with the recommendations offered by Staff.

THE COMMISSION ORDERS THAT:

1. Missouri-American Water Company shall comply with the recommendations offered by Staff in its Final Report of June 15, 2015.

2. Missouri-American Water Company shall submit Implementation Status Reports to the Staff until all Company commitments identified in its July 20, 2015 response have been completed, specifically including commitments regarding Recommendations 3, 6, 7, and 9. Such Implementation Status Reports shall include the Company's implementation plan for each recommendation, a description of the Company's actions taken to date, and dates actions were accomplished. Such Implementation Status Reports shall be provided quarterly and shall be discontinued when Staff concludes the Company has sufficiently met the intent of the recommendations.

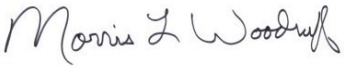
3. Missouri-American Water Company shall provide to Staff the studies, analysis, and audits that it is currently performing or will perform in response to Staff's recommendations.

4. Missouri-American Water Company shall continue meeting with Staff, as determined necessary by Staff, to address call center and other service quality performance matters as they arise, and to discuss the Company's progress regarding the recommendations made in this case, and other topics.

5. This order shall be effective on August 29, 2015.

6. This file shall be closed on August 30, 2015.

BY THE COMMISSION



Morris L. Woodruff
Secretary

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

Woodruff, Chief Regulatory Law Judge

In the Matter of the Application of Ameren Transmission Company of Illinois for Other Relief or, in the Alternative, a Certificate of Public Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain and Otherwise Control and Manage a 345,000-volt Electric Transmission Line from Palmyra, Missouri, to the Iowa Border and Associated Substation Near Kirksville, Missouri.	)	**File No. EA-2015-0146**

ORDER REGARDING MOTION TO DISMISS

CERTIFICATES.
§22. Restrictions and conditions. Statute requiring county commission's consent to construct lines across public roads, and absence of such assents to such construction, did not bar the Commission from approving that construction because the Commission can approve the construction conditioned on later assent.

ELECTRIC.
§3. Certificate of convenience and necessity. Statute requiring county commission's consent to construct lines across public roads, and absence of such assents to such construction, did not bar the Commission from approving that construction because the Commission can approve the construction conditioned on later assent.
§3. Certificate of convenience and necessity. Right to Farm Amendment does not bar the issuance of a certificate of convenience and necessity to construct lines because the certificate's issuance does not take any land out of production.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 4th day of November, 2015.

In the Matter of the Application of Ameren Transmission Company of Illinois for Other Relief or, in the Alternative, a Certificate of Public Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain and Otherwise Control and Manage a 345,000-volt Electric Transmission Line from Palmyra, Missouri, to the Iowa Border and Associated Substation Near Kirksville, Missouri.	))))))))	**File No. EA-2015-0146**

ORDER REGARDING MOTION TO DISMISS

Issue Date: November 4, 2015 Effective Date: November 14, 2015

Background

On May 29, 2015,[1] Ameren Transmission Company of Illinois ("ATXI") filed an Application, seeking a certificate of convenience and necessity ("CCN") authorizing it to construct and operate a new 345-kV electric transmission line approximately 95 miles in length from Palmyra, Missouri west to a new substation near Kirksville, Missouri, and north to a connection point on the Iowa border. On October 13, Neighbors United Against Ameren's Power Line ("Neighbors United") filed a Motion to Dismiss Application. Neighbors United's motion argues that under Article 1, Section 35 of the Missouri Constitution, commonly referred to as the "Right to Farm Amendment," the Commission is constitutionally prohibited from granting the relief requested by ATXI.[2] Further, Neighbors United argues that ATXI does not have the requisite county commission approval required under Section 229.100 RSMo and Commission Rule 4 CSR 240-3.105(1)(D)(1) to obtain the certificate of

[1] Calendar references are to 2015.
[2] Motion to Dismiss, pp. 3-4 (filed October 13, 2015).

convenience and necessity it seeks, mandating dismissal of the Application.[3] For the reasons set forth below, both arguments are devoid of merit.

Standard

A motion to dismiss is a test of the petition or application.[4] The petition or application must be liberally construed and all alleged facts are accepted as true.[5] The tribunal is not allowed to consider the validity of the applicant's allegations or to consider evidence outside the four corners of the application that might challenge their validity.[6] "If the petition [application] sets forth any sets of facts, that, if proven, would entitle the plaintiff [Applicant] to relief, then the petition [Application] states a claim."[7] Accordingly, when ruling on the pending motion, it is not appropriate for the Commission to consider any factual allegations, even if supported by affidavits, presented by Neighbors United in support of its motion.[8]

Right to Farm Amendment

As a preliminary matter, Neighbors United contends "constitutional interpretation and application" of the Right to Farm Amendment is beyond the Commission's authority and, accordingly, the Commission must dismiss the Application.[9] It is undisputed that the Commission has no authority to rule on the constitutionality of a statute.[10] This is because the Commission is an administrative body of limited jurisdiction, having only the powers

[3] *Id*. at 5.
[4] *See, e.g., Nazeri v. Missouri Valley College*, 860 S.W.2d 303, 306 (Mo. banc. 1993)
[5] *See Hedrick v. Jay Wolfe Imports*, 404 S.W.3d 464, 467 (Mo.App. W.D. 2013)
[6] *Id.*
[7] *Id.* Contrast this with a motion for summary determination, for which parties may file testimony, discovery, and affidavits for and against the motion. See Commission Rule 4 CSR 240-2.117.
[8] In support of its argument, Neighbors United attached certified copies of resolutions from the five counties through which the proposed line would run as well as statements form property owners regarding the farming or ranching activities that take place on their property. For the reasons set forth above, the Commission cannot rely on this factual information to resolve the Motion to Dismiss.
[9] Motion to Dismiss, p. 3.
[10] *See, e.g., Duncan v. Missouri Bd. For Architects, Professional Engrs., & Land Surveyors*, 744 S.W.2d 524, 530-31 (Mo.App. 1988); *Fayne v. Department of Social Services*, 802 S.W.2d 565 (Mo.App. 1991).

expressly granted by statutes and reasonably incidental thereto.[11] However, constitutional issues must be raised at the first opportunity,[12] and the Commission must frequently interpret statutory and constitutional provisions to adjudicate the issues within the scope of its jurisdiction.[13]

In this case, Section 393.170.1 RSMo requires an "electrical corporation" to seek the "permission and approval of the Commission" prior to commencement of any "construction of . . . electric plant . . . ." Section 393.170.3 requires the Commission to "grant the permission and approval" only when it is "necessary or convenient for the public service." Thus, ATXI must seek a certificate of convenience and necessity before constructing the proposed transmission line, and the Commission must interpret all relevant constitutional and statutory provisions in determining whether such transmission line is indeed necessary or convenient.

The Right to Farm Amendment provides that "the right of farmers and ranchers to engage in farming and ranching practices shall be forever guaranteed in this state . . . ."[14] Neighbors United claims that ATXI "requests relief that would permanently remove citizens' property from production and prevent these citizen farmers and ranchers from engaging in farming and/or ranching practices."[15] Put another way, Neighbors United asserts that if the Commission were to grant ATXI the CCN to construct and operate this transmission line, such action would infringe on its members' ability to engage in farming or ranching in violation of this constitutional provision.

---

[11] *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).
[12] *See State ex. rel. MoGas Pipeline LLC v. PSC*, 395 S.W.3d 562, 568 (Mo.App. W.D. 2013).
[13] *See, e.g., Missouri Southern R. Co. v. PSC*, 214 S.W. 379, 380 (Mo. 1919).
[14] Mo. Const., Art. 1, § 35.
[15] Motion to Dismiss, p. 4.

This assertion fails to distinguish between the legal significance of granting a CCN based upon a determination that the proposed project is in the public interest and the taking of property through eminent domain proceedings. The former is within the purview of the Commission, while the latter is within the exclusive jurisdiction of Article III courts.[16] Accordingly, because the potential issuance of a CCN does not in and of itself deprive any member of Neighbors United from the ability to farm or ranch, this constitutional provision cannot provide the basis for dismissal of the Application.[17]

County Commission Assents

Under Section 229.100 RSMo, "No person or persons, association, companies or corporations shall erect poles for the suspension of . . . power wires . . . across the public roads or highways of any county of this state without first having obtained the assent of the county commission of such county therefor . . . ."[18] Accordingly, Neighbors United asserts that ATXI must acquire the assent of county commissions in any county where the construction of the transmission line requires stringing power wires across public roads or highways.[19] Commission Rule 4 CSR 240-3.105(1)(D)(1) requires that specific evidence of such assent be provided to the Commission. Neighbors United argues that because such evidence has not been provided, and cannot be provided, dismissal of the Application is required.[20]

This argument ignores specific language in Section 393.170 that authorizes the Commission to impose any conditions on a CCN that it deems reasonable and necessary.[21]

[16] Section 523.010, .262 RSMo.
[17] While the existence of the Right to Farm Amendment does not require dismissal of the Application, it could impact how the Commission interprets the public interest as part of the CCN approval process.
[18] Section 229.100 RSMo.
[19] Motion to Dismiss, p.5.
[20] *Id.*
[21] Section 393.170.3 RSMo.

If such County Commission assents are indeed required by Section 229.100, RSMo, the Commission can make the CCN conditioned upon the receipt of such assents and evidence thereof provided to the Commission. Correspondingly, the Commission's rules provide that when such assent is unavailable at the time of initial filing, it need only be furnished prior to the granting of the authority sought.[22] In short, the Commission may approve the CCN before assent of the county commissions is shown, while conditioning the effectiveness of the CCN on the subsequent submission of proof that the assents have been obtained. Therefore, the existence or non-existence of such assents do not provide a basis for dismissal of the Application.

THE COMMISSION ORDERS THAT:

1. The Motion to Dismiss filed by Neighbors United is denied.

2. This order shall be effective on November 14, 2015.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Pridgin, Deputy Chief Regulatory Law Judge

[22] Commission Rule 4 CSR 240-3.105(D)(2).

In the Matter of the Verified Application and Petition of Laclede Gas Company to Change Its Infrastructure System Replacement Surcharge in Its Laclede Gas Service Territory	))))	**File No. GO-2015-0341** Tariff No. YG-2016-0041
In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in it Missouri Gas Energy Service Territory	))))	**File No. GO-2015-0343** Tariff No. YG-2016-0042

REPORT AND ORDER

ELECTRIC. §31. Equipment. Telemetry equipment rendered obsolete by technological advances did not qualify for an infrastructure replacement surcharge because the obsolete equipment was not worn out or deteriorated.

RATES.
§81. Surcharges. Telemetry equipment rendered obsolete by technological advances did not qualify for an infrastructure replacement surcharge because the obsolete equipment was not worn out or deteriorated.
§81. Surcharges. The Commission could grant an application for an infrastructure replacement surcharge that did not include exact cost amounts when the applicant filed documentation supporting those amounts in time for the other parties to review them.

NOTE: Affirmed on appeal.

NOTE: There is a Notice of Correction to the Order.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 12th day of November, 2015.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Verified Application and Petition of Laclede Gas Company to Change Its Infrastructure System Replacement Surcharge in Its Laclede Gas Service Territory	))))	**File No. GO-2015-0341** Tariff No. YG-2016-0041
In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in it Missouri Gas Energy Service Territory	))))	**File No. GO-2015-0343** Tariff No. YG-2016-0042

REPORT AND ORDER

Issue Date: **November 12, 2015**

Effective Date: **December 1, 2015**

TABLE OF CONTENTS

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Verified Application and Petition of Laclede Gas Company to Change Its Infrastructure System Replacement Surcharge in Its Laclede Gas Service Territory	))))	**File No. GO-2015-0341** Tariff No. YG-2016-0041
In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in it Missouri Gas Energy Service Territory	))))	**File No. GO-2015-0343** Tariff No. YG-2016-0042

REPORT AND ORDER

APPEARANCES

Laclede Gas Company & Missouri Gas Energy
Rick Zucker
700 Market Street
St. Louis, Missouri 63101

Office of the Public Counsel
Marc Poston
200 Madison Street
P.O. Box 2230
Jefferson City, Missouri 65102

PSC Staff
Jeff Keevil
200 Madison Street
P.O. Box 360
Jefferson City, Missouri 65102

USW Local 11-6*
Sherrie Hall
Emily Perez
Hammond and Shinners, P.C.
7730 Carondelet Avenue, Suite 200
St. Louis, Missouri 63105
** USW Local 11-6 intervened in File No. GO-2015-0341. The Commission granted the application of USW Local 11-6 to be excused from the evidentiary hearing.*

REGULATORY LAW JUDGE: Kim S. Burton

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Verified Application and Petition of Laclede Gas Company to Change Its Infrastructure System Replacement Surcharge in Its Laclede Gas Service Territory	))))	**File No. GO-2015-0341** Tariff No. YG-2016-0041
In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in it Missouri Gas Energy Service Territory	))))	**File No. GO-2015-0343** Tariff No. YG-2016-0042

REPORT AND ORDER

Issue Date: November 12, 2015 Effective Date: December 1, 2015

PROCEDURAL HISTORY

On June 19, 2015,[1] Laclede Gas Company ("Laclede") filed a *Notice of Intended Case Filing and Application for Waiver of 60 Days' Notice Period* in File No. GO-2015-0341. On that same day, Missouri Gas Energy ("MGE"), an operating unit of Laclede, also filed a *Notice of Intended Case Filing and Application for Waiver of 60 Days' Notice Period* in File No. GO-2015-0343. In their filings, both MGE and Laclede requested a waiver from the requirement in Commission rule 4 CSR 240-4.020(2) that a utility provide notice at least sixty days before the filing of what is likely to be a contested case. Both Laclede and MGE stated they intended to file applications to adjust their Infrastructure System Replacement Surcharge ("ISRS"). On June 30, the Commission issued orders granting the requested waivers.

[1] All dates are to the year 2015 unless indicated otherwise.

Laclede

On August 3, Laclede filed a verified application and petition to change its ISRS tariff to recover certain infrastructure replacement costs through a customer surcharge, as authorized by sections 393.1009, 393.1012 and 393.1015, RSMo.[2] With its application, Laclede filed a tariff to implement the surcharge with a September 2 effective date (Tariff No. YG-2016-0041). Laclede also requested the Commission establish a procedural schedule and set a hearing to determine the eligibility of certain expenses under relevant ISRS statutes.

