REPORTS

OF THE

PUBLIC SERVICE COMMISSION

OF

THE STATE OF MISSOURI

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Volume 30 MPSC 3d

January 1, 2020 – December 31, 2020

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Morris Woodruff

Reporter of Opinions

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JEFFERSON CITY, MISSOURI

(2022)

PREFACE

This volume of the *Reports of the Public Service Commission of the State of Missouri* contains selected Reports and Orders issued by this Commission during the period beginning January 1, 2020 through December 31, 2020. It is published pursuant to the provisions of Section 386.170, et seq., Revised Statutes of Missouri, 2016, as amended.

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

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

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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of Missouri-American Water Company's Application for a Certificate of Convenience and Necessity Authorizing it to Install, Own, Acquire, Construct, Operate, Control, Manage and Maintain a Sewer System in an area of Clinton County, Missouri (Clinton Estates)	))))))	**File No. SA-2020-0132**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§21 Grant or refusal of certificate generally

The Commission stated in *In re Tartan Energy Company*, 3 Mo. P.S.C. 173 (1994), that five criteria guide its determination of whether granting a utility a CCN is "necessary or convenient for the public service" under Section 393.170, RSMo 2016: (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.

§21 Grant or refusal of certificate generally

The Commission granted Missouri-American Water Company a certificate of convenience and necessity to operate a sewer system in the Clinton Estates service area in Clinton County, Missouri.

EVIDENCE, PRACTICE AND PROCEDURE

§23 Notice and hearing

The requirement for a hearing is met when the opportunity for hearing is provided and no proper party requests the opportunity to present evidence. Citing *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Commission of the State of Missouri*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

SEWER

§2 Certificate of convenience and necessity

The Commission granted Missouri-American Water Company a certificate of convenience and necessity to operate a sewer system in the Clinton Estates service area in Clinton County, Missouri.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 21st day of January, 2020.

In the Matter of Missouri-American Water Company's Application For a Certificate of Convenience and Necessity Authorizing it to Install, Own, Acquire, Construct, Operate, Control, Manage and Maintain A Sewer System in an area of Clinton County, Missouri (Clinton Estates)	))))))	**File No. SA-2020-0132**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: January 21, 2020 Effective Date: February 20, 2020

Procedural History

On November 8, 2019, Missouri-American Water Company (Missouri-American) applied for a certificate of convenience and necessity (CCN) to install, own, acquire, construct, operate, control, manage, and maintain a sewer system in Clinton County, Missouri, in a subdivision known as Clinton Estates near the town of Trimble, Missouri. The sewer utility assets to be acquired are presently owned and operated by Clinton Estates Homeowners Association, a non-regulated homeowners association, which contracts with a third party, Residential Sewage Treatment Company, to perform maintenance and repairs. The area involved is the Clinton Estates subdivision, containing 79.5 acres. The system provides sewer service to approximately 61 residential customers. Customers currently receive quarterly flat rate bills of $120.00 for sewer service. The subdivision is substantially developed and significant additional connections are not anticipated. Missouri-American requested a waiver of the

Commission's 60-day notice requirement found in Commission Rule 20 CSR 4240-4.017(1).

The Commission set a deadline of November 27, 2019, to intervene in the case. No requests to intervene were received. The Staff of the Commission filed its Recommendation on January 10, 2020. Staff recommends that the Commission grant the certificate, subject to conditions.

Commission Rule 20 CSR 4240-2.080(13) states that parties have ten days to respond to pleadings unless otherwise ordered. The parties here were not otherwise ordered. Ten days have elapsed since Staff's recommendation. No party has objected to the recommendation. The Commission will take up the recommendation unopposed.

Decision

Missouri-American is a sewer corporation and a public utility subject to Commission jurisdiction.[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 has stated five criteria that it will use to make this determination:

1) There must be a need for the service;

2) The applicant must be qualified to provide the proposed service;

3) The applicant must have the financial ability to provide the service;

4) The applicant's proposal must be economically feasible; and

5) The service must promote the public interest.[3]

[1] Section 386.020 (43) and (49) RSMo 2016.
[2] Section 393.170, RSMo 2016.
[3] *In re Tartan Energy Company*, 3 Mo. P.S.C. 173, 177 (1994).

Based on the verified pleadings and Staff's Recommendation and Memorandum, the Commission finds the application for a certificate of convenience and necessity to provide sewer service meets the above listed criteria, when subject to the conditions recommended by Staff. No party has objected to Missouri-American's being granted a CCN, to the recommended conditions, nor requested a hearing.[4] The application will be granted, subject to the conditions recommended by Staff.[5] The Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the CCN to Missouri-American, including expenditures related to the certificated service area, in any later proceeding.

Missouri-American requested a waiver of the 60-day notice of case filing requirements established by 20 CSR 4240-4.017(1). Commission Rule 20 CSR 4240-4.017(1)(D) states that a waiver may be granted for good cause, which includes "a verified declaration from the filing party that it has had no communication with the office of the commission within the prior 150 days regarding any substantive issue likely to be in the case." Missouri-American has had no communication with the office of the Commission within the prior 150 days regarding any substantive issue likely to be in this case, other than those pleadings filed for record. Accordingly, for good cause shown, the Commission waives the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1).

[4] The requirement for a hearing is met when the opportunity for hearing is provided and no proper party requests the opportunity to present evidence. No party requested a hearing in this matter; thus, no hearing is necessary. *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Missouri*, 776 S.W.2d 494 (Mo. App. W.D. 1989).
[5] See Staff Memorandum, pp. 6-7.

THE COMMISSION ORDERS THAT:

1. The sixty day notice requirement of Commission Rule 20 CSR 4240-4.017(1) is waived.

2. Missouri-American is granted permission, approval, and a certificate of convenience and necessity to construct, install, own, operate, control, manage, and maintain a sewer system in the proposed Clinton Estates service area.

3. Missouri-American shall charge a monthly residential flat rate of $38.75 to apply to Clinton Estates service area.

4. Missouri-American shall submit new and revised tariff sheets, to become effective before closing on the assets, that include;

a. A service area map (sheet No. MP 19.1);

b. A service area written description (Sheet No. CA 18.1);

c. Sewer rates (Sheet No. RT 3.1);

d. Pump unit rules (Sheet No. 13.4);

e. Appropriate index modifications (Sheet Nos. IN 1.3, IN 1.4, IN 1.5),

as applicable to sewer services in its Clinton Estates service area, to be included in its EFIS sewer tariff P.S.C. MO No. 26.

5. Missouri-American shall notify the Commission of closing on the assets within five days after such closing.

6. If closing on the sewer system assets does not take place within thirty days following the effective date of this order, Missouri-American shall submit a status report within five days after this thirty-day period regarding the status of closing, and additional status reports within five days after each additional thirty-day period, until closing takes place, or until Missouri American determines the transfer of the assets will not occur.

7. If Missouri-American determines a transfer of the assets will not occur, Missouri-American shall notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and Missouri-American shall submit tariff sheets as appropriate and necessary that will cancel service area maps, descriptions, rates and rules applicable to the Clinton Estates service area in its sewer tariff.

8. Missouri-American shall keep its financial books and records for all utility capital related costs accounts and operating expenses in accordance with the NARUC Uniform System of accounts.

9. Missouri-American shall adopt for the Clinton Estates sewer assets the depreciation rates ordered for Missouri-American in Case No. WR-2017-0285.

10. Missouri-American shall provide training to its call center personnel regarding rates and rules applicable to the Clinton Estates customers.

11. Missouri-American shall include the Clinton Estates customers in its established monthly reporting to the Customer Experience Department (CXD) Staff on customer service and billing issues, on an ongoing basis, after closing on the assets.

12. Missouri-American shall distribute to the Clinton Estates customer an information brochure detailing the rights and responsibilities of the utility and its customers regarding its sewer service consistent with the requirements of Commission Rule 20 CSR 4240-13, within thirty days of closing on the assets.

13. Missouri-American shall provide to the CXD Staff an example of its actual communication with the Clinton Estates customers regarding its acquisition and operations of the sewer system assets, and how customers may reach Missouri-American, within ten days after closing on the assets.

14. Missouri-American shall provide to the CXD Staff a sample of ten (10) billing statements from the first month's billing within thirty days after closing on the assets.

15. Missouri-American shall file notice in this case outlining completion of the above-described training, customer communications, and notifications within ten days after such communications and notifications.

16. The Commission reserves all ratemaking treatment to be afforded any matters pertaining to the granting of the CCN, including expenditures related to the certificated service area, to a later proceeding(s).

17. This order shall be effective on February 20, 2020.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Graham, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of Evergy Missouri Metro and Evergy Missouri West's Notice of Intent to File Applications for Authority to Establish a Demand-Side Programs Investment Mechanism	)))))	**File No. EO-2019-0132**

AMENDED REPORT AND ORDER

Affirmed on Appeal: *Public Counsel v. Public Service Commission*, 621 S.W.3d 670 (mem) (Mo. App. W.D. 2021)

ELECTRIC

§13.1 Energy Efficiency
The Commission approved Evergy Metro and West's Missouri Energy Efficiency Investment Act Cycle 3 suite of energy efficiency programs subject to conditions.

§13.1 Energy Efficiency
The Commission shall approve, approve with modification acceptable to the company, or reject Missouri Energy Efficiency Investment Act application within 120 days after filing pursuant to Commission Rule 20 CSR 4240-20.094(4)(H).

§13.1 Energy Efficiency
The Commission determined that Evergy Metro and West valued demand-side investments equal to traditional investments in supply and delivery infrastructure. Evergy calculated that all but one of its Missouri Energy Efficiency Investment Act Cycle 3 programs was cost-effective, and Evergy was willing to modify that program to make it cost-effective. The projected costs will be outweighed by the savings benefits and all customers will monetarily benefit from the programs within the class the programs are offered. Customers who participate in energy efficiency programs will receive most of the benefits of those programs. However, even non-participating customers will receive some benefit.

§13.1 Energy Efficiency
The Commission modified Evergy Metro and West's Missouri Energy Efficiency Investment Act Cycle 3 suite of energy efficiency programs to include the Pay As You Save pilot program, which allows for the installation of energy efficiency measures whose savings outweigh costs.

§41 Billing practices
Customers taking advantage of the Pay As You Save pilot program will pay the costs of the energy efficiency measures over time through a tariffed charge on their bill.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Evergy Missouri Metro and Evergy Missouri West's Notice of Intent to File Applications for Authority to Establish a Demand-Side Programs Investment Mechanism	)))))	**File No. EO-2019-0132**

AMENDED REPORT AND ORDER

Issue Date: **March 11, 2020**

Effective Date: **April 10, 2020**

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BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Evergy Missouri Metro and Evergy Missouri West's Notice of Intent to File Applications for Authority to Establish a Demand-Side Programs Investment Mechanism	)))))	**File No. EO-2019-0132**

AMENDED REPORT AND ORDER

APPEARANCES

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Nicole Mers, Deputy Counsel, and **Travis J. Pringle**, Legal Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

Regulatory Law Judge: John T. Clark

Procedural History

On November 29, 2018, Evergy Missouri Metro[1] and Evergy Missouri West[2] (collectively, "Evergy or the Companies") each applied to the Commission for approval of certain demand-side programs, a Technical Resource Manual (TRM), variances from five Commission rules, and a Demand-Side Investment Mechanism (DSIM) (collectively, "MEEIA Cycle 3") as contemplated by the Missouri Energy Efficiency Investment Act (MEEIA) and the Commission's implementing regulations. Those applications resulted in the opening of File Nos. EO-2019-0132 and EO-2019-0133. The Commission provided notice and set a deadline for applications to intervene in both files.

The Missouri Division of Energy; Midwest Energy Consumers Group; Renew Missouri Advocates d/b/a Renew Missouri; Natural Resources Defense Council; the City of St. Joseph; Spire; The National Housing Trust; and the West Side Housing Organization (collectively "Intervening Parties") timely filed intervention requests in each file. The Commission granted those requests.

On December 27, 2018, the Commission granted an unopposed motion to consolidate EO-2019-0133, Evergy Missouri West's MEEIA application, into EO-2019-0132, Evergy Missouri Metro's MEEIA application, as the two cases involve related questions of law and fact.

Commission Rule 20 CSR 4240-20.094(4)(H) states that the Commission shall approve, approve with modification acceptable to the company, or reject MEEIA applications within 120 days of their filing. The parties were unable to reach an agreement

[1] At that time, known as Kansas City Power & Light Company.
[2] At that time, known as KCP&L Greater Missouri Operations Company.

regarding the applications within the Commission's allotted period and on February 27, 2019, sought to suspend the procedural schedule to allow discussions to continue and consider pursuing an agreement to extend MEEIA Cycle 2 programs for an additional year.[3] The Commission approved the motion to suspend the procedural schedule until February 13, 2019[4] and a subsequent motion to extend the deadline to allow adequate time for parties to file a stipulation.[5] On February 15, 2019, the parties filed an unopposed stipulation and agreement requesting an extension of the Companies' MEEIA Cycle 2 programs which would allow the Companies to continue offering demand-side programs for an additional year and provide continuity between cycles while parties continued to conduct additional discussions regarding a potential MEEIA Cycle 3.[6] The Commission issued an order approving a stipulation and agreement between the parties extending MEEIA Cycle 2 until December 31, 2019, and rejecting the tariffs filed concurrently with the Companies' application.

On August 7, 2019, the Commission issued an order setting a procedural schedule. That order also granted Evergy a variance from filing a 2019 Integrated Resource Plan (IRP) annual update as required by Commission Rule 20 CSR 4240-22.080(3), because of uncertainty regarding the status of the MEEIA Cycle 2 and 3 programs. The Staff of the Commission (Staff) and the Office of the Public Counsel (OPC) supported the variance. Evergy will next file an Integrated Resource Plan update in 2020.

[3] *Motion to Suspend Procedural Schedule,* page 1, File No. EO-2019-0132, filed January 28, 2019.
[4] *Order Granting Motion to Suspend Procedural Schedule,* page 2, filed January 28, 2019.
[5] *Order Extending Time to File Stipulation or Pleading,* page 1, filed February 14, 2019.
[6] *Stipulation and Agreement Regarding Extension of MEEIA 2 Programs During Pendency of MEEIA 3 Case,* page 2, filed February 15, 2019.

On September 23 and 24, 2019, the Commission held an evidentiary hearing. During the hearing, the parties presented evidence relating to the following unresolved issues previously identified by the parties:

1. When it developed MEEIA Cycle 3, did the Companies value demand-side investments equal to traditional investments in supply and delivery infrastructure?

2. Is the proposed MEEIA Cycle 3, as designed by the Companies, expected to provide benefits to all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers?

3. Should the Commission approve, reject, or modify the Companies' MEEIA Cycle 3, along with the waivers in the Companies' application intended to enable its implementation?

    a. If MEEIA Cycle 3 should be modified, how should the plans be modified?

4. If the Commission approves or modifies MEEIA 3, what DSIM provisions should be approved to align recovery with the MEEIA statute?

5. Should Opt-Out Customers be eligible to participate in Business Demand Response programs?

    a. Should Evergy Missouri West be required to publish in its tariff the participation payment to customers that participate in the Business Demand Response programs?

The Staff and OPC contested Evergy's MEEIA applications. The Intervening Parties supported Evergy's MEEIA Cycle 3 applications.

Initial post-hearing briefs were filed on October 11, 2019. Reply briefs were filed on October 21, 2019, and the case was deemed submitted for the Commission's decision on that date and the record closed.[7]

[7] "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 20 CSR 4240-2.150(1).

The Commission issued a Report and Order on December 11, 2019. On December 31, 2019, Evergy filed an application for clarification or rehearing, and OPC filed an application for rehearing

The Commission is amending this Report and Order to clarify how the Pay As You Save Program is configured, and to clarify and revise the Report and Order regarding avoided costs, benefits to all customers, and the business respond opt-out.

I. Findings of Fact

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. Evergy Missouri Metro is a Missouri corporation with its principal office located in Kansas City, Missouri. Evergy Missouri Metro is engaged in the generation, transmission, distribution, and sale of electricity in western Missouri, operating primarily in the Kansas City metropolitan area.[8]

2. Evergy Missouri West is a Delaware corporation with its principal office located in Kansas City, Missouri. Evergy Missouri West is engaged in the business of providing electric utility service in Missouri to the public in its certificated areas.[9]

3. Evergy Missouri Metro and Evergy Missouri West are in the Southwest Power Pool (SPP), a Regional Transmission Organization, and the Companies have an

[8] *Application to Approve DSIM Filing, Request for Variances and Motion to Adopt Procedural Schedule,* page 2, File No. EO-2019-0132, filed November 29, 2018.
[9] *Application to Approve DSIM Filing, Request for Variances and Motion to Adopt Procedural Schedule,* page 2, File No. EO-2019-0133, filed November 29, 2018.

Joint Network Integrated Transmission Service Agreement with the SPP.[10] The SPP treats them as a single load serving entity.[11]

4. Staff is a party in all Commission investigations, contested cases, and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.[12] Staff participated in this proceeding.

5. OPC is a party to this case pursuant to Section 386.710(2), RSMo,[13] and by Commission Rule 20 CSR 4240-2.010(10).

6. In 2009, the Missouri general assembly passed MEEIA. Participation under MEEIA is voluntary and companies do not have to offer demand side programs.[14] Utilities participate in MEEIA because it authorizes cost recovery that allows utilities to value demand-side efficiency equal to traditional investments as an incentive to participate in energy efficiency programs.[15]

7. On November 29, 2018, the Companies filed applications and accompanying tariffs with the Commission requesting approval of demand side programs, TRMs, and DSIMs under the MEEIA statute.[16]

[10] Dietrich Rebuttal, Exhibit 100, page 6.
[11] Transcript, pages 388.
[12] Commission Rules 20 CSR 4240-2.010(10) and (21) and 2.040(1).
[13] All statutory references are to the 2016 Missouri Revised Statutes, as supplemented, unless otherwise indicated.
[14] Section 393.1075, RSMo.
[15] Evergy Surrebuttal Report, Exhibit 4, page 1.
[16] *Application to Approve DSIM Filing, Request for Variances and Motion to Adopt Procedural Schedule,* page 2, File No. EO-2019-0132 and EO-2019-0133, filed November 29, 2018.

8. Evergy Missouri Metro and Evergy Missouri West have proposed separate demand side portfolios that contain the same programs, with the exception that only Evergy Missouri Metro's portfolio has an Income Eligible Home Energy Report.[17]

9. The applications indicate that the Companies are planning to invest $96.3 million with the anticipation of achieving 185.9 megawatts of capacity reduction in the first year of MEEIA Cycle 3's implementation.[18]

10. A successful MEEIA application is dependent on multiple program offerings in the categories of energy efficiency, demand response, low-income, and pilot programs.[19] Evergy has program offerings in all of those categories, including both business and residential programs.[20]

11. Evergy's MEEIA Cycle 3 programs are similar to the ones approved by the Commission in its MEEIA Cycle 1 and MEEIA Cycle 2.[21]

12. Evergy's portfolio of MEEIA Cycle 3 programs consists of a three-year plan for specific demand-side programs and a six-year plan for the income-eligible multi-family program, recovery of program costs and an offset of the throughput disincentive at the same time energy efficiency investments are made, and an opportunity to earn an incentive amount based upon demand and energy savings achieved.[22]

13. Evergy asks the Commission to approve MEEIA Cycle 3 for a three year period from the date of approval.[23]

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[17] Dietrich Rebuttal, Exhibit 100, page 3.
[18] Staff Rebuttal Report, Exhibit 101, page 3.
[19] Marke Rebuttal, Exhibit 200, page 21.
[20] MEEIA Cycle 3, Exhibit 2, pages 16 and 17.
[21] Caisley Surrebuttal, Exhibit 5, page 3.
[22] *Application to Approve DSIM Filing, Request for Variances and Motion to Adopt Procedural Schedule,* page 5, File No. EO-2019-0132 and EO-2019-0133, filed November 29, 2018.
[23] Transcript, page 167.

Avoided Costs

14. Avoided costs are the cost savings obtained by substituting demand side programs for existing and new supply side resources.[24] The importance of avoided costs is that they are used to calculate whether a demand side program is cost-effective as part of the Total Resource Cost test (TRC test).[25]

15. The TRC test compares the costs to deliver the program (including incentives paid to customers, administrative costs, the costs to do the evaluation, measurement and verification, and any out of pocket expenses paid by the customer) to the value of the program benefits (calculated as any energy savings in kWh, times the avoided cost of energy plus any capacity savings times the avoided costs of capacity equals the present value of the benefits). If the TRC results for a program are greater than one, the benefits are greater than the costs and the program is determined to be cost-effective.[26]

16. The TRC test is a preferred cost-effectiveness test under MEEIA. The Commission allows recovery under MEEIA for cost-effective programs as determined utilizing the TRC test.[27]

17. The Commission's IRP rule requires that Evergy analyze combinations of demand-side management programs and supply side resources to look for the lowest net present value of revenue requirement.[28]

[24] Commission Rule 20 CSR 4240-20.092(1)(C).
[25] Transcript, pages 393-394
[26] Transcript, pages 393-394.
[27] Section 393.1075.4 RSMo.
[28] Transcript, pages 141-142. See also: Commission Rule 20 CSR 4240-22.050.

18. Evergy used the levelized cost of a hypothetical Combustion Turbine (CT) to calculate avoided costs because of how it interprets the term "traditional investment" and because the SPP uses the avoided cost of a CT to value capacity.[29]

19. Using Evergy's proposed avoided costs based upon a hypothetical CT, the programs are cost-effective as a whole,[30] but those avoided costs overstate the benefits as calculated using the TRC test.[31]

20. Using Evergy's proposed avoided costs overstates the avoided costs of generation transmission and distribution facilities.[32]

21. Evergy's avoided costs calculations utilize dated information from 2015, which the Companies' 2018 IRP filing relied upon.[33]

22. Evergy did not file a 2019 IRP update, and will not file another IRP update until 2020, because of the variance granted by the Commission on August 7, 2019. The granting of that variance was supported by Staff and OPC.[34]

23. Evergy's capacity exceeds the needs of its customers and the resource adequacy requirements of SPP. Evergy will not need to build a CT to meet capacity needs until 2033, and it will need to build a CT in 2033 regardless of the implementation of its proposed MEEIA Cycle 3.[35]

[29] Evergy Surrebuttal Report, Exhibit 4, page 11.
[30] Evergy Surrebuttal Report, Exhibit 4, page 30.
[31] Transcript, page 381.
[32] Transcript, page 380.
[33] Marke Rebuttal, Exhibit 200, pages 9.
[34] Joint Motion to Establish Procedural Schedule and Grant Variance From Requirement to File 2019 Integrated Resource Plan Annual Update, filed July 24, 2019, and Order Granting Variance Setting Procedural Schedule And Other Procedural Requirements, issued August 7, 2019.
[35] Staff Rebuttal Report, Exhibit 101, page 17.

24. Using the levelized cost of a hypothetical CT to value avoided costs in this instance is not appropriate because Evergy is not actually avoiding the cost of building a CT.[36]

25. Evergy's demand-side programs do not defer the construction, or hasten the retirement of any specific identifiable supply-side resource.[37]

26. Staff's position on valuing avoided costs has changed from prior MEEIA cycles, to when it evaluated the Evergy's MEEIA Cycle 3 in this case. Staff's new position focuses on avoided costs as related to postponement of new supply-side resources and early retirement of existing supply-side resources.[38]

27. Staff proposes using an avoided cost of zero.[39]

28. OPC supports Staff's position that avoided costs of Evergy's MEEIA Cycle 3 should be valued at zero because no supply-side investment would be deferred.[40]

29. Staff's use of zero for avoided costs is inappropriate because the MEEIA statute does not limit avoided costs to those associated with the deferral of capacity or require deferral of capacity.[41]

30. SPP member costs are a source of potential cost avoidance. SPP member fees could be reduced through average monthly reductions in energy and demand.[42] Staff calculated a dollar amount per year that SPP fees would be affected by Evergy's proposed energy efficiency programs.[43] Staff's values for avoided demand costs exceeds

[36] Transcript, pages 303-304.
[37] Staff Rebuttal Report, Exhibit 101, page 25.
[38] Transcript, page 272.
[39] Dietrich Rebuttal, Exhibit 100, page 6.
[40] Marke Rebuttal, Exhibit 200, pages 5-10, and Transcript 487-488.
[41] Section 393.1075, RSMo., and Evergy Surrebuttal Report, Exhibit 4, pages 10-11.
[42] Evergy Surrebuttal Report, Exhibit 4, page 22.
[43] Staff Rebuttal Report, Exhibit 101, page 24, and Schedule JRL-1 (The amounts contained in Schedule JRL-1 are highly confidential.)

$0 per kilowatt per year over the 2019-2027 timeframe.[44] Additional savings from demand response reductions would increase SPP member fees savings.[45]

31. Evergy has the ability to create additional revenue by selling its excess capacity through bi-lateral contracts or requests for proposals.[46] The ability to sell excess capacity only increases as Evergy's demand-side programs are substituted for its customers need for its supply-side resources.

32. The substitution of a demand-side program for an existing supply-side resource occurs automatically when a demand-side program is implemented. Every kWh of energy saved offsets a kWh that would have otherwise been generated by a supply-side resource.[47]

33. Demand-side programs that produce capacity savings have an avoided cost greater than zero even if the subject utility is long on capacity. Valuing avoided costs at zero, as Staff suggests, would unreasonably block the implementation of otherwise cost-effective demand-side programs. This would reduce the number of cost-effective programs offered by companies that have excess capacity.[48]

34. MEEIA is not a program for managing generation and providing supply-side power. MEEIA is designed to compensate the utility for promoting energy efficiency as it encourages its customers to save money by using less of the product the utility sells.[49]

35. In 2017, Evergy Missouri West issued a Request for Proposal (RFP) for generating capacity. The company received seven offers to supply capacity, with terms

[44] Evergy Surrebuttal Report, Exhibit 4, page 24.
[45] Evergy Surrebuttal Report, Exhibit 4, page 24.
[46] Staff Rebuttal Report, Exhibit 101, page 26.
[47] Evergy Surrebuttal Report, Exhibit 4, page 11.
[48] Caisley Surrebuttal, Exhibit 5, page 6.
[49] Owen Surrebuttal, Exhibit 452, page 4.

ranging from four to ten years. As an alternative to its CT analysis, Evergy proposes to use the average price of those bids as an alternative market-based equivalent with which to value avoided costs.[50]

36. The Commission's IRP rules permit the use of a market-based equivalent for calculating avoided demand costs.[51]

37. Staff chose not to analyze Evergy's market-based alternative avoided costs.[52]

38. If a market approach using the average of bids for capacity received in regard to an Evergy Missouri West's RFP is used to calculate avoided costs, the Business Smart Thermostat program is the only non-exempt Evergy MEEIA Cycle 3 program that would not be cost-effective.[53]

39. The Home Energy Report program, and the Heating, Cooling, and Weatherization program, which requires an audit from an authorized energy auditor, are general education campaigns in the public interest, and exempt from having to be cost-effective.[54]

Benefit All Customers

40. MEEIA requires that all customers in the class for which MEEIA programs are offered benefit, regardless of whether they participate in the programs.[55]

[50] Transcript, pages 423-425.
[51] Commission Rule 20 CSR 4240-22.050(5)(A)1.
[52] Transcript, pages 404 and 422.
[53] Transcript, pages 424-425.
[54] MEEIA Cycle 3, Exhibit 1, page 31, and Section 393.1075.4 RSMo.
[55] Transcript, page 307, and Section 393.1075.4 RSMo.

41. Under Evergy's market-based approach calculations, the only program that would not be cost-effective is the business thermostat program.[56] Evergy is willing to make changes to that program so that it is cost-effective.[57]

42. Valuing avoided generation as the means to show benefits to all customers overlooks the purpose of MEEIA, which is to encourage energy efficiency. Utilities should be endeavoring to increase customer participation in energy efficiency programs. While participating customers save money on their bills and experience direct benefits, non-participating customers will benefit from Evergy's MEEIA Cycle 3 because the programs will be cost-effective. Non participating customers benefit from cost-effective programs, because cost-effective programs save more money than they cost. Simply put, all customers benefit, but participating customers benefit more.[58]

43. Customers participating in MEEIA energy efficiency programs will get the benefit of a lower bill because they will have less usage than non-participants.[59]

44. Benefits from a reduction in a customer's bill is not the only benefit to customers. There are also indirect societal benefits, such as improved health and safety, investment in local economies, and local job creation.[60]

45. If all utilities in SPP were to work toward energy efficiency there would be benefits for all customers in the SPP area, including Missouri. There would be a reduction in the number of hours that fossil fuel plants would run, a decrease in the amount of time that higher margin units would run, and fewer emissions.[61]

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[56] Transcript, pages 424-425.
[57] Evergy Missouri Surrebuttal Report, Exhibit 4, page 18
[58] Owen Surrebuttal, Exhibit 452, page 7.
[59] Transcript, page 349.
[60] Staff Rebuttal Report, Exhibit 101, Page 10.
[61] Transcript, pages 328-330.

46. The Heating, Cooling, and Weatherization program is designed to reduce heating and cooling consumption through the use of audits to gather information about energy usage and rebates.[62]

47. The Home Energy Report is an information gathering program that provides the customer with information about their average energy usage, and comparing their usage against similar households.[63]

Pay As You Save Program

48. Pay As You Save (PAYS) is a system that allows utilities to invest in efficiency upgrades on the customer's side of the meter and recover their costs through a tariffed charge on the participant's bill. It is not a consumer loan or individual debt.[64] As a tariffed program, it is tied to the meter.[65] PAYS enables deeper energy efficiency and demand savings by customers who do not have thousands of dollars of disposable income to make energy-related investments, including many residential customers.[66]

49. Under PAYS, the utility collects payments through a tariff to recover its investments from customers at the locations where the upgrades were installed. If any money needs to be borrowed, it is borrowed by the utility. Payment obligations are tied to the location, so whoever is a customer at a location where upgrades are installed makes the payments for only as long as they are a customer there, or until the upgrade costs are recovered.[67]

[62] Marke Rebuttal, Exhibit 200, page 23.
[63] Marke Rebuttal, exhibit 200, page 22.
[64] Marke Rebuttal, attachment GM-10, PAYS Questions for KCPL MEEIA, Exhibit 200, page 1.
[65] Marke Rebuttal, attachment GM-9, Response to PAYS Feasibility Study, Exhibit 200, page 3.
[66] Marke Rebuttal, exhibit 200, page 45.
[67] Marke Rebuttal, attachment GM-9, Response to PAYS Feasibility Study, Exhibit 200, page 3.

50. In ER-2016-0285, the Commission ordered Evergy Missouri Metro to consider incorporating the Pay As You Save (PAYS) program into its next MEEIA filing.[68]

51. Evergy complied with that order by hiring the Cadmus Group to complete a feasibility study, which was completed on September 28, 2018.[69] The Cadmus Group is a consulting firm based in Waltham, Massachusetts.[70]

52. The Cadmus Group's feasibility study recommended that Evergy consider a PAYS program that targets low-income and multifamily populations.[71]

53. OPC recommends that Evergy offer a PAYS program as part of its MEEIA Cycle 3 program portfolio. While OPC would like to see a full PAYS program, it is agreeable to a one-year pilot program to show that the program is feasible.[72]

54. Renew Missouri also recommends inclusion of a PAYS program in Evergy's MEEIA Cycle 3 as a way to increase customer participation and expand the scope of benefits.[73]

55. The position of Evergy has not changed from the position it expressed in ER-2016-0285. Evergy is not interested in being a financial institution that holds loans or liens on equipment on the customer's side of the meter.[74]

56. PAYS starts with an analysis of the property to determine what energy efficiency measures would pay for themselves.[75] Any upgrade that is a proven technology

[68] File No. ER-2016-0285, Report and Order, May 3, 2017, page 14.
[69] Marke Rebuttal, attachment GM-9, Response to Pay As You Save Feasibility Study, Exhibit 200.
[70] Owens Rebuttal, Exhibit, page 451.
[71] Marke Rebuttal, attachment GM-9, Response to Pay As You Save Feasibility Study, Exhibit 200.
[72] Marke Rebuttal, Exhibit 200, page 43.
[73] Owen Surrebuttal, Exhibit 452, page 8.
[74] Evergy Surrebuttal Report, Exhibit 4, page 74.
[75] Transcript, page 188

and can provide immediate net savings to the customer after it has been installed will pay for itself.[76]

57. PAYS does not require credit checks because it is not a loan program.[77] The payback of the costs of the upgrades are tied to the structure that receives the improvement. The funding for each project is capped at a level that is no more than 80% of the savings from the energy efficiency measures being installed. The customer's bill will be less, even though the customer is paying back the costs of the upgrades because the energy efficiency savings are higher than the fixed monthly charge for the upgrades.[78]

58. PAYS is also available to renters with the building owner's consent.[79]

59. PAYS allows customers without the necessary upfront capital to make energy-related investments to take part in energy efficiency projects they could not otherwise afford.[80]

60. Mark Cacye, the general manager for Ouachita Electric Cooperative in Camden Arkansas, testified that the cooperative is averaging 15 percent lower bills for every house participating in the PAYS program.[81]

61. It is appropriate to fund the PAYS program through MEEIA and provide an earnings opportunity for Evergy for successful implementation of the PAYS program.[82]

[76] Marke Rebuttal, attachment GM-10, PAYS Questions for KCPL MEEIA, Exhibit 200, page 2.
[77] Transcript, page 188
[78] Cayce Rebuttal, Exhibit 450, page 2.
[79] Transcript, page 198.
[80] Marke Rebuttal, Exhibit 200, page 45.
[81] Transcript, page 191.
[82] Transcript, page 502.

Business Demand Response Opt-Out Customers

62. The Business Demand Response program is primarily intended to build potential capacity for use in peak reduction to meet SPP capacity margin requirements.[83] One of the advantages of the business response program is that during peak demand periods the Companies can ask those customers in the Business Demand Response program to curtail or interrupt their load to take pressure off the system. Those customers are paid a financial incentive for allowing this interruption. The main benefit to Evergy is the ability to interrupt load to avoid paying higher SPP prices for electricity during peak demand.[84]

63. Interruptible or curtailable rates are voluntary on behalf of the customer.[85]

64. Evergy's largest interruptible customer is willing to interrupt approximately six megawatts of load.[86]

65. The business demand response program is an interruptible or curtailable program.[87]

II. Conclusions of Law

A. Evergy Missouri Metro is an electrical corporation and a public utility, as those terms are defined by Section 386.020(15) and (43), RSMo. As such, the Commission has jurisdiction over Evergy Missouri Metro pursuant to Sections 386.250(1), RSMo, and 393.140, RSMo.

B. Evergy Missouri West is an electrical corporation and a public utility, as those terms are defined by Section 386.020(15) and (43), RSMo. As such, the

[83] Staff Rebuttal Report, Exhibit 101, page 65.
[84] Transcript, page 219-220.
[85] Transcript, page 496.
[86] Transcript., page 220.
[87] Transcript, page 173.

Commission has jurisdiction over Evergy Missouri West pursuant to Sections 386.250(1), RSMo, and 393.140, RSMo.

C. In making its determination, the Commission may adopt or reject any or all of any witnesses' testimony.[88] Testimony need not be refuted or controverted to be disbelieved by the Commission.[89] The Commission determines what weight to accord to the evidence adduced.[90] "It may disregard evidence which in its judgment is not credible, even though there is no countervailing evidence to dispute or contradict it."[91] The Commission may evaluate the expert testimony presented to it and choose between the various experts.[92]

D. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision. Where the evidence conflicts, the Commission determines which evidence is most credible.

E. Commission Rule 20 CSR 4240-20.094(3) requires that the Commission must approve Evergy Missouri Metro's and Evergy Missouri West's MEEIA Cycle 3 plans, approve the plans with modifications acceptable to Evergy Missouri Metro and Evergy Missouri West, or reject the plans.

F. Under Section 393.1075.4 RSMo, the Commission permits electric corporations to implement commission-approved demand-side programs with a goal of achieving all cost-effective demand-side savings.

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[88] *State ex rel. Associated Natural Gas Co. v. Public Service Commission,* 706 S.W.2d 870, 880 (Mo. App., W.D. 1985).
[89] *State ex rel. Rice v. Public Service Commission,* 220 S.W.2d 61, 65 (Mo. banc 1949).
[90] *State ex rel. Rice v. Public Service Commission,* 220 S.W.2d 61, 65 (Mo. banc 1949).
[91] *State ex rel. Rice v. Public Service Commission,* 220 S.W.2d 61, 65 (Mo. banc 1949).
[92] *Associated Natural Gas, supra,* 706 S.W.2d at 882.

G. A demand-side program is any program conducted by a utility to modify the net consumption of electricity on the retail customer's side of the electric meter, including but not limited to energy efficiency measures, rate management, demand response, and interruptible or curtailable load.[93]

H. Energy efficiency measures are measures that reduce the amount of electricity required to achieve a given use.[94]

I. Recovery for demand-side programs is not 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.[95] Evergy's MEEIA programs result in energy and demand savings by substituting energy saved through demand-side programs for energy that otherwise would have been generated by a supply-side resource.

J. The TRC test is a preferred cost-effectiveness test to evaluate demand side programs.[96] The TRC test shows whether a program's savings outweigh its costs. It compares the sum of avoided utility costs and avoided probable environmental compliance costs associated with a program to the sum of all incremental costs of end-use measures that are implemented due to the program.[97] The TRC test, in part, determines whether all customers in a customer class receive benefits from a program. If a program scores one or greater, the program's economic savings outweigh its costs

[93] Section 393.1075.2(3) RSMo.
[94] Section 393.1075.2(4) RSMo.
[95] Section 393.1075.4 RSMo.
[96] Section 393.1075.4 RSMo.
[97] Section 393.1075.2(6) RSMo.

and the program is cost-effective, because money is saved economic benefits flow to all customers regardless of participation

K. Avoided costs or avoided utility costs means the cost savings obtained by substituting demand-side programs for existing and new supply-side resources.[98] Avoided costs are the foundation of whether a MEEIA program is cost-effective under the TRC test. Avoided costs include avoided utility costs resulting from demand-side programs' energy savings and demand savings associated with generation, transmission, and distribution facilities.[99] Nowhere does the MEEIA statute say that a supply-side resource must be avoided or deferred.

L. A Missouri regulated electric utility seeking to utilize demand-side programs and demand-side programs investment mechanisms is required to use the IRP and risk analysis used in its most recently adopted preferred resource plan to calculate its avoided costs,[100] unless the Commission grants it a variance from the request for good cause shown.[101]

M. In its IRP and associated risk analysis an electric utility must calculate the three types of savings projected to be avoided by the demand-side programs, avoided demand cost, avoided energy cost, and avoided probable environmental costs.[102]

N. In calculating the avoided demand cost associated with the demand-side programs included in its IRP risk analysis, an electric utility must include the resulting forgone capacity cost of generation, transmission, and distribution facilities, adjusted to

[98] Commission Rule 20 CSR 4240-20.092(1)(C)
[99] Commission Rule 20 CSR 4240-20.092(1)(C)
[100] Commission Rule 20 CSR 4240-20.092(1)(C)
[101] Commission Rule 20 CSR 4240-20.092(2)
[102] Commission Rule 20 CSR 4240-22(5)(A)1.

reflect reliability reserve margins and capacity losses on the transmission and distribution systems, or the corresponding market-based equivalents of those costs.[103]

O. The best method, in this case, to calculate avoided demand costs is set out in the Commission's IRP rules. The Commission's IRP Demand-Side Resource Analysis rule allows for the calculation of avoided demand costs using a market based equivalent.[104]

P. A variance of Commission Rule 20 CSR 4240-20.92(1)(C) is necessary to apply a different method of calculating avoided costs than the combustion turbine used in by Evergy in its most recent IRP filing.

Q. Section 393.1075.4 RSMo says that recovery for demand-side programs will only be allowed if the programs result in energy or demand savings and benefit all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers.

R. 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.[105]

S. The Home Energy Report program is a general education campaign and is in the public interest.

T. The Heating, Cooling, and Weatherization program is a program of audits and rebates. Those audits make it a general education campaign, and it is in the public interest.

[103] Commission Rule 20 CSR 4240-22 (5)(A)1.
[104] Commission Rule 20 CSR 4240-22(5)(A)1.
[105] Section 393.1075.4 RSMo.

U. The MEEIA statute does not indicate the level of benefits non-participants are to receive.

V. Participation in MEEIA is voluntary and no company is required to offer demand-side programs under MEEIA. As stated above the Commission can approve the applications with modifications so long as those modifications are acceptable to Evergy.[106]

W. Demand response measures are measures that decrease peak demand or shift demand to off-peak periods.[107]

X. Section 393.1075.10 RSMo states that customers opting not to participate in funding MEEIA programs shall still be allowed to participate in interruptible or curtailable rate schedules or tariffs.

Y. The Company has testified that the program is in fact a curtailable or interruptible program. This section of the MEEIA statute applies to the tariff or schedule. The Commission rejected Evergy's MEEIA Cycle 3 tariffs when it approved a stipulation and agreement between the parties extending MEEIA Cycle 2. Thus, there are no schedules or tariffs for the Commission to examine.

[106] Commission Rule 20 CSR 4240-20.094(4)(H)
[107] Section 393.1075.2(2) RSMo.

Variances

Evergy has requested variances be granted from five Commission rules:

1. Variances related to the incentive to be implemented and based on prospective analysis rather than achieved performance verified by EM&V, and the proposed utilization of a Technical Resource Manual for purposes of calculating Throughput Disincentive: 20.092(1)(HH);20.092(1)(M); 20.092(1)(R); 20.093(2)(I) 20.093(2)(I)3; 20.092(1)(N)

2. Variances related to allowing adjustments to Demand-Side Investment Mechanism (DSIM) rates for the Throughput Disincentive DSIM utility incentive revenue requirement as well as the DSIM cost recovery: 20.093(4); 20.093(4)(C)

3. Variances related to "revenue requirement" where the Throughput Disincentive is excluded from the cost recovery revenue requirement: 20.092(1)(Q); 20.092(1)(UU); 20.092(1)(P); 20.092(1)(R); 20.093(2)(J); 20.092(1)(F)

4. Variances related to allowing flexibility in setting the incentives and changing measures within a program: 14.030.

5. Variances related to the methodology for calculating avoided costs, 20.092(1)(C).

All of the Intervening Parties support granting Evergy's MEEIA Cycle 3 applications and associated variances. Staff opposes only the granting of a variance of Commission Rule 20 CSR 4240-20.092(1)(C), which defines avoided costs. Evergy requests the variance of the avoided cost definition because it say that the Companies have interpreted the rule to mean that the methodology for calculating avoided costs would be consistent with the most recently filed IRP at the time of the MEEIA application filing.

III. Decision and Discussion

The Commission will consolidate Evergy Missouri Metro's and Evergy Missouri West's applications, because the SPP treats Evergy Missouri Metro and Evergy Missouri West as a single load serving entity, and the parties who addressed that question in post-

hearing briefs all encouraged the Commission to take the applications together. Furthermore, consolidation will ultimately make it easier for customers who might otherwise be confused if MEEIA programs were only available for one company.

The combustion turbine mechanism for calculating avoided costs is not appropriate in this case because the data relied on is from 2015. A market based equivalent using capacity bids from late 2017 yields more current data to calculate avoided costs. Using a market based equivalency for avoided costs, Evergy calculates that all but one of its MEEIA Cycle 3 programs is cost-effective, and Evergy is willing to modify that program so it becomes cost-effective. Once that is done, the projected costs will be outweighed by the savings benefits and all customers will monetarily benefit from the programs within the class the programs are offered. Customers who participate in energy efficiency programs will receive most of the benefits of those programs. However, all customers will receive some benefit.

The Commission will approve Evergy's MEEIA Cycle 3 subject to certain conditions. The Commission determines that a market-based approach is the most appropriate way to calculate avoided costs for this MEEIA application and that a market-based approach best values demand-side investments equal to traditional investments in supply and delivery infrastructure. Therefore, the Commission will direct the parties to use the average of bids Evergy Missouri West received for capacity in 2017 for purposes of calculating avoided costs.

The Commission determines that Evergy's MEEIA Cycle 3 programs are beneficial to all customers in the customer class in which the programs are proposed.

Evergy has stated that it has no interest in having a PAYS program as part of its MEEIA Cycle 3 portfolio. However, the Commission finds that the PAYS program offers unique opportunities to broaden participation in MEEIA programs to customers who might not otherwise engage in energy efficiency programs. The PAYS pilot program appropriately belongs in MEEIA Cycle 3 because the Commission wants to give Evergy an appropriate earnings opportunity for offering the program, as proposed by Dr. Marke in rebuttal testimony. Evergy may not find offering a PAYS program to be an acceptable condition for approval of the Companies' MEEIA Cycle 3 applications, and Evergy may exercise its prerogative and not offer a MEEIA Cycle 3 portfolio if it does not find this addition acceptable.

The Commission determines that if Evergy implements a MEEIA Cycle 3, it shall offer a PAYS pilot program as described in the rebuttal testimony of Dr. Marke, with the exception that, the budget for the pilot program shall be reduced to no less than $10 million, and no more than $15 million. Evergy Missouri Metro and Evergy Missouri West may administer the pilot program themselves or may employ a third-party operator with experience to operate the Pay As You Save program. The program should be appropriately scaled down to accommodate the reduced budget, as the purpose of the one-year pilot program is to determine the feasibility and desirability of the PAYS program.

Testimony supports the Business Demand Response program as being interruptible or curtailable. The Commission determines from the description of the program that it is an interruptible or curtailable program and that opt-out customers shall be allowed to participate in the Business Demand Response program. If Evergy files

tariffs to implement the approved revised MEEIA Cycle 3, those tariffs will appropriately represent the Commission's determination that the programs are interruptible or curtailable within the meaning of the statute.

The Commission will grant the four unopposed variance requests, because the variances are necessary to successfully implement Evergy's MEEIA Cycle 3, and gain at-will participation. The Commission will grant the fifth variance even though the Commission is not approving Evergy's avoided costs. The Commission is approving the Companies MEEIA Cycle 3 applications with a market-based approach to calculating avoided costs. As modified, the variance is still needed. For this reason the Commission is granting a variance of Commission Rule 20 CSR 4240-20.092(1)(C).

The Commission will make this order effective in 30 days. This is a new order and consequentially all applications for rehearing of the December 11, 2019, Report and Order are now moot. Anyone seeking rehearing of this Amended Report and Order must file a new application for rehearing before the effective date of this order.

THE COMMISSION ORDERS THAT:

1. The MEEIA Cycle 3 Plans, as put forth by Evergy Missouri Metro and Evergy Missouri West, and modified by the Commission, are approved for a period of three years from the effective date of this order. Avoided costs shall be calculated using the average cost of the seven bids to supply capacity which Evergy Missouri West received in response to a 2017 Request for proposal as described in testimony.

2. If Evergy Missouri Metro and Evergy Missouri West offer a MEEIA Cycle 3 plan, the companies shall modify their respective MEEIA Cycle 3 portfolios to include a one-year Pay As You Save pilot program. The Companies, after consulting with the

parties, shall file a one-year Pay As You Save pilot program at least 60 days before such pilot program go into effect. The Pay As You Save pilot program shall include the following:

a. The budget for the pilot program shall be no less than 10 million dollars, and no more than 15 million dollars.
b. Evergy Missouri Metro and Evergy Missouri West may administer the pilot program themselves or may employ a third party operator with experience to operate the pilot program.
c. The pilot program shall identify a goal for the number of participants living in neighborhoods designated by the parties as predominately low or moderate-income customers or renters in multifamily housing with five or more units where the renter is responsible for paying their energy bills. The pilot program shall allow owners of multifamily units in participating buildings to use the program to install upgrades in common areas.
d. The pilot program shall have an appropriate earnings opportunity component for the Companies to be agreed upon by the parties.
e. The pilot program shall include customer protections by capping administrative costs (including total advertising costs as allocated to the total number of projects) for each individual customer project to a percentage of the total loan costs. Energy audit costs are a separate project Component and will not be included with administrative costs.
f. Participants in the Pay As You Save program shall be responsible for the capital provided for the energy efficiency measures minus any rebate.

g. Pay As You Save costs recovered through MEEIA from all ratepayers shall include: the rebate amount, administrative costs, the throughput disincentive, and an earnings opportunity (as agreed upon by the parties).

h. Any savings (kWh or kW) determined through the evaluation of the Pay As You Save program shall not be double counted with savings from other MEEIA programs at that same customer's premise.

i. Evergy Missouri Metro and Evergy Missouri West will notify the Commission of the pilot program's expected starting date, as selected by the Companies.

j. Evergy Missouri Metro and Evergy Missouri West shall submit progress reports both six months and one year after the Pay As You Save pilot program begins. The reports shall provide information based on benchmarks established by the parties to help identify the long-term feasibility and desirability of a Pay As You Save program, including participation rates.

3. Opt-out customers shall be allowed to participate in Evergy Missouri Metro's and Evergy Missouri West's business response program. The Companies are not required to publish compensation in their tariffs.

4. Evergy Missouri Metro and Evergy Missouri West are granted variances from the following Commission rules for the purpose of facilitating their MEEIA Cycle 3 Plans:

- 20 CSR 4240-20.092(1)(HH)
- 20 CSR 4240-20.092(1)(M)
- 20 CSR 4240-20.092(1)(R)
- 20 CSR 4240-20.093(2)(I)3

- 20 CSR 4240-20.092(1)(N)
- 20 CSR 4240-20.093(4)(C)
- 20 CSR 4240-20. 20.092(1)(Q)
- 20 CSR 4240-20.092(1)(UU)
- 20 CSR 4240-20.092(1)(P)
- 20 CSR 4240-20.092(1)(R)
- 20 CSR 4240-20.093(2)(J)
- 20 CSR 4240-20.092(1)(F)
- 20 CSR 4240-14.030
- 20 CSR 4240-20.092(1)(C)

5. This Report and Order shall become effective on April 10, 2020.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Clark, Senior Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of Liberty Utilities (Missouri Water), LLC's Application for a Certificate of Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain, Control, and Manage a Sewer System in Cape Girardeau County, Missouri	))))))	**File No. SA-2020-0067**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

ACCOUNTING

§13 Contributions by utility

Based on its review of the information in this proceeding, Staff calculated an estimated rate base of $617,848. The purchase price being paid by Liberty Water may be below the Net Book Value of the Savers Farm assets.

CERTIFICATES

§21 Grant or refusal of certificate generally

The Commission granted a certificate of convenience and necessity to Liberty Utilities to acquire the sewer utility assets of Savers Farm, a development not subject to the Commission's jurisdiction.

§21 Grant or refusal of certificate generally

The Commission found that Liberty demonstrated it has adequate resources to operate utility systems that it owns, to acquire new systems, to undertake construction of new systems and expansions of existing systems, to plan and undertake scheduled capital improvements, and timely respond and resolve emergency issues when such situations arise.

SEWER

§4 Transfer, lease and sale

The Commission determined that it is in the public's interest for Liberty Water to provide sewer service to Savers Farm in Cape Girardeau County.

§18 Depreciation

The Saver Farm's wastewater system was designed and constructed to serve approximately twice the number of residential customers currently being served. in a future rate proceeding Staff may propose a capacity adjustment to certain wastewater system components to reduce the plant balance level and depreciation expense to be included in rate calculations.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 18th day of March, 2020.

In the Matter of Liberty Utilities (Missouri Water), LLC's Application for a Certificate of Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain, Control, and Manage a Sewer System in Cape Girardeau County, Missouri	))))))	**File No. SA-2020-0067**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: March 18, 2020 Effective Date: April 17, 2020

On November 25, 2019, Liberty Utilities (Missouri Water), LLC (Liberty Water) filed an application with the Missouri Public Service Commission requesting a Certificate of Convenience and Necessity (CCN) to install, own, acquire, construct, operate, control, manage, and maintain a sewer system in Cape Girardeau County, Missouri.

The Commission issued notice and set a deadline for intervention requests, but received none. On March 2, 2020, the Commission's Staff filed its recommendation to approve Liberty Water's request for a CCN, with specified conditions.

Liberty Water is a "water corporation," a "sewer corporation," and "public utility" as those terms are defined in Section 386.020, RSMo, and is subject to the jurisdiction of the Commission.

The CCN would allow Liberty Water to acquire sewer utility assets in Savers Farm, a new development with five phases to be completed by the end of 2020. Phases one through three are completed. The system is currently owned and operated by the

system's developer, Cape Land & Development, LLC (Cape Land), an entity not currently subject to the Commission's jurisdiction.

Cape Land operates a recirculating sand filter system providing sewer service to approximately 110 residential customers in the subdivision. Construction of the wastewater treatment facility began in 2016 and was completed in 2017. The facility is comprised of a parallel tank system with a 50,000-gallon septic tank and a 25,000-gallon recirculating tank in each of the parallel paths, followed by four sand filter beds and ultraviolet light disinfection. Two of the four sand filter beds are currently in use to treat the flow from approximately 110 completed homes.

Staff's calculations for projected plant-in-service of $688,941 and depreciation reserve balances of $71,093, as of December 31, 2019, yield an estimated rate base of $617,848. Based on its review of the Savers Farm information in this proceeding, the purchase price being paid by Liberty Water may be below the Net Book Value (NBV) of the Savers Farm assets.

If the Commission approves this CCN and Liberty acquires the sewer system, then Staff expects an updated rate base level for this system will be established when Liberty Water files its next rate case. The Savers Farm wastewater system was designed and constructed to serve approximately twice the number of residential customers currently being served. Staff states that it may propose, in a future rate proceeding, a capacity adjustment to certain wastewater system components. Such a capacity adjustment, if applied, would reduce the plant balance level and depreciation expense to be included in rate calculations.

Savers Farm homeowners currently pay no fees for the sewer service provided by the subdivision developer. Liberty Water proposes the existing rates, rules, and

regulations currently applicable to certain named service areas found in MO PSC No. 15 Sheet No. 4.1 be applied to Savers Farm. The monthly flat rate for a single-family residence would be $46.21. Staff states that a Commission's decision regarding rate base level in this case is not necessary, and Staff is not recommending any change to the rates charged by Liberty in the applicable existing tariff to be applied to Savers Farm. Members of the homeowners association were given notification of a proposed transfer of the system to Liberty at an annual homeowner's association meeting on December 19, 2019. Liberty informed Staff that the homeowners were very receptive to the proposal.

Ten days have passed since Staff filed its recommendation and no party has objected to Liberty Water's application or Staff's recommendation. No party has requested an evidentiary hearing.[1]Thus, the Commission will rule upon the application.

The Commission may grant a sewer corporation a CCN to operate after determining that the construction and operation are either "necessary or convenient for the public service."[2] The Commission articulated criteria to be used when evaluating applications for utility certificates of convenience and necessity in the case *In Re Intercon Gas, Inc.*, 30 Mo P.S.C. (N.S.) 554, 561 (1991). The *Intercon* case combined the standards used in several similar certificate cases, and set forth the following criteria: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must

[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 393.170.3, RSMo.

promote the public interest.[3] These criteria are known as the Tartan Factors.[4]

There is a need for the service since the customers in Savers Farm already receive sewer service and more homes will be built that require service. Liberty Water is qualified to provide the service as it is currently providing water and sewer services to approximately 3,000 customers throughout its Missouri service areas. Liberty Water has the financial ability to provide the service and no financing approval is being requested. The proposal is economically feasible because the system is relatively new and has already been constructed. The proposal promotes the public interest as demonstrated by positive findings in in the first four Tartan Factors.

Staff evaluates applications involving existing sewer systems utilizing technical, managerial, and financial criteria. Staff states "Liberty has demonstrated over many years that it has adequate resources to operate utility systems that it owns, to acquire new systems, to undertake construction of new systems and expansions of existing systems, to plan and undertake scheduled capital improvements, and timely respond and resolve emergency issues when such situations arise." Staff's review found that Liberty Water meets the requisite technical, managerial, and financial criteria.

Based on the application and Staff's recommendations, the Commission concludes that the factors for granting a CCN to Liberty Water have been satisfied and that it is in the public's interest for Liberty Water to provide sewer service to Savers Farm in Cape Girardeau County. The Commission finds that Liberty Water possesses adequate

[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).

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

technical, managerial, and financial capacity to operate the sewer system. Further, Commission finds that the flat fee of $46.21 for sewer service is just and reasonable. Therefore, the Commission will grant Liberty Water's requested CCN, subject to the conditions described by Staff's recommendation.

THE COMMISSION ORDERS THAT:

1. Liberty Utilities (Missouri Water), LLC is granted a certificate of convenience and necessity to provide sewer service to the property described in the map and legal description provided in its application, subject to the conditions and requirements contained in Staff's Recommendation, including the filing of tariffs, as set out below:

A. Liberty Water's monthly residential flat rate of $46.21 shall apply to Savers Farm;

B. Liberty Water shall submit new and revised tariff sheets, to become effective before closing on the assets, that include:

   a. Cover (Sheet No. Title Page)
   b. Index (Sheet No. 1)
   c. Sewer rates (Sheet No. 4.1)
   d. Service area map (Sheet No. 2.4)
   e. Service area written description (Sheet No. 3.4)

   as applicable to sewer service in its Savers Farm service area, to be included in its EFIS sewer tariff P.S.C. MO No. 15;

C. Liberty Water shall notify the Commission of closing on the assets within five (5) days after such closing;

D. If closing on the sewer system assets does not take place within thirty (30) days following the effective date of the Commission's order approving such, Liberty Water shall submit a status report within five (5) days after this thirty (30) day period regarding the status of closing, and additional status reports within five (5) days after each additional thirty (30) day period, until closing takes place, or until Liberty determines that the transfer of the assets will not occur;

E. If Liberty Water determines that a transfer of the assets will not occur, Liberty Water shall notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and

Liberty Water shall submit tariff sheets as appropriate and necessary that would cancel service area maps, descriptions, rates and rules applicable to the Savers Farm service area in its sewer tariff;

F. Liberty Water shall keep its financial books and records for plant-in-service and operating expenses as related to the Savers Farm operations in accordance with the NARUC Uniform System of Accounts;

G. Liberty Water shall provide detailed plant records that includes for each plant asset a detailed description and original plant costs with supporting detailed invoices and identified by USOA account numbers in its next rate case for Savers Farm Sewer System;

H. Liberty Water shall adopt for the Savers Farm sewer assets the depreciation rates ordered for Cape Rock Village in Liberty's last rate case, Case No. WR-2018-0170;

I. Liberty Water shall obtain from Cape Land, prior to or at closing, all available plant-in- service related records and documents, including but not limited to all plant-in-service original cost documentation, along with depreciation reserve balances, documentation of contribution–in-aid-of construction transactions, and any capital recovery transactions;

J. The Commission makes no finding that would preclude it from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the CCN to Liberty Water, including expenditures related to the certificated service area, in any later proceeding;

K. Liberty Water shall provide training to its call center personnel regarding rates and rules applicable to the Savers Farm customers;

L. Liberty Water shall include the Savers Farm customers in its established monthly reporting to the Customer Experience Department Staff on customer service and billing issues, on an ongoing basis, after closing on the assets;

M. Liberty Water shall distribute to the Savers Farm customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its sewer service, consistent with the requirements of Commission Rule 20 CSR 4240-13, within thirty (30) days of closing on the assets;

N. Liberty Water shall provide to the Customer Experience Department Staff an example of its actual communication with the Savers Farm customers regarding its acquisition and operations of the sewer system assets, and how customers may reach Liberty Water, within ten (10) days after closing on the assets;

O. Liberty Water shall provide to the Customer Experience Department Staff a sample of ten (10) billing statements from the first month's billing within thirty (30) days after closing on the assets; and,

P. Liberty Water shall file notice in this case outlining completion of the above-recommended training, customer communications, and notifications within ten (10) days after such communications and notifications.

2. This order shall become effective on April 17, 2020.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Clark, Senior Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Osage Utility Operating Company, Inc. to Acquire Certain Water and Sewer Assets and for a Certificate of Convenience and Necessity	))))	**File No. WA-2019-0185**

REPORT AND ORDER

Petition for Alternative Writ of Certiorari and Writ of Mandamus denied, Missouri Court of Appeals, W.D., Case No. WD83773, June 3, 2020

Affirmed on Appeal: *Osage Utility Operating Company, Inc. v. Public Service Commission*, 637 S.W.3d 78 (Mo. App. W.D. 2021)

CERTIFICATES

§21 Grant or refusal of certificate generally
An applicant seeking the Commission's approval to purchase the assets of a nonviable utility must show that it is qualified to own and operate the nonviable utility's assets.

§21 Grant or refusal of certificate generally
The Commission traditionally determines if a company is qualified to become a public utility by analyzing the Tartan factors.

§21 Grant or refusal of certificate generally
"[N]ot detrimental to the public interest." means there is no net detriment after considering all of the benefits and all of the detriments, including the risk of increased rates.

§21.4 Economic feasibility of proposed service
§36 Preference between rival applicants generally
The Commission found that increased rates on their own do not mean the transfer is detrimental to the public. Where opponents to an application for the acquisition of a utility who stood to obtain the acquisition contract for themselves provided estimates based only on repairs identified as needed by the Missouri Department of Natural Resources, and failed to address other system upgrades or replacements that may be needed to proactively maintain the systems to avoid future more costly repairs, the Commission found that the acquiring utility's evidence was more credible with regard to what repairs may be needed than that put forth by the parties opposed to the transfer.

EVIDENCE, PRACTICE AND PROCEDURE

§4 Presumption and burden of proof

§6 Weight, effect and sufficiency

An applicant seeking the Commission's approval to purchase the assets of a nonviable utility bears the burden of proof. The burden of proof is the preponderance of the evidence standard. In order to meet this standard, the applicant must convince the Commission it is "more likely than not" that its acquisition of utility assets will not be detrimental to the public. An acquisition incentive is defined as "[a] rate of return premium, debt acquisition adjustment, or both designed to incentivize the acquisition of a nonviable utility.

§6 Weight, effect and sufficiency

An applicant seeking the Commission's approval to purchase the assets of a nonviable utility must show that it is qualified to own and operate the nonviable utility's assets.

§6 Weight, effect and sufficiency

The Commission found that increased rates on their own do not mean the transfer is detrimental to the public. Where opponents to an application for the acquisition of a utility who stood to obtain the acquisition contract for themselves provided estimates based only on repairs identified as needed by the Missouri Department of Natural Resources, and failed to address other system upgrades or replacements that may be needed to proactively maintain the systems to avoid future more costly repairs, the Commission found that the acquiring utility's evidence was more credible with regard to what repairs may be needed than that put forth by the parties opposed to the transfer.

§6 Weight, effect and sufficiency

The Commission found an applicant wishing to purchase the assets of a nonviable utility's preliminary estimates and planned improvements were reasonable because they were consistent with the improvements of other regulated water and sewer utilities.

§6 Weight, effect and sufficiency

Where an applicant to purchase the assets of a nonviable utility has not met the criteria for an acquisition premium, opponents' argument that an acquisition premium will increase rates to the detriment of customers is moot.

§6 Weight, effect and sufficiency

The Commission determined that the applicant to purchase the assets of a nonviable utility had not met its burden to show that the sale of the system "would be unlikely to occur without the probability of obtaining an acquisition incentive" where the evidence shows that the purchase by Osage Utility will take place regardless of the incentive, and where Osage Utility failed to provide necessary records related to the acquired water company's original costs.

§19 Records and books of utilities
An applicant to purchase the assets of a nonviable utility requesting an acquisition incentive for the acquisition of the assets of nonviable assets has the burden to provide records related to the original cost of the acquired company.

EXPENSE

§22 Reasonableness generally
The Commission found an applicant wishing to purchase the assets of a nonviable utility's preliminary estimates and planned improvements were reasonable because they were consistent with the improvements of other regulated water and sewer utilities.

§22 Reasonableness generally
§48 Financing costs and interest
§73 Expenses incurred in acquisition of property
In a rate case, a utility will not be authorized to recover imprudent improvements and financing charges.

§73 Expenses incurred in acquisition of property
The Commission found that increased rates on their own do not mean the transfer is detrimental to the public. Where opponents to an application for the acquisition of a utility who stood to obtain the acquisition contract for themselves provided estimates based only on repairs identified as needed by the Missouri Department of Natural Resources, and failed to address other system upgrades or replacements that may be needed to proactively maintain the systems to avoid future more costly repairs, the Commission found that the acquiring utility's evidence was more credible with regard to what repairs may be needed than that put forth by the parties opposed to the transfer.

PUBLIC UTILITIES

§7 Jurisdiction and Powers of the State Commission
The Commission traditionally determines if a company is qualified to become a public utility by analyzing the Tartan factors.

§13 Acquisition of public utility property
An applicant seeking the Commission's approval to purchase the assets of a nonviable utility must show that it is qualified to own and operate the nonviable utility's assets.

§13 Acquisition of public utility property
"[N]ot detrimental to the public interest." means there is no net detriment after considering all of the benefits and all of the detriments, including the risk of increased rates.

§13 Acquisition of public utility property
§16 Property sold or leased to a public utility
An applicant seeking the Commission's approval to purchase the assets of a nonviable utility bears the burden of proof. The burden of proof is the preponderance of the evidence

standard. In order to meet this standard, the applicant must convince the Commission it is "more likely than not" that its acquisition of utility assets will not be detrimental to the public. An acquisition incentive is defined as "[a] rate of return premium, debt acquisition adjustment, or both designed to incentivize the acquisition of a nonviable utility.

§13 Acquisition of public utility property
§16 Property sold or leased to a public utility
The acquisition incentive rule, 20 CSR 4240-10.085, sets out the criteria for approval of an acquisition incentive. Section (2) of the acquisition incentive rule requires an application for the incentive to "be filed at the beginning of a case seeking authority" to purchase or sell the assets. Section (2) also requires the Commission to grant the request if the Commission finds the request for the incentive to be in the public interest.

RATES

§8 Reasonableness generally
§23 Efficiency of operation and management
In a rate case, a utility will not be authorized to recover imprudent improvements and financing charges.

SECURITY ISSUES

§69 Financing methods and practices generally
§71 Financing expense
In a rate case, a utility will not be authorized to recover imprudent improvements and financing charges.

VALUATION

§13 Ascertainment of value generally
§15 Purchase or sale price
The Commission found that increased rates on their own do not mean the transfer is detrimental to the public. Where opponents to an application for the acquisition of a utility who stood to obtain the acquisition contract for themselves provided estimates based only on repairs identified as needed by the Missouri Department of Natural Resources, and failed to address other system upgrades or replacements that may be needed to proactively maintain the systems to avoid future more costly repairs, the Commission found that the acquiring utility's evidence was more credible with regard to what repairs may be needed than that put forth by the parties opposed to the transfer.

§13 Ascertainment of value generally
§15 Purchase or sale price
The Commission found an applicant wishing to purchase the assets of a nonviable utility's preliminary estimates and planned improvements were reasonable because they were consistent with the improvements of other regulated water and sewer utilities.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Osage Utility Operating Company, Inc. to Acquire Certain Water and Sewer Assets and for a Certificate of Convenience and Necessity	))))	**File No. WA-2019-0185**

REPORT AND ORDER

Issue Date: April 8, 2020

Effective Date: May 8, 2020

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Osage Utility Operating Company, Inc. to Acquire Certain Water and Sewer Assets and for a Certificate of Convenience and Necessity	))))	**File No. WA-2019-0185**

APPEARANCES

OSAGE UTILITY OPERATING COMPANY:

Dean L. Cooper, and **Jennifer L. Hernandez,** Brydon, Swearengen & England, PC, P.O. Box 456, Jefferson City, Missouri, 65102-0456.

CEDAR GLEN CONDOMINUM OWNERS ASSOCIATION, INC:

Mark W. Comley, Newman, Comley & Ruth, PC, 601 Monroe Street, Suite 301, Jefferson City, Missouri, 65102.

PUBLIC WATER SUPPLY DISTRICT #5, LAKE AREA WASTEWATER ASSN., INC., MISSOURI WATER ASSN., INC.:

Aaron Ellsworth, Ellsworth & Hardwick, P.O. Box 250, 2404 Bagnell Dam Boulevard, Lake Ozark, Missouri, 65043.

GREAT SOUTHERN BANK:

Sue A. Schultz and **Anthony J. Soukenik,** 600 Washington Ave, 15th Floor, St. Louis, MO 63101.

REFLECTIONS CONDOMINIUM:

Christopher Kurtz and **Stanley Woodworth,** 5250 W 11th Place, Suite 400, Leawood, KS 66211.

OFFICE OF THE PUBLIC COUNSEL:

Caleb Hall, Senior Counsel, Department of Commerce & Insurance, 200 Madison Street, Suite 650, P.O. Box 2230, Jefferson City, Missouri 65102.

STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:

Whitney Payne, Senior Counsel, and **Mark Johnson**, Deputy Counsel, Missouri Public Service Commission, 200 Madison Street, Suite 800, P.O. Box 360, Jefferson City, Missouri 65102.

SENIOR REGULATORY LAW JUDGE: Nancy Dippell

REPORT AND ORDER

I. Procedural History

On December 19, 2018, Osage Utility Operating Company, Inc. (Osage Utility) filed an Application and Motion for Waiver[1] for authorization to acquire the water and sewer assets and the certificates of convenience and necessity (CCN) in the four service areas of Osage Water Company and the single service area of Reflections Subdivision Master Association, Inc., and Reflections Condominium Owners Association, Inc. Osage Utility's Application also included a request for an acquisition incentive pursuant to Commission rule 20 CSR 4240-10.085.[2] On February 19, 2019, Osage Utility filed an Amended Application and Motion for Waiver.

Lake Area Waste Water Association, Inc. (LAWWA), Missouri Water Association, Inc. (MWA), Public Water Supply District No. 5 of Camden County Missouri (PWSD#5), Cedar Glen Condominium Owners Association, Inc. (Cedar Glen), Reflections Condominium Owners Association, Inc. (Reflections COA),[3] Great Southern Bank,[4] and the Reflections Subdivision Master Association, Inc. (Reflections MA),[5] were granted intervention. The Staff of the Commission (Staff) filed its initial recommendation on May 14, 2019. Several parties filed

[1] The identical application was originally submitted in two files, one for water service (File No. WA-2019-0185) and one for sewer service (File No. SA-2019-0186). Those files were consolidated on January 29, 2019.
[2] Effective August 28, 2019, all of the Commission's regulations were transferred from the Department of Economic Development's (DED) Title 4 to the Department of Commerce and Insurance's (DCI) (formerly Department of Insurance, Financial Institutions and Professional Registration) Title 20. Thus, when filed, this rule was 4 CSR 240-10.085.
[3] Reflections COA is a not-for-profit corporation created by a condominium declaration for the three existing condominium buildings that are part of the Reflections subdivision.
[4] Great Southern Bank provided the financing for Abba Development Company, L.L.C. (Abba), the developer of the Reflections subdivision. Abba defaulted on its loan and conveyed title to all but three of the condominium buildings at the Reflections subdivision to Great Southern Bank. This included the real estate and the physical assets that are part of the water and sewer systems serving the development.
[5] Reflections MA was created by a "Declaration of Restrictions for Reflections Subdivision" when Abba created the subdivision. Reflections MA is the entity charged with the operation of the water and sewer facilities serving the Reflections subdivision.

responses to the recommendations and the parties agreed to a procedural schedule. A hearing was set and written direct, rebuttal, and surrebuttal testimony was filed.

On September 9, 2019, Great Southern Bank, Reflections COA, and Reflections MA (collectively referred to as "Reflections") filed a motion to dismiss the portion of the application related to the sale of the Reflections water and sewer systems. In its motion to dismiss, Reflections claimed that it had terminated its purchase agreement with the managing parent company of Osage Utility, Central States Water Resources, Inc., and had sold the Reflections water and sewer systems to third parties.[6] As an alternative to dismissing the entire application, Reflections requested the Commission dismiss the portion of the amended application relating to Reflections. The Office of the Public Counsel (Public Counsel) filed a response in support of the motion to dismiss.

On September 9, 2019, LAWWA, MWA, and PWSD#5 (referred to as the "Joint Bidders") filed a Motion to Strike Portions of the Written Surrebuttal Testimony of Todd Thomas and Josiah Cox, or Alternatively, Motion for Leave to File Testimony in Response. Cedar Glen filed a similar motion. On the same date, Osage Utility filed both a Motion to Strike and/or Limit Scope of the Proceeding and an Amended Motion to Strike and/or Limit Scope of the Proceeding. The motions to strike and motion to limit the proceeding were denied at the hearing.[7]

The Commission issued an order on September 11, 2019, bifurcating for hearing purposes the Reflections and Osage Water Company portions of the case. The Commission also directed Staff to file a revised recommendation regarding only the Osage Water Company systems. The Commission ordered that the other parties would be allowed to offer testimony responsive to Staff's revised recommendation at the hearing. Staff filed its revised

[6] The "third parties" were LAWWA and MWA.
[7] Transcript, pages 15-16.

recommendation on September 13, 2019, in the form of Supplemental Testimony of Natelle Dietrich with Revised Staff Memorandum.[8] On September 17-18, 2019, a hearing was held regarding only the transfer of assets and CCN for the Osage Water Company water and sewer systems. On September 30, 2019, Osage Utility filed a statement indicating that it was not opposed to the motion to dismiss the Reflections portion of the application.[9] The Commission will grant the motion and dismiss the request for a CCN and to transfer the assets of the Reflections water and sewer systems.

As part of the procedural schedule, the parties were directed to file a list of issues to be decided by the Commission. The parties could not agree to a single issues list and so Staff and Osage Utility filed a list of issues and the other parties filed a separate list of issues. The difference between the lists was the question of whether the motion to dismiss should be granted and the addition of a sub-item asking the question: "Are the certificates necessary or convenient for the public service?" At the hearing, the parties presented evidence relating to the following over-arching issues identified by the parties:

1. Would the sale of Osage Water Company's certificates of convenience and necessity and its water and sewer assets to Osage Utility be detrimental to the public interest?
2. Should the Commission approve an acquisition premium for the acquisition of the Osage Water Company and Reflections systems under 20 CSR 4240-10.085?

Additionally, the record was held open until September 30, 2019, for the receipt of post-hearing Exhibit 406, a letter regarding compliance of the Joint Bidders from the Missouri Department of Natural Resources (MDNR). The Commission also gave Osage Utility the opportunity to file additional correspondence from MDNR by September 30, 2019. Neither

[8] Exhibit 105.
[9] File No. WA-2019-0185, Statement of Non-Opposition to the Motion to Dismiss Request Related to Reflections Subdivision, (filed September 30, 2019).

Exhibit 406 nor any other post-hearing MDNR correspondence was filed and the record was closed on September 30, 2019. Initial post-hearing briefs were filed on October 3, 2019, and reply briefs were filed on October 17, 2019.

Along with its original and amended applications, Osage Utility requested the Commission waive the requirement to give 60-days' notice prior to filing the application as required in Commission rule 20 CSR 4240-4.017(1). Osage Utility stated that it did not engage in conduct that would constitute a violation of the Commission's ex parte rule. The Commission finds that good cause exists to waive the notice requirement, and a waiver of 20 CSR 4240-4.017(1) is granted.

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. Osage Utility is a Missouri corporation with its principal place of business in St. Ann, Missouri.[10] Osage Utility was formed for the purpose of providing water and sewer service to the public in the service areas of Osage Water Company and Reflections water and sewer systems.[11]

2. Osage Utility intends to operate as a "water corporation," a "sewer corporation," and a "public utility" as those terms are defined by statute.[12] As such, Osage Utility is subject to the jurisdiction and supervision of the Commission as established by statute.[13]

[10] Exhibit 1, Direct Testimony of Josiah Cox, p. 1.
[11] Ex. 1, Direct Testimony of Josiah Cox, pp. 1 and 4.
[12] Ex. 1, Direct Testimony of Josiah Cox, p. 4.
[13] Ex. 1, Direct Testimony of Josiah Cox, p. 4.

3. CSWR, LLC (formerly known as First Round CSWR, LLC), is Osage Utility's ultimate parent company.[14] Central States Water Resources, Inc. (Central States) is the managing affiliate for CSWR, LLC.[15]

4. Josiah Cox is the President of Osage Utility. Mr. Cox is also the President of Central States.[16]

5. 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.[17] Staff participated in this proceeding.

6. Public Counsel is a party to this case pursuant to Section 386.710(2), RSMo,[18] and by Commission rule 20 CSR 4240-2.010(10).

7. The Commission granted a transfer of assets and a CCN to operate as a water and sewer utility to Osage Water Company in 1989 in Commission File No. WM-89-73.[19] Subsequently, Osage Water Company was granted CCNs to provide service to additional water and sewer service areas.[20]

8. Currently, Osage Water Company provides water and sewer services to four active water and sewer service areas: Cedar Glen, Chelsea Rose, Cimarron Bay, and HWY KK. The

[14] Ex. 1, Direct Testimony of Josiah Cox, p. 5 and Schedule JC-1.
[15] Ex. 1, Direct Testimony of Josiah Cox, p. 5 and Schedule JC-1.
[16] Ex. 1, Direct Testimony of Josiah Cox, pp. 1 and 4.
[17] 20 CSR 4240-2.010(10) and (21) and 2.040(1).
[18] Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.
[19] Ex. 1, Direct Testimony of Josiah Cox, p. 11; Ex. 100, Direct Testimony of Natelle Dietrich, Schedule ND-d2, p. 18; and Ex. 105, Supplemental Testimony of Natelle Dietrich with Revised Staff Recommendation, Appendix A, p. 4.
[20] Ex. 100, Direct Testimony of Natelle Dietrich, Schedule ND-d2, p. 18; and Ex. 105, Supplemental Testimony of Natelle Dietrich with Revised Staff Recommendation, Appendix A, p. 4.

HWY KK water service area consists only of the Eagle Woods subdivision; the sewer service area includes both Eagle Woods and Golden Glade subdivisions.[21]

9. Osage Water Company also has six inactive water service areas to which Osage Water Company either never provided service or the City of Osage Beach is currently providing the service. Staff proposes those inactive service areas not be included in Osage Utility's water tariff at the time of any transfer. These inactive service territories are: Osage Beach South, Osage Beach North, Sunrise Beach South, Sunrise Beach North, Shawnee Bend, and Parkview Bay.[22] No party objected to these service territories being removed from any future grant of authority.

10. PWSD#5 is a public water supply district organized under Chapter 427, RSMo. PWSD#5 wants to provide water and sewer service to the Cedar Glen service area and has a system adjacent to Cedar Glen with excess water and wastewater capacity.[23]

11. LAWWA is a nonprofit member managed corporation established under Chapter 393, RSMo, for the specific purpose of providing wastewater treatment systems.[24] LAWWA wants to provide sewer service to the Chelsea Rose, Cimarron Bay, and Eagle Woods service areas. LAWWA currently provides sewer service to over 2,700 members with more than 50 treatment facilities throughout the state. The bulk of its members are in Camden, Morgan, and Miller Counties.[25] MWA is governed by a Board of Directors elected by its members.[26] MWA's members gain membership status by applying for and receiving water services from MWA.[27]

[21] Ex. 100, Direct Testimony of Natelle Dietrich, Schedule ND-d2, p. 18; and Ex. 105, Supplemental Testimony of Natelle Dietrich with Revised Staff Recommendation, Appendix A, p. 4.
[22] Ex. 100, Direct Testimony of Natelle Dietrich, Schedule ND-d2, p. 18; and Ex. 105, Supplemental Testimony of Natelle Dietrich with Revised Staff Recommendation, Appendix A, p. 4
[23] Ex. 300, Direct Testimony of David G. Krehbiel, pp. 3-6.
[24] Ex. 401, Direct Testimony of Neddie Goss, p. 1.
[25] Ex. 401, Direct Testimony of Neddie Goss, p. 1.
[26] Ex. 401, Direct Testimony of Neddie Goss, p. 2.
[27] Ex. 401, Direct Testimony of Neddie Goss, p. 2.

12. MWA is a nonprofit member managed corporation established under Chapter 393, RSMo.[28] MWA wants to provide water service to the Chelsea Rose, Cimarron Bay, and Eagle Woods service areas. MWA currently provides water services to over 1,000 members with 20 water production wells.[29] Its members are located in Camden, Miller, and Morgan Counties.

13. In September 2019, LAWWA and MWA jointly purchased the Reflections water and sewer system. After this purchase, Osage Utility dropped its opposition to dismissing the Reflections system from its application.[30]

14. Cedar Glen is a not-for-profit condominium owners corporation. Cedar Glen consists of 216 of Osage Water Company's water and sewer customers.[31] Cedar Glen is opposed to Osage Utility's application preferring to have PWSD#5 annex the Cedar Glen Condominiums into its territory.[32]

15. Osage Water Company currently provides water service to approximately 402 customers, and sewer service to approximately 420 customers in Camden County, Missouri.[33]

16. On December 10, 2002, the Commission issued a Report and Order in File No. WC-2003-0134 finding that Osage Water Company had been effectively abandoned by its owners, and that it was unable or unwilling to provide safe and adequate service to its customers.[34]

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[28] Ex. 401, Direct Testimony of Neddie Goss, p. 2.
[29] Ex. 401, Direct Testimony of Neddie Goss, p. 2; and Tr. p. 458.
[30] *See,* Case No. WA-2019-0185, Reply in Support of Motion to Dismiss or, in the Alternative, Motion to Modify Osage Utility Operating Company, Inc.'s Amended Application, Exhibits A and B.
[31] Ex. 301, Rebuttal Testimony of David G. Krehbiel, p. 2; and Ex. 105, Supplemental Testimony of Natelle Dietrich with Revised Staff Recommendation, Appendix A, p. 4.
[32] Ex. 300, Direct Testimony of David G. Krehbiel, p. 2.
[33] Ex. 1, Direct Testimony of Josiah Cox, p. 12; Ex. 100, Direct Testimony of Natelle Dietrich, Schedule ND-d2, p. 19; and Ex. 105, Supplemental Testimony of Natelle Dietrich with Revised Staff Recommendation, Appendix A, p. 4.
[34] Ex. 1, Direct Testimony of Josiah Cox, pp. 11-12; Ex. 100, Direct Testimony of Natelle Dietrich, Schedule ND-d2, p. 18; and Ex. 105, Supplemental Testimony of Natelle Dietrich with Revised Staff Recommendation, Appendix A, p. 4. See also, *In the matter of the Staff of the Missouri Public Service Commission, Complainant, v. Osage Water Company, Respondent,* Report and Order, 12 Mo.P.S.C.3d 25, File No. WC-2003-0134 (December 10, 2002).

17. On October 21, 2005, Osage Water Company was placed into permanent receivership by order of the Circuit Court of Camden County, Missouri, pursuant to Section 393.145, RSMo.[35] The Circuit Court also ordered the receiver to liquidate the assets of Osage Water Company.[36]

18. The receiver marketed the Osage Water Company assets and received multiple bids from 2014 to 2017. [37]

19. The receiver reported the following bids to the Circuit Court on January 14, 2015: (1) Central States, $479,702.00; (2) Missouri American Water Company, $250,000.00; (3) jointly Cedar Glen, MWA, and LAWWA, $160,000.00; and (4) Gregory Williams, satisfaction of judgment against Osage Water Company. [38]

20. The receiver reported the following bids to the Circuit Court on May 12, 2017: (1) Central States, $440,000.00; (2) PWSD#5, $636,000.00 (Cedar Glen service area only); (3) Patrick Mitchell, $5,000.00 (all assets except Cedar Glen service area); and (4) Gregory Williams, satisfaction of judgment against Osage Water Company.[39]

21. None of the pre-bankruptcy bids resulted in a sale. [40]

22. On August 28, 2017, after being unable to liquidate the assets of Osage Water Company, the Circuit Court authorized the Osage Water Company receiver to file for Chapter 11 bankruptcy.[41]

[35] Circuit Court of Camden County, Case No. 26V010200965 (formerly Case No. CV102-965CC); Ex. 1, Direct Testimony of Josiah Cox, Schedule JC-4; Ex. 100, Direct Testimony of Natelle Dietrich, Schedule ND-d2, p. 19; and Ex. 105, Supplemental Testimony of Natelle Dietrich with Revised Staff Recommendation, Appendix A, p. 5
[36] Ex. 1, Direct Testimony of Josiah Cox, Schedule JC-4, p. 4.
[37] Ex. 100, Direct Testimony of Natelle Dietrich, Schedule ND-d2, p. 10.
[38] Ex. 100, Direct Testimony of Natelle Dietrich, Schedule ND-d2, pp. 10-11.
[39] Ex. 100, Direct Testimony of Natelle Dietrich, Schedule ND-d2, p. 11.
[40] Ex. 100, Direct Testimony of Natelle Dietrich, Schedule ND-d2, p. 11.
[41] Ex. 1, Direct Testimony of Josiah Cox, Schedule JC-5.

23. On October 11, 2017, Osage Water Company filed for Chapter 11 bankruptcy.[42] On October 26, 2017, a bankruptcy trustee was appointed.[43]

24. The bankruptcy trustee held an auction on October 24, 2018, to liquidate Osage Water Company's assets.[44] The bankruptcy auction was conducted with the purpose of achieving the "highest and best offers for the [a]ssets."[45]

25. The trustee utilized a "stalking horse" bidding process with Central States being the stalking horse bidder.[46]

26. A stalking horse bidding process is one where the debtor (the bankruptcy trustee in this case) enters into an agreement with a bidder for an initial bid in advance of the auction. The initial bid serves as the baseline for the auction. If a higher bid is not made at the auction then the stalking horse agreement becomes the asset purchase agreement. The stalking horse bidding process is common under Section 363 of the U.S. Bankruptcy Code.[47]

27. The agreement between Central States and the bankruptcy trustee permitted the trustee to solicit other bids, but Central States maintained the right to match those bids.[48] The initial stalking horse bid by Central States was $465,000.[49]

28. At the auction, the bankruptcy trustee received bids from the Joint Bidders and Missouri American Water Company, with the Joint Bidders having the highest bid. Then, per the

[42] Ex. 1, Direct Testimony of Josiah Cox, Schedule JC-6.
[43] Ex. 1, Direct Testimony of Josiah Cox, Schedule JC-7.
[44] Ex. 1, Direct Testimony of Josiah Cox, Schedule JC-9, p. 2.
[45] Ex. 1, Direct Testimony of Josiah Cox, Schedule JC-10, p. 3.
[46] Ex. 1, Direct Testimony of Josiah Cox, Schedule JC-7; and Ex. 100, Direct Testimony of Natelle Dietrich, Schedule ND-d2, p. 3.
[47] Ex. 100, Direct Testimony of Natelle Dietrich, Schedule ND-d2, p. 2.
[48] Ex. 100, Direct Testimony of Natelle Dietrich, Schedule ND-d2, p. 3.
[49] Ex. 100, Direct Testimony of Natelle Dietrich, Schedule ND-d2, p. 39.

terms of the stalking horse agreement, Central States was allowed to match that bid, which it did.[50]

29. The bankruptcy trustee determined that Central States was the successful bidder with a bid of $800,000.[51] The Joint Bidders were the First Back-Up Bidders with a bid of $800,000.[52] Missouri-American Water Company was the Second Back-Up Bidder with a bid of $600,000.[53]

30. Central States, Joint Bidders, and Missouri-American Water Company each signed a purchase agreement with Osage Water Company.[54]

31. The purchase agreements "were negotiated, proposed, and entered into by the [bankruptcy trustee and Central States, Joint Bidders, and Missouri-American Water Company] in good faith, without collusion, and was the result of arm's-length bargaining with the parties represented by independent counsel."[55]

32. On November 14, 2018, the bankruptcy court issued an order approving the sale of Osage Water Company's assets to Central States under the terms set forth in the asset purchase agreement between Central States and the bankruptcy trustee.[56] The bankruptcy court order also approved the Joint Bidders as the First Back-Up Bidders and Missouri-American

[50] Ex. 100, Direct Testimony of Natelle Dietrich, Schedule ND-d2, pp. 12-13.
[51] Ex. 1, Direct Testimony of Josiah Cox, Schedule JC-9, p. 2; and Schedule JC-10; and Ex. 100, Direct Testimony of Natelle Dietrich, Schedule ND-d2, p. 13.
[52] Ex. 1, Direct Testimony of Josiah Cox, Schedule JC-9, p. 2; and Schedule JC-10.
[53] Ex. 1, Direct Testimony of Josiah Cox, Schedule JC-9, p. 3; and Schedule JC-10.
[54] Ex. 1, Direct Testimony of Josiah Cox, Schedule JC-9.
[55] Ex. 1, Direct Testimony of Josiah Cox, Schedule JC-10, p. 4 (In the Matter of Osage Water Company, Debtor, U.S. Bankruptcy Court for the Western District of Missouri, Case No. 17-42759-drd11, *Order Approving (A) the Sale of Substantially All of Debtor's Assets Free and Clear of All Liens, Interests, Claims and Encumbrances and Related Procedures and Bid Protection Pursuant to 11 U.S.C. § 363, (B) the Potential Assumption and Assignment, or Rejection, of Certain Executory Contracts and Unexpired Leases, and Related Procedures, Pursuant to 11 U.S.C. § 365, and (C) Related Relief Pursuant to 11 U.S.C. §§ 102 and 105*, (issued Nov. 14, 2018).); and Ex. 100, Direct Testimony of Natelle Dietrich, Confidential Schedule ND-d2.
[56] Ex. 1 Direct Testimony of Josiah Cox, Schedule JC-10.

Water Company as the Second Back-Up Bidder per the terms of their agreements with the trustee.[57]

33. Under the terms of their agreement with the bankruptcy trustee, if Central States fails to purchase the Osage Water Company systems, the Joint Bidders as First Back-Up Bidders are obligated to purchase the Osage Water Company systems.[58]

34. The Osage Water Company facilities are currently in need of maintenance and repair.[59] In its revised memorandum, Staff identified maintenance, repair, and/or permitting concerns at each of Osage Water Company's water and sewer facilities. These needs, as identified by Staff, include: facilities operating without permits from the MDNR; one wastewater treatment system with partially treated or untreated wastewater bypassing the treatment processes; and other immediate repairs and longer-term capital improvements.[60]

35. Central States, Osage Utility's affiliate, has purchased 22 wastewater treatment facilities and associated plant. Central States affiliates provide sewer service to approximately 2,800 customers.[61]

36. Central States affiliates own and manage 13 drinking water systems providing water service to approximately 2,900 customers in Missouri and Arkansas.[62]

37. The following Central States affiliates are public utilities authorized to provide water and sewer service in Missouri subject to the regulation of the Commission: Hillcrest Utility Operating Company, Inc.; Elm Hills Utility Operating Company, Inc.; Raccoon Creek Utility

[57] Ex. 1 Direct Testimony of Josiah Cox, Schedule JC-10.
[58] Ex. 1, Direct Testimony of Josiah Cox, Schedule JC-9.
[59] Ex. 1, Direct Testimony of Josiah Cox, pp. 16-20; Ex. 300, Direct Testimony of David G. Krehbiel, p. 5; and Ex. 105, Supplemental Testimony of Natelle Dietrich with Revised Staff Recommendation, Revised Memorandum.
[60] Ex. 105, Supplemental Testimony of Natelle Dietrich with Revised Staff Recommendation, Revised Memorandum, p. 4 of 21.
[61] Ex. 1, Direct Testimony of Josiah Cox, p. 5.
[62] Ex. 1, Direct Testimony of Josiah Cox, p. 6.

Operating Company, Inc.; Indian Hills Utility Operating Company, Inc.; and Confluence Rivers Utility Operating Company, Inc.[63] These Central States-affiliated companies have acquired small Missouri water and sewer companies, improved those systems, brought those systems back into regulatory compliance where needed, and delivered safe and adequate service.[64] Some of those acquired systems were in receivership and had multiple MDNR deficiencies when purchased.[65]

38. Purchasing distressed systems to rehabilitate and operate them as a viable entity is the basic business plan of Central States.[66]

39. Central States has customer service systems at each Missouri utility it currently operates that provide benefits to the customers and comply with the Commission's Chapter 13 rules.[67]

40. Central States has experience in the operation of water and sewer systems.[68] As the other Central States-affiliated companies have done, Osage Utility intends to contract with a qualified and licensed utility system operator for water and sewer plant operations. The contract operator will undertake routine day-to-day inspections, checks, sampling, reporting, meter reading, most system repairs, and extraordinary operations tasks.[69] Central States' computerized maintenance management system will track all these plant operations.[70]

41. Central States has experience in the design and construction of water and sewer systems.[71] In Missouri, Central States-affiliated companies have designed, permitted, and

[63] Ex. 5, Surrebuttal Testimony of Josiah Cox, pp. 8-9.
[64] Ex. 5, Surrebuttal Testimony of Josiah Cox, pp. 8-9.
[65] Ex. 5, Surrebuttal Testimony of Josiah Cox, pp. 8-9.
[66] Ex. 202, Direct Testimony of Kerri Roth, p. 9.
[67] Ex. 1, Direct Testimony of Josiah Cox, p. 7.
[68] Ex. 1, Direct Testimony of Josiah Cox, p. 8.
[69] Ex. 1, Direct Testimony of Josiah Cox, p. 8.
[70] Ex. 1, Direct Testimony of Josiah Cox, p. 8.
[71] Ex. 1, Direct Testimony of Josiah Cox, p. 5.

completed construction, with MDNR approval of approximately $5.1 million of sewer investments[72] and approximately $4.1 million of investments in water systems since March 2015.[73]

42. Central States affiliates have been able to attract investment capital to construct and maintain facilities necessary to provide safe and adequate water and sewer service in its other purchased systems to date. Osage Utility plans to fund this purchase using equity from its parent company CSWR, LLC.[74] Osage Utility has access to the funds necessary to make any necessary repairs and replacements to bring the Osage Water Company systems into regulatory compliance and ensure the provision of safe and adequate service.

43. Similar to the other Central States affiliates, Osage Utility has the technical, managerial, and financial capability to own and operate the Osage Water Company water and sewer systems.[75]

44. Osage Utility has experience in the rehabilitation, operation, management, and investment in small water and sewer facilities to systems that have been essentially "treading water" for over 14 years.[76]

45. MWA and LAWWA have not gotten reports from MDNR to determine what repairs or improvements are required by MDNR for the Chelsea Rose, Eagle Woods, or Cimarron Bay water or sewer systems.[77] Further, the MWA and LAWWA testimony referred to the Eagle Woods subdivision, but made no mention of the Golden Glade subdivision, which is also a part of the Highway KK sewer service area of Osage Water Company.[78]

[72] Ex. 1, Direct Testimony of Josiah Cox, p. 5.
[73] Ex. 1, Direct Testimony of Josiah Cox, p. 6.
[74] Ex. 1, Direct Testimony of Josiah Cox, pp. 8 and 10.
[75] Ex. 1, Direct Testimony of Josiah Cox, pp. 5-10.
[76] Ex. 1, Direct Testimony of Josiah Cox, pp. 5-10.
[77] Ex. 401, Direct Testimony of Neddie Goss, pp. 3-6.
[78] Ex. 401, Direct Testimony of Neddie Goss.

46. The Cedar Glen water and sewer systems are not currently in the PWSD#5 service territory, but a portion of the PWSD#5 service territory is adjacent to Cedar Glen with U.S. Highway 54 separating the two areas.[79] In order to connect the PWSD#5 water systems, including its well and water tower, PWSD#5 would need to receive permissions to cross under U.S. Highway 54.[80]

47. If PWSD#5 connected its system to the Cedar Glen system, the drinking water system would have a redundant well capability for both Cedar Glen Condominiums and for PWSD#5's customers.[81]

48. PWSD#5 has prepared no estimate for the interconnection of its system with the Cedar Glen systems, which could take more than two years to complete.[82]

49. Osage Utility has inspected and analyzed all of the Osage Water Company systems and has a comprehensive plan for addressing the repair and replacement needs of all of the Osage Water Company water and sewer systems.[83] Osage Utility estimated the costs of repair and improvements at Cedar Glen Condominiums is $659,700.[84]

50. Osage Utility's process for determining which repairs are needed includes having a licensed professional engineer work with MDNR, operating the facility on an interim basis to determine which repairs are truly needed, and then going through a competitive bidding process to hire contractors to complete the repairs.[85]

[79] Ex. 300, Direct Testimony of David G. Krehbiel, pp. 3-4.
[80] Tr. p. 338.
[81] Ex. 300, Direct Testimony of David G. Krehbiel, p. 4.
[82] Tr. pp. 340, 364, 365.
[83] Ex. 1, Direct Testimony of Josiah Cox; Ex. 6, Direct Testimony of Todd Thomas; Ex. 105, Supplemental Testimony of Natelle Dietrich with Revised Staff Recommendation.
[84] Ex. 6, Direct Testimony of Todd Thomas, p. 3; and Ex. 302, Rebuttal Testimony of Kenneth Hulett, p. 6.
[85] Tr. pp. 161-162 and 200.

51. Staff found Osage Utility's planned improvements to be reasonable and consistent with the improvements of other water and sewer utilities and they showed a complete plan for bringing the system into compliance and providing safe and adequate service.[86]

52. Staff did not do in-depth cost studies or review in-depth the Joint Bidders' proposal. Staff's witness did not feel comfortable endorsing the Joint Bidders' plan because it was too incomplete.[87]

53. Lake Ozark Water and Sewer has been operating and maintaining the Osage Water Company system on behalf of the receiver and bankruptcy trustee.[88]

54. PWSD#5 received estimates from the Osage Water Company operator, Lake Ozark Water and Sewer, with recommended repairs for the Cedar Glen Condominiums system.[89] Lake Ozark Water and Sewer identified the needed repairs from MDNR inspection reports.[90] PWSD#5 estimated the cost of improvements needed at the Cedar Glen Condominium system to be $39,000.[91]

55. PWSD#5 does not have all the permissions and only very general estimates on the interconnection of the Cedar Glen Condominiums to its water system including the cost to lay pipe under U.S. Highway 54.[92]

56. Osage Utility and PWSD#5 disagree about whether a second well is necessary at Cedar Glen Condominiums.[93] There is more than one method of determining the number of

[86] Tr. pp. 258-259.
[87] Tr. pp. 252-253.
[88] Ex. 400, Direct Testimony of David Stone, p. 3.
[89] Ex. 400, Direct Testimony of David Stone, p. 3.
[90] Ex. 400, Direct Testimony of David Stone, p. 3.
[91] Ex. 400, Direct Testimony of David Stone, pp. 3-5; and Ex. 302, Rebuttal Testimony of Kenneth Hulett, pp. 6-7.
[92] Tr. pp. 338 and404.
[93] Tr. pp. 112, 124, 164, 167, and 172.

people served by a well and Osage Utility has a plan for making the determination and ensuring that the system is in compliance with MDNR regulations as to the number of wells needed.[94]

57. LAWWA and MWA have not evaluated the necessary improvements to Eagle Woods, Cimarron Bay, or Chelsea Rose service areas, so LAWWA and MWA did not present any estimates for improvements.[95]

58. PWSD#5 intends to use funding from bonds to finance any additions or improvements.[96] LAWWA and MWA have not indicated what the source of their financing would be.

59. Any improvements made by Osage Utility will be evaluated by Staff for prudence and presented to and approved by the Commission in a general rate case before being included in rates.[97]

60. At purchase, Osage Utility plans to adopt the current rates for customers until it files its first general rate case.[98]

61. The current water rates for Osage Water Company are as follows:[99]

Monthly Minimum: (Includes 2,000 gallons of water)
For Service through a 5/8" water meter $24.76 per month
For Service through a 1" water meter $34.27 per month
For Service through a 1 1/2" water meter $58.80 per month
For Service through a 2" meter $66.98 per month
For Service through a 3" meter $96.19 per month
For Service through a 4" meter $243.89 per month

Commodity Charge: For metered usage greater than 2,000 gallons per month
$5.86 per 1,000 gallons

[94] Tr. pp. 124 and 164.
[95] Ex. 401, Direct Testimony of Neddie Goss, pp. 4-5.
[96] Tr. p. 385.
[97] Tr. pp. 53, 213, 239, and 279.
[98] Ex. 1, Direct Testimony of Josiah Cox, p. 22.
[99] Ex. 1, Direct Testimony of Josiah Cox, p. 22. These rates do not include applicable taxes.

62. The current sewer rates for Osage Water Company are as follows:[100]

Monthly Bill

Unmetered Condominium $29.02 per month

For Service through a 5/8" water meter $29.02 per month
For Service through a 1" water meter $51.34 per month
For Service through a 1 1/2" water meter $109.96 per month
For Service through a 2" meter $129.49 per month
For Service through a 3" meter $199.25 per month
For Service through a 4" meter $363.14 per month

63. The purchase of Osage Water Company by Osage Utility will likely result in a rate increase to recover the costs of improvements and repairs.[101]

64. Osage Water Company's most recent rate cases before the Commission put new rates in effect on September 19, 2009, in File Nos. WR-2009-0149 and SR-2009-0152.[102]

65. Staff determined the net book value of assets proposed to be purchased by Osage Utility as of December 31, 2018, was approximately $341,508. To calculate this net book value, Staff started with the actual rate base used in Osage Water Company's most recent rate cases and updated plant in service, depreciation reserve, contributions in aid of construction (CIAC), and CIAC amortization values using Osage Water Company's annual reports.[103]

66. If the Joint Bidders become the owners, they will begin charging the Osage Water Company customers the rates currently set for their other customers as soon as the transfer is completed.[104] PWSD#5 will charge the Cedar Glen Condominiums customers $78 for water and

[100] Ex. 1, Direct Testimony of Josiah Cox, pp. 22-23. These rates do not include applicable taxes.
[101] Ex. 1, Direct Testimony of Josiah Cox, p. 23.
[102] Ex. 105, Supplemental Testimony of Natelle Dietrich with Revised Staff Recommendation, Appendix A, p. 22.
[103] Ex. 105, Supplemental Testimony of Natelle Dietrich with Revised Staff Recommendation, Appendix A, p. 22.
[104] Tr. p. 442.

sewer service.[105] The areas being served by MWA and LAWWA will pay a combined base rate of $94 for water and sewer service plus a usage charge.[106]

67. Staff made the following recommendations that Osage Utility has agreed to comply with[107] as part of any grant of authority to transfer the assets of and receive a CCN for Osage Water Company service territories:[108]

a. Authorize Osage Water Company to sell and transfer utility assets to Osage Utility, and transfer the CCNs currently held by Osage Water Company to Osage Utility upon closing on any of the respective systems;

b. Upon closing on each of the Osage Water Company water and sewer systems, authorize Osage Water Company to cease providing service, and authorize Osage Utility to begin providing service;

c. Require Osage Utility to file Tariff Adoption Notice tariff sheets for the corresponding water and sewer tariffs of the regulated Osage Water Company systems within ten (10) days after closing on the Osage Water Company assets;

d. Upon closing on each of the water and sewer systems, authorize Osage Utility to provide service by applying, on an interim basis, the existing rates, rules and regulations as outlined in Osage Water Company's water tariff and sewer tariff, until the effective date of respective adoption notice tariff sheets, as recommended above;

[105] Ex. 302, Rebuttal Testimony of Kenneth Hulett, p. 5; and Ex. 300, Direct Testimony of David G. Krehbiel, p. 5.
[106] Tr. p. 441.
[107] Ex. 1, Direct Testimony of Josiah Cox, pp. 26-28.
[108] Ex. 100, Direct Testimony of Natelle Dietrich, Schedule ND-d2, pp. 16-18.

e. Require Osage Utility to create and keep financial books and records for plant-in-service, revenues, and operating expenses (including invoices) in accordance with the NARUC Uniform System of Accounts;

f. Require Osage Utility to, going forward, keep and make available for audit and review all invoices and documents pertaining to the capital costs of constructing and installing the water and sewer utility assets;

g. Approve depreciation rates for water and sewer utility plant accounts as described and shown in Attachment 1 to Staff's Memorandum;[109]

h. Require Osage Utility to distribute to all customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its water service, consistent with the requirements of Commission Rule 20 CSR 4240-13, within thirty (30) days after the effective date of approval of a CCN by the Commission;

i. Require Osage Utility to, within ninety (90) days of the effective date of a Commission order approving Osage Utility's application, complete repairs to resolve the bypassing of treatment at any wastewater treatment system;

j. Resolve all issues regarding noncompliance with MDNR regulations for all water and sewer systems;

k. Require Osage Utility to provide adequate training for the correct application of rates and rules to all customer service representatives, including those employed by contractors, prior to the customers receiving their first bill from Osage Utility;

[109] Ex. 100, Direct Testimony of Natelle Dietrich, Schedule ND-d2, p. 39.

l. Require Osage Utility to provide to the Customer Experience Department Staff of the Commission a sample of ten (10) billing statements of bills issued to Osage Water Company customers within thirty (30) days of such billing;

m. Require Osage Utility to file notice in this case once Staff's recommendations regarding customer communications and billing, listed above, have been completed; and

n. Require Osage Utility to file a rate case with the Commission no later than twenty-four (24) months after the effective date of an order approving Osage Utility's Application.

68. Staff's recommended conditions are reasonable and necessary to the provision of safe and adequate water and sewer service.

69. The grant of a CCN to provide water and sewer service to the Osage Water Company service areas promotes the public interest.

70. Osage Water Company is a nonviable utility.[110]

71. Osage Utility has the managerial, technical, and financial capability to operate the Osage Water Company systems and will not be materially impaired by the acquisition.[111] Osage Utility is a viable utility.

72. Osage Utility submitted preliminary plans showing how it intends to correct plant, managerial, and operational deficiencies of the Osage Water Company water and sewer

[110] Ex. 100, Direct Testimony of Natelle Dietrich, Confidential Schedule ND-d2, p. 36; and Ex. 1, Direct Testimony of Josiah Cox, p. 24.
[111] Ex. 100, Direct Testimony of Natelle Dietrich, Confidential Schedule ND-d2; and Ex. 1, Direct Testimony of Josiah Cox, p. 25.

systems, and has committed to making necessary corrections within the timeframe set out in the acquisition incentive rule and Staff's recommendations.[112]

73. Before the Joint Bidders could purchase the Osage Water Company assets, they would also need to seek authority for the transfer from the Commission.[113]

74. Central States may choose not to consummate the purchase if the Commission's order makes the purchase not economically feasible in Central States's opinion.[114]

75. Osage Utility did not provide the records related to the original cost of Osage Water Company as required by the acquisition incentive rule.[115]

III. Conclusions of Law

The Commission has reached the following conclusions of law.

A. Osage Water Company is a "water corporation," "sewer corporation," and a "public utility" as those terms are defined in Section 386.020, RSMo. Osage Water Company is subject to the Commission's jurisdiction, supervision, control, and regulation as provided in Chapters 386 and 393, RSMo. After a CCN and the transfer of assets and operations takes place, Osage

[112] Ex. 100, Direct Testimony of Natelle Dietrich, Confidential Schedule ND-d2; and Ex. 1, Direct Testimony of Josiah Cox, p. 25.
[113] Section 393.170.3, RSMo.
[114] Ex. 1, Direct Testimony of Josiah Cox, pp. 24-26; and Exhibit 5, Surrebuttal Testimony of Josiah Cox, pp. 2-8.
[115] 20 CSR 4240-10.085(3)(A)2.A-H.

Utility will also be a “water corporation,” “sewer corporation,” and a “public utility” as those terms are defined in Section 386.020, RSMo.

B. Section 393.190.1, RSMo., requires Osage Water Company to receive approval from the Commission prior to transferring its assets. Section 393.170, RSMo., requires Osage Utility to have a CCN granted by the Commission prior to providing a water and sewer service.

C. The Commission may grant a water corporation and a sewer corporation certificates of convenience and necessity to operate after determining that the services are “necessary or convenient for the public service.”[116] The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.[117] It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.[118]

D. 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

[116] Section 393.170.3, RSMo (Supp. 2019).
[117] *State ex rel. Intercon Gas, Inc., v. Public Service Commission of Missouri*, 848 S.W.2d 593, 597 (Mo. App. 1993), citing *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo. App. 1973), citing *State ex rel. Transport Delivery Service v. Burton*, 317 S.W.2d 661 (Mo. App. 1958).
[118] *St. ex rel. Ozark Electric Coop. v. Public Service Commission*, 527 S.W.2d 390, 392 (Mo. App. 1975).

provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.[119]

E. Pursuant to Section 393.170.3, the Commission may also impose the conditions it deems reasonable and necessary for the grant of a CCN.

F. The standard for a transfer of assets is that the transfer is not detrimental to the public interest.[120] The Commission has previously stated how this standard should be applied:

> What is required is a cost-benefit analysis in which all of the benefits and detriments in evidence are considered. The *AG Processing* decision[121] does not, as Public Counsel asserts, require the Commission to deny approval where a risk of future rate increases exists. Rather, it requires the Commission to consider this risk together with the other possible benefits and detriments and determine whether the proposed transaction is likely to be a net benefit or a net detriment to the public. Approval should be based upon a finding of no net detriment.[122]

G. The Commission has also stated as follows as to the “public interest”:

> The public interest is a matter of policy to be determined by the Commission. It is within the discretion of the Public Service Commission to determine when the evidence indicates the public interest would be served. Determining what is in the interest of the public is a balancing process. In making such a determination, the total interests of the public served must be assessed. This means that some of the public may suffer adverse consequences for the total public interest. Individual rights are subservient to the rights of the public. The "public interest" necessarily must include the interests of both the ratepaying public and the investing public; however, as noted, the rights of individual groups are subservient to the rights of the public in general.[123]

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[119] 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.).

[120] *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App, 1980). Citing, *State Ex Rel. City of St. Louis v. Public Service Com’n of Missouri*, 73 S.W.2d 393, 400 (Mo. banc 1934).

[121] *State ex rel. AG Processing, Inc. v. Pub. Serv. Comm'n of State*, 120 S.W.3d 732 (Mo. 2003).

[122] File No. EO- 2004-0108, *In the Matter of the Application of Union Electric Company, Doing Business as AmerenUE, for an Order Authorizing the Sale, Transfer and Assignment of Certain Assets, Real Estate, Leased Property, Easements and Contractual Agreements to Central Illinois Public Service Company, Doing Business as AmerenCIPS, and, in Connection Therewith, Certain Other Related Transactions*, Report and Order on Rehearing (issued February 10, 2005), pp. 48-49.

[123] *In the Matter of the Joint Application of Great Plains Energy Incorporated, Kansas City Power & Light Company, and Aquila, Inc.*, Report and Order, Case No. EM-2007-0374, 2008 Mo. PSC LEXIS 693, 458-459 (MoPSC July 1, 2008).

H. As the applicant, Osage Utility bears the burden of proof.[124] The burden of proof is the preponderance of the evidence standard.[125] In order to meet this standard, Osage Utility must convince the Commission it is "more likely than not" that its acquisition of Osage Water Company will not be detrimental to the public.[126]

I. An acquisition incentive is defined as "[a] rate of return premium, debt acquisition adjustment, or both designed to incentivize the acquisition of a nonviable utility[.]"[127] A debit acquisition adjustment is an adjustment "to a portion or all of an acquiring utility's rate base to reflect a portion or all of the excess acquisition cost over depreciated original cost of the acquired system[.]"[128]

J. The acquisition incentive rule, 20 CSR 4240-10.085, sets out the criteria for approval of an acquisition incentive. Section (2) of the acquisition incentive rule requires an application for the incentive to "be filed at the beginning of a case seeking authority" to purchase or sell the assets. Section (2) also requires the Commission to grant the request if the Commission finds the request for the incentive to be in the public interest. The Commission does not conclude that the request for an acquisition incentive is in the public interest.

K. Paragraph (3)(A)2 of 20 CSR 4240-10.085 sets out the "[r]ecords related to the original cost of the nonviable utility" that are required to be submitted to the Commission upon filing an application for an acquisition incentive.[129] Osage Utility has not met these filing requirements.

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[124] *State ex rel. GS Technologies Operating Co., Inc. v. Pub. Serv. Comm'n of State of Mo*., 116 S.W.3d 680, 693 (Mo. App. 2003).
[125] *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).
[126] *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*); Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).
[127] 20 CSR 4240-10.085(1)(A).
[128] 20 CSR 4240-10.085(1)(B).
[129] Those records include the following:

L. Subsection (4)(I) of the acquisition incentive rule also requires the applicant to demonstrate "[t]he acquisition would be unlikely to occur without the probability of obtaining an acquisition incentive." The stated purpose of the acquisition incentive rule is to "encourage acquisition of nonviable water or sewer utilities. . . ."[130]

IV. Discussion

This is a unique case dealing with the transfer of assets of Osage Water Company, a water and sewer corporation that has been before the Commission on many occasions and has been in receivership for over 15 years. Most recently, Osage Water Company filed for federal bankruptcy and the bankruptcy trustee held an auction to liquidate Osage Water Company's assets. Through a "stalking horse" bidding process, Osage Utility matched the highest bid at the bankruptcy auction and was found by the court to be the winning bidder. The Joint Bidders were designated as the back-up bidders and have a binding contract to purchase the Osage Water Company systems if Osage Utility does not do so.

On December 19, 2018, Osage Utility filed an application[131] seeking to acquire the water and sewer assets and the CCN in the four service areas of Osage Water Company (Cedar Glen,

A. Accounting records and other relevant documentation, and agreements of donations of contributions, services, or property from states, municipalities, or other government
agencies, individuals, and others for construction purposes;
B. Records of un-refunded balances in customer advances for construction (CAC);
C. Records of customer tap-in fees and hook-up fees;
D. Prior original cost studies;
E. Records of local, state, and federal grants used for construction of utility plant;
F. Relevant commission records;
G. A summary of the depreciation schedules from all filed federal tax returns; and
H. Other accounting records supporting plant-in-service[.]

[130] 20 CSR 4240-10.085, Purpose.

[131] An amended application was later filed on February 19, 2019.

Eagle Woods, Cimarron Bay, and Chelsea Rose).[132] Osage Utility's application included a request for an acquisition incentive pursuant to 20 CSR 4240-10.085.[133]

Osage Utility also requested authority to purchase the single service area of the Reflections water and sewer systems. As discussed above, the Reflections water and sewer systems have been purchased by LAWWA and MWA and Osage Utility no longer opposes dismissing the Reflections system from its application. Therefore, the Commission will grant the motion to dismiss the Reflections water and sewer CCN and asset transfer from the application.

The contested issues at hearing ultimately revolve around whether the grant of authority and transfer of the Osage Water Company assets to Osage Utility is not detrimental to the public interest. Joint Bidders, Cedar Glen, and Public Counsel oppose the transfer of assets arguing that such a transfer is detrimental to the public interest because if the Joint Bidders purchased the assets, they would provide water and sewer services at lower rates than Osage Utility. Additionally, Public Counsel objects to the grant of an acquisition incentive and Staff objects to the acquisition incentive as requested.

a. Would the sale of Osage Water Company's certificates of convenience and necessity and its water and sewer assets to Osage Utility Operating Company be detrimental to the public interest?

This first issue has two parts – granting the CCN and approving the transfer of the assets. The parties discussed at the hearing, and in the briefs, whether Osage Utility could actually purchase an existing CCN, or whether this was an application for a new CCN. Regardless of whether this is the transfer or the grant of a new CCN, in order to be granted such authority,

[132] CSWR formed Osage Utility to be the utility corporation owning and operating the Osage Water Company assets. Osage Utility filed the application for approval with the Commission. Given the receivership and bankruptcy status of Osage Water Company, it was appropriate for the purchaser to file the application.

[133] Effective August 28, 2019, all of the Commission's regulations were transferred from the Department of Economic Development's (DED) Title 4 to the Department of Commerce and Insurance's (DCI) (formerly Department of Insurance, Financial Institutions and Professional Registration) Title 20. Thus, when filed this rule was 4 CSR 240-10.085.

Osage Utility must show that it is qualified to own and operate Osage Water Company's assets. The Commission traditionally determines if a company is qualified to become a public utility by analyzing the *Tartan* factors. The Tartan Factors contemplate a 1) need for service, 2) the utility's qualifications, 3) the utility's financial ability, 4) the feasibility of the proposal, and 5) promotion of the public interest.

Because a CCN has already been granted to Osage Water Company and it currently provides service to water and sewer customers under that CCN, there is an obvious need for the service.[134] Osage Utility has also shown that it is qualified to provide the service. Staff agreed and no other party disputed that Osage Utility has the technical, managerial, and financial capability to provide safe and adequate service to the Osage Water Company service area.[135] The Company has also put forth a comprehensive plan for improvements that may be needed to provide safe, adequate and reliable service.

Once the technical, managerial, and financial qualifications are established, the Commission must look to whether the transfer of the assets and the award of the CCN is "not detrimental to the public interest."[136] The Commission has previously stated that this means there is no net detriment after considering all of the benefits and all of the detriments, including the risk of increased rates.[137]

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[134] With the exception of the areas that Osage Water Company is not currently providing service and never has provided service, which the Commission finds are not necessary and will be removed from the Osage Water Company tariffs transferred to Osage Utility.

[135] Dietrich Direct, Confidential Schedule ND-d2 pg. 32-33; Cox Direct pg. 8-10.

[136] *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App, 1980). Citing, *State Ex Rel. City of St. Louis v. Public Service Com'n of Missouri*, 73 S.W.2d 393, 400 (Mo. banc 1934).

[137] File No. EO- 2004-0108, *In the Matter of the Application of Union Electric Company, Doing Business as AmerenUE, for an Order Authorizing the Sale, Transfer and Assignment of Certain Assets, Real Estate, Leased Property, Easements and Contractual Agreements to Central Illinois Public Service Company, Doing Business as AmerenCIPS, and, in Connection Therewith, Certain Other Related Transactions*, Report and Order on Rehearing (issued February 10, 2005), pp. 48-49.

The Joint Bidders, Cedar Glen, and Public Counsel argue that Osage Utility should not be granted authority for the transfer because it would be detrimental to the public interest for Osage Utility to own these assets instead of the Joint Bidders. These parties' major argument is that the Joint Bidders would be able to provide water and sewer services at lower rates. However, as discussed in more detail below, the Commission has only the application of Osage Utility before it and the Joint Bidders' evidence of the improvements necessary and the costs of those improvements is incomplete. Additionally, the courts have said that increased rates on their own do not mean the transfer is detrimental to the public.[138] Increased rates can be one factor, but there must be a balancing of all the benefits and detriments to determine if the transfer as a whole would be detrimental to the public.[139] After weighing the benefits and detriments, the Commission finds the evidence shows the granting of Osage Utility's application will not be detrimental to the public.

When weighing the benefits, the Commission considered that the rates are likely to increase no matter who is providing services. The evidence showed that improvements are needed throughout the water and sewer systems and Osage Water Company customers have not had a rate increase for ten years. At purchase, Osage Utility plans to adopt the current rates for customers until it files its first general rate case, which will be within 24 months.[140]

In support of their argument that Osage Utility's rates will be unreasonable, and, therefore, detrimental to the public, the Joint Bidders, Cedar Glen, and Public Counsel pointed to several facts they argued would make Osage Utility's rates higher than the Joint Bidders. They point to the fact that Osage Utility is a for-profit company and its rates will include some additional amount

[138] *State ex rel. AG Processing, Inc. v. Pub. Serv. Comm'n of State*, 120 S.W.3d 732, 737 (Mo. 2003).
[139] *State ex rel. AG Processing, Inc. v. Pub. Serv. Comm'n of State*, 120 S.W.3d 732, 737 (Mo. 2003).
[140] Ex. 1, Direct Testimony of Josiah Cox, pp. 26-28.

of earnings for its shareholders that as non-profit entities the Joint Bidders would not charge. The Joint Bidders argue that Osage Utility plans to make unnecessary improvements that will raise rates needlessly and that Osage Utility's estimates for its planned improvements are unreasonably high. The Joint Bidders also argue that Osage Utility's parent and affiliates have a history of seeking large rate increases for the companies it purchases. Additionally, they argue that Osage Utility's affiliated companies have a history of very high finance rates, while PWSD#5 has bond money available at low interest rates to make the purchase. The Commission is not persuaded by these arguments that Osage Utility's rate, after a rate case will be unreasonable or detrimental to the public.

During the hearing, an estimate of Osage Utility's combined rates for water and sewer service was presented based on the pro forma financial statements projecting revenues after Osage Utility's initial rate case and based on the improvements it identifies as needed.[141] That estimated rate, if approved during a rate case, would be a significant increase for Osage Water Company's customers and would be substantially more than the rates proposed by the Joint Bidders. If all these estimates and proposed rates were to become reality, the higher rates charged by Osage Utility could be a financial detriment to Osage Water Company's customers. However, that financial detriment is tempered by the fact that Osage Water Company's customers will not have an immediate rate increase. Rather, a rate increase will come only after a rate case before the Commission. In contrast, if the Joint Bidders become the owners, they will immediately increase the rates even before any improvements are made.

The Commission found the evidence put forth by Osage Utility of improvements and cost estimates that may be needed to be a comprehensive plan for providing safe, adequate, and

[141] Tr. p. 100. That rate, derived from the pro forma financial statements of Osage Utility, was considered confidential and will not be specifically set out here.

reliable service for all of Osage Water Company's customers. Osage Utility has evaluated all of Osage Water Company's systems and their needed repairs while the Joint Bidders' evidence focuses almost exclusively on the Cedar Glen Condominiums. Osage Utility also has experience in rehabilitating nonviable water and sewer systems. Although Staff did not do in-depth cost studies or review in-depth the Joint Bidders' proposal, Staff's witness testified that in his opinion, Osage Utility's preliminary estimates and planned improvements were reasonable because they were consistent with the improvements of other regulated water and sewer utilities[142] and they showed a complete plan for bringing the system into compliance and providing safe and adequate service. Staff's witness did not feel comfortable endorsing the Joint Bidders' plan because it was not presented as a complete application before the Commission.[143]

Due to the Joint Bidders' not submitting comprehensive estimates and planned improvements and not including detailed cost estimates for their proposed interconnection between PWSD#5 and Cedar Glen Condominiums, the Commission was not persuaded by the testimony of Cedar Glen's witness. Further, unlike Osage Utility's estimates, the Joint Bidders' witness's estimates were based on only the repairs identified as needed by the MDNR and did not address other system upgrades or replacements that may be needed to proactively maintain the systems to avoid future more costly repairs. The Commission finds that Osage Utility's evidence was more credible with regard to what repairs may be needed than that put forth by the parties opposed to the transfer.

Additionally, because Osage Utility's operation of the water and sewer systems will be as a regulated public utility, Osage Utility will not be able to charge a rate that the Commission has not found is just and reasonable. In a rate case, Osage Utility will not be authorized to recover

[142] Tr. pp. 258-259.
[143] Tr. pp. 252-253.

imprudent improvements and financing charges. Osage Utility also provided testimony that its financing will be obtained from different equity sources than the other Central States-affiliated acquisitions and Osage Utility has not applied for any outside financing for this transaction.[144] Thus, this financing cannot be compared directly to the other troubled systems purchased by the company. Any financing would also have to be approved by the Commission to be recovered in rates.

The Joint Bidders contend that any repairs and improvements it made would be financed with bonds at a lower rate than Osage Utility's financing. However, there was no evidence as to the financing plans that would cover needed repairs for the systems that would be owned by LAWWA and MWA. The parties opposed to the transfer to Osage Utility also had no estimates or proposals for repairs or improvements to the Cimarron Bay, Eagle Woods, and Chelsea Rose systems[145] and make no mention of the Golden Glade system.

The Joint Bidders also argue that the water customers at Cedar Glen Condominiums will benefit from the redundancy of a second well once the area becomes interconnected with PSWD#5's facilities. The Joint Bidders claim this will save customers the costs of the second well, again lowering rates over what Osage Utility will have to charge. Whether a second well is necessary was not conclusively proven. Further, even though PWSD#5's current service territory is near the Cedar Glen Condominiums, it lies on the opposite side of U.S. Highway 54. Thus, the evidence showed that it would likely be two years before this interconnection could be made given the need to acquire rights of way and permits to cross the highway.[146] These costs were not taken into account in the cost estimates provided by PWSD#5.

[144] Ex. 1, Cox Direct, p.10.
[145] Ex. 401, Direct Testimony of Neddie Goss, pp. 3-5.
[146] Tr. 340, 364, 365; and Ex. 7, Thomas Surrebuttal, pp. 16-17.

Osage Utility asks for a debit acquisition incentive, which the Joint Bidders argue will also increase rates to the detriment of customers. Because the Commission finds below that Osage Utility has not met the criteria for an acquisition premium, this argument is moot.

The Commission recognizes there might be other benefits of Joint Bidder ownership. One such benefit might be an opportunity for greater participation by the customers because the owners can serve on the governing boards of these public and not-for-profit entities. Another potential benefit the Joint Bidders identified is that they already have a presence in the Lake of the Ozarks area. In addition, the residents represented by Cedar Glen oppose Osage Utility's ownership and prefer the Joint Bidders to be the owners.

However, the Commission finds that Osage Utility's ownership would definitively provide many benefits over the status quo, the greatest of which would be finally having stability for the Osage Water Company customers after more than 14 years of instability. The Commission also finds benefit in the transfer of ownership taking place at the end of this proceeding and not having to have another proceeding to approve a different transfer. Additionally, neither the Commission, nor Staff, have had the opportunity to truly vet the Joint Bidders' proposal given its incompleteness, while Osage Utility has a proven track record of bringing distressed systems into compliance and operating them in a safe and adequate manner. There is further benefit to the public in the Commission continuing to have oversight of the systems whereas PWSD#5, LAWWA, and MWA are outside the jurisdiction of the Commission.

After weighing each of these benefits and detriments, the Commission finds that Osage Utility has met its burden to show that a grant of authority to purchase the Osage Water Company assets and a grant of a CCN to operate the Osage Water Company system is not detrimental to the public interest if granted with the agreed conditions proposed by Staff. The evidence that

the ratepayers will be charged unreasonably higher rates if Osage Utility owns the systems is not persuasive. There are too many unknowns to assume that the alleged lower rates to be charged by the Joint Bidders will be so significant as to make the transfer to Osage Utility detrimental to the public. Further, any future rate increases for Osage Utility will only be authorized by the Commission if found to be just and reasonable.

b. Should the Commission approve an acquisition premium for the acquisition of the Osage Water Company under 20 CSR 4240-10.085?

Having decided that it should grant the application for a CCN with conditions, the next issue before the Commission is whether it should grant the request for a debit acquisition incentive. Osage Utility requests a debit acquisition incentive equal to the difference between the total purchase price and the net original cost for Osage Water Company. Osage Utility originally applied for both a rate of return premium and a debit acquisition premium, but has dropped its request for the rate of return premium.[147]

An acquisition incentive is defined as "[a] rate of return premium, debt acquisition adjustment, or both designed to incentivize the acquisition of a nonviable utility[.]"[148] A debit acquisition adjustment is an adjustment "to a portion or all of an acquiring utility's rate base to reflect a portion or all of the excess acquisition cost over depreciated original cost of the acquired system[.]"[149]

The Commission's rule on acquisition premiums sets out requirements for the information to be provided upon application and the criteria for the Commission to make its decision. Osage Utility has the burden to provide records related to the original cost of Osage Water Company.[150]

[147] Ex. 5, Surrebuttal Testimony of Josiah Cox, p. 8.
[148] 20 CSR 4240-10.085(1)(A).
[149] 20 CSR 4240-10.085(1)(B).
[150] 20 SCR 4240-10.085(3)(A)2.

Osage Utility did not provide this information. Additionally, Public Counsel, Cedar Glen, and the Joint Bidders argue that Osage Utility has not shown that the purchase "is in the public interest"[151] or that the purchase "would be unlikely to occur without the probability of obtaining an acquisition incentive."[152]

Under the acquisition incentive rule, Osage Utility has the burden to show that the "acquisition would be unlikely to occur without the probability of obtaining an acquisition incentive."[153] The Commission finds that the only evidence that Central States/Osage Utility would be unlikely to proceed with the purchase without the incentive is the testimony of Josiah Cox that the company would have to rethink its position if the Commission does not approve the incentive.[154] Mr. Cox's testimony on this point was not persuasive.

The evidence shows that the purchase by Osage Utility will likely take place regardless of the incentive. Central States began negotiations for the purchase of Osage Water Company well before the incentive rule was effective or even before the Commission began the formal rulemaking process. Additionally, purchasing distressed systems to rehabilitate and operate them as a viable entity is the basic business plan of Central States. Further, Central States made multiple bids for Osage Water Company, consistently matching the Joint Bidders' bids. Each of these facts leads the Commission to the conclusion that Central States/Osage Utility was determined to purchase Osage Water Company absent any additional incentive.

This case is unique in that a sale of the system is likely to take place, even if Osage Utility does not consummate the transaction. The Joint Bidders are contractually obligated under the bankruptcy order to purchase the system if Osage Utility does not. The acquisition incentive rule

[151] 20 CSR 4240-10.085(4)(H).
[152] 20 CSR 4240-10.085(4)(I).
[153] 20 CSR 4240-10.085(4)(I).
[154] Ex. 1, Direct Testimony of Josiah Cox, pp. 24-26; and Ex. 5, Surrebuttal Testimony of Josiah Cox, pp. 2-8.

does not specifically contemplate this scenario. The focus of the rule is to provide incentives for the purchase of troubled water and sewer systems where those systems might not otherwise attract a qualified owner. In this case, it has taken 14 years, but currently other entities are ready and willing to purchase these troubled systems if Osage Utility fails to do so.

The Commission determines that Osage Utility has not met its burden to show that the sale of the system "would be unlikely to occur without the probability of obtaining an acquisition incentive."[155] Osage Utility has also not met its burden of providing the necessary information about Osage Water Company's original costs. Some of this information can be deduced from information provided by Staff, but Osage Utility has the burden to provide all the information. Without the requirements of the rule being met, the Commission cannot find that the request is in the public interest.

IV. Decision

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts to the law to reach its conclusions, the Commission determines that the substantial and competent evidence in the record supports the conclusion that Osage Utility has met, by a preponderance of the evidence, its burden of proof. The Commission finds that Osage Utility has demonstrated that it possesses adequate technical, managerial, and financial capacity to own, operate, manage, and maintain the Osage Water Company water and sewer systems. Osage Utility has also proven that the grant of a CCN to serve the Osage Water Company service areas and the transfer of Osage Water Company's assets to Osage Utility is not detrimental to the public interest, providing that the conditions in

[155] 20 CSR 4240-10.085(4)(I).

the Staff recommendation are met. The Commission further determines that Osage Utility has not met the criteria of 20 CSR 4240-10.085 for the approval of an acquisition incentive.

Therefore, the Commission will grant Osage Utility a CCN to provide water and sewer service in the service territories previously served by Osage Water Company subject to the conditions recommended by Staff. In addition, the Commission will deny Osage Utility's request for an acquisition incentive. The Commission will authorize Osage Utility to adopt Osage Water Company's tariffs and their rates as an interim measure until it files a rate case within the next 24 months. Upon completion of the transactions transferring the Osage Water Company assets to Osage Utility, the Commission will cancel the CCN of Osage Water Company. Additionally, as recommended by Staff, the Commission will delete the portions of Osage Water Company's service authority for the areas that are not served by Osage Water Company.

The Commission also grants the unopposed motion to dismiss the portions of the application related to a request for a CCN and transfer of the Reflections water and sewer system assets. Further, the Commission finds that good cause exists and waives the 60-day notice requirement of 20 CSR 4240-4.017(1) for purposes of this case.

THE COMMISSION ORDERS THAT:

1. The Motion to Dismiss or, in the Alternative, Motion to Modify Osage Utility Operating Company, Inc.'s Amended Application is granted, in part.

2. The portion of the application requesting authority to purchase the assets and serve the customers of the water and sewer systems owned by Reflections Condominium Owners Association, Inc., Great Southern Bank, and the Reflections Subdivision Master Association, Inc., is dismissed.

3. Commission Rule 20 CSR 4240-4.017(1) is waived for purposes of this application.

4. Osage Water Company and Osage Utility Operating Company, Inc. are authorized to enter into, execute, and perform in accordance with the terms described in the Agreement for Sale of Utility System, attached as Appendix B-C of the to the Application and Motion for Waiver, and incorporated by reference in paragraph 10 of the Amended Application and Motion for Waiver and to take any and all other actions which may be reasonably necessary and incidental to the performance of the acquisition.

5. Upon closing on each of the Osage Water Company water and sewer systems, Osage Utility Operating Company, Inc., is granted a certificate of convenience and necessity to provide water and sewer service in the service territories previously served by Osage Water Company. The grant of authority does not include the six areas (Osage Beach South, Osage Beach North, Sunrise Beach South, Sunrise Beach North, Shawnee Bend, and Parkview Bay) in which Osage Water Company has not been providing service.

6. Upon closing on each of the water and sewer systems, Osage Utility Operating Company, Inc. shall provide service by applying, on an interim basis, the existing rates, rules and regulations as outlined in Osage Water Company's water tariff and sewer tariffs, until the effective date of adoption notice tariff sheets.

7. Osage Utility Operating Company, Inc. shall file Tariff Adoption Notice tariff sheets for the corresponding water and sewer tariffs of the regulated Osage Water Company systems within ten days after closing on the assets.

8. Upon completion of the transactions transferring the Osage Water Company assets to Osage Utility Operating Company, Inc. the Commission will cancel the Osage Water Company's certificates of convenience and necessity and tariffs.

9. Osage Utility Operating Company, Inc. shall create and keep financial books and records for plant-in-service, revenues, and operating expenses (including invoices) in accordance with the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts.

10. Going forward, Osage Utility Operating Company, Inc. shall keep and make available for audit and review all invoices and documents pertaining to the capital costs of constructing and installing the water and sewer utility assets.

11. The depreciation rates for water and sewer utility plant accounts shall be as described and shown in Staff's Memorandum at Schedule ND-d2, Attachment A, page 39 of Exhibit 101, Direct Testimony of Natelle Dietrich.

12. Osage Utility Operating Company, Inc. shall distribute to all customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its water service, consistent with the requirements of Commission Rule 20 CSR 4240-13, within thirty days after the effective date of this order.

13. Within ninety days of the effective date of this order, Osage Utility Operating Company, Inc. shall complete repairs to resolve the bypassing of treatment at any wastewater treatment system.

14. Osage Utility Operating Company, Inc. shall resolve all issues regarding noncompliance with Missouri Department of Natural Resources regulations for all water and sewer systems.

15. Osage Utility Operating Company, Inc. shall provide adequate training for the correct application of rates and rules to all customer service representatives, including those

employed by contractors, prior to the customers receiving their first bill from Osage Utility Operating Company, Inc.

16. Osage Utility Operating Company, Inc. shall provide to the Customer Experience Department Staff of the Commission a sample of ten billing statements of bills issued to Osage Water Company customers within thirty days of such billing.

17. Osage Utility Operating Company, Inc. shall file notice in this case once Staff's recommendations regarding customer communications and billing, listed above, have been completed.

18. Osage Utility Operating Company, Inc. shall file a rate case with the Commission no later than twenty-four months after the effective date of this order.

19. The request for an acquisition incentive under Commission rule 20 CSR 4240-10.085 is denied.

20. Osage Utility Operating Company shall notify the Commission of closing on the assets within five days after such closing.

21. Osage Water Company shall cease providing water and sewer service immediately after closing on the assets of each water and sewer system.

22. The Commission's Data Center shall provide a copy of this order to the County Clerk of Camden County, Missouri.

23. If the closing on the water system assets and/or resolution of the real estate issues has not occurred by June 30, 2020, Osage Utility Operating Company, Inc. shall file a status report no later than July 15, 2020, and every 30 days thereafter, until closing takes place, or until Osage Utility Operating Company, Inc. determines that the transfer of the assets will not occur.

24. The Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to Osage Utility Operating Company, Inc., in any later proceeding.

25. This order shall become effective on May 8, 2020.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Kenney, Rupp, Coleman, and
Holsman CC., concur, as amended.
Silvey, Chm., dissents, as amended.

Dippell, Senior Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of the City of Union, Missouri and Public Water Supply District No. 1 of Franklin County, Missouri for Approval of a Second Addendum to Territorial Agreement Concerning Territory in Franklin County, Missouri	)))))	**File No. WO-2020-0249**

REPORT AND ORDER APPROVING SECOND ADDENDUM TO TERRITORIAL AGREEMENT

WATER

§11 Territorial Agreements

The Commission has jurisdiction over territorial agreements for the sale and distribution of water. Competition to sell and distribute water between and among public water supply districts, water corporations subject to Commission jurisdiction, and municipally owned utilities may be displaced by written territorial agreements. The Commission may approve a territorial agreement if the Commission determines that the territorial agreement in total is not detrimental to the public interest.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held by telephone/internet audio conference on the 8th day of April, 2020.

In the Matter of the Application of the City of Union, Missouri and Public Water Supply District No. 1 of Franklin County, Missouri for Approval of a Second Addendum to Territorial Agreement Concerning Territory in Franklin County, Missouri	)))))	**File No. WO-2020-0249**

REPORT AND ORDER APPROVING SECOND ADDENDUM TO TERRITORIAL AGREEMENT

Issue Date: April 8, 2020 Effective Date: May 8, 2020

This order approves the Second Addendum (Second Addendum) to the Territorial Agreement between the City of Union, Missouri (The City) and Public Water Supply District No. 1 of Franklin County, Missouri Inc. (The District). The Second Addendum would allow the City provide water service to a parcel of land within the District's service territory.[1]

Findings of Facts

1. The City is a fourth class city, existing under Chapter 79 of the Revised Statutes of Missouri. The City owns and operates a waterworks public utility and provides water service to the public under Section 91.450, RSMo. It is a political subdivision of the State of Missouri, and it is not subject to regulation by the Commission except for

[1] The Second Addendum is attached to this Report and Order as Exhibit A.

purposes of the joint application. The City's principal place of business is located at 500 East Locust Street, Union, Missouri 63084.

2. The District is a public water supply district organized under Chapter 247 of the Revised Statutes of Missouri. The District provides water service to customers located within the District's water service area in Franklin County, Missouri. It is a political subdivision of the state of Missouri and is not subject to regulation by the commission except for purposes of the application. The District's principal place of business is located at 3017 Highway A, Washington, Missouri 63090.

3. On November 19, 2002, in File No. WO-2003-0186, the City and the District filed their *Joint Application for Approval of a Water Service Area Territorial Agreement* ("Initial Application") pursuant to Section 247.172, RSMo. On January 17, 2003, the City, the District, the Office of Public Counsel (Public Counsel), and the Staff of the Commission (Staff) filed a Unanimous Stipulation and Agreement, recommending approval of the Join Applicants' Initial Application. On March 6, 2003, after an evidentiary hearing, the Commission issued a Report and Order approving the Initial Application.

4. On September 20, 2006, the City and the District requested that the Commission approve an Addendum to said Territorial Agreement. On December 7, 2006, the Commission issued its *Report and Order* finding approving the Addendum.

5. On February 14, 2020, the Joint Applicants filed a Second Addendum. Pursuant to the Second Addendum, the District agreed to transfer a parcel of land from the District's service territory to the City for the right to provide water service to another parcel of land currently within the District's water service area. The parcel is currently undeveloped, and has no customers.

6. On February 25, 2020, the Commission ordered that notice of the application be provided to potentially interested persons and established March 10, 2020 as the deadline for submission of requests to intervene. No requests to intervene have been filed. The Commission also directed Staff to file a recommendation regarding the joint application by March 20, 2020.

9. On March 20, 2020, Staff filed a recommendation advising the Commission to approve the second addendum. The Office of Public Counsel has not objected to the joint application.

10. Based on the information provided in the application and Staff's recommendation, the Commission finds that the second addendum is in the public interest.

Conclusions of Law

A. The Commission has jurisdiction over Territorial Agreements for the sale and distribution of water under Section 247.172, RSMo. Section 247.172.1, RSMo, provides that "[c]ompetition 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."

B. Section 247.172.4, RSMo, states that "[b]efore 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."

C. Pursuant to Section 247.172.5, RSMo, the Commission may approve a territorial agreement if the Commission determines that the territorial agreement in total is not detrimental to the public interest.

D. Office of Public Counsel did not file a recommendation or objection. By the terms of the Territorial Agreement, the Office of the Public Counsel is deemed to have approved the second addendum.

E. Section 247.172.5, 7, RSMo 2016, provides that the Commission must hold an evidentiary hearing on the proposed territorial agreement unless an agreement is made between the parties and no one requests a hearing. Since no hearing was requested, the requirement for a hearing was met when the opportunity for hearing was provided and no proper party requested the opportunity to present evidence.[2] Therefore, no hearing is necessary for the Commission to make a determination.

Decision

Having considered the joint application and Staff's recommendation in support of approval of the application, the Commission finds that there are no facts in dispute and, therefore, accepts the facts as true. The Commission concludes the Second Addendum between the parties is not detrimental to the public interest and will be approved. In approving the Second Addendum, the Commission is making no ratemaking determinations and reserves the right to consider any ratemaking treatment in a later rate proceeding.

[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).

THE COMMISSION ORDERS THAT:

1. The Second Addendum to the Territorial Agreement between the City of Union, Missouri and Public Water Supply District No. 1 of Franklin County, Missouri Inc., is approved.

2. The City of Union, Missouri is authorized to provide water service to the property described in the Second Addendum**, included with this order as Attachment A**.

3. The City of Union and Public Water Supply District No. 1 of Franklin County, Missouri Inc. are authorized to do such other acts and things, including making, executing, and delivering any and all documents that may be necessary, advisable, or proper to consummate the agreements reflected in the Second Addendum and to implement the authority granted by the Commission in this order.

4. This order shall become effective on May 8, 2020.

5. This file shall be closed on May 9, 2020.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Pridgin, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of Confluence Rivers Utility Operating Company, Inc.'s Request for a Water Rate Increase	)))	**File No. WR-2020-0053**

ORDER APPROVING UNANIMOUS DISPOSITION AGREEMENT AND SMALL COMPANY RATE INCREASE WITH ACCOMPANYING TARIFFS

RATES

§3 Jurisdiction and Powers of the State Commission
§16 Comparisons

The Commission relied on the recommendation of the Commission's Staff and the uncontested Disposition Agreement to support the requested consolidation of various service areas into a single rate. The Commission noted that a comparison of the rate increases between consolidated and unconsolidated showed customer savings in the vast majority of the service areas when consolidated.

§3 Jurisdiction and Powers of the State Commission
§22 Economic conditions
§72 Effective date

Decided at the beginning of the pandemic, the Commission accepted the utility's voluntary offer to delay the effective date of a rate increase.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held by telephone/internet audio conference on the 8th day of April, 2020.

In the Matter of Confluence Rivers Utility Operating Company, Inc.'s Request for a Water Rate Increase	)))	**File No. WR-2020-0053**

ORDER APPROVING UNANIMOUS DISPOSITION AGREEMENT AND SMALL COMPANY RATE INCREASE WITH ACCOMPANYING TARIFFS

Issue Date: April 8, 2020 Effective Date: July 1, 2020

Procedural history

On August 29, 2019, Confluence Rivers Utility Operating Company, Inc. (Confluence Rivers) filed notices opening two staff assisted rate cases under Commission Rule 20 CSR 4240-10.075.[1] The cases asked for both a rate increase and a rate consolidation for 9 water systems and 9 sewer systems.[2] Confluence Rivers sought an increase of $368,360 in its total annual water service operating revenues and a $527,721 increase in sewer operating revenues. Confluence Rivers serves approximately 542 water customers and 627 sewer customers.

[1] SR-2020-0054 was consolidated into this case on October 15, 2019.
[2] The systems to be combined include: the Willows Service Area, water and sewer; Gladlo Service Area, water and sewer; Eugene Service Area, water only; Smithview Service Area, water only; ROY-L Service Area, water and sewer; Mill Creek Service Area, sewer only; Majestic Lakes Service Area, water and sewer; Auburn Lake Service Area, water and sewer; Calvey Brook Service Area, water and sewer; Lake Virginia Service Area, sewer only; Villa Ridge Service Area, sewer only; Evergreen Lake Service Area, water only;

The Commission held three local public hearings and heard from a total of 18 witnesses.[3] Eighty-six public comments were filed, apart from those received during the local public hearings.

On February 10, 2020, the parties filed a *Unanimous Agreement Regarding Disposition of Small Utility Company Revenue Increase Request (Disposition Agreement).*[4] The *Disposition Agreement* purports to resolve all issues in this matter, agrees to annual revenue increases for all systems, and combines the multiple systems' water rates and sewer rates into single rates. Different from past small company staff assisted rate cases, information regarding the rate increases and consolidations is contained solely in the *Disposition Agreement* and its supplemental filings.

Commission rules allow parties five days to respond to small company rate case disposition agreements. Five days have elapsed and no party has objected or otherwise responded to the filing of the *Disposition Agreement*.

On March 18, 2020, the Commission, on its own motion, held an on-the-record presentation for the parties to submit a presentation on the *Disposition Agreement* and answer further questions from the Commission. The Staff of the Missouri Public Service Commission (Staff) filed corrected billing comparisons and an updated table of rates on March 24, 2020. Staff filed a further correction of billing comparisons on March 30, 2020. No parties objected to the Staff's filed corrections.

Meanwhile, on March 13, 2020, Confluence Rivers filed new water and sewer tariffs, YW-2020-0155 and YS-2020-0156, respectively. Those tariffs each bear an

[3] Hearings were held in Eureka and O'Fallon, Missouri, on November 4, 2019, and Jefferson City on November 5.
[4] Signatory parties to the *Disposition Agreement* include: Confluence Rivers; the Staff; and the Public Counsel.

effective date of April 12, 2020. On March 24, 2020, Staff filed its recommendation to approve the tariffs, finding that they comply with the terms of the *Disposition Agreement*.

Commission rules allow parties ten days to respond to pleadings unless otherwise ordered. Ten days have elapsed and no party has objected or otherwise responded to the filing of the tariffs.

Parties were ordered to respond in a shorter time to the Staff's recommendation. No responses or objections were received to the Staff's recommendation to approve the tariffs filed in compliance with the *Disposition Agreement*.

On March 30, 2020, the Commission directed the parties to respond to a proposal to delay the effective date of the tariffs due to the COVID-19 pandemic and its related economic disruptions. Confluence Rivers responded affirmatively that they would voluntarily delay the effective date of the tariffs to July 1, 2020.

Discussion

In the *Disposition Agreement*, the parties agreed that Confluence Rivers would file compliance tariffs for water service and for sewer service. Both single-rate tariffs were filed March 13, 2020, with effective dates of April 12, 2020.

The *Disposition Agreement* provides for an *increase* to Confluence Rivers' water revenue requirement of $306,355 (201%). Added to the previous water revenues of $152,322, this results in overall annual water revenues of $458,676.

The *Disposition Agreement* also provides for a sewer revenue requirement *increase* of $345,597 (173%). Added to the previous sewer revenues of $199,751, this results in overall annual sewer revenues of $545,349.

The Customer Experience Department conducted a review of Confluence Rivers' procedures and practices used to ensure that its customers' service needs are met. That review resulted in a section of the *Disposition Agreement* requiring Confluence Rivers to

develop and implement a process to ensure all customer complaints received are documented and maintained for at least 2 years.

Within 3 years, Confluence Rivers shall have replaced all nonfunctioning meters in the Smithview subdivision. All customers with a currently nonfunctioning meter will be placed temporarily on a flat, unmetered, rate. Once a customer's meter is replaced, that customer will transition to the metered rate.

The Water and Sewer Department also conducted a review of the water and sewer systems. That review found that most of the system improvements are still under construction, and therefore, the costs of these improvements are not included in this rate case. The deadline for inclusion was November 12, 2019. This was further explained at the March 18, 2020, on-the-record presentation as a basis for dividing the capital improvements between rate cases: 15% for this case, reserving 85% for a future rate case(s).

Water system customers will average a 207% increase to their water service rate, to $42.20 per month with a commodity charge of $7.01 per 1,000 gallons. Sewer system customers will average a 179% increase to their sewer rate, to $72.48 per month. Three of the 9 water systems last adjusted rates in 2011, 2005, and 1995. The three longest standing sewer system rates date from 2014 (2), and 1995.

The Commission's Water and Sewer Department supports a single rate structure for all water and sewer customers among the various systems, based on the unique circumstances of this case.

Staff submitted an updated table of rates comparing projected rates among the systems as stand-alone entities compared to the consolidated basis proposed in the *Disposition Agreement.* In 16 of the 22 rates among the 18 systems, the *consolidated* customer charge is lower than the stand-alone customer charge. Commodity charges

show similar numbers, with 5 of 7 systems have a lower *consolidated* commodity charge versus a stand-alone commodity charge.

The terms of the *Disposition Agreement* reflect compromises between the Staff, the Office of the Public Counsel (Public Counsel) and Confluence Rivers, and no party has agreed to any particular ratemaking principle in arriving at the amount of the specified annual operating revenue increases.

The Commission is tasked with setting just and reasonable rates, which may result in a revenue increase more or less than the increase originally sought by the utility. The Commission has the authority to approve a disposition agreement.

The Commission finds and concludes that the *Non-Unanimous Agreement Regarding Disposition of Small Utility Company Revenue Increase Request* is reasonable and should be approved. Furthermore, the unopposed proposed rates are just and reasonable in order to provide safe and adequate service to the ratepayers.

Due to the global pandemic caused by COVID-19, Confluence Rivers has offered to delay the implementation of the rate increases until July 1, 2020. The Commission accepts Confluence Rivers' offer, and will make this order effective July 1, 2020. Confluence Rivers may extend the effective date of its tariffs by filing an appropriate notice in this file. If it has not done so by April 9, 2020, the presiding judge may issue an order by delegation to suspend those tariffs until July 1, 2020.

THE COMMISSION ORDERS THAT:

1. The *Unanimous Agreement Regarding Disposition of Small Utility Company Revenue Increase Request* filed on February 10, 2020, and hereto attached as Attachment 1, is approved.

2. All parties shall comply with the terms of the *Unanimous Agreement Regarding Disposition of Small Utility Company Revenue Increase Request*.

3. Tariff Nos. YS-2020-0156 and YW-2020-0155, submitted on March 13, 2020, are approved. As discussed in the body of this order, the Commission intends the tariffs to go into effect on July 1, 2020. If Confluence Rivers does not submit a notice extending the effective date of the tariffs to July 1, 2020, the regulatory law judge is directed to suspend the tariff until that date.

4. This order shall become effective on July 1, 2020.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Hatcher, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Elm Hills Utility Operating Company, Inc., for Authority to Acquire Certain Sewer Assets	)))	**File No. SM-2020-0146**

ORDER GRANTING TRANSFER OF ASSETS AND GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§21 Grant or refusal of certificate generally

The Commission authorized the transfer of assets from Central Rivers and granted Elm Hills a certificates of convenience and necessity to provide water and sewer service within the proposed service areas.

§21.2 Technical qualifications of applicant

The Commission found that Elm Hills possessed adequate technical, managerial, and financial capacity to operate the systems it wishes to purchase from Central Rivers. Elm Hills is a subsidiary of Central States Water Resources and has access to experienced employees who have also demonstrated managerial abilities over the water and wastewater utilities owned by Central States Water Resources. Elm Hills has access to highly qualified operating and engineering experience. Elm Hills also has appropriate customer service and billing capabilities through its contractors, which provide a benefit to customers.

§33 Immediate need for the service

The Commission determined that there is a need for the service because, as the Prairie Field Subdivision develops, homes will be built requiring service. Also, Central Rivers' existing service areas will continue to need sewer service.

SEWER

§18 Depreciation

The sales agreement for all of Central Rivers' sewer assets allows for an adjustment of the purchase price in the event that the Elm Hills discovers information establishing a lower net book value for the assets than Central Rivers represented. Elm Hills has not requested an acquisition adjustment and has the financial capacity to purchase and operate the Central Rivers systems at the agreed to purchase price. Elm Hills proposes to adopt Central Rivers' existing rates. Depreciation rates for Elm Hills and Central Rivers are similar.

WATER

§20 Depreciation

The sales agreement for all of Central Rivers' sewer assets allows for an adjustment of the purchase price in the event that Elm Hills discovers information establishing a lower net book value for the assets than Central Rivers represented. Elm Hills has not requested an acquisition adjustment and has the financial capacity to purchase and operate the Central Rivers systems at the agreed to purchase price. Elm Hills proposes to adopt Central Rivers' existing rates. Depreciation rates for Elm Hills and Central Rivers are similar.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held by telephone/internet audio on the 15th day of April, 2020.

In the Matter of the Application of Elm Hills Utility Operating Company, Inc., for Authority to Acquire Certain Sewer Assets	)))	**File No. SM-2020-0146**

ORDER GRANTING TRANSFER OF ASSETS AND GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: April 15, 2020 Effective Date: May 15, 2020

On November 22, 2019, Elm Hills Utility Operating Company, Inc. (Elm Hills) filed an application requesting to acquire the assets of Central Rivers Wastewater Utility, Inc. (Central Rivers) as part of its application, Elm Hills also applied for a certificate of convenience and necessity ("CCN") to expand Central Rivers' service area to include the undeveloped Prairie Field Subdivision adjacent to Central Rivers' Private Garden service area in Clay County, Missouri. That CCN application was assigned File No. SA-2020-0152, and was consolidated into this file.

The Commission issued notice of the application and set a deadline for the filing of applications to intervene, but no applications were received. The Commission ordered its Staff (Staff) to file a recommendation. Staff filed a recommendation on March 17, 2020, recommending approval of the transfer of assets and CCN subject to conditions. Elm Hills filed a response to Staff's recommendation agreeing to those conditions. No other responses were received.

No party requested a hearing and the requirement for a hearing is met when the opportunity for a hearing has been provided.[1] Thus, the Commission will rule on the applications.

Elm Hills provides water service to approximately 133 customers and sewer service to approximately 375 customers in Pettis and Johnson Counties, Missouri. Elm Hills is a water corporation and a sewer corporation, subject to the Commission's jurisdiction.[2]

Central Rivers provides sewer service to approximately 295 customers in Ray, Clay, and Clinton Counties, Missouri. Central Rivers is a sewer corporation,[3] subject to the Commission's jurisdiction. As a regulated utility, Central Rivers must obtain the Commission's authorization before selling or transferring its assets.[4] In evaluating the proposed acquisition, the Commission can only disapprove the transaction if it is detrimental to the public interest.[5]

Elm Hills is a subsidiary of Central States Water Resources and has access to experienced employees who have also demonstrated managerial abilities over the water and wastewater utilities owned by Central States Water Resources. Elm Hills has access to highly qualified operating and engineering experience. Elm Hills also has appropriate customer service and billing capabilities through its contractors, which provide a benefit to customers. The Commission finds that allowing Elm Hills to acquire the assets of Central Rivers is not detrimental to the public interest.

The sales agreement for all of Central Rivers' sewer assets allows an adjustment of the purchase price in the event that the Elm Hills discovers information establishing a lower

[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 386.020(49),(59), RSMo 2016.
[3] Section 386.020(49), RSMo 2016.
[4] Section 393.190, RSMo 2016.
[5] *State ex rel. City of St. Louis v. Public Service Com'n of Missouri*, 73 S.W.2d 393, 400 (Mo banc 1934).

net book value for the assets than Central Rivers represented. Elm Hills has not requested an acquisition adjustment in this matter and has the financial capacity to purchase and operate the Central Rivers systems at the agreed to purchase price. Elm Hills proposes to adopt Central Rivers' existing rates. Depreciation rates for Elm Hills and Central Rivers are similar. Staff recommends that Elm Hills continue to use Central River's depreciation rates ordered in File No. SR-2014-0247 for existing assets, and use Elm Hills' depreciation rates ordered in File No. SM-2017-0150 for assets acquired by Elm Hills, until the next rate case.