On August 7, the Office of the Public Counsel ("OPC") responded to Laclede's application in File No. GO-2015-0341 by filing *Public Counsel's Motion to Reject Tariff Filing or Alternative Motion for an Evidentiary Hearing, and Motion Regarding a Procedural Schedule.* The Commission issued an order on August 7 suspending Laclede's ISRS tariff until December 1, and set an October 15 evidentiary hearing on Laclede's application. USW Local 11-6 filed an application to intervene in the Laclede case, which the Commission granted.

MGE

MGE similarly filed a verified application and petition to change its ISRS tariff in its Missouri Gas Energy Service Territory on August 3. MGE filed a tariff with a September 2 effective date (Tariff No. YG-2016-0042). On August 11, the Commission issued an order suspending MGE's tariff until December 1 and directing the Commission's Staff to file a recommendation on the application by October 2. On

[2] All statutory references are to the 2013 Cumulative Supplement of the Missouri Revised Statutes, unless indicated otherwise.

August 26, OPC filed a motion requesting the Commission reject MGE's ISRS tariff or set the matter for hearing by consolidating the case with the pending evidentiary hearing on Laclede's ISRS application.

The Commission issued an order on August 27 setting a joint evidentiary hearing on Laclede's and MGE's applications for October 15.[3] Staff filed separate recommendations on Laclede's and MGE's applications on October 2. A joint evidentiary hearing was held on October 15. The parties filed post-hearing briefs on October 26.

On November 9, Laclede and MGE filed a motion requesting expedited treatment. OPC filed a *Response in Opposition to Motion to Expedite* on November 10.

JOINT FINDINGS OF FACT

1. Laclede Gas Company ("Laclede") is a public utility, incorporated under the laws of the State of Missouri. Laclede is engaged in the business of distributing and transporting gas to customers in Eastern Missouri, specifically for customers located in the City of St. Louis, and the Counties of St. Louis, St. Charles, Crawford, Jefferson, Franklin, Iron, St. Genevieve, St. Francois, Madison, and Butler.[4]

2. MGE is an operating unit of Laclede that conducts business in its MGE service territory under the fictitious name of Missouri Gas Energy. MGE is engaged in the business of distributing and transporting natural gas to approximately 500,000 customers in the western Missouri counties of: Andrew, Barry, Barton, Bates,

3 Commission rule 4 CSR 240-2.110(3) states that the Commission may order a joint hearing when pending actions involve related questions of law or fact.

4 Exhibit 1; Verified Application and Petition Laclede Gas Company, pg. 2, ¶ 3-4.

Buchanan, Carroll, Cass, Cedar, Christian, Clay, Clinton, Dade, DeKalb, Greene, Henry, Howard, Jackson, Jasper, Johnson, Lafayette, Lawrence, McDonald, Moniteau, Pettis, Platte, Ray, Saline, Stone, and Vernon.[5]

A. LACLEDE

3. Laclede's most recent general rate increase was approved by the Commission in File No. GR-2013-0171. After the general rate case, an ISRS was established on April 12, 2014, authorizing Laclede to recover the cost of statutorily eligible infrastructure replacements through a surcharge on customer bills rather than through a formal rate case.[6] Since then, the Commission approved two additional ISRS adjustments by Laclede.[7] The total of these adjustments are included in Laclede's current ISRS rates for the recovery of eligible costs through February 28.[8]

4. On August 3, Laclede filed an application seeking to adjust its ISRS to recover certain infrastructure investments made during the period from March 1through June 30, as well as estimated infrastructure replacement costs through August 31 ("Laclede Application").[9]

5. The Laclede Application includes a rate schedule and supporting documentation identifying the utility account, work order description, month of completion, addition amount, depreciation rate, accumulated depreciation, and

[5] Exhibit 2, Verified Application and Petition of MGE, ¶ 3.

[6] *See* File No. GO-2014-0212; Exhibit 1, ¶ 1.

[7] *See* File Nos. GR-2015-0026 and GO-2015-0269; Exhibit 1, ¶ 2. Section 393.1015.3 allows a gas corporation to change its ISRS rates no more than two times every twelve months.

[8] Exhibit 1, ¶ 2.

[9] Exhibit 1.

depreciation expense for all ISRS work order additions from March through June with estimates for the months of July and August.[10]

6. In the Laclede Application, the company estimated that its eligible ISRS costs for the period March 1 through August 30 entitled the company to an incremental increase in ISRS revenue of $4,330,031.[11]

Laclede Telemetry Equipment

7. As part of the proposed ISRS increase, Laclede seeks to recover $401,259 in infrastructure investments for telemetric instrumentation and equipment replaced by the company.[12]

8. In a gas distribution system, gas constantly flows through the pipeline at different pressures from a variety of different sources to customers. Appropriate flow and pressure must be maintained to ensure the safety, integrity and reliability of the gas distribution system.[13] If there is a disruption in pressure or flow, real time data allows a gas company to take remedial action on a timely basis.[14]

9. Telemetry equipment is a main component of the regulator station. It is used to electronically transmit information on pressure and flow at a regulator station in real time

[10] Exhibit 1, Appendix A, B,C.

[11] Exhibit 1.

[12] Exhibit 1, Appendix A, Schedule 1, pg. 26; Exhibit 3, Seamands Direct Testimony, pg 5. See also Exhibit 100 pg 2- Staff Memorandum on Laclede. Plant-in-service related to telemetry equipment from prior ISRS cases were included in the submitted rates for this ISRS application. Staff states that this is due to an agreement between Laclede and OPC in Laclede's previous ISRS filing that the values related to those items would be excluded in the previous ISRS filing, but could be considered in future ISRS filings.

[13] Exhibit 3, pg. 4, ln 5-9.

[14] Exhibit 3, pg. 4, ln 4-13.

to a central control room so that the information can be monitored by individuals, who then send information back to that regulator station to adjust the flow or pressure.[15]

10. The telemetry equipment is physically located next to a regulator station. Lines run from the telemetry equipment to the regulator controller that tells it to open or close. The telemetry equipment also connects to pressure and flow information.[16]

11. If telemetry equipment fails, the failure can cause a gas leak by allowing the pipe to over-pressurize. It can also impact the service provided to customers by shutting off the gas so customers lose service.[17]

12. Laclede uses telemetry equipment in order to comply with federal and state safety regulations.[18]

13. Between 2000 and 2002, Laclede purchased and put into use the Network 3300 Series telemetry equipment from Bristol Network. In 2007, Laclede received notice from Bristol Network that this line of telemetry equipment was on the path to retirement and being replaced by a new Bristol ControlWave product line.[19] Bristol Network stated that it would stop providing repair parts on the Network 3300 Series in 2009 and would only continue to repair, service or replace the line through June 2011.[20]

[15] Transcript; pg. 46, ln. 2-9; Exhibit 3; pg. 3, ln 22- pg. 4, ln. 3.

[16] Transcript; pg. 46, ln. 14-23.

[17] Transcript; pg. 52, ln. 9-12; pg. 65, ln 6-16.

[18] Exhibit 3, pg. 4, ln 14-22. 4 CSR 240-40.030(13)(S)(1) and 49 CFR Part 192.741 require a utility with more than one regulating station or more than 1,000 customers to maintain graphic telemetering to monitor gas pressure.

[19] Exhibit 3, pg. 6, ln. 4-21.

[20] Exhibit 3, Attached Exhibit PAS-D1.

14. Laclede approved the purchase of replacement Bristol ControlWave RTUs and other telemetric equipment in December 2011 and began replacing existing telemetry equipment in 2012.[21]

15. As part of Laclede's replacement of old telemetry equipment, the large majority of the telemetry expense for which Laclede currently seeks ISRS recovery is found in work order 604180 ($205,916.37) and work order 604190 ($133,284.56).[22] An additional $62,057 is identified in four smaller telemetry work orders (#001172,#003306, #003402, and #00537).[23]

16. The telemetric equipment in work orders 604180 and 604190 were replaced while Laclede was replacing low-pressure regulator stations with new higher pressure stations.[24] While there were failures at different times on different pieces of similar equipment, the telemetric equipment removed in those two work orders were operating as expected at the time they were replaced.[25] There were no signs of corrosion on the exposed portions of the replaced equipment.[26]

Budgeted Infrastructure Replacements for July and August

17. From the time the Laclede Application was filed on August 3, Staff had sixty days – until October 2 – in which to review the ISRS rate request and file a recommendation with the Commission.[27]

[21] Exhibit 3, pg. 6, ln. 4-21.

[22] Exhibit 1, Appendix A, Schedule 1, pg 26.

[23] Exhibit, 200, Schedule JSM02).

[24] Transcript, pg. 63, ln. 15- pg. 64, ln 9.

[25] Transcript, pg. 57, ln 1-19.

[26] Transcript, pg. 56, ln. 22-25.

[27] Exhibit 100, Staff Memorandum on Laclede, pg. 2. Section 393.1010.2.(2), RSMo.

18. Staff began a review of the Laclede Application by evaluating the actual expense records provided at the time the petition was filed for the months of March through June.[28] On August 14, Laclede replaced the estimates provided to Staff and OPC for July in the Laclede Application with actual ISRS eligible plant addition cost information. The estimates for the month of August were updated with actual costs on September 14.[29]

19. As part of its review of Laclede's Application, Staff's auditing unit reviewed all supporting work papers, work orders, and other documentation provide by Laclede to evaluate ISRS eligibility. Staff also communicated with Laclede's personnel to seek clarification of information when necessary. Staff had sufficient time to conduct a review of the work papers and work orders associated with the true-up information provided by Laclede for the months of July and August.[30]

20. Staff determined the value of the infrastructure improvements for the months of July and August – which Staff identified in its reconciliation as the "true-up" – is $1,914,665.[31]

21. The value of property included in an ISRS decreases over time as the property depreciates from the moment of installation and as additional accumulated depreciation and deferred income taxes are calculated.[32]

[28] Exhibit 100, Staff Memorandum on Laclede, pg. 3.

[29] Id.

[30] Id.

[31] Transcript, pg. 86, ln 22- Pg. 87, ln 2. Staff recommended a revenue requirement for Laclede's infrastructure system replacements from March 1 through August 31, 2015 and including depreciation reserve and deferred income tax reserve through October 15, 2015 of $4,497,173. Transcript, pg. 84, ln. 7-10.

[32] Transcript, pg. 77, ln 3-15.

22. Staff updated the amount of accumulated depreciation reserve and accumulated deferred income tax reserve associated with Laclede's ISRS plant additions through October 15 to reflect as closely as possible the revenue requirement at the time an ISRS rate will go into effect.[33]

23. In its October 2 recommendation, Staff also submitted a rate design for the collection of Laclede's total ISRS surcharge for each of Laclede's customer rate classes.[34] No party opposed Staff's ISRS rate design.

24. Staff did not perform a reconciliation of the ISRS revenue Laclede collected from customers over the past twelve months to account for over-or under-collection of ISRS revenue because Laclede's last ISRS tariff only went into effect on May 22.[35] A reconciliation will occur at the time of Laclede's next ISRS filing.[36]

B. MGE

25. MGE's current ISRS was established to go into effect on October 18, 2014.[37] MGE's ISRS was then adjusted once to recover eligible costs incurred through February 28, 2015.[38]

[33] Exhibit 100, pg. 3.

[34] Exhibit 100, Appendix B.

[35] See File No. GO-2105-0269. Exhibit 100, pg. 3. Commission rule 4 CSR 240-3.265 (17) requires a reconciliation be performed at the end of the twelve month period that an ISRS is in effect to reconcile the difference between the revenues resulting from the ISRS and the appropriate pretax revenues as determined by the Commission.

[36] Exhibit 100, pg. 3. Section 393.1015.5(2), RSMo requires a gas corporation to reconcile the difference between the revenues resulting from an ISRS and the Commission approved pre-tax revenues at the end of each twelve-month calendar period the ISRS is in effect.

[37] See File No. GR-2015-0025.

[38] *See* GR-2015-0270; Exhibit 102, Pg. 1-2.

26. On August 3 MGE filed an application seeking to adjust its ISRS to include certain infrastructure investments from March 1 through August 31("MGE Application"). The MGE Application included actual expenses for the period March 1 through June 30 with estimated infrastructure replacement costs through August 31 for a total proposed ISRS related revenue requirement of $1,807,205.[39]

27. The MGE Application includes a rate schedule and supporting documentation identifying the utility account, work order description, month of completion, addition amount, depreciation rate, accumulated depreciation, and depreciation expense for all ISRS work order additions from March through June with estimates for the months of July and August.[40]

Budgeted Infrastructure Replacements for July and August

28. Staff began a review of the MGE Application by evaluating the actual amounts provided in the filing.[41] MGE replaced the July estimates provided in the MGE Application with actual ISRS eligible plant addition costs on August 14. The August estimates were updated with actual costs on September 15, 2015.[42]

29. As part of its review of MGE's Application, Staff's auditing unit reviewed all supporting work papers, work orders, and other documentation provide by MGE to evaluate ISRS eligibility. Staff also communicated with MGE's personnel to seek clarification of information when necessary. Staff had sufficient time to conduct a review

[39] Exhibit 2.

[40] Exhibit 2.

[41] Exhibit 102, Staff Report and Recommendation, pg. 3.

[42] Id.

of the work papers and work orders associated with the true-up information provided by MGE for the months of July and August.[43]

30. Staff updated the amount of accumulated depreciation reserve and accumulated deferred income tax reserve associated with MGE's ISRS plant additions through October 15 to reflect as closely as possible the revenue requirement at the time an ISRS rate will go into effect.[44]

31. After conducting a thorough review and completing its calculations, Staff recommended MGE's ISRS be adjusted to include $1,878,151 of pre-tax revenues for recovery of eligible infrastructure costs for the March 1 through August 31 period.[45]

CONCLUSIONS OF LAW

Laclede and MGE are each a "gas corporation" and "public utility" under section 386.020, RSMo. Both Laclede and MGE are subject to the jurisdiction of the Commission, as provided in Chapters 386 and 393, RSMo. Sections 393.1009 through 393.1015, RSMo ("ISRS statute") authorize a method for gas corporations to establish or change ISRS rate schedules outside of a general rate case.

An ISRS is a single issue ratemaking tool authorized by statute that allows rates to be changed based on a consideration of only a single factor. Similar to a fuel adjustment clause, it is not intended to address every variable that impacts a utility's rates or its return on equity.[46]

[43] Id.