The Commission may grant a water or 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."[6] 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.[7] These criteria are known as the Tartan Factors.[8]

There is a need for the service because as the Prairie Field Subdivision develops, homes will be built requiring service. Also, Central Rivers' existing service areas will continue to need sewer service. Elm Hills is qualified to provide the service as it is currently providing water and sewer services to approximately 508 customers throughout its Missouri service

[6] Section 393.170.3, RSMo 2000.
[7] 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.).
[8] *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).

areas. Elm Hills has the financial ability to provide the service and no financing approval is being requested, and Elm Hills has the financial capacity to purchase the Central Rivers systems. Additionally, the proposal is economically feasible because the Prairie Field Subdivision sewer system is being contributed by the developer, and the Central Rivers systems already exist. The proposal promotes the public interest as demonstrated by positive findings in in the first four Tartan Factors.

The Commission finds that Elm Hills possesses adequate technical, managerial, and financial capacity to operate the water system it wishes to purchase from Central Rivers. The Commission concludes that the factors for granting a CCN to Elm Hills have been satisfied and that it is in the public interest for Elm Hills to provide water and sewer service to the Prairie Field Subdivision and the service areas currently served by Central Rivers. The Commission will authorize the transfer of assets and grant Elm Hills the certificates of convenience and necessity to provide water and sewer service within the proposed service areas, subject to the conditions in Staff's memorandum.

Elm Hills also seeks a waiver of the Commission's 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1)(D). Elm Hills certifies that it has had no communication with the office of the Commission regarding any substantive issue likely to be in this case during the preceding 150 days.

THE COMMISSION ORDERS THAT:

1. Elm Hills Utility Operating Company, Inc.'s request for waiver from the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1)(D) is granted.

2. Central Rivers Wastewater Utility, Inc. is authorized to sell and transfer to Elm Hills Utility Operating Company, Inc. the assets identified in the Application and Motion for Waiver.

3. Elm Hills Utility Operating Company, Inc. is granted a Certificate of Convenience and Necessity to install, acquire, build, construct, own, operate, control, manage and maintain sewer systems in Clay County, Clinton County and Ray County, Missouri, in the areas currently served by Central Rivers Wastewater Utility, Inc.

4. Elm Hills Utility Operating Company, Inc. is granted a Certificate of Convenience and Necessity to install, acquire, build, construct, own, operate, control, manage and maintain a sewer system in Clay County, Missouri, in the Prairie Field Subdivision as an expansion of the Private Gardens service area as described in Attachment C of Staff's March 17, 2020, Recommendation and Memorandum.

5. The transactions are subject to the following conditions as put forth in Staff's March 17, 2020, Memorandum:

A. Elm Hills shall adopt Central Rivers existing sewer rates for the former Central Rivers service areas;

B. Elm Hills shall use depreciation rates ordered in File No. SR-2014-0247 for existing assets, and use Elm Hills' depreciation rates ordered in File No. SM-2017-0150 for assets acquired by Elm Hills until the next rate case.

C. Elm Hills shall submit revised tariff sheets, to become effective upon closing on the assets, adding Central Rivers service area maps, service area written descriptions, sewer rates, and a revised index to be included in its EFIS water tariff P.S.C. MO No. 2;

D. The delinquent Central Rivers PSC assessment of $1,009.31 be paid within thirty (30) days of closing on the assets.

E. Elm Hills shall notify the Commission of closing on the assets within five days after such closing; If closing on the utility assets does not take place within 30 days following the effective date of the Commission's order approving such, Elm Hills shall submit a status report within five days after this 30 day period regarding the status of closing, and additional status reports within five days after each additional 30 day period, until closing takes place, or until Elm Hills determines that the transfer of the assets will not occur; If Elm Hills determines that a transfer of the assets will not occur, Elm Hills shall notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made;

F. Elm Hills shall keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts;

G. Elm Hills shall create and maintain documentation and analysis supporting rate base valuation of the Central Rivers assets as of the date of acquisition for the purposes of Elm Hills's next general rate case; and

6. Nothing in this order shall be considered a finding by the Commission of the value of a transaction for ratemaking purposes.

7. The Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the CCN to Elm Hills, including expenditures related to the certificated service area, in any later proceeding.

8. This order shall become effective on May 15, 2020.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Clark, Senior Regulatory Law Judge.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Spire Missouri, Inc. d/b/a Spire, for Permission and Approval and a Certificate of Convenience and Necessity to Construct, Install, Own, Operate, Maintain, and Otherwise Control and Manage a Natural Gas Distribution System to Provide Gas Service in Lafayette County as an Expansion of its Existing Certificated Areas	)))))))	**File No. GA-2020-0235**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§34 Public convenience and necessity or public benefit
§43 Gas
§48 Operations under terms of the certificate generally

The Commission issued an order granting a certificate of convenience and necessity to install, own, operate, control, manage, and maintain a gas plant in Lafayette County, Missouri subject to the condition that the Commission will reserve all rate making determinations regarding the revenue impact of the service area extension request until the company's next general rate making proceeding.

§34 Public convenience and necessity or public benefit
§43 Gas
§48 Operations under terms of the certificate generally

The Commission issued an order granting a certificate of convenience and necessity to install, own, operate, control, manage, and maintain a gas plant in Lafayette County, Missouri subject to the condition that the company file an updated tariff sheet to incorporate the specified new territory.

GAS

§3 Certificate of convenience and necessity
§18 Rates

The Commission issued an order granting a certificate of convenience and necessity to install, own, operate, control, manage, and maintain a gas plant in Lafayette County, Missouri subject to the condition that the Commission will reserve all rate making determinations regarding the revenue impact of the service area extension request until the company's next general rate making proceeding.

§3 Certificate of convenience and necessity
§17 Operation generally

The Commission issued an order granting a certificate of convenience and necessity to install, own, operate, control, manage, and maintain a gas plant in Lafayette County, Missouri subject to the condition that the company file an updated tariff sheet to incorporate the specified new territory.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held by telephone and internet audio conference on the 6th day of May, 2020.

In the Matter of the Application of Spire Missouri, Inc. d/b/a Spire, for Permission and Approval and a Certificate of Convenience and Necessity to Construct, Install, Own, Operate, Maintain, and Otherwise Control and Manage a Natural Gas Distribution System to Provide Gas Service in Lafayette County as an Expansion of its Existing Certificated Areas	))))))))	**File No. GA-2020-0235**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: May 6, 2020 Effective Date: May 16, 2020

Spire Missouri, Inc. seeks a certificate of convenience and necessity for a natural gas distribution system to provide gas service in Lafayette County, Missouri. The Commission will grant Spire a certificate of convenience and necessity.

PROCEDURAL HISTORY

Spire on February 3, 2020, applied for a certificate of convenience and necessity (CCN) to construct, install, own, operate, maintain, and otherwise control and manage a natural gas distribution system to provide gas service in Lafayette County, Missouri, as an expansion of Spire's existing certificated area. Spire seeks a CCN to provide gas to an individual project, a Lafayette County maintenance building. Spire also requests waiver of the 60-day notice requirement under 20 CSR 4240-4.017. The Commission has received no requests to intervene in this case.

On April 20, 2020, Staff recommended that the Commission grant Spire a CCN

subject to the conditions that the Commission:

1) Reserve all rate making determinations regarding the revenue requirement impact of the service area expansion until Spire's next general rate making proceeding; and

2) Require Spire to file an updated tariff sheet to incorporate the specified section in Lafayette County.

No objections to Staff's recommendation have been received, and the time for responses has expired.[1] The Commission will take up Spire's application unopposed.

DECISION

Spire is a gas corporation and a public utility subject to Commission jurisdiction.[2] The Commission may grant a gas corporation a certificate of convenience and necessity after determining that such construction and operation are either "necessary or convenient for the public service."[3] The Commission has stated five criteria that it will use to determine necessity or convenience:

1) There must be a need for the service;

2) The applicant must be qualified to provide the service;

3) The applicant must have the financial ability to the 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 pleadings and Staff's recommendation, the Commission

[1] Commission Rule 20 CSR 4240-2.080(13) allows parties 10 days to respond to pleadings unless otherwise ordered by the Commission.
[2] Section 386.020(18),(43), RSMo (Cum. Supp. 2019).
[3] Section 393.170.3, RSMo (2016).
[4] *In re Tartan Energy Co.*, 3 Mo. P.S.C. 173, 177 (1994).

finds the application for a certificate of convenience and necessity to provide gas service, subject to the conditions recommended by Staff, meets the stated criteria. No party has objected to issuance of a CCN, nor has any party objected to Staff's recommended conditions or requested a hearing.[5] Spire's application will be granted, subject to the conditions recommended by Staff. This order will be given a 10-day effective date to avoid undue delay.

In addition, the Commission will grant Spire's request for waiver of the 60-day notice requirement under 20 CSR 4240-4.017. The Commission finds good cause exists for waiver, based on Spire's verified declaration that it had no communication with the Office of the Commission regarding substantive issues in the application within 150 days before Spire filed its application.

THE COMMISSION ORDERS THAT:

1. Spire is granted permission, approval, and a certificate of convenience and necessity to construct, install, own, operate, control, manage, and maintain gas plant in Lafayette County, Missouri, as an expansion of its existing certificated area, and as more particularly described in its application and Staff's recommendation.

2. The certificate of convenience and necessity granted by this order is subject to the condition that the Commission will reserve all rate making determinations regarding the revenue impact of this service area extension request until Spire's next general rate making proceeding.

[5] A hearing requirement is met when the opportunity for hearing is provided and an evidentiary hearing is not requested by a proper party. *State ex rel. Deffenderfer Enters., Inc. v. Pub. Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App. W.D. 1989).

3. Spire shall file an updated tariff sheet to incorporate the described section of Lafayette County, Missouri.

4. The 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1) is waived for good cause.

5. This order shall become effective on May 16, 2020.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Jacobs, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Summit Natural Gas of Missouri Inc., for Certificates of Convenience and Necessity to Construct, Install, Own, Operate, Maintain, and Otherwise Control and Manage Natural Gas Lines to Provide Gas Service in Certain Areas of Laclede and Webster Counties in Conjunction with its Existing Certificated Areas	)))))))	**File No. GA-2020-0251**

ORDER GRANTING CERTIFICATES OF CONVENIENCE AND NECESSITY

CERTIFICATES

§21 Grant or refusal of certificate generally

§43 Gas

The Commission granted an area Certificate of Convenience and Necessity (CCN) to a gas distribution utility after finding that the cost of the planned upgrades result in a benefit to customers of increased pressure and capacity.

§21 Grant or refusal of certificate generally

The Commission employed the Tartan criteria to evaluate applications for Certificates of Convenience and Necessity (CCNs). The Tartan criteria is as follows: (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.

GAS

§3 Certificate of convenience and necessity

The Commission granted an area Certificate of Convenience and Necessity (CCN) to a gas distribution utility after finding that the cost of the planned upgrades result in a benefit to customers of increased pressure and capacity.

§3 Certificate of convenience and necessity

The Commission employed the Tartan criteria to evaluate applications for Certificates of Convenience and Necessity (CCNs). The Tartan criteria is as follows: (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.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held by telephone and internet audio conference on the 6th day of May, 2020.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Summit Natural Gas of Missouri Inc., for Certificates of Convenience and Necessity to Construct, Install, Own, Operate, Maintain, and Otherwise Control and Manage Natural Gas Lines to Provide Gas Service in Certain Areas of Laclede and Webster Counties in Conjunction with its Existing Certificated Areas	)	**File No. GA-2020-0251**

ORDER GRANTING CERTIFICATES OF CONVENIENCE AND NECESSITY

Issue Date: May 6, 2020 Effective Date: June 5, 2020

On February 21, 2020, Summit Natural Gas of Missouri Inc. (Summit), filed an application seeking approval for two service area certificates of convenience and necessity (CCN) for natural gas lines and to provide gas service in specified areas of Laclede and Webster Counties, Missouri, adjacent to the Company's existing certificated areas in those counties, and in conjunction with the construction of certain upgrades to its system. On April 7, 2020, Summit filed a supplement to its application. Summit also seeks waiver of the 60-day notice of case filing requirement.

The Commission directed notice of the filings and set an intervention deadline. No applications to intervene were received. On April 24, 2020, the Staff of the Missouri Public

Service Commission (Staff) filed its recommendation and supporting memorandum to approve the CCNs, with conditions.

The requested service area CCNs are necessary to complete a 3-phase system upgrade in the Rogersville rate district.[1] Portions of the system upgrade will be within Summit's existing certificated area; however, two segments of line must be constructed adjacent to Summit's existing certificated area in Laclede and Webster Counties. In addition to the upgraded service, there are potential customers located along the proposed expansion route. Due to the potential customers, Summit requests area certificates rather than line certificates.[2] Thus, this upgrade fulfills two purposes: (1) to address the pressure and capacity issues on the Rogersville system;[3] and (2) to allow for continued customer growth.

Summit's pressure issues are currently being addressed by heavy reliance on Southern Star Central Gas Pipeline and its ability to provide a certain pressure at the interconnect point. Phase 1 of the upgrade will allow Summit to ensure minimum pressure requirements to serve the entire Rogersville rate area by installing two compressors near the interconnect point.

Phase 2 of the upgrade will provide two additional main feed inputs into the City of Lebanon system where there is currently only one. This will mitigate the distribution system pressure and capacity issues for the Lebanon system, which is a portion of the Rogersville rate area.

[1] Summit has a total of 5 rate districts in Missouri.
[2] 20 CSR 4240-3.205(1)(A) addresses filing requirements for a service area certificate and 20 CSR 4240-3.205(1)(B) addresses filing requirements for a gas transmission line certificate.
[3] These issues were the subject of investigation docket File Number GO-2018-0195.

Phase 3 will provide enough capacity and pressure on the transmission line to effectively serve the current and future needs of Summit's firm customers. The system has a current bottleneck in its connection between an 8 inch steel line and 4 and 6 inch lines. For the past two winters, Summit's capacity issues were addressed via a temporary mobile liquefied natural gas connection. The pressure issue is currently addressed by using a rented compressor. Two segments of the line being constructed to address the bottleneck must be constructed in territory adjacent to, but not within, Summit's existing service territory in Laclede and Webster Counties. It is these areas for which Summit seeks area CCNs.

A new transmission line would alleviate all expenses related to the operation and maintenance of the liquid natural gas facility and compressor station, approximately $54,400 per year. The compressor station costs approximately $9,000 per month for the compressor rental.

The cost of these upgrades would be recovered from existing and future customers served within Summit's existing certificated areas, all of whom would benefit from the increased pressure and capacity. The area CCNs that Summit is applying for will create the possibility of dispersing the costs across a broader customer base if new customers connect in these new certificated areas. Summit estimates approximately 70 customers who are currently unable to access natural gas, could be served after the installation of the new transmission lines.

Summit intends to finance this upgrade by a combination of equity and debt utilizing its existing line-of-credit revolver, and will not need external financing. The rates

for the proposed area will be those currently approved and in effect for services provided in Summit's adjacent certificated territories under its existing tariff.

Staff recommends the Commission approve Summit's requested CCNs subject to the following conditions:

- Reserve all rate making determinations regarding the revenue requirement impact of this service area extension request until the Company's next general rate making proceeding, subject to the in-service criteria listed in Staff's memorandum;
- Reserve all determination regarding prudency of the proposed upgrades until Summit's next general rate making proceeding; and
- Require Summit to file to update its tariffs to incorporate the requested sections for Laclede County and Webster County.

Commission rule allows parties 10 days to respond to pleadings. More than ten days have elapsed since Staff filed its recommendation. No party has objected to the recommendation or the recommended conditions.[4] Further, no party has objected to the application. Therefore, the Commission will consider the application, and Staff's recommendation, with the recommended conditions, unopposed.

Summit is a gas corporation and a public utility subject to Commission jurisdiction.[5] The Commission may grant a gas corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either "necessary or convenient for the public service."[6] The Commission set forth the specific criteria used to evaluate CCNs in *In the Matter of Tartan Energy Company, et al*., 3 Mo. PSC 3d 173 (1994):

> (1) there must be a need for the service;
>
> (2) the applicant must be qualified to provide the proposed service;

[4] Summit filed its statement that it had no objection to the recommendation or conditions on May 4, 2020.
[5] Section 386.020(18) and (43), RSMo 2016.
[6] Section 393.170, RSMo 2016.

(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.

There is a need for these services as Summit experienced capacity constraints in the Rogersville system in January 2018. There is also a need with the identified potential customers who are currently unable to access natural gas. Summit is qualified to provide the service as it is currently providing gas service, and owns and manages its facilities, including undertaking improvements to provide reliable service. Summit has the financial resources through its parent companies, and does not require additional external finance. The proposal is economically feasible with anticipated customer growth, and Summit's ability to take advantage of economies of scale. The dual purposes of addressing pressure and capacity issues, as well as future growth, together contribute to the proposal's economic feasibility. The proposal promotes the public interest as demonstrated by positive findings in in the first four Tartan Factors.

Based on the unopposed application and supplemental application, and Staff's unopposed recommendation and conditions, the Commission finds the application for a CCN to provide gas service meets the above listed criteria, when subject to the conditions recommended by Staff. No party has objected to Summit being granted a CCN, subject to the recommended conditions, nor has any party requested a hearing.[7] The Commission will grant Summit's requested CCNs, subject to the conditions recommended by Staff.

[7] 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).

Summit also requested a variance from the Commission's 60-day notice requirement. Commission rule allows the Commission to grant a variance upon a finding of good cause, which includes "a verified declaration from the filing party that it has had no communication with the office of the commission within the prior 150 days regarding any substantive issue likely to be in the case". Summit submitted a verified declaration as described. No parties opposed Summit's request for a waiver of the 60-day notice requirement. The Commission will grant Summit's request for a waiver of the 60-day notice requirement.

THE COMMISSION ORDERS THAT:

1. The 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1) is waived.

2. Summit is granted permission, approval, and a certificate of convenience and necessity to construct, install, own, operate, control, manage, and maintain natural gas lines and to provide gas service in Laclede and Webster Counties, Missouri, as more particularly described in its application and supplemental application, subject to the conditions described in this order.

3. Nothing in this Order shall be considered a finding by the Commission of the value for ratemaking purposes of the properties, transactions, and expenditures related to this natural gas distribution system service area expansion. The Commission reserves the right to consider any ratemaking treatment to be afforded the properties, transactions, and expenditures in Summit's next general rate making proceeding, subject to the in-service criteria listed in Staff's memorandum.

4. The Commission reserves all determinations regarding prudency of the proposed upgrades until Summit's next general rate making proceeding.

5. Summit shall update its tariffs to incorporate the requested sections for Laclede County and Webster County.

6. This order shall be effective on June 5, 2020.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Hatcher, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West for Approval of COVID-19 Related Customer Programs and Motion for Expedited Treatment	)))))	**File No. EO-2020-0383**

ORDER PERMITTING COVID-19 CUSTOMER PROGRAMS

ELECTRIC

§41 Billing practices

Due to COVID-19 pandemic “state of emergency” government declarations, the Commission permitted the utility to temporarily suspend disconnections and the accumulation of interest and late fees related to non-payment for all but its largest business customers. The Commission also permitted the utility to offer customers flexible payment arrangements and to work with commercial and industrial customers on payment arrangements as needed on a case-by-case basis. Utility reports that these actions have substantially increased arrearages and that arrearages will continue to rise, with significantly higher bad debt expense as a result.

SERVICE

§4 Abandonment, discontinuance and refusal of service

Due to COVID-19 pandemic “state of emergency” government declarations, the Commission permitted the utility to temporarily suspend disconnections and the accumulation of interest and late fees related to non-payment for all but its largest business customers. The Commission also permitted the utility to offer customers flexible payment arrangements and to work with commercial and industrial customers on payment arrangements as needed on a case-by-case basis. Utility reports that these actions have substantially increased arrearages and that arrearages will continue to rise, with significantly higher bad debt expense as a result.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held by telephone/internet audio conference on the 28th day of May, 2020.

In the Matter of the Application of Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West for Approval of COVID-19 Related Customer Programs and Motion for Expedited Treatment	))))))	**File No. EO-2020-0383**

ORDER PERMITTING COVID-19 CUSTOMER PROGRAMS

Issue Date: May 28, 2020 Effective Date: June 7, 2020

On May 22, 2020,[1] Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (collectively, the Company or Evergy) filed an Application for Approval of COVID-19 Related Customer Programs (Application) and a Motion for Expedited Treatment per Rules 20 CSR 4240-2.060; and 20 CSR 4240-4.017(1)(D). The Company also requested a variance from the 60-day notice requirement of 20 CSR 4240-4.017. On May 26, the Commission directed the Commission Staff to file a recommendation on Evergy's Application no later than 8:30 a.m. on May 27. The same deadline was set for any other party wishing to file objections or comments. On May 27, the Staff recommended approval and the Office of Public Counsel concurred.

The Company states that because of the COVID-19 pandemic and consistent with the Commission's statements and its orders in other Missouri utility proceedings, Evergy has suspended disconnections and the accumulation of interest and late fees related to non-payment at least through June 1, 2020 for all but its largest business customers.

[1] All date references will be to 2020 unless otherwise indicated.

Evergy states it is offering customers flexible payment arrangements over a 12-month period and is working case-by-case with commercial and industrial customers on payment arrangements as needed. The Company states that as a result of these actions and the economic impact the pandemic is having on customers' ability to pay bills generally, arrearages have substantially increased and will continue to rise, and Evergy expects this to result in significantly higher bad debt expense.

The Company states it does not believe Commission authorization is required for the programs. Evergy believes it has management discretion with respect to collection activities, including whether to disconnect for non-payment if arrearages are present and not paid in full, whether to apply late fees, whether to offer a customer an extended payment plan and whether to forgive any portion of an arrearage.

Evergy proposes to adopt the programs without filing and getting approval of a specific tariff. It contends the programs are consistent with the approach used with bill credits in the merger approved in Case No. EM-2018-0012 because the program results in no change of rates. It states its programs are also consistent with the intent behind the government declarations of a "state of emergency" in the Company's service territories and the Commission's recognition of the impact the pandemic is having on customers in its Orders in Case No. AW-2020-0356. It states that moving forward without requiring approval of a specific tariff will allow the Company to begin providing assistance as quickly as possible.

The Company states that even though time constraints may render it impossible for the Commission to grant prior approval, the Company is placing the Commission on notice it will start offering the residential customer incentives described in the Application on June 1 unless otherwise directed. It states it understands Commission action on the

Application will neither grant nor deny authority to defer costs associated with such programs to a regulatory asset and will neither grant nor deny recovery of program costs in rates. The Company, however, reminds the Commission that it is addressing the costs of the one- and four-month payment programs in its request for an accounting authority order in Case No. EO-2020-0293.

The Commission finds that because of the exigent circumstances created by the pandemic, the Rule 20 CSR 4340-4.017 60-day notice requirements should be waived. The Commission likewise finds that on balance it should not limit management's discretion in meeting the pandemic crisis. The Commission will issue an order permitting Evergy to implement the programs described in the Application. The Commission's order, however, will not be deemed approval of the programs, a rate-making order or a determination as to prudency, as to whether the Company's programs are preferential, or as to whether their costs should be accommodated in an accounting authority order. Because Evergy wishes to implement its programs immediately and no party has objected to the programs, the Commission will make the order effective in ten days.

THE COMMISSION ORDERS THAT:

1. The Commission grants Evergy's motion for a variance from the 60-day notice requirement of 20 CSR 4240-4.017.

2. Evergy shall be permitted to implement the COVID-19 program described in its Application.

3. For each residential customer that enters the programs described in the Company's Application, c. ii and c. iii, Evergy shall provide Staff the residential customer billing and payment history from the March 2020 billing cycle through the customer's completion of the program and receipt of the bill credit(s).

4. Staff shall review the residential customer data provided by Evergy to determine Evergy's compliance with the provisions of its COVID-19 customer programs (Company Application c. ii and c. iii). Within sixty days of receiving the customer data, Staff shall file a report or a pleading advising the Commission when its report will be filed, identifying any noncompliance issues, quantifying the dollar amount in total of bill credits provided to residential customers under the Company's Application c. ii and c. iii, and including any relevant observations as to the effectiveness of the specific customer programs

5. This Order shall be effective on June 7, 2020.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Graham, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Spire Missouri, Inc. d/b/a Spire, for Permission and Approval and a Certificate of Convenience and Necessity to Construct, Install, Own, Operate, Maintain, and Otherwise Control and Manage a Natural Gas Distribution System to Provide Gas Service in Lawrence County as an Expansion of its Existing Certificated Areas	))))))))	**File No. GA-2020-0236**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§4 Jurisdiction and powers generally

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

GAS

§3 Certificate of convenience and necessity

The Commission has stated five criteria that it will use to determine whether an applicant qualifies for a certificate of convenience and necessity: 1) There must be a need for the service; 2) The applicant must be qualified to provide the proposed service; 3) The applicant must have the financial ability to provide the service; 4) The applicant's proposal must be economically feasible; and 5) The service must promote the public interest.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held by telephone/internet audio conference on the 28th day of May, 2020.

In the Matter of the Application of Spire Missouri, Inc. d/b/a Spire, for Permission and Approval and a Certificate of Convenience and Necessity to Construct, Install, Own, Operate, Maintain, and Otherwise Control and Manage a Natural Gas Distribution System to Provide Gas Service in Lawrence County as an Expansion of its Existing Certificated Areas	)	**File No. GA-2020-0236**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: May 28, 2020 Effective Date: June 27, 2020

Procedural History

On February 3, 2020, Spire Missouri, Inc. (Spire) filed the above-referenced application. Spire amended its application on February 6, 2020. The application seeks, among other things, permission and approval and a certificate of convenience and necessity ("CCN") to construct, install, own, operate, maintain, and otherwise control and manage a natural gas distribution system to provide gas service in Lawrence County, Missouri, as a further expansion of Spire's existing certificated area. The certificate is needed to serve potential customers that contacted Spire with a need for a distribution system extension to serve poultry operations near Pierce City and Verona, Missouri. The application further requests a waiver of the Commission's 60-day notice rule.[1]

[1] Commission Rule 20 CSR 4240-4.017(1).

The Staff of the Commission filed its Recommendation on May 13, 2020. Staff recommends that the Commission grant the certificate, subject to two conditions. The conditions are that the Commission should:

- reserve all rate making determinations regarding the revenue requirement impact of this service area extension request until Spire's next general rate making proceeding; and
- require Spire to file an updated tariff sheet incorporating the requested Sections for Lawrence County.

No party has responded to Staff's Recommendation.

Decision

Spire is a gas corporation and a public utility subject to Commission jurisdiction.[2] The Commission may grant a gas corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either "necessary or convenient for the public service."[3] The Commission has stated five criteria that it will use to make this determination:

1) There must be a need for the service;

2) The applicant must be qualified to provide the proposed service;

3) The applicant must have the financial ability to provide the service;

4) The applicant's proposal must be economically feasible; and

5) The service must promote the public interest.[4]

[2] Section 386.020(18), (43) RSMo 2016.
[3] Section 393.170, RSMo.
[4] *In re Tartan Energy Company*, 3 Mo. P.S.C. 173, 177 (1994).

Based on the verified pleadings, the Commission finds the application for a certificate of convenience and necessity to provide gas service meets the above listed criteria.[5] The application will be granted.

Commission Rule 20 CSR 4240-4.017(1)(D) states that a waiver may be granted for good cause. Good cause exists in this case. Spire has had no communication with the office of the Commission within the prior 150 days regarding any substantive issue likely to be in this case, other than those pleadings filed for record. Accordingly, for good cause shown, the Commission waives the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1).

THE COMMISSION ORDERS THAT:

1. Commission Rule 20 CSR 4240-4.017(1) is waived.

2. Spire Missouri, Inc. is granted permission, approval, and a certificate of convenience and necessity to construct, install, own, operate, control, manage, and maintain gas plant as more particularly described in its application and Staff Recommendation.

3. The certificate of convenience and necessity is subject to the condition that the Commission will reserve all ratemaking determinations regarding the revenue impact of this service area extension request until Spire Missouri, Inc.'s next general ratemaking proceeding.

4. Spire Missouri, Inc. shall file an updated tariff sheet incorporating the requested sections for Lawrence County.

[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).

5. This order shall become effective on June 27, 2020.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Pridgin, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Request of Spire Missouri Inc. d/b/a Spire for a Temporary Waiver from Commission Rules 20 CSR 4240-40.030 (9)(Q), (13)(M), (15)(C), (15)(D) and (15)(E) and Orders Pertaining to Inspections and Replacements	))))))	**File No. GE-2020-0373**

ORDER ON APPLICATION FOR TEMPORARY WAIVERS

GAS

§7 Jurisdiction and powers of the State Commission
§13 Additions and betterments
§16 Safety
§35 Safety

The Commission may waive compliance with any of the requirements of 20 CSR 4240-40.030, with appropriate limitations and conditions, upon a showing that gas safety is not compromised, pursuant to the waiver provisions of 20 CSR 4240-40.030(18).

§13 Additions and betterments
§16 Safety
§35 Safety

The Commission determined that temporary waiver of compliance with the requirements for replacement of unprotected steel lines under 20 CSR 4240-40.030(15)(C), to adapt to the disruptions caused by COVID-19, would not compromise gas safety with appropriate limitations and conditions. However, the company was required to complete timely replacements whenever possible, and to conduct weekly odorant intensity tests in affected areas and provide notice of replacement delays to customers.

§13 Additions and betterments
§16 Safety
§35 Safety

The Commission found that a temporary waiver of compliance with the mandated timing of replacement of cast iron gas mains under Commission orders pursuant to Commission Rule 20 CSR 4240-40.030(15)(D), to adapt to the disruptions caused by COVID-19, would not compromise gas safety when granted with certain conditions.

§13 Additions and betterments
§16 Safety
§35 Safety

The Commission determined that where an established Commission-approved replacement program for unprotected steel transmission lines, feeder lines and mains exists is in effect under 20 CSR 4240-40.030(15)(E), it is not appropriate for the Commission to waive compliance with that rule in order to defer the replacement of recently discovered segments of unprotected steel gas main.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held by telephone and internet audio conference on the 11th day of June, 2020.

In the Matter of the Request of Spire Missouri Inc. d/b/a Spire for a Temporary Waiver from Commission Rules 20 CSR 4240-40.030 (9)(Q), (13)(M), (15)(C), (15)(D) and (15)(E) and Orders Pertaining to Inspections and Replacements	)))))))	**File No. GE-2020-0373**

ORDER ON APPLICATION FOR TEMPORARY WAIVERS

Issue Date: June 11, 2020 Effective Date: June 21, 2020

Spire Missouri Inc. d/b/a Spire filed an application on May 15, 2020, seeking, in part, temporary waiver of compliance with certain gas safety rules and Commission orders governing pipeline facility replacement under Commission Rule 20 CSR 4240-40.030. Spire's application is made on behalf of operating units Spire Missouri East and Spire Missouri West. Spire contends COVID-19 social distancing orders and guidelines obstruct Spire's timely completion of some requirements because of difficulty accessing customer premises.

Spire requests expedited treatment and waiver of the 60-day notice requirement under 20 CSR 4240-4.017. To facilitate expedited treatment, the Commission takes up Spire's application in two orders. This order concerns the requests in Spire's application that do not require notice to the U.S. Secretary of Transportation pursuant to 49 U.S.C. § 60118 and 20 CSR 4240-40.030(18).

As addressed in this order, Spire's application seeks temporary waiver of

compliance with portions of Commission Rule 20 CSR 4240-40.030(15), which governs minimum requirements for pipeline replacement programs. Spire requests waiver of provisions governing replacement programs for unprotected steel service lines and yard lines, 20 CSR 4240-40.030(15)(C); cast iron lines and mains, 20 CSR 4240-40.030(15)(D); and unprotected steel lines and mains, 20 CSR 4240-40.030(15)(E). In addition to the specified rules, Spire's obligations are also governed by Commission orders, and Spire seeks temporary waiver from the requirements of such orders.[1] Spire's application does not seek a waiver in regard to large commercial and industrial yard lines.

On May 26, 2020, Staff recommended that the Commission grant conditional approval of some of Spire's requests for temporary waiver and deny others for a lack of information. Spire's response on June 3, 2020, clarified its requests as to some rules. In light of Spire's response, Staff on June 5, 2020, submitted updated recommendations. Spire provided additional clarifications in a June 8, 2020 response, and Staff again revised its recommendations in a June 9, 2020 filing.

The Commission may waive compliance with any of the requirements of Rule 20 CSR 4240-40.030 upon a showing that gas safety is not compromised, pursuant to 20 CSR 4240-40.030(18). The Commission has reviewed and considered Spire's application, Staff's recommendation and the parties' subsequent filings. The Commission determines temporary waiver of compliance with the requirements for replacement of

[1] Staff identifies orders in File Nos. GO-2002-50 and GO-93-343, as modified by the Unanimous Stipulation and Agreement in File No. GO-99-155, as relevant to Spire's obligations under 20 CSR 4240-40.030(15)(C) (unprotected steel service lines and yard lines). In addition, Spire identifies orders in File Nos. GO-91-277, GO-91-239, GO-91-295 and GO-99-302 in regard to 20 CSR 4240-40.030(15)(C). However, Spire's response to Staff's recommendation does not address the additional orders. In regard to Spire's application for temporary waiver of compliance with 20 CSR 4240-40.030(15)(D) (cast iron transmission lines, feeder lines or mains), Spire identifies File No. GO-2008-0002, GO-2002-50 and GO-91-275 in its waiver application. Staff's recommendation addresses File Nos. GO-2002-50 and GO-91-275, with no mention of the 2008 matter. Spire's response does not address the disparity.

unprotected steel lines under 20 CSR 4240-40.030(15)(C), with appropriate limitations and conditions, will not compromise gas safety. Despite the waiver, Spire will be required to complete timely replacements whenever possible. Spire will be required to conduct weekly odorant intensity tests in affected areas and provide notice of replacement delays to customers.

Likewise, the Commission finds a temporary waiver of compliance with the mandated timing of replacement of cast iron mains under Commission orders will not compromise gas safety when granted with the conditions proposed in Staff's updated recommendation filed on June 9, 2020. Commission Rule 20 CSR 4240-40.030(15)(D) requires Commission-approved replacement programs for cast iron transmission lines and mains. Spire seeks temporary waiver of requirements approved in previous Commission orders, in File Nos. GO-2002-50 and GO-91-275, which mandate replacement of cast iron main areas within a specified period when two or more breaks are noted. As with waiver regarding unprotected steel lines, Spire will be required to provide notice of replacement delays and conduct weekly odorant intensity tests in affected areas. The temporary waivers allow Spire time to adapt to the disruption caused by COVID-19. Spire's operating units are required to achieve compliance by no later than December 31, 2020, for Spire Missouri West, and May 31, 2021, for Spire Missouri East.

Staff's updated recommendation, filed on June 9, 2020, withdraws a recommendation that Spire's replacement plan under these waivers commence with the oldest facilities. The Commission recognizes that to complete replacements within the period allowed, Spire must coordinate with customers. However, the Commission also recognizes the safety concerns that motivated Staff's initial recommendation that the

oldest facilities be replaced first. Therefore, the temporary waiver requires Spire to prioritize replacement of the oldest facilities in its plan to bring all facilities into compliance.

As to Spire's request pertaining to four segments of unprotected steel main, which Spire reports were recently discovered by the company in a records review, the Commission determines waiver of 20 CSR 4240-40.030(15)(E) is not appropriate. The rule requires operators to establish Commission-approved replacement programs for unprotected steel transmission lines, feeder lines and mains. Staff advises the Commission approved such plans submitted by Spire Missouri East's predecessor, Laclede Gas Company, in File Nos. GO-91-239 and GO-2003-0506. All known unprotected steel mains were replaced, as reflected in annual status reports in File No. GO-2003-0506, which closed in May 2015. Rather than waive compliance with 20 CSR 4240-40.030(15)(E), the Commission will order Spire to replace the four segments of unprotected steel main by no later than May 31, 2021, as Spire has requested and as Staff recommends. The Commission requests that Spire call to the Commission's attention any costs associated with the replacement of these mains in future infrastructure system replacement surcharge (ISRS) filings.

In addition, Staff recommends the Commission require Spire to file a list of incidents, as of May 15, 2020, of noncompliance with Commission rules and orders pertaining to inspections, surveys and replacements at issue in this matter. The Commission will order such a list to be filed in this case. Any confidential information, if included, may be designated as such. Although this order generally concerns those portions of Spire's application that do not require notice to the U.S. Department of Transportation, the list required by this order also includes any incidents of

noncompliance with Commission rules 20 CSR 4240-40.030(9)(Q)1, 20 CSR 4240-40.030(13)(M)1, 20 CSR 4240-40.030(M)2.A and 20 CSR 4240-40.030(M)2.B.

Finally, the Commission will grant Spire's request for waiver of the 60-day notice requirement under 20 CSR 4240-4.017. The Commission finds good cause exists for waiver, based on Spire's verified declaration that it had no communication with the Office of the Commission regarding substantive issues in the application within 150 days before Spire filed its application.

To avoid delay in Spire's adaptation to COVID-19 restrictions, the Commission's order will take effect in 10 days.

THE COMMISSION ORDERS THAT:

1. Spire's application for temporary waiver of compliance with Commission Rule 20 CSR 4240-40.030(15)(C) and Commission orders in File Nos. GO-2002-50 and GO-93-343, as modified by the Unanimous Stipulation and Agreement in File No. GO-99-155, is granted, subject to the following limitations and conditions:

   a. Waiver is granted to Spire Missouri West through December 31, 2020, and to Spire Missouri East through May 31, 2021;

   b. No later than July 1, 2020, Spire shall file in this case a comprehensive list of unprotected steel service and yard line replacements to be delayed pursuant to this temporary waiver. Confidential information, if included, may be designated as such;

   c. Despite this waiver, Spire shall identify facilities that can be safely replaced, such as facilities located at schools and other buildings now closed to the public, and complete timely replacement of those facilities;

d. Spire shall conduct additional public awareness efforts to notify customers when replacement of facilities is delayed pursuant to this temporary waiver. Spire shall file in this case a report on such efforts;

e. Spire shall conduct weekly odorant intensity tests, in accordance with the test requirements of 20 CSR 4240-40.030(12)(P)6, in areas where replacement of unprotected steel service lines and yard lines is delayed pursuant to this temporary waiver;

f. Whenever possible, while also considering access to customer premises, Spire Missouri West's and Spire Missouri East's replacement programs shall prioritize replacement of the oldest facilities.

2. Spire's application for temporary waiver of mandated replacement dates pursuant to Commission orders in File Nos. GO-2002-50 and GO-91-275, as required by Commission Rule 20 CSR 4240-40.030(15)(D), is granted, subject to the following limitations and conditions:

a. Waiver is granted to Spire Missouri West through December 31, 2020, and to Spire Missouri East through May 31, 2021;

b. No later than July 1, 2020, Spire shall file in this case a comprehensive list of cast iron main replacements to be delayed pursuant to this temporary waiver. Confidential information, if included, may be designated as such;

c. Spire shall conduct additional public awareness efforts to notify customers when replacement of facilities is delayed pursuant to this temporary waiver. Spire shall file in this case a report on such efforts;

d. Spire shall conduct weekly odorant intensity tests, in accordance with the test requirements of 20 CSR 4240-40.030(12)(P)6, in areas where replacement of cast iron mains is delayed pursuant to this temporary waiver;

e. Whenever possible, while also considering access to customer premises, Spire Missouri West's and Spire Missouri East's replacement programs shall prioritize replacement of the oldest facilities.

3. In lieu of temporary waiver of compliance with Commission Rule 20 CSR 4240-40.030(15)(E), the Commission shall establish a deadline for replacement of the four segments of unprotected steel main identified in Spire Missouri East's April 30, 2020, quarterly report. Spire shall complete such replacement by no later than May 31, 2021.

4. Spire shall call to the Commission's attention costs associated with replacement of the four segments of unprotected steel main addressed in this order in any future ISRS filing that includes such costs.

5. By no later than July 1, 2020, Spire shall file in this case a list of all incidents of noncompliance with the requirements of Commission rules and orders specified in Spire's application in this matter that had occurred as of May 15, 2020, as provided above. The list shall identify each incident of noncompliance by location and/or address, specify by rule number and/or case number the obligations that had not been complied with, specify the nature of each incident of noncompliance and state the date action was due to maintain compliance. Confidential information, if included in the filing, may be designated as such.

6. The 60-day notice requirement of Rule 20 CSR 4240-4.017(1) is waived for good cause.

7. This order shall be effective on June 21, 2020.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Jacobs, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Request of Spire Missouri Inc. d/b/a Spire for a Temporary Waiver from Commission Rules 20 CSR 4240-40.030 (9)(Q), (13)(M), (15)(C), (15)(D) and (15)(E) and Orders Pertaining to Inspections and Replacements	)))))))	**File No. GE-2020-0373**

ORDER APPROVING APPLICATION FOR TEMPORARY WAIVER AND DIRECTING WRITTEN NOTICE

GAS

§7 Jurisdiction and powers of the State Commission
§8 Jurisdiction and powers of the Federal Commissions
§13 Additions and betterments
§16 Safety
§35 Safety

The Commission determined that waiver of Commission Rules 20 CSR 4240-40.030(9)(Q)1, 20 CSR 2 4240-40.030(13)(M)1, 20 CSR 4240-40.030(13)(M)2.A, and 20 CSR 4240-40.030(13)(M)2.B, authorized under 20 CSR 4240-40.030(18), are subject to the provisions of 49 U.S.C §60118(d), which requires at least 60 days' written notice to the U.S. Secretary of Transportation before the effective date of a state commission approving waiver of a requirement under federal gas safety regulations.

§13 Additions and betterments
§16 Safety
§35 Safety

The Commission determined that the temporary waiver of compliance with 20 CSR 4240-40.030(9)(Q)1, regarding the frequency of inspections for atmospheric corrosion, to adapt to the disruptions caused by COVID-19, would not compromise gas safety when granted with certain conditions restricting the time and place of waiver provisions, requiring additional documentation and public notice, and the conducting of periodic odorant intensity tests.

§13 Additions and betterments
§16 Safety
§35 Safety

The Commission determined that the temporary waiver of compliance with 20 CSR 4240-40.030(13)(M) requires leakage surveys, regarding leakage surveys, to adapt to the disruptions caused by COVID-19, would not compromise gas safety when granted with

certain conditions restricting the time and place of waiver provisions, requiring additional documentation and public notice, and the conducting of periodic odorant intensity tests.

§8 Jurisdiction and powers of the Federal Commissions
§13 Additions and betterments
§16 Safety
§35 Safety

Waiver of Commission rules 20 CSR 4240-40.030(9)(Q)1, 20 CSR 2 4240-40.030(13)(M)1, 20 CSR 4240-40.030(13)(M)2.A, and 20 CSR 4240-40.030(13)(M)2.B, is subject to federal law requiring at least 60 days' written notice to the U.S. Secretary of Transportation.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held by telephone and internet audio conference on the 11th day of June, 2020.

In the Matter of the Request of Spire Missouri Inc. d/b/a Spire for a Temporary Waiver from Commission Rules 20 CSR 4240-40.030 (9)(Q), (13)(M), (15)(C), (15)(D) and (15)(E) and Orders Pertaining to Inspections and Replacements	)))))))	**File No. GE-2020-0373**

ORDER APPROVING APPLICATION FOR TEMPORARY WAIVER AND DIRECTING WRITTEN NOTICE

Issue Date: June 11, 2020 Effective Date: August 12, 2020

Spire Missouri Inc. d/b/a Spire filed an application on May 15, 2020, seeking temporary waiver of compliance with certain gas safety rules on behalf of operating units Spire Missouri East and Spire Missouri West. Spire's application seeks, in part, temporary waiver of compliance with some provisions of Commission rules governing the frequency of inspections to monitor atmospheric corrosion, 20 CSR 4240-40.030(9)(Q), and surveys to control leakage in distribution systems, 20 CSR 4240-40.030(13)(M). Spire contends COVID-19 social distancing orders and guidelines obstruct Spire's timely completion of some inspection and survey requirements under Commission rules because of difficulty accessing customer premises.

To facilitate Spire's request for expedited treatment, the Commission takes up Spire's application in two orders. This order concerns only Spire's request for waiver of compliance with Commission rules 20 CSR 4240-40.030(9)(Q)1, 20 CSR

4240-40.030(13)(M)1, 20 CSR 4240-40.030(13)(M)2.A and 20 CSR 4240-40.030(13)(M)2.B, addressing only the portion of Spire's application that requires notice to the U.S. Secretary of Transportation. The Commission considers all other requests, including Spire's request for waiver of the notice requirement under 20 CSR 4240-4.017, in a separate order.

On May 26, 2020, the Commission's Staff recommended that the Commission grant conditional approval of some of Spire's requests for temporary waiver and deny others.[1] Spire responded with additional information on June 3, 2020, and clarified that Spire is not seeking waiver of any of the specific provisions of gas safety rules at issue in this order for which Staff recommended denial. Spire's response indicated general agreement to the conditions and limitations recommended by Staff. In light of Spire's response, Staff on June 5, 2020, submitted updated recommendations. Spire provided additional clarifications in a June 8, 2020 response, and Staff again revised its recommendations in a June 9, 2020 filing.

The Commission may waive compliance with any of the requirements of Rule 20 CSR 4240-40.030 upon a showing that gas safety is not compromised, pursuant to 20 CSR 4240-40.030(18). The Commission has reviewed and considered Spire's application, Staff's updated recommendation and Spire's additional filings and determines temporary waiver, with appropriate limitations and conditions, will not compromise gas safety. Waiver is limited to facilities inside customer premises, and Spire will be required to continue timely inspections of such facilities whenever feasible. Spire will also be

[1] Staff recommended the Commission should not grant temporary waiver of compliance with the following rules: 20 CSR 4240-40.30(9)(Q)2, 20 CSR 4240-40.30(9)(Q)3, 20 CSR 4240-40.030(13)(M)2.C and 20 CSR 4240-40.030(13)(M)3. Spire's response, filed on June 3, 2020, clarified that it is not seeking waiver of compliance with those rules.

required to provide notice of inspection delays, conduct weekly odorant intensity tests in affected areas and bring all facilities into compliance by no later than December 31, 2020.

The Commission will also require that no incident of noncompliance remain uncorrected for more than one year. To complete inspections and surveys in a timely manner, Spire must coordinate with customers and deploy resources efficiently. However, facilities that have been noncompliant for the longest periods should be addressed with urgency. Therefore, as Staff recommends, the temporary waiver requires Spire to complete inspection of each facility within one year after the date the facility became noncompliant because of a missed inspection or survey. For purposes of the temporary waiver, this date is the "delinquent date," as provided in Staff's recommendation filed on June 9, 2020.[2] Although a waiver is granted through no later than December 31, 2020, each facility is eligible for waiver of compliance for a maximum of only one year after the delinquent date. As a result, depending on the delinquent date, some facilities must be brought into compliance before the December 31, 2020, deadline, while all facilities should be in compliance by no later than December 31, 2020.

Spire's waiver request includes gas safety rules under federal regulation. As indicated in 20 CSR 4240-40.030(18), federal law requires at least 60 days' written notice to the U.S. Secretary of Transportation when a state commission approves waiver of a requirement under 49 C.F.R. part 192.[3] Specifically, 49 U.S.C. § 60118(d) provides,

[2] In regard to inspections for atmospheric corrosion, 20 CSR 4240-40.030(9)(Q)1 requires inspections at intervals not exceeding 39 months, so the delinquent date is 39 months after a facility's most recent inspection; Commission Rule 20 CSR 4240-40.030(13)(M) requires leakage surveys at intervals not exceeding 15 months for some facilities and 39 months for others. A facility's delinquent date would be 15 or 39 months after the most recent survey.

[3] Staff advises waiver of 20 CSR 4240-40.030(9)(Q)1 requires waiver of 40 C.F.R. 192.481 and waiver of 20 CSR 4240-40.030(13)(M) likely requires waiver of 40 C.F.R. 192.723, although Staff was not able to pinpoint the precise extent of waiver of the federal rule required by Spire's application.

emphasis added:

> If a certification under section 60105 of this title or an agreement under section 60106 of this title is in effect,[4] the State authority may waive compliance with a safety standard to which the certification or agreement applies in the same way and to the same extent the Secretary may waive compliance under subsection (c) of this section. **However, the authority must give the Secretary written notice of the waiver at least 60 days before its effective date.** If the Secretary makes a written objection before the effective date of the waiver, the waiver is stayed. After notifying the authority of the objection, the Secretary shall provide a prompt opportunity for a hearing. The Secretary shall make the final decision on granting the waiver.

Given Spire's request for expedited treatment, the Commission directed Spire and Staff to file pleadings regarding compliance with 49 U.S.C. § 60118. In response, Staff and Spire confirmed the 60-day notice requirement. However, Spire requests the Commission grant a waiver to take effect at such time as the Department of Transportation's Pipeline and Hazardous Materials Safety Administration completes review. Spire neither explains how the Commission can provide 60 days' notice of a contingent effective date nor cites authority or precedent for such a practice. Similarly, Staff requests the Commission make waiver contingent on PHMSA's notice to the Commission that it has no objection. However, under 49 U.S.C. § 60118 any waiver by this Commission is already contingent on the Secretary's review. Based on the parties' filings and 49 U.S.C. § 60118, the Commission concludes it is obligated to provide at least 60 days' notice. Should Spire wish to seek adjustment of the effective date after PHMSA review, the issue may be taken up at that time.

Finally, contact information posted on the U.S. Department of Transportation

[4] Staff's memorandum filed on May 26, 2020, confirms the Commission has a certification in effect with the U.S. Department of Transportation, pursuant to 49 U.S.C. § 60105.

website requests electronic communications rather than correspondence by mail because of the COVID-19 pandemic.[5] The Commission will direct immediate written notice of this order to the Secretary of the U.S. Department of Transportation by email to the address provided on the department's website. To accommodate the notice requirement, the Commission will make this order effective 62 days after the date of issuance.

THE COMMISSION ORDERS THAT:

1. Spire's application for temporary waiver from Commission Rule 20 CSR 4240-40.030(9)(Q)1 is granted, subject to the following limitations and conditions:

a. Waiver is granted through December 31, 2020;

b. Waiver of atmospheric corrosion monitoring applies only to Spire facilities inside customer premises and does not apply to facilities outside customer premises;

c. Spire shall document the number of incidents of noncompliance and provide a monthly update to the Commission by submission directly to Staff;

d. Despite this waiver, Spire shall identify accessible customer premises, such as schools and other buildings now closed to the public, and complete timely inspections of those facilities;

e. Spire shall conduct additional public awareness efforts to notify customers when inspection of facilities is delayed pursuant to this temporary waiver. Spire shall file in this case a report on such efforts;

[5] Assistance to the Public During COVID-19, U.S. Department of Transportation (Mar. 27, 2020), https://www.phmsa.dot.gov/news/assistance-public-during-covid-19 (visited June 9, 2020) (posting requests electronic correspondence and provides a list of email addresses; email addresses listed at link under "related documents").

f. Spire shall conduct weekly odorant intensity tests, in accordance with the test requirements of 20 CSR 4240-40.030(12)(P)6, in areas where atmospheric corrosion monitoring is delayed pursuant to this temporary waiver;

g. Spire shall complete inspections of all noncompliant facilities, as required by 20 CSR 4240-40.030(9)(Q)1, by no later than December 31, 2020;

h. Spire shall complete inspections of each noncompliant facility by no later than one year after the facility's delinquent date;

i. The one-year limit serves only to require compliance before December 31, 2020, for eligible facilities. The one-year limit does not extend the waiver period beyond December 31, 2020.

2. Spire's application for temporary waiver from Commission rules 20 CSR 4240-40.030(13)(M)1, 20 CSR 4240-40.030(M)2.A and 20 CSR 4240-40.030(M)2.B is granted, subject to the following limitations and conditions:

a. Waiver is granted through December 31, 2020;

b. Waiver of leakage surveys applies only to Spire facilities inside customer premises and does not apply to facilities outside customer premises;

c. Spire shall document the number of incidents of noncompliance and provide a monthly update to the Commission by submission directly to Staff;

d. Despite this waiver, Spire shall identify accessible customer premises, such as schools and other buildings now closed to the public, and complete timely surveys of those facilities;

e. Spire shall conduct additional public awareness efforts to notify customers when inspection of facilities is delayed pursuant to this temporary waiver. Spire shall file in this case a report on such efforts;

f. Spire shall conduct weekly odorant intensity tests, in accordance with the test requirements of 20 CSR 4240-40.030(12)(P)6, in areas where leakage surveys are delayed pursuant to this temporary waiver;

g. Spire shall complete surveys of all noncompliant facilities, as required by 20 CSR 4240-40.030(13)(M)1, 20 CSR 4240-40.030(M)2.A and 20 CSR 4240-40.030(M)2.B, by no later than December 31, 2020;

h. Spire shall complete inspections of each noncompliant facility by no later than one year after the facility's delinquent date;

i. The one-year limit serves only to require compliance before December 31, 2020, for eligible facilities. The one-year limit does not extend the waiver period beyond December 31, 2020.

3. By no later than 5 p.m. on June 12, 2020, the Commission's data center shall provide written notice of this order to the U.S. Secretary of Transportation by attaching a copy of this order in an email message addressed to PHMSA.Pipelinesafety@dot.gov with "Notice to Secretary of Transportation" indicated in the subject line.

4. This order shall be effective on August 12, 2020.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Jacobs, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Assessment Against	)	
the Public Utilities in the State of Missouri	)	**File No. AO-2020-0402**
for the Expenses of the Commission for the	)	
Fiscal Year Commencing July 1, 2020	)	

ASSESSMENT ORDER FOR FISCAL YEAR 2021

PUBLIC UTILITIES

§1 Generally

The Commission established the assessment amount for fiscal year 2021.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held by telephone and internet audio conference on the 17th day of June, 2020.

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, 2020	))))	**Case No. AO-2020-0402**

ASSESSMENT ORDER FOR FISCAL YEAR 2021

Issue Date: June 17, 2020 Effective Date: July 1, 2020

Pursuant to 386.370, RSMo, the Commission estimates the expenses to be incurred by it during the fiscal year commencing July 1, 2020. These expenses are reasonably attributable to the regulation of public utilities as provided in Chapters 386, 392 and 393, RSMo and amount to $21,820,479. 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 $11,852,274. In addition to the separately identified costs for each utility group, the Commission estimates the amount of expenses that could not be attributed directly to any utility group of $9,968,205.

The Commission estimates that the amount of Federal Gas Safety reimbursement will be $600,000. The unexpended balance in the Public Service Commission Fund in the hands of the State Treasurer on July 1, 2020, is estimated to be $2,893,232. The Commission deducts these amounts and

estimates its Fiscal Year 2021 Assessment to be $18,327,247. 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 2019, 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	$ 10,423,463
Gas	$ 4,371,469
Steam/Heating	$ 82,635
Water & Sewer.....	$ 2,227,055
Telephone.....	$ 1,222,625
Total	$ 18,327,247

The Commission allocates a proportionate share of the $18,327,247 to each industry group as indicated above. The amount allocated to each industry

group is allotted to the companies within that group. This allotment is accomplished according to the percentage of each individual company's gross intrastate operating revenues compared to the total gross intrastate operating revenues for that group. The amount allotted to a company is the amount assessed to that company.

The Budget and Fiscal Services Department of the Commission is hereby directed to calculate the amount of such assessment against each public utility, and the Commission's Director of Administration shall render a statement of such assessment to each public utility on or before July 1, 2020. The assessment shall be due and payable on or before July 15, 2020, or at the option of each public utility, it may be paid in equal quarterly installments on or before July 15, 2020, October 15, 2020, January 15, 2021, and April 15, 2021. 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

IT IS ORDERED THAT:

1. The assessment for fiscal year 2021 shall be as set forth herein.

2. The Budget and Fiscal Services Department of the Commission shall calculate the amount of such assessment against each public utility.

3. On behalf of the Commission, the Commission's Director of Administration shall render a statement of such assessment to each public utility on or before July 1, 2020.

4. Each public utility shall pay its assessment as set forth herein.

5. The Budget and Fiscal Services Department shall deliver checks to the Director of Revenue the day they are received.

6. This order shall become effective on July 1, 2020.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Woodruff, Chief Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Liberty Utilities (Missouri Water), LLC d/b/a Liberty Utilities to Acquire the Water and Sewer Franchises and Assets of Lakeland Heights Water Company, Oakbrier Water Company, R.D. Sewer Company LLC, and Whispering Hills Water System	))))))	**File No. WM-2020-0174**

ORDER GRANTING TRANSFER OF ASSETS AND GRANTING CERTIFICATES OF CONVENIENCE AND NECESSITY

CERTIFICATES

§21 Grant or refusal of certificate generally

The Commission employed the Tartan criteria to evaluate applications for Certificates of Convenience and Necessity (CCNs). The Tartan criteria is as follows: (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.

§52 Transfer, mortgage or lease generally

A utility sought to purchase regulated water and sewer systems for four residential subdivisions. Prior to sale, a regulated utility must obtain the Commission’s authorization before selling or transferring its assets.

§52 Transfer, mortgage or lease generally

In evaluating the sale of a regulated utility’s assets, the Commission can only disapprove the transaction if it is detrimental to the public interest.

SEWER

§2 Certificate of convenience and necessity

The Commission employed the Tartan criteria to evaluate applications for Certificates of Convenience and Necessity (CCNs). The Tartan criteria is as follows: (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 Transfer, lease and sale

In evaluating the sale of a regulated utility's assets, the Commission can only disapprove the transaction if it is detrimental to the public interest.

WATER

§2 Certificate of convenience and necessity

The Commission employed the Tartan criteria to evaluate applications for Certificates of Convenience and Necessity (CCNs). The Tartan criteria is as follows: (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 Transfer, lease and sale

In evaluating the sale of a regulated utility's assets, the Commission can only disapprove the transaction if it is detrimental to the public interest.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held by telephone and internet audio conference on the 17th day of June, 2020.

In the Matter of the Application of Liberty Utilities (Missouri Water), LLC d/b/a Liberty Utilities to Acquire the Water and Sewer Franchises and Assets of Lakeland Heights Water Company, Oakbrier Water Company, R.D. Sewer Company LLC, and Whispering Hills Water System	)))))))	**File No. WM-2020-0174**

ORDER GRANTING TRANSFER OF ASSETS AND GRANTING CERTIFICATES OF CONVENIENCE AND NECESSITY

Issue Date: June 17, 2020 Effective Date: July 17, 2020

On February 6, 2020, Liberty Utilities (Missouri Water) LLC d/b/a Liberty Utilities (Liberty Water) filed an application with the Missouri Public Service Commission requesting that the Commission approve its acquisition of the water and sewer franchises and assets of Lakeland Heights Water Company (Lakeland Heights), Oakbrier Water Company (Oakbrier), R.D. Sewer Company LLC (R.D. Sewer), and Whispering Hills Water System (Whispering Hills)(collectively the Selling Utilities). Liberty Water also requested the transfer of the related certificates of convenience and necessity (CCNs).

The Commission issued notice of the application and set a deadline for the filing of applications to intervene, but no applications were received. The Commission ordered its Staff (Staff) to file a recommendation. Staff filed a recommendation on June 4, 2020, recommending approval of the transfer of assets and CCNs subject to conditions. No other responses were received. No responses or objections to Staff's recommendation were filed.

No party requested a hearing and the requirement for a hearing is met when the opportunity for a hearing has been provided.[1] Thus, the Commission will rule on the application.

Liberty Water provides water service to over 7,000 customers and sewer service to more than 400 customers in several service areas throughout Missouri. Liberty Water is a certificated water corporation and a sewer corporation, subject to the Commission's jurisdiction.[2]

Lakeland Heights provides water service to approximately 101 single-family residential customers in the Lakeland Heights subdivision, located in the Rockwood Point area of the City of Wappapello, Wayne County, Missouri. Lakeland Heights is a certificated water corporation, subject to the Commission's jurisdiction.[3] Liberty Water's proposed improvements for Lakeland Heights appear to be consistent with the results of Staff's document review and observations at the time of Staff's inspection.

Oakbrier provides water service to approximately 78 single-family residential customers in the Oakbrier subdivision located in Butler County, Missouri. Oakbrier is a certificated water corporation, subject to the Commission's jurisdiction.[4] Liberty Water's proposed improvements for Oakbrier appear to be consistent with the results of Staff's document review and observations at the time of Staff's inspection.

R.D. Sewer provides sewer service to approximately 176 single-family residential customers in a subdivision near the city of Dexter in Stoddard County, Missouri. R.D. Sewer is a certificated sewer corporation, subject to the Commission's jurisdiction.[5] Liberty Water's

[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 386.020(49), (59), RSMo 2016.
[3] Section 386.020(59), RSMo 2016; CCN granted in Case No. 17928 (1973).
[4] Section 386.020(59), RSMo 2016; CCN granted in WA-88-128.
[5] Section 386.020(49), RSMo 2016; CCN granted in SO-2008-0289.

proposed improvements for R.D. Sewer appear to be consistent with the results of Staff's document review and observations at the time of Staff's inspection.

Whispering Hills provides water service to approximately 50 single-family residential customers in the Whispering Hills subdivision located in Wayne County, Missouri. Whispering Hills is a water corporation, subject to the Commission's jurisdiction.[6] Liberty Water's proposed improvements for Whispering Hills appear to be consistent with the results of Staff's document review and observations at the time of Staff's inspection.

As regulated utilities, the Selling Utilities must obtain the Commission's authorization before selling or transferring their assets.[7] In evaluating the proposed acquisition, the Commission can only disapprove the transaction if it is detrimental to the public interest.[8]

Liberty Water has acquired several small existing water and sewer systems, and, as a subsidiary of Algonquin Power & Utilities Corporation, is affiliated with other companies that undertake some of the tasks associated with utility service, such as customer billing, and technical resources. Liberty Water has demonstrated managerial capacity in the operation of its current system. Liberty Water has access to capital through its upstream affiliates. Staff's position is that Liberty Water has the technical, managerial, and financial capacities to acquire and operate the Selling Utilities. The Commission finds that allowing Liberty Water to acquire the assets of the Selling Utilities is not detrimental to the public interest.

The purchase price for the Selling Utilities is above the net book value of the assets to be acquired. It has been Staff's position in prior cases that utility rates for acquired properties should be based upon the remaining net book value associated with the original cost of utility plant at the time when the plant was first devoted to public use; rate base should not reflect the amount of any acquisition adjustment, either above or below net book value.

[6] Section 386.020(59), RSMo 2016; CCN granted in WM-2009-0436.
[7] Section 393.190, RSMo 2016.
[8] *State ex rel. City of St. Louis v. Public Service Com'n of Missouri*, 73 S.W.2d 393, 400 (Mo banc 1934).

Liberty Water has not requested an acquisition adjustment in this matter. Liberty Water has the financial capacity to purchase and operate the Selling Utility's systems at the agreed to purchase price.

The Selling Utilities currently maintain a business office in Bernie, Missouri, that is used by many customers to pay their bills or conduct business with the Selling Utilities. Liberty Water will not maintain a local office in the area, but will establish a third-party payment center at a location yet-to-be-determined. Liberty Water's current customer service representatives will be available to take and process customer inquiries pertaining to billing and/or service issues, make necessary bill adjustments, enter into payment plans within company guidelines, interact with Staff in working with customer complaints, and manage new customer accounts and the closing of customer accounts.

Liberty Water proposed adopting the Selling Utilities' existing rates, and applying Liberty Water's existing tariff rules. There are sufficient differences in the rules and regulations between the two sets of tariffs that Staff recommends Liberty Water adopt the currently effective tariffs of the Selling Utilities, and work towards a consolidation at its next rate proceeding. Liberty Water did not object to this recommendation.

Staff recommends using the depreciation rates ordered in each of the Selling Utilities' most recent general rate cases: WR-2012-0266 for Lakeland Heights; WR-2012-0267 for Oakbrier; SR-2012-0263 for R.D. Sewer; and WM-2009-0436 for Whispering Hills. These rates will be reviewed during the pendency of Liberty Water's next rate case involving these systems. Liberty Water did not object to this recommendation.

The Commission may grant a water or 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."[9] 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.[10] These criteria are known as the Tartan Factors.[11]

There is a need for the service because as the customers of the Selling Utilities are already receiving service and will continue to need that service with the improvements Liberty Water proposes. Liberty Water is qualified to provide the service based on its current provisions of water and sewer service throughout its Missouri service areas. Liberty Water has demonstrated its financial ability by making appropriate investment in its current operations. The proposed transaction is economically feasible as no rate change is requested. The proposal promotes the public interest as demonstrated by positive findings in in the first four Tartan Factors.

The Commission finds that Liberty Water possesses adequate technical, managerial, and financial capacity to operate the water and sewer systems it wishes to purchase from the Selling Utilities. The Commission concludes that the factors for granting a CCN to Liberty Water have been satisfied and that it is in the public interest for Liberty Water to provide water and sewer service to the service areas currently served by the Selling Utilities. The

[9] Section 393.170.3, RSMo 2016.
[10] 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.).
[11] *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).

Commission will authorize the transfer of assets and grant Liberty Water the certificates of convenience and necessity to provide water and sewer service within the proposed service areas, subject to the conditions in Staff's memorandum.

Liberty Water also seeks a waiver of the Commission's 60-day notice requirement of Commission rule 20 CSR 4240-4.017(1)(D). Liberty Water certifies that it has had no communication with the office of the Commission regarding any substantive issue likely to be in this case during the preceding 150 days.

THE COMMISSION ORDERS THAT:

1. Liberty Water's request for waiver from the 60-day notice requirement of Commission rule 20 CSR 4240-4.017(1)(D) is granted.

2. The Selling Utilities are authorized to sell and transfer to Liberty Water the assets identified in the application.

3. Liberty Water is granted Certificates of Convenience and Necessity to install, acquire, build, construct, own, operate, control, manage and maintain water and sewer systems in the areas currently served by the Selling Utilities.

4. Upon closing of the asset transfer, the Selling Utilities are authorized to cease providing service, and Liberty Water is authorized to begin providing service.

5. Liberty Water shall adopt the currently effective tariffs of the Selling Utilities, and work towards a consolidation at its next rate proceeding.

6. Liberty water shall use the depreciation rates as recommended in Staff's Memorandum.

7. The transactions are subject to the following conditions as put forth in Staff's June 4, 2020, Memorandum:

> A. Liberty Water shall submit an adoption notice <u>prior to closing on the assets</u>, to adopt the existing Lakeland Heights, Oakbrier, and Whispering Hills tariffs (emphasis original);

B. Liberty Water shall create and keep financial books and records for plant-in-service, revenues, and operating expenses (including invoices) in accordance with the NARUC Uniform System of Accounts;

C. Liberty Water shall provide training to its call center personnel regarding rates and rules applicable to the customers acquired from the Selling Utilities, prior to the customers receiving notification of the pending acquisition;

D. Liberty Water shall establish a third party local payment center and notify Staff of the location and associated payment fees within fifteen (15) days after closing on the assets;

E. Liberty Water shall distribute to the newly acquired customers, prior to the first billing from Liberty Water, an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its utility service, consistent with the requirements of Chapter 13 of the Commission rules, as well as notification regarding changes to the billing cycle, bill format, and payment options within fifteen (15) days of closing on the assets;

F. Liberty Water shall provide to the Customer Experience Department (CXD) Staff a sample of its actual communication with its newly acquired customers regarding its acquisition and operations of the utility assets, and how customers may reach Liberty Water, within fifteen (15) days after closing on the assets;

G. Liberty Water shall provide to the CXD Staff a sample of five (5) billing statements for each acquired company from the first month's billing within thirty (30) days after closing on the assets;

H. Liberty Water shall include the customers acquired from the Selling Utilities in its established monthly reporting to the CXD Staff on customer service and billing issues, on an ongoing basis, after closing on the assets;

I. Liberty Water shall file notice in this case once the Staff recommendations regarding staff training, payment center, informational brochure, communications, and billing are completed.

8. The Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters in any later proceeding.

9. This order shall become effective on July 17, 2020.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Hatcher, Regulatory Law Judge.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Petition of Missouri-American Water Company for Approval to Change an Infrastructure System Replacement Surcharge (ISRS)	))))	**File No. WO-2020-0190**

REPORT AND ORDER

Reversed and Remanded on Appeal: *Matter of Missouri-American Water*, 637 S.W.3d 121 (Mo. App. W.D. 2021)

ACCOUNTING

§38 Taxes

The Commission found that it could correct three prior cases in the fourth case of a series of Infrastructure System Replacement Surcharge (ISRS) cases because Sections 393.1003.3 and 393.1006.6 (RSMo) provide that an ISRS is not final until reset at the next general rate case. As the utility had not yet had a general rate case to reset the ISRS, the Commission determined it could use the fourth case to address Internal Revenue Service (IRS) normalization violations collected from the first three cases.

§38 Taxes

The Commission deferred to the Internal Revenue Service's (IRS's) interpretation of the Internal Revenue Code as the IRS is the agency charged with its enforcement.

§38 Taxes

The Commission found that the term net operating loss (NOL) is defined as "the excess of operating expenses over revenues." An NOL results when a utility does not have enough taxable income to utilize all of the tax deductions to which it would otherwise be entitled. When this situation occurs, the amount of the unused deductions is referred to as an NOL and is booked to a deferred tax asset account.

§38 Taxes

In three prior Infrastructure System Replacement Surcharge (ISRS) cases, the Commission determined that no net operating loss (NOL) was shown, and that there would be no normalization violation in the treatment of Accumulated Deferred Income Taxes (ADIT) of the federal tax code due to the Commission's order. Subsequent to those three decisions the utility obtained a Private Letter Ruling (PLR) from the Internal Revenue Service (IRS). The IRS took a different position than the three prior Commission orders.

The PLR directs that for purposes of the ISRS all plant additions are included in the ADIT deduction but only plant additions other than repairs to plant are included in the NOL calculation as an offset to ADIT.

§38 Taxes

§38.1. Book/tax timing differences

The tax normalization requirements of the IRS Code mandate that utility rates be set so that customers do not receive the tax benefit of accelerated depreciation deductions any faster than over the estimated straight-line book lives authorized for the utilities' assets. The Internal Revenue Service (IRS) agreed with the utility's net operating loss (NOL) theory that the NOL amount applicable to Infrastructure System Replacement Surcharge (ISRS) plant additions should be determined using the so-called with-and-without method.

The with-and-without method (applied only to plant additions other than repairs to plant) looks at the difference between straight line depreciation used for rates and accelerated depreciation used for income tax reporting and multiplies this amount by the income tax rate to determine the NOL.

EVIDENCE, PRACTICE AND PROCEDURE

§13 Documentary evidence

The Commission deferred to the Internal Revenue Service's (IRS's) interpretation of the Internal Revenue Code as the IRS is the agency charged with its enforcement.

§13 Documentary evidence

In three prior Infrastructure System Replacement Surcharge (ISRS) cases, the Commission determined that no net operating loss (NOL) was shown, and that there would be no normalization violation in the treatment of Accumulated Deferred Income Taxes (ADIT) of the federal tax code due to the Commission's order. Subsequent to those three decisions the utility obtained a Private Letter Ruling (PLR) from the Internal Revenue Service (IRS). The IRS took a different position than the three prior Commission orders.

The PLR directs that for purposes of the ISRS all plant additions are included in the ADIT deduction but only plant additions other than repairs to plant are included in the NOL calculation as an offset to ADIT.

§27 Finality and conclusiveness

The Commission found that it could correct three prior cases in the fourth case of a series of Infrastructure System Replacement Surcharge (ISRS) cases because Sections 393.1003.3 and 393.1006.6 (RSMo) provide that an ISRS is not final until reset at the next general rate case. As the utility had not yet had a general rate case to reset the ISRS, the Commission determined it could use the fourth case to address Internal

Revenue Service (IRS) normalization violations collected from the first three cases.

EXPENSE

§67 Taxes
§79 Infrastructure system replacement surcharge (ISRS) eligible expense
The Commission found that it could correct three prior cases in the fourth case of a series of Infrastructure System Replacement Surcharge (ISRS) cases because Sections 393.1003.3 and 393.1006.6 (RSMo) provide that an ISRS is not final until reset at the next general rate case. As the utility had not yet had a general rate case to reset the ISRS, the Commission determined it could use the fourth case to address Internal Revenue Service (IRS) normalization violations collected from the first three cases.

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The Commission found that the term net operating loss (NOL) is defined as "the excess of operating expenses over revenues." An NOL results when a utility does not have enough taxable income to utilize all of the tax deductions to which it would otherwise be entitled. When this situation occurs, the amount of the unused deductions is referred to as an NOL and is booked to a deferred tax asset account.

WATER

§16 Rates and revenues
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BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Petition of Missouri-American Water Company for Approval to Change an Infrastructure System Replacement Surcharge (ISRS)	))))	**File No. WO-2020-0190** Tariff No. YW-2020-0148

REPORT AND ORDER

Issue Date: June 17, 2020

Effective Date: June 27, 2020

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Petition of Missouri-American Water Company for Approval to Change an Infrastructure System Replacement Surcharge (ISRS)	))))	**File No. WO-2020-0190** Tariff No. YW-2020-0148

APPEARANCES

Missouri-American Water Company:

Dean L. Cooper, Brydon, Swearengen & England, PO Box 456, Jefferson City, Missouri 65102.

Staff of the Missouri Public Service Commission:

Mark Johnson, Deputy Counsel, PO Box 360, 200 Madison Street, Jefferson City, Missouri 65102.

Office of the Public Counsel:

John Clizer, Senior Counsel, PO Box 2230, 200 Madison St., Ste. 650, Jefferson City, Missouri, 65102.

Regulatory Law Judge: Charles Hatcher

REPORT AND ORDER

I. Procedural History

On March 2, 2020, Missouri-American Water Company (MAWC) filed a petition requesting authority from the Missouri Public Service Commission (Commission) to change its Infrastructure System Replacement Surcharge (ISRS) for its St. Louis County service territory.

MAWC requested to adjust its ISRS rate to recover eligible costs incurred in connection with infrastructure system replacements made during the period October 1, 2019 through March 31, 2020. The Commission issued notice of the application and provided an opportunity for interested persons to intervene. No requests to intervene were received. The filed tariff sheet has an effective date of June 30, 2020.

MAWC's ISRS was established in WO-2018-0373 (MAWC ISRS 1), changed in WO-2019-0184 (MAWC ISRS 2), and changed again in WO-2019-0389 (MAWC ISRS 3). In this, the fourth MAWC ISRS case since its last general rate case, MAWC also proposes an adjustment to cure normalization violations resulting from the prior three ISRS cases.

On May 1, 2020, the Staff of the Commission (Staff) filed its recommendation and memorandum. Staff agreed with MAWC's calculation of its proposed adjustment to cure normalization violations. Staff recommended that the Commission reject the original tariff sheet and approve an ISRS rate for MAWC based on Staff's determination of the appropriate amount of ISRS revenues, which includes an adjustment of $35,328 to cure normalization violations which occurred in MAWC ISRS cases 1, 2, and 3.

On May 11, 2020, MAWC filed a response agreeing with Staff's recommendation. On the same day, the Office of the Public Counsel (Public Counsel) filed its objections and a request for an evidentiary hearing. The Commission held an evidentiary hearing on June

3, 2020. In total, the Commission admitted the testimony of six witnesses and 13 exhibits into evidence. Post-hearing briefs were filed on June 8, 2020.

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. MAWC is a "water corporation" and a "public utility", as defined in Sections 386.020(59) and (43), and 393.1000(7), RSMo 2016,[1] and is authorized to provide water service in St. Louis County.

2. Public Counsel is a party to this case pursuant to Section 386.710(2), and by Commission rule 20 CSR 4240-2.010(10).

3. Staff is a party to this case pursuant to Section 386.071, and Commission rule 20 CSR 4240-2.010(10).

4. An ISRS allows water companies located in St. Louis County to charge customers for system replacements on infrastructure that is worn out or deteriorated, without a general rate case.[2]

5. On March 2, 2020, MAWC filed a petition for its St. Louis County service territory, requesting a change to its ISRS to recover eligible costs incurred for infrastructure system replacements made during the period October 1, 2019, through March 31, 2020, (ISRS Period).[3]

[1] Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.
[2] Sections 393.1000 to 393.1006, RSMo.
[3] MAWC's Petition to Change Its Infrastructure System Replacement Surcharge & Motion for Approval of Customer Notice.

6. In conjunction with its petition, MAWC filed a tariff sheet that would generate a total revenue requirement for MAWC's ISRS.[4] MAWC's proposed ISRS revenue requirement was $8,996,922.[5]

7. MAWC proposed the ISRS be adjusted to address an issue of a normalization violations in MAWC's three prior ISRS cases.[6]

8. Staff recommended approval of incremental pre-tax ISRS surcharge revenues in the amount of $9,725,687.[7] Staff's revenue requirement updates MAWC's requested revenue requirement of $8,996,922 with actual costs for the months of February and March 2020, as the petition included estimated costs. MAWC revised its revenue requirement to match Staff's.[8]

9. Staff's recommended revenue requirement also included MAWC's proposed adjustment of $35,328 to address normalization violations in MAWC ISRS 1 through 3.[9] Public Counsel objected to this adjustment.[10]

10. An ISRS is reset after each general rate case. MAWC has had three ISRS cases since its most recent general rate case. In each of those three ISRS cases, MAWC has claimed a net operating loss (NOL) due to the ISRS replacements.[11]

[4] MAWC's Petition to Change Its Infrastructure System Replacement Surcharge & Motion For Approval of Customer Notice, Appendix B.
[5] MAWC's Petition to Change Its Infrastructure System Replacement Surcharge & Motion For Approval of Customer Notice, Appendix C, p. 1.
[6] MAWC's Petition to Change Its Infrastructure System Replacement Surcharge & Motion For Approval of Customer Notice, paragraph 31.
[7] Ex. 303, Supplement to Direct Testimony of Ali Arabian, Sch. AA-sd1, p. 4 and 8.; Ex. 302, Direct Testimony of Ali Arabian, p. 2, ln. 5-6.
[8] Ex. 101, Direct Testimony of Brian LaGrand, p. 4. ln. 20.
[9] Ex. 303, Supplement to Direct Testimony of Ali Arabian, Sch. AA-sd1, p. 5-7.
[10] Response to Staff Recommendation and Request for an Evidentiary Hearing, filed May 11, 2020.
[11] Report and Order, WO-2018-0373, issued December 5, 2018; Report and Order, WO-2019-0184, issued June 5, 2019; Order Approving Partial Stipulation and Agreement and Approving Infrastructure System Replacement Surcharge, WO-2019-0389, issued November 21, 2019.