[44] Exhibit 102, pg. 3.

[45] Exhibit 102, pg. 5. Including the previously approved ISRS, Staff recommends a total cumulative ISRS surcharge of $6,683,273.

[46] *State ex rel. Union Elec. Co. v. Pub. Serv. Comm'n of State of Missouri*, 399 S.W.3d 467 (Mo.App. 2013).

The ISRS statute allows a gas corporation to adjust its rates and charges in order to recover costs for eligible infrastructure system replacements[47] after approval by the Commission. Both Laclede and MGE, as the parties requesting an increase in ISRS rates, have the burden of proof to demonstrate through competent and substantial evidence that the projects qualify under the ISRS statute.[48]

Laclede's Telemetry Equipment

After receiving notice from the manufacturer that the Network 3300 Series of telemetry equipment was being discontinued in 2009 and no longer serviceable in 2011, Laclede began the process of converting its telemetry system to newer equipment. OPC objects to the inclusion of $401,258 in Laclede's requested ISRS for telemetry equipment costs, arguing they are not eligible pipeline component replacements, as contemplated in section 393.1009(5)(a). Specifically, OPC asserts that the replaced equipment was not "worn out or in a deteriorated condition."

Section 393.1009(5) describes "Gas utility plant projects" which are eligible for ISRS recovery as the following:

> (a) Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to comply with state or federal safety

[47] 4 CSR 240-3.265(1)(B) defines eligible infrastructure system replacements as natural gas utility plant projects that: 1. Replace or extend the useful life of existing infrastructure; 2. Are in service and used and useful; 3. Do not increase revenues by directly connecting the infrastructure replacement to new customers; and 4. Were not included in the natural gas utility's rate base in its most recent general rate case.

[48] State *ex rel. Sure-Way Transp. v. Division of Transp. of State of Mo.*, 778 S.W.2d 839, 843 (Mo. App. 1989). *Deaconess Manor Ass'n v. Public Service Com'n of State of Mo.*, 994 S.W.2d 602 (1999).

> requirements as replacements for existing facilities that have worn out or are in deteriorated condition.

The Missouri Supreme Court recently noted that the term "deteriorate" means, "to make inferior in quality or value," to "grow worse," and "become impaired in quality, state, or condition."[49] Examining all these definitions of "deteriorate," the Court concluded that "'deterioration' is a gradual process that happens over a period of time rather than an immediate event."[50] Reversing a Commission order allowing ISRS recovery for gas facilities damaged by a third party, the court stated the Commission erred by presuming that any change to a gas utility plant project qualifies for an ISRS surcharge."[51]

The court's decision makes clear that the Commission should evaluate the eligibility of gas utility plant projects narrowly in order to ensure compliance with the legislature's intent. When evaluating the telemetry equipment Laclede replaced, which are pipeline system components installed to comply with state or federal safety requirements, the evidence shows that the specific units at issue in work orders 604180 and 604190 were still operable at the time of the replacements. There were no signs of deterioration, such as corrosion.

While it is clear that telemetry equipment plays a vital role in monitoring and ensuring the safe distribution of gas, Laclede failed to show the specific parts replaced were in an impaired condition. To simply state that the software was old, and the

[49] *Verified Application & Petition of Liberty Energy (Midstates) Corp. v. Office of Pub. Counsel*, 464 S.W.3d 520 (Mo. 2015).

[50] *Id*. at 525.

[51] Id.

manufacturer no longer providing repair parts, is not sufficient to demonstrate ISRS eligibility due to a worn out or deteriorated condition. If that were true, Laclede would have replaced all of the telemetry equipment in 2009 or 2011. For this type of equipment, absent some type of impairment in quality, state, or condition, age alone does not justify inclusion of a gas utility project in an ISRS recovery. Also, the Missouri Supreme Court noted that a single event cannot alone show impairment or deterioration.[52] Accordingly, manufacturer discontinued support for the telemetry equipment cannot alone show impairment or deterioration in this case. Since the telemetry equipment replacement occurred at the same time as regulator station upgrades, it appears the timing of the replacement was more likely motivated by the efficiency of changing both at the same time than the age of the equipment or any actual impairment.

Pro-Forma Inclusion

OPC contends that the ISRS applications filed on August 3 by both Laclede and MGE do not meet the statutory requirement of section 393.1015.1(1), RSMo since they fail to provide supporting documentation of actual work completed in the months of July and August. Instead, both Laclede and MGE submitted estimates of budgeted infrastructure expenses for July and August with the petitions filed on August 3.

Section 393.1015.1(1), RSMo states that:

> "At the time that a gas corporation files a petition with the commission seeking to establish or change an ISRS, it shall submit proposed ISRS rate schedules and its supporting documentation regarding the

[52] *Verified Application & Petition of Liberty Energy (Midstates) Corp. v. Office of Pub. Counsel*, 464 S.W.3d 520 (MO. 2015).

> calculation of the proposed ISRS with the petition, and shall serve the office of the public counsel with a copy of its petition, its proposed rate schedules, and its supporting documentation."

The Commission must therefore determine if the ISRS statute restricts what is recoverable to those projects completed and documented prior to the filing of an ISRS petition. The statutory language is designed to ensure that meaningful information is provided that allows a determination of the eligibility of projects for inclusion in an ISRS. Commission rule 4 CSR 240-3.265(20) identifies what documentation should be provided at the time a natural gas utility files a petition seeking to change an ISRS. Subsection (L) of the regulatory section states that:

> For each project for which recovery is sought, the statute, commission order, rule, or regulation, if any, requiring the project a description of the project, the location of the project, what portions of the project are completed, used and useful, what portions of the project are still to be completed, and the beginning and planned end date of the project.

Budgeted project information meets the statutory and regulatory requirement for the initial petition filing. So long as Staff has sufficient time to perform an effective review of ISRS eligibility within the sixty days allowed by the ISRS statute, the budgeted July and August documents, along with the actual expense records provided after the filing of the petitions are acceptable.

Furthermore, were the inclusion of a project in an ISRS to be the final step in the project review, OPC's narrow interpretation would be more persuasive. The purpose of the ISRS statute is to allow gas corporations to more timely recover costs for specific infrastructure replacements. The inclusion of a project in an ISRS does not mean the review of the cost or the project is completed. Section 393.1015.2(2), RSMo authorizes

the Commission's Staff to examine the information provided by the company and confirm that the underlying costs are in accordance with the statutes.

Reconciliation is required within twelve months of an ISRS being implemented.[53] After that, in a subsequent rate case, the Commission is not bound in the ratemaking treatment to be applied to the infrastructure system replacements and will still perform a prudence review were it may disallow the recovery of a project previously included in an ISRS.[54]

The statutory language requiring companies submit "supporting documentation" with their proposed ISRS rate schedules does not prohibit the use of budgeted information. Similar to a true-up in a general rate case, Laclede and MGE replaced the budgeted calculations with information on actual costs.

Staff received Laclede's actual ISRS eligible plant additions for July on August 14 (11 days after the petition was filed) and updated August actual expenses on September 14 (42 days after the petition was filed).

Staff received MGE's actual ISRS eligible plant additions for July on August 14 (11 days after the petition was filed) and updated August actual expenses on September 15 (43 days after the petition was filed).

Staff states that it had sufficient time after receiving the updated information to perform the examinations allowed by section 393.1015.2(2), RSMo. Staff concluded the

[53] Section 393.1015.5(2), RSMo.

[54] Section 393.1015.8, RSMo.

projects in the updated information provided by both Laclede and MGE for the months of July and August were ISRS eligible.

OPC also asserts that the method of providing only budgeted costs at the time of the ISRS filing does not provide sufficient time to conduct discovery and review the supporting materials. By necessity, the amount of time allowed for discovery in an ISRS case is not as long as that provided in a general rate case because the review required is not as complex. The ISRS statute ensures the application procedure happens in a condensed timeframe. The Commission is required to issue an order that is effective no later than one hundred twenty days after the petition is filed, and Staff has 60 days to conduct an examination.[55] OPC was provided the updated July and August information at the same time as Staff. OPC never demonstrated an attempt to conduct discovery on the actual costs for July and August.[56] For this reason, the Commission sees no evidence of an actual impediment to OPC's ability to conduct meaningful discovery of the July and August projects submitted by Laclede and MGE.

Decision

I. Laclede

In making this decision, the Commission has considered the positions and arguments of all of the parties. Applying the facts to the law in reaching its conclusion, the Commission finds that Laclede has not met its burden of proof to demonstrate that

[55] Section 393.1015.2(3), RSMo.

[56] Commission rule 4 CSR 240-2.090(2) allows parties twenty days to respond to data requests. In its *Order Suspending Tariff, Scheduling Evidentiary Hearing and Setting Procedural Schedule* issued on August 11, the Commission adopted a schedule that limited the time to respond to discovery to five business days after October 2.

the telemetry equipment included in its Work Orders: 001172, 003306, 003402, 005357, 604180, and 604190 are worn out or in a deteriorated condition so as to be ISRS eligible under the requirements of sections 393.1009 to 393.1015, RSMo. Aside from the telemetry equipment, Laclede provided competent and substantial evidence that all other projects submitted in its petition for the period beginning March 1through August 31 are ISRS eligible.

Laclede submitted with its petition the supporting documentation required by Section 393.1015.1(1), RSMo. The projects included in Laclede's petition for the months of July and August are eligible for inclusion in its ISRS. Since no party opposed the inclusion of updated reserves for depreciation and accumulated deferred income taxes ("ADIT") related to actual ISRS investments, Laclede's ISRS rates will recognize the depreciation and ADIT through October 15.

Staff submitted a rate design for each customer class to allow Laclede to generate the surcharge amount approved by the Commission. No parties objected to Staff's rate design method. The Commission will direct Laclede to utilize Staff's rate design method.

The Commission will reject the tariff filed by Laclede on August 3 and direct the company to submit a tariff that is consistent with this order.

II. MGE

In making this decision, the Commission has considered the positions and arguments of all of the parties. Applying the facts to the law in reaching its conclusion, the Commission finds that MGE provided competent and substantial evidence that the

Verified Application and Petition and the supporting documentation comply with the requirements of sections 393.1009 to 393.1015, RSMo. MGE submitted with its petition the supporting documentation required by section 393.1015.1(1), RSMo to allow inclusion in the ISRS of the projects identified in MGE's petition for the period beginning March 1 through August 31.

Since no party opposed the inclusion of updated reserves for depreciation and accumulated deferred income taxes ("ADIT") related to actual ISRS investments, MGE's ISRS rates will recognize the depreciation and ADIT through October 15. The Commission concludes that MGE is entitled to adjust its ISRS to recover additional Infrastructure System Replace Surcharge revenues of $1,878,151, with a total cumulative ISRS surcharge of $6,683,273.

Staff submitted a rate design for each customer class to allow MGE to generate the surcharge amount approved by the Commission in Appendix B of its memorandum (Exhibit 102). No parties objected to Staff's rate design method. The Commission will direct MGE to utilize Staff's rate design method.

III. Motion for Expedited Treatment

On November 9, 2015, Laclede and MGE filed a *Motion for Expedited Treatment* requesting the Commission issue this Report and Order in File Nos. GO-2015-0341 and GO-2015-0343 on November 12, with an effective date ten days later, on November 22.[57] In the motion, the companies state that they are capable of filing within twenty-four

[57] File No. GO-2015-0341-EFIS Item No. 53. File No. GO-2015-0343-EFIS Item No. 42.

hours tariffs that will comply with any order the Commission orders on November 12. Laclede asserts that OPC agreed in a Stipulation and Agreement in a previous Laclede rate case to work to implement Laclede's ISRS filings as soon as possible.[58] Therefore, six full business days to seek rehearing is "more than ample."[59] There is no reference in the motion of OPC acquiescing to this requested expedited treatment.

The companies assert that good cause exists to grant expedited treatment since coinciding effective dates allow Laclede to more efficiently place new rates into effect. However, the exigency of a situation does not constitute grounds for the Commission to act without authority.[60] An order of the Commission, unless the Commission orders otherwise, goes into effect after thirty days.[61] The courts have stated that although the Commission has discretion to set a time less than thirty days for the effective date of an order, anything less than ten is presumptively unreasonable.[62] This allowance of at least ten days between issuance and being effective is significant since section 386.500.2, RSMo requires applications for rehearing of a Commission order be filed prior to the effective date of that order.

Laclede and MGE request an order on their submitted ISRS tariffs be effective after ten days. Yet, the companies do not factor in the time needed to review any tariffs the Commission may direct them to file to comply with this Report and Order. While the scope of a review may be limited, an order approving a compliance tariff is

[58] File No. GR-2013-0171, *Rate Case Stipulation, ¶ 15.*

[59] File No. GO-2015-0341-EFIS Item No. 53. File No. GO-2015-0343-EFIS Item No. 42 *Motion for Expedited* Treatment ¶¶*2-3.*

[60] State *ex rel. Fischer v. Public Service Comm'n*, 645 S.W.2d 39, 43 (Mo. App. 1982).

[61] Section 386.490.2, RSMo.

[62] *State ex rel. Office of Public Counsel v. Public Service Commission*, 409 S.W.3d 522 (2013).

appealable.[63] Therefore, to ensure sufficient time for any party to request a rehearing, the Commission will allow at least ten days before the effective date of this Report and Order.

The Commission will deny the *Motion for Expedited Treatment*. Since section 393.1015.2(3), RSMo requires the Commission to issue an order to become effective no more than one hundred and twenty days after the petitions were filed, the Commission finds good cause exists to issue this Report and Order to become effective in less than thirty days.

THE COMMISSION ORDERS THAT:

1. The following tariff sheet filed by Laclede Gas Company on August 3, 2015, and assigned Tariff No. YG-2016-0041 is rejected:

P.S.C. Mo. No. 5 Consolidated

25th Revised Sheet No. 12, CANCELLING 24th Revised Sheet No. 12

1.

2. Laclede Gas Company is authorized to adjust its Infrastructure System Replacement Surcharge in an amount sufficient to recover ISRS revenue of $4,493,055 for File No. GO-2015-0341.

3. Laclede Gas Company is authorized to file composite/cumulative ISRS rates for each customer class consistent with Staff's recommended rate design method, found in Staff's Exhibit 101.