11. MAWC's theory of its NOL is the accelerated depreciation expense of the new infrastructure subtracted from zero new revenues on that infrastructure, produces a loss on the new infrastructure up until the time the new ISRS rates are effective.[12]

12. The Commission found no NOL existed in the first two MAWC ISRS cases.[13] MAWC ISRS 3 (WO-2019-0389) settled via a stipulation to abide by the finding of the Internal Revenue Service (IRS). MAWC requested and received an advisory opinion from the IRS, called a Private Letter Ruling (PLR).[14]

13. The IRS is the agency designated to interpret the Internal Revenue Code and to determine whether the actions of taxpayers and regulators are in compliance with the Code.[15]

14. The Commission's decisions in MAWC ISRS 1 and 2 were based on its long-term understanding, and Internal Revenue Code definition, that the phrase "net operating loss" referred to year-end tax calculations, and any such loss would not be project-specific.[16]

15. Ruling 9 of the PLR states:

> Under the circumstances described, in order to comply with the normalization method of accounting within the meaning of section 168(i)(9), the amount of depreciation-related ADIT reducing rate base used to determine the revenue requirement set in the Surcharge Case must be decreased to reflect a portion of the **NOL** for the test period for depreciation-related book/tax differences during the test period for the Surcharge Case which would not have arisen had Taxpayer not reported depreciation-related book/tax differences during the test[17] period for the Surcharge Case and such decrease in depreciation-related ADIT must be an

[12] Transcript (Tr.) Vol 1, p. 65, ln. 4-14.
[13] Both MAWC ISRS 1 and 2 were appealed by MAWC. The Western District Court of Appeals affirmed those orders. Missouri-American Water Company v. Mo. Pub. Serv. Comm'n., 591 S.W. 3d 465 (2019); Missouri-American Water Company v. Mo. Pub. Serv. Comm'n. No. WD 83067, 2020 WL 1918699.
[14] Ex. 102c, Direct Testimony of John R. Wilde, Schedules JRW-1 and JRW-2.
[15] Ex. 301, Rebuttal Testimony of Mark L. Oligschlaeger, p. 3, ln. 15-17.
[16] WO-2018-0373, Report and Order, issued December 5, 2018; WO-2019-0184, Report and Order, issued June 5, 2019.
[17] Original reads "text"

amount that is no less than the amount computed using the With-and-Without Method.[18] (emphasis added)

16. In Ruling 9, the PLR uses the term NOL to refer to a specific project and a specific time period, which is a different working definition of NOL in the context of ISRS rate cases than used by the Commission in the past.[19]

17. Ruling 9 identifies the NOL claimed by MAWC as "the portion of the NOL for the test period for the Surcharge Case which would not have arisen had Taxpayer not reported depreciation-related book/tax differences during the te[s]t period for the Surcharge."[20]

18. The term "net operating loss" is defined as "the excess of operating expenses over revenues."[21] An NOL results when a utility does not have enough taxable income to utilize all of the tax deductions to which it would otherwise be entitled. When this situation occurs, the amount of the unused deductions is referred to as an NOL and is booked to a deferred tax asset account.[22]

19. The tax normalization requirements of the IRS Code mandate that utility rates be set so that customers do not receive the tax benefit of accelerated depreciation deductions any faster than over the estimated straight-line book lives authorized for the utilities' assets.[23]

20. The IRS agreed with MAWC's NOL theory that the NOL amount applicable to ISRS plant additions should be determined using the so-called "with-and-without" method.[24]

[18] Ex. 102c, Direct Testimony of John R. Wilde, Schedule JRW-2, p. 20.
[19] Tr. Vol 1, p. 118, Staff witness Mark Oligschlaeger.
[20] Ex. 202, Rebuttal Testimony of John R. Wilde, p. 4, ln. 8-12.
[21] Ex. 100, Stipulation of Facts, paragraph 13.
[22] Ex. 300, Direct Testimony of Mark L. Oligschlaeger, p. 5, ln. 4-7.
[23] Ex. 300, Direct Testimony of Mark L. Oligschlaeger, p. 3-4. ln. 21-4; Ex. 102, Direct Testimony of John R. Wilde, p. 5, ln. 11-15, and p. 11, ln 7-10.
[24] Ex. 301, Rebuttal Testimony of Mark L. Oligschlaeger, p. 4-6, ln. 21-23.

However, the IRS disagreed with MAWC's position from the prior ISRS cases than an NOL should also be applied to repairs to plant. [25]

21. The With and Without Method is directed by the PLR to be used in calculating the NOL amount.[26]

22. The With and Without Method is a comparison of the accelerated depreciation to the straight line depreciation amount (with accelerated depreciation compared to without accelerated depreciation). Lines 62-63 of MAWC's attached schedule BWL-2 shows the comparison.[27]

23. The guidance of the PLR was not available to the Commission in decisions MAWC ISRS 1 through 3 as it was not filed with the Commission by MAWC until December 9, 2019,[28] which is after the issuance of the decisions in MAWC ISRS 1 through 3.[29]

24. In MAWC ISRS 1, MAWC's updated revenue requirement using actual receipts for the nine month ISRS period was $7,264,876. This ISRS calculation included accumulated deferred income taxes (ADIT) and a proposed NOL. Staff recommended the removal of the $9.3 million deferred tax asset (NOL). The impact of this removal was an $866,917 reduction in the ISRS. Staff's proposed ISRS including the NOL reduction and other adjustments was $6,377,959.[30]

25. In MAWC ISRS 2, the updated revenue requirement using actual receipts for the nine month ISRS period was $9,706,228. This ISRS calculation included ADIT and a proposed NOL. Staff proposed the removal of the $8.85 million deferred tax asset (NOL). The impact of this removal was an $827,383 reduction in the ISRS. Staff's updated ISRS

[25] Ex. 102c, Direct Testimony of John R. Wilde, Schedule JRW-2, p. 19-20, Ruling 5.
[26] Ex. 102c, Direct Testimony of John R. Wilde, Schedule JRW-2, p. 20, Ruling 9.
[27] Ex. 101, Direct Testimony of Brian W. LaGrand, Schedule BWL-2, p. 2, ln. 62-63.
[28] WO-2018-0373, Notice Concerning Receipt of Private Letter Ruling, filed December 9, 2019 (the Commission takes notice of this filing).
[29] Respectively: December 5, 2018; June 5, 2019; and November 21, 2019.
[30] WO-2018-0373, Report and Order, issued December 5, 2018.

revenue requirement, including the NOL reduction and other adjustments, was $8,878,845.[31]

26. In MAWC ISRS 3, the updated revenue requirement using actual receipts for the six month ISRS period was $6,782,250.[32] This ISRS calculation included ADIT and a proposed NOL.[33] Staff proposed the removal of the $7.1 million deferred tax asset (NOL).[34] The impact of this removal was a $670,027 reduction in the ISRS. Staff's updated ISRS revenue requirement, including the NOL reduction and other adjustments, was $6,112,222.[35]

27. Implementing Ruling 9 results in a $35,328 adjustment for the normalization violations that occurred over the three prior ISRS cases.[36]

28. Not including an offset for an NOL amount in computing the ISRS surcharge constituted a violation of the IRS Code's normalization restrictions, by effectively passing accelerated depreciation deduction benefits on to customers prematurely.[37]

29. The IRS requires violations to be remedied at the next available opportunity, and if not remedied could lead to severe sanctions by the IRS on MAWC such as the loss of the ability to claim accelerated depreciation.[38] The inability to utilize accelerated depreciation could result in higher rates for MAWC customers.[39]

[31] WO-2019-0184, Report and Order, issued June 5, 2019.
[32] WO-2019-0389, Staff Recommendation, Appendix A, p. 4 (the Commission takes notice of Appendix A).
[33] WO-2019-0389, Staff Recommendation, Appendix A, p. 3.
[34] WO-2019-0389, Staff Recommendation, Appendix A, Attachment 1.
[35] WO-2019-0389, Staff Recommendation, Appendix A, Attachment 1.
[36] Ex. 102, Direct Testimony of Brian W. LaGrand, Schedule BWL-3.
[37] Ex. 300, Direct Testimony of Mark L. Oligschlaeger, p. 7-8, ln. 19-2; and p. 8 ln. 16-20; Ex. 102, Direct Testimony of John R. Wilde, p. 5, ln. 1-26.
[38] Ex. 102, Direct Testimony of John R. Wilde, p. 5-6, ln. 17-8.
[39] Ex. 102, Direct Testimony of John R. Wilde, p. 7-8, ln. 19-2.

30. Ruling 9 is limited in its applicability to utilities that are in an NOL carryover position at some point during the ISRS period.[40]

31. Ruling 9 is limited in its applicability as PLR's are applicable only to the taxpayer that requested it. It is also limited as to the facts asserted within the PLR and findings based on those asserted facts. Ruling 9 is further limited in its applicability as PLR's cannot be used as precedent. [41]

32. The IRS is required to check if the facts described in the PLR are accurate when processing the taxpayer's return.[42]

33. PLR's will be revoked if the IRS finds the facts supplied by the taxpayer to be incorrect and can even have the revocation be retroactive.[43]

34. MAWC's submitted request to the IRS for the PLR included: a written discussion by Staff's Director of Operations Mark Oligschlaeger, Staff's final response to the request, and the Commission decisions in MAWC ISRS 1 and 2.[44]

35. MAWC's tariff directs that Contributions In Aid of Construction (CIAC) be segregated into a deferred account for inclusion in rate base in MAWC's next general rate proceeding. Additionally, CIAC is already included in the deferred taxes calculation in taxable income reconciled for 2018, 2019, and 2020.[45]

[40] Ex. 102, Direct Testimony of John R. Wilde, p. 11, ln. 15-17; Ex. 103, Rebuttal Testimony of John R. Wilde, p. 9, ln. 11-16.
[41] Ex. 102c, Direct Testimony of John R. Wilde, Schedule JRW-2, p. 22.
[42] Brief of the Missouri Office of the Public Counsel, p. 10, citing 26 CFR § 601.201(l)(2); Rev. Proc. 2019-1, I.R.B. 2019-01 § 11.03 (I.R.S. January 2, 2019).
[43] Brief of the Missouri Office of the Public Counsel, p. 10, citing 26 CFR § 601.201(l)(2),(4),(5); Rev. Proc. 2019-1, I.R.B. 2019-01 §§ 11.03,11.04,11.05 (I.R.S. January 2, 2019).
[44] Ex. 102, Direct Testimony of John R. Wilde, p. 10, ln. 9-15; Ex. 301, Rebuttal Testimony of Mark L. Oligschlaeger, p. 7, ln. 9-18; Ex. 103, Rebuttal Testimony of John R. Wilde, p. 4, ln. 8-12, and p. 8, ln. 7-10, and p. 10, ln. 6-12; Tr. Vol 1, p. 51-52, ln. 25-17.
[45] Tr. Vol 1, p. 68, ln. 4-16; and p 77, ln. 13-18.

36. ISRS revenues to be counted are limited to those occurring due to the ISRS replacements, and cannot be counted as both revenue under the existing rates and revenue to offset an NOL.[46]

37. The PLR requires the NOL include only losses related to accelerated depreciation based upon the With-and-Without Method and MAWC applied that Method in calculating the $35,328 adjustment for the prior three ISRS cases.[47]

38. The IRS was aware that MAWC had taxable income in 2018.[48]

39. MAWC's initial ISRS calculation included the repairs to plant in the deferred income taxes for purposes of calculating the ISRS.[49] According to the PLR, repairs to plant is not subject to the normalization method of accounting.[50] Therefore, repairs to plant is not included in the NOL deferred tax asset for purposes of calculating the ISRS.[51] All parties have agreed that recognition of deferred taxes associated with accelerated depreciation tax timing differences for all plant additions should be included for this ISRS Period.[52]

40. The NOL reduces ADIT. In the ISRS rate calculation for the current case, the NOL adjustment for MAWC ISRS 1 through 3 is an adjustment added to the total revenue requirement.[53]

41. Staff witness Barnes recommended that the cost of service allocation is based on the revenue requirement being spread to each class based on billing determinants agreed to in MAWC's previous general rate case. The rate design, limited per statute to St. Louis County, is an increase per 1,000 gallons of $0.30155 for Rate A,

[46] Section 393.1000(6); Tr. Vol. 1, p. 70, ln. 5-21, p. 81; ln. 9-14; p. 82, ln. 8-11; and p. 83, ln. 4-20.
[47] Tr. Vol. 1, p. 61, ln. 20-25.
[48] Tr. Vol. 1, p. 79 - 81, ln. 15-14 (p. 81).
[49] Ex. 101, Direct Testimony of Brian LaGrand, Schedule BWL-2, p. 1, ln. 7 and 25; and p. 2, n. 32, 41, and 84.
[50] Ex. 102c, Direct Testimony of John R. Wilde, Schedule JRW-2, p. 19-20, Ruling 5.
[51] Tr. Vol. 1, p. 67-68.
[52] OPC Brief, p. 50, MAWC Brief, p. 24, Staff Brief, p. 17.
[53] Ex. 101, Direct Testimony of Brian LaGrand, Schedule BWL-2, p. 1.

resulting in an ISRS rate of $0.96287 per 1,000 gallons. The increases for Rates B and J were $0.00239 and $0.00229, respectively, per 1,000 gallons, resulting in ISRS rates for Rates B and J of $0.01463 and $0.01399, respectively, per 1,000 gallons.[54] No party objected to Mr. Barnes' proposed rate design.

42. In MAWC ISRS 3, MAWC and Staff entered into a stipulation and agreement that in the event the IRS ruled in MAWC's favor regarding the disputed NOL amounts in that case and MAWC ISRS 1 and 2, then MAWC would file an Accounting Authority Order (AAO) to cure the normalization violation.[55] The signatories were ordered by the Commission to comply with the agreement.[56]

III. Conclusions of Law

A. The Commission has the authority under Sections 393.1000 through 393.1006, RSMo, to consider and approve ISRS requests. Since MAWC brought the action, it bears the burden of proof.[57] The burden of proof is the preponderance of the evidence standard.[58] In order to meet this standard, MAWC must convince the Commission it is "more likely than not" that its allegations are true.[59]

B. Section 393.1006.2(4) provides that where the Commission finds that a petition complies with the statutory requirements, the Commission "shall enter an order authorizing the water corporation to impose an ISRS that is sufficient to recover "appropriate pretax revenues."

C. Section 393.1000(1) defines "appropriate pretax revenues" to include "recognition of accumulated deferred income taxes and accumulated depreciation

[54] Ex. 304, Direct Testimony of Matthew J. Barnes, p. 2-3, ln. 7-11(p. 3)
[55] WO-2019-0389, Order Approving Partial Stipulation and Agreement and Approving Infrastructure System Replacement Surcharge, issued November 21, 2019, p 2.
[56] WO-2019-0389, Order Approving Partial Stipulation and Agreement and Approving Infrastructure System Replacement Surcharge, issued November 21, 2019, Ordered paragraph 4.

associated with eligible infrastructure system replacements which are included in a currently effective ISRS."

D. Sections 393.1003.3 and 393.1006.6 provide that an ISRS is not final until reset at the next general rate case.

E. Section 393.1006.8 reads in pertinent part: "Commission approval of a petition…to establish or change an ISRS…shall in no way be binding upon the commission in determining the ratemaking treatment to be applied to eligible infrastructure system replacements during a subsequent general rate proceeding…"

F. Section 393.1003.1 provides that an ISRS is subject to refund.

G. Stare decisis does not bind the Commission to past Commission decisions.[60]

IV. Decision

The underlying ISRS request for the fourth ISRS period since MAWC's most recent general rate case is uncontested. The only disputed issue in this case is the inclusion of a $35,328 adjustment to cure alleged normalization violations from MAWC ISRS 1 through 3. MAWC ISRS 1 established the ISRS. MAWC ISRS 2 and 3 changed the ISRS. MAWC ISRS 4, the current case, seeks to further change the ISRS. The currently enacted ISRS as a whole has not been reset since it was established in MAWC ISRS 1. Thus, the Commission can use the current case, MAWC ISRS 4, to address the violations from

[57] "The burden of proof, meaning the obligation to establish the truth of the claim by preponderance of the evidence, rests throughout upon the party asserting the affirmative of the issue". *Clapper v. Lakin*, 343 Mo. 710, 723, 123 S.W.2d 27, 33 (1938); *see also* Section 393.150.2.
[58] *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).
[59] *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).
[60] *State ex rel. AG Processing, Inc. v. Public Serv. Comm'n,* 120 S.W.3d 732, 736 (Mo. banc 2003).

MAWC ISRS 1 through 3 because the ISRS itself is not final until it is reset in a general rate case.

The NOL reduces ADIT. In the ISRS rate calculation for the current case, the NOL adjustment for MAWC ISRS 1 through 3 is an adjustment added to the total revenue requirement. As the ISRS is not final until reset in a general rate case, the eligible infrastructure system replacements from MAWC ISRS 1 through 3 continue to be included in a currently effective ISRS, as that ISRS was established in MAWC ISRS 1 and has not yet been reset, meaning it is within the statutory meaning of currently effective ISRS.

MAWC and Staff offered evidence of the normalization violation by way of a statement issued by the IRS, the agency responsible for producing and enforcing the Internal Revenue Code. The statement issued by the IRS was a PLR. The PLR agreed with MAWC, and identified an NOL in the loss of accelerated depreciation during the ISRS time periods. The Commission defers to the interpretation of the Internal Revenue Code by the IRS, the agency charged with its enforcement.

In general, the deferred tax asset (NOL) proposed by MAWC included all plant additions, including repairs to plant in all three prior MAWC ISRS cases. It was PLR Ruling 5 which stated that repairs to plant is not subject to normalization accounting that led to the NOL adjustment from MAWC ISRS 1 through 3 being considerably less than what was removed by Staff in those cases.

All plant additions including repairs to plant are included in ADIT because they have accelerated depreciation for tax purposes. In the case of repairs to plant the entire amount is depreciated for tax purposes in the year it is placed in service. For purposes of the ISRS all plant additions are included in the ADIT deduction but only plant additions other than repairs to plant are included in the NOL calculation as an offset to ADIT. The With and

Without Method (applied only to plant additions other than repairs to plant) looks at the difference between straight line depreciation used for rates and accelerated depreciation used for income tax reporting and multiplies this amount by the income tax rate to determine the NOL.

Public Counsel raised three objections: 1) the PLR did not verify any facts, only repeated the facts given them, and the IRS may not have even received Staff's input; 2) even if the Commission accepts the veracity of the PLR, the adjustment calculation did not include CIAC; 3) even if the Commission accepts the veracity of the PLR, the adjustment calculation did not include continuing revenues.

As to challenge one, the only evidence offered was the testimony that the submission to the IRS did include Staff's comments and the previous case decisions. Public Counsel also questioned whether the IRS confirmed the existence of an NOL, or merely repeated the facts given in MAWC's submission. Public Counsel raised questions, but ultimately offered no evidence of impropriety. The testimony together with the Commission's reading of the PLR are sufficient to deny Public Counsel's first challenge as to the submission of documents and the IRS interpretation of the facts given.

Challenge two raises the issue that CIAC was not counted as income to offset the NOL as the contributions occurred during the ISRS periods. The testimony of MAWC and Staff show that CIAC is already being counted and that MAWC's tariff directs that CIAC is included in general rate cases. Furthermore, the PLR Ruling 9 specifically states that the NOL deducted against the depreciation related ADIT must be an amount that is no less than the amount computed using the With-and-Without Method. This calculation does not provide for revenue offsets of any type. The PLR applicable to MAWC's ISRS, does not

consider NOL treatment in the same context that would be applied for traditional income tax calculation purposes. Challenge two is denied.

Challenge three raises the issue that continuing revenue is not counted as an offset to an NOL. Public Counsel's theory is that the replacement pipe, once placed into the ground, is generating revenue from the continued sale of the water flowing through it from the time of installation until the new ISRS rates become effective. As MAWC and Staff point out, this revenue is earned under the prior rates and thus cannot be double counted as revenue. Challenge three is denied.

In the end, Public Counsel believes that an NOL is a tax return item that requires a tax return be completed. Public Counsel witness John Riley testified to such and further stated his belief that one cannot have an NOL on an interim basis, nor can an NOL be asset specific. Staff witness Mark Oligschlaeger testified that Staff does not necessarily disagree with this position; however, the IRS clearly found in MAWC's favor. Thus, the Public Counsel's position appears to be in direct contradiction to the IRS's interpretation of its own Internal Revenue Code in Ruling 9.

The IRS requires a normalization violation to be corrected at the next available opportunity. The stipulation and agreement from MAWC ISRS 3 requires that MAWC file an AAO. The Commission sees no benefit to waiting for an AAO versus addressing the normalization violation in the present case. Making the adjustment in the current case allows for administrative economy, certainty for MAWC in its tax dealings with the IRS, and as the IRS has the power to retroactively revoke the PLR based on incorrect facts, the Commission will grant the request to relieve MAWC of its commitment to file an AAO pursuant to the stipulation and agreement in MAWC ISRS 3.

V. Conclusion

Based on Staff's and MAWC's adjustments, the updated ISRS calculation will result in MAWC collecting ISRS revenues in the amount of $9,725,687. The Commission also concludes that the appropriate rate design is that which was testified to by Matthew J. Barnes and to which there were no objections.

MAWC has complied with the requirements of the applicable ISRS statutes to authorize its use of an ISRS. The Commission concludes that MAWC shall be permitted to establish an ISRS to recover ISRS revenues for this case in the amount of $9,725,687. Since the revenues and rates authorized in this order differ from those contained in the tariffs MAWC first submitted, the Commission will reject those tariffs. The Commission will allow MAWC an opportunity to submit new tariffs consistent with this order.

Section 393.1015.2(3), RSMo, requires the Commission to issue an order to become effective not later than 120 days after the petition is filed. That deadline is June 30, 2020. To allow MAWC time to file a tariff sheet in compliance with this Order, the Commission will make this order effective in less than thirty days.

THE COMMISSION ORDERS THAT:

1. MAWC is authorized to change its ISRS sufficient to recover ISRS revenues in the amount of $9,725,687. MAWC is authorized to file an ISRS rate for each customer class as described in the body of this order.

2. The tariff sheet filed by MAWC on March 2, 2020, and assigned Tariff Tracking No. YW-2020-0148, is rejected.

3. MAWC is authorized to file a new tariff sheet to recover the revenue authorized in this Report and Order.

4. As described in the body of this order, MAWC is relieved from the terms of the

Partial Stipulation and Agreement approved by the Commission in WO-2019-0389.This order shall become effective on June 27, 2020.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Hatcher, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of Union Electric Company d/b/a Ameren Missouri's Tariffs to Decrease Its Revenues for Electric Service	)))	**File No. ER-2019-0335**

AMENDED REPORT AND ORDER

ELECTRIC

§13 Operations generally

The Commission found that the state legislature's enactment of Section 393.1400, RSMo. (the PISA statute) did not establish a legislative policy, presumption, or directive that supports imposing a 15% share of changes in net energy costs on utilities that have a fuel adjustment clause.

§13 Operations generally

An applicant utility bears the burden to show that its requested fuel adjustment clause should continue.

EVIDENCE, PRACTICE AND PROCEDURE

§6 Weight, effect and sufficiency

An applicant utility bears the burden to show that its requested fuel adjustment clause should continue.

§6 Weight, effect and sufficiency

The Commission declined to change the fuel adjustment clause sharing percentages from 95/5 to 85/15 where opponent's evidence showed changing the sharing mechanism would provide more pressure on the applicant to operate at optimal efficiency, but failed to show that the 85/15 sharing percentages would improve the applicant's efficiencies.

RATES

§101 Fuel clauses

An applicant utility bears the burden to show that its requested fuel adjustment clause should continue.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a Ameren Missouri's Tariffs to Decrease Its Revenues for Electric Service	)))	**File No. ER-2019-0335**

AMENDED REPORT AND ORDER

Issue Date: July 15, 2020

Effective Date: July 25, 2020

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a Ameren Missouri's Tariffs to Decrease Its Revenues for Electric Service	)))	**File No. ER-2019-0335**

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SENIOR REGULATORY LAW JUDGE: Nancy Dippell

AMENDED REPORT AND ORDER

On April 29, 2020, the Commission issued its Report and Order resolving the final open issues in this case. The Report and Order became effective on May 29, 2020. On May 28, 2020, the Office of the Public Counsel filed a timely application for rehearing and request for corrections. Union Electric Company d/b/a Ameren Missouri filed a response on June 8, 2020.

Both parties noted a misstatement in the Commission's Report and Order at Finding of Fact 14. By this Amended Report and Order, the Commission corrects that error and clarifies its Decision. No other changes to the substance of the Report and Order have been made.

Because no other substantive matters in the Commission's Report and Order have changed, the Commission finds it reasonable to make this Amended Report and Order effective in less than 30 days. Any party wishing to request rehearing of this Amended Report and Order, should request rehearing before the effective date of this order.

I. Procedural History

On July 3, 2019, Union Electric Company d/b/a Ameren Missouri (Ameren Missouri) filed tariff sheets designed to implement a general rate decrease for its electric service. The tariff sheets bore an effective date of August 2, 2019, but were suspended until May 30, 2020. On February 28, 2020, Union Electric Company d/b/a Ameren Missouri (Ameren Missouri), the Staff of the Commission (Staff), the Office of the Public Counsel (Public Counsel), Missouri Department of Natural Resources - Division of Energy, Missouri Industrial Energy Consumers, Midwest Energy Consumers Group, Consumers Council of Missouri, Natural Resources Defense Council, and the Sierra Club

(collectively "Signatories"), filed a non-unanimous stipulation and agreement[1] resolving all but two issues regarding Ameren Missouri's request for a rate decrease. On March 2, 2020, the Signatories filed a Corrected Non-Unanimous Stipulation and Agreement with minor corrections. On March 9, 2020, Ameren Missouri and Public Counsel filed a Second Non-Unanimous Stipulation and Agreement. Ameren Missouri and Public Counsel represented that each of the other parties had no objection to the second stipulation and agreement.

After holding an on-the-record presentation and considering the stipulation and agreements, the Commission approved the two unopposed agreements on March 18, 2020. Revised tariff sheets implementing the two stipulation and agreements and rate changes were allowed to become effective by operation of law on April 1, 2020. The stipulation and agreements resolved all issues with the exception of the fuel adjustment clause (FAC) sharing ratio issue raised by Public Counsel.

The Commission held an evidentiary hearing on March 11, 2020. During the on-the-record presentation and the evidentiary hearing, the Commission received pre-filed written testimony and live cross-examination testimony. Additionally, the Commission took official notice of several past Commission decisions, Staff reports, and Commission rule 20 CSR 4240-20.090. Initial briefs were filed on March 30, 2020 and reply briefs were filed on April 7, 2020.

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

[1] The only non-signatory party, Renew Missouri Advocates, d/b/a Renew Missouri, indicated that it had no objection to the agreement.

greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. Ameren Missouri is a Missouri certificated electrical corporation as defined by Subsection 386.020(15), RSMo (2016),[2] and is authorized to provide electric service to portions of Missouri.

2. Public Counsel is a party to this case pursuant to Section 386.710(2), RSMo, and by Commission Rule 20 CSR 4240-2.010(10).

3. Staff is a party to this case pursuant to Section 386.071, RSMo, and Commission Rule 20 CSR 4240-2.010(10).

4. The FAC is a surcharge on customer bills that covers the increase and/or decrease in fuel and purchased power costs and revenues for the period between rate cases.[3]

5. Ameren Missouri has utilized an FAC since the Commission first approved it in File No. ER-2008-0318.[4] In that case, the Commission found that allowing Ameren Missouri to pass 95% of its prudently-incurred fuel and purchased power costs, above those included in its base rates, through a FAC was appropriate. The Commission found that a 95% pass-through would still provide Ameren Missouri sufficient incentive to operate at optimal efficiency because other incentives also encouraged the company to

[2] Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.
[3] Exhibit 200, Direct Testimony of Lena M. Mantle, p. 3.
[4] File No. ER-2008-0318, *In the Matter of Union Electric Company d/b/a AmerenUE for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Company's Missouri Service Area*, Report and Order (issued Jan 1, 2009). Ameren Missouri was previously known as AmerenUE.

minimize its net fuel costs.[5] The Commission also determined that the 95% pass-through would allow Ameren Missouri the opportunity to earn a fair return on its investment.[6]

6. The 95% pass-through to ratepayers and 5% retention by Ameren Missouri in the FAC are commonly referred to as the "95/5 sharing mechanism." With the 95/5 sharing mechanism, when fuel and purchased-power costs are higher than what was included in permanent rates, customers pay for 95% of the increased costs while Ameren Missouri bears the remaining 5%. Conversely, when fuel and purchased-power activity costs are lower than what was calculated in the previous rate case, customers receive 95% of their excess payments, and the company retains 5% of the savings.[7]

7. File No. ER-2010-0036 was Ameren Missouri's next general rate case after its FAC was first approved.[8] In that case, the Commission asked the parties whether the 95/5 sharing mechanism allowed Ameren Missouri sufficient opportunity to earn a return on equity while providing adequate incentive to prudently manage its fuel and purchased power costs.[9] Staff reported that it lacked sufficient data to provide a meaningful analysis because the two cases were held so close together.[10] Ultimately, the Commission authorized continuation of the FAC with the 95/5 sharing mechanism and noted that it would review the sharing ratio in Ameren Missouri's next general rate case.[11]

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[5] File No. ER-2008-0318, Report and Order (issued Jan. 1, 2009), p. 73.
[6] File No. ER-2008-0318, Report and Order (issued Jan. 1, 2009), p. 73.
[7] Exhibit 200, Direct Testimony of Lena M. Mantle, p. 3.
[8] File No. ER-2010-0036, *In the Matter of Union Electric Company d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service*, Report and Order (issued May 28, 2010).
[9] File No. ER-2010-0036, Order Directing the Parties to Submit Testimony Concerning the Appropriateness of AmerenUE's Current Fuel Adjustment Clause (issued Feb 17, 2010).
[10] File No. ER-2010-0036, Report and Order (issued May 28, 2010), p. 74, (citing, Supplemental Direct Testimony of Lena M. Mantle - FAC, pp. 5-6).
[11] File No. ER-2010-0036, Report and Order (issued May 28, 2010), p. 80.
("Substantially changing the existing fuel mechanism without a meaningful analysis could have severe consequences for AmerenUE and ultimately for ratepayers." *Id*. at 77.).

8. In Ameren Missouri's next two general rate cases, File Nos. ER-2011-0028[12] and ER-2012-0166,[13] Staff and the Public Counsel advocated for setting the fuel adjustment sharing mechanism at an 85% to 15% ratio.[14] In Ameren Missouri's next general rate case, File No. ER-2014-0258,[15] Public Counsel's witness advocated for a 90% to 10% sharing ratio.[16] In all three cases, the Commission dismissed arguments for changing the 95/5 ratio and found that no party had provided a reason to change the percentages.[17]

9. Ameren Missouri's next rate case, File No. ER-2016-0179,[18] was settled by stipulation and agreement that the Commission approved. In that agreement, Public Counsel, along with the other parties, agreed to continue the 95/5 sharing ratio.[19]

10. The current case is Ameren Missouri's next rate case after File No. ER-2016-0179. Under its current FAC, Ameren Missouri continues to pass 95% of eligible costs and revenues through the FAC. The remaining 5% is not passed through the FAC and operates as an incentive for Ameren Missouri to minimize fuel and purchased power costs.[20]

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[12] File No. ER-2011-0028, *In the Matter of Union Electric Company d/b/a AmerenUE's Tariff to Increase Its Annual Revenues for Electric Service*.
[13] File No. ER-2012-0166, *In the Matter of Union Electric Company d/b/a Ameren Missouri's Tariffs to Increase Its Revenues for Electric Service*.
[14] File No. ER-2011-0028, Report and Order (issued July 13, 2011); and File No. ER-2012-0166, Report and Order (issued Dec. 12, 2012).
[15] File No. ER-2014-0258, *In the Matter of Union Electric Company d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Electric Service*.
[16] File No. ER-2014-0258, Report and Order (issued April 29, 2015), p. 108.
[17] File No. ER-2011-0028, Report and Order (issued July 13, 2011), p. 86; File No. ER-2012-0166, Report and Order (issued Dec. 12, 2012), p. 83; and File No. ER-2014-0258, Report and Order (issued April 29, 2015), p. 111.
[18] File No. ER-2016-0179, *In the Matter of Union Electric Company d/b/a Ameren Missouri's Tariffs to Increase Its Revenues for Electric Service.*
[19] File No. ER-2016-0179, Order Approving Unanimous Stipulation and Agreement (issued March 8, 2017).
[20] Transcript, p. 380.

11. In this case, Public Counsel has proposed to change the FAC sharing percentage based on its claim that doing so "would create a greater incentive for Ameren Missouri to manage the FAC costs"[21] and "reduce the likelihood of gamesmanship with the FAC."[22] Public Counsel provided no direct evidence to support that a "greater" incentive would provide any better results other than the opinion to that effect by its witness Lena M. Mantle. Public Counsel also admitted that the "inefficient scheduling of generation resources" could be brought before the Commission in an FAC prudence review.[23]

12. In the ten quarterly FAC surveillance reports submitted by Ameren Missouri for the 2nd Quarter 2017 through the 3rd Quarter 2019, Ameren Missouri reported earning below its authorized return on equity only once.[24]

13. Since the beginning of Ameren Missouri's FAC, its 5% share of prudently incurred net fuel costs has totaled $42,326,518,[25] which is less than one percent of all of Ameren Missouri's fuel costs.[26]

14. During Accumulation Periods 20-32 (February 1, 2015 to February 1, 2020), seven of thirteen FAC rate adjustments have been rate decreases.[27]

15. Fuel costs are volatile and electric utilities do not have complete control over those fuel costs.[28] In general, Ameren Missouri's net energy costs are set by markets for

[21] Exhibit 200, Direct Testimony of Lena M. Mantle, p. 5.
[22] Exhibit 200, Direct Testimony of Lena M. Mantle, p. 6.
[23] Exhibit 202, Surrebuttal Testimony of Lena M. Mantle, p. 6.
[24] Exhibit 201, Rebuttal Testimony of Lena M. Mantle, p. 6.
[25] Exhibit 202, Surrebuttal Testimony of Lena M. Mantle, Schedule LM-S-3; and Exhibit 7, Rebuttal Testimony of Andrew Meyer, p. 16.
[26] Tr. pp. 392 and 405.
[27] Exhibit 202, Surrebuttal Testimony of Lena M. Mantle, Schedule LM-S-3.
[28] Exhibit 6, Direct Testimony of Andrew Meyer, pp. 5, and 18-26; and Tr. pp. 335-337.

energy and fuel that are largely beyond Ameren Missouri's control.[29] However, certain measures are within the utility's control, such as employing qualified and experienced personnel to pursue economic efficiencies and negotiate better contracts for both itself and its customers.[30] Ameren Missouri has also engaged in historical hedging practices in an attempt to mitigate fuel price volatility.[31]

16. Even though fuel costs are volatile, Ameren Missouri's coal costs have decreased by almost 19% since 2016.[32]

17. Most utilities in other states with FACs do not have a sharing mechanism.[33]

18. Changing the sharing percentage without evidence supporting a reason to do so, could erode investor confidence in the utility.[34]

19. In addition to the FAC sharing mechanism, Ameren Missouri has other incentives to prevent it from misusing the FAC, including prudence reviews with disallowance of imprudent costs and the elimination or alteration of the FAC in a future case.[35]

20. No party is alleging that Ameren Missouri acted imprudently with its current FAC 95/5 sharing mechanism.[36] Staff's witness testified that there had been no pattern of imprudence discovered during the many prudence reviews of the FAC[37] and there has not been a complaint action brought against Ameren Missouri for failing to prudently

[29] Tr. p. 336; and Exhibit 6, Rebuttal Testimony of Andrew Meyer, pp. 17-26.
[30] Tr. pp. 335, 342-344.
[31] Tr. p. 335.
[32] Exhibit 6, Direct Testimony of Andrew Meyer, pp. 18-19.
[33] Exhibit 7, Rebuttal Testimony of Andrew Meyer, p. 12; and Tr. p. 352.
[34] Exhibit 7, Rebuttal Testimony of Andrew Meyer, p. 16; and Tr. p. 348.
[35] Exhibit 7, Rebuttal Testimony of Andrew Meyer, p. 15. *See also,* File No. ER-2008-0318, Report and Order (issued Jan. 27, 2009), pp. 70 and 73.
[36] Tr. p. 366-368, 378, and 398-399.
[37] Tr. p. 380.

manage its net energy costs through its FAC.[38] The Commission did order Ameren Missouri to refund $17,169,838, plus interest, to rate payers in 2011 after an FAC prudency review because Ameren Missouri categorized certain contracts incorrectly.[39]

III. Conclusions of Law

A. The FAC's enabling statute provides that the Commission 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" when approving an FAC.[40]

B. The state legislature's enactment of Section 393.1400, RSMo (the PISA statute) did not establish a legislative policy, presumption, or directive that supports imposing a 15% share of changes in net energy costs on utilities that have an FAC. Section 386.266 was not amended explicitly or implicitly by the enactment of the PISA statute.[41]

C. Commission rule 20 CSR 4240-20.090(11)(B)2 provides that if "the staff, OPC, or other party auditing the [FAC] believes that insufficient information has been supplied to make a recommendation regarding . . . [prudence], it may utilize discovery to obtain the information it seeks."[42] The prudence audit rule also provides for a suspension of the 180-day timeline if there is a discovery dispute and a pending motion to compel and allows the Commission to extend the 180-day timeline for other reasons for good cause

[38] Tr. p. 366-368, 378, and 398-399.
[39] File No. EO-2010-0255, *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 AmerenUE,* Report and Order (issued April 27, 2011).
[40] Subsection 386.266.1, RSMo (Supp. 2019).
[41] *See, e.g.*, *LeSage v. Dirt Cheap Cigarettes and Beer, Inc.* 102 S.W.3d 1, 5 (Mo. banc 2003).
[42] Emphasis added.

shown.[43] If that happens, the case becomes a contested one under Section 536.010, RSMo, and the parties will have additional opportunity to conduct discovery. There is no operation of law date in such a proceeding and Public Counsel or any other party can take the steps it needs to address claims of imprudence.

IV. Decision

Ameren Missouri has requested that its FAC continue to include a 95/5 sharing mechanism as it has since its inception. As the applicant, Ameren Missouri bears the burden to show that its requested FAC should continue. Given that the parties reached an agreement, which was approved by the Commission, including the continuation of a FAC sharing mechanism demonstrates that Ameren Missouri has satisfied that requirement. The only contested issue for Commission decision is whether the sharing percentages should remain 95/5 as requested by Ameren Missouri, or should be changed to 85/15 as requested by Public Counsel.

Public Counsel argues that changing the sharing percentages to 85/15 will provide more incentive for Ameren Missouri to keep net fuel costs as low as possible. Staff and Ameren Missouri argue that the current sharing mechanism has not been shown to be ineffective and should stay the same. The state legislature gave the Commission the discretion to create the FAC incentives and it is within the Commission's discretion to reevaluate that sharing mechanism. The facts in this case, however, do not show that there is any reason to adjust the sharing mechanism.

The Commission has found on several occasions, that the 95/5 sharing ratio provides Ameren Missouri sufficient incentive to operate at optimal efficiency and still

[43] 20 CSR 4240-20.090(11)(B).

provides an opportunity for Ameren Missouri to earn a fair return on its investment. The evidence in this case also showed that Ameren Missouri continues to have the opportunity to earn a fair return, as shown by its quarterly earnings from 2017 through 2019, and it continues to operate efficiently, as shown by the tendency in recent periods for Ameren Missouri to have decreasing fuel costs. Staff's witness testified that the 95/5 ratio was an appropriate incentive based on finding no pattern of imprudence during the previous prudence reviews.

Additionally, no evidence was presented that Ameren Missouri acted imprudently or manipulated its FAC to the detriment of ratepayers. Public Counsel's evidence showed changing the sharing mechanism to 85/15 would provide more pressure on Ameren Missouri, but not that more pressure is needed. In recent periods, fuel costs are frequently lower than estimated and there was no evidence that the 85/15 sharing percentages would improve the company's efficiencies.[44] As the Commission has found in its prior decisions, there are also other incentives to keep costs low such as prudence reviews and the possibility that the FAC could be discontinued completely. The Commission determines that the 95/5 sharing mechanism remains appropriate for all the same reasons it was found appropriate in those prior Commission decisions.

Public Counsel's claim that the legislature has provided guidance on the appropriate incentive mechanism sharing percentages by including 15% of capital investments in the PISA statute is also not persuasive. The legislature's creation of an unrelated sharing mechanism in another utility statute does not imply the legislature intends those percentages to carry over to the FAC.

[44] The opinion of Public Counsel's witness without other supporting evidence does not persuade the Commission that the sharing percentage is not sufficient or should be changed.

The Commission's decision in this case should not be taken as stating that there may never be a change to the sharing percentage or that the Commission will always maintain the status quo. However, in this case the evidence does not support a change in the sharing percentage.

Therefore, the Commission determines that based on the facts in this case, the 95/5 sharing mechanism in Ameren Missouri's FAC provides the appropriate incentive to properly manage its net energy costs. Because the general rate tariffs have already become effective and include the FAC with the 95/5 sharing mechanism, the company need not take further action to implement this decision.

THE COMMISSION ORDERS THAT:

1. The fuel adjustment clause of Ameren Missouri shall continue to include a 95/5 sharing mechanism.

2. This amended report and order shall become effective on July 25, 2020.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Rupp, and
Coleman, CC., concur.
Holsman, C., absent.

Dippell, Senior Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of The Empire District Electric Company's Request for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in its Missouri Service Area	)))))	**File No. ER-2019-0374** Tariff No. YE-2020-0029

AMENDED REPORT AND ORDER

Affirmed on Appeal: *Matter of Empire District Electric Company's Request for Authority to File Tariffs Increasing Rates for Electric Service*, 630 S.W.3d 887 (Mo. App. W.D. 2021)

RATES

§101 Fuel clauses

Several parties filed motions to clarify the Commission's Report and Order. Staff's motion noted that the Commission's Report and Order determined that the Fuel Adjustment Clause transmission percentages of 34% for the Southwest Power Pool and 50% for the Midcontinent Independent System Operator, which Staff supported, were inconsistent with Staff's trued-up base factor, which the Commission adopted. So the Commission amended its Report and Order to resolve this inconsistency.

§101 Fuel clauses

Public Counsel's claim that the legislature has provided guidance on the appropriate incentive mechanism sharing percentages by including 15 percent of capital investments in the plant in service statute is also not persuasive. The legislature's creation of an unrelated sharing mechanism in another utility statute does not imply the legislature intends those percentages to carry over to the FAC.

§101 Fuel clauses

The Commission found that the 95/5 sharing ratio provides Empire sufficient incentive to operate at optimal efficiency and still provides an opportunity for Empire to earn a fair return on its investment. The evidence in this case also showed that Empire continues to operate efficiently.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of The Empire District Electric Company's Request for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in its Missouri Service Area	)))))	**File No. ER-2019-0374** Tariff No. YE-2020-0029

AMENDED REPORT AND ORDER

Issue Date: July 23, 2020

Effective Date: August 2, 2020

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of The Empire District Electric Company's Request for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in its Missouri Service Area	)))))	**File No. ER-2019-0374** Tariff No. YE-2020-0029

REPORT AND ORDER

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SENIOR REGULATORY LAW JUDGE: John T. Clark

REPORT AND ORDER

I. Procedural History

Tariff Filings, Notice, and Intervention

On August 14, 2019, The Empire District Electric Company (Empire) filed tariff sheets designed to implement a general rate increase for utility service. The submitted tariff (Tracking No. YE-2020-0029) would have increased Empire's annual electric revenues by approximately $26.5 million dollars (approximately 4.93 percent)[1]. The tariff had an effective date of September 13, 2019. 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 July 11, 2020. 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 Natural Resources - Division of Energy (DE), Midwest Energy Consumers Group (MECG), Natural Resources Defense Council (NRDC), Sierra Club, Renew Missouri Advocates (Renew Missouri), National Housing Trust (NHT), The Empire District Electric SERP Retirees (EDESR), The Empire District Retired Members & Spouses Association (EDRA), and the International Brotherhood of Electrical Workers Local Unions No. 1464, and 1474 (IBEW).

The Commission adopted a test year encompassing the twelve months ending on March 31, 2019, updated through September 30, 2019, with a true-up period to include known and measurable information through January 31, 2020. On December 9, 2019, The Office of the Public Counsel (OPC) filed *Public Counsel's Motion to Modify Test Year*

[1] Ex. 4P, Richard Corrected Direct, Schedule SDR-9.

to Include Isolated Adjustments Related to Retirement of Asbury. OPC requested the Commission modify the ordered test year to include isolated adjustments for the retirement of the Asbury coal-fired power plant. OPC asked to include isolated adjustments to account for Empire moving Asbury's retirement from no later than June 2020, to no later than March 2020. The Commission denied OPC's request. March is outside the true-up cutoff period and the Commission determined that Asbury's retirement is best addressed in Empire's next rate case. Instead, the Commission ordered the parties to submit items for potential inclusion in an Accounting Authority Order (AAO) to capture the financial impacts of that retirement for consideration in Empire's next rate case.

Local Public Hearings

The Commission conducted local public hearings in Bolivar, Joplin, and Branson, Missouri.[2]

Global Stipulation and Agreement

On April 15, 2020, Empire, the Commission's Staff (Staff), MECG, EDESR, EDRA, NRDC, NHT, and Renew Missouri submitted their *Global Stipulation and Agreement* (Agreement). On April 16, 2020, OPC objected to the Agreement. Pursuant to Commission rule, the Agreement became the joint position statement of the signatory parties. However, no party is bound by the Agreement and all the issues addressed in the Agreement remain for determination after hearing.[3]

Evidentiary Hearing

On October 17, 2019, the Commission scheduled an evidentiary hearing for April 14-17, and 20-22, 2020. On March 13, 2020, Missouri Governor, Mike Parson, declared

[2] Transcript, Vols 3, 4, 6-8.
[3] Commission Rule 20 CSR 4240-2.115(2)(D).

a state of emergency because of the -COVID-19 viral pandemic. On March 23, 2020, the Governor closed Missouri state buildings to all but essential employees. The Commission responded to the closure by preparing to conduct the evidentiary hearing electronically by videoconference.

On April 3, 2020, Staff submitted on behalf of the parties a *Progress Report and Request for Extension of Filing Dates*. In that pleading the parties agreed to waive cross examination of all witnesses and asked the Commission to cancel the evidentiary hearing and decide all issues on the record. The Commission suspended the hearing to allow for submission of the case on the record, and altered the procedural schedule to accommodate new filing dates and the Commission's questions for the parties.

Case Submission

The Commission admitted the testimony of 58 witnesses, received 321 exhibits into evidence, and took administrative notice of certain matters. Briefs were filed according to the modified procedural schedule. The final reply briefs were filed on May 18, 2020, and the case was deemed submitted for the Commission's decision on that date.[4]

The Commission issued a Report and Order on July 1, 2020. On July 8, 2020, Staff filed an application for clarification. On July 10, 2020, EDESR, EDRA, and Empire also filed motions for clarification. Staff's motion noted that the Commission's Report and Order determined that the Fuel Adjustment Clause (FAC) transmission percentages of 34% for the Southwest Power Pool (SPP) and 50% for the Midcontinent Independent System Operator (MISO), which Staff supported, were inconsistent with Staff's trued-up

[4] "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 20 CSR 4240-2.150(1).

base factor, which the Commission adopted. Therefore, the Commission is amending this Report and Order to resolve this inconsistency, clarify some other issues, and to address concerns about the enforceability of the parties' resolution of undisputed issues.

II. General Matters

MECG Motion to Strike, and Empire's Objections to Evidence

MECG filed its *Motion to Strike Portions of OPC Surrebuttal Testimony* on April 12, 2020, asking the Commission to strike portions of OPC surrebuttal testimony on the basis that the testimony was not responsive to matters raised in rebuttal testimony. The Commission denies MECG's motion to strike testimony.

On May 6, 2020, Empire filed its *Objections to Offers of Evidence*, objecting to specific testimony offered by OPC witnesses relating to the retirement of the Asbury power plant. The Commission has previously determined that the test year in this case would not be modified to include isolated adjustments related to the retirement of Asbury, and that isolated true-up adjustments for Asbury's retirement would not be included in this general rate proceeding.[5] However, that determination does not make all testimony related to Asbury's retirement irrelevant to every issue before the Commission in this case. Because the testimony in question contains evidence relevant to pending issues, Empire's objections to specific OPC testimony are overruled and that testimony is admitted into the record.

General Findings of Fact

The Commission finds that any given witness's qualifications and overall credibility are not dispositive as to each portion of that witness's testimony. The Commission gives

[5] File No. ER-2019-0374, Order Denying Motion for Reconsideration, issued February 19, 2020.

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 are necessary. [6] 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. [7]

1. 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, Kansas, Oklahoma, and Arkansas. Empire is regulated by the utility regulatory commissions in all four states and by the Federal Energy Regulatory Commission (FERC). [8]

2. OPC is a party to this case pursuant to Section 386.710(2), RSMo[9], and by Commission Rule 20 CSR 4240-2.010(10).

3. Staff is a party to this case pursuant to Commission Rule 20 CSR 4240-2.010(10).

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[6] 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).

[7] 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)

[8] Ex. 1, Baker Direct, page 3.

[9] Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016 and subsequently revised or supplemented.

4. Empire provides electric generation, transmission, and distribution services to approximately 173,000 retail electric customers in portions of Arkansas, Kansas, Missouri, and Oklahoma. Empire provides electric service to approximately 155,000 customers in Missouri.[10]

5. Empire merged with Liberty Utilities on January 3, 2017. Empire and Liberty Utilities are subsidiaries of Liberty Utilities, Co (LUCo). LUCo is wholly owned by Algonquin Power & Utilities Company (APUC). Liberty Utilities provides gas, water and sewer service in Missouri and other jurisdictions.[11]

6. To determine the appropriate level of utility rates, the Commission must calculate a revenue requirement for Empire. The revenue requirement is the incremental increase or decrease in revenues based on measurement of the utility's current total cost of service compared to its current revenue levels under existing rates the utility needs to provide safe and reliable service, as measured using Empire's existing rates and cost of service.[12]

7. To determine the appropriate revenue requirement for an investor owned utility, the first step is to calculate the cost of service (COS) for that utility[13]. The COS for a regulated utility can be defined by the following formula:[14]

Cost of Service = Cost of Providing Utility Service

or

COS = O + (V-D)R where,

COS = Cost of Service

[10] Ex. 1, Baker Direct, page 3.
[11] Ex. 101, Staff Direct Report, page 3.
[12] Ex. 100, Bolin Direct, page 4.
[13] Ex. 100, Bolin Direct, pages 3-4.
[14] Ex. 100, Bolin Direct, pages 3-4

O = Operating Costs (Fuel, Payroll, Maintenance, etc.), Depreciation and Taxes

V = Gross Valuation of Property Required for Providing Service (including plant and additions or subtractions of other rate base items)

D = Accumulated Depreciation Representing Recovery of Gross Depreciable Plant Investment

V – D = Rate Base (Gross Property Investment less Accumulated Depreciation = Net Property Investment)

(V – D)R = Return Allowed on Rate Base

Once the cost of service is determined, a cost of capital analysis is done to determine the appropriate rate of return for the utility.[15]

8. The test year for this case is the twelve months ending March 31, 2019, updated through September 30, 2019.[16]

9. The Commission also selected a true-up period ending January 31, 2020, to account for any significant changes in Empire's cost of service that occurred after the end of the test year period but prior to the tariff operation of law date.[17]

10. 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

[15] Ex. 100, Bolin Direct, page 6.
[16] Ex. 100, Bolin Direct, page 5: and File No. ER-2019-0374, Order Setting Procedural Schedule and Other Procedural Requirements, October 17, 2019.
[17] Ex. 100, Bolin Direct, page 6

process removes abnormal or unusual events from the cost of service calculations and replaces those events with normal levels of revenues or costs.[18]

11. 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.[19]

12. The calculated cost of service is then compared to net income available from existing rates to determine the revenue requirement, which is to determine the incremental change in Empire's rate revenues required to cover its operating costs and provide a fair return on investment used in providing utility service.[20]

General Conclusions of Law

A. Empire 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.

B. The Commission's subject matter jurisdiction over Empire's rate increase request is established under Section 393.150, RSMo.

C. 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.

D. Section 393.150.2, RSMo, makes clear that at any hearing involving a requested rate increase the burden of proof to show the proposed increase is just and reasonable rests on the corporation seeking the rate increase. As the party requesting

[18] Ex. 101, Staff Direct Cost of Service Report, page 2.
[19] Ex. 101, Staff Direct Cost of Service Report, page 2.
[20] Ex. 100, Bolin Direct, page 4.

the rate increase, Empire bears the burden of proving that its proposed rate increase is just and reasonable. In order to carry its burden of proof, Empire must meet the preponderance of the evidence standard.[21] In order to meet this standard, Empire must convince the Commission it is "more likely than not" that Empire's proposed rate increase is just and reasonable.[22]

E. In determining whether the rates proposed by Empire are just and reasonable, the Commission must balance the interests of the investor and the consumer.[23] 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.[24]

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

[21] *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).
[22] *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).
[23] *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603, (1944).
[24] *Bluefield Water Works & Improvement Co. v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 690 (1923).

> 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.[25]

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.[26]

F. 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.[27]

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.[28]

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[25] *Bluefield,* at 692-93.
[26] *Federal Power Commission v. Hope Natural Gas Co.,* 320 U.S. 591, 603 (1944) (citations omitted).
[27] *Federal Power Commission v. Natural Gas Pipeline Co*. 315 U.S. 575, 586 (1942).
[28] *State ex rel. Associated Natural Gas Co. v. Pub. Serv. Comm'n*, 706 S.W. 2d 870, 873 (Mo. App. W.D. 1985).

G. 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.[29]

H. A test year is 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 unadjusted results do not fairly represent the utility's most current annual level of existing revenue and operating costs.[30]

I. 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.[31]

J. 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.[32] It involves adjustment of the historical test year figures for known and measurable subsequent or future changes.[33] 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

[29] *State ex rel. Union Electric Company v. Public Service Comm'n*, 765 S.W.2d 618, 622 (Mo. App. 1988).
[30] Ex. 100, Bolin Direct, page 5.
[31] *See State ex rel. Utility Consumers' Council of Missouri, Inc. v. Public Service Comm'n*, 585 S.W.2d 41, 59 (Mo. banc 1979).
[32] *St. ex rel. Missouri Public Service Comm'n v. Fraas,* 627 S.W.2d 882, 887-888 (Mo. App. 1981).
[33] *St. ex rel. Missouri Public Service Comm'n v. Fraas,* 627 S.W.2d 882, 888 (Mo. App. 1981). .

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."[34]

III. Undisputed Issues

On April 15, 2020, Empire, Staff, MECG, EDESR, EDRA, NRDC, NHT, and Renew Missouri submitted a *Global Stipulation and Agreement,* which resolved all issues between the signatory parties.[35] The Agreement contained the following general provisions, which provided in part:

> This Stipulation is being entered into for the purpose of settling all issues in this case on behalf of the Signatories, and…represents a settlement on a mutually-agreeable outcome without resolution of specific issues of law or fact. [I]n the event the Commission does not approve this Stipulation, or approves it with modifications or conditions to which a Signatory objects, then this Stipulation shall be null and void, and no Signatory shall be bound by any of its provisions.[36]

OPC was not a signatory to the Agreement, and on April 16, 2020, OPC filed *Public Counsel's Objection to Parts of the Global Stipulation and Agreement Filed April 15, 2020*.[37] As stated in the procedural history, pursuant to Commission Rule 20 CSR 4240-2.115 (2)(D), once objected to, the Agreement became the joint position statement of the signatory parties. Commission Rule 20 CSR 4240-2.115 (2)(E), states that a party may indicate that it does not oppose all or part of a nonunanimous stipulation and agreement.

[34] *In the Matter of St. Louis County Water Company*, File No. WR-96-263 (*Report & Order*, issued December 31, 1996), at p. 8; 5 Mo. P.S.C. 3d 341, 346.
[35] *Global Stipulation and Agreement*, April 15, 2020.
[36] *Global Stipulation and Agreement*, April 15, 2020, page 12.
[37] *Public Counsel's Objection to Parts of the Global Stipulation and Agreement*, filed April 16, 2020.

OPC did not object to specific provisions of the Agreement and affirmatively identified those provisions in its pleading.[38]

On May 6, 2020, the parties submitted initial briefs, and answers to Commission questions. Those May 6, 2020, filings were inconsistent as to which issues were still disputed between the parties. Some parties indicated that issues were undisputed that other parties indicated were still in dispute. On May 7, 2020, the Commission ordered the parties to jointly file a stipulation listing any undisputed issues as well as the agreed upon resolution of those undisputed issues. The Commission explained that undisputed issues are issues that are not in dispute irrespective of Commission action on any other issues.[39] On May 11, 2020, Empire filed a pleading on behalf of the parties stating that by agreement of the parties participating in this proceeding the issues contained in the pleading were no longer disputed issues in this proceeding.[40]

On July 10, 2020, after the Report and Order was issued, but prior to its effective date, EDESR, EDRA, and Empire each filed motions for clarification asking that the Commission approve the undisputed issues' resolutions agreed to by the parties, and not objected to by OPC or any other party. OPC had until July 17, 2020, to respond to the motions for clarification. OPC did not file a response to the clarification motions.[41]

The Commission is not approving the Agreement as a resolution of this rate proceeding or as a resolution of any contested issue before the Commission. The Agreement is only a position statement, but no party opposes its positions on any issues that the parties agree are no longer in dispute. The Commission references the

[38] *Public Counsel's Objection to Parts of the Global Stipulation and Agreement*, filed April 16, 2020, pages 3-6.
[39] *Order to File a List of Issues No Longer in Dispute*, Issued May 7, 2020.
[40] *Response to Commission Order*, Filed May 11, 2020.
[41] *Order Directing Responses to Motions for Clarification and Motions for Rehearing*, Issued July 13, 2020, and Commission rule 20 CSR 4240-2.080 (13).

Agreement to recognize the location of the parties' resolutions of the undisputed issues. The parties have independently decided that the undisputed issues, for which the parties' resolutions of those issues are in the Agreement, remain undisputed regardless of how the Commission determines any other issues in this rate proceeding.

The parties have independently resolved the following issues:

Rate Design, Other Tariff and Data Issues:[42]

1. What should be the amount of the residential customer charge?
2. Should Empire continue its Low-Income Pilot Program as is, or modify it?
3. Should Empire be ordered to consolidate the PFM rate schedules into the GP/TEB rate schedule in a future proceeding?
4. Should Empire be ordered to incorporate shoulder months into the Special Contract / Praxair rate structures in the next rate proceeding?
5. Should Empire be ordered to work to incorporate shoulder months into the rate structures of all non-lighting rate schedules?
6. Should Empire be ordered to retain each of the following: Primary costs by voltage; Secondary costs by voltage; Primary service drops; Line extension by rate schedule and voltage; Meter costs by voltage and rate schedule
7. Should Empire be ordered to use of AMIs for near 100 percent sample load research as soon as is practical, but no more than 12 months after 90 percent of AMI are installed?

[42] Rate design, Other Tariff and Data Issues were resolved by the parties pursuant to the Agreement. In the parties' May 11, 2020, *Response to Commission Order*, undisputed Rate Design, Other Tariff and Data Issues are designated as Issue 2, subparts f-q and s-y, referencing the parties April 8, 2020, *Joint List of Issues*, which sets forth the parties original list of contested issues for Commission determination.

8. Should Empire be ordered to retain individual hourly data for future bill comparisons
9. Should Empire be ordered to retain coincident peak determinants for use in future rate proceedings
10. How should the amount collected from customers related to the SBEDR charge be billed, and should there be a separate line item on customers' bills?
11. By when should Empire move customers served on CB/SH that exceed the demand limits of those schedules to the appropriate rate schedule?
12. What, if any, revenue neutral interclass shifts are supported by the class cost of service study?
13. How should any residential revenue requirement increase or decrease be apportioned to the energy (kWh) rates?
14. What, if any, changes to the CB, SH, GP and TEB customer charge are supported by the class cost of service study?
15. What, if any, changes to the CB, SH, GP and TEB customer charge should be made in designing rates resulting from this rate case?
16. How should any CB and SH revenue requirement increase or decrease be apportioned to the energy (kWh) rates?
17. How should any GP and TEB revenue requirement increase or decrease be apportioned to the demand (kW) and energy (kWh) rates?
18. How should any LP revenue requirement increase or decrease be apportioned to the demand (kW) and energy (kWh) rates?

19. What, if any, changes to the current SC-P energy (kWh) rates should be made to align with Market Prices?

Fuel Adjustment Clause:[43]

20. What FAC-related reporting requirements should the Commission impose?
21. Should the Company provide any additional reporting requirements within its FAC monthly reporting in regards to MJMEUC?
22. Should any wind project costs or revenues flow through the FAC before the wind projects revenue requirements are included in base rates?
23. When should Empire be required to provide its quarterly FAC surveillance reports?

Energy Efficiency:[44]

24. Should Empire's cost of service include an amount for promoting energy efficiency and demand-side management?
25. If an amount remains in Empire's cost of service for energy efficiency, should EM&V be performed as was agreed to in Empire's last general rate case?

[43] Fuel Adjustment Clause issues not contested and determined by the Commission elsewhere in this order were resolved by the parties pursuant to the Agreement, and on pages 3-5 of the Agreement. In the parties' May 11, 2020, *Response to Commission Order*, undisputed FAC issues are designated as Issue 5, subparts b, the second sentence of d-ii, d-iii, and e., referencing the parties April 8, 2020, *Joint List of Issues*, which sets forth the parties original list of contested issues for Commission determination.

[44] Energy Efficiency issues have been resolved by the parties pursuant to paragraph 20 of the Agreement. In the parties' May 11, 2020, *Response to Commission Order*, undisputed Energy Efficiency issues are designated as Issue 15, referencing the parties April 8, 2020, *Joint List of Issues*, which sets forth the parties original list of contested issues for Commission determination.

Reliable Service:[45]

26. Is Empire providing reliable service? If not, what should the Commission do?

Estimated Bills:[46]

27. Should Empire be ordered to incorporate data into its monthly reports to Commission Staff regarding the number of estimated meter readings, the number of estimated meter readings exceeding three consecutive estimates, the number of bills with a billing period outside of 26 to 35 days, and the Company and contract meter reader staffing levels?
28. Should Empire be ordered to evaluate the authorized meter reader staffing level and take action to maintain adequate meter reader staffing levels in order to minimize the number of estimated bills?
29. Should Empire be ordered to initiate action to more clearly communicate on customer's bills when they are based on estimated usage?
30. Should Empire be ordered to ensure that all customers who receive estimated bills for three consecutive months receive the required communication regarding estimated bills and their option to report usage?
31. Should Empire be ordered to ensure that all customers who receive an adjusted bill due to underestimated usage are offered the required amount of time to pay the amount due on past actual usage?

[45] Reliable Service has been resolved by the parties pursuant to paragraph 10 of the Agreement. In the parties' May 11, 2020, *Response to Commission Order*, the undisputed Reliable Service issue is designated as Issue 22b, referencing the parties April 8, 2020, *Joint List of Issues*, which sets forth the parties original list of contested issues for Commission determination.

[46] Estimated Bill issues have been resolved by the parties pursuant to paragraph nine of the Agreement. In the parties' May 11, 2020, *Response to Commission Order*, undisputed Estimated Bills issues are designated as Issue 23, referencing the parties April 8, 2020, *Joint List of Issues*, which sets forth the parties original list of contested issues for Commission determination.

32. Should Empire be ordered to evaluate meter reading practices and take action to ensure that billing periods stay within the required 26 to 35 days, unless permitted by exceptions listed in the Commission's rule 20 CSR 4240-13.015.1(C)?
33. Should Empire be ordered to file notice within this case by September 1, 2020, containing an explanation of the actions it has taken to implement the above recommendations?

Retirement:[47]

34. Should Empire be required to externally fund, through a Rabbi Trust, its SERP benefits obligation?[48]
35. Should Empire be required to provide, to a designated EDRA contact, the following documents of The Empire District Electric Company in the years 2020-2026:

IRS filings (specifically Form 5500 for each plan),

Actuarial valuation reports,

Financial disclosures,

Annual funding notice to pension plan participants,

Annual health care premium and coverage letter to retirees,

[47] Retirement issues have been resolved by the parties pursuant to paragraphs 27-29 of the Agreement. In the parties' May 11, 2020, Response to Commission Order, undisputed Retirement issues are designated as Issue 45, referencing the parties April 8, 2020, Joint List of Issues, which sets forth the parties original list of contested issues for Commission determination.

[48] Paragraph 29 of the Agreement states that the EDESR and the Company shall discuss with Staff and OPC, in or prior to July of 2020, the possibility of external funding (Rabbi Trust) of SERP benefits. It also states that should an agreement be reached Empire will fund SERP benefits via a Rabbi trust within 30 days of execution of the written agreement. The Commission addresses this issue as part of its resolution of Issue 16, Pensions and post-employment benefits. The Commission has not approved the funding of a Rabbi trust as part of this general rate proceeding. The parties are not authorized to take any action inconsistent with the Commission's resolution of issue 16. The parties may present any agreement to fund a Rabbi trust for the Commission's consideration in Empire's next general rate proceeding.

FERC Form 1 and summary and full annual reports.

36. Should the company be required to designate a contact person for EDRA to contact regarding these matters?

The Commission need not resolve items that are not identified as contested issues. However, there may also be issues that parties request the Commission address in a certain manner for which no other party opposes the resolution. By ordering specific action on these issues that are no longer in dispute, the Commission will be providing guidance to the parties and directing action be taken consistent with this order. With their motions requesting clarification, it appears Empire, EDESR, EDRA are stating that the specific issues referenced in the May 11, 2020 Response to Commission Order are in this category of "undisputed issues" and not merely issues that have gone away and need not be addressed by the Commission. Having reviewed the related filings in the record and determined the unopposed terms in the Agreement to be reasonable resolutions of the undisputed issues identified in the May 11, 2020 Response to Commission Order, the Commission finds the undisputed issues should be resolved consistent with the terms of the Agreement unless otherwise specified in this order.

IV. Disputed Issues

1) Rate of Return—Return on Equity, Capital Structure, and Cost of Debt

Findings of Fact

13. The rate of return (ROR) is the overall cost of capital; that is, the cost of debt and the Commission-selected return on equity (ROE) weighted by the capital structure.[49]

[49] Ex. 101, Staff Direct Report, page 3.

14. An authorized ROE is a Commission-determined return granted to monopoly industries, allowing them the opportunity to earn fair and reasonable compensation for their investments.[50]

15. Cost of equity (COE) is a market-determined minimum return investors are willing to accept for their investment in a company, compared to returns on other available investments.[51]

16. COE is not directly observable; it must be estimated based upon both quantitative and qualitative information.[52]

17. A utility's COE is implied by the price investors are willing to pay for a share of stock.[53]

18. COE and ROE are not equivalent, a COE is determined by what investors are willing to pay for a share of stock, while Commission authorized ROEs have been consistently higher than COEs.[54]

19. Three financial analysts offered recommendations regarding an appropriate ROE. Robert B. Hevert testified on behalf of Empire. Hevert is a Partner and Rates, Regulation & Planning Practice Leader at ScottMadden Management Consultants. Prior to that Hevert was 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

[50] Ex. 101, Staff Direct Report, page 2.
[51] Ex. 101, Staff Direct Report, page 6.
[52] Ex. 10, Hevert Direct, page 15.
[53] Ex. 210, Murray Direct, page, 2
[54] Ex. 210, Murray Direct, page 2.

Massachusetts. He also holds the Chartered Financial Analyst designation.[55] Hevert recommends a ROE of 9.95 percent with a range of 9.80 percent to 10.60 percent.[56]

20. Peter Chari is employed as a Utilities Regulatory Auditor for the Financial Analysis Department of the Staff. He holds a Bachelor of Arts in Economics and a Master of Business Administration in Finance from North Central College. He was awarded the professional designation of Certified Rate of Return Analyst by the Society of Utility and Regulatory Financial Analysts.[57] Staff witness Chari recommends a ROE of 9.25 percent with a range of 9.05 percent to 9.80 percent.[58]

21. David Murray is employed as a Utility Regulatory Manager for OPC. Prior to employment with the OPC, Murray was the Utility Regulatory Manager of the Financial Analysis Department for Staff from 2009 through June 30, 2019. Murray started work at the Commission as a Financial Analyst in June 2000. Prior to that, he was employed by the Missouri Department of Insurance in a regulatory position. He holds a Bachelor of Science degree in Business Administration with an emphasis in Finance and Banking, and Real Estate from the University of Missouri-Columbia and a Master's degree in Business Administration from Lincoln University. In April 2007, he was awarded the professional designation of Certified Rate of Return Analyst by the Society of Utility and Regulatory Financial Analysts. He also holds the Chartered Financial Analyst designation.[59] Murray recommends a ROE of 9.25 percent with a range of 8.50 percent to 9.25 percent.[60]

[55] Ex. 36, Hevert Direct, Attachment A.
[56] Ex. 36, Hevert Direct, page 2.
[57] Ex. 101, Staff Direct Report, Appendix 1.
[58] Ex. 101, Staff Direct Report, pages 18-19.
[59] Ex. 210, Murray Direct, Schedule DM-D-1.
[60] Ex. 210, Murray Direct, page 2.

22. Common methods to determine a COE and an authorized ROE are the Discounted Cash Flow Models (DCF), Capital Asset Pricing Models (CAPM), risk premium models, and comparative earnings analyses.[61]

23. Each methodology has certain inherent disadvantages that may lead to unreasonable estimates. DCF's main disadvantage revolves around estimation of growth rate, and CAPM's main issue of concern is estimation of market risk premiums ("MRP").[62]

24. The constant growth DCF model assumes that an investor buys a stock for an expected total return rate, which is derived from cash flows received in the form of dividends plus appreciation in market price (the expected growth rate). The Constant Growth DCF model expresses the COE as the discount rate that sets the current price equal to expected cash flows.[63]

25. The Bond Yield Plus Risk Premium approach assumes that investors require a risk premium over the cost of debt as compensation for assuming the greater risk of common equity investment. The model is expressed as a bond yield plus equity risk premium.[64]

26. FERC determined that risk premium models (like the Bond Yield Plus Risk Premium) are less reliable that DCF and CAPM models.[65]

27. The CAPM is based on capital market theory that the total risk of a company consists of market (systematic) risk and business-specific (unsystematic) risk. Investors are only compensated for systematic risk because investors can avoid unsystematic risk by diversifying their portfolios. Systematic risks are unanticipated events in the economy,

[61] Ex. 108, Chari Rebuttal, page 2.
[62] Ex. 108, Chari Rebuttal, page 2.
[63] Ex. 36, Hevert Direct, page 47.
[64] Ex. 36, Hevert Direct, Glossary, page ii.
[65] Ex. 108, Chari Rebuttal, page 2.

such as economic growth, changes in interest rates, demographic changes, etc., that affect almost all assets to some degree. The required risk premium for incurring the market risk as it relates to the investment is determined by adjusting the market risk premium by the beta of the stock or portfolio. The adjusted risk premium is then added to a risk-free rate to determine the COE.[66]

28. Empire's witness Hevert used a Constant Growth DCF, a CAPM and Empirical CAPM (ECAPM), a Bond Yield Plus Risk Premium, and an Expected Earnings Analysis to determine Empire's recommended ROE.[67]

29. Staff's witness Chari used Constant Growth DCF and CAPM models for COE estimation and recommended ROE.[68]

30. OPC's witness Murray used a multi-stage DCF method, a CAPM model, and he performed simple and logical reasonableness checks of his COE estimates.[69]

31. All three financial analysts used DCF and CAPM models.

32. Gross Domestic Product (GDP) is the value of all finished goods and services produced within a country during a given period of time.[70]

33. Utility growth rates are generally consistent with the GDP growth rate.[71]

34. It is unlikely that utilities will grow at a higher rate than the overall economy, because it runs counter to basic economic principles that companies will grow at a rate consistent with the long-term growth rate of the overall economy over the long-term.[72]

[66] Ex. 210, Murray Direct, page 37-38.
[67] Ex. 36, Hevert Direct, page 4.
[68] Ex. 108, Chari Rebuttal, page 4.
[69] Ex. 210, Murray Direct, page 19.
[70] Ex. 36, Hevert Direct, Glossary, page ii.
[71] Ex. 101, Staff Direct Report, page 7.
[72] Ex. 108, Chari Rebuttal, page 7.

35. The long-term nominal GDP growth rate estimate is 4.1 percent (unadjusted for inflation).[73] A higher estimate of nominal GDP growth of 4.4 percent would also be reasonable.[74]

36. The projected long-term nominal GDP growth rate is a reasonable restriction for determining growth rates used to estimate the COE for a regulated electric utility.[75]

37. Hevert's constant growth DCF model assumes that his electric proxy group's dividends will grow perpetually at an average of 5.80 percent, a growth rate that is about 170 basis points higher than the estimated long-term growth rate for the general economy.[76]

38. The constant growth DCF model also assumes dividend payments. Staff found 84 companies that do not pay dividends within the S&P 500 company list that Hevert used. This inflated Hevert's MRPs, which resulted in an inflated COE.[77]

39. Hevert's recommended ROE of 9.95 percent is 56 basis points higher than the national average of authorized ROE.[78] The Commission finds this ROE would be excessive because his constant growth DCF results are based on unsustainable long-term growth rates, and both his DCF and CAPM include inflated MRPs.[79]

40. Staff notes that if Hevert had calculated MRPs correctly his CAPM COE estimates would range from 6.02 percent to 7.60 percent, not 8.66 percent to 9.76 percent, and his ECAPM COE estimates would range from 6.88 percent to 8.50 percent,

[73] Ex. 108, Chari Rebuttal, page 7.
[74] Ex. 101, Staff Direct Report, page 16.
[75] Ex. 101, Staff Direct Report, page 16.
[76] Ex. 108, Chari Rebuttal, page 7.
[77] Ex. 108, Chari Rebuttal, pages 9-10.
[78] Ex. 108, Chari Rebuttal, pages 6-7.
[79] Ex. 108, Chari Rebuttal, pages 8-10.

not 10.19 percent to 11.05 percent.[80] In addition, ECAPM is not known as a generally accepted method used by investors to estimate the COE to apply to expected cash flows/dividends from utility stocks.[81]

41. The projected long-term nominal GDP growth rate is a reasonable restriction for determining growth rates used to estimate the COE for a regulated electric utility.[82]

42. Staff's witness Chari used a more reasonable constant growth rate of 4.20 percent to 5.00 percent to determine a COE estimate of between 7.34 percent to 8.14 percent.[83]

43. Staff determined that an authorized ROE of 9.25 percent would be appropriate[84]

44. OPC's COE estimate is between 5.35 percent to 6.75 percent.[85]

45. OPC's witness Murray used a growth rate range of 2.85 percent to 3 percent,[86] which is also less than the nominal GDP growth rate.

46. Both Staff and OPC's financial analysts agree that a 9.25 percent authorized ROE is reasonable. [87] The Commission finds this ROE to be reasonable and based upon realistic economic growth.

[80] Ex. 108, Chari Rebuttal, page 9-10.
[81] Ex. 211, Murray Rebuttal, page 11.
[82] Ex. 101, Staff Direct Report, page 16.
[83] Ex. 101, Staff Direct Report, page 16.
[84] Ex. 108, Chari Rebuttal, page 19.
[85] Ex. 210, Murray Direct, pages 39-40.
[86] Ex. 212, Murray Surrebuttal/True-Up Direct, page 25.
[87] Ex. 101, Staff Direct Report, page 18; Ex, 210, Murray Direct, page 42; and Ex. 213, Murray Supplemental Surrebuttal, page 3.

47. The Commission has used the "zone of reasonableness standard" for setting an authorized ROE. The point from which the zone of reasonableness extends is a recent industry average of authorized ROE.[88]

48. The 2019 national average of authorized ROE is 9.39 percent.[89]

49. Capital structure represents how a company's assets are financed. Capital structure typically consists of common equity, long-term debt, and short-term debt.[90]

50. Empire recommends the Commission adopt its true-up capital structure, which consists of 53.07 percent common equity and 46.93 long-term debt.[91]

51. Staff recommends the Commission use Empire's capital structure, which consists of 52.43 percent common equity and 47.57 percent long-term debt.[92]

52. OPC recommends the Commission use LUCo's adjusted capital structure consisting of 46 percent common equity and 54 percent long-term debt.[93]

53. In File No. EM-2016-0213 the Commission evaluated a joint application requesting approval of an agreement and plan of merger in which Liberty Sub Corp would merge with and into Empire and under which Liberty Utilities (Central) Co. would acquire all the common stock of Empire.

54. An unopposed Stipulation and Agreement was submitted In File No. EM-2016-0213 on August 23, 2016 (Merger Stipulation).