4. Laclede Gas Company shall file a tariff sheet in compliance with this order no later than November 13, 2015.

[63] Id.

5. Staff shall review the tariff sheet required by Ordered Paragraph 4 above once it is filed by Laclede Gas Company and file a recommendation as to whether the tariff sheet is in compliance with this order no later than November 16, 2015.

6. Any party wishing to respond or comment on the tariff sheet required by Ordered Paragraph 4 above shall file its response no later than November 16, 2015.

7. The following tariff sheet filed by Missouri Gas Energy, an Operating Unit of Laclede Gas Company, on August 3, 2015, and assigned Tariff No. YG-2016-0042 is rejected:

P.S.C. Mo. No. 6

5th Revised Sheet No. 10, Canceling 4th Revised Sheet No. 10

8. Missouri Gas Energy, an operating unit of Laclede Gas Company is authorized to adjust its Infrastructure System Replacement Surcharge sufficient to recover revenues of $1,878,151 for File No. GO-2015-0343.

9. Missouri Gas Energy is authorized to file composite/cumulative ISRS rates for each customer class consistent with Staff's recommended rate design method, found in Staff's Exhibit 102.

10. Missouri Gas Energy shall file a tariff sheet in compliance with this order no later than November 13, 2015.

11. Staff shall review the tariff sheet required by Ordered Paragraph 10 above once it is filed by Missouri Gas Energy and file a recommendation as to whether the tariff sheet is in compliance with this order no later than November 16, 2015.

12. Any party wishing to respond or comment on the tariff sheet required by Ordered Paragraph 10 above shall file its response no later than November 16, 2015.

13. The November 9, 2015 *Motion for Expedited Treatment* is denied.

14. This order shall be effective on December 1, 2015, except for Ordered Paragraphs 4, 5, 6, 10, 11, and 12 above, which shall become effective upon issuance.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, W. Kenney, and
Coleman, CC., concur;
Rupp, C., dissents.

Burton, Regulatory Law Judge.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Verified Application and Petition of Laclede Gas Company to Change Its Infrastructure System Replacement Surcharge in Its Laclede Gas Service Territory	))))	**File No. GO-2015-0341** Tariff No. YG-2016-0041

ORDER NUNC PRO TUNC

Issue Date: November 12, 2015 Effective Date: November 12, 2015

On November 12, 2015, the Commission issued a Report and Order that incorrectly stated that the amount Laclede Gas Company is authorized to adjust its Infrastructure System Replacement Surcharge is $4,493,055. The Commission will correct the mathematical error in this Order *Nunc Pro Tunc.* The correct language of the ordered paragraph 2 of the Report and Order is as follows:

> 2. Laclede Gas Company is authorized to adjust its Infrastructure System Replacement Surcharge in an amount sufficient to recover ISRS revenue of $4,456,045 for File No. GO-2015-0341.

THE COMMISSION ORDERS THAT:

1. The Commission's Report and Order, issued on November 12, 2015, is corrected *Nunc Pro Tunc* to change the amount of the authorized Infrastructure System Replacement Surcharge in Ordered Paragraph 2 to $4,456,045.

2. This order shall be effective when issued.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Kim S. Burton, Regulatory Law Judge
by delegation of authority
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 12th day of November, 2015.

In the Matter of the Application of Missouri-American Water Company for a Certificate of Convenience and Necessity Authorizing it to Install, Own, Acquire, Construct, Operate, Control, Manage and Maintain A Sewer System in Benton County, Missouri	)))))	**File No. SA-2015-0065**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

SEWER. §2. Certificate of convenience and necessity. The Commission granted an application for a certificate convenience and necessity when the applicant showed that it could provide better service at a lower rate than the current operator.
EVIDENCE, PRACTICE AND PROCEDURE. §22. Parties. In an action for a certificate of convenience and necessity, the Commission denied an application for intervention from a resident of the prospective service are because that resident was unaffected by the decision, in that the resident did not have to take service from the applicant.

NOTE: Interlocutory Appeal dismissed.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 12th day of November, 2015.

In the Matter of the Application of Missouri-American Water Company for a Certificate of Convenience and Necessity Authorizing it to Install, Own, Acquire, Construct, Operate, Control, Manage and Maintain A Sewer System in Benton County, Missouri	)))))	**File No. SA-2015-0065**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: November 12, 2015 Effective Date: December 12, 2015

Missouri-American Water Company filed an application with the Commission on September 8, 2014, seeking a certificate of convenience and necessity to purchase and operate a sewer system in a rural portion of Benton County, Missouri. The sewer system in question is currently served by Benton County Sewer District No. 1, which is operated by a receiver appointed by the United States District Court for the Western District of Missouri.

The Commission provided notice of the application, and set October 1, 2014 as the deadline for interested persons to intervene. The Missouri Department of Natural Resources filed a timely application to intervene and was granted leave to intervene on October 7, 2014. George M. Hall, an individual resident of the area for which Missouri-American seeks to be certified as a sewer provider, applied to intervene out of time on November 16, 2014. The Commission's Staff filed a pleading opposing Mr. Hall's request to intervene the next day.

While considering Mr. Hall's request to intervene out of time, the Commission conducted a local public hearing on November 24, 2014, in Benton County. At that local public hearing Mr. Hall, and others, testified in opposition to Missouri-American's application. Other members of the public testified in support of that application.

On December 17, 2014, the Commission denied Mr. Hall's application to intervene out of time, finding that he failed to demonstrate that his stated interests differ from those of the general public who are represented in this case by the Office of the Public Counsel. Further, the Commission found that Mr. Hall failed to demonstrate that his stated interests may be adversely affected by a final order arising from this case. Although the Commission denied Mr. Hall's request to intervene, it did grant him leave to file an *amicus curiae* brief, which he filed on January 9, 2015.

On December 26, 2014, Mr. Hall asked the Commission to reconsider its order denying his application to intervene out of time. The Commission denied reconsideration in an order issued on January 7, 2015. Mr. Hall appealed the denial of his application to intervene out of time to the Missouri Court of Appeals – Western District on January 14, 2015.

The Court of Appeals dismissed Mr. Hall's appeal in an opinion issued on September 22, 2015.[1] The Court of Appeals found that Mr. Hall did not demonstrate a claim to intervene as a matter of right. Rather, he sought only permissive intervention, the denial of which is not a final order of the Commission and is not subject to interlocutory appeal. The Court of Appeals' dismissal of Mr. Hall's appeal returned jurisdiction over Missouri-American's application to the Commission as of October 14, 2015, when the Court's mandate issued.

[1] Case No. WD78297.

On November 17, 2014, before Mr. Hall filed his appeal, the Staff of the Commission filed its recommendation regarding Missouri-American's application. Staff advised the Commission to grant the requested certificate to Missouri-American, subject to certain conditions. On October 23, 2015, after the appeal was resolved, the Commission allowed all parties until November 4, 2015 to respond to Staff's recommendation. Missouri-American responded that it accepts the conditions proposed by Staff. No other party responded.

The Commission finds that no party objects to the Commission granting Missouri-American's application for a certificate of convenience and necessity, subject to the conditions recommended by Staff, and no party requests a hearing regarding that application. Since no party requests a hearing, the Commission may make a determination without conducting a hearing.[2]

Section 393.170, RSMo (2000) requires a sewer corporation to receive approval from the Commission before constructing or operating a sewer system. The Commission may grant a sewer corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either "necessary or convenient for the public service."[3] The Commission has stated five criteria that it will use in making that 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;

[2] *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] Section 393.170.3 RSMo (2000).

4) The applicant's proposal must be economically feasible; and

5) The service must promote the public interest.[4]

The testimony offered at the local public hearings demonstrated a clear need for good sewer service in the territory Missouri-American asks to serve. Some residents and potential customers might prefer to scrap the entire centralized sewer service and instead rely on individual sewage disposal options. If those residents wish to pursue that option, nothing in this order will force them to take service from Missouri-American. Other residents are not willing or able to rely on other options and need the centralized sewage disposal option offered by the company. Missouri-American is a large, financially stable company with the expertise and financial wherewithal to take over and operate a very troubled sewer system. What is more, Missouri-American will charge the customers of the sewer system a substantially lower rate than they currently pay to the Sewer District.[5] Based on the verified application and the verified recommendation of Staff, the Commission independently finds and concludes that granting Missouri-American's application for a certificate of convenience and necessity to provide sewer service meets the above-listed criteria. The Commission will also consider the matters raised by Mr. Hall in his *amicus curiae* brief.

In his *amicus curiae* brief, Mr. Hall asserts several arguments. First, he alleges Missouri-American lacks standing to apply for the certificate of convenience and necessity because Benton County Sewer District #1 was dissolved by a vote of the people in 2013 and, therefore, there is no entity capable of selling anything to Missouri-American. He then

[4] *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).
[5] Staff's recommendation explains that residential customers of the Sewer District currently pay $84.00 per month for sewer service. Missouri-American will charge those customers $65.22 per month, a decrease of 22.36 percent.

challenges the legality of the order of the Federal District Court that authorized the court-appointed receiver to sell the assets of the Sewer District to Missouri-American. Second, he alleges that the asset purchase agreement submitted as an exhibit to Missouri-American's application is invalid because it is not dated. Finally, he asserts that the feasibility study submitted with the application is flawed because it assumes that the current customers of the Sewer District will become customers of the Missouri-American's system and asserts that many Sewer District customers will refuse to hook-up to the Missouri-American system. He is concerned that if many customers do not hook-up to the Missouri-American system, rates charged to the remaining customers will need to be increased to unsustainable levels to cover the costs required to operate the system.

The arguments presented in the *amicus curiae* brief are not persuasive. This Commission has no authority to assess or challenge the validity of the federal court order that authorized the trustee to sell the assets of the Sewer District to Missouri-America and approved the asset purchase agreement,[6] nor does it have authority to determine how the proceeds of the sale are distributed. This Commission only has authority to determine whether Missouri American, a regulated sewer corporation, should be given authority to operate that system. The concerns expressed about the viability of the sewer system if substantial numbers of Sewer District customers refuse to take service from Missouri-American are also unpersuasive. Missouri-American proposes to provide service to the customers of this system as a part of its existing Jefferson City Area operating district. That means the costs of providing sewer service to this system will be shared among the customers of the larger district, lending stability to the rates. In sum, none of the

[6] The August 25, 2014 Order of the United States District Court for the Western District of Missouri is attached to Missouri-American's application.

arguments presented in the *amicus curiae* brief cause the Commission to alter its finding and conclusion that Missouri-American's application should be granted.

THE COMMISSION ORDERS THAT:

1. Missouri-American Water Company is granted permission, approval, and a certificate of convenience and necessity to install, own, acquire, construct, operate, control, manage, and maintain a sewer system for the public in Benton County, Missouri, as more particularly described in the company's application.

2. The certificate of convenience and necessity is granted upon the conditions set out in this order.

3. Missouri-American Water Company shall notify the Commission of the closing of the assets within 5 days after such closing.

4. Missouri-American Water Company shall submit new tariff sheets within 30 days of the effective date of this order, as 30-day filings, for its existing sewer tariff No. 10, depicting the Benton County service area with a written description that is consistent with that shown by Attachment A to Staff's recommendation, a map consistent with that shown by Attachment B to Staff's recommendation, a revised Sheet SR1 to add applicability of existing rates to Benton County, and rule changes to address installation, ownership, and maintenance of pump units.

5. If closing does not take place within 30 days following the effective date of this order, Missouri-American Water Company shall submit a status report within 5 days after this 30-day period regarding the status of closing, and additional status reports within 5

days after each additional 30-day period, until closing takes place, or until Missouri-American Water Company determines that closing will not occur.

6. If Missouri-American Water Company determines that closing will not occur, it shall notify the Commission of such, after which time the Commission may cancel, or deem null and void, the Certificate of Convenience and Necessity issued to the company, and order replacement of any tariff sheets specific to the Benton County service area that may have become effective.

7. Missouri-American Water Company shall utilize and apply the depreciation rates shown in Attachment D to Staff's recommendation.

8. Missouri-American Water Company shall keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform Systems of Accounts.

9. Missouri-American Water Company shall keep operations records, including those for customer complaints/inquiries, meter placement and replacement/testing, vehicle, equipment and telephone use records, and customer account records.

10. Nothing in the Staff recommendation or this order shall bind the Commission on any ratemaking issue in any future rate proceeding.

11. Missouri-American Water company shall ensure adherence to Commission Rule 4 CSR 240-13.020(1) regarding the production of customer bills within a 26-35 days of service billing period within 30 days of this order.

12. Missouri-American Water Company shall distribute to Benton County customers an informational brochure detailing the rights and responsibilities of the utility and its customers, before the first billing from the company, consistent with the

requirements of Commission Rule 4 CSR 240-13.040(3).

13. Missouri-American Water Company shall include the Benton County customers along with existing customers for its reporting to the Consumer and Management Analysis Unit (CMAU)[7] staff for 1) Average Abandoned Call Rate, 2) Average Speed of Answer, 3) 1st Call Effectiveness, 4) Average Customer Response Time, 5) Call Volumes, 6) Call Center Staffing, 7) Call Center Staffing Levels, 8) the number of actual monthly meter reads in total and by district, 9) the number of monthly estimated meter reads, 10) the number of consecutive estimated reads, and 11) the meter reader staffing levels.

14. Missouri-American Water Company shall provide adequate training to all customer service representatives before the Benton County customers receive their first bill for sewer service from the company.

15. Missouri-American Water Company shall provide to the CMAU staff on a monthly basis a document detailing the bills to Benton County customers that were issued for greater than 35 days of service.

16. Missouri-American Water Company shall provide to the CMAU staff within 30 days after billing a sample of 10 billing statements of its first month bills issued to the Benton County customers.

[7] Staff's recommendation refers to the Engineering and Management Services Unit (EMSU). Since that recommendation was filed, the EMSU has been renamed as part of a reorganization of the Commission's Staff.

17. This order shall become effective on December 12, 2015.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Woodruff, Chief Regulatory Law Judge

In the Matter of TUK LLC for Certificates of Convenience and Necessity Authorizing it to Install, Own, Acquire, Construct, Operate, Control, Manage and Maintain Water and Sewer Systems in Jefferson County, Missouri	)))))	**File No. WA-2015-0169 et al.**

ORDER APPROVING STIPULATION AND AGREEMENT AND GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES. §22. Restrictions and conditions. The Commission granted an application for a certificate of convenience and necessity to operate a sewer company, waived a regulation requiring a feasibility study, and approved a stipulation and agreement under which the applicant withdrew an application for a certificate of convenience and necessity to operate a water company and provided water at no charge.