55. The Commission's *Order Approving Stipulations and Agreements and Authorizing Merger Transaction* issued on September 7, 2016, in File No. EM-2016-0213

[88] Ex. 210, Murray Direct, page 17.
[89] Ex. 108, Chari Rebuttal, pages 6-7.
[90] Ex. 210, Murray Direct, page 5.
[91] Ex. 7, Richard True-up direct, page 21.
[92] Ex. 149, Staff's Recommended Allowed Rate of Return as of September 30, 2019, replacing table 1 of Staff's Direct Report.
[93] Ex. 212, Murray Surrebuttal/True-Up Direct, page 35.

approved the Merger Stipulation finding that under its terms, including the reasonable conditions imposed on the merger transactions contained therein, the merger transaction at issue was not detrimental to the public and should be approved. Condition 5 of the Merger Stipulation states that "If Empire's per books capital structure is different from that of the entity or entities in which Empire relies for its financing needs, Empire shall be required to provide evidence in subsequent rate cases as to why Empire's per book capital structure is the most economical for purposes of determining a fair and reasonable allowed rate of return for purposes of determining Empire's revenue requirement."[94]

56. Staff and OPC relied on the conditions contained in the Merger Stipulation in File No. EM-2016-0213 to protect Empire and its customers from detriments that could occur due to Empire's financing needs being consolidated with the rest of APUC's regulated utilities.[95]

57. Empire creates consolidated financial statements that include all of its operations, including its gas distribution subsidiary, Empire Gas. Empire also creates deconsolidated financial statements in which it breaks out Empire Gas' distribution operations from Empire's electric, water and non-regulated operations.[96]

58. Initially both Empire's and Staff's per book capital balances for Empire were based upon Empire's deconsolidated financial statements.[97] As of September 30, 2019, based upon its per books balance sheet LUCo had 53.00 percent common equity and 47.00 percent long-term debt, and based upon its deconsolidated financial statements Empire had 52.90 percent common equity and 47.10 percent long-term debt.[98] Staff's

[94] Ex. 108, Chari Rebuttal, pages 13-14.
[95] Ex. 212, Murray Surrebuttal and True-up Direct, page 35.
[96] Ex. 211, Murray Rebuttal, page 7.
[97] Ex. 211, Murray Rebuttal, page 7.
[98] Ex. 108, Chari Rebuttal, page 14.

witness, Mr. Chari, subsequently acknowledged that he had inadvertently utilized Empire's deconsolidated capital structure in his analysis, and he clarified that Empire's consolidated capital structure was actually 52.49 percent common equity and 47.51 percent long-term debt.[99]

59. Whether or not a capital structure is economical depends on the equity ratio in the capital structure. All things being equal, the higher the equity ratio, the less economical the capital structure. This is because equity costs more than the other portions of the capital structure such as debt and preferred stock..[100]

60. Based upon LUCo's per books balance sheet and Empire's financial statements Staff determined that Empire had the more economical structure based on the equity ratio.[101]

61. LUCo's per books balance sheet does not include off balance sheet debt supported by LUCo's assets.[102]

62. Before APUC acquired Empire, Empire financed and operated itself and all its affiliates as one entity, that is Empire did not finance and operate Empire Gas as a stand-alone entity; therefore, the financial community assessed Empire's risk on a consolidated level, including that of Empire Gas.[103] Thus, Empire's consolidated financial statements should be used to calculate Empire's capital structure.[104]

63. When Empire was a stand-alone company, it had its own financing functions and direct access to capital markets for short and long-term debt. Empire now relies on

[99] Ex. 109 Chari Surrebuttal, pages 2 and 12.
[100] Ex. 108, Chari Rebuttal, page 14, and Ex. 210, Murray Direct, page 9.
[101] Ex. 108, Chari Rebuttal, page 14.
[102] Ex. 211, Murray Surrebuttal/True-Up Direct, pages 11-12.
[103] Ex. 211, Murray Surrebuttal/True-Up Direct, pages 11-12.
[104] Ex. 211, Murray Surrebuttal/True-Up Direct, pages 11-12.

LUCo for all of its financing functions, which includes access to short-term debt and long-term debt.[105]

64. LUCo has a $500 million credit facility for its short-term debt. LUCo relies on APUC's financing subsidiary, Liberty Utilities Finance GP 1 (LUF), for its long-term debt financing needs. LUF issues debt directly to third-parties on behalf of LUCo and intermediate entities between LUCo and APUC. LUCo guarantees all debt issued by LUF, which includes debt that was issued for the sole purpose of buying equity in LUCo.[106]

65. Empire no longer has its own credit facility. Empire had its own $200 million credit facility until February 23, 2018, when LUCo increased the capacity under its consolidated credit facility to $500 million.[107]

66. Empire's commercial paper investors rely on LUCo's credit facility as a backstop to Empire's commercial paper obligations. Empire's commercial paper program has not been formally terminated as of January 3, 2020, but it will eventually be terminated after Illinois and Massachusetts finalize their approval of the Liberty Utilities Money Pool Agreement.[108]

67. LUCo unconditionally guarantees $395 million in off balance sheet debt ($135 million issued by Liberty American and $260 million issued by LUF)[109], which is not shown in its' per book value. This off balance sheet debt should be considered when determining whether LUCo's or Empire's capital structure is more economical.[110]

[105] Ex, 210, Murray Direct, pages 6 - 7.
[106] Ex, 210, Murray Direct, pages 7, lines 6-11.
[107] Ex. 211, Murray Rebuttal, page 38.
[108] Ex. 211, Murray Rebuttal, page 38.
[109] Ex. 212, Murray Surrebuttal/True-Up Direct, page 10, lines 6 – 10, 14-16.
[110] Ex. 212, Murray Surrebuttal/True-Up Direct, page 12.

68. The rating agencies recognize the $395 million in guarantees as off balance sheet debt and adjust LUCo's debt to include it.[111]

69. LUCo uses the off balance sheet debt to fund equity infusion in LUCo, which is ultimately used to fund its regulated utilities.[112]

70. Therefore since LUCo used the $395 million debt to record a higher equity balance on LUCo's balance sheet, not only should this debt be added to the debt recorded on LUCo's balance sheet, but it should also be subtracted from LUCo's equity balance.[113]

71. After adjusting for the $395 million in off balance sheet debt, LUCo's common equity ratio is 46 percent,[114] which is a more economical capital structure than Empire's.[115]

72. The Commission has a history of using LUCo's capital structure for LUCo's affiliate companies. The Commission approved LUCo's capital structure for two of Empire's affiliates, Liberty Utilities (Midstates Natural Gas) and Liberty Utilities LLC (Missouri Water), in File Nos. GR-2014-0152 and WR-2018-0170.[116]

73. Empire is recommending a cost of debt of 4.85 percent, based on Empire's recorded cost of debt at January 1, 2020.[117]

74. Staff adjusted its recommended cost of debt to reflect OPC witness Schallenberg's concern about LUCo's $90 million dollar loan to Empire not being in compliance with the Affiliate Transaction Rule as the interest charged to Empire exceeds

[111] Ex. 212, Murray Surrebuttal/True-Up Direct, page 17.
[112] Ex, 210, Murray Direct, pages 10, Line 12.
[113] Ex, 210, Murray Direct, pages 10, Lines 15 - 17.
[114] Ex, 210, Murray Direct, pages 10, line 20.
[115] Ex, 210, Murray Direct, pages 10, line 24.
[116] Ex. 212, Murray Surrebuttal/True-Up Direct, page 20.
[117] Ex. 7, Richard True-up direct, page 21.

LUCo's short-term debt rate used to fund the loan. Staff adjusted its embedded cost of debt recommendation from 4.84 percent to 4.57 percent.[118]

75. OPC's witness Murray matched the cost of debt to the capital structure that is actively managed for and used to obtain financing, which is LUCo's.[119] This is appropriate because LUCo's cost of debt matches the financial risk embedded in LUCo's adjusted capital structure of 46 percent common equity and 54 percent long-term debt.[120]

76. Empire's debt financing is now being provided by LUCo and LUF, therefore Empire's credit ratings are not a necessary component for it to access capital.[121]

77. OPC's recommended cost of debt is 4.65 percent based on LUCo's consolidated cost of debt.[122] OPC's recommended cost of debt does not include any affiliate notes, hence no adjustments are necessary.[123]

78. The Commission finds use of LUCo's cost of debt appropriate because it best aligns with the financial risk embedded in LUCo's capital structure.[124]

Conclusions of Law

K. In determining the rate of return, the Commission must consider Empire's capital structure and cost of debt, 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 capital, or the ROE. Estimating the cost of common equity capital is a difficult task, as academic commentators have recognized.[125]

[118] Ex. 130, Chari Surrebuttal, pages 13-14.
[119] Ex. 212, Murray Surrebuttal/True-Up Direct, page 23; and Ex. 299-17, OPC Reply to Testimony Responding to Commission Questions of David Murray, pages 1-3.
[120] Ex. 210, Murray Direct, pages 14.
[121] Ex. 210, Murray Direct, pages 14.
[122] Ex. 211, Murray Rebuttal, page 10.
[123] Ex. 212, Murray Surrebuttal/True-Up Direct, page 23.
[124] Ex. 211, Murray Rebuttal, page 10; and Ex. 211, Murray Surrebuttal/True-Up Direct, page 23.
[125] See Phillips, *The Regulation of Public Utilities*, Public Utilities Reports, Inc., p. 394 (1993).

Determining a rate of ROE is imprecise and involves balancing a utility's need to compensate investors against its need to keep prices low for consumers.[126]

L. Missouri court decisions recognize that the Commission has flexibility in fixing the rate of return, subject to existing economic conditions.[127] "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."[128] Moreover, the United States Supreme Court has instructed the judiciary not to interfere when the Commission's rate is within the zone of reasonableness.[129]

Decision

Three financial experts offered testimony in this rate case. Empire's witness Hevert's determination of a recommended ROE of 9.95 percent is excessive. His constant growth DCF ROE relied on an unreasonable assumption that utility growth would substantially exceed the long-term growth rate of the United States economy. This assumption is not credible even under periods of normal economic growth. Both his DCF and CAPM calculations utilized inflated MRPs. Further, his reliance on an ECAPM was not reasonable, as ECAPM is not known as a generally accepted method used by

[126] *State ex rel. Pub. Counsel v. Pub. Serv. Comm'n*, 274 S.W.3d 569, 574 (Mo. Ct. App. 2009).
[127] *State ex rel. Laclede Gas Co. v. Public Service Commission*, 535 S.W.2d 561, 570-571 (Mo. App. 1976).
[128] *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*.
[129] *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' ").

investors to estimate the COE to apply to expected cash flows/dividends from utility stocks.

The remaining two financial analysts each independently arrived at a reasonable ROE for Empire of 9.25 percent, though 9.25 percent was at the top of OPC witness Murray's range and closer to the bottom of Staff witness Chari's range. Both analysts used reasonable growth rates and risk premiums in their analysis to determine their respective ROE recommendations. The Commission finds the testimony of Mr. Murray and Mr. Chari more credible than Mr. Hevert's, and their recommended 9.25 percent ROE to be appropriate.

If Empire's capital structure is different than that of the entity or entities it relies on for its financing needs, Condition 5 of the Merger Stipulation approved in File No. EM-2106-0213 requires Empire to provide evidence in its rate cases as to why its per book capital structure is the most economical for purposes of determining a fair and reasonable allowed rate of return. A primary reason the parties included this requirement was to protect Empire and its customers from detriments that could occur due to Empire's financing needs being consolidated with the rest of APUC's regulated utilities.

Although Empire and Staff arrived at similar positions and both found Empire's capital structure to be the most economical for purposes of complying with Condition 5 of the Merger Stipulation, both of their analysis are flawed and not reliable. Their capital structures were similar because they both inappropriately used LUCo's per book balance sheet capital structure that did not reflect LUCo's off balance sheet debt. Staff determined Empire's capital structure was appropriate based on Empire having the appearance of a more economical capital structure as determined by its per book value capital structure when compared to LUCo's. The Commission finds OPC's witness Murray more

persuasive than either Staff's or Empire's witnesses with regard to capital structure. He appropriately utilized Empire's consolidated capital structure and included LUCo's off balance sheet debt in his capital structure calculations. LUCo's adjusted capital structure is appropriate to use for setting rates in this case because it is more economical than Empire's. Further, use of the affiliated utility's capital structure is not the capital structure the Commission has historically used for other Liberty Utilities companies. Based on this analysis and supported by the facts set out above, LUCo's adjusted capital structure of 46 percent common equity and 54 percent long-term debt is the appropriate capital structure to use in setting rates in this case.

Based upon its determination related to capital structure, the Commission further finds that the cost of long-term debt should be based on LUCo's consolidated embedded cost of long-term debt of 4.65 percent, because it best aligns with the financial risk embedded in LUCo's capital structure.

2) Rate Design, Other Tariff and Data Issues

a) Should the GP and TEB rate schedules be fully consolidated?
b) Should the CB and SH rate schedules be partially consolidated?
c) Should "grandfathered" multifamily customers taking service through a single meter be given the option of being served on the CB/SH rate schedule?
d) How should Empire's revenue requirement be allocated amongst Empire's customer rate classes (Class revenues responsibilities)?
e) How should the rates for each customer class be designed?
f) How should any revenue requirement increase or decrease be allocated to each rate class?
g) How should production-related costs be allocated to each rate class?
h) How should plant accounts 364, 366 and 368 be classified?
i) How should primary and secondary distribution plant facility costs be allocated to each rate class?
j) How should General plant facility costs be allocated to each rate class?

Findings of Fact

79. Empire's current rate structure includes base rates, a FAC (fuel adjustment clause) factor, Energy Efficiency Cost Recovery (EECR) charge, and a tax reform credit.

The base rates include monthly customer charges, energy charges, and demand charges. For some rate classes, the energy charges vary by season.[130]

80. Costs included in a customer charge are the costs necessary to make electric service available to the customer regardless of the level of electric service utilized. The costs can include monthly meter reading, billing, postage, customer accounting service expenses, as well as distribution.[131]

81. Energy charges are charges based on the amount of energy used by a customer. Unlike a customer charge, the energy charge will fluctuate based on the kilowatt hour (kWh) of usage and the rate per kWh. Blocks are used to identify when a specific rate per kWh will be charged for a certain level of usage. For instance, while one rate may be applied in a block for usage of 0-600 kWhs, a higher or lower rate may apply to the block of usage above 600 kWh.[132]

82. Empire's current rate design is that contained in the compliance tariffs filed on August 15, 2016, as substituted on August 26, 2016, and approved to become effective as of September 14, 2016 in its last rate case, File No. ER-2016-0023. [133]

83. A Class Cost of Service (CCOS) study is an analysis that apportions a utility's allowed costs to provide service among its various customer classes. The total cost allocated to a given class represents the costs that class would pay to produce an equal rate of return to other classes.[134]

[130] Ex. 26, Lyons Direct, page 5.
[131] Ex. 104, Staff Class Cost of Service Report, page 14.
[132] Ex. 104, Staff Class Cost of Service Report, pages 14-15. Ex. 101, Staff Direct Report, page 33.
[133] Order Approving Compliance Tariffs, issued in File No. ER-2016-0023 on September 6, 2016.
[134] Ex. 208, Marke Rebuttal, page 2.

84. Three CCOS studies were prepared by Staff, Empire and MECG.[135] None of these CCOS studies are reliable due to the unavailability of reliable data needed to establish class and system peaks and billing determinants, and due to a large number of estimated bills.[136] For example, Empire's peak data, which is the basis for the vast majority of the costs allocated in a CCOS, did not appear reasonable.[137]

85. In the past Staff employed an in-house method to allocate costs but because of a lack of data Staff was unable to collect the information necessary for its direct filing.[138]

86. Using Staff's method a CCOS study can normally be assumed to be accurate to around 5 percent plus or minus of each studied class's revenue requirement. However, due to data reliability concerns and large percentages of estimated bills, that is not true in this case.[139]

87. Staff recommends that the General Power (GP) and Total Electric Building (TEB) rate schedules be consolidated because there is no apparent cost-related distinction between them.[140]

88. Empire recognizes that there are some benefits to consolidating the GP and TEB rate schedules, which they identified as[141]:

a. Schedules GP and TEB have identical customer charges and rate structures.

b. Schedules GP and TEB have a similar cost of service.

[135] Ex. 104, Staff Class Cost of Service Report; Ex.26, Direct Testimony of Timothy S. Lyons; Ex. 650, Direct Testimony of Kavita Maini.
[136] Ex. 120, Kliethermes Rebuttal, pages 2-4, and Ex. 121, Lange Rebuttal, page 21.
[137] Ex. 104, Staff Class Cost of Service Report, page 25.
[138] Ex. 104, Staff Class Cost of Service Report, page 26.
[139] Ex. 136, Lange Surrebuttal, page 13.
[140] Ex. 104, Staff Class Cost of Service Report, pages 3 and 18.
[141] Ex. 28, Lyons Rebuttal CCOS, page 14.

c. Consolidating rates and charges simplifies the Company's rate management and customer communication.

89. Empire's primary concern with the consolidation of GP and TEB rate schedules is customer bill impacts and whether some customers may experience significant bill increases as a result of the change due to the consolidation of GP and TEB rate schedules.[142]

90. Staff recommends the Commercial (CB) and Space Heating (SH) rate schedules be partially consolidated except the charge for non-summer usage in excess of 700 kWh per customer per month.[143]

91. Empire recognizes that there are some benefits to consolidating the CB and SH rate schedules, which they identified as[144]:

a. Schedules CB and SH have identical rate structures and customer charges.

b. The cost of service differences between Schedules CB and SH can be recognized by maintaining distinct winter tail block rates.

c. Potential bill impact concerns related to the proposed rate changes can be addressed by maintaining distinct winter tail block rates.

d. Consolidating rates and charges simplifies the Company's rate management and customer communication.

92. Empire's primary concern with the partial consolidation of CB and SH rate schedules is the customer bill impacts and whether some customers may experience

[142] Ex. 28, Lyons Rebuttal CCOS, page 14.
[143] Ex. 121, Lange Rebuttal, page 22.
[144] Ex. 28, Lyons Rebuttal CCOS, pages 13 - 14.

significant bill increases as a result of the change due to the consolidation of CB and SH rate schedules.[145]

93. Commission Rule 20 CSR 4240-20.050.2 requires that multiple-family dwellings (apartments) built after June 1, 1981, be separately metered. Multiple-family buildings built before June 1, 1981, are grandfathered and continue to be metered from one meter (master metered).[146]

94. Staff has proposed that Empire's tariff be modified to allow master metered customers the option of being served on the CB tariff instead of the Residential tariff.[147]

95. Multiple-family buildings built prior to June 1, 1981, that are master metered are served on the residential tariff and their bill calculated by multiplying the customer charge and KWh block by the number of dwelling units.[148] Because the customer charge is multiplied by the number of dwelling units, the bill may contain customer charges for unoccupied dwelling units.

96. After Advanced Metering Infrastructure (AMI) is set up, Empire will be able to collect better customer usage data. Having this data will improve the quality of their load research and revenue data, which will allow them to implement rate schedules with time variant rate structures.[149]

97. Staff's CCOS report showed the Residential class is contributing within 5 percent of its cost of service, however Staff has acknowledged that its CCOS in this case cannot be assumed to be accurate to within 5 percent plus or minus per class.[150]

[145] Ex. 28, Lyons Rebuttal CCOS, page 13-14.
[146] Commission Rule 20 CSR 4240-20.050.2.
[147] Ex.104, Staff Class Cost of Service Report, page 34.
[148] Ex.104, Staff Class Cost of Service Report, page 34.
[149] Ex. 121, Lange Rebuttal, page 21.
[150] Ex.104, Staff Class Cost of Service Report, page 32; and Ex. 136, Lange Surrebuttal, page 13.

98. Allocation consists of assigning rate base and expense items to rate classes based on the factors that reflect their underlying cost of service.[151]

99. In the past Staff employed an in-house method to allocate costs but because of a lack of data Staff was unable to collect the information necessary for its direct filing.[152]

100. Staff proposed various rates for each customer class; some included maintaining the current rates.[153]

101. An overall goal of rate design is to minimize inter-class subsidies. The revenue requirement should generally be allocated among the customer rate classes in a manner that reflects an aggregate movement toward the system ROR. This is accomplished by assigning a larger increase to classes that produce a lower ROR than the system ROR.[154]

102. MECG proposes that any rate decrease for the LP and, GP and SC-P rate classes be reflected by reducing both blocks of the energy charge of each class. All other charges (customer and demand charges) used for the collection of fixed costs would remain at current levels. [155] If a rate increase is ordered, MECG proposes that energy charges should remain at current levels and the demand charges be proportionally increased to correct the over recovery of fixed costs from the energy charges.[156]

103. Empire supports MECG's recommendation to apply any rate increases for the LP rate class to the billing demand and facility charges and to apply any rate

[151] Ex. 26, Lyons Direct, page 10.
[152] Ex. 104, Staff Class Cost of Service Report, page 26.
[153] Ex.104, Staff Class Cost of Service Report, pages 14-23.
[154] Ex. 26, Lyons Direct, page 28.
[155] Ex. 350, Maini Direct, page 36.
[156] Ex. 350, Maini Direct, page 36.

decreases to the energy charges. Empire supports MECG's recommendation to apply any rate decreases to the energy charges.[157]

104. Empire anticipates filing its next rate case in the third quarter of 2020.[158]

105. The appropriate allocation method for production-related costs will vary case-to-case with utility characteristics and data availability.[159]

106. Allocation consists of assigning rate base and expense items to rate classes based on the factors that reflect their underlying cost of service.[160]

107. Customer use of utility-owned equipment is related to the voltage needs of the customer. Before allocating distribution plant costs to customer rate classes, the individual distribution plant accounts are classified between customer and demand related costs. Demand-related costs are divided between primary demand, reflecting customers served at primary voltage, and secondary demand, reflecting customers served at secondary voltage.[161]

108. Distribution plant Accounts 364 through 370 involve both demand-related and customer-related costs. The customer-related component of distribution facilities - the number of poles, transformers, meters, and miles of conductor - are directly related to the number of customers on the utility's system, but the size of each of these items are associated with the level of energy that they deliver over time. The amounts in distribution system accounts need to be allocated between customer-related and demand-related classifications.[162]

[157] Ex. 28, Lyons Rebuttal CCOS, page 10.
[158] Ex. 1017, Richard Supplemental, page 12.
[159] See Staff's Position Statement, P. 13, filed April 17, 2020.
[160] Ex. 26, Lyons Direct, page 10.
[161] Ex.104, Staff Class Cost of Service Report, page 27-28.
[162] Ex.104, Staff Class Cost of Service Report, page 28.

109. Empire used the Minimum-Size Method to calculate the customer related component of accounts 364, 366, and 368. The Minimum-size Method assumes that a minimum sized distribution system can be built to serve minimum demand requirements of customers. The minimum system costs are allocated to each rate class based on the number of customers. Distribution plant in excess of the minimum system reflect the cost of serving customer peak demands. Peak demand costs are also allocated to each rate class based on customer peak demands.[163]

110. Staff used the Zero-Intercept Cost Minimum method to calculate the customer related component of Accounts 364, 366, and 368. The zero-intercept cost study tries to identify the portion of plant related to a hypothetical no-load state. It relates installed cost to current carrying capacity or demand rating, and creates a curve for various sizes of the equipment involved, using regression techniques, and extends the curve to a no-load intercept. The cost related to the zero-intercept is the customer related component.[164]

111. For the remaining classification of Account 364, Staff relied on Empire's study provided within its workpapers.[165]

112. Staff used Empire's cost of $6.90 per foot to calculate the customer-related portion of plant Account 366. The remaining classification of Account 366 relied upon Empire's study provided within its workpapers.[166]

113. For the remaining classification of Account 368, Staff relied on Empire's study provided within its workpapers.[167]

[163] Ex. 26, Lyons Direct, pages 17-18.
[164] Ex.104, Staff Class Cost of Service Report, page 28.
[165] Ex.104, Staff Class Cost of Service Report, page 28.
[166] Ex.104, Staff Class Cost of Service Report, page 29.
[167] Ex.104, Staff Class Cost of Service Report, page 29.

114. Staff allocated the costs of the primary distribution facilities based on the sum of each class's coincident peak demands measured at primary voltage for each month of the test period. Staff only allocated distribution primary costs to those customers that used these facilities.[168]

115. Staff allocated the costs of the secondary distribution system, including line transformers, based on the sum of each class's coincident peak demands at secondary voltage.[169]

116. Empire allocates general plant related costs based on the composite allocation of all labor-related production, transmission, distribution, customer accounts, and customer service O&M expenses. Empire states that this allocation methodology is well established in industry literature and is consistent with the Company's prior rate case filing.[170]

117. Staff relies on the Regulatory Assistance Project (RAP), *Electric Cost Allocation for a New Era* to support its analysis of allocations. General plant costs support all of a utility's functions.[171]

118. Staff maintains its class revenue responsibility and rate design variations as a reasonable outcome in this case, regardless of the unavailability of a typically reliable CCOS from any party.[172]

[168] Ex.104, Staff Class Cost of Service Report, page 29.
[169] Ex.104, Staff Class Cost of Service Report, page 29.
[170] Ex. 26, Lyons Direct, page 27.
[171] Ex. 104, Staff Class Cost of Service Report, Appendix 3, page 42.
[172] Ex. 136, Lange Surrebuttal, page 13.

Conclusions of Law

M. Empire has the burden of proof to show that its proposed tariffs are just and reasonable, including the reasonableness of its rate design.[173] Just because a company derives a higher rate of return from one class than another does not necessarily render those rates unjust or unreasonable.[174]

N. Commission rule 20 CSR 4240-20.050(2), states that each residential and commercial unit in a multiple-occupancy building, construction of which has begun after June 1, 1981, shall have installed a separate electric meter for each residential or commercial unit.

O. The Public Utility Regulatory Act of 1978, 16 U.S.C. 2601, requires that individual meters be installed in new buildings to encourage the conservation of energy by the occupants of those buildings. This is codified in Missouri law in the Commission's Rule 20 CSR 4240-20.050(2).

P. Empire's current tariff's Residential Service (RG) Schedule states that if the RG schedule is used for service through a single meter to multiple-family dwellings within a single building, each Customer charge and kWh block will be multiplied by the number of dwelling units served in calculating each month's bill. It also provides that service is furnished for the sole use of the Customer and will not be resold, redistributed or submetered, directly or indirectly.[175]

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[173] *See, e.g., State ex rel. Monsanto Company v. Public Service Commission,* 716 S.W.2d 791 (Mo. 1986) "Laclede filed the tariffs here in question using the existing rate design. In the suspension order and notice of proceedings dated January 18, 1983, the Commission noted that the Company bore the burden of proof before the Commission and ordered the Company 'to provide evidence and argument sufficient for the Commission to determine . . . the reasonableness of the Company's rate design.'" *Id.* at 795. See also *In re Empire District Electric Company*, 13 Mo P.S.C. 3d 350, Commission File No. ER-2004-0570, Report and Order (March 10, 2005).

[174] *Midwest Gas Users Ass'n v. Kansas SCC,* 595 P.2d 735, 747 (Kan. App. 1979).

[175] PSC Mo. No. 5, Sec. 1, 19th Revised Sheet No 1.

Decision

There are potential advantages to consolidating the GP and TEB rate schedules and to partially consolidating the CB and SH rate schedules, but at this time the billing impact of those changes is unknown. Staff's assertions that the billing impacts would be mitigated are based upon Staff's revenue requirement and CCOS study. However, Staff has similarly indicated that none of the CCOS studies submitted in this case are reliable for ratemaking. Therefore, the Commission finds that it is not appropriate to consolidate rate schedules at this time based on the questionable accuracy of the CCOS studies. Since Empire has indicated that it will file a rate case in the third quarter of 2020, the Commission will order Empire to submit an impact analysis regarding the alignment of the CB and SH, and GP and TEB rate schedules in its next rate case.

Some apartment buildings built before June 1, 1981, receive service from Empire through a single meter. Those buildings' bills are generated by multiplying the customer charge and kWh blocks by the number of dwelling units in the building. This simulates the charges that would be paid in a building with individual meters for each dwelling unit. Empire's tariff states that service is furnished for the sole use of the customer and will not be resold or redistributed. This means that no portion of the bill can be collected by the building owner/landlord from tenants for utilities, and the property owner/landlord will pay a monthly customer charge on unoccupied dwelling units. There may be advantages to these customers having the option of being billed under the CB tariff. The Commission will order Empire to modify its tariff to permit master-metered customers the option of being served on the CB tariff instead of the Residential tariff.

The quality of the CCOS studies used by the parties in this rate case is such that those studies are not sufficiently accurate for the purpose of significantly altering Empire's

current rate design. The large number of estimated bills and the lack of confidence in any CCOS study make it difficult to determine the appropriate rate design revenue requirement allocations. Therefore, the Commission finds that it is not appropriate to make any changes to the revenue requirement allocations at this time. The issue of the appropriate residential customer charge was resolved by the parties and in not an issue in dispute in this proceeding. The current residential customer charge will remain in effect. Based on this analysis, and supported by the facts set out above, the Commission determines that Empire has not met its burden to establish that its proposed changes to rate design are reasonable. Staff's CCOS is not reliable, so there is insufficient evidence to justify changing the current allocations for class revenue responsibilities. The Commission finds that it is appropriate to apply any revenue increase or decrease to the energy charge and not the customer charge. Any increase or decrease should be applied to each energy block in proportion to the revenue generated by that block. Additionally the Commission determines that any decrease for the LP and GP rate classes shall reduce the energy blocks of each class.

Both Staff and Empire described their methods of classifying accounts 364, 366, and 368. Empire appears to want the Commission to endorse a methodology for classifying these accounts and allocating primary and secondary distribution as well as general plant facility costs. The Commission agrees with Staff that no specific allocation method should be ordered or endorsed because the appropriate method will vary from case to case based on the utility's characteristics and available data. However, because of the concerns about the reliability of the data involved, the Commission determines that Empire has not met its burden of proof and will adopt the account classifications and the

allocation of primary and secondary plant facility costs as well as general plant facility costs as determined by Staff.

3) Jurisdictional Allocation Factors

Findings of Fact

119. Jurisdiction allocation factors are used to allocate demand-related and energy-related costs between each of the retail jurisdictions served by Empire; Missouri, Arkansas, Oklahoma, and Kansas, as well as the wholesale jurisdiction in Missouri and Kansas.[176]

120. Generation units and transmission lines are planned, designed, and constructed to meet a utility's anticipated system peak demands, plus required reserves. Accordingly, the contribution of each of Empire's three jurisdictions: Missouri Retail Operations, Non-Missouri Retail Operations, and Wholesale Operations, coincident to the system peak demand, i.e., each jurisdiction's demand at the time of the system peak, is the appropriate basis on which to allocate these facilities. Thus, the term coincident peak refers to the load, generally in kWs or megawatts (MW), in each of the jurisdictions that coincides with Empire's overall system peak recorded for the time period in the corresponding analysis.[177]

121. Demand refers to the rate at which energy is delivered to a system to match the customer's load requirements. Staff utilized a twelve coincident peak methodology to determine demand allocation.[178] Use of a twelve coincident peak method is appropriate

[176] Ex. 101, Staff Direct Report, pages 32-33.
[177] Ex. 101, Staff Direct Report, page 33.
[178] Ex. 101, Staff Direct Report, page 33.

for an electric utility, such as Empire, that experiences similar system peak demands in both summer and winter months.[179]

122. Staff calculated the demand allocation factor for Missouri at .8393, for non-Missouri at .1065, and for wholesale operations at .0542.[180]

123. Energy allocation includes variable expenses, like fuel, that are allocated to jurisdictions based upon energy consumption. The energy allocation factor is a ratio of normalized annual kWh used by each jurisdiction as compared to Empire's normalized total usage. There are adjustments for anticipated growth, annualization, and non-normal weather. [181]

124. Staff calculated the energy allocation factor for Missouri at .8240, for non-Missouri at .1109, and for wholesale operations at .0651.[182]

125. Empire criticized Staff for annualizing retail energy kWh for Missouri and Arkansas as well as the Wholesale jurisdiction, but not for Kansas and Oklahoma. Staff responded that Non-Missouri Retail Operations is comprised of the sum of the other states in which Empire provides retail electric service other than Missouri, and the energy allocation factors for each jurisdiction is the ratio of the normalized annual kWh usage of a particular jurisdiction to the total normalized Empire kWh usage.[183]

126. Empire appears to have applied multiple methods when determining jurisdictional allocations, but provided no persuasive explanation as to why those allocations are correct.[184]

[179] Ex. 101, Staff Direct Report, page 33.
[180] Ex. 101, Staff Direct Report, page 34.
[181] Ex. 101, Staff Direct Report, page 34.
[182] Ex. 101, Staff Direct Report, page 34.
[183] Ex. 128, Bax Surrebuttal, page 2.
[184] Ex. 57, Jurisdictional Allocators Workpaper.

127. Although now owned by Liberty Utilities, Empire still serves the same states it did prior to the acquisition.

Conclusions of Law

No additional Conclusions of Law are required for this issue

Decision

The Commission finds that Staff's jurisdictional allocations are the appropriate factors to be used to calculate Empire's cost of service.

4) WNR and SRLE Adjustment Mechanisms

Findings of Fact

128. Empire proposes to implement a weather normalization rider (WNR) to adjust customer bills to reflect normal weather conditions. For weather periods that are milder than normal, a WNR charge would be applied to the bill. For weather periods that are harsher than normal, a credit would be applied to the bill. Empire asserts this rider would prevent over or under-collection by the Company during abnormal weather conditions.[185] Empire has requested the WNR as a Revenue Stabilization Mechanism (RSM) under Section 386.266.3 RSMo.[186]

129. In the alternative Staff has proposed its Sales Reconciliation to Levelized Expectations (SRLE), a rate mechanism designed to account for weather and conservation for customers served on the Residential, CB, and SH rate schedules. This tariff mechanism is similar to the Volumetric Indifference Reconciliation to Normal (VIRN) approved as part of a stipulation and agreement in Ameren Missouri's last gas rate case (File No. GR-2019-0077). Staff asserts its SRLE reconciles revenues above 400 kWh per

[185] Ex. 4, Richard Corrected Direct, Schedule SDR-9, page 5.
[186] Ex.104, Staff Class Cost of Service Report, page 3.

month per customer by creating a third residential block within Empire's billing system at this break point where usage from 401-600 kWh would be charged at the same rate as the first 400 kWh, but maintains Empire's exposure to changes in revenue below 400kWh per month per customer.[187]

130. Under Empire's proposed WNR, customers would not be able to know what they would be billed for energy prior to using that energy.[188] The WNR would not create a specific rate that is applicable to all customers; it would instead modify a customer's billable usage after that usage had been incurred.[189]

131. Empire's proposed WNR does not explicitly adjust for conservation.[190] Under the proposed WNR, all usage above a base usage would be considered to be weather sensitive usage.[191] Thus, its design would result in a customer who engaged in conservation efforts having to repay the Company for that customer's reductions in usage from year to year, as adjusted for the number of heating and cooling degree days.[192]

132. Staff contends that usage of approximately 400 kWh per customer per month appears unlikely to be impacted by either weather or conservation in the immediate future.[193]

133. Implementation of Staff's SRLE, or any rate stabilization mechanism for Empire, would be further complicated by large customers within the CB and SH class that would be more appropriately served under a different rate schedule.[194]

[187] Ex.104, Staff Class Cost of Service Report, pages 3-5.
[188] Ex. 123, Stahlman Rebuttal CCOS, page 3.
[189] Ex. 123, Stahlman Rebuttal CCOS, page 3.
[190] Ex. 136, Lange Surrebuttal, page 5.
[191] Ex. 204, Mantle Rebuttal, page 5
[192] Ex. 160, Kliethermes Supplemental, page 2.
[193] Ex.104, Staff Class Cost of Service Report, page 4.
[194] Ex.104, Staff Class Cost of Service Report, page 10.

134. The SRLE would eliminate the throughput disincentive related to any energy efficiency programs implemented by Empire.[195]

135. Empire has earned a fair ROE without a WNR in recent periods.[196]

136. The Commission has previously approved a WNAR (the WNR counterpart for gas utilities, a Weather Normalization Adjustment Rider) for Liberty-Midstates Natural Gas division in Missouri.[197]

137. The weather normalization process for electric utilities is much more complex than for gas utilities, and WNARs for gas utilities are already complex, data intensive, and dependent on billing cycle stability.[198] In addition, Empire's proposed WNR is further complicated because it calls for customer specific rate adjustments, compared to the WNAR approved for Liberty-Midstates Natural Gas which has one rate applied to all customers in a class.[199]

138. Empire's proposed WNR is complicated and would likely confuse its customers.[200] Section 386.266.5 RSMo requires the WNR amount to be separately disclosed on each customer's bill. For customers to understand their bills they would have to understand the concept of heating and cooling degree days, and that "normal" weather used in the WNR charge is different than the normal weather on many websites.

139. Also, customers will be confused if the WNR charge for one month is different from the WNR charge for a different month yet the "difference from normal weather" is identical.[201]

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[195] Ex.104, Staff Class Cost of Service Report, page 12
[196] Ex. 203C, Mantle Direct, pages 4-5 and Ex. 204, Mantle Rebuttal, pages 2-3.
[197] Ex. 123, Stahlman Rebuttal CCOS, page 2.
[198] Ex. 160, Kliethermes Supplemental, page 2.
[199] Ex. 123, Stahlman Rebuttal CCOS, page 2.
[200] Ex. 204, Mantle Rebuttal, pages 4-5.
[201] Ex. 204, Mantle Rebuttal, page 5.

140. In addition to being unnecessarily complex, Empire's proposed WNR would be impossible to implement.[202]

141. Under Empire's proposed WNR if an additional person joined the household increasing household electrical usage, that additional usage would be normalized as if caused by weather.[203]

142. Empire has also not considered many technical aspects of its proposed WNR, including how or whether the WNR would be applied to estimated bills.[204]

143. Empire supports Staff's SRLE with four modifications: (1) adjust for the partial loss of new customer and sales revenues; (2) adjust for customer migration from CB or SH to GP; (3) implement the SRLE on a temporary basis; and (4) implement the SRLE on a calendar basis beginning January 1, 2020.[205]

144. Both Empire and Staff's weather normalization models are likely flawed. As many as 15 percent of Empire's residential customers received an estimated bill in 2018 and as many as 26 percent received an estimated bill in December 2019. Staff used a test period of August 2018 through July 2019 for weather normalization. The large percentage of estimated usage caused errors in both Staff's and the Company's weather normalization models.[206]

145. Additionally, both Staff's and Empire's weather analysis were impacted by a lack of data used to scale the daily weather adjustments to an overall revenue month.[207]

146. Staff's SRLE does not just compensate Empire for the rise and fall of revenue due to weather and conservation. The SRLE attributes any rise and fall of

[202] Ex. 123, Stahlman Rebuttal CCOS, page 2
[203] Ex. 204, Mantle Rebuttal, page 5.
[204] Ex. 204, Mantle Rebuttal, page 5.
[205] Ex. 29, Lyons Surrebuttal and True-Up, pages 5-6.
[206] Ex. 120, Kliethermes Rebuttal, pages 2-4; Ex. 160 Kliethermes Supplemental, pp. 2-3.
[207] Ex. 118, Stahlman Rebuttal, page 2.

revenue to weather or conservation, without considering the cause. The SRLE mechanism assumes a broad interpretation of conservation that includes any energy efficiency measures whether funded by ratepayers or not, as well as any other factor causing changes to the cost of energy sold. This unreasonably broad interpretation of "conservation" would include any customer decisions or actions that reduce or increase energy consumption.[208] For example, if a member of a household moved out causing a reduction in usage, the SRLE would attribute that reduction to conservation. Similarly, increases in residential class usage resulting from the current "stay at home" orders in many locations related to COVID-19 would also be attributed to conservation and eligible for SRLE adjustments.[209]

147. OPC believes that the SRLE is likely unlawful as the Commission has not previously promulgated a rule to implement the SRLE.[210] OPC suggests the Commission promulgate a rule to allow for implementation of a SRLE mechanism.[211]

Conclusions of Law

Q. Section 386.266.3 RSMo provides that any electrical corporation may make an application to the Commission to approve rate schedules authorizing periodic rate adjustments, outside of general rate proceedings, to adjust rates of customers in eligible customer classes to account for the impact on utility revenues of increases or decreases in residential and commercial customer usage due to variations in either weather, conservation, or both.

[208] Ex. 160, Kliethermes Supplemental, page 4.
[209] Ex. 160, Kliethermes Supplemental, pages 7-8.
[210] Section 386.266.13 RSMo.
[211] EX. 204, Mantle Rebuttal, page 7.

R. Section 386.266.13 RSMo says that the Commission shall have previously promulgated rules to implement the application process for any rate adjustment mechanism under subsections 1 to 3 of this section prior to the commission issuing an order for any such rate adjustment.

Decision

Empire's proposed WNR is complex and would likely confuse customers as it is required to be disclosed separately on each customer's bill, is customer specific, and relies on a determination of normal weather that is not readily accessible. Because weather normalization models are data intensive and dependent on billing cycle stability, the large number of estimated bills in this case skews the results of both Staff's and Empire's weather normalization models. Because the weather modeling is inaccurate, there is potential for over or under-recovery, which is what the WNR is meant to avoid.

Further, the proposed WNR appears to be in violation of Section 386.266.3 RSMo, which requires "rate schedules". The WNR would not create a specific rate that is applicable to all customers under Empire's proposed WNR. Customers would not be able to know what they would be billed for energy prior to using that energy, but would instead have their billable usage modified after that usage had been incurred. The Commission finds that Empire's WNR should be rejected.

Staff contends the Commission's approval of a VIRN for Ameren Missouri in its last gas rate case is somehow supportive of approval of a SRLE in this case. However, that VIRN was approved as part of a settlement agreement and was based upon the facts specific to that case and the operations of the natural gas company in question. In this case, the Commission must analyze the SRLE as proposed in this case, based upon the facts presented in this case, and the operations of Empire.

Staff's SRLE proposal suffers from some of the same data problems as the WNR and does not comply with Section 386.266.3 RSMo. The large number of estimated bills and lack of billing data likely caused flaws in Staff's modeling. Additionally, Staff's proposed SRLE does not comply with Section 386.266.3 RSMo, because it would allow for adjustments due to the impact on revenues of increases or decreases in residential and commercial customer usage not exclusively due to variations in either weather, conservation, or both. While Empire's WNR does not directly account for conservation, Staff's proposed SRLE mechanism attributes any rise or fall of revenue to weather or conservation, regardless of the cause. Usage changes due to customers simply using less energy or customers moving in and out of Empire's service territory would be treated as resulting from conservation and weather. Staff's proposed SRLE is rejected.

Empire's proposed modifications to Staff's SRLE would not alleviate the billing data issues or bring it into compliance with Section 386.226.3 RSMo. Empire's proposed modified SRLE is rejected.

OPC argued it would be unlawful for the Commission to authorize a SRLE, either as proposed by Staff or Empire, based upon its interpretation of Section 386.266 RSMo as requiring the Commission to promulgate implementation rules prior to approving such a mechanism. Because the Commission has determined that both proposed WNR and SRLEs should be rejected on other grounds, a decision on this point is not necessary.

5) FAC

Findings of Fact

148. The Commission first authorized an FAC for Empire in its Report and Order in Empire's 2008 rate case (File No. ER-2008-0093) and it has been continued with

modifications in subsequent Empire rate cases.[212] Empire requested the continuation of its FAC pursuant to Section 386.266.1, RSMo.[213] To continue its FAC, Empire is required to file a new general electric rate case every four years.[214]

149. In this rate case, Empire seeks to continue its FAC with an updated base cost of energy. The difference between actually incurred fuel costs and the base fuel costs included in rates in this case will be billed or credited to each customer based on the customer's monthly energy usage.[215] The continuation of the FAC will permit Empire to adjust customers' bills twice each year, on June 1st and December 1st, based on the varying costs of fuel used to generate electricity at Empire's generating units and electric energy Empire purchases on behalf of its customers.[216]

150. Energy expenses represent a significant portion of the overall costs to operate an electric utility. Empire is mostly a price taker and not a price setter regarding variable energy costs.[217]

151. Empire's actual total energy costs continue to be relatively large, volatile, and beyond the control of the Company. [218]

152. Even if fuel analysts use production cost models to help calculate an FAC base factor, there are still many assumptions that have to be made, and it is difficult to model the marketplace due to the complex interactions of many factors including resource

[212] Ex. 101, Staff Direct Report, page 91.
[213] Ex. 4, Richard Corrected Direct, page 29.
[214] Section 386.266.5(3) RSMo.
[215] Ex. 4, Richard Corrected Direct, pages 30-31.
[216] Ex. 4, Richard Corrected Direct, pages 31-32, and Schedule SDR-11.
[217] Ex. 15, Tarter Rebuttal, page 5.
[218] Ex. 101, Staff Direct Report, page 95.

costs, unit outages and market prices. One of the primary reasons for having an FAC is that future FAC eligible costs cannot be predicted with certainty.[219]

153. The existing FAC base factor, that has been in effect since September 14, 2016, is $0.02415 per kWh.[220]

154. Empire initially requested that the FAC base factor be increased three percent to $0.02488 per kWh (inclusive of 100 percent recovery of transmission expenses).[221] Empire updated its requested FAC base factor (inclusive of 100 percent recovery of transmission expenses) to $0.02416 per kWh.[222]

155. Empire incurs MISO transmission costs for 100 MWs of the Plum Point Power Plant in Arkansas. Empire owns a 50 MW share of that plant and has a purchased power contract for the capacity and generation of another 50 MW. Since the purchased power contract is for 50 percent of its total capacity of the Plum Point Power Plant, Empire is currently able to include 50 percent of its MISO costs in its FAC.[223]

156. Staff calculated Empire's percentage of SPP transmission service costs at 32.04 percent with some exclusions,[224] which is near the 34 percent currently authorized by the Commission.

157. Empire's current FAC includes 50 percent of MISO non-administrative costs and 34 percent of SPP non-administrative costs. However, no transmission revenues are included in Empire's FAC.[225]

[219] Ex. 1011, Tarter Supplemental, page 8.
[220] Ex. 18, Doll Supplemental Direct, page 4; and Ex. 104, Staff Class Cost of Service, Appendix 2
[221] Ex. 14, Tarter Direct, pages 4-5.
[222] Ex. 18, Doll Supplemental Direct, page 4.
[223] Ex. 204, Mantle Rebuttal, pages 8, 12.
[224] Ex. 104, Staff's Class Cost of Service Report, page 39.
[225] Ex. 17, Doll Direct, page 7, and Schedule AJD-2, pages 4-5.

158. Those percentages were established in File Nos. ER-2014-0258 and ER-2014-035, and in Empire's most recent rate case, File No. ER-2016-0023, those same percentages were maintained.[226]

159. Empire proposes including 100 percent of transmission costs in the FAC base factor calculation. [227] Empire justifies the inclusion of all transmission costs by noting the time it has spent participating in working groups to ensure that customers have access to reliable cost effective energy, and claiming that those efforts have yielded adjusted production cost savings, lower resource adequacy requirements, and the ability to reliably accommodate lower cost generation delivery with increasing efficiency. SPP and MISO have been coordinating on seams efforts but they have completed no projects from that effort.[228]

160. The base factor in Empire's FAC should be set based on the base energy cost included in the revenue requirement set in this case.[229]

161. Empire's FAC tariff involves the accumulation of net energy costs over a six-month period and comparing that cost accumulation to the FAC base factor. Ninety-five percent of this over/under recovery balance is then credited/billed to Empire's customers over a six-month billing period that immediately follows the six-month accumulation period.[230]

162. Staff identified four accumulation periods that were under-recovered and three that were over-recovered.[231]

[226] Ex. 17, Doll Direct, Schedule AJD-2, page 2.
[227] Ex. 15, Tarter Rebuttal, pages 7-8; and Ex. 17, Doll Direct, page 7.
[228] Ex. 17, Doll Direct, page 7 - 9.
[229] Ex. 101, Staff Direct Report, page 96.
[230] Ex. 4, Richard Corrected Direct, page 31.
[231] Ex. 161, Mastrogiannis Supplemental, page 3.

163. Staff recommends that the Commission continue to include the current percentages of MISO and SPP non-administrative costs, which are reflective of Empire's transmission costs associated with true purchased power and off-system sales, to be recovered in Empire's FAC.[232]

164. Staff recommends the Commission approve the continuation of Empire's FAC[233] using a trued-up base factor (inclusive of only transmission costs and revenues Empire incurs for Purchased Power and Off-System Sales).[234]

165. OPC supports keeping the percent of the transmission costs the same as in Empire's current FAC, but also asks to modify the FAC to include the transmission revenues associated with the applicable transmission costs as well. OPC contends that transmission costs and revenues should match the circumstances impacting the transmission costs and revenues when rates from this case become effective.[235]

166. The Commission has previously only approved appropriate transmission costs in the FAC in Empire's rate cases, along with Evergy Missouri West and Evergy Missouri Metro rate cases, and not transmission revenues.[236]

167. Changing the percentage of transmission costs and revenues Empire includes in its FAC is inconsistent with both prior Commission rulings and with the transmission percentage used by other Missouri investor-owned electric utilities with FACs.[237]

168. Empire's current sharing mechanism is a 95/5 ratio[238].

[232].Ex. Mastrogiannis Surrebuttal/True-up Direct, page 2
[233] Ex. 101, Staff Direct Report, page 92.
[234] Ex. 137, Mastrogiannis Surrebuttal True-Up Direct, page 2.
[235] Ex 203, Mantle Direct, page 16.
[236] Ex. 112, Mastrogiannis Rebuttal, page 4-5.
[237] Ex. 112, Mastrogiannis Rebuttal, page 3.
[238] Ex. 112, Mastrogiannis Rebuttal, page 2.

169. Staff recommends continuing that sharing mechanism, where customers would be responsible for, or receive the benefit of, 95 percent of any change in fuel and purchased power costs as defined in the FAC tariff from the base amount included in rates. [239]

170. Empire is proposing to continue the current 95/5 sharing mechanism.[240]

171. OPC proposes changing the FAC sharing mechanism to an 85/15 ratio. OPC believes that a change of the sharing mechanism benefits the public interest by placing a greater incentive on Empire to manage its normalized fuel costs. OPC acknowledges that with an 85/15 sharing mechanism Empire would bear an increased risk, but argues Empire has the ability to influence FAC costs and the customers do not.[241]

172. The base fuel factor is only an estimate, and setting the base fuel factor in a rate case requires many assumptions and modeling challenges. Additionally, FAC eligible costs cannot be forecasted with certainty, which is one of the primary reasons for having a FAC in the first place.[242]

173. Over the last 11 years, OPC calculates that Empire has collected 99.9 percent of the FAC costs allocated to Missouri's customers, failing to collect less than $1.5 million of those costs.[243] Empire calculates that over a three-year period it collected about 99.6 percent of the actual FAC costs and had to absorb about $1.3 million of those costs. Over that same period if the sharing mechanism was 85/15 Empire states it would

[239] Ex. 112, Mastrogiannis Rebuttal, pages 2-3.
[240] Ex. 14, Tarter Direct, page 3.
[241] Ex. 203, Mantle Direct, pages 7 and 12.
[242] Ex. 1011, Tarter Supplemental, page 8.
[243] Ex. 205, Mantle Surrebuttal, page 8.

have collected about 98.9 percent of the actual FAC costs and had to absorb almost $4 million of those costs..[244]

174. OPC argues that 85/15 was the appropriate sharing mechanism based upon Senate Bill 564 (now codified as Section 393.1400 RSMo.), which allows for an 85 percent recovery related to plant in service (PISA) depreciation.[245]

175. OPC states that the Legislature's selection of an 85 percent mechanism for PISA provides a more reasonable alternative to the 95/5 incentive mechanism previously adopted by the Commission for Empire's FAC.[246]

176. OPC also urges the Commission to change Empire's sharing ratio to 85/15 because of Empire's past hedging practices.[247] In File No. EO-2017-0065, a prudence review of Empire's FAC costs, OPC presented evidence that from the time Empire was granted a FAC through the filing of surrebuttal testimony in that case Empire's hedging policy resulted in losses of over $95 million.[248]

177. Hedging losses are a cost that flows through Empire's FAC for recovery from its customers.[249]

178. The Commission did not find Empire's hedging practices or losses were imprudent in File No. EO-2017-0065.[250] That decision was affirmed by the Missouri Court of Appeals in Case No. WD81627.[251]

[244] Ex. 15, Tarter Rebuttal, page 6.
[245] Ex. 203, Mantle Direct, page 13.
[246] Ex. 203, Mantle Direct, page 13.
[247] Ex. 205, Mantle Surrebuttal, page 4.
[248] Ex. 205, Mantle Surrebuttal, page 3.
[249] Ex. 205, Mantle Surrebuttal, page 3.
[250] Ex. 205, Mantle Surrebuttal, page 4-5.
[251] Ex. 17, Doll Direct, page 13.

179. In File No. EO-2017-0065, the Commission considered the value of hedging as analogous to the cost and value of buying earthquake insurance. The Commission stated: "The risk reduction offered by insurance has a value, although that value may not be fully realized until there is an earthquake, just as the value of hedging may not be fully realized until a combination of factors results in a price spike in the natural gas market."[252]

180. After the prudence review in File No. EO-2017-0065 Empire changed its hedging policies.[253] Empire submitted an updated Energy Risk Management Policy dated December 20, 2019. Section four of the Energy Risk Management Policy regarding Empire's hedging strategy has been streamlined and some of the advanced procurement methods have been eliminated.[254]

181. OPC speculates that Empire would have reduced hedging losses if it had been required to absorb 15 percent of the hedging losses,[255] but provides no evidentiary support that Empire would not have had the hedging losses with an 85/15 FAC sharing mechanism.

182. The FAC statute requires utilities to undergo prudency reviews every 18 months and refund imprudently incurred costs plus interest.[256]

183. Staff, through its review in this case, and previous reviews in Empire FAC prudence review cases has not found evidence that the current 95/5 sharing mechanism was inadequate and should be changed.[257]

[252] File No. EO-2017-0065, Amended Report and Order, page 20, issued March 10, 2018.
[253] Ex.205, Mantle Surrebuttal, page 4-5.
[254] Ex. 215, Riley Rebuttal, page 3.
[255] Ex. 205, Mantle Surrebuttal, page 5.
[256] Section 386.266.5(4), RSMo.
[257] Ex. 112, Mastrogiannis Rebuttal, page 3.

184. Changing the FAC sharing percentage is inconsistent with both prior Commission rulings and with the transmission percentage used by other Missouri investor-owned electric utilities with FACs.[258]

185. Empire's current agreement with the Missouri Joint Municipal Electric Utility Commission (MJMEUC) is a 5-year agreement for Empire to sell energy and capacity to the cities of Monett, and Mount Vernon, Missouri.[259]

186. Empire's energy sold to MJMEUC under the agreement will be billed to the cities by MJMEUC resulting in a reduced portion of Empire's total fuel expense assigned and billed to Empire's retail customers. Empire will also sell energy back to the SPP on behalf of MJMEUC.[260]

187. Empire contends, and Staff's concurs, that the language describing the Off-System Sales Revenue (OSSR) portion of Empire's FAC tariff does not allow revenues from the MJMEUC contract, which is a full and partial requirement sales contract, to flow through the FAC, because the OSSR tariff language excludes revenue from full and partial requirement sales to municipalities.[261]

188. Empire was not opposed to modifying the FAC to allow revenue from the MJMEUC contract to flow through the FAC, so long as any such tariff modification is tethered to the establishment of an AAO or some other sort of vehicle that would allow Empire to create a regulatory asset for the difference in jurisdictional allocations as a result of the contract.[262]

[258] Ex. 112, Mastrogiannis Rebuttal, page2-3, and Schedule BM-r1
[259] Ex. 20, Doll Rebuttal, page 7.
[260] Ex. 20, Doll Rebuttal, pages 7-8.
[261] Ex. 137, Mastrogiannis Surrebutal True-Up direct, pages 3-4, and Ex. 20 Doll Rebuttal, pages 7-8.
[262] Ex. 20, Doll Rebuttal, page 8.

189. Staff was opposed to this modification of the AAO. However, Staff recommends that the Commission order Empire to file additional reporting requirements with its FAC monthly reports and Fuel Adjustment Rate filing workpapers. These additional reporting requirements will demonstrate that the energy purchased from Empire related to the MJMEUC contracts will be billed to the cities via MJMEUC and will thereby reduce a portion of the fuel expense that is allocated and billed to Empire's retail customers. This reduced portion of fuel expense will clearly illustrate that the energy purchased for these specific cities via MJMEUC is not flowing through the FAC in order to be collected from all Empire's retail customers.[263]

190. OPC agreed with the FAC language that has been in effect along with Empire's proposed changes in this case regarding revenues from MJMEUC contracts. OPC asks that the Commission require, as a part of Empire's monthly FAC filing, a detailed listing of the costs incurred due to the MJMEUC contract.[264]

191. OPC asked the Commission to prohibit Empire from passing short-term capacity contracts through the FAC by removing from its FAC tariff sheets its ability to recover any costs of capacity, regardless of the length of the contract. [265]

192. Staff has expressed concerns that the timing of the retirement of Asbury, the addition of a new capacity agreement with a customer, and the new generation resources not being available could lead to a SPP resource adequacy shortfall, which could require Empire to enter into potentially expensive short-term capacity contracts.[266]

[263] Ex. 137, Mastrogiannis Surrebutal True-Up direct, page 4.
[264] Ex. 203, Mantle Direct, page 3.
[265] Ex. 205, Mantle Surrebuttal, page 20.
[266] Ex. 111, Luebbert Rebuttal, page 3.

Conclusions of Law

S. The Commission may 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".[267]

T. Commission Rule 20 CSR 4240-3.161(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. Empire has met those filing requirements.

U. FACs are subject to prudence reviews at least every eighteen-months, requiring a refund of any imprudently incurred costs plus interest at the utility's short-term borrowing rate.[268]

V. Utilities with an FAC are required to file a general rate case with a new rates effective date no later than four years after the effective date of the Commission's order implementing the FAC.[269]

W. Only transmission costs associated with prudently incurred fuel and purchased-power costs may be flowed through an FAC between rate cases.[270]

X. Section 393.1400 RSMo, which includes a provision allowing plant in-service accounting, allows 85 percent of the depreciation expense and return to be included for recovery in the electric utility's rate base in its next general rate case.

[267] Section 386.266.1, RSMo.
[268] Section 386.266.5(4), RSMo.
[269] Section 386.266.5(3), RSMo.
[270] Section 386.266.1, RSMo.

Y. Under Section 386.266.5, RSMo, the Commission cannot revise Empire's FAC without considering all relevant factors, that may affect the costs or overall rates and charges of the corporation.

Z. The Commission's Report and Order in File No. ER-2014-0351, of which the Commission takes administrative notice, states that the transmission charges to be included in Empire's FAC are the costs to transmit electric power it did not generate to its own load (true purchased power), and the costs to transmit excess electric power it is selling to third parties to locations outside of SPP (off-system sales).

AA. Empire's previously Commission approved tariff: PSC Mo. No. 5 Section 4, Original Sheet No. 17x regarding Empire's Fuel and Purchase Power Adjustment Clause Rider states that purchased power costs shall include transmission service costs reflected in FERC Account 565: 34 percent of SPP costs associated with Network Transmission Service charges billed through schedules 2, 3, and 11; and 50 percent of MISO costs associated with network transmission service, point-to-point transmission service, system control and dispatch, and reactive supply and voltage control.

Decision

Empire has requested to continue its FAC with an updated base cost of energy, to continue the current 95/5 sharing mechanism, and to modify its current FAC to include 100 percent of transmission costs in the FAC base factor calculation. Because Empire's actual total energy costs continue to be relatively large, volatile, and beyond the control of the Company, the Commission will approve continuation of its FAC.

As to the appropriate sharing mechanism, OPC has proposed changing the FAC incentive ratio for Empire from 95/5 to 85/15. OPC argues that changing the sharing percentages to 85/15 will provide more incentive for Empire to keep net fuel costs as low

as possible. Staff and Empire argue that the current sharing mechanism has not been shown to be ineffective and should stay the same. The state legislature gave the Commission the discretion to create the FAC incentives and it is within the Commission's discretion to reevaluate that sharing mechanism. The facts in this case, however, do not show that there is any reason to adjust the sharing mechanism.

The Commission has found on several occasions, and finds here that the 95/5 sharing ratio provides Empire sufficient incentive to operate at optimal efficiency and still provides an opportunity for Empire to earn a fair return on its investment. The evidence in this case also showed that Empire continues to operate efficiently. Staff's witness testified that the 95/5 ratio was an appropriate incentive based on finding no pattern of imprudence during the previous FAC prudence reviews. Additionally, no evidence was presented that Empire acted imprudently or manipulated its FAC to the detriment of ratepayers. OPC's evidence showed changing the sharing mechanism to 85/15 would provide more pressure on Empire, but not that more pressure is needed. Therefore, the Commission determines that based on the facts in this case, the 95/5 sharing mechanism in Empire's FAC provides the appropriate incentive to properly manage its net energy costs.

OPC's claim that the legislature has provided guidance on the appropriate incentive mechanism sharing percentages by including 15 percent of capital investments in the PISA statute is also not persuasive. The legislature's creation of an unrelated sharing mechanism in another utility statute does not imply the legislature intends those percentages to carry over to the FAC.

The Commission's decision in this case should not be taken as stating that there may never be a change to the sharing percentage or that the Commission will always

maintain the status quo. However, in this case the evidence does not support a change in the sharing percentage.

Regarding transmission costs, the Commission is not changing the costs that flow through the FAC. The percentage of transmission costs included in the FAC will remain the same as they are now, which is 34 percent for SPP costs, 50 percent for MISO transmission costs, and no allowance for transmission revenues. This is consistent with Missouri law and prior Commission rulings, which allow only transportation costs related to purchased power to flow through the FAC.

The Commission finds that Staff's base factor should be recalculated to apply 34 percent to SPP costs associated with Network Transmission Service schedules 2, 3, and 11 and apply 50 percent to MISO costs associated with network transmission service, point-to-point transmission service, system control and dispatch, and reactive supply and voltage control. The resulting base factor will incorporate the appropriate percentages of SPP and MISO non-administrative transmission costs and is the appropriate base factor for Empire's FAC.

The Commission disagrees with OPC's contention that revenue from the MJMEUC contract should flow through Empire's FAC. Empire's current FAC tariff language does not allow revenues from its MJMEUC contract to flow through its FAC. The Commission further finds that the FAC tariff should not be revised to allow revenue from MJMEUC contracts to flow through the FAC.

OPC alternately recommended that Empire be required, as a part of its monthly FAC filing, to provide a detailed listing of the costs incurred due to the MJMEUC contract. The Commission finds OPC's request to be reasonable. The Commission will order additional reporting for Empire to file with its FAC monthly reports and Fuel Adjustment

Rate filing workpapers, including a detailed listing of all costs incurred due to the MJMEUC contracts and the revenues that Empire receives from MJMEUC.

Additionally, OPC's recommendation that Empire's FAC be modified to prohibit inclusion of any capacity contracts is not appropriate. There has been no demonstration that Empire will be unable to meet SPP resource adequacy requirements. Any concerns about the appropriateness of short-term capacity cost can be reviewed as part of the FAC prudency review, and the Commission will direct its Staff to do so. Thus, the Commission finds no reason to change Empire's FAC to disallow the pass through of short-term capacity costs.

6) Credit Card Fees

Findings of Fact

193. Currently, each Empire customer who pays their utility bill with a credit card is charged a transaction fee.[271] The fee is $2.25 per residential payment and is imposed by a third party that processes the card payments.[272]

194. For Empire, payment of bills by credit card has increased 36 percent in the last two years from 379,329 transactions in 2016 to 511,195 in 2018.[273] Payment by credit card is the second most utilized payment option for Empire customers,[274] with 25 percent of Empire's customers paying with credit or debit cards.[275]

[271] Ex. 101, Staff Direct Report, page 82.
[272] Ex. 101, Staff Direct Report, page 103 and Ex. 1, Baker Direct, page 9.
[273] Ex. 1, Baker Direct, page 9.
[274] Ex. 101, Staff Direct Report, page 104.
[275] Ex. 200, Conner Direct, page 9.

195. Empire proposes the elimination of credit card convenience fees for individual customers, with Empire instead recovering the costs associated with processing online card payments in its overall cost of service.[276]

196. The fees associated with credit card transactions are similar to bank fees Empire incurs that are already included in the cost of service paid by all customers.[277]

197. Empire has not projected the number of customers that may pay bills by credit card if no convenience fee is charged to them, but based on current participation, Staff anticipates that the total number of customers paying with credit cards will increase if there is no convenience fee.[278]

198. Empire states that it is important from a customer service perspective to provide its customers the choice to pay online, reducing the amount of customer service representative hours needed to receive and process in-person payments from customers.[279]

199. If the Commission approves including credit card fees in Empire's revenue requirement, Staff recommends that the Company be ordered to:[280]

a. Track performance and savings to the Company and its customers from this initiative.

b. Monitor the level of customers using the credit card option, whether the number of payments by credit card increases, and whether eliminating a fee to pay by credit card results in savings to the customer and/or to the Company.

[276] Ex. 2, Baker Rebuttal, page 3.
[277] Ex. 1, Baker Direct, page 10.
[278] Ex. 101, Staff Direct Report, page 104.
[279] Ex. 1, Baker Direct, page 10.
[280] Ex. 101, Staff Direct Report, page 105

c. State how the Company will inform customers that there is no fee to pay their bill by credit card.

200. The Commission has previously approved requests to eliminate credit card convenience fees with the utility absorbing credit card processing services in the cost of service.[281]

201. OPC opposes the elimination of credit card fees. If all Empire's customers are required to pay for credit card fees, they will not only be paying for their own payment method, but also for those who choose to pay with credit or debit cards.[282] OPC asserts that the 25 percent of Empire's customers who are using credit cards to pay their electric bills will receive a net economic benefit, to the detriment of Empire's customers who cannot use a credit card to pay their electric bills.[283]

202. Empire proposes that $1,297,266 be included in rates for credit card processing fees based on the true-up period.[284]

203. Staff proposes that $1,165,283 be included in rates for credit card fees based on the test period.[285] This amount is based on Staff's jurisdictional allocation factor of 89.09 percent applied to costs booked in Account 903, including credit card fees.[286]

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

The 36 percent increase in the use of credit card payments in just the last two years illustrates that more customers want to pay their utility bills online using a credit or

[281] Ex. 101, Staff Direct Report, page 105, referencing File Nos. GR-2017-0215 & GR-2017-0216.
[282] Ex. 200, Conner Direct, page 9.
[283] Ex. 201, Conner Rebuttal, page 3.
[284] Ex. 7, Richard True-Up Direct, page13.
[285] Ex. 148, Bolin Additional Evidence.
[286] Ex. 129, Bolin Surrebuttal True-Up, page 5 and Ex. 148, Bolin Additional Evidence.

debit card. As bank fees are already recovered in the cost of service, credit card transaction fees should be similarly treated. OPC's argument that 75 percent of Empire's customers who do not use credit cards will pay for the 25 percent who do is not persuasive given that the number of payments by credit card are increasing and the elimination of the credit card transaction fee effectively removes a barrier to more customers paying by credit card. The Commission finds that credit card fees should be included in the Company's revenue requirement so that individual fees are no longer required.

The Commission finds that the appropriate amount of credit card fees to include in Empire's revenue requirement is $1,165,283 based on the test year period.

The Commission additionally finds it reasonable to order Empire to perform the following tasks: (1) track performance and savings to the Company and its customers from this initiative; (2) monitor the level of customers using the credit card option, whether the number of payments by credit card increases, and whether eliminating a fee to pay by credit card results in savings to the customer, to the Company, or to both; and (3) state how the Company will inform customers that there is no fee to pay their bill by credit card.

7) Rate Case Expense

Findings of Fact

204. Rate case expense is defined as all incremental costs incurred by a utility directly related to an application to change its general rate levels. These applications are usually initiated by the utility, but rate case expenses may also be incurred as a result of the filing of an earnings complaint case by another party. The largest amounts of rate case expenses usually consist of costs associated with use of outside witnesses,

consultants, and external attorneys hired by the utility to participate in the rate case process.[287]

205. OPC recommends allowable rate case expenses be normalized over three years, because Empire generally files rate cases every three years.[288]

206. Staff recommends allowable discretionary rate case expenses be normalized over two years.[289]

207. Empire proposes including an annualized amount of prudent rate case expense and amortizing it over a period of two years.[290]

208. Empire has incurred expenses for outside consultants in this rate case.[291]

209. Empire is required to submit a depreciation study every five years. Empire submitted a depreciation study in File No. ER-2016-0023, Empire's last rate case, which is within five years of this rate case.[292] It is appropriate to include a normalized amount, one-fifth of the study cost, in rate case expense in this case.[293]

210. Empire must perform a line loss study at least every four years. Empire performed a line loss study in 2018, which is within four years of this rate case. [294] It is appropriate to include a normalized amount, one-fourth of the study cost, in rate case expense in this case.[295] Neither OPC nor Empire oppose a four-year normalization for the line loss study.[296]

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[287] Ex. 101, Staff Direct Report, page 74.
[288] Ex. 200, Conner Direct, page 6.
[289] Ex. 101, Staff Direct Report, page 73.
[290] Ex. 7, Richard True-Up Direct, pp. 13, 16-17; and Ex. 59 Rate Case Expense Workpaper of Sheri Richard.
[291] Ex. 101, Staff Direct Report, page 73.
[292] Ex. 101, Staff Direct Report, page 73.
[293] Ex. 140, Niemeier Surrebuttal/True-Up, pages 8-9.
[294] Ex. 140, Niemeier Surrebuttal/True-up, page 9.
[295] Ex. 140, Niemeier Surrebuttal/True-up, page 9.
[296] Ex. 201, Connor Rebuttal, page 2, and Ex. 6, Richars Surrebuttal, page 7.

211. Staff recommends assigning Empire's discretionary rate case expenses to both ratepayers and shareholders based upon a 50/50 split, full recovery of the depreciation study over five years, and full recovery of the line loss study over four years.[297] Staff calculated $71,676 in trued-up rate case expense normalized over two years.[298]

212. Rate case expense can benefit both ratepayers and shareholders. Through a rate case, the ratepayer is receiving the opportunity to be provided safe and adequate service at a just and reasonable rate and the shareholder is receiving an opportunity to receive an adequate return on investment.[299]

213. Rate case expense sharing creates an incentive and eliminates a disincentive on the utility's part to control rate case expenses to reasonable levels.[300]

214. Utility management has a high degree of control over rate case expense. Generally, the utility determines when, and how often, a rate case is filed. Attorneys, consultants, and other services can either be provided by in-house personnel or can be acquired from an outside party. Rate case expenses subject to a sharing mechanism do not include internal labor costs. Those are included in the cost of service through the payroll and are paid by ratepayers.[301]

215. Empire says that applying a sharing mechanism to all consultant costs is inappropriate because it does not have an in-house rate design or cost of service

[297] Ex. 101, Staff Direct Report, page 74.
[298] Ex. 156, Bolin Supplemental, page 4 and Ex. 140, Niemeier Surrebuttal True-Up, pages 8-9.
[299] Ex. 101, Staff Direct Report, page 74.
[300] Ex. 101, Staff Direct Report, page 74.
[301] Ex. 101, Staff Direct Report, page 74.

department and must contract out for these services. Larger utilities have those in-house services and may recover those costs through rates.[302]

216. Empire argues that the filing of this rate case was not discretionary. According to Section 386.266.5(3), RSMo, Empire had to file a 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 its FAC, September 9, 2016.[303]

217. A FAC is a voluntary mechanism that Empire chose to request and chooses to seek continuation of in this case.[304]

218. Empire also argues that the concept of sharing rate case expense with shareholders is incorrect. Empire asserts that rate case expense is a cost of supplying service to its customers and therefore should be included in its cost of service.[305]

219. Not all rate case expense is a necessary cost of supplying service to customers. Some rate case expense produces direct benefits to shareholders that are not shared with customers, such as hiring an outside technical expert seeking a higher ROE.[306]

220. Empire's shareholders stood to benefit from many of the issues raised and litigated by Empire in this case. In this case, Empire has requested a rate of return of 9.95 percent,[307] the continuation of its FAC,[308] elimination of credit card transaction fees,[309] a

[302] Ex. 5, Richard Rebuttal, page 34.
[303] Ex. 5, Richard Rebuttal, page 33-34.
[304] Ex. 129, Bolin Surrebuttal/True-up, pages 5-6
[305] Ex. 5, Richard Rebuttal, page 34.
[306] Ex. 129 Bolin Surrebuttal/True-up, pages 6-7.
[307] Ex. 36, Hevert Direct, page 2.
[308] Ex. 26, Lyons Direct, page 5.
[309] Ex. 2, Baker Rebuttal, page 3.

weather normalization mechanism[310], LED lighting trackers,[311] inclusion of various incentive compensation packages,[312] and other items that Empire wants included in its cost of service.

Conclusions of Law

BB. The Commission has broad discretion to determine which expenses a utility may recover from ratepayers. The Missouri Supreme Court has stated that the Commission's statutory power and authority to set rates "necessarily includes the power and authority to determine what items are properly includable in a utility's operating expenses and to determine and decide what treatment should be accorded such expense items."[313] The Commission's authority extends to allocating an expense between certain classes or groups of ratepayers[314] and to requiring company shareholders to bear expenses the Commission finds to be unreasonable or unnecessary.[315]

CC. Subsection 20 CSR 4240-3.160(1)(A) requires that a depreciation study be submitted with a general rate increase request unless Staff received these items during the three years prior to the rate increase request or before five years have elapsed since last receiving said items.

DD. To be able to continue or modify a rate adjustment mechanism, such as an FAC, 20 CSR 4240-20.090 (13)(B) requires a utility to have conducted a new line loss study. The end of the twelve month period of actual data collected for use in that study

[310] Ex. 22, Fox Direct.
[311] Ex. 33, McGarah Direct.
[312] Ex. 5, Richard Rebuttal, pages 24-29.
[313] *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).
[314] *State ex rel. City of W. Plains v. Pub. Serv. Comm'n*, 310 S.W.2d at 934.
[315] *State ex rel. KCP & L Greater Missouri Operations Co. v. Missouri Pub. Serv. Comm'n*, 408 S.W.3d at 164-165.

must be no earlier than four years before the date the utility files the general rate proceeding seeking to continue or modify that rate adjustment mechanism.

EE. To be able to continue utilizing an FAC, Subsection 386.266.5(3), RSMo requires Empire to "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's order implementing a FAC for Empire. Empire's last request for an overall increase in rates for electric service was docketed as File No. ER-2016-0023 and the Commission order authorizing the continuation of Empire's current FAC was effective September 9, 2016. A FAC is a voluntary mechanism.[316]

FF. The Commission has previously found rate case expense sharing was just and reasonable. In a 1986 decision, *In the Matter of Arkansas Power and Light Company*, the Commission adopted Public Counsel's proposed disallowance of one-half of rate case expense.[317] The Commission also acknowledged this authority in a number of other cases.[318]

GG. The Commission has the legal authority to apportion rate case expense between ratepayers and shareholders. In File No. ER-2014-0370, involving Kansas City Power and Light Company's request for a rate increase the Commission determined that rate case expense should be shared between the ratepayers and shareholders.[319] That decision was upheld by the Western District Court of Appeals, which found that "the remedy crafted by the [Commission] was a reasonable exercise of the [Commission's]

[316] *State ex rel. KCP & L Greater Missouri Operations Co. v. Missouri Pub. Serv. Comm'n*, 408 S.W.3d at 164-165.
[317] Report and Order, File No. ER-85-265, 28 Mo. P.S.C. (N.S.) 435, 447 (1986),
[318] 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).
[319] *In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service*, Report and Order, File No. ER-2014-0370, issued September 2, 2015.

discretion and expertise in determining just and reasonable expenses to be borne by ratepayers."[320]

Decision

In many ways 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 ROE; 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.[321]

The evidence shows that Empire's shareholders stood to benefit from many of the issues raised and litigated by Empire in this case. In this case, Empire has requested a rate of return of 9.95 percent, the continuation of its FAC, elimination of credit card transaction fees, a weather normalization mechanism, LED lighting trackers, inclusion of various incentive compensation packages, and other items that Empire wants included in

[320] *In Matter of Kansas City Power & Light Co.'s Request for Auth. to Implement a Gen. Rate Increase for Elec. Serv. v. Missouri Pub. Serv. Comm'n*, 509 S.W.3d 757, 779 (Mo. Ct. App. 2016), reh'g and/or transfer denied (Nov. 1, 2016), transfer denied (Feb. 28, 2017).
[321] Amended Report and Order, File No. GR-2017-0215, page 52, issued March 7, 2018.

its cost of service. It was Empire's decision and entirely within Empire's power to pursue these issues, hire outside consultants to support issues, and to file this rate case.

Empire also argues that there should be no rate case expense sharing because Empire was required to file a rate case pursuant to Section 386.266.5(3), RSMo. This is a requirement tied to the implementation and continuation of Empire's FAC and the FAC is a risk management mechanism that primarily benefits Empire. Empire knew when it requested a FAC that it would have to file a rate case in four years.

Therefore, it is just and reasonable that the shareholders and the ratepayers, who both benefited from the rate case, share in the rate case expense. The Commission finds that in order to set just and reasonable rates under the facts in this case, the Commission will require Empire's shareholders to cover a portion of Empire's rate case expense. The Commission will assign Empire's discretionary rate case expense to both ratepayers and shareholders based upon a 50/50 split.

The Commission finds Staff's recommendation to normalize discretionary rate case expense over two years to be appropriate. Empire's proposal to amortize rate case expense would be treating it differently than other classes of expenses. OPC's recommendation of a three year normalization is inappropriate given Empire's intention to file its next rate case within a year.

Because conducting a depreciation study and line loss study are required by Commission rule, it is appropriate that ratepayers bare their full cost. However, since they are not required to be performed annually, it is not appropriate to include their full cost in rates in this case. The Commission finds that Empire should be allowed full

recovery of the depreciation study over five years and full recovery of the line loss study over four years, because that is the period set out in the rule for their frequency.

The Commission determines that the appropriate amount of rate case expenses to include in Empire's revenue requirement is $71,676 annually, for two years. That amount includes the normalized cost of the depreciation study from the prior rate case, and the normalized cost of the line loss study.