WATER. §2. Certificate of convenience and necessity. The Commission granted an application for a certificate of convenience and necessity to operate a sewer company, waived a regulation requiring a feasibility study, and approved a stipulation and agreement under which the applicant withdrew an application for a certificate of convenience and necessity to operate a water company and provided water at no charge.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 22nd day of October, 2015.

In the Matter of TUK LLC for Certificates of Convenience and Necessity Authorizing it to Install, Own, Acquire, Construct, Operate, Control, Manage and Maintain Water and Sewer Systems in Jefferson County, Missouri	)))))	**File No. WA-2015-0169 et al.**

ORDER APPROVING STIPULATION AND AGREEMENT AND GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: October 22, 2015 Effective Date: November 21, 2015

On January 20, 2015, TUK LLC ("TUK") filed an application with the Missouri Public Service Commission ("Commission") requesting that the Commission grant it certificates of convenience and necessity ("CCN") to install, own, acquire, construct, operate, control, manage and maintain water and sewer systems in Jefferson County, Missouri. TUK also requested that the Commission waive Commission rules regarding certain filing requirements. On January 21, 2015, the Commission directed notice and set a deadline for persons to request intervention. The Commission received an intervention request from the Missouri Department of Natural Resources, which was granted on February 24, 2015. The Commission consolidated the separate water and sewer cases, File Nos. WA-2015-0169 and SA-2015-0170, on February 3, 2015.

On May 22, 2015, the Commission's Staff filed a recommendation, which was corrected on May 28, 2015, that asks the Commission to approve the application, subject to

certain conditions. On June 2, 2015, the Office of the Public Counsel ("OPC") filed a response to Staff's recommendation proposing that TUK file a new rate case within 18 months instead of a rate review by Staff after rates become effective. On October 7, 2015, TUK, Staff and OPC filed a pleading titled *Unanimous Stipulation and Agreement* ("Agreement"). However, since the Agreement was not signed by the Missouri Department of Natural Resources, the Agreement is non-unanimous. Commission Rule 4 CSR 240-2.115(2) provides that other parties have seven days in which to object to a non-unanimous stipulation and agreement. If no party files a timely objection to a stipulation and agreement, the Commission may treat it as a unanimous stipulation and agreement. More than seven days have passed since the Agreement was filed, and no party has objected. Therefore, the Commission will treat the Agreement as a unanimous stipulation and agreement.

The Agreement is intended to resolve all issues identified by the parties and recommends that the Commission grant TUK's application for a sewer CCN, subject to the conditions stated in the Agreement. The Agreement states that TUK will withdraw its request for a water CCN, will not charge for water, and will not connect new water customers unless it later requests and receives a water CCN from the Commission.[1]

The Commission may grant a sewer corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either "necessary or convenient for the public service."[2] The Commission articulated the specific

[1] To be a water corporation or public utility subject to the jurisdiction of the Commission, a company must be devoted to public use by making its services available to the general public for gain or compensation. See, Sections 386.020 (43) and (59), RSMo Supp. 2013; *Hurricane Deck Holding Co. v. Public Service Commission of State*, 289 S.W.3d 260, 264 (Mo. App. 2009); *Osage Water Co. v. Miller County Water Authority, Inc.,* 950 S.W. 2d 569, 574 (Mo. App. 1997).
[2] Section 393.170.3, RSMo 2000.

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.[3]

Based on the Commission's independent and impartial review of the verified filings, the Commission determines that TUK has satisfied all necessary criteria for the grant of a sewer CCN. TUK's provision of sewer service to the service area described is in the public interest, and the Commission will grant the request for the certificate and approve the Agreement.

THE COMMISSION ORDERS THAT:

1. TUK LLC is granted permission, approval, and a certificate of convenience and necessity to install, own, acquire, construct, operate, control, manage and maintain a sewer system in Jefferson County, Missouri, as more particularly described in its application and in the parties' Agreement.

2. The Agreement filed on October 7, 2015, is approved. The signatory parties are ordered to comply with the Agreement, which is incorporated herein in its entirety as if fully set forth. The Agreement shall be attached to this order as Appendix A.

[3] 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.).

3. The certificate of convenience and necessity is granted subject to the conditions set out in the Agreement.

4. TUK LLC's request for a waiver from Commission Rules 4 CSR 240-3.305(1)(A)5 and 4 CSR 240-3.600(1)(A)5 regarding the requirement to file a feasibility study is granted.

5. Nothing in the Staff recommendation, the Agreement, or this order shall bind the Commission on any ratemaking issue in any future rate proceeding.

6. This order shall become effective on November 21, 2015.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Bushmann, Senior Regulatory Law Judge

In the Matter of the Joint Application of	)	
Hickory Hills Water & Sewer Co., Inc. and	)	
Missouri-American Water Company, for	)	File No. WA-2016-0019
MAWC to Acquire Certain Water and Sewer Assets	)	
of Hickory Hills and, in Connection Therewith, Issue	)	
Indebtedness and Encumber Assets.	)	

ORDER DENYING REQUEST FOR LOCAL PUBLIC HEARINGS AND GRANTING APPLICATIONS WITH CONDITIONS

CERTIFICATES. §22. Restrictions and conditions. The Commission denied a motion for a local public hearing, on applications for transfers of assets and for certificate of convenience and necessity, because the movant did not oppose any relief and the systems were in a state of environmental crisis.

WATER. §2. Certificate of convenience and necessity. The Commission denied a motion for a local public hearing, on applications for transfers of assets and for certificate of convenience and necessity, because the movant did not oppose any relief and the systems were in a state of environmental crisis.

SEWER. §2. Certificate of convenience and necessity. The Commission denied a motion for a local public hearing, on applications for transfers of assets and for certificate of convenience and necessity, because the movant did not oppose any relief and the systems were in a state of environmental crisis.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 4th day of November, 2015

.

In the Matter of the Joint Application of Hickory Hills Water & Sewer Co., Inc. and Missouri-American Water Company, for MAWC to Acquire Certain Water and Sewer Assets of Hickory Hills and, in Connection Therewith, Issue Indebtedness and Encumber Assets.	))))))	File No. WA-2016-0019

ORDER DENYING REQUEST FOR LOCAL PUBLIC HEARINGS AND GRANTING APPLICATIONS WITH CONDITIONS

Issue Date: November 4, 2015 Effective Date: November 14, 2015

Hickory Hills Water & Sewer Co., Inc. ("Hickory Hills") and Missouri-American Water Company ("MAWC") are public utilities subject to the Commission's regulation. This action consists of two applications to transfer the certificates of convenience and necessity ("certificates") and assets of Hickory Hills to MAWC. One application addresses water service and the other application addresses sewer service.

The Commission's staff ("Staff") filed a recommendation, [1] and a supplemental recommendation, [2] in favor of granting the applications subject to certain conditions.[3] The Commission received responses to the recommendation from the parties as follows:

[1] Electronic Filing Information System ("EFIS") No. 13 (October 2, 2015) *Staff Recommendation*.

[2] EFIS No. 19 (October 15, 2015) *Response to Order Directing Filing*. sets forth the supplemental recommendation in reply to MAWC's response to the recommendation.

[3] EFIS No. 13 (October 2, 2015) *Staff Recommendation*.

- Support from intervenor Department of Natural Resources ("DNR"); [4]
- No objection to any condition from MAWC; [5]
- No opposition from the Office of the Public Counsel ("OPC"). [6]

Nevertheless, OPC's response also included the request for a local public hearing.[7] OPC's request for a local public hearing[8] ("request") is unnecessary because OPC opposes no relief sought in this action. Moreover, a local public hearing would needlessly delay remediation of an environmental hazard as described below. Because of those peculiar and urgent circumstances, the Commission is denying the request and granting the applications.

I. Local Public Hearings

The request drew opposition from Missouri-American Water Company ("MAWC")[9] and Staff. [10] OPC filed a reply to the response of MAWC[11] and Staff. [12] Staff filed a sur-reply.[13]

[4] EFIS No. 15 (October 13, 2015) *Missouri Department of Natural Resources' Response to Staff's Recommendation*; EFIS No. 23 (October 26, 2015) *Missouri Department of Natural Resources' Reply to MAWC's Response to Staff Recommendation and Public Counsel Response*.

[5] EFIS No. 17 (October 13, 2015) *Response to Staff Recommendation and Public Counsel Response*. MAWC sought clarification of Staff's position as to the governing tariffs for the Hickory Hills service area, which Staff addressed in its supplemental recommendation. EFIS No. 19 (October 15, 2015) *Response to Order Directing Filing*, second and third pages, paragraphs 9 and 10.

[6] EFIS No. 14 (October 9, 2015) *The Office of the Public Counsel's Response to Staff Recommendation and Request for Local Public Hearing*.

[7] EFIS No. 14 (October 9, 2015) *The Office of the Public Counsel's Response to Staff Recommendation and Request for Local Public Hearing*.

[8] In Commission practice, a local public hearing includes a presentation on the Commission's operations from the Commission's public communications personnel, brief presentations from parties, and a question-and-answer period between those persons and members of the public. Those events occur outside the presence of the commissioners and the regulatory law judge. At the conclusion of the question-and-answer period, the regulatory law judge takes testimony and exhibits—under oath and subject to cross-examination—from members of the public.

[9] EFIS No. 17 (October 13, 2015) *Response to Staff Recommendation and Public Counsel Response.* OPC characterizes MAWC's response as not opposing a local public hearing. EFIS No. 20 (October 23, 2015) *The Office of the Public Counsel's Response to Staff* page 2 paragraph 7. But we read MAWC's

A. Standards

OPC does not cite any authority mandating a local public hearing on any of the applications. The law governing the applications for certificates provides:

> The commission shall have the power to grant the permission and approval herein specified whenever it shall **after due hearing** determine that such construction or [provision of service] is necessary or convenient for the public service [.[14]]

OPC cites no authority showing that any hearing is due. Because there is no right to a local public hearing, the matter is committed to the Commission's discretion. The Commission exercises its discretion by carefully considering all circumstances.

B. Arguments

The circumstances of this case, as set forth in verified filings, show that convening a local public hearing would hinder, and not promote, not aid, the long-sought remediation of historically troubled systems. The water system is in need of repairs, and the sewer system is in crisis, including:[15]

- A lagoon with a useful life that expired 30 years ago, sludge accumulated without removal over that time, resulting in diminished capacity for treatment.

position otherwise because, while MAWC generally does not oppose local public hearings, MAWC specifically distinguishes these applications. EFIS No. 17 (October 13, 2015) *Response to Staff Recommendation and Public Counsel Response* page 4 and 5 paragraph 4.

[10] EFIS No. 16 (October 13, 2015) *Staff's Opposition to OPC's Request for Local Public Hearing.*

[11] EFIS No. 22 (October 26, 2015) *The Office of the Public Counsel's Response to MAWC.*

[12] EFIS No. 20 (October 23, 2015) *The Office of the Public Counsel's Response to Staff.*

[13] EFIS No. 21 (October 23, 2015) *Staff's Reply to OPC*.

[14] Section 393.170, RSMo 2000. Emphasis added.

[15] EFIS No. 13 (October 2, 2015) *Staff Recommendation* page 2 to 3.

- Pipes that admit rainwater that can cause backups to homes, overflow of manholes, and overload in the lagoon, which can cause spillage and threaten a breach of containment.

Those and other issues are the subject of litigation brought by DNR against Hickory Hills and pending in circuit court since 2012.[16] Yet the long-running environmental difficulties of Hickory Hills find no place in OPC's arguments.

1. OPC's Arguments

OPC's arguments relate to communications among the Commission, MAWC, and customers. The current customers of Hickory Hills are among OPC's client base.[17]

OPC argues that:

> [OPC] believes that affording customers the opportunity to speak to the Commission at a hearing is a critical part of the Commission's process to ensure that a proposed transfer of assets is just and reasonable. [[18]]

The transfer of assets is not subject to the "just and reasonable" standard applicable in a utility rate case. The standard governing the applications for transfer is the public interest, which means in this context:

> [N]o such change shall be made as would work to the public detriment. 'In the public interest,' in such cases, can reasonably mean no more than 'not detrimental to the public.'" [[19]]

[16] State of Missouri v. Hickory Hills Water & Sewer, Inc., Case No. 12MT-CC00027 (Cir. Ct. Moniteau County), also described at EFIS No. 6 (August 18, 2015) *Missouri Department of Natural Resources' Application to Intervene* first and second page 1 paragraph 3.

[17] Section 386.710, RSMo 2000.

[18] EFIS No. 14 (October 9, 2015) *The Office of the Public Counsel's Response to Staff Recommendation and Request for Local Public Hearing* page 3 paragraph 8.

[19] State ex rel. City of St. Louis v. Pub. Serv. Comm'n of Missouri, 73 S.W.2d 393, 400 (Mo. banc 1934).

The public interest also determines the applications for certificates as part of the statutory standard of convenience and necessity. [20] That standard includes a variety of considerations.

> The term "necessity" does not mean "essential" or "absolutely indispensable", but that an additional service would be an improvement justifying its cost. Additionally, what is necessary and convenient encompasses regulation of monopoly for destructive competition, prevention of undesirable competition, and prevention of duplication of service. The safety and adequacy of facilities are proper criteria in evaluating necessity and convenience as are the relative experience and reliability of competing suppliers. 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. [21]

Those factors do not appear in the arguments that OPC offers in support of the request.

As to communication between customers and the Commission, OPC argues:

> [OPC] believes that customers should have the opportunity to voice their concerns, if any, to the Commission regarding the proposed transfer. [22]

But customers have already made full and effective use of that opportunity, Staff notes:

> The Commission held a local public hearing for Hickory Hills customers as recently as August 11, 2014, as part of Case No. WR-2014-0167. Public meetings were also held in 2013. Other meetings, formal and informal, have been held over the several years that Hickory Hills has been a problem system. Staff is of the opinion that another local public hearing is unnecessary in this case. [23]

[20] Section 393.170.3, RSMo 2000.

[21] *State ex rel. Intercon Gas, Inc. v. Pub. Serv. Comm'n of Missouri*, 848 S.W.2d 593, 597-98 (Mo. App. W.D.1993). Emphasis added.

[22] EFIS No. 14 (October 9, 2015) *The Office of the Public Counsel's Response to Staff Recommendation and Request for Local Public Hearing* page 3 paragraph 9.

[23] EFIS No. 16 (October 13, 2015) *Staff's Opposition to OPC's Request for Local Public Hearing* page 2 paragraph 6.

OPC does not argue otherwise and suggests no change in its clients' concerns from those previous actions, local public hearings, and meetings.

Nevertheless, as to communications between the customers and MAWC, OPC raises important matters:

> . . . [OPC] is concerned that customers of Hickory Hills have not been properly notified of the pending transfer [;[24]]

and:

> Additionally, customers should have the opportunity to meet the potential owner of their water and sewer system and ask questions regarding future plans for their utility. [[25]]

OPC does not describe any improper notice or suggest what constituted proper notice that did not occur, and MAWC alleges that sufficient communication has occurred:

> The customers of Hickory Hills have been extremely involved with the various efforts to address the water and sewer service issues. It is MAWC's belief that they are well aware of the proposals. [[26]]

MAWC's concern now, like Staff and DNR, is for delay of a much-needed resolution. A local public hearing, with testimony before the Commission that is under oath and subject to cross-examination, would delay that resolution and is not necessary for the Commission to reach its decision in this case.

2. Arguments of MAWC, Staff, and DNR

Further, MAWC, Staff, and DNR implore the Commission to dispense with further delay. MAWC argues:

[24] EFIS No. 14 (October 9, 2015) *The Office of the Public Counsel's Response to Staff Recommendation and Request for Local Public Hearing* page 3 paragraph 7.

[25] EFIS No. 14 (October 9, 2015) *The Office of the Public Counsel's Response to Staff Recommendation and Request for Local Public Hearing* page 3 paragraph 9.

[26] EFIS No. 17 (October 13, 2015) *Response to Staff Recommendation and Public Counsel Response* page 4 to 5 paragraph 4.

> Thus, in this case, holding a local public hearing would merely add unnecessary cost and time to the process. [27]

Staff argues:

> The Commission should approve the proposed transaction without delay, as quickly as possible, and thereby provide to the ratepayers of Hickory Hills the relief they have sought for some years now. [28]

DNR argues:

> Therefore, the PSC should approve the joint application as expeditiously as possible. [29]

The reason for the urgency is what MAWC describes as "a non-compliant system that needs immediate attention."[30]

DNR elaborates, recounting that DNR and the:

> . . . receiver, the residents, and PSC staff have made exhaustive efforts to get an adequate sewage treatment system in place at Hickory Hills, and in spite of those efforts, funds have not been available to replace the system, and the adverse environmental effects and contamination of the neighboring stream have continued unabated for years, with no relief in sight until MAWC came along with an offer to purchase and replace the system. [31]

Staff amplifies that argument, noting Hickory Hills' history before the Commission, including receivership and past actions.

[27] EFIS No. 17 (October 13, 2015) *Response to Staff Recommendation and Public Counsel Response* page 4 to 5 paragraph 4.

[28] EFIS No. 21 (October 23, 2015) *Staff's Reply to OPC*.

[29] EFIS No. 23 (October 26, 2015) *Missouri Department of Natural Resources' Reply to MAWC's Response to Staff Recommendation and Public Counsel Response* page 2.

[30] EFIS No. 17 (October 13, 2015) *Response to Staff Recommendation and Public Counsel Response* page 4, paragraph 4.

[31] EFIS No. 23 (October 26, 2015) *Missouri Department of Natural Resources' Reply to MAWC's Response to Staff Recommendation and Public Counsel Response* page 2.

> Hickory Hills . . . has been a matter of ongoing concern to the Commission and its Staff, as well as DNR, OPC, and its customers, since before it went into receivership in 2007. [32]

DNR supports the applications because it is satisfied that it can make progress with MAWC to address environmental concerns of the Hickory Hills system.

The arguments of DNR are persuasive because DNR's only interest in this action is the enforcement of environmental laws. Also persuasive are the arguments of Staff. Staff is not an agency statutorily charged to advocate an interest, like DNR and OPC, and does not possess a substantive interest of its own. Staff is above any specific interest and so provides the Commission with neutral, yet expert, advice on public interest and detriment. Staff's arguments against the request are especially persuasive in this context.

3. Ruling

In any event, OPC does not oppose any relief sought in this action.[33] There is no dispute as to the applications so no practical relief would result from a local public hearing. For those reasons, the Commission will deny the request.

It is possible, however, to accommodate both efficient remediation and encourage communication between the public and MAWC. To accomplish this, the Commission will order MAWC to convene a meeting with Hickory Hills' customers within 60 days of this order's effective date. The meeting's purpose is to inform Hickory Hills'

[32] EFIS No. 16 (October 13, 2015) *Staff's Opposition to OPC's Request for Local Public Hearing* page 2 paragraph 6.

[33] OPC has made clear that, while it intends to preserve certain theories for future actions, it has renewed its non-opposition. EFIS No. 22 (October 26, 2015) *The Office of the Public Counsel's Response to MAWC*.

customers about the transfer of ownership and operation. OPC, and any other party, may attend that meeting.

II. The Applications for Transfer of Assets

MAWC's response to Staff's recommendation included a reply to OPC's response, and drew a reply and sur-reply from Staff,[34] OPC,[35] and DNR.[36]

A. Standards

The standard governing the applications for transfer is the public interest, which means, in this context:

> [N]o such change shall be made as would work to the public detriment. 'In the public interest,' in such cases, can reasonably mean no more than 'not detrimental to the public.'" [[37]]

The public interest also determines the applications for certificates as part of the statutory standard of convenience and necessity.[38] That standard includes a variety of considerations:

> The term "necessity" does not mean "essential" or "absolutely indispensable", but that an additional service would be an improvement justifying its cost. Additionally, what is necessary and convenient encompasses regulation of monopoly for destructive competition, prevention of undesirable competition, and prevention of duplication of service. The safety and adequacy of facilities are proper criteria in evaluating necessity and convenience as are the relative experience and reliability of competing suppliers. Furthermore, it is within the discretion of the Public Service

[34] EFIS No. 19 (October 15, 2015) *Response to Order Directing Filing.*

[35] EFIS No. 22 (October 26, 2015) *The Office of the Public Counsel's Response to MAWC.*

[36] EFIS No. 23 (October 26, 2015) *Missouri Department of Natural Resources' Reply to MAWC's Response to Staff Recommendation and Public Counsel Response.*

[37] *State ex rel. City of St. Louis v. Pub. Serv. Comm'n of Missouri*, 73 S.W.2d 393, 400 (Mo. banc 1934).

[38] Section 393.170.3, RSMo 2000. The applications for seek relief in the alternative: a transfer of current certificates, or issuance of new certificates, to MAWC. EFIS No. 1 (July 28, 2015) page 6 paragraph (A).

> Commission to determine when the evidence indicates the **public interest** would be served in the award of the certificate. [39]

The Commission also has authority to impose conditions on the certificates, including those that Staff proposes and the parties discuss, as follows. [40]

B. Proposed Conditions

Staff recommends granting the applications subject to certain conditions,[41] which the parties discuss in the filings described above, but which are ultimately unopposed by any party. DNR supports the recommendation[42] and does not take any position in the other parties' discussion of the conditions.[43] OPC expresses certain theories regarding rates, rate base, and rate design that it intends to preserve for a future general rate action.[44] But OPC but does not oppose the applications or any proposed condition.[45]

Between MAWC and Staff, one clarification remains. MAWC cites the statute requiring the Commission to approve the consolidation of the Hickory Hills system with a service territory of MAWC:

> Upon the date of the acquisition of a small water utility by a large water public utility, whether or not the procedures for

[39] *State ex rel. Intercon Gas, Inc. v. Pub. Serv. Comm'n of Missouri*, 848 S.W.2d 593, 597-98 (Mo. App. W.D.1993). Emphasis added.

[40] Section 393.170.3, RSMo 2000.

[41] EFIS No. 13 (October 2, 2015) *Staff Recommendation*.

[42] EFIS No. 15 (October 13, 2015) *Missouri Department of Natural Resources' Response to Staff's Recommendation*.

[43] EFIS No. 23 (October 26, 2015) *Missouri Department of Natural Resources' Reply to MAWC's Response to Staff Recommendation and Public Counsel Response*.

[44] While every Commission order is immune from collateral attack under Section 385.550, RSMo 2000, the Commission may decide to abrogate any earlier order under Section 386.490.2, RSMo Supp. 2013.

[45] EFIS No. 14 (October 9, 2015) *The Office of the Public Counsel's Response to Staff Recommendation and Request for Local Public Hearing* page 2 paragraph 3; EFIS No. 22 (October 26, 2015) *The Office of the Public Counsel's Response to MAWC*.

> establishing ratemaking rate base provided by this section have been utilized, the small water utility shall, **for ratemaking purposes, become part of an existing service area**, as defined by the public service commission, of the acquiring large water public utility that is either contiguous to the small water utility, the closest geographically to the small water utility, or best suited due to operational or other factors. This **consolidation shall be approved** by the public service commission **in its order approving the acquisition**. [46]

MAWC proposes its St. Louis Metro service area,[47] and Staff supports that choice,[48] so the Commission will approve that consolidation.

Therefore, the Commission will grant the applications, include conditions on the certificates, and make this order effective in ten days because of the environmental hazards described above.

THE COMMISSION ORDERS THAT:

1. The request for local public hearings is denied.

2. Missouri-American Water Company "(MAWC") may operate the systems of Hickory Hills Water & Sewer Co., Inc. ("Hickory Hills") on an interim basis. Any such operation shall:

   a. Include working with the Missouri Department of Natural Resources "(DNR") to resolve the sewer noncompliance as quickly as possible.

   b. Be subject to the current Hickory Hills tariffs until the effective date of adoption notice tariff sheets as set forth in ordered paragraph 4.a.

[46] Section 393.320.6, RSMo Supp. 2013. Emphasis added.

[47] EFIS No. 17 (October 13, 2015) *Response to Staff Recommendation and Public Counsel Response* page 2 to 3 paragraph 3.a

[48] EFIS No. 19 (October 15, 2015) *Response to Order Directing Filing* second and third pages paragraph 9 and 10.

3. The applications for transfer of assets ("transfer"), as described in the body of this order, are granted.

a. Within five business days after closing on the transfer has occurred, MAWC shall file a notice that the closing has occurred.

b. The consolidation for ratemaking purposes of Hickory Hills' service area with the St. Louis Metro service area of MAWC is approved.

4. The applications for certificates of convenience and necessity ("certificates"), as described in the body of this order, are granted. Certificates shall issue to MAWC and shall be effective on the closing date of the transfer. The certificates shall be subject to the following conditions.

a. Within ten days after closing on the transfer, MAWC shall file adoption notice tariff sheets adopting the existing water tariff, and sewer tariff, of Hickory Hills including existing rates, rules and service area, and proposing a 30-day effective date.

b. MAWC shall adopt the current Hickory Hills depreciation rates as ordered in File Nos. WR-2009-0151 and SR-2009-0154.

c. MAWC shall keep Hickory Hills' financial books and records for rate base, revenues, and operating expenses in accordance with the NARUC Uniform System of Accounts.

d. MAWC shall maintain and retain proper rate base records on a going forward basis.

e. For purposes of rate base for plant-in-service and depreciation reserve, MAWC's books and records of respect to the Hickory Hills system shall

include the plant-in-service, depreciation reserve, CIAC, and CIAC amortization balances as calculated by the Audit Staff valued as of August 31, 2015. The actual values for plant-in-service, depreciation reserve, CIAC, and CIAC amortization shall be subject to review and adjustment in MAWC's next rate case.

f. MAWC may book a regulatory asset in the amount approximately as set forth in the *Staff Recommendation*, highly confidential version, Memorandum page 7 paragraph 8. Such regulatory asset shall be split equally between water and sewer, associated with amounts paid related to for Hickory Hills' receivership fees and loan payoff. That regulatory asset shall be amortized over a five-year period, beginning the first month following the effective date of this order.

g. MAWC shall not recognize for accounting purposes any "acquisition adjustment" or "acquisition premium" associated with the transfer.

h. Within 30 days after closing on the assets, MAWC shall submit payment of the delinquent FY2014 and FY2015 assessments, and payment of the FY2016 assessment of an amount to keep it current according to the option of quarterly payments.

i. Within 30 days of this order's effective date, MAWC shall ensure adherence to Commission Rule 4 CSR 240-13.020(1) regarding the production of customer bills with a 26-35 days of service billing period.

j. MAWC shall distribute to Hickory Hills customers an informational brochure detailing the rights and responsibilities of MAWC and its

customers before the first billing from MAWC, consistent with the requirements of Commission Rule 4 CSR 240-13.040(3).

k. MAWC shall include the Hickory Hills customers along with existing customers for its monthly reporting to the Commission's Consumer and Management Analysis Unit ("CMAU," formerly the Engineering Management Services Unit) staff for 1) Average Abandoned Call Rate, 2) Average Speed of Answer, 3) 1st Call Effectiveness, 4) Average Customer Response Time, 5) Call Volumes, 6) Call Center Staffing Levels, including job titles and the number of people employed in each category, 7) the number of actual monthly meter reads in total and by district, 8) the number of monthly estimated meter reads, 9) the number of consecutive estimated reads and 10) the meter reader staffing levels.

l. MAWC shall provide adequate training for the correct application of rates and rules to all customer service representatives before HickoryHills customers receiving their first bill from MAWC.

m. MAWC shall provide to the CMAU staff on a monthly basis a document detailing the bills to Hickory Hills customers that were issued for more than 35 days of service.

n. MAWC shall provide to the CMAU staff within 30 days of billing a sample of ten billing statements of the first three months' bills issued to Hickory Hills customers, in order to check for accuracy.

o. MAWC shall provide an example of its communication with the Hickory Hills customers regarding MAWC's acquisition of Hickory Hills and how MAWC can be reached.

p. MAWC shall work with DNR to resolve the sewer noncompliance as quickly as possible.

q. Within 60 days of the effective date of this order, MAWC shall convene an informational meeting as described in the body of this order.

5. Nothing in this order precludes the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the applications for transfer or certificates, including expenditures related to the certificated service area, in any later proceeding.