8) Management expense

Findings of Fact

221. OPC asks the Commission to disallow officer ($34,618) and management ($3,673,266) expenses for Empire for a total amount of $3,707,884, through the test year period. [322]

222. OPC states that Empire lacks formal policies and procedures regarding travel expenses, and these amounts should be removed to protect ratepayers from reimbursing Empire for expenses that do not help the company provide safe and adequate service to its customers. OPC calculated disallowances for local meals, excessive charges for travel, and gifts and celebrations for the company and employees.[323]

223. Among other officer expense charges that OPC identified as being partially allocated to Empire's rate payers are trips to Bermuda ($904.32), Australia ($268.77), and London and Peru ($2,268.09) totaling $3,441.17.[324] Empire states that the Bermuda trip was never allocated to Empire or included in its cost of service.[325]

[322] Ex. 202, Conner Surrebuttal True-Up, page 4.
[323] Ex. 200, Conner Direct, page 8.
[324] Ex. 299, Conner Supplemental testimony, page 4.
[325] Ex. 1018, Richard Responsive Supplemental, page 7.

224. OPC differentiated between officer expenses and management expenses and between meals and other officer expenses. While OPC reviewed officer expense account charges, it did not review any manager expenses. OPC simply applied its percentage disallowance of officer meals and other expenses to management expense charges without any review of manager expense account charges.[326] OPC's disallowance of other officer expenses at the end of the test year was $31,914 of which $904 were related to the Bermuda trip.[327]These disallowances were for officer expense account charges that included excessive meal charges, alcohol, gifts, celebrations, unsupported expense claims and other charges that do not provide benefits to Empire rate payers.[328]

225. OPC disallowed $2,704 in officer meals through the test year.[329] Lunchtime may be the only time available for some internal meetings, and most of the people attending those meetings are not paid for the additional hours. Providing a meal incentivizes attendance and allows for additional productive time.[330]

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

Some management expenses that do not benefit ratepayers should be disallowed. Empire's justifications for providing meals to compensate for unpaid hours and incentivize attendance seems reasonable. The Commission finds that other officer expenses for trips to Australia, London, and Peru should be disallowed as they have no reasonable connection to providing safe and adequate service to ratepayers. Since the Bermuda trip

[326] Ex. 299-7, Conner Testimony in Response to Commission Questions, page 4.
[327] Ex. 202, Conner Surrebuttal, ACC-S-1.
[328] Ex. 200, Conner Direct, page 7.
[329] Ex. 202, Conner Surrebuttal, ACC-S-1.
[330] Ex. 5, Richard Rebuttal, page 30.

was not included in Empire's cost of service, no adjustment is necessary. The additional other officer expense disallowances recommended by OPC also appear reasonable in that the charges provide no benefits to ratepayers.

The Commission does not find credible OPC's contention that if an average amount of corporate officer expenses are found to be excessive and should be disallowed that an identical percentage of all lower level manager expenses should be assumed to also be excessive. An analysis of at least a sample of management expense reports would be necessary to support any relationship of application of officer expense disallowance percentages to management. Therefore, the Commission disallows $31,010 of other officer expense charges and allows the remaining $3,676,874 to be recovered in Empire's cost of service.

9) Allowance for Funds Used During Construction

Findings of Fact

226. Empire is no longer managed as a stand-alone entity.[331] On June 1, 2018, Empire borrowed $90 million from its affiliate LUCo[332] to refinance $90 million of Empire's first mortgage bonds. The terms of Empire's $90 million promissory note were a 15-year term at a 4.53 percent interest rate and a $450,000 origination fee along with a "make whole" provision.[333]

227. LUCo obtained the funds that were used for the $90 million loan to Empire through use of its credit facility.[334] Although LUCo obtained the funds that were loaned to Empire at a short-term debt rate, the terms of Empire's promissory note treated it as a

[331] Ex.210, Murray Direct, page 15.
[332] *See* Finding of Fact No. 5.,page 11.
[333] Ex. 220, Schallenberg Direct, page 12.
[334] Ex. 220, Schallenberg Direct, page 14, and Ex. 43, Timpe Rebuttal, page 3.

long-term debt.[335]

228. Short-term borrowing, such as commercial paper, carries a lower interest rate than long-term borrowing.[336]

229. The average cost of LUCo's short-term debt for the 12-month period ending January 31, 2020, is 2.15 percent.[337]

230. Empire did not solicit any bids for the refinancing of the $90 million first mortgage bond.[338]

231. The promissory note includes a "make whole" provision, which requires Empire to pay all remaining interest payments on the note even if the note is retired earlier than the 15-year term period.[339]

232. A make whole provision is a condition that would benefit LUCo as the lender, but does not provide a benefit to Empire and would make it difficult for Empire to refinance in the future at a lower interest rate.[340]

233. LUCo was not charged a $450,000 origination fee as part of issuing the $90 million from its credit facility. Hence, LUCo charged Empire for issuance costs for long-term debt that was never issued but was instead borrowed from the LUCo credit facility.[341]

234. Short-term debt is usually a component of a utility's capital structure.[342]

235. When short-term debt is used by a utility to support construction work in

[335] Ex.156, Bolin Supplemental, page 5.
[336] Ex. 44, Cochrane Surrebuttal, page 11.
[337] Ex. 156, Bolin Supplemental, page 5.
[338] Ex. 129, Bolin Surrebuttal True-Up, page11.
[339] Ex. 220, Shallenberg Direct, page 12.
[340] Ex. 220, Shallenberg Direct, page 12-13.
[341] Ex. 220, Schallenberg Direct, page 15.
[342] Ex. 210, Murray Direct, page 5.

progress (CWIP) it is typically excluded from the ratemaking capital structure. Instead, the debt associated with construction costs are tracked in the allowance for funds used during construction (AFUDC). AFUDC includes the net cost for the period of construction of borrowed funds used for construction purposes.[343]

236. Once construction is complete and a project is placed in operation and ready for service, the project's costs, including the cost for borrowed funds tracked in the AFUDC, can receive treatment as electric plant in service and be included in the rate base.[344]

237. The AFUDC value is computed by applying an AFUDC rate to the accumulated eligible CWIP balance. The AFUDC rate is determined using a formula and elements, which considers such things as the balance of long-term debt, long-term debt interest rate, common equity, average short-term debt balances, and short-term debt interest rate.[345]

238. The formula for the AFUDC rate[346] recognizes long-term debt balances as

[343] Ex. 210, Murray Direct, page 5, and Ex. 60, Electric Plant Instructions.
[344] Ex. 60, Electric Plant Instructions.
[345] Ex. 60, Electric Plant Instructions; 18 C.F.R. Part 101, Title 18, Electric Plant Instructions, 3. Components of Construction Cost; OPC's Initial Post-hearing brief, page 45; Ex. 210C Murray Direct, page 15-16.
[346] Ex. 60, Electric Plant Instructions.

$Ai = s(S/W) + d(D/D + P + C)(1-S/W)$ $Ae = [1-S/W][p(P/D+P+C)+c(C/D+P+C)]$

Ai = Gross allowance for borrowed funds used during construction rate.

Ae = Allowance for other funds used during construction rate.

S = Average short-term debt.

s = Short-term debt interest rate.

D = Long-term debt.

d = Long-term debt interest rate.

P = Preferred stock.

p = Preferred stock cost rate.

C = Common equity.

c = Common equity cost rate.

the actual book balances as of the end of the prior year with the cost for long-term debt being the weighted average cost. The cost rate for common equity is the rate granted in a rate case and the short-term debt interest rate is determined annually.[347]

239. Empire requested the Commission approve tariffs that set the AFUDC rate based on its use of "actual book value" for long-term debt, preferred stock, and common equity.[348] The $90 million loan is included by Empire as long-term debt in the calculation of AFUDC. As explained more fully in the decision below, OPC opposes the use of long-term debt rate, including for the $90 million loan, to calculate the AFUDC rate and proposes the use of only a short-term debt rate to set the AFUDC rate.[349]

Conclusions of Law

HH. Commission Rule 20 CSR 4240-20.015 (1)(B) defines an 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 ….

II. Commission Rule 20 CSR 4240-20.015 (2)(A) States that:

> 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 goods or

[347] Ex. 60, Electric Plant Instructions.
[348] Ex. 60, Electric Plant Instructions; and Empire's Statement of Position, page 13
[349] *See* Public Counsel's Positions on Jointly Listed Issues, page 11-12.

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.

JJ. Commission Rule 20 CSR 4240-20.015 (2)(B) states that:

> Except as necessary to provide corporate support functions, the regulated electrical corporation shall conduct its business in such a way as not to provide any preferential service, information or treatment to an affiliated entity over another party at any time.

KK. Commission Rule 20 CSR 4240-20.015 (3)(A) sets forth evidentiary standards for affiliate transactions:

> When a regulated electrical corporation purchases information, assets, goods or services from an affiliated entity, the regulated electrical corporation shall either obtain competitive bids for such information, assets, goods or services or demonstrate why competitive bids were neither necessary nor appropriate.

LL. The Commission's affiliate transaction regulations require that Empire utilize a Cost Allocation Manual (CAM) with regard to its transactions with affiliated companies.[350]

MM. In File No. EM-2016-0213, of which the Commission takes administrative notice, the Commission approved a stipulation and agreement in which the joint applicants agreed they would not obtain Empire financing services from an affiliate, unless such services comply with Missouri's Affiliate Transaction Rules.

NN. The presumption of prudence does not apply to affiliate transactions. The

[350] 20 CSR 4240-20.015.2(E) and .3(D).

affiliate transaction rules were enacted in an effort to prevent regulated utilities from subsidizing their non-regulated activities. To presume that a regulated utility's costs in a transaction with an affiliate were incurred prudently is inconsistent with these rules.[351]

OO. Before utility property can be included in rate base, thereby allowing a utility to earn a rate of return on it, it must be utilized to provide service to its customers.[352]

PP. The Commission has the discretion to prescribe uniform methods of keeping accounts, records and books to be observed by electrical corporations and may prescribe, by order, forms of accounts and records to be kept.[353]

QQ. Except as otherwise provided, electric utilities shall keep accounts in conformity with the Uniform System of Accounts (USOA).[354]

RR. The USOA's Electric Plant Instructions, recognizes components of construction cost that are properly includible in electric plant accounts, including AFUDC.[355]

Decision

Issues to be resolved by the Commission include a determination as to whether Empire's rate base should be reduced to reflect the source and cost of the $90 million promissory note with LUCo and the appropriate metric to be used for Empire's carrying cost rate for funds used during construction that are capitalized.

The parties disagree as to whether Empire's rate base should be reduced to reflect

[351] *Office of the Public Counsel v Mo.PSC,* 409 S.W.3d 371 (Mo. 2013).
[352] *State ex rel. Union Elec. Co. v. Public Service Com'n of Mo.,* 765 S.W.2d 618 (Mo. App W.D. 1989.)
[353] Section 393.140.4, RSMo.
[354] 20 CSR 4240-20.030. *See also* 18 C.F.R. Part 101, Title 18, Electric Plant Instructions, 3. Components of Construction Cost, (17).
[355] 18 C.F.R. Part 101, Title 18, Electric Plant Instructions, 3. Components of Construction Cost, (17).

the source and actual cost of the financial transaction behind Empire's $90 million promissory note with LUCo. Staff argues that although the promissory note for the $90 million had a 4.53 percent long-term interest rate, a short-term debt rate should be applied to determine Empire's capital structure. Furthermore, OPC argues that the $450,000 origination fee should be removed from rate base and that Empire's AFUDC rate should be limited to short term debt and its related cost or interest rate.[356] Empire opposes these positions and asserts the $90 million loan from LUCo replaced maturing long-term debt with new long term debt. According to Empire, refinancing the $90 million of long-term bonds with short-term debt violates basic principles of financing.

Under the Commission's applicable affiliate transactions rule, Empire should not be charged more than the fully distributed cost or fair market value, whichever is less. The evidence clearly demonstrates that the terms of the $90 million promissory note violated the affiliate transaction rule. LUCo charged Empire a higher long-term interest rate than the short-term rate it incurred when it financed the debt through its credit facility. Therefore, Empire did not pay the fully distributed cost for the loan and there were no competitive bids to determine the market value. Empire failed to obtain bids to justify the 15-year long-term loan with LUCo at the 4.53 percent long-term rate or the need for a $450,000 origination fee. Since there is no presumption of prudency for the promissory note with Empire's affiliate LUCo, the Commission finds it reasonable to consider the impacts of the promissory note on rate base and apply the rates and terms actually incurred by LUCo.

Since the Commission has already determined that Empire should apply LUCo's

[356] Staff did not state a position on the AFUDC rate issue.

capital structure for purposes of determining rate of return, there is no need to reduce Empire's $90 million promissory note to a short-term debt rate in the capital structure. However, the analysis does not end there.

Financing decisions by a utility can have a direct impact on customers since increases in the cost of capital are passed on to customers when the financing is included in the capital structure used to set rates.[357] As the courts have recognized, such an increase in capital costs is also included in the AFUDC, "thereby increasing the future investment which the ratepayer must pay a return on and provide a return of."[358]

AFUDC

While the Commission directed Empire to utilize LUCo's capital structure, that does not address debt used to determine the AFUDC rate, which is then used to determine the AFUDC and ultimately the CWIP. The USOA permits the AFUDC for construction work to be added into rate base for electric plant (along with other construction costs) once a plant is completed and used for service. Calculating AFUDC at the end of a year involves the use of an AFUDC rate, which incorporates the equity rate, the long-term debt rate, and the short-term debt rate. CWIP is a cumulative calculation, which is based on the AFUDC rate, the length of construction, and the annual construction cost.

For example:

Sample Project:

- *Construction period – 2 years*
- *Annual Construction Cost - $100*
- *AFUDC Rate in each year– 10%*

$CWIP_n = AFUDC_n + [CWIP_{n-1} + Construction\ Cost_n]$

[357] *State ex rel. Union Elec. Co. v. Public Service Com'n of Mo., 765 S.W.2d 618, 624 (Mo. App W.D. 1989.)*
[358] *Id.*

$= [AFUDC\ Rate_n \times (CWIP_{n-1} + Construction\ Cost_n)] + [CWIP_{n-1} + Construction\ Cost_n]$

At the end of Year 1, $CWIP_1$ and $AFUDC_1$ on the project are calculated as shown below.

$CWIP_1 = AFUDC_1 + [CWIP_0 + Construction\ Cost_1]$
$= [AFUDC\ Rate_1 \times (CWIP_0 + Construction\ Cost_1)] + [CWIP_0 + Construction\ Cost_1]$
$= [0.10 \times (\$0 + \$100)] + [\$0 + \$100]$
$= \$10 + \$100$
$= \$110$

At the end of year 2, $CWIP_2$ and $AFUDC_2$ on the project are calculated as shown below.

$CWIP_2 = AFUDC_2 + [CWIP_1 + Construction\ Cost_2]$
$= [AFUDC\ Rate_2 \times (CWIP_1 + Construction\ Cost_2)] + [CWIP_1 + Construction\ Cost_2]$
$= [0.10 \times (\$110 + \$100)] + [\$110 + \$100]$
$= [0.10 \times \$210] + \$210$
$= \$21 + \$210$
$= \$231$

In this example, $231 would be the cumulative CWIP at the end of year two, of which $31 is the cumulative AFUDC over the two-year period.

The evidence demonstrates that LUCo's short-term interest rate for the twelve-months ending on January 31, 2020, was 2.15 percent. In so far as Empire used funds from the $90 million loan for CWIP, the higher 4.53 percent interest rate over the 15 year term of the loan will increase the AFUDC rate and thereby increase rate base when included in AFUDC. Therefore, going forward, Empire should apply the 2.15 percent short-term debt rate to the $90 million funds and treat the $90 million as short-term debt for purposes of calculating AFUDC. While OPC supports Empire being required to fund all of its CWIP at the short-term debt rate, no evidence supports this requirement. Empire argues that the formula for calculating AFUDC in the USOA requires use of the "actual book balances as of the end of the prior year" and that altering the prescribe formula will not reflect the true cost of funds Empire incurs when investing in capital projects.

Empire contends that this would be inconsistent with the requirement that Empire follow FERC accounting. Empire's argument ignores the Commission's statutory

authority to designate specific accounting methods. This is not an arbitrary decision by the Commission to ignore guidelines established in the USOA; it is quite the opposite. The USOA was intended to be applied to stand-alone electric companies. In the age of holding companies and affiliates, the Commission may analyze if the actions of a utility within a more complex ownership structure are consistent with the intent of the USOA and direct specific accounting treatment if it finds they are not. In this circumstance, where the debt Empire uses to calculate the AFUDC rate does not accurately represent the true cost of the source of funds for the $90M promissory note, the Commission is acting within its authority to direct a correction. The overall formula and method for calculating AFUDC will still be applied as directed by the USOA.

If the $450,000 origination fee was included in part of Empire's AFUDC calculations, which ultimately can be included in rate base, then rate base should also be adjusted to remove the portion attributable to the origination fee.

10) Cash Working Capital

Findings of Fact

240. Cash working capital (CWC) refers to the net funds required by Empire to finance goods and services used to provide service to customers.[359]

241. Empire determined the CWC requirement using a lead-lag study, which compares the net difference between the revenue lag and expense lead.[360]

242. The revenue lag represents the number of days from the time customers receive their electric service to the time customers pay for electric service, while the

[359] Ex. 26, Lyons Direct, page 44.
[360] Ex. 26, Lyons Direct, page 44.

expense lead represents the number of days from the time the Company receives goods and services used to provide electric service to the time payments are made for those goods and services. Together, the revenue lag and expense leads are used to measure the lead-lag days.[361]

243. If Empire has income tax expense, then its lead days for income tax expense would be applied to the approved level consistent with the IRS's payment schedule.[362] Empire has income tax expense included in its cost of service.[363] Empire calculated lead days for federal and state income taxes based on the number of days from the midpoint of the applicable tax period to the payment IRS dates.[364] Empire's tax paying affiliate does make quarterly payments to the IRS.[365] Empire determined that the appropriate number of expense lag days for its income tax lag was 39.38 days.[366]

244. OPC argued that an expense lag of 365 days should be used to measure income tax lag due to Empire's lack of income tax liability.[367]

245. The appropriate number of lag days is 39.38 because the Internal Revenue Code requires that corporate income taxes be paid on a quarterly basis.[368]

246. Empire calculated lead days associated with cash vouchers based on a stratified sample of invoices paid with different weights for lead days in each stratum determined by a proportion of the total stratum transactions. Empire calculated 29.21 as the appropriate number of expense lag days for cash vouchers. [369]

[361] Ex. 26, Lyons Direct, page 44.
[362] Ex. 27, Lyons Rebuttal, page 4.
[363] Ex. 124, Staff True-Up Accounting Schedule 9, page 5.
[364] Ex. 26, Lyons Direct, page 50.
[365] Ex.1018, Richard Responsive Supplemental Testimony, page 4.
[366] Ex. 26, Lyons Direct, Schedule TSL-SR1.
[367] Ex. 216, Riley Surrebuttal, pages 3-5.
[368] Section 6655 Internal Revenue Code.
[369] Ex. 27, Lyons Rebuttal, page 5-6.

247. Staff did not base its calculation on the number of transactions in each stratum, but instead accounted for the dollar amount of invoices in each class because lag is calculated based upon a dollar amount. Staff calculated 35.14 as the appropriate number of expense lag days for cash vouchers.[370]

248. Staff's cash voucher lag is consistent with previous Empire rate cases. The cash voucher lag from Empire's most recent rate case, File No. ER-2016-0023 was 35.28 days.[371]

249. Empire included bad debt expense in CWC, and calculated 42.13 as the appropriate number of lag days.[372] Empire's calculation reflects a collection lag from the time a customer bill is considered uncollectible and charged to bad debt expense to the time payment is received from customers.[373]

250. CWC measures the timing of a utility's cash flow that includes the revenues received from the customers and all of the payments made by the utility, because bad debt is a non-cash item Empire does not make payments to a supplier or other outside entity for bad debt, so the appropriate number of lag days is zero.[374]

251. Empire's vacation leave policy covers a calendar year and employees are granted their leave on January 1st of each year, which they can use throughout that calendar year. However, the policy allows for a deferral of up to five days of vacation to the following calendar year, to be used within the first quarter.[375]

[370] Ex. 132, Giacone Surrebuttal, pages 5-6.
[371] Ex. 132, Giacone Surrebuttal, page 8.
[372] Ex. 26, Lyons Direct, Schedule TSL-SR1.
[373] Ex. 27, Lyons Rebuttal, page 7.
[374] Ex. 132, Giacone Surrebuttal, page 4.
[375] Ex. 132, Giacone Surrebuttal, page 2.

252. Empire assumes the traditional approach, that most employees take their vacation uniformly throughout the year. Employees receive their vacation allotment on January 1st and take their vacation by December 31st. This approach assumes that vacation is taken at the midpoint of the year. Thus, the appropriate number of lead days to use for vacation pay is 182.50 days.[376]

253. Staff argued that an adjustment to the traditional approach for vacation day lag was needed to account for the five days of vacation Empire employees can carry over to the following year.[377] While Staff proposed a numerical adjustment in its stated position on this issue, it did not offer any supportive evidence into the record.

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

The Commission finds that the appropriate expense lag days for income tax is 39.38 days.

The Commission finds that the appropriate expense lag days for cash vouchers is 35.14 days.

The Commission finds that bad debt expense is a component of CWC, and the appropriate expense lag days for bad debt is zero days, because no cash is expended for bad debt.

The Commission finds that the appropriate number of expense lag days for employee vacation is 182.5 days.

[376] Ex. 27, Lyons Rebuttal, page 7.
[377] Ex. 132, Giacone Surrebuttal, page 3.

11) Accumulated Deferred Income Tax

Findings of Fact

254. Empire's Accumulated Deferred income taxes (ADIT) represents, a net prepayment of income taxes by customers prior to tax payment by Empire.[378]

255. Empire may deduct depreciation expense on an accelerated basis for income tax purposes, the amount of depreciation expense used as a deduction for income tax purposes by Empire is considerably higher than the amount of depreciation expense used for ratemaking purposes. This results in what is referred to as a "book-tax timing difference," and creates a deferral of income tax reserves to the future. The net credit balance in the ADIT accounts reserve represents a source of cost-free funds to Empire. Therefore, Empire's rate base is reduced by the ADIT balance to avoid having customers pay a return on funds that are provided cost-free.[379]

256. The net operating loss (NOL) is the result of Empire's use of the 50 percent first-year bonus depreciation that was available to utilities prior to the 2017 Tax Cuts and Jobs Act.[380]

257. If the use of accelerated tax depreciation reduces current income tax expense to a negative number, a NOL results. NOLs are carried forward to possibly offset future current income tax expense and cash outflows.[381]

258. The IRS has issued private letter rulings providing that an NOL deferred tax asset resulting from accelerated tax depreciation should be offset against a plant deferred tax liability also resulting from accelerated tax depreciation for ratemaking purposes.[382]

[378] Ex. 101, Staff Direct Report, page 24.
[379] Ex. 101, Staff Direct Report, pages 24-25.
[380] Ex. 5, Richard Rebuttal, page 8.
[381] Ex. 5, Richard Rebuttal, page 8.
[382] Ex. 5, Richard Rebuttal, page 9.

259. OPC's argument that Empire is not entitled to a reduction for a NOL because Empire is included in the consolidated income tax return filed by the Liberty Utilities, denies Empire a reduction it would otherwise be allowed as a stand-alone company.[383]

260. General ledger account 190.125 (Financial Accounting Standard (FAS) 123) is the deferred tax asset for stock-based compensation. Normalized payroll did not include any stock-based compensation, so any deferred tax impact of stock-based compensation expense should not be included in ADIT balances for rate base.[384]

261. Empire provided no persuasive evidence as to why FAS 123 should be included in ADIT.[385]

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

Empire's use of accelerated tax depreciation reduced Empire's income tax expense to a negative number, which resulted in an NOL. The NOL offsets the ADIT liabilities. This is appropriate since the NOL did not reduce current income tax payments and did not provide the company with a no-cost source of capital. OPC's argument that Empire's NOL should be disregarded because Empire is included in Liberty Utilities' consolidated tax return fails to explain how the deferred NOL income tax benefit of accelerated depreciation should be accounted for and deprives Empire of what it would

[383] Ex. 216, Riley Surrebuttal, page 3.
[384] Ex. 131, Foster Surrebuttal True-Up, page 2.
[385] Ex. 5, Richard Rebuttal, page 7.

otherwise be allowed as a stand-alone company. The Commission finds that Empire's booked accumulated deferred federal income tax should include a reduction for the NOL.

Empire provides no persuasive evidence as to why FAS 123 should be included in ADIT, but merely argues that if the underlying stock-based compensation is included by the Commission in normalized payroll levels, the FAS 123 deferred tax asset should also be included in the ADIT balances. The Commission finds that the FAS 123 deferred tax asset for stock-based compensation should not be included in ADIT balances for rate base since it accepts Staff's normalized payroll levels that exclude stock-based compensation.

12) Tax Cut and Jobs Act of 2017 federal income tax rate reduction from 35% to 21% impact for the period January 1 to August 30, 2018

Findings of Fact

262. The Commission opened File Nos. ER-2018-0228 and ER-2018-0366 to consider the impact of the Tax Cuts and Jobs Act of 2017 (TCJA) and to appropriately adjust the Company's rates following the passage of Section 393.137 RSMo. The Commission directed Empire to establish a regulatory liability to address the impact of the TCJA on Empire's rates from the date of the tax rate reduction to the effective date of lower base rates for Empire (January 1, 2018 - August 30, 2018), also known as the stub period.[386]

263. The Commission ordered Empire to defer approximately $11.7 million of stub period tax savings benefits (stub period revenue) on its balance sheet as a regulatory liability.[387]

[386] Ex. 4, Richard Corrected Direct, page 13.
[387] Ex. 101, Staff Direct Report, page 55.

264. The Commission did not address any ratemaking treatment regarding the stub period revenue in File No. ER-2018-0366, including whether the stub period revenue can or should be returned to the ratepayers, but postponed that decision to be addressed in this general rate case. [388]

265. Staff's proposal that the Commission amortize the regulatory liability over five years and not include the unamortized balance of the stub period revenue regulatory liability in rate base[389] is reasonable and aligns with the intent of the legislature in enacting Section 393.137 RSMo.

266. Empire's argument that it would be inequitable to return the stub period revenue to the ratepayers, and that it earned less than its allowed return during the stub period[390] is both irrelevant and is credibly contradicted by OPC's witness, whose analysis of the Empire's financial surveillance reports for the 12-month period ending September 30, 2018, indicate that Empire was substantially exceeding its authorized ROE.[391]

267. OPC states that the $11.7 million represents interest free money to Empire and that the Commission usually adjusts a company's rate base for its use of interest free money from its retail customers. OPC suggests that any unamortized balance should be an offset from rate base.[392]

268. The stub period revenue represents a tax benefit received by Empire over a relatively short period of time; recognizing that benefit over a finite five-year period is more appropriate than including this amount in rates as a long-term reduction to rate base.[393]

[388] Ex. 4, Richard Corrected Direct, page 13.
[389] Ex. 101, Staff Direct Report, page 56.
[390] Ex. Ex. 4, Richard Corrected Direct, page 13.
[391] Ex. 214, Riley Direct, page 5.
[392] Ex. 215, Riley Rebuttal, page 2.
[393] Ex. 154, Oligschlaeger Surrebuttal, page 6.

269. Amortizing the stub period revenue over five years with no rate base offset for the unamortized amount is consistent with prior rate treatment of many extraordinary deferrals granted by the Commission in that it effectively "shares" the financial impact of the extraordinary event in question between the utility and its customers. Passing on to customers the dollar value of the TCJA tax benefits in rates over time through an amortization, but excluding the unamortized amount from rate base, appropriately shares the benefit of unanticipated windfalls such as the stub period revenue between a utility and its customers.[394]

270. The amortization of the TCJA stub period revenue over five years reduces Empire's total amortization expense by $2,345,691.[395]

271. Staff's position to amortize over five years with no rate base offset for the unamortized amount is the most fair and equitable treatment of the impact of the TCJA for ratemaking purposes.[396]

272. The TCJA reduction in tax rate required the revaluation of accumulated tax timing differenced previously valued at 35 percent, to be revalued at 21 percent.[397]

273. The Commission's Report and Order in ER-2018-0366 ordered Empire to record as a regulatory liability the excess ADIT balances included in rates, using the difference between the 35 percent federal income tax rate and the now lower 21 percent federal income tax rate. That calculation of the regulatory liability was to begin January 1, 2018. The recovery of the differed excess ADIT to be determined in this rate proceeding.[398]

[394] Ex. 154, Oligschlaeger Surrebuttal, page 6.
[395] Ex. 102, Staff Direct Accounting Schedules.
[396] Ex. 154, Oligschlaeger Surrebuttal, page 6.
[397] Ex. 101, Staff Direct Report, page 54.
[398] Ex. 101, Staff Direct Report, page 55, and ER-2018-0366, Report and Order, Ordered p[paragraphs, Issued August 15, 2018.

274. This excess deferred tax value is required to be returned to customers based on whether the excess deferred taxes are protected or unprotected. Protected excess ADIT is the portion associated with accelerated depreciation tax timing differences that must be normalized for rate making purposes and where the flow back of excess ADIT cannot be returned to customers any more quickly than over the estimated life of the assets that gave rise to the ADIT. Unprotected excess ADIT is the portion of the deferred tax reserve that resulted from normalization treatment of tax timing differences other than accelerated depreciation.[399]

275. The balances of the protected excess ADIT is $101,146,004 and the balance of the unprotected excess ADIT is $25,621,649, as of March 31, 2019.[400]

276. Empire proposes returning the unprotected portion to customers amortized over three years.[401] This would result in an annual amortization amount of $8,540,550 of excess ADIT.[402]

277. Some utilities have requested ten or 15 years to return the unprotected portion to customers. Empires three year proposal does not present a rate impact concern for customers because it will reduce rates.[403]

278. Neither Empire nor the Commission can accelerate the return or amortization of the protected portion of the excess ADIT without violating IRS normalization rules. The protected portion of excess ADIT will flow back to the customers over the average remaining life of the assets.[404]

[399] Ex. 101, Staff Direct Report, pages 54-55.
[400] Ex. 750, Global Stipulation and Agreement, page 2.
[401] Ex. 4, Richard Corrected Direct, pages 21-22.
[402] Ex. 4, Richard Corrected Direct, page 21.
[403] Ex. 4, Richard Corrected Direct, pages 21-22.
[404] Ex. 4, Richard Corrected Direct, page 22.

279. Empire's adjustment to amortize protected excess ADIT in this case is $2,263.671.[405]

Conclusions of Law

SS. Section 393.137.3, RSMo, states in part:

> If the rates of any electrical corporation to which this section applies have not already been adjusted to reflect the effects of the federal 2017 Tax Cut and Jobs Act, … the commission shall have one time authority … to adjust such electrical corporation's rates prospectively so that the income tax component of the revenue requirement used to set such an electrical corporation's rates is based upon the provisions of such federal act without considering any other factor as otherwise required by section 393.270. The commission shall also require electrical corporations … to defer to a regulatory asset the financial impact of such federal act on the electrical corporation for the period of January 1, 2018, through the date the electrical corporation's rates are adjusted on a one-time basis as provided for in the immediately preceding sentence. The amounts deferred under this subsection shall be included in the revenue requirement used to set the electrical corporation's rates in its subsequent general rate proceeding through an amortization over a period determined by the commission.

TT. The Commission ordered Empire in File No. ER-2018-0366, to record a $11.7 million regulatory liability, representing the financial impact of the Tax Cut and Jobs Act of 2017 on Empire for the stub period, January 1, 2018 through August 30, 2018.

UU. The Commission ordered Empire in File No. ER-2018-0366, to record a regulatory liability for the difference between the excess ADIT balances included in current rates, which is calculated using the 35 percent federal corporate income tax rate, versus the now lower federal corporate income tax rate of 21 percent. The calculation of the regulatory liability of excess ADIT shall begin as of January 1, 2018. Recovery of the

[405] Ex. 4, Richard Corrected Direct, page 23.

amounts deferred through the regulatory liability shall be determined in Empire's next general rate proceeding (this proceeding).

Decision

Section 393.137.3, RSMo required Empire to defer the stub period revenue amount of $11.7 million. The statute also requires the Commission to include the deferred stub period revenue in its revenue requirement in Empire's subsequent rate case and amortize those amounts over a period determined by the Commission.

Empire's assertions that being ordered to return the stub period revenue would constitute retroactive ratemaking or that the amounts should not be returned because they were lawfully collected under Empire's approved tariff are overcome by the clear language of the statute; which specifically references the stub period: "the period of January 1, 2018, through the date the electrical corporation's rates are adjusted on a one-time basis." The stub period revenue is to be included in the revenue requirement and amortized over a period of time.

Likewise, OPC's argument that the stub period revenue should be immediately returned to the customers through a rate base adjustment is not contemplated by the statute. The Commission finds that the stub period revenue, the TCJA $11.7 million regulatory liability established in File No. ER-2018-0366, shall be amortized as a reduction to Empire's total amortization expense over five years with no rate base offset for the unamortized amount.

Section 393.137.3, RSMo, requires that the Commission determine an amortization period for the excess ADIT amounts. Empire has proposed returning the unprotected portion of excess ADIT to customers as amortized over three years. No party

has proposed an alternative position and the Commission finds a three-year amortization reasonable given that Empire will be filing another rate case in the third quarter of 2020.

The Commission takes administrative notice of its Report and Order in File No. ER-2018-0366. Empire calculates the amount of the protected portion of excess ADIT using the ARAM to match depreciation deductions for booked and tax purposes on each individual asset over the course of history. That determines when the excess deferred income taxes associated with that asset are released for refund to customers. The Excess protected ADIT must be returned over the average remaining life of the asset.

In ER-2018-0366 evidence showed that improperly calculating the return of protected excess ADIT could result in a mismatch that could result in a normalization violation under IRS regulations. Accordingly, the Commission cannot order a specific amortization period for the protected portion of the excess ADIT. The adjustment to amortize protected excess ADIT in this case is $2,263.671. This amount must periodically be recalculated and amortized over the life of specific assets, which due to retirements and other unforeseeable conditions may change over time. The Commission shall order Empire to return the protected amount of excess ADIT as amortized over the average remaining life of asset compliant with IRS normalization principles. Empire shall submit those amounts in its next rate case so that the Commission may determine compliance.

13) Asbury and AAO

Findings of Fact

280. For ratemaking purposes, a “Test Year” uses the test year income statement as a starting point for determining a utility’s existing annual revenues, operating costs, and net operating income. An “Update” is a period used to consider factors that

occur subsequent to the test year through a specific date. Updating a case does not change the test year, but rather, adjusts the test year to reflect audited results associated with factors considered through the update period. It represents the last date through which historical data is available to be audited.[406]

281. In a rate case, a "True-Up" can be used when significant changes in a utility's cost of service occur after the end of the update period for the test year but prior to the operation-of-law date.[407]

282. In this case, the Commission issued an order that established the test year as the 12 months ending March 31, 2019, with an update period through September 30, 2019. The order also allowed for items to be trued-up through January 31, 2020, based off of known and measurable information.[408]

283. The Commission denied a motion by OPC to modify the test year to include isolated adjustments for the retirement of the Asbury coal-fired power plant.[409]

284. Asbury was an approximately 200 MW cyclone steam generator commissioned in 1970, which burned a blend of low-sulfur Wyoming coal and local bituminous coal. In 2014, Empire retrofitted Asbury with an air quality control system, which was intended to extend the expected retirement date of the plant from 2030 to June 2035.[410]

285. In June 2019, Empire addressed the Asbury plant in its Triennial Integrated Resource Plan (IRP). Empire's IRP modeling showed that in 2018, Asbury had a 48

[406] Ex. 101, Staff's Direct Report, pages 1-3.
[407] Ex. 101, Staff's Direct Report, page 2.
[408] *See* Commission's October 17, 2019 Order Setting Procedural Schedule and Other Procedural Requirements.
[409] Order Denying Public Counsel's Motion to Modify the Test Year, and Order to File Suggestions for Inclusion in an Accounting Authority Order. January 28, 2020.
[410] Ex. 203, Mantle Direct, pages 21-22.

percent average capacity factor and because of the additional capital investment necessary to meet environmental regulations relating to Asbury's coal ash handling system and the energy market created by the SPP[411] integrated marketplace, the Asbury plant was not a cost-effective resource.[412]

286. Empire planned to close the Asbury plant no later than June 2020 in order to avoid the additional investment that would be required to comply with environmental regulations governing coal ash. Asbury would not have been allowed to operate beyond that time without making considerable investments or incurring significant costs to dispose of the coal ash.[413]

287. Empire identified certain Asbury assets to be reused and/or repurposed for the operations and maintenance (O&M) of other generation units, including basing the O&M of its future wind farms at the Asbury facility.[414] Empire also continued to evaluate the ultimate plan for the remaining Asbury assets.[415]

288. In January 2020, Empire indicated it was exploring options for the continued use of buildings and equipment at the Asbury location but had insufficient data.[416]

289. Black and Veatch was engaged to perform a multi-part study for Empire with regard to the closure of Asbury. The goal of Phase 1 of the study was to develop an initial Plant Retirement Plan that would be used to support the preferred plan for the plant's final disposition by analyzing multiple options. As of May 6, 2020, Empire was still

[411] SPP is a regional transmission organization that provides electric transmission services on behalf of its transmission-owner members pursuant to its regional tariff. *E. Texas Elec. Coop., v. F.E.R.C.,* 331 F.3d 131, 133 (D.C. Cir. 2003).
[412] Ex. 41, Wilson Direct, page 6; *See also,* Empire's 2019 IRP filed June 28, 2019, in File No. EO-2019-0049.
[413] Ex. 4, Richard Corrected Direct, page 25.
[414] Ex. 217, Robinett Direct, page 6.
[415] Ex. 1012, Wilson Supplemental, page 1.
[416] Ex. 217, Robinett Direct, Schedule JAR-D-2, page 5.

in the process of working through the final stages of Phase 1. Phase 2 will be the creation of the final plan based on Empire's decision on the ultimate disposition of the facility.[417]

290. Asbury last generated power in December 2019.[418] However, Asbury's assets (excluding those used elsewhere) were removed from service for accounting purposes as of March 1, 2020; the same day Asbury was de-designated from the SPP Market.[419]

291. The closure of Asbury was expected to impact Empire's O&M expense, including reducing costs to maintain the plant, such as materials expense as well as labor costs associated with the plant.[420]

292. However, since Asbury's planned retirement was after January 31, 2020, all of the impacts of the retirement could not be known or measurable before the end of the true-up period, including the changes in O&M charges.[421]

293. After the retirement, Asbury would still require O&M related to continued retirement activities. The appropriate level of O&M for Asbury is further complicated by Empire's potential use of the facilities for other future generation facilities.[422]

294. Empire proposed the Commission approve an AAO for items related to the Asbury closure.[423]

295. An AAO occurs when the Commission authorizes a utility to account for particular financial items in a different manner than what is normally required under the

[417] Ex. 1012, Wilson Supplemental, page 2.
[418] Ex. 219, Robinett Surrebuttal/True-Up, page 1.
[419] Ex. 1012, Wilson Supplemental, pages 1-2.
[420] Ex. 1012, Wilson Supplemental, pages 1-2 26.
[421] Ex. 4, Richard Corrected Direct, page. 2; and Ex. 1017, Richard Supplemental Testimony, page 20.
[422] Ex. 217, Robinett Direct, page 7.
[423] Ex. 1017, Richard Supplemental Testimony, page 20.

FERC USOA.[424] Although the USOA's general guidance is that net income should reflect all items of profit and loss during a period,[425] instruction number seven of the USOA allows for special treatment of certain items related to an extraordinary event that is significant and different from the ordinary and typical activities of a company.[426]

296. An AAO permits deferral from one period to another. The items deferred are booked as a regulatory asset or liability in the appropriate USOA accounts. During a subsequent rate case, the Commission determines what portion, if any, of the deferred amounts will be addressed in rates.[427]

297. Although the retirement of plant assets in general may be common, the retirement of a generating station can in some limited circumstances be considered extraordinary. This is due to the high dollar value of the generating units and the rarity of the retirement of units of this nature.[428]

298. For many years, Asbury was the primary baseload generating unit owned by Empire. The retirement of a unit of this size was unprecedented for Empire, especially since the retirement occurred well before the end of Asbury's estimated depreciable life.[429] The unrecovered original book cost for Asbury is estimated to be around $200 million.[430]

299. Empire acknowledged its decision to retire Asbury was not usual in nature or a frequent occurrence.[431]

[424] Ex. 162, Oligschlaeger, Supplemental, page 6.
[425] 18 C.F.R. Part 101, General Instruction 7.
[426] Ex. 1017, Richard Supplemental Testimony, page 20-21.
[427] Ex. 129, Bolin Surrebuttal True-Up, page 2; and Ex. 1017. Richard Supplemental Testimony, page 20.
[428] Ex. 162, Oligschlaeger, Supplemental, page 7.
[429] Ex. 162, Oligschlaeger, Supplemental, page 7-8.
[430] Ex. 217, Robinett Direct, page 2.
[431] Ex. 1017, Richard Supplemental Testimony, page. 21.

300. The Asbury retirement is expected to have a financial impact of at least five percent of the Empire's annual net income.[432]

301. An AAO could be issued directing Empire to record for consideration in its next rate case all impacts of the retirement of Asbury, including the return on and of the rate base associated with Asbury, depreciation, and any reduction in O&M expense.[433]

302. Although deferral through an AAO may require customers to wait to receive the benefits of the Asbury retirement in rates, the deferral approach can capture all the savings, including savings that occur prior to when rates will go into effect in this case.[434]

303. Empire anticipates filing its next rate case in the third quarter of 2020 to request recovery for wind generation acquisitions.[435]

Conclusions of Law

VV. A regulated utility's rates are established prospectively in periodic ratemaking proceedings, based on the utility's revenues and expenses during an earlier test year.[436] The use of a test year is the accepted way to establish future rates. The test year is a tool to find the relationship between investment, revenues, and expenses with certain adjustments made to the test year figures.[437]

WW. The criteria for determining whether an event outside the test year should be included is whether the proposed adjustment: 1) is known and measurable; 2) promotes

[432] Ex. 162, Oligschlaeger, Supplemental, pages 6-7.
[433] Ex. 1017, Richard Supplemental Testimony, page 20; and Ex. 162, Oligschlaeger, Supplemental Testimony, pages 8-9.
[434] Ex. 162, Oligschlaeger, Supplemental Testimony, pages 9-10.
[435] Ex. 1017, Richard Supplemental, page 12. Maini Direct, page 35.
[436] *State ex rel Aquila Inc. v Public Service Com'n of State*, 326 S.W.3d 20 at 28 (Mo. App. W.D. 2010).
[437] *State ex rel GTE North Inc. v Missouri Public Service Com'n* 835 S.W.2d 356, 368 (Mo. App. W.D. 1992).

the proper relationship of investment, revenues and expenses; and, 3) is representative of the conditions anticipated during the time the rates will be in effect.[438]

XX. When setting rates, the choice of method to adjust the test year for known and measurable changes is a factual determination within the Commission's expert discretion. The Commission is not required to recognize and incorporate all known and measurable events outside the test year so long as the results are rates that are just and reasonable.[439]

YY. SPP identifies generation owned, purchased or leased as a Network Resource if it is designated to serve load under SPP's Open Access Transmission Tariff.[440]

ZZ. Before a generating resource can terminate its designation as a Network Resource, SPP's Regional Tariff requires a request be submitted to terminate the designation status. The request must indicate the date and time that the termination is to be effective.[441]

AAA.The Commission has the discretion to prescribe uniform methods of keeping accounts, records and books to be observed by electrical corporations and may prescribe, by order, forms of accounts and records to be kept.[442]

BBB.Except as otherwise provided, electric utilities shall keep accounts in conformity with the USOA.[443]

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[438] *State ex rel GTE North Inc. v Missouri Public Service Com'n* 835 S.W.2d 356, 368 (Mo. App. W.D. 1992).
[439] *State ex rel GTE North Inc. v Missouri Public Service Com'n* 835 S.W.2d 356, 370 (Mo. App. W.D. 1992).
[440] *See* Southwest Power Pool, Inc., Open Access Transmission Tariff, Sixth Revised Volume No. 1, Part III, Section 30.1. https://spp.etariff.biz:8443/viewer/viewer.aspx
[441] *See* Southwest Power Pool, Inc., Open Access Transmission Tariff, Sixth Revised Volume No. 1, Part III, Section 30.3. https://spp.etariff.biz:8443/viewer/viewer.aspx
[442] Section 393.140.4, RSMo.
[443] 20 CSR 4240-20.030.

CCC. The USOA, Instruction No. 7 states that although net income should reflect all items of profit and loss during the period, an exception is made for extraordinary items, which are 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. 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 be reasonably expected to recur in the foreseeable future[444].

DDD. Although the ability to use a deferral mechanism is a policy decision within the Commission's discretion, the Commission has generally followed the guidance in the USOA that costs should not be deferred to another accounting period except for "extraordinary items."[445]

EEE. The purpose of an AAO is to defer and track certain extraordinary revenues or costs for consideration in a future rate case. The existence of an AAO does not guarantee any particular treatment of the deferred items in ratemaking.[446]

FFF. The Commission has authority to defer extraordinary costs of a utility for consideration in a later period. In doing so, it is not engaging in single-issue rate making.[447]

Decision

When the Commission established the test year for this case, it evaluated the treatment options for Asbury, which no party disputed would be retired before the rates for this case went into effect. The Commission specifically rejected OPC's request to

[444] 18 C.F.R. Part 101, General Instruction No. 7.
[445] *Kan. City Power v. Public Serv. Comm*, 509 S.W.3d 757 at 770.(Mo.App. W.D. 2016).
[446] *Missouri Gas Energy v. Pub. Serv. Com'n of Mo.*, 978 S.W. 2d 434 (Mo. App. W.D. 1998).
[447] *State ex rel. Office of Pub. Counsel v. Pub. Serv. Com'n of Mo*. 858 S.W. 2d 806 (Mo. App. W.D. 1993).

include isolated adjustments for the Asbury retirement in the true-up period. The Commission limited the scope of the true-up due to concerns that all the impacts of the Asbury retirement would not be known and measurable within the time available. In addition, the planned reuse of portions of the Asbury facilities made the isolated adjustments OPC requested unfeasible.

OPC contends that it is unlawful and unreasonable to include in rates the costs associated with the Asbury plant. Instead, OPC proposes that going forward, the Commission remove the costs associated with operating Asbury, including depreciation expense and O&M cost. For various reasons, the Commission disagrees with OPC's position.

When OPC filed its direct testimony on January 15, 2020, OPC initially argued that with a March 1, 2020 retirement date, Asbury's depreciation expense and O&M cost should be removed from Empire's cost of service since the new rates are expected to go into effect in July 2020, months after Asbury's retirement. OPC was concerned that ratepayers would be paying for plant that was no longer providing them benefits.

After discovering Asbury last generated power in December 2019 (prior to the January 31, 2020 true-up cutoff date), OPC again requested the Commission treat Asbury's retirement in this case and include it in the true-up. While OPC may be correct that Asbury last generated power in December 2019, OPC incorrectly assumes that this is when Asbury must cease being an asset. Asbury was still designated a generating Network Resource by SPP - meaning the RTO recognized Asbury as a unit capable of meeting load requirement - until it was "de-designated" after March 1, 2020. Under the RTO's tariffs, SPP's acceptance was required before Asbury's designation could be

terminated.[448] It would be reasonable to find that the retirement of Asbury could not occur before its status as a generator designated to serve load changed within SPP.

However, even if OPC is correct and the retirement of Asbury should be set as the day it last generated power in December 2019, the retirement still occurred after March 31, 2019, the end of the test year. OPC ignores the essential reason the Commission initially rejected its request to true-up isolated adjustments for Asbury. When determining if events outside the test year should be included, the Commission considers whether the proposed adjustments are known and measurable and are representative of the conditions anticipated during the time rates will be in effect.[449]

Regardless of whether Asbury retired on December 12, 2019, or after March 1, 2020, the impacts of the Asbury retirement are not known or measurable. OPC's witness was only able to provide an estimated range for O&M expenses to be removed from rates, since, as he acknowledged, savings would be decreased by the O&M costs for the retirement process.[450] While OPC acknowledges Empire will incur O&M costs for the retirement they also recommend Empire recover no O&M costs for Asbury.[451] OPC's proposal to remove all O&M costs for Asbury does not represent the anticipated conditions when the new rates are in effect since Empire will be incurring costs while it repurposes some of Asbury's facilities and also performing retirement activities.

Some of Asbury's facilities will be used as the base for O&M operations for Empire's planned wind farms and Empire is still evaluating if it will reuse other existing facilities. Although Asbury may not be generating electricity, some of its facilities may still

[448] *See* Southwest Power Pool, Inc., Open Access Transmission Tariff, Sixth Revised Volume No. 1, Part III, Section 30.3. https://spp.etariff.biz:8443/viewer/viewer.aspx
[449] *State ex rel GTE North Inc. v Missouri Public Service Com'n* 835 S.W.2d 356, 368 (Mo. App. W.D. 1992).
[450] Ex. 217, Robinett Direct, page 7.
[451] Ex. 217, Robinett Direct, page 7.

be used and useful. However, since Phase 1 of the Plant Retirement Plan was still ongoing as of May 6, 2020, it is impossible to accurately determine in this case the proper level of ongoing expense, including which Asbury plants will continue to have depreciation expense and which will not. OPC recommends the Commission remove all Asbury-related expenses and revenues from rates in this case and then set up a deferral account to track retirement and possible dismantlement costs for future consideration.[452] OPC's proposal will require Empire to wait until rates are set in the next rate case before the Company can possibly recover its ongoing retirement costs. It will also involve a limited deferral. Since OPC would only exclude costs beginning with new rates in July, it removes the possibility customers could recoup costs from the time of retirement until July.

The courts have found that, "[w]hether a cost should be afforded different treatment and merits a deferral directly impacts the PSC's chosen methodology for setting rates and is necessarily a discretionary judgment that is within the expertise of the PSC…."[453]It is both lawful and reasonable for costs related to Asbury to be included in rates. While Empire should not be allowed to have a generating plant sit idle indefinitely while recovering costs in rates, that is not the current situation. The transitional period in which some Asbury facilities are being retired and other assets may be repurposed occurred after the January 31, 2020 true-up cutoff and will continue after this report and order is issued. For this reason, the impacts of Asbury's retirements should be considered in their entirety in the next rate case and not as isolated adjustments in this case.

Excluding the Asbury retirement from the true-up adjustments does not mean the Commission intends to grant Empire a windfall. Although the inclusion in rates of all costs

[452] Ex. 219 Robinett Surrebuttal/True-Up, page 2.
[453] *Kan. City Power & Light Co.'s Request for Auth. To Implement a General Rate Increase for Elc. Serv. V. MO. Pub. Serv. Comm'n*, 509 S.W.3d 757, 770 (Mo.App. 2016).

related to a fully operational Asbury plant may not be an accurate representation of Empire's operating expense, an AAO could be issued directing Empire to record for consideration in its next rate case all impacts of the retirement of Asbury, including the return on and of the rate base associated with Asbury, depreciation, and any reduction in O&M expense. The Commission could then make a determination on the treatment for Asbury's retirement in the next rate case.

Empire's customers will not be disadvantaged by the deferral of the impacts of the Asbury retirement, compared to the option of reflecting the net savings from the retirement in rates set in this case. The difference between the deferral and immediate rate recognition scenarios is primarily one of timing. While customers will have to wait until rates for Empire's next rate case are set to receive the direct benefits of the Asbury retirement in rates if the impacts are deferred, the full amount of those net savings will still be captured and available to flow to customers in the next rate case, which Empire plans to file soon. The evidence shows that the retirement of the Asbury power plant is extraordinary, unusual, unique, and not recurring. The Commission finds that it is appropriate to issue an AAO to allow the Commission to defer a final decision until more is known about the financial impact of the retirement.

The signatories to the Agreement agreed that any order establishing an AAO for Asbury should direct Empire to establish a regulatory asset/liability, beginning January 1, 2020, to reflect the impact of the closure of Asbury and require Empire to separately track and quantify the changes from the base amounts, as reflected in Appendix D to the Agreement, of the following categories of rate base and expense[454]:

a. Rate of return on Asbury Plant,

[454] Ex 750, Global Stipulation and Agreement.

b. Accumulated Depreciation,

c. Accumulated and Excess Deferred Income Tax,

d. Fuel inventories assigned to the Asbury Plant,

e. Depreciation expense,

f. All Non-fuel/ non-labor operating and maintenance expenses,

g. All labor charges for maintaining and operating the Asbury Plant,

h. Property taxes assigned to the Asbury Plant,

i. Any costs associated with the retirement of the Asbury Plant, including dismantlement and decommissioning - Non-Empire labor excluded.

OPC's witness also proposed the following items be included in an AAO:[455]

a. Cash working capital and income tax gross up associated with Asbury.

b. Any fuel or SPP revenues or expenses associated with Asbury that do not flow through the FAC.

c. Revenue from scrap value or value of items sold.

Having found that the retirement of the Asbury power plant is extraordinary, the Commission will direct Empire to establish an AAO to defer costs and revenues associated with its retirement. OPC argues that the appropriate time to start the deferral is, "sometime before the earliest proposed retirement date of December 12, 2019."[456]

Beginning the deferral on January 1, 2020, should provide parties the opportunity to argue various positions in the next rate case as to retirement events while preserving

[455] Ex. 299-11, Robinett Testimony In Response To Commission Questions, page 1; and Office of Public Council's Response to Commission's Order Denying Public Counsel's Motion to Modify the Test Year, and Order to File Suggestions for Inclusion in an Accounting Authority (April 3, 2020).
[456] Ex. 299, Robinett Reply to Testimony Responding to Commission Questions, pages 9-10.

accounting of the amounts for consideration regardless of the Commission's determination as to the retirement.

In comparison, starting the deferral on an earlier date, such as the middle of a month, may cause difficulties distinguishing costs for auditing purposes. This may outweigh any benefits in quantifying those costs or revenues. Therefore, the deferral will begin January 1, 2020, until the Commission makes a decision regarding the AAO deferrals in Empire's next rate case. The Commission orders Empire to record as regulatory assets and regulatory liabilities the revenues and expenses in the categories identified by the signatories to the Agreement and proposed by OPC.

Empire's Objection to Offers of Evidence

On May 6, 2020, Empire filed its *Objections to Offers of Evidence*, objecting to specific testimony offered by OPC witnesses relating to the retirement of Asbury. Empire requested the Commission exclude certain portions of OPC's surrebuttal testimony or provide the Company and other parties the opportunity to submit additional testimony should the Commission overrule its objection and admit OPC's surrebuttal testimony. The Commission did not rule on Empire's motion until this Report and Order wherein the motion is overruled. OPC's surrebuttal testimony pertaining to Asbury was admitted into the record. The Commission has addressed the Asbury issue identified in this case concerning whether it is lawful and reasonable to include costs for Asbury in rates. While the analysis on that issue addresses OPC's position, the testimony presented by OPC was not sufficient to persuade the Commission that adjustments for Asbury's retirement are appropriate in this case. Even though Empire was not given an opportunity to present additional testimony, it is unlikely that any further testimony from Empire or any other party would impact the Commission's decision, which is consistent with Empire's position.

To the extent that Empire or other parties seek to admit testimony responsive to OPC's statements about events surrounding the retirement of Asbury or how costs and revenues for the Asbury assets should ultimately be treated, this case is not the proper place for those filings. Those issues can be addressed by the parties in Empire's next rate case.

14) Fuel Inventories

Findings of Fact

304. To determine the amount of coal inventory, the average daily burn by unit must be calculated. The average daily burn by unit is derived by dividing the annualized tons burned by the difference between 365 days and the number of annual planned outage days. Then, the average daily burn is multiplied by an appropriate number of days of inventory for each plant resulting in a burn inventory.[457]

305. Staff used a 60-day calculation to establish Empire's rate base investment in the coal inventory maintained both at KCPL's Iatan Generating Stations (Empire owns 12 percent of Iatan 1 and 2) and Plum Point Energy Station (Empire owns 7.52 percent of Plum Point).[458]

306. Empire acknowledged that Asbury has not operated as much as it did in the past, but this lower level of operation is already reflected in the average daily burn that Staff used in its calculation.[459]

307. Based upon information as of the end of the true-up period of January 31, 2020, and a retirement date of March 1, 2020, Staff determined that appropriate level of coal inventory was 18 days for Asbury.[460]

[457] Ex. 101, Staff Direct Report, pages 23-24.
[458] Ex. 101, Staff Direct Report, page 24.
[459] Ex. 15, Tarter Rebuttal, 15-16.
[460] Ex. 138, McMellen Surrebuttal True-Up, pages 2-3.

308. Empire set the number of burn days inventory for the Asbury 1 unit at 60 days consistent with past rate cases and inventory levels of other Empire coal units.[461]

309. OPC argues that the appropriate number of burn days for Asbury is zero.

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

The Commission finds that the appropriate number of burn days to use for Asbury coal inventory is 60 days. The Commission is not persuaded that any consideration of the impact of Asbury's anticipated retirement date of March 1, 2020 should be included in the calculation of Asbury fuel inventory since it is beyond the end of the true-up period in this rate case. Fuel inventories will be further addressed in Empire's next rate case to be filed in the third quarter of 2020. The financial impact of Asbury's retirement, including fuel inventories, will be addressed in that case through an AAO ordered by the Commission in this Report and Order. The treatment of Asbury's retirement through an AAO will allow fuel inventory changes to be captured and treated with other Asbury retirement related issues that impact Empire's rates.

15) Operation and Maintenance Normalization

Findings of Fact

310. A utility's O&M expenses are a major component of the revenue requirement.[462]

[461] Ex. 101, Staff Direct Report, page 24.
[462] Ex. 4, Richard Corrected Direct, page 8.

311. The O&M expense in this issue refers to non-labor O&M costs for each of Empire's generating units.[463]

312. Empire calculated O&M costs in the amount of $32,731,672 using actual test year amounts normalized for boiler plant maintenance.[464]

313. Staff calculated O&M costs in the amount of $28,877,386 prior to the application of jurisdictional allocation factors.[465]

314. While Staff recorded Empire's plant major overhaul schedule incorrectly, Staff reviewed the maintenance accounts and analyzed each plant separately to determine the trend, so mistakenly recording the major overhaul schedule did not affect Staff's final analysis or O&M expense recommendation.[466]

315. Staff used a five-year average to normalize O&M expenses for Asbury, State Line Combined Cycle, State Line Common, State Line 1, and Energy Center and Ozark Beach. Staff used a six-year average to normalize O&M expenses for Iatan 1 and a three-year average to normalize O&M expenses for Riverton.[467]

316. O&M expenses tend to fluctuate from year to year, because unscheduled outages occur at irregular and unpredictable times, and major planned outages do not occur annually.[468]

317. It is not appropriate to adjust actual utility expenses for ratemaking purposes based on overall economic indexes (inflation) that are not company or utility-specific. Those indicators are more reflective of the economic conditions in the United States.[469]

[463] Ex. 5, Richard Rebuttal, page 18.
[464] Ex. 62, Operation and Expense Workpapers, and Ex. 7 Richard True-up Direct, page 15.
[465] Ex. 124, Staff True-up Accounting Schedules
[466] Ex. 143, Sarver Surrebuttal True-Up, page 6.
[467] Ex. 143, Sarver Surrebuttal True-Up, page 6-7
[468] Ex. 101, Staff Direct Report, page 70.
[469] Ex. 143, Sarver Surrebuttal True-Up, page 7.

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

The Commission determines that the use of an average of historical O&M expenses to normalize O&M expenses provides the most reliable result because of the yearly fluctuation of O&M costs. These fluctuations in costs are related to both unscheduled outages that are irregular and unpredictable and major planned outages that do not occur annually. The Commission therefore finds that $28,877,386 is the appropriate amount of O&M expense to include in Empire's revenue requirement before jurisdictional allocation factors are applied. The Commission does not find that it is appropriate to adjust the O&M expense amount for inflation. The Commission finds that the appropriate normalized average of years for Riverton is three years, for State Line Combined Cycle Unit and for the Common Unit and State Line Unit 1 unit the appropriate normalized average of years is five years.

16) Pension and post-employment benefits (OPEB) (FAS 87 and FAS 106)

Findings of Fact

318. Empire provided two actuarial valuations to Staff, one based on acquisition accounting and one, for regulatory purposes, calculated as if the acquisition did not occur.[470]

319. The Merger Stipulation in File No. EM-2016-0213, states in paragraph three that "The Joint Applicants will ensure that the merger will be rate-neutral for Empire's

[470] Ex. 12, Fallert Rebuttal, page 2.

customers." The use of regulatory accounting for ongoing Pension and OPEB balances is necessary to comply with the Commission's order in that case.[471]

320. Acquisition accounting requires that some unamortized balances in the plans be immediately recognized as part of the business combination. Since amortization of these balances is a component of pension and OPEB expense, eliminating them from the rate calculation would have an impact on customer rates, which would not comply with the Commission's order in File No. EM-2016-0213.[472]

321. Staff used acquisition accounting amounts for the year 2018 in its direct filing.[473]

322. Staff's pension expense adjustment incorporates all of the components of financial and regulatory pension expense including those components recorded by Empire in account 426, allowing Empire full recovery of its pension costs.[474]

323. The Financial Accounting Standards Board (FASB) Accounting Standards Update No. 2017-07, 14 Compensation-Retirement Benefits, is the rule Empire relies on. It requires that the non-service cost components of pension and OPEB expense be reported outside of the subtotal of income from operations. Empire determined that account 426500, Other Income Deductions, would be the correct place to record these expenses in compliance with this rule.[475]

324. Paragraph 10 of the stipulation and agreement approved in Empire's last general rate case, File No. ER-2016-0023 states: "The prepaid pension asset balance as

[471] Ex. 13, Fallert True-Up Direct, pages 2-3.
[472] Ex. 13, Fallert True-Up Direct, page 3.
[473] Ex. 12, Fallert Rebuttal, page 2.
[474] Ex. 143, Sarver Surrebuttal True-Up, page 2.
[475] Ex. 1013, Fallert Supplemental, page 3.

of March 31, 2016 is $23,314,960, Missouri jurisdictional." [476] Empire's calculation of prepaid pension starts with that balance and adds activity to arrive at a prepaid pension balance of $26,269,345.

325. Some management employees receive benefits under Empire's Supplemental Employee Retirement Program (SERP). The IRS designated this program as a non-qualified plan. In a non-qualified plan, the expense is not pre-funded, so the payment basis is appropriate.[477]

326. Empire recommends expense basis as a preferable approach to calculate SERP because: (1) the expense amount is independently determined by the company's actuary; (2) it is consistent with the calculation of similar items (qualified pensions and OPEBs); and, (3) the recognition of SERP on an expense basis, rather than a payment basis, more closely matches the benefits provided to customers.[478]

327. Empire's Rabbi Trust analysis for the cases modeled, indicates that the cost to ratepayers of reimbursing benefits as they are paid (payment basis) was lower than the cost of prefunding (expense basis).[479]

328. Staff's allocation of total SERP cost to Missouri expense is based on the percentage of total ongoing FAS 87 pension cost to the portion of this cost allocated to Missouri expense. This applies an allocation percentage developed for a qualified

[476] Order Approving Stipulation and Agreement, Attachment A, File No. ER-2016-0023, issued August 10, 2016.
[477] Ex. 101, Staff Direct Report, page 69.
[478] Ex. 12, Fallert Rebuttal, page 5.
[479] Ex. 94, Rabbi Trust Analysis.

pension expense and not a non-qualified SERP expense. The appropriate SERP allocation percentage is 82.15 percent.[480]

329. In December 2018, $639,992 was reclassified from account 182353 to account 254101. Staff's true up calculation included the impact of this entry on account 254101 but did not include the impact on account 182353.[481]

330. Empire's true-up filing includes a total tracker balance of $12,260,836, which is $226,954 more than Staff's direct filing balance of $12,033,882. Empire's witness attributes the increase to activity between September 30, 2019, and January 31, 2020, errors in Staff's balance for account 182359, and a double-count of adjustments to remove FAS 88 settlements (acquisition accounting basis) in Staff's direct filing.[482]

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

The Commission finds most persuasive Empire's position that the regulatory accounting actuary report contains the appropriate data for determining Empire's pension and OPEB costs. However, Staff's jurisdictional allocation factors should be applied to pension and OPEB costs where applicable.

Accordingly, as pension and OPEB amounts that were previously charged to account 926 are now being charged by Empire to account 426, the Commission finds that these amounts charged to FERC account 426 should be included in pension and OPEB expenses.

[480] Ex. 12, Fallert Rebuttal, pages 5-6.
[481] Ex. 11, Fallert Direct, Schedule JAF-2.
[482] Ex. 13, Fallert True-Up Direct, page 5.

Paragraph 29 of the Agreement states that parties will continue to discuss and potentially recommend that Empire's SERP be pre-funded with a Rabbi Trust. The Commission is not approving costs associated with a SERP Rabbi Trust in this general rate proceeding and is not authorizing the pre-funding of a Rabbi Trust for Empire's SERP. The Commission finds that the payment basis is appropriate to calculate SERP costs because SERP costs are not pre-funded and Empire's own analysis indicates that costs to ratepayers to reimburse the SERP benefits are lower under the payment basis. The appropriate allocation percentage is 82.15 percent.

The Commission finds that the appropriate rate base and tracker amortization balances for accounts 182353 and 254101 are $12,260,836.

Based upon Empire's calculation of activity occurring since the Commission approved a stipulation and agreement in Empire's last rate case, File No. ER-2016-0023, setting the prepaid pension asset balance as of March 31, 2016, the Commission finds that the balance of the prepaid pension is $26,269,345 as of the end of the true-up period ending January 31, 2020.

17) Affiliate Transactions

Findings of Fact

331. Affiliated transactions are exchanges of good and services between a regulated utility and another entity sharing common ownership with the utility. Affiliated transactions are of concern to the Commission because of the prospect of a regulated entity's customers providing a "cross-subsidy" to the non-regulated operations of the firm owning both entities, by either paying excessive prices or receiving insufficient revenues for affiliated goods and services. The danger of cross-subsidy arises in affiliated transactions because such exchanges of goods and services are by definition not "arms-

length" in nature; hence they are not conducted by two independent third parties each looking out for its own best interest.[483]

332. Empire is part of a multi-layered corporate structure. It is directly owned byLUCo, which in turn is owned by a string of affiliated companies, and ultimately by APUC. Empire receives a variety of corporate, administrative and support services from a number of upstream affiliated entities, as well as support services from Liberty Utilities Service Corp (LUSC).[484]

333. Liberty Utilities, through LUSC and Liberty Utilities (Canada) Corp., provides some services on a shared basis to Empire where there is an opportunity to realize economies of scale or other efficiencies. These services are provided and charged based on a direct charge or a defined cost allocation methodology as set forth in APUC's Cost Allocation Manual (CAM). [485]

334. APUC's CAM is based on the National Association of Regulatory Utility Commissions (NARUC) Guidelines for Cost Allocations and Affiliate Transactions. The fundamental premise of those guidelines and the CAM is to directly charge costs as much as possible and to use reasonable allocation factors where allocation of indirect costs is necessary and direct charging is not possible.[486]

335. All costs incurred that are directly related to a specific affiliate company or business unit are directly charged to that company or business unit. Costs that are not directly related to a specific utility are indirectly allocated between the regulated and

[483] Ex. 114, Oligschlaeger Rebuttal, pages 1-2.
[484] Ex. 114, Oligschlaeger Rebuttal, page 3.
[485] Ex. 24, Schwartz Direct, page 3.
[486] Ex. 24, Schwartz Direct, page 4.

unregulated business units using two Corporate Allocation Methods for business services and corporate services as described in the CAM.[487]

336. Empire states that APUC's CAM satisfies the Commission's affiliate transaction rules, and that the Missouri Appendix satisfies the requirements of Commission Rules 20 CSR 4240-20.015 by providing the criteria, guidelines, and procedures the Missouri Regulated Utilities will follow when engaging in affiliate transactions.[488]

337. In File No. AO-2017-0360, Empire requested that its CAM be approved by the Commission. That case is currently suspended, as well as other cases involving other utilities' CAMs, pending the outcome of File No. AW-2018-0394, in which the Commission is considering changes to the Affiliate Transactions Rules for electric and other major utilities.[489]

338. APUC provides benefits to its subsidiaries by providing financing, financial control, legal, executive and strategic management and related services. The services provided by APUC are necessary for all affiliates to have access to capital markets for funding of capital projects and operations.[490]

339. OPC alleges that Empire has no employees and is operated by a non-regulated services company without Commission approval.[491]

340. LUSC employs most of the U.S.-based utility employees, who are assigned to specific utilities.[492]

[487] Ex. 101, Staff Direct Report, page 30.
[488] Ex. 24, Schwartz Direct, page 8.
[489] Ex. 114, Oligschlaeger Rebuttal, pages 3-4.
[490] Ex. 24, Schwartz Direct, page 10.
[491] Ex. 220, Schallenberg Direct, page 6.
[492] Ex. 101, Staff Direct Report, page 30.

341. Staff is not aware of any statute, rule or other requirement that obligated Empire to obtain advance approval from the Commission for the employee transfer to LUSC.[493]

342. In File No. EM-2016-0213, Empire provided testimony that LUSC is the legal employer of all United States based utility employees. Thus, Empire's employees are employed by a service company instead of directly by the Empire.[494] The parties to that case were on notice that Empire's employees would be employed by LUSC.

343. The transfer of employees from Empire to LUSC did not necessarily mean that there was any fundamental change in either the nature of the services provided or an increase in its cost to Empire. When Aquila United, Inc. merged with Kansas City Power & Light Company, in subsequent rate cases all labor expense was allocated to Kansas City Power & Light Company employees.[495]

344. Empire is still to a large degree receiving the same services from the same employee positions as it did prior to the LUSC transfer. Accordingly, there should be no appreciable difference in cost between Empire's current receipt of such services from LUSC and Empire having in-house employees perform the services. [496]

345. Providing corporate services to a number of affiliates on a centralized basis, as is done for Empire by the APUC upstream affiliates, is expected to be inherently more cost-effective than having each affiliate, including regulated utilities, provide the services for themselves.[497]

[493] Ex. 114, Oligschlaeger Rebuttal, page 8.
[494] Ex. 25, Schwartz Rebuttal, page 6.
[495] Ex. 114, Oligschlaeger Rebuttal, page 9.
[496] Ex. 114, Oligschlaeger Rebuttal, page 9.
[497] Ex. 114, Oligschlaeger Rebuttal, page 6.

346. For affiliate transactions between regulated and service companies, APUC upstream affiliate charges are calculated at cost, with no profit margin included in the charges to affiliates.[498]

347. Staff supports the concept of centralized provision of services to utilities in the situation where multiple affiliated entities exist under the corporate umbrella, as is the case with Empire.[499]

348. OPC also asserts that Liberty and APUC filed a FERC Form 60, and the costs on the form 60 reports do not match the amounts on Empire's affiliate transaction reports filed with the Commission.[500]

349. Empire states that there are timing differences between the filings causing different amounts to appear, there are currency conversion rate differences between the two filings, and Empire's Affiliate Transaction Report includes payroll funding and benefits not reflected in the FERC Form 60.[501]

350. OPC alleges that Empire receives allocated cost assignments from LUSC and that because Empire did not competitively bid the goods or services or demonstrate that competitive bidding was neither necessary nor appropriate for these affiliate transactions, it has no ability to determine fair market price, or the fully distributed cost for it to produce the good or service for itself.[502]

351. OPC states that not only do all of Empire's affiliate transactions violate the Commission's affiliate transactions rules but they also violated the conditions of the

[498] Ex. 114, Oligschlaeger Rebuttal, page 6.
[499] Ex. 114, Oligschlaeger Rebuttal, page 6.
[500] Ex. 220, Schallenberg Direct, page 8-9.
[501] Ex. 25, Schwartz Rebuttal, pages 8-9.
[502] Ex. 220, Schallenberg Direct, page 6.

Merger Stipulation.[503] OPC reviewed Empire's 2018 Affiliate Transactions Report,[504] but OPC points to no specific costs and provides no examples of incurred costs that were imprudent, or violate the Commission's Affiliate Transactions Rules, except for a $90 million affiliate promissory note.

352. OPC contends that a material adjustment should be made to disallow affiliate transactions expenses, but it only provides general and broad allegations of violations of the Affiliate Transactions Rules and does not offer any detailed calculation of what that amount might be.[505]

353. Staff disagrees with OPC's assumption that all affiliate transactions present the same level of regulatory concerns, and should be handled in the same manner for ratemaking purposes.[506]

354. Staff differentiates affiliated transactions into three primary categories:

a. An exchange of goods and services between a regulated entity and unregulated affiliate.

b. An exchange of goods and services between two regulated affiliates.

c. Services provided to a regulated affiliate by a nonregulated affiliated service company

355. The first category of affiliated transactions presents greater regulatory concern than the other two categories because the parent company can derive greater profits if a regulated utility overpays for a good or service from an unregulated affiliate [507]

356. Empire's affiliate transactions are almost entirely between Empire and its affiliated service companies.[508]

[503] Ex. 220, Schallenberg Direct, page 9.
[504] EX. 220c, Schallenberg Direct, Schedule RES-D-6.
[505] Ex. 114, Oligschlaeger Rebuttal, page 4.
[506] Ex. 114, Oligschlaeger Rebuttal, page 5.
[507] Ex. 114, Oligschlaeger Rebuttal, page 5.
[508] Ex. 114, Oligschlaeger Rebuttal, page 6.

357. Staff conducted an audit of Empire in the course of this case, including a review of the costs allocated to it from upstream affiliates and found most of those costs to be reasonable. Based on the review, Staff made some adjustments to some of the cost allocations and had a concern with Empire's allocation methodologies.[509]

358. The regulatory concerns when reviewing affiliate transactions include whether the allocated costs reasonably relate to the regulated operations of the utility and are incurred to benefit the utility and its customers, and are not excessive given their intended benefit.[510]

359. Affiliate transaction rules may be considered to go beyond the parameters of Staff's standard corporate allocations review, if they are interpreted as requiring that market values be determined for all goods and services obtained by utilities from nonregulated service company affiliates.[511]

360. The inherent cost efficiencies embedded within the shared services model employed for Empire, and also commonly found with other utilities, is that transfer of services at cost is generally a reasonable alternative to employment of competitive bidding or other market pricing methodology for services received by regulated utilities from service company affiliates.[512]

361. There have been a reduction in costs in certain functions that Empire previously provided on a stand-alone basis due to transfer of staff to shared service functions. Examples provided by Empire include:[513]

[509] Ex. 101, Staff Direct Report, pages 29-32.
[510] Ex. 114, Oligschlaeger Rebuttal, page 7.
[511] Ex. 114, Oligschlaeger Rebuttal, page 7.
[512] Ex. 114, Oligschlaeger Rebuttal, pages 7-8.
[513] Ex. 24, Schwartz Direct, page 11.

a. For Treasury services, in 2016 prior to its acquisition Empire incurred over $400,000. After the acquisition, the Treasury function became part of the LABS shared services and in 2018 Empire incurred less than $200,000 for Treasury services.
b. For Internal Audit prior to the acquisition, Empire incurred nearly $500,000 for its auditing function, when compared to less than $125,000 after the acquisition.
c. Human Resources functions were transitioned to shared services functions after the acquisition and had incurred approximately $440,000 in 2018, when compared to $700,000 in 2016.

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

The Commission finds that the affiliate transactions presented under this case, with the exception of the $90 million promissory note as addressed in issue nine, were prudent and complied with the requirements of Commission Rule 20 CSR 4240-20.015. The Commission does not rely on a presumption of prudence in making this decision. OPC points to no specific costs and provides no examples of incurred costs that were imprudent, or that violate the Commission's Affiliate Transactions Rules, except for a $90 million affiliate promissory note. Therefore, the Commission sees no need for any adjustments to Empire's revenue requirement aside from those identified in issue nine.

The Commission also finds that Empire's interactions with its affiliates should be reviewed as part of the next rate case. Staff should conduct an audit of the various types of affiliate transactions as part of this review and provide testimony to support it findings.

18) Riverton 12 O&M Tracker

Findings of Fact

362. A tracker for Riverton's O&M costs was established in File No. ER-2014-0351. In File No. ER-2016-0023 the tracker was continued because Riverton 12 was converted from a simple cycle to a combined cycle unit so there was no operational history by which to determine an appropriate level of Riverton O&M costs.[514]

363. The Riverton 12 Tracker was established to normalize or smooth costs of the Riverton 12 long-term maintenance agreement.[515]

364. Operating expenses associated with the Riverton 12 long-term maintenance agreement have increased by $4,789,471 since the tracker was established in Empire's last rate case.[516]

365. Conditions have not changed since the tracker was initiated. Because of the implementation of the SPP Integrated Market, the hours of unit operation have continued to vary from year to year, and the unit starts and trips are inconsistent from year to year. The tracker normalizes those fluctuations and smooths costs.[517]

366. Empire's position is that due to the continued uncertainty of operations and the potential for significant variations in the equivalent operating hours (EOH) charges,

[514] Ex. 101, Staff Direct Report, page 71.
[515] Ex. 5, Richard Rebuttal, page 4.
[516] Ex. 4, Richard Corrected Direct, pages 24 and 28.
[517] Ex. 5, Richard Rebuttal, page 5.

the extension of the tracker should be granted in order to continue to protect customers by smoothing the long term maintenance agreement (LTSA) costs.[518]

367. Empire calculated the balance of the Riverton 12 O&M tracker at $13,717,733 as of January 31, 2020, amortized over five years at $2,743,547.[519]

368. Staff calculated the balance of the Riverton 12 O&M tracker at $14,258,325 as of January 31, 2020, amortized over five years at $2,851,665.[520]

369. Staff used a three-year average to calculate O&M expenses for the Riverton units since the Riverton 12 unit was converted to a combined cycle unit on May 1, 2016. The three-year average O&M expense is $8,133,625 based on the end of the test period (before jurisdictional allocation).[521]

370. Empire calculated the O&M expenses for all of the Riverton units as of January 31, 2020, at $8,349,230 using actual rather than averaged amounts.[522]

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

Based upon the implementation of the SPP Integrated Market, the fluctuation in the hours of unit operation, and the availability of only three years of O&M information from the time Riverton 12 was converted from a simple cycle to a combined cycle unit, the Commission finds that the Riverton 12 tracker should continue. The Commission

[518] Ex. 5, Richard Rebuttal, page 5.
[519] Ex. 63 Riverton Workpapers, and Ex. 7, Richard True-Up Direct, page 13
[520] Ex. 124, Staff's True-Up Accounting Schedules, and Ex. 143, Sarver Surrebuttal True-Up page 9.
[521] Ex. 143, Sarver Surrebuttal True-Up, page 7, and Ex. 124, Staff True-Up Accounting Schedules.
[522] Ex. 64, Riverton Expense True-Up.

determines that the appropriate balance for the Riverton 12 O&M tracker is $14,258,325, which should be amortized over five years at $2,851,665.