6. This order shall be effective on November 14, 2015.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Jordan, Senior Regulatory Law Judge

In the Matter of Missouri-American Water Company for a Certificate of Convenience and Necessity Authorizing It to Install, Own, Acquire, Construct, Operate, Control, Manage and Maintain a Water System in an Area of St. Charles County, Missouri	)))))	**File No. WA-2016-0054**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY AND GRANTING WAIVER

CERTIFICATES. §22. Restrictions and conditions. The Commission issued an order granting an application for a certificate of convenience and necessity to operate a water system, conditioned on the applicant filing a tariff adopting the tariffs of an existing service area for the new service area; and with conditions related to accounting and recordkeeping.

WATER. §2. Certificate of convenience and necessity. The Commission issued an order granting an application for a certificate of convenience and necessity to operate a water system, conditioned on the applicant filing a tariff adopting the tariffs of an existing service area for the new service area; and with conditions related to accounting and recordkeeping.

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 December, 2015.

In the Matter of Missouri-American Water Company for a Certificate of Convenience and Necessity Authorizing It to Install, Own, Acquire, Construct, Operate, Control, Manage and Maintain a Water System in an Area of St. Charles County, Missouri	)))))	**File No. WA-2016-0054**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY AND GRANTING WAIVER

Issue Date: December 16, 2015 Effective Date: January 15, 2016

On September 4, 2015, Missouri-American Water Company ("MAWC") filed an application with the Missouri Public Service Commission ("Commission") requesting that the Commission grant it a Certificate of Convenience and Necessity ("CCN") to install, own, acquire, construct, operate, control, manage and maintain a water system in St. Charles County, Missouri. MAWC amended parts of its application on October 21, 2015 (collectively, the "Application"). The requested CCN would allow MAWC to provide water service to an existing development known as the Jaxson Estates subdivision. In connection therewith, MAWC requests permission to purchase a water distribution system from Ciana Realty, LLC, the current provider of water to Jaxson Estates.

The Commission issued notice and set a deadline for intervention requests, but no persons requested to intervene in this proceeding. On December 9, 2015, the Commission's Staff filed its Recommendation and Memorandum to approve the transfer of

assets and the granting of a CCN, subject to certain conditions. Staff advises the Commission to issue an order that:

1. Approves the CCN for MAWC to provide water service in the proposed Jaxson Estates service area as shown in the attached map and boundary description;

2. Requires MAWC to notify the Commission of closing of the assets within five (5) days after such closing;

3. Approves residential flat rates of $40.00 per month for water service;

4. Approves adoption of rules and regulations currently in effect for water service in its St. Louis Metro service area to apply to water service in the Jaxson Estates service area; Requires MAWC to submit new tariff sheets as described within this memorandum no later than thirty (30) days following the effective date of an order approving the CCN, as 30-day filings, to become effective prior to closing on the assets, for its existing water tariff No. 13, depicting the Jaxson Estates service area with a written description that is consistent with that as included with the Application, a map that is consistent with that as shown by the Attachment A, and a modified rate sheet for the Jaxson Estates service area that retains existing monthly rates;

5. If closing does not take place within thirty (30) days following the effective date of the Commission's order, requires MAWC to submit a status report within five (5) days after this 30-day period regarding the status of closing, and additional status reports within five (5) days after each additional 30-day period, until closing takes place, or until MAWC determines that closing will not occur;

6. Requires MAWC, if it determines that closing will not occur, to notify the Commission of such, after which time the Commission may cancel, or deem null and void, the CCN issued to MAWC, and order replacement of any tariff sheets specifically applicable to the Jaxson Estates service area that may have become effective;

7. Authorizes MAWC to utilize and apply water depreciation rates as shown in Attachment E;

8. Requires MAWC to keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts;

9. Requires MAWC to keep operations records including those for customer complaints/inquiries, vehicle, equipment and telephone use records, maintenance activity, service calls and customer account records; and

10. Makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded in any matters pertaining to the granting or transfer of the CCN to MAWC, including expenditures related to the certificated service area, in any later proceeding.

On December 10, 2015, MAWC filed its response, stating that it has no objection to the Staff Recommendation. No other party has objected to the Staff recommendation within the time set by the Commission. Thus, the Commission will rule upon the unopposed application. No party has requested an evidentiary hearing, and no law requires one.[1] Therefore, this action is not a contested case, [2] and the Commission need not separately state its findings of fact.

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."[3] 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.[4] The Commission finds that MAWC possesses adequate technical, managerial, and financial capacity to operate the water system it wishes to purchase from

[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 Supp. 2013.
[3] Section 393.170.3, RSMo 2000.
[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), 1994 WL 762882, *3 (Mo. P.S.C.).

Ciana Realty, LLC. 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 Ciana Realty, LLC. Consequently, based on the Commission's independent and impartial review of the verified filings, the Commission will authorize the transfer of assets and grant MAWC the certificate of convenience and necessity to provide water service within the proposed service area, subject to the conditions described above.

The Application also asked the Commission to waive the 60-day notice requirement under 4 CSR 240-4.020(2), if necessary. MAWC explains that such waiver may not be necessary since matters of this type rarely become contested cases. However, MAWC asserts that good cause exists in this case for granting such waiver because the application was filed as soon as possible due to the nature of this particular transaction. In addition, the applicants state that no purpose would be served to require the applicants to wait sixty days after their agreement to file the application with the Commission. The Commission finds that good cause exists to waive the notice requirement, and a waiver of 4 CSR 240-4.020(2) will be granted.

THE COMMISSION ORDERS THAT:

1. Missouri-American Water Company's request for a waiver of the notice requirement under Commission Rule 4 CSR 240-4.020(2) is granted.

2. Missouri-American Water Company is granted the certificate of convenience and necessity to provide water service within the authorized service area as more particularly described in the Application, subject to the conditions and requirements contained in Staff's Recommendation, including those conditions described in the body of this order.

3. Missouri-American Water Company is authorized to acquire the assets of Ciana Realty, LLC identified in the Application.

4. Missouri-American Water Company is authorized to take such other actions as may be deemed necessary and appropriate to consummate the transactions proposed in the Application.

5. This order shall become effective on January 15, 2016.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Bushmann, Senior Regulatory Law Judge

DIGEST OF REPORTS

OF THE

PUBLIC SERVICE COMMISSION

OF THE

STATE OF MISSOURI

LIST OF DIGEST TOPICS

ACCOUNTING

ACCOUNTING

§42. Accounting Authority Orders. The Commission approved a stipulation and agreement that provided for an accounting authority order allowing deferred recording for carrying costs associated with relicensing fees. **25 MPSC 3d 26**

§42. Accounting Authority Orders. The Commission has no authority to order an electric corporation to sell its street lights to a city. **25 MPSC 3d 73**

§42. Accounting Authority Orders. The Commission denied an accounting authority order to allow deferred accounting, sometimes called a "tracker," for future expenses that the applicant knew were likely to increase because deferred accounting is for unpredictable events. **25 MPSC 3d 368**

CERTIFICATES

I. IN GENERAL

II. JURISDICTION AND POWERS

III. WHEN A CERTIFICATE IS REQUIRED

IV. GRANT OR REFUSAL OF CERTIFICATE OR PERMIT - FACTORS

V. PREFERENCE BETWEEN RIVAL APPLICANTS – FACTORS

VI. CERTIFICATE OR PERMIT FOR PARTICULAR UTILITIES

VII. OPERATION UNDER TERMS OF THE CERTIFICATE

VIII. TRANSFER, MORTGAGE OR LEASE

IX. REVOCATION, CANCELLATION AND FORFEITURE

CERTIFICATES

§11. When a certificate is required generally. The Public Service Commission Act provides that the Commission has jurisdiction over any entity that owns or operates electric plant, including transmission line, devoted to public use. Public use is not limited to retail sales to the general public, and includes any integral link in the sale and distribution of electricity to the public, like transmission lines. The Federal Energy Regulatory Commission has not pre-empted State authority over the siting of electric plant. **25 MPSC 3d 217,**

§11. When a certificate is required generally. The Public Service Commission Act provides that the Commission has jurisdiction over any entity that owns or operates electric plant, including transmission line, devoted to public use. Public use is not limited to retail sales to the general public, and includes any integral link in the sale and distribution of electricity to the public, like transmission lines. The Federal Energy Regulatory Commission has not pre-empted State authority over the siting of electric plant. **25 MPSC 3d 338**

§21. Grant or refusal of certificate generally. The Commission denied an application for a line certificate when the applicant did not show that the project was needed and economically feasible. **25 MPSC 3d 292**

§21.1. Public interest. The Commission denied an application for a line certificate when the applicant did not show that the project was needed and economically feasible. **25 MPSC 3d 292**

§21.4. Economic feasibility of proposed service. The Commission denied an application for a line certificate when the applicant did not show that the project was needed and economically feasible. **25 MPSC 3d 292**

§22. Restrictions and conditions. The Commission issued an order, granting an application for a certificate of convenience and necessity, conditioned on the filing of tariffs as further described in the order. **25 MPSC 3d 504**

§22. Restrictions and conditions. The Commission issued an order granting an application for a certificate of convenience and necessity to operate a water system conditioned on the filing of a tariff within 20 days to the order's effective date. **25 MPSC 3d 510**

§22. Restrictions and conditions. The Commission granted an application for a certificate of convenience and necessity to operate a sewer company, waived a regulation requiring a feasibility study, and approved a stipulation and agreement under which the applicant withdrew an application for a certificate of convenience and necessity to operate a water company and provided water at no charge. **25 MPSC 3d 568**

§22. Restrictions and conditions. Statute requiring county commission's consent to construct lines across public roads, and absence of such assents to such construction, did not bar the Commission from approving that construction because the Commission can approve the construction conditioned on later assent. **25 MPSC 3d 523**

§22. Restrictions and conditions. The Commission denied a motion for a local public hearing, on applications for transfers of assets and for certificate of convenience and necessity, because the movant did not oppose any relief and the systems were in a state of environmental crisis. **25 MPSC 3d 573**

§22. Restrictions and conditions. The Commission issued an order granting an application for a certificate of convenience and necessity to operate a water system, conditioned on the applicant filing a tariff adopting the tariffs of an existing service area for the new service area; and with conditions related to accounting and recordkeeping. **25 MPSC 3d 589**

§25. Ability and prospects of success. The Commission denied an application for a line certificate when the applicant did not show that the project was needed and economically feasible. **25 MPSC 3d 292**

§42. Electric and power. The Public Service Commission Act provides that the Commission has jurisdiction over any entity that owns or operates electric plant, including transmission line, devoted to public use. Public use is not limited to retail sales to the general public, and includes any integral link in the sale and distribution of electricity to the public, like transmission lines. The Federal Energy Regulatory Commission has not pre-empted State authority over the siting of electric plant. **25 MPSC 3d 217**

§42. Electric and power. The Public Service Commission Act provides that the Commission has jurisdiction over any entity that owns or operates electric plant, including transmission line, devoted to public use. Public use is not limited to retail sales to the general public, and includes any integral link in the sale and distribution of electricity to the public, like transmission lines. The Federal Energy Regulatory Commission has not pre-empted State authority over the siting of electric plant. **25 MPSC 3d 338**

DEPRECIATION

I. IN GENERAL

II. JURISDICTION AND POWERS

III. BASIS FOR CALCULATION

IV. FACTORS AFFECTING ANNUAL ALLOWANCE

V. RESERVES

VI. DEPRECIATION OF PARTICULAR UTILITIES

DEPRECIATION

No headnotes in this volume involved the question of depreciation.

DISCRIMINATION

DISCRIMINATION

No headnotes in this volume involved the question of discrimination.

ELECTRIC

ELECTRIC

§3. Certificate of convenience and necessity
The Public Service Commission Act provides that the Commission has jurisdiction over any entity that owns or operates electric plant, including transmission lines, devoted to public use. Public use is not limited to retail sales to the general public, and includes any integral link in the sale and distribution of electricity to the public, like transmission lines. The Federal Energy Regulatory Commission has not pre-empted State authority over the siting of electric plant. **25 MPSC 3d 217**

§3. Certificate of convenience and necessity
The Public Service Commission Act provides that the Commission has jurisdiction over any entity that owns or operates electric plant, including transmission lines, devoted to public use. Public use is not limited to retail sales to the general public, and includes any integral link in the sale and distribution of electricity to the public, like transmission lines. The Federal Energy Regulatory Commission has not pre-empted State authority over the siting of electric plant. **25 MPSC 3d 338**

§3. Certificate of convenience and necessity. Statute requiring county commission's consent to construct lines across public roads, and absence of such assents to such construction, did not bar the Commission from approving that construction because the Commission can approve the construction conditioned on later assent. **25 MPSC 3d 523**

§3. Certificate of convenience and necessity. Right to Farm Amendment does not bar the issuance of a certificate of convenience and necessity to construct lines because the certificate's issuance does not take any land out of production. **25 MPSC 3d 523**

§9. Jurisdiction and powers of the State Commission. The Commission has no authority to order an electric corporation to sell its street lights to a city. **25 MPSC 3d 73**

§22. Revenue. In a general rate action, after the issuance of the decision on the merits, the Commission's staff filed revised information on revenue requirement and Net Base Energy Charge, which the Commission memorialized by notice issued in that case. **25 MPSC 3d 70**

§31. Equipment. Telemetry equipment rendered obsolete by technological advances did not qualify for an infrastructure replacement surcharge because the obsolete equipment was not worn out or deteriorated. **25 MPSC 3d 529**

§43. Accounting Authority Orders. The Commission approved a stipulation and agreement that provided for an accounting authority order allowing deferred recording for carrying costs associated with relicensing fees. **25 MPSC 3d 26**

§43. Accounting Authority Orders. Granting a public utility's accounting authority order for deferred recording of certain expenses does not entitle the utility to have those expenses included in rates. **25 MPSC 3d 73**

§43. Accounting Authority Orders. The Commission denied an accounting authority order to allow deferred accounting, sometimes called a "tracker," for future expenses that the applicant knew were likely to increase because deferred accounting is for unpredictable events. **25 MPSC 3d 368**

EVIDENCE, PRACTICE AND PROCEDURE

EVIDENCE, PRACTICE AND PROCEDURE

§2. Jurisdiction and Powers. The Commission has power to hear a complaint against a variety of entities, but has no power to hear a complaint against itself. **25 MPSC 3d 16**