The Commission finds that the appropriate method to determine the amount of Riverton 12 O&M expenses to include in the cost of service is to use a three-year average of O&M expenses through the end of the test year. Staff applied this same methodology for all Riverton units ($8,133,625) prior to applying Staff's jurisdictional allocations. Staff's adjustments to Riverton are inclusive of the entire generating facility, including Riverton 12. Therefore, that amount is not appropriate to include in the Riverton 12 tracker. The Riverton 12 tracker should be set at a three-year average of O&M expenses for Riverton 12 to which Staff's jurisdictional allocations have been applied.

19) Software Maintenance Expense

Findings of Fact

371. Empire has contracts, operating licenses, and agreements with vendors that provide maintenance, upgrades to software, and support for its computer software.[523]

372. Empire calculated software maintenance expense of $924,820.[524] Empire notes that Staff excluded a vendor and that Staff's results should be trued-up to January 31, 2020.[525]

373. Staff determined a software maintenance expense level of $836,858, after adjusting its calculations to include an excluded vendor. Staff annualized the expense for each of the suppliers based on the current rate for each as recorded on the General Ledger as of September 30, 2019. This is not an item that requires true-up.[526]

[523] Ex. 101, Staff Direct Report, page 80.
[524] Ex. 65, Software Normalized Amount.
[525] Ex. 5, Richard Rebuttal, page 36.
[526] Ex. 143, Sarver Surrebuttal True-Up, page 9, and Ex. 101, Staff Direct Report, page 80.

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

The Commission finds that the appropriate normalized level of for software maintenance expense is $836,858.

20) Advertising Expense

Findings of Fact

374. Staff classifies advertising into five categories: general, safety, institutional, promotional, and political. Institutional and political advertising are always disallowed by Staff. General and safety advertising are always allowed by Staff. Promotional advertising can be allowed to the extent that the utility can provide cost justification for the advertisement.[527]

375. $30,211 of advertising expense was appropriately disallowed from Empire's initial request. Staff provided explanations as to why each item was disallowed. Staff disallowed $1,972 in institutional/goodwill advertising. Institutional/goodwill advertising promotes the company's public image and does not benefit customers. Staff also disallowed $1,800 in invoices that, although paid in the test year, were invoiced in 2017. Staff further disallowed $770 in invoices recorded to below the line accounts 182303 and 182318.[528]

376. Empire calculated $155,552 in allowable advertising expense. While Empire made some disallowances, no explanation was provided as to why the disallowances were made.[529]

[527] Ex. 101, Staff Direct Report, page 80.
[528] Ex. 140, Nieneier Surrebuttal True-Up, page 5.
[529] Ex. 66, Advertising Expense Workpapers.

377. Empire stated that while it did not oppose Staff's adjustments those adjustments should be reduced because the proposed adjustment is on a total company level and the advertising benefits all jurisdictions and should be allocated accordingly.[530]

378. Empire also took issue with some adjustments being disallowed based upon product code assignment, or the description being vague, or an insufficient description on the invoice.[531]

379. Staff used multiple methods to determine whether an advertising invoice was allowed or disallowed. Each advertisement the Company submitted was reviewed to determine its primary message and whether it was recoverable under the categories established in the Commission's ruling in *In re Kansas City Power and Light*. Empire did not provide a copy of the advertisement with the invoice in some instances, so Staff relied on the product code assigned to the advertisement in the general ledger.[532]

Conclusions of Law

GGG. In the Report and Order in File Nos. EO-85-185 and EO-85-224, Regarding KCP&L Request for a Rate Increase, the Commission discontinued the New York rule regarding advertising and adopted four advertising categories supported by Staff:

1. General - informational advertising that is useful in the provision of adequate service

2. Safety - advertising which conveys the ways to safely use electricity and to avoid accidents

3. Promotional - advertising used to encourage or promote the use of electricity

4. Institutional - advertising used to improve the company's public image

[530] Ex. 5, Richard Rebuttal, page 23.
[531] Ex. 5, Richard Rebuttal, page 23.
[532] Ex. 140, Niemeier Surrebuttal True-Up, page 3.

The EO-85-185 and EO-85-224 Report and Order states that Staff proposes to allow the costs of all general advertising and reasonable amounts of safety advertising, and the costs associated with promotional advertising if the benefits derived were shown to exceed the costs. It was Staff's further proposal to disallow costs associated with institutional advertising. The Commission added a fifth category of political advertising.[533]

> 5. Political advertising - does not benefit the ratepayers and is not properly charged to them.

Decision

Staff's disallowances regarding advertising are consistent with how the Commission has previously ruled regarding advertising disallowances. The Commission found Staff's analysis most credible. Staff explained the amounts disallowed by category, and gave an overview of its methodology. Staff additionally justified its reasons for relying on invoice category codes for some advertising where Empire failed to provide a copy of the advertisement. The Commission finds that the appropriate amount of advertising to include is $129,196.

21) Customer Service

Findings of Fact

380. In the Liberty-Empire merger case, File No. EM-2016-0213, the Commission approved the Merger Stipulation in which Empire and Liberty stated they would strive to meet or exceed the customer service levels currently provided to their customers. The Merger Stipulation also provided that Staff and Empire would meet on a

[533] In re Kansas City Power and Light Company, 75 P.U.R.4th.

periodic basis to review contact center and other service quality performance. In both 2017 and 2018, Empire's performance fell below pre-merger levels.[534]

381. By Empire's admission it missed its customer service target by 2 percent in 2017, and in 2018, Empire was 16 percent below targeted levels of performance.[535] As of August 2019, Empire was 6 percent below the target.[536]

382. Statistics provided by Empire for September 2019 show an abandoned call rate of 4 percent and an average speed of answer of 44 seconds. Empire has an abandoned call rate goal of 5 percent or less and a goal for answering all calls within 30 seconds.[537]

383. Empire's customer service efforts were hampered by an almost 60 percent turnover in contact center employees, largely due to retirements. Empire currently has increased its staffing above pre-merger levels in the contact center. [538]

384. Turnover attributable to a merger is a common consequence of mergers.[539]

385. Empire is taking appropriate actions to address the unacceptable contact center performance that began in 2017, subsequent to the merger with Liberty Utilities.[540] However, it is necessary to institute greater oversight regarding customer-service and reporting requirements to prevent situations like this from arising in the future.[541]

[534] Ex. 101, Staff Direct Report, page 101.
[535] Ex. 1, Baker Direct, page 12.
[536] Ex. 1, Baker Direct, page 13.
[537] Ex. 101, Staff Direct Report, page 101.
[538] Ex. 1, Baker Direct, pages 12-13.
[539] Ex. 101, Staff Direct Report, page 102.
[540] Ex. 101, Staff Direct Report, page 102.
[541] Ex. 207, Marke Rebuttal, page 8.

386. At the Local Public Hearings conducted in Bolivar, Joplin, and Branson, the most frequent complaint regarding Empire's service involved the number of estimated bills, and the difficulty in addressing estimated bills with Empire.[542]

387. Since the acquisition, Empire's number of estimated bills has increased significantly reaching as high as 25,578 in December of 2019. In the six months before the merger with Liberty Utilities in July of 2017, Empire estimated fewer than 1,000 of its customers' bills each month. Between 2017 and 2018, there was a 654 percent increase in estimated bills and a 293 percent increase between 2017 and 2019. Empire has been able to reduce the estimated bills to 5,658 in January 2020 and 1,179 in February 2020.[543]

388. Empire attributed these high levels of estimated bills to many meter readers leaving their positions for other positions in the company following the announcement about the plan to move to AMI. However, in late 2018, Empire was successful with union contract negotiations, which allowed for the use of contractors for meter reading, which allowed for a reduction in estimated meter reads. Unfortunately, beginning in August 2019, the Meter Reading department had four readers on medical leave at the same time for several months. This, coupled with other factors, led to the Company again experiencing an increase in estimated bills.[544]

389. While the estimated meter reads in the first two months of 2020 continue to be higher than early 2017, they have drastically improved from late 2019. Empire's goal is to read every meter every month. In an effort to meet this goal, Empire has reallocated meter readers to cover service areas that had vacant positions. Additionally, they have allowed employees to work additional overtime. Empire has worked with its meter-reading

[542] Local Public Hearing transcripts.-Tr. Vol. 3, 4, 5.
[543] Ex. 207, Marke Rebuttal, page 6.
[544] Ex. 3, Baker Surrebuttal, pages 8-9.

contractor. The contractor hired an extra person to help keep their routes on schedule, and the contractor will continue to work with the Company to provide additional solutions as needed.[545]

Conclusions of Law

GGG. Commission Rule 20 CSR 4240-13.040 establishes procedures to follow when customers make inquiries of utilities so customer inquiries are handled in a reasonable manner.

> (1) A utility shall adopt procedures which shall ensure the prompt receipt, thorough investigation and, where possible, mutually acceptable resolution of customer inquiries. The utility shall submit the procedures to the commission for approval and the utility shall notify the commission and the public counsel of any substantive changes in these procedures prior to implementation.
>
> (2) A utility shall establish personnel procedures which, at a minimum, ensure that—(A) At all times during normal business hours qualified personnel shall be available and prepared to receive and respond to all customer inquiries, service requests, safety concerns, and complaints.

Decision

The Commission is concerned about Empire's customer service. Much of that concern related to the large number of estimated bills received by Empire's customers and the customer service they receive when trying to understand and resolve issues with estimated bills. Estimated bills have had an effect on customer's perceptions of Empire's customer service. When the large number of estimated bills is combined with the high turnover rate in Empire's contact center, it is a formula for poor customer service. Much

[545] Ex. 3, Baker Surrebuttal, page 9.

of this is likely attributable to the merger, and the Commission is hopeful that this drop in customer service is just temporary.

While the Commission finds that Empire is taking steps to improve its customer service, the Commission believes it is important to monitor Empire's progress related to meter reading and billing. Accordingly, the Commission will order Empire to do the following tasks (originally agreed to by Empire as part of the Agreement) for the years 2020, 2021, and 2022 related to meter reading and billing:

1. Incorporate data into its monthly reports to Commission Staff;

2. Initiate quarterly reports to the Commission Staff and OPC regarding the number of estimated meter readings;

3. Initiate quarterly reports to the Commission Staff and OPC regarding the number of estimated meter readings exceeding three consecutive estimates;

4. Initiate quarterly reports to the Commission Staff and OPC regarding the number of bills with a billing period outside of 26 to 35 days; and

5. Initiate quarterly reports to the Commission Staff and OPC regarding the Company and contract meter reader staffing levels;

6. Evaluate the authorized meter reader staffing level and take action to maintain adequate meter reader staffing levels in order to minimize the number of estimated bills.

7. Company will meet with Staff and OPC to discuss bill redesign possibilities for the future.

8. Ensure that all customers who receive estimated bills for three consecutive months receive the appropriate communication regarding estimated bills and their option to report usage as required by Service and Billing Practices, Rule 20 CSR 4240-13.020(3).

9. Ensure that all customers who receive an adjusted bill due to underestimated usage are offered the appropriate amount of time to pay the amount due on past actual usage as required by Service and Billing Practices, Rule 20 CSR 4240-13.025(1)(C).

10. Evaluate meter-reading practices and take action to ensure that billing periods stay within the required 26 to 35 days, unless permitted by those exceptions listed in the Commission's rules.

11. File notice within this case by September 1, 2020, containing an explanation of the actions the Company has taken to implement the above recommendations related to billing and bill estimates.

22) Material and Supplies

Findings of Fact

390. Material and Supplies (M&S) are Empire's investment in inventory for items such as spare parts, electric cables, poles, meters, and other items used in daily operations and maintenance activities to maintain Empire's production facilities and electric system. Empire holds a variety of M&S in inventory so the items can be readily available when needed in performing its utility operations.

391. Empire calculates that the appropriate amount of M&S to be included in cost of service is $33,031,612, which represents a 13-month average as of January 31, 2020, for electric inventory only.[546]

392. Staff calculates that the appropriate amount of M&S to be included in cost of service is $32,773,580.[547] This reflects the 13-month average of costs as provided by Empire as of January 31, 2020, after applying the Missouri jurisdictional allocation factor.[548]

393. Empire calculates that the appropriate amount to remove from inventory as it relates to Non-Electric items is $67,179, which also represents a 13-month average as of January 31, 2020.[549]

[546] Ex. 10, Palumbo True-Up Direct, page 2, and Ex. 67, Materials and Supplies Workpaper.
[547] Ex. 124, Staff True-up Accounting Schedules, Schedule 02.
[548] Ex. 140, Niemeier Surrebuttal/True-up, page 6.
[549] Ex. 10, Palumbo True-Up Direct, page 2, and Ex. 68, Removal of Non-Electric Inventory Workpaper.

394. Staff calculates the appropriate balance to remove from inventory as it relates to Non-Electric items is $76,714, before Missouri jurisdictional allocations.[550]

395. Clearing accounts are temporary accounts that will be transferred to another account for miscellaneous expenses that need to be allocated to several accounts, such as vehicle maintenance and cell phone expenses. Clearing accounts are not materials or supplies. Staff did not include clearing accounts in its 13-month average.[551]

396. Empire says that clearing accounts should be included in the average because the balances fluctuate during the test year.[552]

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

The Commission finds the evidence presented by Staff most persuasive. The appropriate balance to be included for materials and supplies to be included in the cost of service is $32,773,580, and the appropriate amount to exclude is $76,714. Missouri jurisdictional allocations should be applied to these amounts.

23) Asset Retirement Obligations

Findings of Fact

397. Asset Retirement Obligations (ARO) are obligations associated with a tangible long-lived asset that result from the acquisition, construction, development, or normal operation of a long-lived asset in which the timing or method of settlement is

[550] Ex. 140, Niemeier Surrebuttal/True-Up, page 6, and Ex. 68, Removal of Non-Electric Inventory Workpaper.
[551] Ex. 140, Niemeier Surrebuttal True-Up, page 6, and Ex. 124, Staff True-Up Accounting Schedules.
[552] Ex. 9, Palumbo Rebuttal, page 2.

conditional on a future event. An ARO exists when the obligation to perform the asset retirement activity is unconditional even though there may be uncertainty about whether and how and when the obligation will be settled.[553]

398. An ARO is a financial requirement to record currently the costs associated with the future retirement/remediation of a long-lived asset. Therefore, the utility is required to book for financial purposes the current costs to retire a long-lived asset at a date in the future. These costs are then collected over the useful life of the asset.[554]

399. AROs represent one component of costs that are considered in determining the cost of removal component of utility depreciation rates.[555]

400. During the negotiation of this rate case, it was discovered that $9.2 million of claimed ARO costs were already incurred by Empire.[556]

401. What Staff had previously understood to be accrued liabilities booked by Empire for future costs were actually recent cash expenditures. Therefore, Staff changed its position on the rate case treatment of these costs.[557]

402. Staff is generally opposed to rate recovery of AROs. AROs represent one component of costs that are considered in determining the cost of removal component of utility depreciation rates. Cost of removal is allowed to be collected in rates on an ongoing basis in order for the utilities to recover over time the estimated costs of “removing” assets once they are retired and no longer needed to provide service to customers. Allowing rate treatment of AROs would very likely result in double recovery in rates by the utility of certain costs related to retirement of assets.[558]

[553] Ex. 4, Richard Corrected Direct, pages 14-15.
[554] Ex. 354, Meyer Supplemental Surrebuttal, page 2.
[555] Ex. 154, Oligschlaeger Sur-Surrebuttal, page 2.
[556] Ex. 354, Meyer Supplemental Surrebuttal, page 3.
[557] Ex. 154, Oligschlaeger Sur-Surrebuttal, page 2.
[558] Ex. 154, Oligschlaeger Sur-Surrebuttal, page 2.

403. The ARO balance Empire asks the Commission include in rate base is for costs paid to remove asbestos at the Asbury and Riverton generating units, as well as, costs paid to settle obligations for the coal ash ponds at Asbury, Iatan, and Riverton. Empire has not previously recovered these amounts in rates.[559]

404. Staff has verified that the amounts sought in rates by Empire as AROs represent recent cash expenditures, and that the costs were both prudent and necessary.[560]

405. The costs for removal of asbestos at Asbury should be treated as cost of removal and charged against the Asbury accumulated depreciation reserve. Similar treatment should be afforded the costs for working on the Iatan and Asbury ash ponds. For the Riverton ash pond, which has already been retired, the costs were captured in a regulatory asset to be amortized in the next rate case.[561]

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

The Commission has not generally allowed for the recovery of ARO's because without a legal obligation, these future costs were not known and measureable. However, the evidence in this case shows that the costs at issue to remove asbestos at the Asbury and Riverton generating units, as well as, costs paid to settle obligations for the coal ash ponds at Asbury, Iatan, and Riverton are not ARO's. Instead, these costs have already been paid by Empire, but not yet recovered in rates. The cost of removal of asbestos at Asbury and costs associated with the operation of certain ash ponds at Asbury and Iatan

[559] Ex. 6, Richard Surrebuttal, pages 3-4 and 6.
[560] Ex. 154, Oligschlaeger Sur-Surrebuttal, page 2.
[561] Ex.354, Meyer Supplemental Surrebuttal, page 3.

shall be charged to the accumulated depreciation reserve of each respective generation facility. However, for the Riverton ash pond, which has already been retired, the costs shall be captured in a regulatory asset to be considered in Empire's next rate case.

24) LED Replacement Tracker

Findings of Fact

406. Empire currently has tariffs for municipal street lighting and its private lighting service.[562]

407. Empire's municipal LED tariff was implemented after a pilot program was conducted to determine the benefits of LED lights compared to high-pressure sodium fixtures.[563]

408. Empire is requesting two deferrals, one to capture the costs associated with the mercury vapor lights replacement program and to track the difference between estimated and actual revenues and costs of the LED light fixtures for municipal lighting customers, and the other to defer and track the same revenues and costs from private lighting customers switching to LED Lighting.[564]

409. LED lights are more efficient, use less energy, last longer, are more durable, and have the ability to operate at lower temperatures than other lighting sources.[565]

410. Empire states that replacing all the mercury vapor lights at once is more efficient and less expensive than replacing the lights individually through attrition. A technician would drive a truck out to each of the 8,500 lights to inspect and determine

[562] Ex. 33, McGarrah Direct, pages 2 and 7.
[563] Ex. 33, McGarrah Direct, page 3.
[564] Ex. 106, Bolin Rebuttal, page 6.
[565] Ex. 33, McGarrah Direct, page 4.

what type of light is out, whether the failure is a bulb or the fixture and whether the parts are available.[566]

411. Empire proposes to switch all 8,500 municipal mercury vapor lights to LED lights over a 12-18 month time period even if the lights are still in working condition.[567] Empire can control the timing of the replacement of mercury vapor lights.[568]

412. A tracker is a rate mechanism under which the amount of a particular cost of service item incurred by a utility is tracked and compared to the amount of that item currently included in a utility's rates. Any over-recovery or under-recovery of the item in rates compared to actual expenditures is booked to a regulatory asset or liability account, and would be eligible to be included in the utility's rates set in its next general rate proceeding through an amortization to expense.[569]

413. Use of trackers may be justified when the costs are material in nature and the applicable costs:

a. Demonstrate significant fluctuation and up-and-down volatility over time, and for which accurate estimation is difficult;

b. Are new costs for which there is little or no historical experience, and for which accurate estimation is accordingly difficult; and

c. Are imposed upon utilities by Commission rule.[570]

414. Empire is currently collecting in its cost of service depreciation expense and a return on the mercury vapor lights it wishes to replace.[571]

[566] Ex. 33, McGarrah Direct, pages 6-7.
[567] Ex. 106, Bolin Rebuttal, pages 9-10.
[568] Ex. 106, Bolin Rebuttal, page 9.
[569] Ex. 106, Bolin Rebuttal, page 6.
[570] Ex. 106, Bolin Rebuttal, page 7.
[571] Ex. 106, Bolin Rebuttal, page 10.

415. If Empire replaces all the mercury vapor lights following the conclusion of this rate case, it would continue to receive rate recovery of depreciation expense and return for those mercury vapor lights until its next rate case which would offset some of the depreciation expense and return Empire would defer for new LED lights.[572]

416. Under a deferral, Empire would get to collect the return and depreciation expense on the new assets that is not currently included in the revenue requirement.[573]

417. Empire witness McGarrah estimated that the cost to install a municipal LED light of minimum size at $372.88, and the cost to install a private light at approximately $240, depending on light size.[574]

418. Staff witness Bolin testified that if Empire replaced all 8,500 municipal mercury vapor lights within a one year time frame, the maximum annual cost of replacement would be approximately $448,195, which is not a material cost for Empire.[575]

419. If the Company converts all 8,500 mercury vapor lights to LED lighting the annual amount of lost revenue from the municipal lighting customers is estimated to be $127,415, which is also not a material amount to Empire.[576]

420. Staff witness Bolin testified that Empire currently has 5,400 mercury vapor lights in its Missouri private lighting service class. If it replaced all 5,400 of those lights within a one-year time frame, the most the annual cost of replacing the private mercury vapor lights with LED lights would be is approximately $282,333, which is not a material cost for Empire.[577] If the company converts all 5,400 mercury vapor lights in its Missouri

[572] Ex. 106, Bolin Rebuttal, page 10.
[573] Ex. 106, Bolin Rebuttal, page 10.
[574] Ex. 35, McGarrah Surrebuttal, pages 4 and 5.
[575] Ex. 129, Bolin Rebuttal, page 9.
[576] Ex. 129, Bolin Rebuttal, page 9.
[577] Ex. 106, Bolin Surrebuttal/True-up, page 8.

private lighting service class to LED lighting, the annual amount of lost revenue from the private lighting customers is estimated to be $79,056, which is not a material amount to Empire.[578]

421. While most of Empire's mercury vapor lights are 30 to 40 years old, they have not failed,[579] and replacement bulbs are still available (although fixtures are not).[580]

Conclusions of Law

HHH. The Commission may "prescribe uniform methods of keeping accounts, records and books to be observed by electrical corporations[.]"[581] Additionally, the Commission may "prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited."[582]

Decision

Empire failed to present adequate or credible evidence to support its request for LED replacement trackers for either municipal lighting or its private lighting service. Staff presented credible evidence that neither the municipal nor the private LED replacement costs were sufficiently material to Empire to justify the extraordinary remedy of a tracker. Additionally, there was no credible evidence that replacement costs fluctuated, were difficult to estimate, or were imposed by a Commission rule.

The Commission is also not convinced that changing from one kind of light to another is a cost for which Empire lacks historical experience, and Empire presented no evidence otherwise. While the Commission recognizes the benefits of such lighting retrofit programs because LED lights are more efficient, use less energy, and last longer, the

[578] Ex. 106, Bolin Surrebuttal/True-up, page 8.
[579] Ex. 35, McGarrah Surrebuttal, page 4.
[580] Ex. 35, McGarrah Surrebuttal, page 2.
[581] Section 393.140(4), RSMo.
[582] Section 393.140(8), RSMo.

requirements for establishing a tracker have not been met with the facts presented in this case. The Commission denies Empire's requests for LED replacement trackers.

25) May 2011 Tornado Unamortized AAO Balance

Findings of Fact

422. An AAO is an accounting mechanism that permits deferral of costs from one period to another. The items deferred are booked as an asset rather than an expense, thus improving the financial picture of the utility in question during the deferral period. During a subsequent rate case, the Commission determines what portion, if any, of the deferred amounts will be recovered in rates.[583]

423. In File No. EU-2011-0387, the Commission authorized Empire to defer incremental O&M expenses incurred for the repair, restoration and rebuild activities associated with the May 22, 2011 tornado in Joplin. Empire was also allowed to defer depreciation expense and carrying costs associated with the tornado-related capital expenditures. [584]

424. The Commission ordered the Company to begin amortizing the deferral over a ten-year period to start at the earlier of (1) the effective date of new rates implemented in its next general rate case (File No. ER-2012-0345) or next rate complaint case; or (2) June 1, 2013.[585]

425. The AAO permits Empire to accrue a carrying charge equal to its AFUDC rate on its tornado capital additions during the deferral period to offset the lack of a current return on its tornado-related capital additions.[586]

[583] Ex. 129, Bolin Surrebuttal True-Up, page 2.
[584] Ex. 129, Bolin Surrebuttal True-Up, pages 2-3; and Ex. 101, Staff Direct Report, page 53.
[585] Ex. 129, Bolin Surrebuttal True-Up, page 3, and Ex. 101, Staff Direct Report, page 53.
[586] Ex. 129, Bolin Surrebuttal True-Up, page 3.

426. The unamortized AAO balance as of January 31, 2020 is $1,274,630.[587]

427. In File No. WR-95-145, the Commission noted that including the unamortized balance of a flooding disaster in rate base would shield the shareholders from the risk of a natural disaster while imposing the risk entirely on the ratepayers.[588]

428. Excluding the unamortized balance from Empire's rate base denies it a return on the investment it made to restore electric service, results in an immediate understatement of Empire's cost of service to Missouri retail customers and is at odds with the Commission's order authorizing the deferral.[589]

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

The magnitude of the destruction from the Joplin Tornado was something Empire could neither have prevented nor predicted. After the tornado, Empire made significant investments to restore electric systems to its Missouri retail customers quickly and efficiently. The Commission at that time authorized the deferral of expenses to restore, repair, and rebuild. The Commission finds that it is appropriate that the unamortized AAO Balance for the May 2011 Joplin Tornado be included in rate base.

26) Depreciation and Amortization Expense

Findings of Fact

429. Empire is not requesting to change currently ordered depreciation rates in this case.[590]

[587] Ex. 129, Bolin Surrebuttal True-Up, page 3; and Ex. 70, Tornado Regulatory Asset Workpaper.
[588] Ex. 129, Bolin Surrebuttal True-Up, page 4.
[589] Ex. 5, Richard, Rebuttal, page 7.
[590] Ex. 101, Staff Direct Report, page 89.

430. No new depreciation study was completed for this rate case, and Staff has no objections to the current depreciation study submitted in File No. ER-2016-0023 on October 16, 2015, which meets the requirement of 20 CSR 4240-3.160(1)(A).

431. Staff calculated that the appropriate amount of depreciation expense as of January 31, 2020, is $71,423,882 and the appropriate amount of amortization of electric plant is $3,387,871.[591]

432. Empire calculated that the appropriate amount of depreciation expense as of January 2020, is $71,515,922[592] and the appropriate amount of amortization of electric plant is $3,821,588. [593]

433. The depreciation amount booked to the clearing account for transportation equipment should be removed from depreciation expense. Those expenditures are charged to construction projects that will eventually be plant in service, so the costs will be recovered through depreciation over the life of the assets.[594]

434. Staff did not provide any evidence as to why it used a depreciation rate of 2.5 percent for FERC accounts 371 and 373 in its True-Up Accounting Schedules.[595]

435. The depreciation rate approved by the Commission in File No. ER-2016-0023 for account 371 is 4.67 percent and for account 373 is 3.33 percent.[596]

Conclusions of Law

III. Section 20 CSR 4240-3.160(1)(A) requires that a depreciation study, database and property unit catalog be submitted with a general rate increase request

[591] Ex. 124, Staff True-Up Accounting Schedules.
[592] Ex. 71, Annualized Depreciation Expense.
[593] Ex. 72, Annualized Amortization Expense.
[594] Ex. 101, Staff Direct Report, page 90.
[595] Ex. 124, Staff True-Up Accounting Schedules.
[596] Ex. 5, Richard, Rebuttal, page 32.

unless Staff received these items during the three (3) years prior to the rate increase request or before five (5) years have elapsed since last receiving said items.

Decision

The Commission finds that the appropriate level of depreciation expense to include in the cost of service is $71,423,882 and the appropriate amount of amortization of electric plant is $3,387,871, applying Staff's jurisdictional allocations except for any adjustments that may be required to correct the depreciation rates for account 371 and account 373. Further, the Commission finds that the depreciation amount booked to the clearing account for transportation equipment should be removed from depreciation expense. The Commission determines that the depreciation rates approved in File No. ER-2016-0023 for account 371 of 4.67 percent and for account 373 of 3.33 percent should be maintained. While Staff agrees that these are the appropriate depreciation rates for accounts 371 and 373, its True-Up Accounting Schedule 5 applies a 2.5 percent depreciation rate to these accounts. Any correction to the True-Up Accounting Schedule should be reflected in the total depreciation expense amount.

27) Iatan/Plum Point Carrying Costs

Findings of Fact

436. In File No. EO-2005-0263, the Commission approved Empire's regulatory plan deferring certain carrying costs associated with the Iatan 1 Air Quality Control Systems (AQCS) investment past its in-service date into Account 182308.[597] The deferral of carrying costs after a project's in-service date is also known as "construction accounting."[598]

[597] Ex. 101, Staff Direct Report, page 25.
[598] Ex. 101, Staff Direct Report, page 25.

437. In the *Report and Order* in KCPL's File No. ER-2010-0355, the Commission disallowed certain costs that had been booked to the Iatan 1 accounts. The effect of these two disallowances reduced the balance of the Iatan 1 AQCS plant balance for all owners, including Empire.[599]

438. In Empire's next general rate proceeding, File No. ER-2012-0345, Staff removed any construction accounting allowances associated with the portion of Iatan 1 AQCS approved disallowances that were allocated to Empire from its rate base and expense amortization calculations.[600]

439. In File No. EO-2005-0263, the Commission approved Empire deferring certain "carrying costs" associated with the Iatan 2 generation unit investment past its in-service date in to Account 182332.[601]

440. Staff removed any construction accounting allowances associated with the portion of Iatan 2 disallowances that were allocated to Empire from its rate base and expense amortization calculations. Staff also reduced the balance of Iatan 2 carrying costs by Empire's deferral of fuel and purchased power expense savings it had incurred due to the addition of Iatan 2 to its generating system from the unit's in-service date through June 30, 2012.[602]

441. In File No. ER- 2010-0130, the Commission approved Empire deferring certain "carrying costs" associated with the Plum Point generating unit investment past its in-service date into Account 182331.[603]

[599] Ex. 101, Staff Direct Report, pages 25-26.
[600] Ex. 101, Staff Direct Report, page 26.
[601] Ex. 101, Staff Direct Report, page 26.
[602] Ex. 101, Staff Direct Report page 26.
[603] Ex. 101, Staff Direct Report, page 26.

442. Based on the results of its Construction Audit and Prudence Review for Plum Point (submitted in File No. ER-2011-0004), Staff recommended one disallowance to Empire's Plum Point plant balances.[604]

443. Staff used the September 30, 2015 balance ($109,533) from the most recent rate proceeding, File No. ER-2016-0023, and the annual amortization expense included in Staff's Accounting Schedules in File No. ER-2012-0345, to determine the unamortized balance to include in rate base.[605]

444. Staff's direct filing calculated Iatan/Plum Point carrying costs through the update period in this case, September 30, 2019. Staff trued up the balances through January 31, 2020.[606]

445. The appropriate level of unamortized Iatan 1 and Iatan 2 carrying costs at January 31, 2020, is Staff's determination of $3,939,778 and $2,148,142 respectively.[607]

446. The appropriate level of amortization for the Iatan/Plum Point carrying costs is Staff's determination of $100,923. [608]

447. Staff's calculation used the September 30, 2015 balance from the most recent rate proceeding, File No. ER-2016-0023, and the annual amortization expense included in Staff's Accounting Schedules in File No. ER-2012-0345, to determine the unamortized balance as of September 30, 2019, those amounts were then trued-up through January 31, 2020.[609]

448. In Empire's File No. ER-2012-0345, Staff recommended amortization of these carrying costs into the cost of service using a composite amortization rate derived

[604] Ex. 101, Staff Direct Report, page 26.
[605] Ex. 101, Staff Direct Report, pages 26-27.
[606] Ex. 101, Staff Direct Report, pages 26-27 and Ex. 124, Staff True-Up Accounting Schedules.
[607] Ex. 124, Staff True-Up Accounting Schedules.
[608] Ex. 124, Staff True-Up Accounting Schedules.
[609] Ex. 101, Staff Direct Report, page 25-27, and Ex. 124, Staff True-Up Accounting Schedules.

from dividing the total depreciation expense for each plant by the total plant balance for each plant. Staff used these composite rates and calculated amortization amounts of $84,729 for Iatan 1 AQCS, $44,828 for Iatan 2, and $1,987 for Plum Point. Staff used the same amortization amounts in this case.[610]

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

The Commission finds that the appropriate amount of carrying costs to include in rate base as of January 31, 2020, is $3,939,778 for Iatan 1, $2,148,142 for Iatan 2, and $100,923 for Plum Point. These amounts reflect construction disallowances ordered in previous cases before this Commission. The appropriate level of amortization expense for the carrying costs are $84,729 for Iatan 1, $44,828 for Iatan 2 and $1,987 for Plum Point.

28) Incentive Compensation

Findings of Fact

449. As a stand-alone company Empire had one incentive plan called the Management Incentive Compensation Program, which offered awards to senior officers for achievement of certain pre-set goals.[611]

450. Post-merger there are four employee incentive plans: the Long Term Incentive Plan (LTIP), and three different short-term incentive plans, the Empire Legacy Bonus/Incentive Plan, the Shared Bonus Plan (SBP) and the Short Term Incentive Plan (STIP). As part of the merger, employees who had Director and above within their title

[610] Ex. 101, Staff Direct Report, page 54.
[611] Ex. 101, Staff Direct Report, page 66.

were moved to the Liberty Utilities STIP. The Empire Information Technology team was moved to the Liberty Utilities SBP and STIP.[612]

451. Staff corrected its initial employee incentive adjustments in its surrebuttal true-up testimony after receiving corrected responses to discovery requests from Empire.[613]

452. Empires provided Staff with both personal objective achievement percentages and target bonus percentages for all employees with incentive pay for both Empire and its subsidiaries. This enabled Staff to use actual data instead of averages when recreating the incentive pay calculations for each employee.[614]

453. The appropriate level of incentive compensation to include in the cost of service is $1,245,016, the amount determined by Staff.[615]

454. Empire calculated $4,078,229 as incentive compensation to include in the cost of service.[616]

455. The Commission's long-standing precedent has disallowed recovery of employee incentive compensation that is based on shareholder earnings without directly and proportionately benefitting customers.[617]

456. Staff's analysis of Empire's STIP and SBP led to disallowances to eliminate 50 percent of employee incentives associated with the "Our Efficiencies" objective of the parent scorecard. These costs should be assigned to shareholders.[618]

[612] Ex. 101, Staff Direct Report, page 66.
[613] Ex. 139, Newkirk Surrebuttal True-Up, page 3.
[614] Ex. 113, Newkirk Rebuttal, page 2.
[615] Ex. 124, Staff True-Up Direct Accounting Schedules.
[616] Ex. 75, Empire response to DR 0033.1.
[617] Ex. 139, Newkirk Surrebuttal True-Up, page 3.
[618] Ex. 101, Staff Direct Report, page 68.

457. Staff also reviewed each divisional scorecard to disallow any incentive metric associated with the performance measure of meeting earnings per share targets or enhancing the value of a utility's stock price.[619]

458. Staff has eliminated stock options associated with Empire's LTIP recognized as an expense in this case consistent with the Commission's *Report and Order* in File No. ER-2006-0315.[620]

459. Customers do not appear to receive any real, tangible or measurable benefit from employee incentives awarded based on the company's increased earnings that would outweigh the costs to ratepayers.[621]

460. Incentive goals that boost the value of Empire's stock price benefit Empire's shareholders and not the ratepayers, and those incentives appropriately should not be included in rates.[622]

Conclusions of Law

JJJ. The Commission has not generally allowed the recovery of incentive compensation tied to financial metrics in rates because "[t]hose financial incentives seek to reward the company's employees for making their best efforts to improve the company's bottom line. Improvements to the company's bottom line chiefly benefit the company's shareholders, not its ratepayers. Indeed some actions that might benefit a company's bottom line, such as a large rate increase, or the elimination of customer service personnel, might have an adverse effect on ratepayers."[623]

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[619] Ex. 101, Staff Direct Report, page 68.
[620] Ex. 101, Staff Direct Report, page 68.
[621] Ex. 139, Newkirk Surrebuttal True-Up, page 3.
[622] Ex. 101, Staff Direct Report, page 66.
[623] *In the Matter of Missouri Gas Energy's Tariffs to Implement a General Rate Increase for Natural Gas Service,* File No. GR-2004-0209, Report and Order (issued September 21, 2004), p. 43. See also similar conclusions in *In the Matter of the Application of Kansas City Power & Light Company for Approval to Make*

KKK. The Commission's historical decisions are represented in its Report and Order in KCPL's rate case in File No. ER-2007-0291. Beginning on page 49 of that Report and Order the Commission said:

> KCPL has the right to tie compensation to [earnings per share]. However, because maximizing [earnings per share] could compromise service to ratepayers, such as by reducing maintenance, the ratepayers should not have to bear that expense. What is more, because KCPL is owned by Great Plains Energy, Inc., and because GPE has an unregulated asset, Strategic Energy L.L.C., KCPL could achieve a high [earnings per share] by ignoring its Missouri ratepayers in favor of devoting its resources to Strategic Energy. Even KCPL admits it is hard to prove a relationship between earnings per share and customer benefits. Nevertheless, if the method KCPL chooses to compensate employees shows no tangible benefit to Missouri ratepayers, then those costs should be borne by shareholders, and not included in cost of service. [footnotes omitted]

Decision

The Commission has traditionally not allowed earnings based compensation to be recovered in rates because those incentives predominantly benefit shareholders and not ratepayers. Incentivizing employees to improve Empire's bottom line aligns the employee interests with the shareholders and not ratepayers. Staff appropriately disallowed the short-term incentive plans because of its earnings per share target, the Long Term Incentive Plan because it is a stock compensation plan, and the Stock Option expenses. The Commission agrees with Staff that those incentive plans are primarily for the benefit of the shareholders and not for the benefit of the ratepayers. The Commission finds that

Certain Changes in its Charges for Electric Service to implement Its Regulatory Plan, File No. ER-2007-0291, Report and Order (issued December 6, 2007), p. 49 (the Commission denied Kansas City Power & Light's request to recover compensation tied to earnings per share).

$1,245,016 is the appropriate amount of incentive compensation to include in Empire's cost of service.

29) Customer Demand-Side Management Program (DSM)

Findings of Fact

461. Empire's Account 182318 contains costs of the Company's customer demand-side management (DSM) programs.[624]

462. Empire states that the rate base amount for the customer DSM program as of January 31, 2020 is $4,269,460 and the appropriate level of amortization expense related to the DSM program is $1,422,715.[625]

463. Staff amortized Empire's costs before its Regulatory Plan ended on June 15, 2011, over ten years. Staff amortized costs incurred after that over a period of six years, consistent with the Commission's Report and Order in File No. ER-2014-0351.[626]

464. Staff removed the amortization of program expenditures from 2007 and 2011 that expired in December 2017, and the amortization of the expenditures from 2008 and 2012 that expired in December 2018, as well as the balance for the years 2009 and 2013 that became fully amortized as of December 2019.[627]

465. After surrebuttal was filed Staff discovered an error in the formula of the supporting workpaper for the calculation of the regulatory asset balance. Staff's corrected workpaper contains the calculations that support its position.[628]

[624] Ex. 101, Staff Direct Report, page 52.
[625] Ex. 76, DSM Workpaper.
[626] Ex. 101, Staff Direct Report, page 52.
[627] Ex. 101, Staff Direct Report, page 52, and Ex. 139, Newkirk Surrebuttal True-Up, page 4.
[628] Ex. 152, Newkirk Additional Evidence.

466. The appropriate rate base amount for the customer DSM program trued-up as of January 31, 2020 is $4,267,998 based on Staff's calculations, and the appropriate level of amortization expense related to the customer DSM program is $1,447,308.[629]

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

The Commission finds that the appropriate rate base amount for the customer DSM programs is $4,267,998, and the appropriate level of amortization expense related to the customer DSM program is $1,447,308.

30) Bad Debt Expense

Findings of Fact

467. Bad debt expense is the portion of retail revenue that Empire is unable to collect from retail customers due to non-payment of bills.[630]

468. The final bill is due 21 days from the statement mailing date. If unpaid, on the second day after the due date, a collection notice is sent advising the customer the account will be turned over to a collection agency if unpaid or suitable arrangements are not made within 10 days. After the 10 days, any accounts that remain unpaid are written off and sent to a collection agency.[631]

469. Empire's bad debt expense fluctuates from year to year.[632]

470. Staff looked at Empire's most recent five years bad debt write-offs that were never collected, and calculated the average uncollectable rate of 0.4016 percent bad debt

[629] Ex. 152, Newkirk Additional Evidence.
[630] Ex. 101, Staff direct Report, page 79.
[631] Ex. 101, Staff direct Report, page 79.
[632] Ex. 101, Staff direct Report, page 79.

to revenue. This was applied to Staff's annualized and adjusted test year retail rate revenues to find Empire's normalized bad debt expense.[633]

471. Staff calculated the appropriate level of bad debt expense to include in rates trued-up to January 31, 2020 is $1,910,437.[634]

472. Empire agrees with Staff's methodology for determining the bad debt percentage, but disagrees with the adjusted level of revenues to which Staff applied that percentage.[635]

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

Both Empire and Staff arrived at similar uncollectable expense ratios. It appears the main discrepancy between the parties' bad debt expense calculations is dependent upon the level of revenue. The Commission finds that a five-year average is the most appropriate method to calculate the uncollectable rate, and that Staff's annualized and adjusted test year retail rate revenues are reasonable. Therefore, the Commission determines that the appropriate level of Bad Debt Expense to include in Empire's cost of service is $1,910,437.

31) Retail Revenue

Findings of Fact

473. Operating revenues are composed of retail rate revenue and other operating revenue. Retail rate revenue is defined as test year rate revenues consisting

[633] Ex. 101, Staff direct Report, page 79.
[634] Ex. 124, Staff's True-Up Accounting Schedules.
[635] Ex. 5, Richard Rebuttal, page 21.

solely of the revenues derived from the current rates Empire charges for providing electric service to its Missouri retail customers (i.e., native load and customer charges).[636]

474. Revenues from the FAC represent collections or refunds of prior period fuel costs and are excluded in determining the annualized level of ongoing rate revenues.[637]

475. Staff eliminated unbilled revenue from its determination of revenue requirement to ensure only 365 days of revenue are included and to reflect revenues on an "as billed" basis.[638] The recording of unbilled revenue on the books of Empire recognizes sales of electricity that have occurred but have not yet been billed to the customer.[639] It is necessary to remove unbilled revenue in order to reach an accurate revenue requirement based on electricity sales actually collected from Missouri customers.[640]

476. Staff removed the FAC revenues from the test year revenues.[641]

477. Franchise taxes are removed from revenue requirement because city franchise tax is not a revenue source for Empire.[642] It is a municipal tax Empire is obligated to collect and remit to the various municipalities where the Company provides electric service. Generally, there is no impact on Empire's earnings related to the collection of city franchise taxes because this revenue is offset by an equal amount of expense.[643]

[636] Ex. 101, Staff Direct Report, page 35.
[637] Ex. 101, Staff Direct Report, page 35.
[638] Ex. 101, Staff Direct Report, page 49.
[639] Ex. 101, Staff Direct Report, page 49.
[640] Ex. 101, Staff Direct Report, pages 49-50.
[641] Ex. 101, Staff Direct Report, page 49.
[642] Ex. 8, Palumbo Direct, pages. 3-4, and Ex. 101, Staff Direct Report, page 50.
[643] Ex. 8, Palumbo Direct, pages. 3-4; and Ex. 101, Staff Direct Report, page 50.

478. Empire's states that Staff's process violated the fundamental matching principle in ratemaking in regards to adjustments made to FAC revenues, unbilled revenue and franchise tax revenue.[644]

479. In order to have appropriate matching when normalizing or annualizing revenues or expenses, a common date is used across the board. However, in the case of complete disallowance, the amount is not trued-up past the test year because it is not necessary in order to set an account to zero. No matter what balances would be reflected in the update period or true-up period, it is the test year that is adjusted in the EMS run. So for that reason, as done by Staff, a negative adjustment should be made equal to test year amounts in order to remove these revenues from the revenue accounts.[645]

480. The appropriate adjustments to be removed from retail revenues are the total amounts recorded in the general ledger for the test year: [646] unbilled revenues, $6,391,485; franchise tax revenues, $9,923,350; and FAC revenues, $17,047,207. Since these accounts are only pass-through accounts, Staff's adjustment will zero out each account and have no effect on the cost of service.[647]

481. Staff adjusted actual billing determinants to equal the normalized and annualized monthly kWh using the relationship between actual average usage per customer and normalized and annualized average usage per customer. Staff also used the relationship between percentage of usage priced in the first rate block and the second rate block to distribute normalized and annualized monthly kWh to the rate blocks for rate classes Residential Service (RG), Commercial Service (CB) and Small Heating Service

[644] Ex. 5, Richard Rebuttal, page 12.
[645] Ex. 139, Newkirk Surrebuttal True-Up, pages 1-2.
[646] Ex. 124, Staff True-Up Accounting Schedules, Schedule 10, page 1
[647] Ex. 101, Staff Direct Report, pages 49-51, and Ex. 139, Newkirk Surrebuttal True-up, pages. 1-2.

(SH). This calculation resulted in normalized usage by rate block, which was then converted to total normalized and annualized revenues by multiplying rate block usage by the appropriate rates. The GP and Total Electric Building Service (TEB) class billing units were similarly adjusted; however, the rate classes were subdivided by voltage with separate normalization and annualization adjustments being applied to each voltage level.[648]

482. The appropriate level of billing determinants to be used in the calculation of retail rate revenue for the test year are included in the true-up workpapers of Michelle Bocklage[649] and Byron Murray[650], and the level of retail revenue is provided in Staff's True-Up Accounting Schedules.[651]

483. The billing adjustments should be trued up to January 31, 2020; with the exception of retail revenue for unbilled revenue, franchise tax revenue, and FAC revenue. The excepted amounts should not be trued up but should be left at test year amounts.[652]

Conclusions of Law

No additional conclusions of law are necessary.

Decision

The difference between Empire's and Staff's position on these issues is based on Empire's use of balances trued-up through January 31, 2020, while Staff used test year amounts through September 30, 2019. According to Empire, updating these amounts is necessary in order to maintain a proper matching of the rate components. The

[648] Ex. 101, Staff Direct Report, page 37.
[649] Ex. 147, Bocklage Supporting Evidence.
[650] Ex. 151, Murray Supporting Evidence.
[651] Ex. 124, Staff True-Up Accounting Schedules.
[652] Ex. 139, Newkirk Surrebuttal True-up, page 2.

Commission was persuaded by Staff's explanation that unbilled revenues, franchise tax revenue, and FAC revenues, are pass-through accounts and Staff's adjustment will zero out each account so that it has no effect on cost of service. Thus, with the exceptions of retail revenue for unbilled revenue, franchise tax revenue and FAC revenue, billing adjustments should be trued-up to January 31, 2020, in order to maintain the appropriate matching. However, the adjustments to retail revenue for unbilled revenue, franchise tax revenue and FAC revenue should not be trued up but should be left at test year amounts.

The Commission was also persuaded that Staff's adjustments represent the appropriate amounts to be removed from retail revenues. Those amounts are: unbilled revenues, $6,391,485; franchise tax revenues, $9,923,350; and FAC revenues, $17,047,207.[653] These are the total amounts recorded in the general ledger for the test year.[654]

The Commission further determines that the appropriate level of billing determinants to be used in the calculation of retail rate revenue for the test year are included in the true-up workpapers of Michelle Bocklage[655] and Byron Murray,[656] and the appropriate level of retail revenue is provided in Staff's True-Up Accounting Schedules.[657]

32) Other Revenue

Findings of Fact

484. Other operating revenue includes revenues from such items as forfeited discounts, reconnect charges, rent from electric property, and other miscellaneous

[653] Ex. 101, Staff Direct Report, pages 49-51, and Ex. 139, Newkirk Surrebuttal, pages 1-2.
[654] Ex. 101, Staff Direct Report, pages 49-51, and Ex. 139, Newkirk Surrebuttal, pages. 1-2.
[655] Ex. 147, Bocklage Supporting Evidence.
[656] Ex. 151, Murray Supporting Evidence.
[657] Ex. 124, Staff True-Up Accounting Schedules.

charges.[658]

485. Coal fly ash is a byproduct created as a result of the burning of coal in generating stations to produce electricity. Fly ash has a number of possible industrial uses, primarily as an ingredient in concrete products. Over the past several years, Empire has been selling its fly ash to several different industrial companies to be used in concrete. By recycling fly ash, Empire receives revenue and provides positive environmental benefits.[659]

486. Empire's miscellaneous other revenues consist of forfeited discounts, rents from property, reconnect, and surge arrester fees. Staff's analysis reflected a review of these revenue levels over a three-year period ending September 30, 2019. Based upon Staff's review, the miscellaneous revenue levels at a 12-month period ending September 30, 2019, appear reasonable for inclusion in customer cost of service.[660]

487. Empire agreed with or did not oppose adjustments proposed by Staff in their Direct Report for rent revenue, fly ash revenues, and miscellaneous revenues.[661] Empire updated its rent revenues balance to September 30, 2019, as recommended by Staff witness Caroline Newkirk in Staff's Direct Report.[662] The other electric revenues were normalized to a three-year average as of September 30, 2019, while the fly ash revenues were adjusted.[663]

488. With the additional data provided as a part of true-up, Staff adjusted its date ranges to full calendar years instead of the mid-year ranges, which were previously used.

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[658] Ex. 101, Staff Direct Report, page 35.
[659] Ex. 101, Staff Direct Report, pages 50-51.
[660] Ex. 101, Staff Direct Report, page 51.
[661] Ex. 5, Richard Rebuttal, page 37.
[662] Ex. 7, Richard True-Up Direct, pages 9 and11; and Ex. 81, Rent Revenues Workpaper,
[663] Ex. 7, Richard True-Up Direct, pages 9 and 11, Ex. 82, Other Revenues Workpaper, and Ex. 83, Fly Ash Revenues Workpaper.

Staff used the 12-month period ending December 31st for 2017, 2018, and 2019 to analyze trends in the "other revenue" data. After analyzing the trends in the data, Staff decided to use a three-year average for rent revenue, fly ash revenue, and other electric revenue.[664]Empire showed that the appropriate normalized amount of rent revenues is $1,026,462,[665] other electric revenues is $354,638,[666] and fly ash revenues that should be included in the cost of service is $36,107.[667]

Conclusions of Law

No additional conclusions of law are needed.

Decision

The Commission finds that Empire's approach is more consistent with the approach used in other calculations. Empire did not oppose Staff's adjustments for rent revenues, other electric revenues, or fly ash revenues as outlined in Staff's Direct Report. Empire appropriately updated the rent revenues balance to September 30, 2019, and normalized the other revenues to a three-year average as of September 30, 2019 as initially suggested by Staff. Empire provided the workpapers of its witness showing that the appropriate normalized amount of rent revenues is $1,026,462, other electric revenues is $354,638, and the level of fly ash revenues that should be included in the cost of service is $36,107.

[664] Ex.139, Newkirk Surrebuttal/True-up, page 4.
[665] Ex. 81, Rent Revenues Workpaper.
[666] Ex. 82, Other Revenues Workpaper,
[667] Ex. 83, Fly Ash Revenues Workpaper.

33) Tax Cut and Jobs Act Revenue

Findings of Fact

489. Test year rate revenues do not reflect the full amount of the reduction to Empire's rates ordered by the Commission in File No. ER-2018-0366, from the TCJA.[668]

490. Test year revenues were overstated by the difference between the amount that was actually billed to customers during the test year and the amount that would have been billed if the federal tax rate reduction had been in effect throughout the entire test year.[669]

491. Staff proposes an adjustment to remove the income tax impact to revenues for each rate class by multiplying the actual test year kWh for the months of April 2018 through August 2018 by the appropriate class' tax credit as established in File No. ER-2018-0366.[670]

492. The appropriate amount of TCJA revenue to remove from test year revenues is $7,760,076,[671] which represents the sum of the adjustment to all Empire rate classes.[672]

Conclusions of Law

No additional conclusions of law are necessary.

Decision

The evidence shows that test year revenues, beginning April 1, 2018, were overstated because the TCJA was not recognized in Empire electric rates until September 1, 2018. The Commission determines that the test year revenue amounts were overstated

[668] Ex. 101, Staff Direct Report, page 49.
[669] Ex. 101, Staff Direct Report, page 49.
[670] Ex. 101, Staff Direct Report, page 49.
[671] Ex. 102, Staff Direct Accounting Schedules, and Ex. 124, Staff True-Up Accounting Schedules.
[672] Ex. 102, Staff Direct Accounting Schedules, and Ex. 124, Staff True-Up Accounting Schedules.

by $7,760,076, which should be removed from test year revenues to properly reflect the current income tax rate for the entire test year. The Commission agrees with Staff's recommended adjustment to remove the income tax impact to revenues for each rate class by multiplying the actual test year kWh for the months of April 2018 through August 2018 by the appropriate class' tax credit. The Commission has already found in issue 12 that the amounts deferred for the stub period shall be amortized as a reduction to Empire's total amortization expense over five years with no rate base offset for the unamortized amount.

34) Property Insurance

Findings of Fact

493. Insurance expense is the cost of protection obtained from third parties by utilities against the risk of financial loss associated with unanticipated events or occurrences.[673]

494. Utilities, like non-regulated entities, routinely incur insurance expense to minimize their liability, and potentially that of their customers, associated with unanticipated losses.[674]

495. Staff annualized Empire's insurance expense.[675]

496. Staff made an adjustment to its direct filing to include increases to Empire's portion of the 2019-2020 property insurance premium by $934,813.[676]

Conclusions of Law

No additional Conclusions of Law are required for this issue.

[673] Staff's Cost of Service Report, Ex. 101, pages 77-78.
[674] Staff's Cost of Service Report, Ex. 101, pages 77-78.
[675] Staff's Cost of Service Report, Ex. 101, page 78.
[676] Ex. 125, Arabian Surrebuttal True-Up, page 3.

Decision

The Commission finds Staff's determination of property insurance expense to be included in Empire's cost of service on a Missouri jurisdictional basis appropriate.

35) Injuries and Damages

Findings of Fact

497. Empire maintains workers' compensation insurance for the benefit of its employees.[677]

498. The workers' compensation adjustment proposed by Staff annualizes this expense based upon the premiums in effect at July 2019 to reflect an ongoing and normal expense level for Empire.[678]

499. From time to time, claimants sue Empire seeking payment of damages. If Empire loses the lawsuit, Empire will likely make a payout to the aggrieved party. Alternatively, it may choose to enter in to an out-of-court settlement, also resulting in a payout.[679]

500. To determine a normalized level of this expense, Staff used a five-year average of actual injuries and damages and workers' compensation payments in its cost of service report, instead of relying upon accounting estimates. Staff applied an allocation of 50 percent to the five-year average of actual payments made for injuries and damages[680].

[677] Ex. 101, Staff Cost of Service Report, page 81.
[678] Ex. 101, Staff Cost of Service Report, page 81.
[679] Ex. 101, Staff Cost of Service Report, page 81.
[680] Ex. 101, Staff Cost of Service Report, page 81.

501. The allocation of 50 percent represents the electric expense portion of the payments. The remaining 50 percent of the payments are allocated to the Company's construction, water operations and below-the-line activities.[681]

502. Below the line refers to line items in the income statement that do not directly impact a company's reported profits.[682]

503. A five-year average of actual payments was used to normalize this expense, because Staff's analysis shows a considerable fluctuation in the annual amount of payments from one year to the next.[683]

504. The appropriate amount of injuries and damages expense to include in the cost of service is $312,562 (total company).[684]

505. Empire annualized its' insurance expense based on new insurance premiums that went into effect after the test year. This adjustment also normalized the test year level of injuries and damages claims and workers' compensation payments by utilizing a five-year average of actual payments.[685]

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

Both Empire and Staff agree on the total company injuries and damages expense to be included in the cost of service. The Commission finds that $312,562 is the appropriate amount of injuries and damages expense, total company, to include in the cost of service.

[681] Ex. 101, Staff Cost of Service Report, page 81.
[682] Ex. 101, Staff Cost of Service Report, page 81.
[683] Ex. 101, Staff Cost of Service Report, page 81.
[684] Ex, 86, Richard workpaper.
[685] Ex. 7, Richard True-Up Direct, page 16.

36) Payroll and Overtime

Findings of Fact

506. Staff made adjustments to Empire's test year payroll expense to reflect annualized levels of payroll, payroll taxes, and 401(k) benefit costs as of January 31, 2020, as detailed in Staff's Direct Cost of Service Report and True-Up testimony.[686]

507. Staff's test year total payroll includes all the components of payroll expense (regular payroll, overtime payroll and incentive compensation).[687] Staff calculated regular payroll and overtime separately from incentive compensation. Staff independently calculated an annualized level of incentive compensation to include in the cost of service, and therefore made an adjustment to add this number into the cost of service.[688]

508. Staff made several adjustments to its initial filing to correct employee counts through the true-up period, January 31, 2020.[689]

509. Staff made adjustments to remove all incentive compensation that occurred in the test year. Staff then made a further adjustment adding the appropriate amount of incentive compensation back into the cost of service.[690]

510. Staff calculated a reasonable overtime payroll level for Empire by multiplying an overtime percentage computed for the non-union and union employees based on a two-year average of overtime hours that actually occurred by the current rate paid for overtime as of September 30, 2019, then divided that amount by Staff's pro forma base payroll amount.[691]

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[686] Ex. 125, Arabian Surrebuttal True-Up, page 3; and Ex. 101, Staff Cost of Service Report, page 62.
[687] Ex. 129, Bolin Surrebuttal, page 4.
[688] Ex. 129, Bolin Surrebuttal, page 4.
[689] Ex. 125 Arabian Surrebuttal True-Up, pages. 2-3.
[690] Ex. 129, Bolin Surrebuttal, page 4.
[691] Ex. 101, Staff Direct Report, page 62.

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

The Commission finds that Staff's methodology to determine the appropriate test year amount updated through the true-up period of January 31, 2020 for total payroll, including overtime expense, to be appropriate for inclusion in Empire's cost of service.

37) Retention Bonuses

Findings of Fact

511. There is a very high demand for employees that have the unique skillset of journeyman lineman, who support efforts of increased reliability, infrastructure upgrades, and increased responsiveness to customer requests. As a result of the increased competition, utilities, including Empire, have struggled to hire and retain the desired number of journeyman lineman.[692]

512. As a result of this high demand, utility contract companies are now willing to offer high premium pay and other benefits, including daily per diems in an effort to meet their workforce needs. In most cases, employees have been able to double and even triple their compensation.[693]

513. Empire's planned to offer monthly retention bonuses of $1,500 until the increased competitive job market for lineman subsides. Empire plans to also promote this incentive externally to attract lineman. Empire also plans on offering this retention bonus to retain existing staff with lineman skills currently in other roles,[694]

[692] Ex. 39, Westfall Direct, page 12.
[693] Ex. 39, Westfall Direct, page 12.
[694] Ex. 39, Westfall Direct, page 13.

514. Empire has requested to include an annualized amount of retention bonuses paid to linemen and other qualified employees that started after the test year in rates.[695]

515. Prior to implementing the lineman retention program starting with the September 2019 pay period, Empire lost 16 journeymen linemen between March and August of 2019.[696]

516. Now that the retention program has been implemented, Empire states that retention efforts have been successful. Empire has been able to keep qualified personnel, having only lost two lineman since the roll out of the retention program. It has also assisted with Empire's recruitment efforts to replace the employees it had lost.[697]

517. Empire urges the Commission to include $1,021,080, for journeyman lineman retention bonuses in its cost of service.[698]

518. Staff included amounts considered to be known and measurable in its direct case as of September 30, 2019, the end of the update period.[699] Empire implemented the retention program during the September 2019 pay period within the update period.[700]

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

Empire has described the shortage of journeyman lineman, and has explained that it has had difficulty in attracting and retaining qualified employees for this position. The Commission finds Empire's testimony regarding the shortage of journeyman lineman

[695] Ex. 7, Richards True-Up Direct, pages 13 and 21.
[696] Ex. 40, Westfall True-Up Direct, page 3.
[697] Ex. 40, Westfall True-Up Direct, page 3.
[698] Ex. 88, Retention Workpaper and Ex. 7, Richards True-Up Direct, page 13.
[699] Ex. 125, Arabian Surrebuttal True-Up, page 2.
[700] Ex. 40, Westfall True-Up Direct, page 3.

credible. Hiring and retaining qualified linemen is important to Empire being able to provide safe and adequate service. Also, the lineman bonuses of $1,500 are a known and measurable amount. Accordingly, the Commission finds that $1,021,080, should be included in Empire's cost of service for its lineman retention program.

38) Employee Benefits

Findings of Fact

519. Empire offers its employees dental, vision, healthcare, and life insurance benefits, which are included in Account 926.[701]

520. Staff analyzed Empire's employee benefit costs included in its general ledger. Staff annualized each expense by examining the individual costs over a 36-month period to determine the appropriate amount to include for each expense. A three-year average through the update period was performed to annualize these expenses ending September 30, 2019.[702]

521. Empire trued up the test year medical, dental, and vision claim expense accounts to the balances at January 31, 2020.[703]

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

Based on the evidence, the Commission finds that Staff's three-year average to annualize employee benefits through September 30, 2019 is the appropriate method to use to determine the level of employee benefits to include in the cost of service.

[701] Ex. 101, Staff Direct Report, page 63.
[702] Ex. 101, Staff Direct Report, page 63, Ex. 102, Staff Direct Accounting Schedules, and Ex. 124, Staff True-Up Accounting Schedules.
[703] Ex. 7, Richard True-Up Direct, page 15, and Ex. 89, Medical Dental Vision Workpaper

39) Property Taxes

Findings of Fact

522. Utility companies are required to file a valuation of their utility property with their respective taxing authorities at the beginning of each assessment year, which is January 1st. Based on the information provided by the utility, the taxing authority will in turn send the company its "assessed values" for every category of the company's property.[704]

523. The taxing authority issues a property tax bill to the utility late in the year which is due no later than December 31st.[705]

524. Staff's calculation is based upon the last known actual amount of property taxes paid by Empire and the plant-in-service associated with the property tax payment.[706]

525. To appropriately calculate the overall property tax amount for Empire, the amount of Empire's share of the Plum Point plant was subtracted from total plant in service. The owners of Plum Point have agreed to make an annual Payment In Lieu of Taxes (PILOT) instead of paying property taxes. The set amount of PILOT taxes that Empire has agreed to pay for Plum Point was then added to the annualized property tax calculation to determine the total property tax adjustment.[707]

526. The appropriate amount of property tax expense is $25,138,294. Staff determined this annualized level by applying Empire's tax rate to plant in service balances

[704] Ex. 101, Staff's Cost of Service Report, pages 78-79.
[705] Ex. 127, Surrebuttal/True-Up Testimony of Courtney Barron, page 2.
[706] Ex. 127, Surrebuttal/True-Up Testimony of Courtney Barron, page 2.
[707] Ex. 101, Staff's Cost of Service Report, pages 78-79.

as of December 31, 2019, which are the most current known and measurable balances used in the property tax assessment process.[708]

527. The proper method to calculate the property tax to be included in cost of service is Staff's method. Staff calculated the property rate by dividing the 2019 property taxes paid by the December 31, 2018 total property. This property tax rate was then applied to the total property as of December 31, 2019 to determine annualized property tax. Not included in the property tax calculation is the 2019 Plum Point PILOT paid, Staff added this to the annualized property tax to determine the total annualized property tax.[709]

528. Staff updated property tax expense to reflect plant-in-service as of December 31, 2019. The ratio of property taxes paid at year-end 2019 to the balance of plant-in service as of January 1, 2019 was applied by Staff to the December 31, 2019 plant-in-service balance.[710]

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

The Commission finds that $25,138,294 (after the jurisdictional allocation factor is applied) is the appropriate amount of property tax to include in the cost of service. The Commission additionally finds that Staff's method of calculating property tax is reasonable.

[708]Ex. 101, Staff's Cost of Service Report, pages. 78-79; Ex. 127, Barron Surrebuttal/True-up , pages. 1-3; and Ex. 124, Staff True-up Accounting Schedules.
[709] Ex. 101, Staff's Direct Report, pages 78-79; Ex. 127, Barron Surrebuttal/True-up *T*, pages 1-3.
[710] Ex. 127, Barron Surrebuttal/True-up, page 3.

40) Dues and Donations

Findings of Fact

529. Edison Electric Institute (EEI) is an association of investor-owned electric utilities and industrial affiliates, whose primary function is to represent the interests of its members in the legislative and regulatory arenas, which includes lobbying activities.[711]

530. Staff excluded EEI dues totaling $179,693, because Empire failed to quantify the benefit of its participation in this organization to the ratepayers and shareholders.[712]

531. In addition, Staff disallowed other dues and donations, which included those related to country clubs, national and state level chamber of commerce, and alumni associations. Allowing Empire to recover these expenses through rates would cause ratepayers to involuntarily contribute to these organizations.[713]

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

The Commission finds that dues and donations to EEI and the other dues and donations identified by Staff in its Direct Report, which included those related to country clubs, national and state level chamber of commerce, and alumni associations, should be excluded from the cost of service because there is no direct benefit to ratepayers.

[711] Ex. 127, Barron Surrebuttal/True-up, page 3.
[712] Ex. 101, Staff's Direct Report, page 77.
[713] Ex. 101, Staff's Direct Report, page 76.

41) Outside Services

Findings of Fact

532. Various outside (independent) contractors and vendors provide legal, auditing, and other services to Empire to carry out its operational activities as needed.[714]

533. Staff reviewed Empire's outside services expenses booked to Accounts 923045 and 923047 for the test year through the update period ending September 30, 2019. Staff normalized the amounts of outside services by calculating a five-year average of incurred costs for these accounts in the amount of $2,326,254.[715]

534. Staff subtracted the five-year average of incurred costs from the test year total to determine the adjustment. This adjustment does not include outside services related to rate case expense. Outside services incurred for rate case purposes are booked in a separate account.[716]

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

The Commission finds that $2,326,254 is the appropriate amount of outside services to be included in the cost of service from Accounts 923045 and 923047. The Commission further determines that Staff's jurisdictional allocations should be applied.

[714] Ex. 101, Staff Direct Report, page 82.
[715] Ex. 101, Staff Direct Report, p. 82.
[716] Ex. 101, Staff Direct Report, page 82.

42) Common Property Removed from Plant and Accumulated Depreciation

Findings of Fact

535. Empire records its water, non-utility operating, Empire District Gas, fibercom, MO water, and MO Midstates gas general plant in service balances on its electric books.[717]

536. Some common plant assets on Empire's books are related to non-electric service and should be removed.[718]

537. Staff applied an allocation factor to the entire general plant balances, FERC Accounts 389-398, instead of applying the allocation factor only to those specific assets within the plant accounts that are shared. Those accounts do not just include electric plant but also include common plant that serves other regulated and unregulated business.[719]

538. Empire made adjustments to remove a portion of common plant utilized by other businesses, which includes buildings such as the Joplin Corporate Office, the Joplin Kodiak Operations office and the Ozark Call Center. Then it applied a jurisdictional allocation factor to all remaining general plant.[720]

539. Prior to the application of the jurisdiction factors the total company amounts are $5,724,752 for removal of common property from plant in service, and $3,330,005, for accumulated depreciation as of the end of the true-up period ending January 31, 2020.[721]

Conclusions of Law

No additional Conclusions of Law are required for this issue.

[717] Ex. 101, Staff Direct Report, page 19.
[718] Ex. 4, Richard Corrected Direct, page 11.
[719] Ex. 5, Richard Rebuttal, page 3.
[720] Ex. 5, Richard Rebuttal, page 3.
[721] Ex. 93, Common Property True-Up Workpaper.

Decision

The Commission finds that Empire's method of calculating removal of common property from plant in service and the corresponding accumulated depreciation is the appropriate method. Staff erred because FERC Accounts 389-398 are not all common plant. Therefore, the Commission concludes that $5,724,752 is the correct amount for removal of common property from plant in service, and $3,330,005, is the correct corresponding amount for accumulated depreciation. Staff's jurisdictional allocation factors should be applied to those amounts.

43) File No. EM-2016-0213 Commission-ordered conditions

Some parties have questioned Empire's compliance with conditions A.4, A.5, A.6, and G.3 contained in the Merger Stipulation approved by the Commission in File No. EM-2016-0213. Compliance with conditions A.4, A.5, and A.6, regarding cost of capital, capital structure, and affiliate transactions, are addressed elsewhere in this Report and Order. Consequently, because those issues have already been addressed, no additional findings of fact or conclusions of law are necessary, and no relief need be granted beyond what has been determined in other issues.

Empire's compliance with condition G.3, involving access to records, has not been otherwise addressed and the Commission will address that condition here.

Findings of Fact

540. In the Merger Stipulation approved by the Commission in File No. EM-2016-0123, the parties were aware of the potential impact APUC's business and financing strategies might have on Empire's capital structure, and cost of capital.[722]

[722] Ex. 210, Murray Direct, page 20.

541. The Merger Stipulation contained conditions regarding records access that the joint applicants, Empire and Liberty, agreed to follow.[723]

542. Condition G.3 of the Access to Records Conditions states: Empire shall provide Staff and OPC access to and copies of, if requested by Staff or OPC, the complete Liberty Utilities Co, LU Central and Empire Board of Directors' meeting minutes, including all agendas and related information distributed in advance of the meeting, presentations and handouts, provided that privileged information shall continue to be subject to protection from disclosure and Empire shall continue to have the right to object to the provision of such information on relevancy grounds.[724]

543. OPC's witness Murray states that there were discovery problems related to withholding of APUC and LUCo materials, such as Board of Director documents and affiliate financing transaction materials.[725]

544. Staff was provided access to Board of Director documents in response to data request No. 0009.[726]

545. OPC requested all affiliate loan agreements for all of the companies that may be involved in raising financing to capitalize LUCo's capital structure. Empire objected that the information was irrelevant.[727]

546. OPC requested information on how recent economic and capital market events may impact APUC's investment plans for Empire and/or financing plans. Empire objected that the information was irrelevant because it was outside the test year.[728]

[723] Order Approving Stipulations and Agreements and Authorizing Merger Transaction, Issued September 7, 2016.
[724] Order Approving Stipulations and Agreements and Authorizing Merger Transaction, Appendix to Attachment A, Issued September 7, 2016.
[725] Ex. 211, Murray Rebuttal, page 6.
[726] Ex. 153, Empire response to Staff data request 0009.
[727] Ex. 212, Murray Surrebuttal True-Up, page14.
[728] Ex. 212, Murray Surrebuttal True-Up, page 8.

547. No party in this case sought to compel discovery.

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

Condition G.3 of the Merger Stipulation, Access to Records Conditions, states that Empire shall provide Staff and OPC access to the complete LUCo and Empire Directors' meeting minutes. It also states that Empire may object for relevancy. OPC's witness Murray testified regarding the information Empire objected to for relevancy. Empire is within its right to object under condition G.3 for relevancy. If OPC believed that the requested information was relevant it should have asked the Commission to compel Empire to produce that information. It did not. The Commission received no motions to compel discovery in this case. The Commission finds that Empire complied with condition G.3, because it provided board of director information to Staff in response to Staff's request, and timely objected to OPC's requests based upon relevancy.

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, Empire provides safe and adequate service, and the Commission concludes, based upon its 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

requirement authorized by the Commission is no more than what is sufficient to keep Empire's utility plants in proper repair for effective public service and provide to Empire'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.[729] In order that this case can proceed expeditiously, the Commission will make this order effective on August 2, 2020, to prevent unnecessary delay in the filing of compliance tariffs. This is a new order and consequentially all applications for rehearing of the July 1, 2020, Report and Order are now moot. Anyone seeking rehearing of this Amended Report and Order must file a new application for rehearing before the effective date of this order.

THE COMMISSION ORDERS THAT:

1. The Motion to Strike Portions of OPC Surrebuttal Testimony filed by Missouri Industrial Energy Consumers on April 10, 2020, is denied.

2. The Objections to Offers of Evidence filed by The Empire District Electric Company on May 6, 2020, are denied.

3. The tariff sheets submitted on August 14, 2019, by The Empire District Electric Company, assigned Tariff No. YE-2020-0029 are rejected.

4. The Empire District Electric Company is authorized to file tariff sheets sufficient to recover revenues approved in compliance with this order.

5. The Empire District Electric Company shall file any information required by Section 393.275.1, RSMo, and Commission Rule 20 CSR 4240-10.060 no later than September 1, 2020.

[729] Section 386.490.3, RSMo.

6. The Empire District Electric Company shall record as a regulatory asset/liability the costs and revenues identified in the body of this order as of January 1, 2020, related to the closure of the Asbury Power Plant. The regulatory asset/liability should quantify separately dollars related to the categories of costs and revenues.

7. The Empire District Electric Company shall comply with all directives, conditions and reporting requirements as more fully described in the body of this order.

8. This Report and Order shall become effective on August 2, 2020.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Clark, Senior Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Confluence Rivers Utility Operating Company, Inc., for Authority to Acquire Certain Water and Sewer Assets and for a Certificate of Convenience and Necessity	)))))	**File No. WA-2019-0299**

REPORT AND ORDER

CERTIFICATES

§21.1 Public interest

§53 Consolidation or merger

The Commission found the standard applicable to the sale of a utility of "not detrimental to the public interest" means there is no net detriment after considering all of the benefits and all of the detriments. There must be a balancing of all the benefits and detriments to determine if the transfer as a whole would be detrimental to the public.

PUBLIC UTILITIES

§7 Jurisdiction and Powers of the State Commission

§13 Acquisition of public utility property

The Commission's powers are not unlimited. The Commission cannot deny the owners of a utility their right to sell their property unless the Commission finds the sale would be detrimental to the public interest. If the sale is not detrimental to the public interest, then the Commission has no authority to deny the transaction.

SEWER

§2 Certificate of convenience and necessity

§4 Transfer, lease and sale

The Commission found the standard applicable to the sale of a utility of "not detrimental to the public interest" means there is no net detriment after considering all of the benefits and all of the detriments. There must be a balancing of all the benefits and detriments to determine if the transfer as a whole would be detrimental to the public.

§4 Transfer, lease and sale

§7 Jurisdiction and Powers of the State Commission

The Commission's powers are not unlimited. The Commission cannot deny the owners of a utility their right to sell their property unless the Commission finds the sale would be detrimental to the public interest. If the sale is not detrimental to the public interest, then the Commission has no authority to deny the transaction.

WATER

§2 Certificate of convenience and necessity

§4 Transfer, lease and sale

The Commission found the standard applicable to the sale of a utility of "not detrimental to the public interest" means there is no net detriment after considering all of the benefits and all of the detriments. There must be a balancing of all the benefits and detriments to determine if the transfer as a whole would be detrimental to the public.

§4 Transfer, lease and sale

§8 Jurisdiction and Powers of the State Commission

The Commission's powers are not unlimited. The Commission cannot deny the owners of a utility their right to sell their property unless the Commission finds the sale would be detrimental to the public interest. If the sale is not detrimental to the public interest, then the Commission has no authority to deny the transaction.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Confluence Rivers Utility Operating Company, Inc., for Authority to Acquire Certain Water and Sewer Assets and for a Certificate of Convenience and Necessity	)))))	**File No. WA-2019-0299**

REPORT AND ORDER

Issue Date: August 26, 2020

Effective Date: September 25, 2020

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Confluence Rivers Utility Operating Company, Inc., for Authority to Acquire Certain Water and Sewer Assets and for a Certificate of Convenience and Necessity	)))))	**File No. WA-2019-0299**

APPEARANCES

Dean Cooper and Jennifer L. Hernandez, Brydon, Swearengen & England, P.O. Box 456, Jefferson City, Missouri 65102

Appearing for Confluence Rivers Utility Operating Company, Inc.

David Linton, McCarthy, Leonard & Kaemmerer, 825 Maryville Centre Drive, Suite 300, Town and Country, Missouri 63017

Appearing for Lake Perry Lot Owners Association.

John Clizer, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102

Appearing for the Office of the Public Counsel.

Karen Bretz, Travis Pringle, and Mark Johnson, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102

Appearing for the Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Charles Hatcher

REPORT AND ORDER

I. Procedural History

On March 29, 2019, Confluence Rivers Utility Operating Company, Inc. (Confluence) filed two applications with the Missouri Public Service Commission (Commission) seeking authority to acquire the water and sewer systems owned by Port Perry Service Company ("Port Perry"), in Perry County, Missouri (Applications).[1] Confluence also seeks Certificates of Convenience and Necessity (CCNs) in conjunction with the transaction.

The Lake Perry Lot Owners' Association (the Lot Owners) represents most of Port Perry's customers. The Lot Owners intervened and objected to the purchase.

Soon after Confluence filed its Applications, the Lot Owners moved to dismiss. The Staff of the Commission (Staff) filed its recommendation to grant the requested authority subject to certain conditions on May 31, 2019. Confluence agreed to Staff's recommended conditions.

On June 4, 2019, the Lot Owners responded in opposition to Staff's recommendation, renewed their motion to dismiss, and requested a hearing. On June 10, 2019, the Office of the Public Counsel (Public Counsel), responded in opposition to Staff's recommendation, opposed granting the requested authority, and requested that Port Perry be made a party. The Commission denied both the motion to dismiss and the request to make Port Perry a party.