§2. Jurisdiction and Powers. The statutes require State agencies to allow inspection and reproduction of public records, but impose no such requirement on a public utility. Therefore, a complaint alleging that a public utility failed to disclose records did not state a claim for which the Commission can grant relief. **25 MPSC 3d 20**

§18. Record and evidence in other proceedings. The Commission is entitled to interpret its own orders, and agreements incorporated in to those orders, and its interpretations constitute findings of fact. **25 MPSC 3d 368**

§22. Parties. The Commission has power to hear a complaint against a variety of entities, but has no power to hear a complaint against itself. **25 MPSC 3d 16**

§22. Parties. The statutes require State agencies to allow inspection and reproduction of public records, but impose no such requirement on a public utility. Therefore, a complaint alleging that a public utility failed to disclose records did not state a claim for which the Commission can grant relief. **25 MPSC 3d 20**
§22. Parties. In an action for a certificate of convenience and necessity, the Commission denied an application for intervention from a resident of the prospective service are because that resident was unaffected by the decision, in that the resident did not have to take service from the applicant. **25 MPSC 3d 558**
§23. Notice and hearing. The Commission's staff was not entitled to a pre-hearing decision because staff had no interest protected by the due process of law, and no party having such an interest was suffering any impairment under the Commission's order, so the application did not constitute a contested case. **25 MPSC 3d 277**
§24. Procedures, evidence and proof. The Commission rules on a motion to dismiss for failure to state a claim by disregarding the mere conclusions unsupported by allegations, assuming that the complaint's allegations are true, and determining whether those allegations describe a claim. **25 MPSC 3d 37**
§24. Procedures, evidence and proof. The Commission rules on a motion to dismiss for failure to state a claim by disregarding the mere conclusions unsupported by allegations, assuming that the complaint's allegations are true, and determining whether those allegations describe a claim. **25 MPSC 3d 51**
§24. Procedures, evidence and proof. Dismissal for failure to state a claim and summary determination before the Commission are analogous to procedures in Missouri Supreme Court Rules 55.27(a)(6) and 74.04, respectively. Those two dispositions are not interchangeable. Proof that establishes facts supporting summary determination also supports dismissal because the quantum of proof is higher for summary determination than for dismissal: summary determination requires undisputed facts, but dismissal may occur despite factual disputes. **25 MPSC 3d 37**
§24. Procedures, evidence and proof. Dismissal for failure to state a claim and summary determination before the Commission are analogous to procedures in Missouri Supreme Court Rules 55.27(a)(6) and 74.04, respectively. Those two dispositions are not interchangeable. Proof that establishes facts supporting summary determination also supports dismissal because the quantum of proof is higher for summary determination than for dismissal: summary determination requires undisputed facts, but dismissal may occur despite factual disputes. **25 MPSC 3d 51**
§24. Procedures, evidence and proof. A complaint seeking a remedy that is contrary to tariff is seeking a special rebate, or undue or unreasonable preference or advantage, contrary to statute. **25 MPSC 3d 37**
§24. Procedures, evidence and proof. A complaint seeking a remedy that is contrary to tariff is seeking a special rebate, or undue or unreasonable preference or advantage, contrary to statute. **25 MPSC 3d 51**
§24. Procedures, evidence and proof. Summary determination was due when the party defending a complaint showed that the complainant could demonstrate a violation of any statute or Commission regulation, order, or tariff. **25 MPSC 3d 37**
§24. Procedures, evidence and proof. Summary determination was due when the party defending a complaint showed that the complainant could demonstrate a violation of any statute or Commission regulation, order, or tariff. **25 MPSC 3d 51**
§24. Procedures, evidence and proof. The Commission excluded prepared testimony offered for the first time on surrebuttal. **25 MPSC 3d 368**
§27. Finality and conclusiveness. A collateral action is an action that challenges an order by means other than the exclusive remedy. That includes challenging a public utility practice that is in accord with a Commission decision that is beyond appeal; to challenge the practice is to challenge the decision. **25 MPSC 3d 37**
§27. Finality and conclusiveness. A collateral action is an action that challenges an order by means other than the exclusive remedy. That includes challenging a public utility practice that is in accord with a Commission decision that is beyond appeal; to challenge the practice is to challenge the decision. **25 MPSC 3d 51**

EXPENSE

EXPENSE

§51. Legal expense. In a general rate action, the Commission awarded the applicant the full cost, recovered over five years, of the depreciation study that the Commission's regulations require every five years; and, of the amount of attorney fees requested, awarded the same proportion as the amount of revenue requirement awarded compared to the amount requested. **25 MPSC 3d 368**

GAS

GAS

No headnotes in this volume involved the question of gas.

MANUFACTURED HOUSING

MANUFACTURED HOUSING

No headnotes in this volume involved the question of manufactured housing.

PUBLIC UTILITIES

PUBLIC UTILITIES

§1 Generally. The Commission established the assessment amount for fiscal year 2015. **25 MPSC 3d 287**

§5. Obligation of the utility. The statutes require State agencies to allow inspection and reproduction of public records, but impose no such requirement on a public utility. Therefore, a complaint alleging that a public utility failed to disclose records did not state a claim for which the Commission can grant relief. **25 MPSC 3d 20**

RATES

I. JURISDICTION AND POWERS

II. REASONABLENESS-FACTORS AFFECTING REASONABLENESS

RATES

§23. Efficiency of operation and management. The Commission rejected a plan filed under the Missouri Energy Efficiency Initiative Act because those tariffs assumed savings and benefits without evaluation, measurement, and verification; compensated the applicant without saving energy; and that would provide little benefit to ratepayers. **25 MPSC 3d 347**

§40. Revenues. In a general rate action, after the issuance of the decision on the merits, the Commission's staff filed revised information on revenue requirement and Net Base Energy Charge, which the Commission memorialized by notice issued in that case. **25 MPSC 3d 70**

§44. Taxes. The Commission's affiliate transactions rule did not support using a hypothetical net operating loss carryover instead of the actual amount. **25 MPSC 3d 73**

§64. Reduction of rates. The Commission clarified that a revenue-neutral increase for one customer class does not require corresponding increases or decreases for other classes. **25 MPSC 3d 334**

§66. Filing of schedules reports and records. A tariff may take effect without personal notice to any specific customer and without any specific customer's participation in the process; all members of the public have representation through the Office of the Public Counsel. **25 MPSC 3d 37**

§66. Filing of schedules reports and records. A tariff may take effect without personal notice to any specific customer and without any specific customer's participation in the process; all members of the public have representation through the Office of the Public Counsel. **25 MPSC 3d 51**

§69. Approval or rejection by the Commission. On the filing of a tariff that changes the rates a public utility may charge, the Commission must consider all factors relevant to that charge—not just the upward pressure that the public utility cites in seeking a rate increase, but downward pressures and other matters affecting a just and reasonable charge. Not so with a tariff to change terms and conditions of service. **25 MPSC 3d 478**

§71. Suspension. On the filing of a tariff that changes the rates a public utility may charge, the Commission must consider all factors relevant to that charge—not just the upward pressure that the public utility cites in seeking a rate increase, but downward pressures and other matters affecting a just and reasonable charge. Not so with a tariff to change terms and conditions of service. **25 MPSC 3d 478**

§77. Billing methods and practices. On the filing of a tariff that changes the rates a public utility may charge, the Commission must consider all factors relevant to that charge—not just the upward pressure that the public utility cites in seeking a rate increase, but downward pressures and other matters affecting a just and reasonable charge. Not so with a tariff to change terms and conditions of service. **25 MPSC 3d 478**

§81. Surcharges. The Commission approved an application and tariff to govern the applicant's infrastructure replacement surcharge, which allowed the applicant to recover its costs at the risk of over-collection, conditioned on the filing of a notice when the applicant approached over-collection. **25 MPSC 3d 222**

§81. Surcharges. The Commission could grant an application for an infrastructure replacement surcharge that did not include exact cost amounts when the applicant filed documentation supporting those amounts in time for the other parties to review them. **25 MPSC 3d 524**

§81. Surcharges. The Commission could grant an application for an infrastructure replacement surcharge that did not include exact cost amounts when the applicant filed documentation supporting those amounts in time for the other parties to review them. **25 MPSC 3d 529**

§81. Surcharges. Telemetry equipment rendered obsolete by technological advances did not qualify for an infrastructure replacement surcharge because the obsolete equipment was not worn out or deteriorated. **25 MPSC 3d 524**

§81. Surcharges. Telemetry equipment rendered obsolete by technological advances did not qualify for an infrastructure replacement surcharge because the obsolete equipment was not worn out or deteriorated. **25 MPSC 3d 529**

§101. Fuel clauses. The Commission included transmission costs in an electric corporation's fuel adjustment clause only to the extent that those costs related to the transmission of off-system sales outside its regional transmission organization and purchased power. **25 MPSC 3d 73**

§101. Fuel clauses. The Commission included transmission costs in an electric corporation's fuel adjustment clause only to the extent that those costs related to the transmission of off-system sales outside its regional transmission organization and purchased power. **25 MPSC 3d 239**

§101. Fuel clauses. The Commission included transmission costs in an electric corporation's fuel adjustment clause only to the extent that those costs related to the transmission of off-system sales outside its regional transmission organization and purchased power. **25 MPSC 3d 368**

§101. Fuel clauses. When an electrical corporation agreed not to file a proposed tariff seeking a fuel adjustment clause until a certain date, the date referenced was the effective date of a proposed tariff, not the filing date of the proposed tariff. **25 MPSC 3d 368**

§101. Fuel clauses. The Commission concluded that an electrical corporation met the qualifications for a fuel adjustment clause and determined the parameters of the fuel adjustment clause. **25 MPSC 3d 368**

§119. Rate design, class cost of service for electric utilities. The Commission clarified that a revenue-neutral increase for one customer class does not require corresponding increases or decreases for other classes. **25 MPSC 3d 334**

SECURITY ISSUES

I. IN GENERAL

SECURITY ISSUES

No headnotes in this volume involved the question of security issues.

SERVICE

SERVICE

SERVICE.

§3. Obligation of the utility. A water and sewer corporation under receivership violated statutes and its tariff in refusing additional service and improvement within its certificated area of service, so the Commission directed the corporation to seek authority for that service and improvement, and inquire of the circuit court what the corporation could do without specific authorization from the circuit court. **25 MPSC 3d 486**

§4. Abandonment, discontinuance and refusal of service. A water and sewer corporation under receivership violated statutes and its tariff in refusing additional service and improvement within its certificated area of service, so the Commission directed the corporation to seek authority for that service and improvement, and inquire of the circuit court what the corporation could do without specific authorization from the circuit court. **25 MPSC 3d 486**

§13. Jurisdiction and powers of the courts. A water and sewer corporation under receivership violated statutes and its tariff in refusing additional service and improvement within its certificated area of service, so the Commission directed the corporation to seek authority for that service and improvement, and inquire of the circuit court what the corporation could do without specific authorization from the circuit court. **25 MPSC 3d 486**

§18. Duty to render adequate service. The Commission ordered a water company to improve service at its call center by improving employee training, recording, processing, classification, specialization, follow-up, and documentation. **25 MPSC 3d 517**

§35. Management and operation. The Commission ordered a water company to improve service at its call center by improving employee training, recording, processing, classification, specialization, follow-up, and documentation. **25 MPSC 3d 517**

SEWER

SEWER

§2. Certificate of convenience and necessity. The Commission denied a motion for a local public hearing, on applications for transfers of assets and for certificate of convenience and necessity, because the movant did not oppose any relief and the systems were in a state of environmental crisis. **25 MPSC 3d 573**

§2. Certificate of convenience and necessity. The Commission granted an application for a certificate convenience and necessity when the applicant showed that it could provide better service at a lower rate than the current operator. **25 MPSC 3d 558**

STEAM

STEAM

No headnotes in this volume involved the question of steam.

TELECOMMUNICATIONS

TELECOMMUNICATIONS

No headnotes in this volume involved the question of telecommunications.

VALUATION

VALUATION

No headnotes in this volume involved the question of valuation.

WATER

WATER

§2. Certificate of convenience and necessity. The Commission issued an order granting an application for a certificate of convenience and necessity to operate a water system conditioned on the filing of a tariff within 20 days to the order's effective date. **25 MPSC 3d 510**

§2. Certificate of convenience and necessity. The Commission granted an application for a certificate of convenience and necessity to operate a sewer company, waived a regulation requiring a feasibility study, and approved a stipulation and agreement under which the applicant withdrew an application for a certificate of convenience and necessity to operate a water company and provided water at no charge. **25 MPSC 3d 568**

§2. Certificate of convenience and necessity. The Commission denied a motion for a local public hearing, on applications for transfers of assets and for certificate of convenience and necessity, because the movant did not oppose any relief and the systems were in a state of environmental crisis. **25 MPSC 3d 573**

§2. Certificate of convenience and necessity. The Commission issued an order granting an application for a certificate of convenience and necessity to operate a water system, conditioned on the applicant filing a tariff adopting the tariffs of an existing service area for the new service area; and with conditions related to accounting and recordkeeping. **25 MPSC 3d 589**

§4. Transfer, lease and sale. The Commission granted the application of a water corporation to sell its assets to a public water district, notwithstanding allegations of financial detriment to the public water district, because the Commission has no jurisdiction over the financial health of a public water district. **25 MPSC 3d 277**

§6. Jurisdiction and powers generally. The Commission held that all territorial agreements between a city and a water district are subject to Commission approval, and ineffective without the Commission's approval, so the Commission ordered a territorial agreement between a city and a water district filed with the Commission. **25 MPSC 3d 1**

§8. Jurisdiction and powers of the State Commission. The Commission granted the application of a water corporation to sell its assets to a public water district, notwithstanding allegations of financial detriment to the public water district, because the Commission has no jurisdiction over the financial health of a public water district. **25 MPSC 3d 277**

§10. Receivership. A water and sewer corporation under receivership violated statutes and its tariff in refusing additional service and improvement within its certificated area of service, so the Commission directed the corporation to seek authority for that service and improvement, and inquire of the circuit court what the corporation could do without specific authorization from the circuit court. **25 MPSC 3d 486**

§14. Maintenance. The Commission approved an application and tariff to govern the applicant's infrastructure replacement surcharge, which allowed the applicant to recover its costs at the risk of over-collection, conditioned on the filing of a notice when the applicant approached over-collection. **25 MPSC 3d 222**