[1] The sewer application, File Number SA-2019-0300, has been consolidated with this case.

A local public hearing was held in Perryville on September 10, 2019.[2] An evidentiary hearing was held October 7-8, 2019, in Jefferson City, Missouri.[3] At the evidentiary hearing, the Commission heard the testimony of twelve witnesses and received twenty-one exhibits into evidence.

Subsequently, the Commission decided that establishing the net book value of Port Perry was a relevant and critical issue to its determination of whether the transaction would be a detriment to the public. The record was reopened, and a limited additional evidentiary hearing was held by telephone and internet conference call on May 19, 2020.[4] At the additional evidentiary hearing, the Commission heard from four witnesses and admitted eight exhibits into evidence.[5] The record was closed on May 27, 2020, with the admittance of a late-filed exhibit. Initial post-hearing briefs were filed on June 2, 2020, and reply briefs were filed on June 9, 2020.

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. Confluence is a Missouri corporation with its principal place of business in St. Ann, Missouri. It is a "water corporation," a "sewer corporation," and a "public utility" as

[2] The Commission heard from 24 witnesses at the local public hearing, all testified against the acquisition. Transcript, Volume I (hereinafter, "Tr. Vol.").
[3] Tr. Vol. II and IV.
[4] The hearing was not in-person due to the COVID-19 national emergency.
[5] Tr. Vol. VII.

those terms are defined by statute. Confluence is subject to the jurisdiction and supervision of the Commission as established by statute.[6]

2. Port Perry is a "water corporation", a "sewer corporation" and a "public utility" as those terms are defined by statute. Port Perry is subject to the jurisdiction and supervision of the Commission as established by statute.[7]

3. Public Counsel is a party to this case pursuant to Section 386.710(2), RSMo (2016),[8] and by Commission rule 20 CSR 4240-2.010(10).

4. Staff is a party to 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.[9] Staff participated in this proceeding.

5. Port Perry has signed an Agreement for Sale of Utility System (Asset Purchase Agreement).[10]

6. Confluence's ultimate parent company is CSWR, LLC (CSWR), with Central States Water Resources, Inc. (Central States) being the managing affiliate for CSWR.[11] The Asset Purchase Agreement is between Central States and Port Perry. Upon closing of the sale, Central States will transfer its rights, title, and interest in Port Perry's assets to Confluence.[12]

7. Josiah Cox is the president of Confluence. Mr. Cox is also the president of Central States. Mr. Cox is also the president of four additional affiliate utility systems. The

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[6] Ex. 1, Cox Direct, p. 1, and 4.
[7] Ex. 100, Dietrich Direct, Schedule ND-d2, p. 2.
[8] Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.
[9] 20 CSR 4240-2.010(10) and (21) and 2.040(1).
[10] Ex. 1, Cox Direct, Schedule JC-5C.
[11] Ex. 1, Cox Direct, p. 4.
[12] Ex. 1, Cox Direct, p. 12, lns. 6-10; and Schedule JC-5C.

four affiliates collectively operate three water and six sewer systems. The four affiliates are also owned by the parent corporation, CSWR.[13]

8. CSWR owns 172 water and wastewater systems across four states.[14] CSWR provides sewer service to approximately 2,800 customers.[15] CSWR provides water service to approximately 2,900 customers.[16]

9. Port Perry currently holds CCNs from the Commission to operate water and sewer utilities in Perry County, Missouri, and has held them since 1973. Port Perry provides water service to approximately 370 customers and sewer service to 248 customers.[17] Port Perry's last rate increase was approximately eighteen years ago, in 2002.[18]

10. Port Perry's water and sewer system is compliant with Missouri Department of Natural Resources requirements.[19]

11. Port Perry's water and sewer system will need maintenance and improvements to continue good operational standards and preserve the normal life of utility assets.[20]

12. There is an existing and future need of Port Perry customers for water and sewer services.[21] Having a water and sewer system in the Port Perry service area promotes the public interest.[22]

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[13] Ex 300, Cox Direct, p. 4, lns. 19-22.
[14] Tr. Vol. VII, p. 396, lns. 4-9.
[15] Ex. 1, Cox Direct, p. 5.
[16] Ex. 1, Cox Direct, p. 6.
[17] Ex. 1, Cox Direct, p. 11, lns. 8-13.
[18] Ex. 100, Dietrich Direct, Schedule ND-d2, p. 2.
[19] Tr. Vol. II, p. 197, lns. 22-23.
[20] Ex. 100, Dietrich Direct, Schedule ND-d2, p. 3.
[21] Ex. 100, Dietrich Direct, Schedule ND-d2, p. 5.
[22] Tr. Vol IV, p. 283, lns. 8-11.

13. Confluence's standard business practice is to use its own database of water and sewer systems in Missouri, cross-referenced with enforcement lists, age of infrastructure, and existing technology to choose utilities that may be agreeable to a purchase. Confluence then approaches those utilities that have infrastructure issues such that they need significant reinvestment.[23]

14. Port Perry is not typical of many other of the utilities acquired by Confluence because it is not a troubled utility that will necessarily require the same magnitude of improvements that other systems have needed.[24]

15. Confluence has historically used local contractors, and has a local operations and maintenance group within forty-five miles of the Port Perry systems.[25]

16. Confluence bids all construction projects, including operations and maintenance. Projects are then awarded to the lowest bidder.[26] Confluence's affiliates do not bid on those projects.[27]

17. Confluence is not seeking financing authority. The entire purchase of Port Perry will be funded with equity.[28] Confluence has not yet determined whether improvements will be funded by equity, debt, or a combination. The terms of any debt financing would be subject to the approval of the Commission.[29]

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[23] Tr. Vol. II, pp. 61-62, lns. 19-5.
[24] Ex. 102, Bolin Surrebuttal, p. 4, lns. 6-7.
[25] Tr. Vol. II, p. 39, lns. 11-16.
[26] Tr. Vol. II, pp. 37-38, lns. 22-12.
[27] Tr. Vol. II, p. 67, lns. 13-15.
[28] Tr. Vol. II, p. 44, lns. 1-5.
[29] Ex. 1, Cox Direct, p. 10.

18. Confluence is equipped with sufficient technical, managerial, and financial capacity to complete the pending transaction and operate the Port Perry utility systems safely.[30]

19. Confluence is not proposing to change rates in this case.[31]

20. Staff did not review or determine possible future rates to be charged to Port Perry customers. Staff will audit historical financial data, invoices and all relevant factors in recommending customer rate levels at the time of Port Perry's next general rate case filed by the utility.[32]

21. Confluence and Staff initially proposed different Port Perry water and sewer system net book value amounts.[33]

22. All parties agree after Staff's further analysis that the net book value of Port Perry water and sewer systems as of December 31, 2019, is $77,936: $20,070 for the water assets and $57,866 for the sewer assets.[34] Net book value does not change due to ownership of a utility.[35] The net book value set by the Commission in this case will be the Port Perry starting net book value amounts in a subsequent rate case filed by Confluence.[36]

23. It is not uncommon that purchases of utilities are above net book value.[37]

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[30] Ex. 100, Dietrich Direct, Schedule ND-d2, pp. 4-5; Ex. 1, Cox Direct, pp. 8-9.
[31] Ex. 102, Bolin Surrebuttal, p. 2, ln.13.
[32] Ex. 102, Bolin Surrebuttal, p. 2, lns. 13-16.
[33] Ex. Dietrich Direct, Schedule ND-d2, p. 7; Ex. 1, Cox Direct, pp. 15-16, lns. 14-8.
[34] Ex. 800, Bolin Direct, p. 4, lns. 15-16; Ex. 600, Cox Direct, pp.2-3, lns. 22-5; Ex. 701, DeWilde Rebuttal, pp. 2-3, lns. 12-2; see also Stipulation and Agreement as to Net Book Value, filed April 9, 2020, para. 3. Note that Exhibit 600 is marked as direct testimony in Transcript Volume VII, but was prefiled as rebuttal testimony. Citations in this Order will be consistent with the transcript.
[35] Tr. Vol. VII, p. 405, lns. 18-22.
[36] Ex. 600, Cox Direct, p. 2, lns. 6-9.
[37] Tr. Vol IV, pp. 274-275, lns. 23-1.

24. An acquisition premium is the amount paid for a system above its net book value.[38] The size or existence of an acquisition premium does not affect ratemaking as net book value is the starting point for ratemaking purposes.[39]

25. There is an acquisition premium being paid in this case; however, Confluence is not seeking rate recovery of the acquisition premium.[40]

26. Purchase price per customer is a standard metric used for utility purchases.[41]

27. Confluence typically uses an iterative process in determining future repairs and maintenance projects on systems it is purchasing, refining projects as information develops.[42] This process involves multiple preliminary estimates and may involve third-party engineer preliminary estimates.[43] These estimates evolve over time.[44] Confluence's first estimate of Port Perry future repairs and maintenance projects was approximately $693,000.[45] Its most recent repair and maintenance plan for Port Perry's water and sewer system has estimated costs of $229,075, as of April 2019.[46] Confluence's estimates come from licensed engineers.[47]

28. The Lot Owners have opposed the Application of Confluence to purchase Port Perry since they were first aware of it.[48] The Lot Owners have stated their intent to

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[38] Ex. 800, Bolin Direct, p. 5, lns. 16-19.
[39] Tr. Vol. VII, p. 406, lns. 18-22.
[40] Tr. Vol. II, p. 40, lns. 12-15; p. 62, ln. 15; p. 150, lns. 10-16; p. 151, lns. 10-12; see also *Waiver Concerning Acquisition Premium*, filed by Confluence on March 4, 2020.
[41] Tr. Vol. VII, pp. 388-389, ln. 16-4.
[42] Tr. Vol. II, p. 57, lns. 6-13.
[43] Tr. Vol. II, p. 147, lns. 4-6.
[44] Tr. Vol. II, pp. 147-148, lns. 10-14.
[45] Tr. Vol. II, p. 57, lns. 4-6.
[46] Ex. 307, Justis Rebuttal, Schedule GJ-03, data request 0012, requested April 24, 2019.
[47] Tr. Vol. II, p. 147, lns. 4-6.
[48] Ex. 309, DeWilde Rebuttal, p. 4, lns. 10-19.

pursue, if possible, the purchase of Port Perry.[49] On April 4, 2019, the Lot Owners made a purchase offer to Port Perry, priced below that offered by Confluence.[50] The Lot Owners received no reply.[51]

29. The Lot Owners put forth six aspects that make the proposed purchase by Confluence potentially detrimental to the public interest: loss of local control;[52] multiple engineer reports for estimates of repairs;[53] lack of financing information;[54] potential indirect recovery of the acquisition premium;[55] higher anticipated rates under Confluence as opposed to the Lot Owners' ownership business plan;[56] and public sentiment of the customers.[57]

30. Staff recommended the Commission approve the sale, subject to the following eleven conditions,[58] to which Confluence agreed, set out as follows:[59]

a. Authorize Port Perry to sell and transfer utility assets to Confluence, and transfer the CCNs currently held by Port Perry to Confluence effective upon closing on the assets;

b. Require Confluence to file adoption notice tariff sheets for each tariff, water and sewer, currently in effect for Port Perry, as 30-day filings, within ten (10) days after closing on the assets;

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[49] Ex. 309, DeWilde Rebuttal, pp. 4-10.
[50] Ex. 309, DeWilde Rebuttal, pp. 9-10, lns. 22-14.
[51] Ex. 309, DeWilde Rebuttal, p. 10, lns. 15-16.
[52] Ex. 307, Justis Rebuttal, p. 4, lns. 9-10.
[53] Ex. 307, Justis Rebuttal, pp. 15-17, lns. 22-11.
[54] Ex. 307, Justis Rebuttal, p. 4, lns. 13-14.
[55] Ex. 700, Justis Rebuttal, pp. 3-4, lns. 21-14.
[56] Ex. 307, Justis Rebuttal, p. 4, lns. 12-13.
[57] Ex. 307, Justis Rebuttal, p. 4, ln. 9.
[58] Ex. 100, Dietrich Direct, Schedule ND-d2, pp. 8-9.
[59] Ex. 1, Cox Direct, p. 15.

c. Upon closing on the water and sewer systems, authorize Port Perry to cease providing service, and authorize Confluence to begin providing service by applying, on an interim basis, the existing rates, rules and regulations as outlined in Port Perry's water and sewer tariffs, until the effective date of respective adoption notice tariff sheets, as recommended above;

d. Approve depreciation schedules for Confluence, as shown on Attachments A and B, and order Confluence to depreciate its plant accounts for the appropriate systems as specified by the depreciation schedules;

e. Require Confluence to ensure adherence to Commission Rule 20 CSR-13 with respect to Port Perry's customers;

f. Require Confluence to provide an example of its actual communication with Port Perry's customers regarding its acquisition and operations of the system assets, and how customers may reach Confluence regarding water and sewer matters, within ten (10) days after closing on the assets;

g. Prior to its first billing, require Confluence to distribute to Port Perry customers an informational brochure detailing the rights and responsibilities of the utility and customers regarding its water and sewer service, consistent with the requirements of Commission rule 20 CSR 4240-13.040(3)(A-L) within ten (10) days after closing on the assets;

h. Require Confluence to provide to Staff's Customer Experience Department a sample of ten (10) billing statements of bills issued to the Port Perry customers within thirty (30) days of such billing;

i. Require Confluence to provide adequate training for the correct application of rates and rules to all customer service representatives, including those employed by contractors, prior to the customers receiving their first bill from Confluence;

j. Require Confluence to file notice in this case once Staff recommendations regarding customer communications and billing, listed above, have been completed; and

k. Make no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the transfers of assets or the CCNs to Confluence, including past expenditures or future expenditures related to providing service in the applicable service area, in any later proceeding.

31. The Lot Owners and Public Counsel recommended the Commission impose four additional conditions on Confluence, set forth as follows:

a. Limit starting rate base to Staff's recommendation;

b. Require Confluence to develop a clear capital investment plan for Lake Perry that is endorsed by both the Lot Owners and Public Counsel;

c. Require Confluence to establish a customer advisory board and associated governance processes, satisfactory to both the Lot

Owners and Public Counsel, that allows meaningful customer input into future capital investments before they are incurred; and

d. Require Confluence to undergo a biannual independent audit, using an auditor and audit plan acceptable to both the Lot Owners and Public Counsel, to review the reasonableness of operating costs and to confirm that all goods and services are being procured appropriately.[60]

32. The second condition proposed by the Lot Owners and Public Counsel to require the capital investment plan be endorsed by the Lot Owners and Public Counsel is not appropriate.[61] The appropriate time to oppose any investment made under the plan is when Confluence attempts to recover costs in rates, and the prudency of those management decisions is ultimately determined by the Commission.[62]

33. The third condition proposed by the Lot Owners and Public Counsel, allowing meaningful customer input into future capital investments before they are incurred, could inappropriately result in the customers micro-managing the decisions of Confluence.[63] Any interested party to a subsequent rate case can propose the disallowance of any capital investment it believes was unnecessary.[64]

34. The fourth condition proposed by the Lot Owners and Public Counsel, requiring a biannual independent audit, is unnecessary as customers already have the ability to file formal or informal complaints with the Commission to address any issues, Staff

[60] Ex. 307, Justis Rebuttal, pp. 21-22, lns. 19-7.
[61] Ex. 103, Busch Surrebuttal, p. 6, lns. 10-11.
[62] Ex. 103, Busch Surrebuttal, p. 6, lns. 11-13.
[63] Ex. 103, Busch Surrebuttal, p. 6, lns. 14-17.
[64] Ex. 103, Busch Surrebuttal, p. 6, lns. 17-18.

already conducts a full audit in the course of each rate case, and the Commission also has the ability to direct an investigation of Confluence at any time.[65]

35. Confluence has agreed that the rates for service will remain the same as those existing under Port Perry at the time of the sale until a subsequent rate case. The current water rates for Port Perry are as follows:

Monthly Minimum: (includes 2,000 gallons of water)	
5/8” meter	$13.32
3/4” meter	$16.26
1” meter	$22.33
1 1/2" meter	$37.49
2” meter	$55.69
3” meter	$98.16
4” meter	$158.83
All usage over 2,000 gallons (per 1,000 gallons)	$3.58

The current sewer rates for Port Perry are as follows:

Monthly bill	
Full-time residential sites	$18.94
Part-time residential sites	$14.21
Part-time residential trailer Or camper site with sewer service	$14.21
Bathhouse and swimming pool complex	$37.37
Camper dumping station (each)	$37.37[66]

36. Staff recommended Confluence adopt the depreciation rate schedules set forth in Attachment A and B of Staff’s Official Case File Memorandum.[67] No party put forth evidence that these schedules are incorrect.

III. Conclusions of Law

The Commission has reached the following conclusions of law.

[65] Ex. 103, Busch Surrebuttal, pp. 6-7, lns. 19-3.
[66] Ex. 1, Cox Direct, pp. 13-14.
[67] Ex. 100, Dietrich Direct, Schedule ND-d2, pp. 10-11.

A. Confluence is a “water corporation”, “sewer corporation” and a “public utility” as those terms are defined in Section 386.020. Port Perry is a “water corporation”, “sewer corporation” and a “public utility” as those terms are defined in Section 386.020, RSMo. Both Confluence and Port Perry are subject to the Commission’s jurisdiction, supervision, control, and regulation as provided in Chapters 386 and 393, RSMo.

B. Section 393.170, RSMo requires Confluence to have CCNs, which are granted by the Commission, prior to providing water or sewer service in the current Port Perry service area. Section 393.190, RSMo requires Commission approval prior to a transfer of utility assets.

C. Section 393.170.3 RSMo (Supp. 2019), in setting forth the standard for the granting of CCNs, requires that the Commission determine that the services are “necessary or convenient for the public service.” The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.[68] It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.[69]

D. The Commission has previously articulated the specific criteria to be used when evaluating CCN applications: (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

[68] *State ex rel. Intercon Gas, Inc., v. Public Service Commission of Missouri*, 848 S.W.2d 593, 597 (Mo. App. 1993), citing *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo. App. 1973), citing *State ex rel. Transport Delivery Service v. Burton*, 317 S.W.2d 661 (Mo. App. 1958).
[69] *State ex rel. Ozark Electric Coop. v. Public Service Commission*, 527 S.W.2d 390, 392 (Mo. App. 1975).

financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.[70]

E. Pursuant to Section 393.170.3, RSMo, the Commission may impose the conditions it deems reasonable and necessary for the grant of a CCN.

F. Section 393.190, RSMo does not set forth a standard or test for the Commission's approval of the proposed transfer. "The standard governing the Commission's review of an application for sale of assets is set forth in *Fee Fee Trunk Sewer, Inc. v. Litz:* 'The Commission may not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest.' 596 S.W.2d 466, 468 (Mo.App.1980)." *Environmental Utilities, LLC v. Pub. Serv. Comm'n*, 219 S.W.3d 256, 265 (Mo.App. W.D. 2007). As originally stated by the Missouri Supreme Court in 1934, "A property owner should be allowed to sell his property unless it would be detrimental to the public."[71]

G. The public interest is a matter of policy to be determined by the Commission.[72] It is within the discretion of the Commission to determine when the evidence indicates the public interest would be served.[73] Determining what is in the interest of the

[70] *In Re Intercon Gas, Inc.*, 30 Mo P.S.C. (N.S.) 554, 561 (1991); *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, 1994 WL 762882, *3 (Mo. P.S.C. 1994). These factors are sometimes referred to as the "*Tartan* factors."
[71] *State ex rel. City of St. Louis v. Public Service Comm'n of Missouri*, 73 S.W.2d 393, 400 (Mo. banc 1934).
[72] *State ex rel. Public Water Supply District No. 8 of Jefferson County v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980).
[73] *State ex rel. Intercon Gas, Inc. v. Public Service Com'n of Missouri*, 848 S.W.2d 593, 597-598 (Mo. App. 1993).

public is a balancing process.[74] Public interest necessarily must include the interests of the investing public.[75]

H. As Confluence brought the Applications, 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, Confluence must convince the Commission it is "more likely than not" that its provision of water and sewer service in the current Port Perry service area is necessary or convenient for public service. Confluence must also convince the Commission it is "more likely than not" that its acquisition of Port Perry will not be detrimental to the public.

I. Commission rule 20 CSR 4240-10.085, on the recovery of acquisition premiums, details a separate application for recovery of the acquisition premium, which demonstrates the system to be acquired is a nonviable utility, and that the acquisition would be unlikely to occur without the probability of obtaining an acquisition incentive. Confluence has not sought to recover an acquisition premium.

IV. Decision

Confluence requests both a CCN and authority to purchase the assets of Port Perry. A CCN case requires discussion of technical, managerial, and financial capability, along with the Tartan factors of the entity seeking the CCN. The Commission's decision regarding the authority to purchase a utility is a determination of whether the sale is detrimental to the public interest.

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[74] *State ex rel. Churchill Truck Lines, Inc. v. Public Service Commission*, 555 S.W.2d 328, 334-335 (Mo. App. 1977).
[75] *State ex rel. City of St. Louis v. Public Service Comm'n of Missouri*, 73 S.W.2d 393, 400 (Mo. banc 1934).
[76] State ex rel. GS Technologies Operating Co., Inc. v. Pub. Serv. Comm'n of State of Mo., 116 S.W.3d 680, 693 (Mo. App. 2003).
[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).

The Lot Owners and Public Counsel argued that the sale of Port Perry's systems to Confluence would be detrimental to the public interest, collectively arguing six detriments. Staff and Confluence both recommend the Commission approve the sale, subject to eleven conditions put forth by Staff, as not detrimental to the public interest.

CCN

In order to be granted a CCN to provide water and sewer service in the existing Port Perry service area, Confluence must show that it is qualified to own and operate Port Perry's assets. The Commission traditionally determines if a company is qualified to become a public utility by analyzing the Tartan factors. The Tartan factors contemplate: 1) need for service, 2) the utility's qualifications, 3) the utility's financial ability, 4) the feasibility of the proposal, and 5) promotion of the public interest.

Because a CCN has already been granted to Port Perry and it currently provides service to water and sewer customers under that CCN, there is an obvious need for the service. Confluence has shown that it is qualified to provide the service. Staff agreed and no other party produced evidence that Confluence did not have the technical, managerial, and financial capability to provide safe and adequate service to the Port Perry service area. Confluence has the financial ability to purchase Port Perry, and the financial ability to operate it safely. Promotion of the public interest is served by the continuation of water and sewer service. Additionally, positive findings with respect to the other four Tartan factors support a finding that the Applications will promote the public interest.

The technical, managerial, and financial qualifications having been established, the Commission must look to whether the transfer of Port Perry's assets is "not detrimental to the public interest."

Authority to Purchase

A prior Commission decision is not established precedent for later Commission decisions. However, consistency between cases, when appropriate, is beneficial and preferred. The Commission has previously stated:

> In considering whether or not the proposed transaction is likely to be detrimental to the public interest, the Commission notes that its duty is to ensure that [a utility company] provides safe and adequate service to its customers at just and reasonable rates. A detriment, then, is any direct or indirect effect of the transaction that tends to make the [provision of that utility's service] less safe or less adequate, or which tends to make rates less just or less reasonable. The presence of detriments, thus defined, is not conclusive to the Commission's ultimate decision because detriments can be offset by attendant benefits. The mere fact that a proposed transaction is not the least cost alternative or will cause rates to increase is not detrimental to the public interest where the transaction will confer a benefit of equal or greater value or remedy a deficiency that threatens the safety or adequacy of the service.[78]

Thus, the term not detrimental to the public interest means there is no net detriment after considering all of the benefits and all of the detriments.

It is well established that continuation of adequate service to the public served by a utility is not only a benefit, but is the purpose behind Section 393.190, RSMo.[79] The continuation of service benefits the interest of the state in the health and welfare of its citizens and in protecting its waters. The continuation of service benefits the interests of the investors in offering a rate of return on their investment in water and sewer utilities. The continuation of service also benefits the current 370 water and 248 sewer customers, as well as future customers.

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[78] File No. EO- 2004-0108, *In the Matter of the Application of Union Electric Company, Doing Business as AmerenUE, for an Order Authorizing the Sale, Transfer and Assignment of Certain Assets, Real Estate, Leased Property, Easements and Contractual Agreements to Central Illinois Public Service Company, Doing Business as AmerenCIPS, and, in Connection Therewith, Certain Other Related Transactions*, Report and Order on Rehearing (issued February 10, 2005), p. 48-49.
[79] State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W.2d 466, 468 (Mo. App. 1980).

A total of six potential detriments were put forth by the Lot Owners: 1) loss of local control; 2) multiple engineer reports for estimates of repairs; 3) lack of financing information; 4) potential indirect recovery of the acquisition premium; 5) higher anticipated rates under Confluence as opposed to the Lot Owners' ownership business plan; and 6) public sentiment of the customers. Public Counsel joined in the advocacy of the final three detriments.

The first proposed detriment, loss of local control, is not persuasive as there is no statutory requirement of local control for utility services and no credible evidence was presented suggesting a loss of local control would result in any detriment. No evidence was provided that a loss of local control would tend to make the water or sewer service less safe or less adequate, or that it would tend to make rates less just or less reasonable. The Commission finds that the loss of local control in this case does not make the transaction detrimental to the public interest.

The Lot Owners also argued that Confluence's multiple engineering reports and differing estimates of anticipated repairs is detrimental to the public interest. The Lot Owners frame Confluence's repairs and maintenance cost estimate process as the epitome of self-dealing and bad engineering practice. The Commission disagrees. These estimates are not meant to be binding contracts. Confluence stated that its estimates, and list of repairs and maintenance, evolves over time. This is not unusual in an acquisition case as the buyer has not yet operated the system to get a more defined and detailed list of repairs and maintenance. No evidence was offered that multiple engineering reports estimating different lists of repairs would tend to make the water or sewer service less safe or less adequate, or that it would tend to make rates less just or less reasonable. The multiple

estimates do not support a finding of public detriment, because both the actual repairs and maintenance to be performed and their ultimate costs are not only speculative, but are not before the Commission in this proceeding.

The third detriment put forth by the Lot Owners is the lack of financing information. Confluence will use equity to purchase Port Perry. Confluence testified that it had not yet decided if the repairs and maintenance would be financed by debt, equity, or a combination. Given the facts in this case, Confluence is not required to disclose how it will pay for uncertain, future repairs and maintenance costs. There is, however, a requirement that any financing sought by Confluence must first receive Commission approval. Therefore, in this case where Confluence has demonstrated it has the financial ability to undertake needed repairs, a lack of financing information for future repairs and maintenance costs does not tend to make the water or sewer service less safe or less adequate, and also does not tend to make rates less just or less reasonable. The Commission finds that, given the facts in this case, Confluence's lack of specific financing information for future repairs and maintenance costs does not make the transaction detrimental to the public interest.

Generally, only the net book value of the purchase price of any utility plant would be recoverable in rates from rate-paying customers. Confluence's purchase price for Port Perry is above net book value, therefore an acquisition premium exists. Confluence has not requested recovery of an acquisition premium in this case.

While there is no direct recovery of the acquisition premium by Confluence, the Lot Owners and Public Counsel contend that the temptations for indirect recovery of the acquisition premium are detrimental to the public interest. Gold plating projects; inflated

financing; self-dealing; cutting expenses to unsafe levels; and socializing the acquisition premium across other service areas are examples of how such indirect recovery could occur. No evidence was offered that Confluence is, or plans to, engage in any of these indirect recovery methods. These temptations exist for all regulated utilities, and current utility regulations already address them. In any general rate case where Confluence would seek to recover such amounts through rates, the Commission will review the prudence of Confluence's repairs and maintenance costs. Requests for financing requires Commission authority. Complaints can be made regarding any utility violation of the affiliate transactions rules, or of any unsafe conditions. Rate consolidation likewise cannot happen without review and authorization by the Commission. The Commission finds the risk of a future indirect recovery of some portion of the acquisition premium when balanced against the benefits does not make the transaction detrimental to the public interest in this case.

The fifth detriment is the potentially higher rates under Confluence ownership as opposed to under ownership of the Lot Owners. Only Confluence's Applications are before the Commission, but the Lot Owners were permitted to introduce their business plan in order to show the detriments of the Confluence plan.[80] Stated another way, this is not a bidding situation in which the Commission has authority to choose between the business plans.

Confluence's operation of the Port Perry systems will be as a regulated public utility, Confluence will not be able to charge a rate that the Commission has not found is just and reasonable. In a rate case, Confluence will not be authorized to recover imprudent improvements and financing charges as rate cases include audits and prudence reviews.

[80] Order Regarding Four Motions to Strike Testimony, Request to Limit Issues, Request for Discovery Sanctions, and Request to Delay Evidentiary Hearing, issued October 2, 2019.

There is likely to be a rate increase no matter who owns Port Perry because maintenance and improvements are needed. The Commission is persuaded that the risk of a higher rate increase under Confluence's ownership than under the hypothetical Lot Owners' ownership does not outweigh the benefits of Confluence's ownership.

The final detriment to the public argued in this case is the sentiment of the customers. The Lot Owners make up the majority of Port Perry's customers. The Lot Owners oppose the purchase by Confluence. However, the interests of the customers are not the totality of the public interest. The state of Missouri has a public interest in protecting the health and safety of its citizens as well as in protecting its waters from effluent. Public interest also includes the investing public. The Commission is not persuaded that the sentiment of the customers is more than a slight detriment. When weighing these competing public interests together, the Commission does not find the proposed transaction to be detrimental to the public interest.

The Commission recognizes the clear desire of the Lot Owners to operate their own water and sewer system. This ownership would have its own benefits, as well as detriments. However, the Commission's powers are not unlimited. The owners of Port Perry have decided to sell their water and sewer system, which already serves the Lot Owners as customers. The Commission cannot deny the owners their right to sell unless the Commission finds the sale would be detrimental to the public interest. If the sale is not detrimental to the public interest, then the Commission has no authority to deny Confluence's purchase.[81]

[81] State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W.2d 466, 468 (Mo. App. 1980).

There must be a balancing of all the benefits and detriments to determine if the transfer as a whole would be detrimental to the public.[82] After weighing the totality of all benefits against all detriments, the Commission finds the evidence shows the granting of Confluence's Applications, subject to Staff's recommended conditions which Confluence agreed to, will not be detrimental to the public interest.

The Lot Owners and Public Counsel recommended the Commission impose four additional conditions on Confluence. The first, which would limit Confluence's starting rate base to net book value as identified by Staff, is met as all parties agree to the net book value. The next two, requiring Confluence to develop a capital investment plan endorsed by the Lot Owners and Public Counsel, and to establish a customer advisory board satisfactory to the Lot Owners and Public Counsel, infringe upon Confluence's right to make its own business decisions. The last recommended condition requires a biannual audit. This condition would overlap the audit done during a general rate case. For the above reasons, the four conditions recommended by the Lot Owners and Public Counsel are rejected.

The Commission finds that Confluence has met its burden to show that the grant of a CCN to operate the Port Perry systems is necessary or convenient for the public service subject to the conditions proposed by Staff and agreed to by Confluence. The Commission finds that Confluence has also met its burden to show that granting it the authority to purchase Port Perry would not be detrimental to the public interest.

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,

[82] State ex rel. AG Processing, Inc. v. Pub. Serv. Comm'n of State, 120 S.W.3d 732, 737 (Mo. 2003).

the Commission determines that the substantial and competent evidence in the record supports the conclusion that Confluence has met, by a preponderance of the evidence, its burdens of proof. The Commission finds that Confluence has demonstrated that it possesses adequate technical, managerial, and financial capacity to own, operate, manage, and maintain the Port Perry water and sewer systems. The Commission finds that Confluence has met the Tartan factors. Confluence has shown by a preponderance of the evidence that the grant of a CCN to serve the Port Perry service areas, subject to the conditions recommended by Staff, is necessary or convenient for the public service. Confluence has also shown by a preponderance of the evidence that the transfer of Port Perry's assets to Confluence is not detrimental to the public interest.

The Commission finds that Confluence's proposed acquisition of Port Perry is not detrimental to the public interest. Therefore, the Commission will approve the transfer of assets, pursuant to Section 393.190, RSMo. The Commission will grant Confluence the CCNs to provide water and sewer service in the service territories previously served by Port Perry, pursuant to Section 393.170, RSMo, subject to the conditions set forth by Staff.

THE COMMISSION ORDERS THAT:

1. Port Perry is authorized to sell and transfer utility assets to Confluence, via Central States, as identified in Confluence's Applications.

2. The net book value of Port Perry, as of December 31, 2019, is $77,936: $20,070 for the water assets and $57,866 for the sewer assets.

3. Upon closing on the Port Perry water and sewer systems, Confluence is granted a CCN to provide water and sewer service in the service areas currently served by Port Perry.

4. Upon closing on each of the water and sewer systems, Confluence shall provide service by applying, on an interim basis, the existing rates, rules and regulations as outlined in Port Perry's water tariff and sewer tariffs, until the effective date of respective adoption notice tariff sheets.

5. Confluence shall file Tariff Adoption Notice tariff sheets for the corresponding water and sewer tariffs of the Port Perry systems within ten days after closing on the assets.

6. Immediately upon closing on the Port Perry water and sewer systems, Port Perry shall cease providing service, and Port Perry's CCN and tariffs are canceled.

7. Confluence shall depreciate its plant accounts for the appropriate systems as specified by the depreciation schedules shown on Attachments A and B of Staff's Memorandum, Exhibit 100, Direct Testimony of Natelle Dietrich, Schedule ND-d2, pp.10 and 11 of 11.

8. Confluence shall adhere to Commission rule 20 CSR 4240 Chapter 13 with respect to Port Perry customers.

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

10. Prior to its first billing, Confluence shall distribute to Port Perry customers an informational brochure detailing the rights and responsibilities of the utility and customers regarding its water and sewer service, consistent with the requirements of Commission rule 20 CSR 4240-13.040(2)(A-L) within ten (10) days after closing on the assets.

11. Confluence shall provide to Staff's Customer Experience Department a sample of ten (10) billing statements of bills issued to the Port Perry customers within thirty (30) days of such billing.

12. Confluence shall provide adequate training for the correct application of rates and rules to all customer service representatives, including those employed by contractors, prior to the Port Perry customers receiving their first bill from Confluence.

13. Confluence shall file notice in this case once Staff recommendations regarding customer communications and billing have been completed.

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

15. This order shall be effective on September 25, 2020.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Hatcher, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Spire Missouri, Inc. d/b/a Spire a Certificate of Convenience and Necessity to Construct, Install, Own, Operate, Maintain, and Otherwise Control and Manage a Natural Gas Distribution System to Provide Gas Service in Cass County as an Expansion of its Existing Certificated Area	)	**File No. GA-2021-0010**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§4 Jurisdiction and powers generally

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

GAS

§3 Certificate of convenience and necessity

The Commission has stated five criteria that it will use to determine whether an applicant qualifies for a certificate of convenience and necessity: 1) There must be a need for the service; 2) The applicant must be qualified to provide the proposed service; 3) The applicant must have the financial ability to provide the service; 4) The applicant's proposal must be economically feasible; and 5) The service must promote the public interest.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held by telephone/internet audio conference on the 16th day of September, 2020.

In the Matter of the Application of Spire Missouri, Inc. d/b/a Spire for a Certificate of Convenience and Necessity to Construct, Install, Own, Operate, Maintain, and Otherwise Control and Manage a Natural Gas Distribution System to Provide Gas Service in Cass County as an Expansion of its Existing Certificated Area	)))))))	**File No.: GA-2021-0010**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: September 16, 2020 Effective Date: October 16, 2020

Procedural History

On July 13, 2020, Spire Missouri, Inc. (Spire), filed the above-referenced application. The application seeks, among other things, permission and approval and a certificate of convenience and necessity ("CCN") to construct, install, own, operate, maintain, and otherwise control and manage a natural gas distribution system to provide gas service in Cass County, Missouri, as a further expansion of Spire's existing certificated area.

The application describes two projects Spire wishes to complete. The first project will extend service to industrial customers in an industrial park. The second project will extend service to commercial customers, with the potential to serve residential customers. The application further requests a waiver of the Commission's 60-day notice rule.[1]

[1] Commission Rule 20 CSR 4240-4.017(1).

The Staff of the Commission filed its Recommendation on August 24, 2020. Staff recommends that the Commission grant the certificate, subject to two conditions. The conditions are that the Commission should:

- reserve all rate making determinations regarding the revenue requirement impact of this service area extension request until Spire's next general rate making proceeding; and
- require Spire to file an updated tariff sheet incorporating the requested Sections for Cass County.

No party has responded to Staff's Recommendation.

Decision

Spire is a gas corporation and a public utility subject to Commission jurisdiction.[2] The Commission may grant a gas corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either "necessary or convenient for the public service."[3] The Commission has stated five criteria that it will use to make this determination:

1) There must be a need for the service;

2) The applicant must be qualified to provide the proposed service;

3) The applicant must have the financial ability to provide the service;

4) The applicant's proposal must be economically feasible; and

5) The service must promote the public interest.[4]

[2] Section 386.020(18), (43) RSMo 2016.
[3] Section 393.170, RSMo. 2016.
[4] *In re Tartan Energy Company*, 3 Mo. P.S.C. 173, 177 (1994).

Based on the verified pleadings, the Commission finds the application for a certificate of convenience and necessity to provide gas service meets the above listed criteria.[5] The application will be granted.

Commission Rule 20 CSR 4240-4.017(1)(D) states that a waiver may be granted for good cause. Good cause exists in this case. Spire has had no communication with the office of the Commission within the prior 150 days regarding any substantive issue likely to be in this case, other than those pleadings filed for record. Accordingly, for good cause shown, the Commission waives the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1).

THE COMMISSION ORDERS THAT:

1. Commission Rule 20 CSR 4240-4.017(1) is waived.

2. Spire is granted permission, approval, and a certificate of convenience and necessity to construct, install, own, operate, control, manage, and maintain gas plant as more particularly described in its application and Staff Recommendation.

3. The certificate of convenience and necessity is subject to the condition that the Commission will reserve all ratemaking determinations regarding the revenue impact of this service area extension request until Spire's next general ratemaking proceeding.

4. Spire shall file an updated tariff sheet incorporating the requested sections for Cass County.

[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).

5. This order shall become effective on October 16, 2020.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Pridgin, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Confluence Rivers Utility Operating Company, Inc., to Acquire Certain Water and Sewer Assets of Terre Du Lac Utilities Corporation	)))))	**File No. WM-2020-0403**

ORDER DENYING MOTION TO COMPEL DISCOVERY

EVIDENCE, PRACTICE AND PROCEDURE

§5 Admissibility

Where a party moved to compel discovery of non-redacted/un-redacted testimony of a witness in a proceeding involving a sister company of applicant before another state's public utility commission, the testimony in question would likely be irrelevant – and, thus, inadmissible – in the case in hand, as it concerns only the amount of contributions in aid of construction (CIAC) to be ascribed to the purchaser when its rates are set by the other state's public utility commission and is not relevant to acquisition premium or the financial condition of the parent company, as alleged by movant.

§11 Best and secondary evidence

Where a party moved to compel discovery of non-redacted/un-redacted testimony of a witness in a proceeding involving a sister company of applicant before another state's public utility commission, the testimony is not needed, as the financial statements of the parent company would provide the best evidence of the financial condition and strength of the parent company and its relationship to the financial health of applicant.

§18 Record and evidence in other proceedings

Where a party moved to compel discovery of non-redacted/un-redacted testimony of a witness in a proceeding involving a sister company of applicant before another state's public utility commission, the information sought may be obtained from applicant without obtaining the analysis, opinions, and conclusions of the witness about those financial statements and also imposes an unnecessary and disproportionate burden on applicant by requiring applicant to facilitate movant's preparation of its case against it.

§29 Discovery

Where a party moved to compel discovery of non-redacted/un-redacted testimony of a witness in a proceeding involving a sister company of applicant before another state's public utility commission, the information sought may be obtained from applicant without obtaining the analysis, opinions, and conclusions of the witness about those financial

statements while also imposing an unnecessary and disproportionate burden on applicant by requiring applicant to facilitate movant's preparation of its case against it.

§29 Discovery

Where a party moved to compel discovery of an appraisal report of a water and/or sewer system proposed to be acquired by a sister company of applicant in a proceeding before another state's public utility commission, the Missouri Public Service Commission held that there was no connection between the two cases other than both applicants being corporate siblings seeking to acquire water and/or sewer systems. With no other connections between the appraisals, the Commission denied the motion as a "fishing expedition."

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held by telephone and internet audio conference on the 30th day of September, 2020.

In the Matter of the Application of Confluence Rivers Utility Operating Company, Inc., to Acquire Certain Water and Sewer Assets of Terre Du Lac Utilities Corporation	)))))	**File No. WM-2020-0403**[1]

ORDER DENYING MOTION TO COMPEL DISCOVERY

Issue Date: September 30, 2020 Effective Date: September 30, 2020

On June 12, 2020,[2] Confluence Rivers Utility Operating Company, Inc. (Confluence) filed an Application and Motion for Waiver seeking leave to purchase substantially all the water and/or sewer assets of Terre Du Lac Utilities Corporation (TDL). On September 2, the Office of Public Counsel (OPC) filed a Motion to Compel responses to data requests (DR) OPC had propounded upon Confluence.[3]

OPC's DRs were as follows:

DR 3116. Please provide non-redacted copies of all parties' pre-filed testimony filed in Docket No. 19-00062 before the Tennessee Public Utility Commission.[4]

DR 3117. Please provide the Aqua Utilities Appraisal Report provided in response to the Tennessee Consumer Advocate's data requests 1-26 in Docket No. 19-00062 before the Tennessee Public Utility Commission.

[1] WM-2020-0403 and SM-2020-0404 were consolidated by order of July 6, 2020.
[2] All date citations will be to 2020 unless otherwise indicated.
[3] OPC has satisfied Commission Rule 20 CSR 4240-20.090(8).
[4] The parties have narrowed their arguments about this broad request to data related to the financial health of Confluence's corporate parent, CSWR and related to the TDL acquisition premium..

OPC explains its DRs seek responses concerning the testimony of Alex Bradley and David Dittemore in a Tennessee Public Utility Commission proceeding where Limestone Utility Operating Company, LLC's (Limestone) proposes to acquire Aqua Utilities, Inc., (Aqua) assets.[5] Per OPC, the redacted portions concern an acquisition premium and the financial condition of CSWR, LLC (CSWR). OPC states CSWR is the parent company of both Confluence and Limestone and so CSWR's financial health may illuminate Confluence's financial health (DR 3116). OPC explains who appraised Aqua Utilities' systems and how they were appraised may relate to TDL's appraisal methodology credibility in the instant case (DR-3117).[6] Specifically, OPC states a comparison of the Tennessee Aqua and Missouri TDL appraisals may illuminate whether Confluence will be able to acquire the TDL systems without an acquisition premium or other incentive.

Confluence objects that the DRs call for information that is not relevant and is protected by a Tennessee Public Utility Commission (PUC) protective order. Per Confluence, the appraisal is not relevant because the Tennessee Aqua and Missouri TDL systems are materially dissimilar. Confluence says that the Aqua system serves far fewer customers and that TDL has, in contrast to Aqua, been cited for numerous violations of federal and state environmental laws. Confluence argues that for this reason and because Limestone specifically disclaimed seeking an acquisition premium or any such adjustment, the Aqua appraisal is irrelevant to the TDL valuation.

[5] *In re: Joint Application of Aqua Utilities Company, Inc., and Limestone Water Utility Operating Company, LLC, for Authority to Sell or Transfer Title to the Assets, Property and Real Estate of a Public Utility and for a Certificate of Public Convenience and Necessity*, Docket No. 19-00062. Tennessee Public Utility Commission. Bradley and Dittemore testified on behalf of the Tennessee Attorney General, Public Counsel states that the Tennessee Attorney General has refused to give it the un-redacted testimony.
[6] Confluence indicated it would disclose the identity of the appraiser in response to another OPC DR.

Concerning CSWR's financial condition, Confluence argues, "[i]t is not apparent from the testimony that CSWR's financial condition is a subject of the redacted testimony," Confluence states that in any event "the financial statements of CSWR would provide the best evidence regarding the financial condition and strength of that entity."

Commission Rule 20 CSR 4240.090 provides that: "Discovery may be obtained by the same means and under the same conditions as in civil actions in the circuit court." Missouri Supreme Court Rule 56.01 governs the scope of discovery in civil actions in the circuit court, and, generally, "[p]arties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action. . . ."[7] Relevance, for purposes of discovery, is broadly defined to include material "reasonably calculated to lead to the discovery of admissible evidence."[8] The party seeking to obtain discovery has the burden of establishing the relevance of the information in order to obtain it.[9] Discovery may not be used merely as a "fishing expedition" or on "mere suspicion."[10] On the other hand, "[i]t is a plain rule of discovery that a party will not be required to make available any compilation of data or research efforts that is equally available to the interrogating party."[11] "Neither party ought to be required simply to facilitate his adversary's preparation of the case against him."[12] The need for discovery must be balanced against the burden and intrusiveness involved in furnishing this information.[13]

[7] Rule 56.01(b)(1); *Ratcliff v. Sprint Missouri, Inc.*, 261 S.W.3d 534, 546 - 547 (Mo. App. W.D. 2008).
[8] *State ex rel. Wright v. Campbell*, 938 S.W.2d 640, 643 (Mo. App. E.D. 1997).
[9] *State ex rel. Kander v. Green,* 462 S.W.3d 844, 848 (Mo. App. W.D. 2015).
[10] *State ex rel. Boswell v. Curtis*, 334 S.W.2d 757, 760 (Mo. App. Spr. D. 1960).
[11] *State ex rel. Albert v. Adams,* 540 S.W.2d 26, 30 (Mo. Banc 1976).
[12] *State ex rel. Schlueter Mfg. Co. v. Beck*, 337 Mo. 839, 855; 85 S.W.2d 1026, 1030 (Mo. Banc 1935).
[13] *State ex rel. MacDonald v. Franklin*, 149 S.W.3d 595, 597 (Mo. App. S.D. 2004).

DR 3116 – Evaluation of CSWR's Financial Condition

A review of the redacted testimony of Alex Bradley and David Dittemore, which was attached to OPC's motion, reveals that Bradley's testimony, including the redacted portions, concerns only the amount of CIAC (contributions in aid of construction) that should be ascribed to Limestone when its rates are set by the Tennessee Commission. OPC does not assert that the amount of CIAC to be used in setting rates in Tennessee would have any relevance to this Missouri proceeding and the Commission finds that it has none. That leaves the testimony of Mr. Dittemore.

Mr. Dittemore's testimony does contain information and conclusions by the Tennessee Attorney General's witness about CSWR's financial condition and the amount and significance of the acquisition premium resulting from the purchase of the Tennessee utility. Portions of that testimony are redacted in compliance with a protective order issued by the Tennessee commission. Dittemore did not testify on behalf of Confluence or a company affiliated with Confluence, and Confluence has no authority to change the redactions in another party's testimony. If the Commission were to grant OPC's motion it would need to order Confluence to violate the Tennessee protective order by turning over an un-redacted copy of Bradley's testimony that it may have in its possession. This Commission will not burden Confluence with conflicting orders where OPC does not need the documents.

OPC does not need to obtain an un-redacted copy of Dittemore's testimony to obtain the information it seeks. Dittemore's testimony is based on the financial statements of CSWR and Limestone provided in the Tennessee case. OPC may seek those financial statements directly from Confluence without obtaining the analysis, opinions and

conclusions of the Tennessee Attorney General's witness about those financial statements. OPC offers no evidence or argument as to how Limestone's financial information is relevant to this proceeding and does not claim CSWR's financial statements are not as available to OPC as they are to Confluence. As far as concerns the analysis, conclusions and opinions of Bradley about CSWR's financial statements, Confluence ought not be required to facilitate OPC's preparation here,[14] particularly in light of the burdens imposed by the Tennessee protective order.

In summary, OPC's request in DR 3116 for an un-redacted copy of Bradley's testimony does not call for information likely to be admissible at trial. OPC's request in DR 3116 for the un-redacted testimony of Dittemore would require Confluence to violate the Tennessee protective order and ultimately seeks information that is available for discovery through other means. Overall, DR 3116 imposes an unnecessary and disproportionate burden on Confluence. The Commission will deny OPC's Motion to Compel Discovery as to DR 3116.

DR 3117 - The Aqua Utilities Appraisal Report

The Commission cannot find based on the current pleadings that OPC has met its burden with respect to the Aqua appraisal. OPC argues the Aqua appraisal might prove useful to undermine or verify the credibility of a TDL appraisal's methodology and the contention that without an acquisition premium Confluence will not be able to acquire TDL. Nothing in aid of this surmise is now known except that CSWR is the "parent" of both Limestone and Confluence, these two corporate "siblings" are both seeking to acquire water and sewer assets, and an acquisition premium may (and this is disputed)

[14] *State ex rel. Schlueter Mfg. Co. v. Beck*, 337 Mo. 839, 855; 85 S.W.2d 1026, 1030 (Mo. Banc 1935).

be at issue in both cases. OPC seems to argue that these connections are enough to throw up a "red flag." With no other connections between the appraisals, however, it appears that OPC's request constitutes merely a "fishing expedition" to find more connections where the only fish ultimately to be caught is that the appraisal methodologies (of different assets of different sizes with different problems for different parties) are different. Provided with only this dim light, the Commission simply cannot see the "likelihood" of discovering admissible evidence and finds that OPC has not sustained its burden. The Commission will deny OPC's Motion to Compel Discovery as to DR 3117.

THE COMMISSION ORDERS THAT:

1. OPC's Motion to Compel Discovery as to DR 3116 and DR 3117 is overruled.

2. This Order shall be effective when issued.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Graham, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

Debbie Feken	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. EC-2020-0183**
	)	
The Empire District Electric Company	)	
	)	
Respondent.	)	

REPORT AND ORDER

ELECTRIC

§41 Billing practices

Where Complainant signed a guarantor contract for her son's account, as an alternative to her son providing a monetary deposit to reconnect service, utility rightly refused to disclose billing and payment information on her son's account, as her son had not authorized the utility to provide Complainant access to the records and such information was confidential under Section 386.480, RSMo 2016, and Commission Rule 20 CSR 4240-20.015(2)(C). However, under that statute and regulation, the Commission may, in the course of a hearing or proceeding or on order of the Commission, compel the utility to disclose the requested confidential billing and payment information.

SERVICE

§6 Restoration or continuation of service

Commission Rule 20 CSR 4240-13.030(5) provides that, in lieu of a deposit, a utility may accept a written guarantee as a requirement before restoring service.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Debbie Feken	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. EC-2020-0183**
	)	
The Empire District Electric Company	)	
	)	
Respondent.	)	

REPORT AND ORDER

Issue Date: October 21, 2020

Effective Date: November 20, 2020

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Debbie Feken	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. EC-2020-0183**
	)	
The Empire District Electric Company	)	
	)	
Respondent.	)	

APPEARANCES

Debbie Feken
Pro se

Diana C. Carter
For Empire District Electric Company

Casi Aslin
For Staff of the Missouri Public Service Commission

Regulatory Law Judge: Paul T. Graham

REPORT AND ORDER

Issue Date: October 21, 2020 Effective Date: November 20, 2020

On July 8, 2020, the Missouri Public Service Commission (the Commission) conducted an evidentiary hearing on the Complaint of Debbie Feken (Ms. Feken) against The Empire District Electric Company (Empire). At the conclusion of the hearing, the Commission ordered briefing and took the case under advisement. On September 30, 2020, the Regulatory Law Judge issued notice of his recommended report an order per Rule 20 CSR 4240-2.070(15)(H). This notice advised the parties that they had ten days from the issuance of the recommended order to file comments supporting or opposing the recommended order. None were filed. The Commission will now issue its Report and Order.

Procedural Background

Ms. Feken filed a Complaint disputing a bill in the amount of $274.04. She requested the following relief:

> "I want a copy of guarantor contract I signed June 2017. I want proof [confidential] never paid his electric bill on time for 1 year therefore keeping me as a responsible guarantor. I want proof the guarantor contract I signed is legally and duly enforcible (sic) without said proof of a default to me."

Large parts of the record filed in the Commission's Electronic Filing Information System were designated there as "confidential." Section 386.480, RSMo, provides that "[n]o 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." Rule 20 CSR 4240-2.135 contains provisions for the

protection of customer and company information. In this case, Empire asserts Ms. Feken owes her son's bill based upon a guarantee she signed, and no evidence relevant to this issue will be considered confidential except her son's name and the addresses of Ms. Feken and her son.

Findings of Fact

1. Any finding of fact reflecting 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]

2. Ms. Feken's son had service with Empire at his own address beginning in 2013. Service was maintained until June 28, 2017, when it was discontinued for non-payment. Because of the account payment history, before it would reconnect service at Ms. Feken's son's residence, Empire required a $465.00 deposit to reconnect service, along with the past due balance and a reconnection fee. Empire offered Ms. Feken's son the option to provide a guarantor as an alternative to the deposit requirement.[2]

3. On June 30, 2017, Ms. Feken signed a guarantee agreement[3] for her son, and his service was reconnected later the same day.[4]

[1] 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. S.D. 2009).
[2] Exhibit 100, Staff Report, Official Case File Memorandum, p. 2; Exhibit 200, Patsy Mulvaney Rebuttal Testimony, p. 3.
[3] This report and order will refer to other guarantee agreements as well. Hereinafter, the guarantee agreement which she signed with her son will be called the "Feken guarantee."
[4] Exhibit 100, Staff Report, Official Case File Memorandum, p. 2; Transcript, Vol. II, p. 35.

4. The Feken guarantee stated the guarantor agreed to be liable for up to $465.00 in charges, which could be transferred to the guarantor's account if the guaranteed account's final bill was unpaid.[5]

5. The Feken guarantee stated: "[t]his agreement will expire under the same conditions as would result in the refund of the deposit."[6] Patsy Mulvaney, Empire's director of customer services,[7] stated this was explained to a guarantor when the agreement was executed.[8] Ms. Feken acknowledged she recalled making a statement that each time she signed an Empire guarantee agreement; the customer would have to pay on time for one year before her responsibility would be terminated.[9]

6. Empire's policy is to provide both the customer and the guarantor with a copy of the signed guarantee, and the agreement form has a place for the customer and guarantor to initial indicating they have received signed copies. The signed Feken guarantee, however, was not so initialed.[10]

7. On July 16, 2019, Ms. Feken's son requested termination of service.[11] Service was terminated on July 31, 2009, and a final bill in the amount of $274.04 was generated.[12]

8. The final balance on the son's bill became delinquent on August 22, 2019, and was transferred to Ms. Feken on August 29, 2019.[13] A letter was mailed to her that

[5] Exhibit 203, Guarantee Agreement.
[6] Exhibit 203, Guarantee Agreement As stated below in the Conclusions of Law: Rule 20 CSR 4240-13.030(6) provides that a guarantor shall be released upon satisfactory payment of all disputed utility charges during the last 12 months.
[7] Exhibit 200, Patsy Mulvaney Rebuttal Testimony, p. 1.
[8] Exhibit 200, Patsy Mulvaney Rebuttal Testimony, pp. 3-4.
[9] Transcript, Vol. II, p. 47.
[10] Exhibits 100, Staff Report, Official Case File Memorandum, p. 3; and Exhibit 203, Guarantee Agreement.
[11] Exhibit 100, Staff Report, Official Case File Memorandum, p. 3.
[12] Exhibit 100, Staff Report, Official Case File Memorandum, p. 3.
[13] Exhibit 100, Staff Report, Official Case File Memorandum, p. 3

same day, erroneously dated June 29, advising the balance transfer would appear on her next bill and offering the option of an installment plan.[14]

9. On September 3, 2019, Ms. Feken called Empire and requested a copy of the signed Feken guarantee agreement, copies of her son's account to prove the amount owed, and his payment history as proof she had not been released from the contract.[15] A company representative advised she could send only the Feken guarantee agreement to Ms. Feken, but not the requested billing and payment information, which could be provided only to her son.[16]

10. On September 6, 2019, Empire sent Ms. Feken a copy of the signed Feken guarantee agreement and confirmed it was Empire's policy to deny guaranteed account information to the guarantor unless the customer with the account had specifically granted permission to the guarantor to access the account information.[17]

11. Ms. Feken contacted the Commission's Consumer Services Department after receiving the bill without the requested documentation and initiated the Commission's informal complaint process.[18] Ms. Feken was contacted on December 30, 2019, to clarify the details of her complaint.[19] On January 6, 2020, Staff submitted data requests to Empire. Staff reviewed the Feken guarantee agreement,

[14] Exhibit 100, Staff Report, Official Case File Memorandum, p. 3; See Transcript, Vol. II, pp. 67-68, 72, for other communications of September 5 and 6, 2019, between the Company and Ms. Feken offering an installment plan.
[15] Exhibit 100, Staff Report, Official Case File Memorandum, p. 4; Transcript, Vol. II, pp. 35, 43; Exhibit 207, a transcription of a September 3, 2020, telephone conversation between Teresa Lashmet, of the Company, and Debbie Feken; Exhibit 204, Recorded Call, 9/3/2019.
[16] Exhibit 100, Staff Report, Official Case File Memorandum, p. 4; See also Exhibit 207, a transcription of a September 3, 2020, telephone conversation between Teresa Lashmet, of the Company, and Debbie Feken; and Exhibit 204, Recorded Call, 9/3/2019.
[17] Exhibit 100, Staff Report, Official Case File Memorandum, p. 4; Transcript, Vol. II, p. 67-68. Empire states Ms. Feken was told in a phone call of September 13, 2019, "she could not have the customer's or see [her son's] bills." Transcript, Vol. II, 74.
[18] Exhibit 100, Staff Report, Official Case File Memorandum, p. 5.
[19] Exhibit 100, Staff Report, Official Case File Memorandum, p. 2.

account notes, recorded phone calls between Empire and Ms. Feken, her son's billing statements and payment history, and correspondence between the parties. Staff concluded Ms. Feken's son did not pay his electric bill on time for one year.[20]

12. Ms. Feken denies ever receiving the Feken guarantee agreement[21] but does not dispute signing the Feken guarantee agreement.[22]

13. Ms. Feken testified she did not ask her son to provide the bills or to authorize Empire to provide her access to them "because he's not the one wanting me to pay them. It's Empire."[23] She testified, "It's Empire's responsibility to show me that I do owe them."[24]

14. Ms. Feken has signed several other guarantor agreements with Empire.[25] Angie Simkin, Consumer Service Manager for Liberty Utilities,[26] testified that on March 7, 2014, Ms. Feken signed a guarantee agreement for a customer other than her son, and, subsequently in January of 2015, on the basis of the agreement a balance was transferred to Ms. Feken's account.[27] Following that transfer, Ms. Feken called Empire on January 28, 2015,[28] requested printouts on the account and was told that she could not have the customer's account information.[29] In an unsworn response to a witness's statement and in closing argument, Ms. Feken denied requesting this information.[30]

15. The Commission's Staff found there were potential scenarios where an account holder might be unable or unwilling to contact Empire, leaving the guarantor with

[20] Exhibit 100, Staff Report, Official Case File Memorandum, p. 2, et seq.
[21] Transcript, Vol. II, p. 47.
[22] Transcript, Vol. II, pp. 35; 50-51.
[23] Transcript, Vol. II, pp. 52-53.
[24] Transcript, Vol. II, pp. 52-53.
[25] Transcript, Vol. II, pp. 46-47; 73
[26] Exhibit 201, Simkin Surrebuttal, page 1, ll. 6-8.
[27] Transcript, Vol. II, pp. 73, 74.
[28] Transcript, Vol. II, p. 75.
[29] Transcript, Vol. II, pp. 73-74.
[30] Transcript, Vol. II, pp. 75, 79.

no access to proof the guarantee remained in effect.[31] To address these concerns, Empire has now changed its procedures, allowing a customer to exercise a "guarantor" option allowing a guarantor to obtain relevant information (but not make account changes).[32]

Conclusions of Law

A. Section 386.390.1, RSMo, permits any person to make a complaint setting forth any act or thing done or omitted to be done by any public utility "in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission. . . ." The Company is a "utility. " Section 386.020, RSMo. Ms. Feken has filed a Complaint alleging Empire has committed acts or omitted to do acts in violation of Section 393,130, RSMo. The Commission has jurisdiction in this case.

B. Rule 20 CSR 4240-2.070 provides that a formal complaint shall set "forth any act or thing done or omitted to be done by any person, corporation, or public utility, including any rule or charge established or fixed by or for any person, corporation, or public utility, in violation or claimed to be in violation of any provision of law or of any rule or order or decision of the commission." The rule requires the complaint to state the relief requested.

C. Missouri law provides that 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; and that any charge in excess of that allowed by law or order or decision of the commission is prohibited.[33]

[31] See Exhibit No. 101, Surrebuttal Testimony of Ben Rankin, pp. 3 – 5.
[32] Exhibit 201, Surrebuttal Testimony of Angie Simkin , p. 4.
[33] Section 393.130, RSMo.

D. Rule 20 CSR 4240-13.030(5) provides that in lieu of a deposit a utility may accept a written guarantee.

E. Rule 20 CSR 4240-13.030(6) provides that a guarantor shall be released upon satisfactory payment of all disputed utility charges during the last 12 months.

F. Rule 20 CSR 4240-20.015(2)(C) provides that "customer information shall be made available . . .only upon consent of the customer or as otherwise provided by law or commission rule or orders."

G. Section 386.480, RSMo, provides that "[n]o 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."

H. The Commission is an administrative body of limited jurisdiction, having only the powers expressly granted by statutes and reasonably incidental thereto.[34] The jurisdiction, supervision, powers and duties of the Commission extend "[t]o such other and further extent, and to all such other and additional matters and things, and in such further respects as may herein appear, either expressly, or impliedly."[35] Section 386.040, RSMo, which created and established the Commission, provides the Commission "shall be vested with and possessed of the powers and duties in this chapter specified, and also

[34] 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); *State ex rel GS Technologies Operating Co. v. PSC of Mo.*, 116 S.W.3d 680, 696 (Mo. App. 2003).
[35] Section 386.250(7), RSMo.

all powers necessary or proper to enable it to carry out fully and effectually all the purposes of this chapter."[36] The Commission's principal interest is to serve and protect ratepayers.[37]

I. The determination of witness credibility is left to the Commission "which is free to believe none, part or all of the testimony."[38]

Decision

The relief requested in Ms. Feken's Complaint was a copy of her signed guarantee agreement; proof that her son had not paid his bill on time for a year, thereby releasing her as guarantor; and proof the guarantor contract was legally enforceable without proof of her son's default. The Commission's Staff and Empire have provided Ms. Feken with a copy of her guarantee. With respect to whether Empire violated a rule, regulation or tariff by refusing to directly provide Ms. Feken's with her son's account records, the Commission finds that (a) 20 CSR 4240-20.015(2)(C) provides that "customer information shall be made available . . .only upon consent of the customer or as otherwise provided by law or commission rule or orders"; (b) the evidence did not show Ms. Feken's son had consented to disclosure of his customer information; (c) Empire could not disclose this information to Ms. Feken; and (d) accordingly, Empire did not violate the law, a regulation or its tariff in refusing to make the disclosure.

The Commission, however, also finds that Ms. Feken is entitled to the relief she requested: to proof she remained liable on the Feken guarantee and proof of her son's

[36] Section 386.040, RSMo.
[37] *State ex rel Capital City Water Co. v. Missouri Public Service Commission,* 850 .W.2d 903, 911 (Mo. App. W.D. 1993).
[38] *In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service and Midwest Energy Consumers' Group v. Missouri Public Service Commission,* 509 S.W.3d 757, 763 (Mo. App. W.D. 2016).

default. Empire cannot disclose these records to Ms. Feken. But Section 386.040, RSMo, grants the Commission "all powers necessary or proper to enable it to carry out fully and effectually all the purposes of this chapter," and per Section 386.480, RSMo, the Commission may order records disclosed which are otherwise confidential. Accordingly, the Commission will order Empire to produce to Ms. Feken a copy of the billing records that show she remained liable on the guarantee when her son terminated his account and show she owed the amount subsequently transferred to her account. If Ms. Feken then decides she has been incorrectly charged, she may seek appropriate remedies with the Commission in a new complaint.

It is the Commission's decision, accordingly, that: (a) Ms. Feken has received the guarantee as she requested; (b) she should receive proof of her continued liability on the guarantee and that she owed the amount Empire transferred to her account; and, (c) with respect to issue of providing copies of the Feken guarantee and bills to Ms. Feken, Empire did not violate any statute or regulation within the Commission's jurisdiction, or any tariff. If after review of the records provided to her, Ms. Feken wishes to raise issues other than those decided in this order, she may file a new complaint with the Commission. Any application for rehearing must be filed before the effective date of this Order.

THE COMMISSION ORDERS THAT:

1. Within ten days after the effective date of this Report and Order, Empire shall provide directly to Ms. Feken a copy of such billing records as are necessary to show she remained liable on the guarantee and that the uncollected amount owed by her son was the amount transferred from her son's account to her account. Empire shall simultaneously file notice of compliance with this order.

2. Only information contained in the record disclosing the name of Ms. Feken's son and the addresses of Ms. Feken and her son shall be considered confidential. All other information filed in this case shall be public.

3. This Report and Order shall become effective on November 20, 2020.

BY THE COMMISSION

Morris Woodruff
Secretary

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

Graham, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of Elm Hills Utility Operating Company, Inc.'s Request for a Water and Sewer Rate Increase	)	**File No. WR-2020-0275**
	)	Tariff Nos. YW-2021-0057 and
	)	YS-2021-0058

ORDER GRANTING MOTION FOR PRODUCTION

EVIDENCE, PRACTICE AND PROCEDURE

§2 Jurisdiction and powers
§13 Documentary evidence
§29 Discovery

The Office of the Public Counsel (OPC) moved for the production of certain documents from certain upstream owners of a utility subject to the Commission's jurisdiction. OPC expressly stated its request is made under the statutory authority of Section 386.450, RSMo (2016), and not the Commission's discovery rule, 20 CSR 4240-2.090. The Commission found that the statute is a broader grant of authority than the general right to discovery allowed under Missouri's rules of civil procedure consistent with the Commission's past practice.

§2 Jurisdiction and powers
§13 Documentary evidence
§29 Discovery

Section 386.450, RSMo (2016) has no requirement that the subjects of the production request be parties to the case or for there to be a case at all.

§2 Jurisdiction and powers
§13 Documentary evidence
§29 Discovery

Section 386.450, RSMo (2016) has no requirement that the subjects of the production request be within the jurisdiction of the Commission. Nevertheless, the Commission found it had limited personal jurisdiction over the upstream owners based on the appearance of close and interwoven ownership and management ties.

§2 Jurisdiction and powers
§13 Documentary evidence
§29 Discovery

The Commission found the good cause requirement for the use of Section 386.450, RSMo (2016), to be met by the importance of the underlying information. The information sought would contribute to the evaluation of the utility's capital structure which is used in ratemaking. As just and reasonable rates are statutorily required by the Commission, it

must appropriately understand the capital structure and thus, also the upstream capital structure to guard against double leveraging.

RATES

§3 Jurisdiction and powers of the State Commission

The Commission found the good cause requirement for the use of Section 386.450, RSMo (2016), to be met by the importance of the underlying information. The information sought would contribute to the evaluation of the utility's capital structure which is used in ratemaking. As just and reasonable rates are statutorily required by the Commission, it must appropriately understand the capital structure and thus, also the upstream capital structure to guard against double leveraging.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held by telephone and internet audio conference on the 28th day of October, 2020.

In the Matter of Elm Hills Utility Operating Company, Inc.'s Request for a Water and Sewer Rate Increase	)))	**File No. WR-2020-0275** Tariff Nos. YW-2021-0057 and YS-2021-0058

ORDER GRANTING MOTION FOR PRODUCTION

Issue Date: October 28, 2020 Effective Date: October 28, 2020

On March 6, 2020,[1] Elm Hills Utility Operating Company, Inc. (Elm Hills) opened two staff assisted rate cases, water and sewer, which have subsequently been consolidated. On September 18, the Office of the Public Counsel (OPC) filed its Motion for Order Regarding the Production of Documents (Motion). On September 25, Elm Hills responded. On September 28, OPC replied to Elm Hills' response. The Staff of the Missouri Public Service Commission (Staff) did not file any response.

OPC seeks certain books, accounts, papers, or records from US Water Systems LLC, an unnamed investment firm,[2] Sciens Water Opportunities Fund LP, Tom Rooney, John Rigas, and Daniel Standen (collectively "The Group").[3] OPC's concern generally is with the flow of investment capital and to what extent that capital is funded with debt. OPC believes this information about the upstream ownership relates to the capital structure of

[1] All dates hereafter refer to the year 2020, unless otherwise stated.
[2] The name of the firm is currently being treated as confidential and will not be stated in this order. *See* OPC's Motion, para. 12.
[3] OPC has listed the items sought in Attachment K of its Motion, which is attached to this order with the confidential firm name redacted.

Elm Hills' parent company, and consequently Elm Hills. OPC expressly states its Motion is made under the statutory authority of Section 386.450, RSMo (2016)[4], and not the Commission's discovery rule, 20 CSR 4240-2.090.

Elm Hills responded with several objections, summarized below.

1. The entities from which OPC seeks information are out-of-state and not parties to the case.

2. The records sought by OPC are not from a jurisdictional public utility.

3. OPC must exhaust its administrative remedies in enforcing the subpoenas it already has requested be issued before exercising a separate statutory grant of authority.

4. None of the documents or information sought by OPC is in the possession of Elm Hills.

5. The information sought is not relevant to the underlying case.

6. The jurisdiction-over-affiliates statute, Section 393.140(12), RSMo, keeps operations of certain qualifying non-utility affiliate companies away from the Commission's scrutiny.

7. The Commission does not have personal jurisdiction over The Group.

Many of Elm Hills' objections address OPC's motion under traditional discovery rules. However, OPC specified that it filed its motion pursuant to a separate statutory authority and not under the rules of discovery. Therefore, the governing statute of the OPC's Motion is Section 386.450, RSMo, which is broader than the general right to discovery allowed under Missouri's rules of civil procedure. The Commission has

[4] Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.

consistently interpreted this statute broadly, given the unique grant of investigative power bestowed upon OPC and the Commission by the Missouri General Assembly via this statute.[5]

Section 386.450, RSMo, unambiguously allows for the production of out-of-state records (1). Section 386.450, RSMo, has no requirement that the subjects of OPC's investigation be parties to a case, in fact it states "any corporation, person or public utility" (1). Section 386.450 also has no requirement that the subjects be jurisdictional utilities, as it references "any corporation, person or public utility" (2). Further, Section 386.450 imposes no requirement of exhaustion of remedies (3). Section 386.450 is set out in full below:

> At the request of the public counsel and upon good cause shown by him the commission shall require or on its own initiative the commission may require, by order served upon any corporation, person or public utility in the manner provided herein for the service of orders, the production within this state at such time and place as it may designate, of any books, accounts, papers or records kept by said corporation, person or public utility in any office or place within or without this state, or, at its option, verified copies in lieu thereof, so that an examination thereof may be made by the public counsel when the order is issued at his request or by the commission or under its direction.

[5] Order Granting the Office of the Public Counsel's Motion to Compel, issued June 26, 2007, File No. WR-2007-0460, p. 4 stating, "Section 386.450 allows OPC considerable latitude when making discovery requests. The statute does not place any requirement on OPC that any case exist in order for it to obtain the books, accounts, papers or records kept by any corporation upon a request and demonstration of 'good cause'.", and p. 5, "Section 386.450, RSMo does not place a time restriction on such requests; Order Denying Objection to Order and Motion to Dismiss of Universal Utilities, Inc., and Nancy Carol Croasdell, issued July 15, 2008, File No. WC-2008-0331, p. 2 an emphasized finding that the statute applies to any corporation, not just public utilities; Order Compelling Universal Utilities and Nancy Carol Croasdell to Produce Books, Accounts, Papers or Records, issued January 3, 2008, File No. WC-2008-0079, p. 1, stating Section 386.450 is not a discovery statute and there is no requirement to find relevance to a specific case; Order Directing Ameren UE to Produce Documents Sought by Public Counsel, issued February 25, 2009, File No. EO-2009-0126, affirming that OPC need not make a request under the statute in connection with any formal case; Order Concerning Motion to Compel, issued December 2, 2003, File No. WR-2003-0500, p. 11, acknowledging the statute includes non-parties; Order Regarding Motion to Quash Subpoena, issued January 22, 2014, File No. WR-2013-0461, affirming the statute's grant to the Commission to require production of information from any corporation, person or public utility; Order Denying Application for Rehearing, issued May 17, 2012, File No. WR-2012-0299, p. 1, affirming the statute gives broader discover authority than the general right to discover relevant information; Order Compelling Answers, issued January 5, 1994, File No. WO-94-192, p. 2, determining that use of the statute does not require an underlying case.

Elm Hills' objection that the sought information is not in its possession or control is not well taken as the documents are not being sought from Elm Hills (4).

Section 386.450, RSMo, does not express a relevance requirement. Nevertheless, the Commission will address relevance as OPC's Motion is made within the context of this file and not a separate investigation. Relevance can be established by a showing of the connection of OPC's requested information to this file, which is a rate case. Rate cases as a matter of course involve apportionment of capitalization, which involves assessments of capital structure. The Commission is expressly required to examine the dealings of regulated entities with their unregulated affiliates, and specifically to "inquire as to, and prescribe the apportionment of, capitalization, earnings, debts and expenses".[6] Thus, OPC's inquiry into the upstream ownership regarding capitalization and debts is relevant to the apportionment of capitalization between Elm Hills and its owners (5). While Elm Hills argues this same statute, Section 393.140(12), RSMo, protects the upstream ownership as those entities are "substantially kept separate and apart", Elm Hills' argument fails in that the inquiry as to whether these other corporate entities are substantially kept separate and apart must necessarily precede a determination whether the entities are substantially kept separate and apart (6).

Lastly is Elm Hills' argument that the Commission does not have personal jurisdiction over The Group. It contends that Section 386.450, RSMo, must be viewed in conjunction with the limits imposed by other statutes describing the Commission's jurisdiction, and viewed in conjunction with the idea that the State's jurisdiction ends at its borders absent some minimum contacts to the state.

[6] Section 393.140(12), RSMo.

Elm Hills is a “water corporation,” “sewer corporation” and “public utility” as defined in Sections 386.020(59), (49), and (43) RSMo, respectively. As such Elm Hills is subject to the personal jurisdiction of the Commission under Chapters 386 and 393 of the Missouri Revised Statutes. The definitions of both water and sewer corporations include those owning, operating, controlling or managing any water or sewer system. Thus far, the ownership and corporate structure surrounding Elm Hills can be summarized as follows:

- Elm Hills is owned by Elm Hills Utility Holding Company, Inc.,
- which is owned by CSWR LLC,
- which is managed by Central States Water Resources, Inc.
- which has Tom Rooney, John Rigas, and Daniel Standen as three members of its Board of Directors.
- CSWR LLC is a wholly owned subsidiary of US Water Systems LLC,
- which was created on July 30, 2018, by Sciens Capital Management LLC.
- US Water Systems LLC was formed by investment funds affiliated and managed by the unnamed investment firm (see Footnote 2 *supra*).
- The unnamed investment firm was created on July 30, 2018.
- Sciens Capital Management LLC launched Sciens Water Opportunities Fund in 2018 to invest in the water sector, through the formation and development of companies.
- Sciens Water Opportunities Fund lists CSWR LLC among three companies in its portfolio.

- Sciens Water Opportunities Fund lists John Rigas as Chairman and CEO, Daniel Standen as Partner, and Tom Rooney as Chairman, Operating Committee.

In spite of the multi-layered nature of the corporate relationships, close ties are seen between the managing corporation of the ownership corporation of the holding company that owns Elm Hills (Central States Water Resources, Inc.) and the highest level of upstream ownership (Sciens Water Opportunities Fund) with the sharing of three board members. Corporate public relations statements are normally viewed with a critical eye, but it is probative that the Sciens Water Opportunities Fund website states "Sciens works closely with the management teams of its portfolio companies supporting them in achieving their strategic goals." Based on the appearance of close and interwoven ownership and management ties of The Group to Elm Hills, the Commission finds it has personal jurisdiction over The Group as potential owners and managers in direct control over Elm Hills for the limited purposes of OPC's request for production pursuant to Section 386.450, RSMo (7).

The Commission turns to the good cause requirement of Section 386.450, RSMo. OPC argues two facts support a finding of good cause: 1) the inability to secure the information through conventional means; and 2) the importance of the information sought as it relates to the capital structure of Elm Hills. Elm Hills argues that the first OPC argument for good cause fails as OPC has offered no proof of its inability to secure the information, and in fact has not sought to enforce subpoenas it had previously requested in this case. The Commission agrees that OPC's inability to gain the information is not a

proper foundation for good cause due to OPC's failure to follow-up on other avenues, such as its previously issued subpoenas.[7]

However, the Commission agrees with OPC's second rationale for good cause, the importance of the information. The Commission is statutorily required to ensure that Elm Hills' rates are just and reasonable.[8] The Commission's setting of just and reasonable rates includes an evaluation of the capital structure (funding) of Elm Hills. A utility's capital structure is comprised of debt and equity. Capital structure is typically stated as the ratio of debt compared to equity that make up a company's total capital (e.g. a company may have $60 million in debt, and $40 million in equity, equaling total capital of $100 million, with the capital structure ratio of the utility being sixty percent debt to forty percent equity).

The costs for debt and equity are then applied to the capital structure ratio, which produces a weighted cost for each (e.g. ten percent cost of debt multiplied by the capital structure's sixty percent debt equals a weighted cost of debt of six percent). Thus, the weighted cost of capital is the addition of the weighted cost of debt plus the weighted cost of equity.

In the above example (a utility with a sixty-forty debt to equity capital structure ratio), a ten percent cost of debt produces a weighted cost of debt of six percent. However, the cost of equity is typically higher. The cost of equity reflects the competing investment choices available to a potential owner, and the return necessary to attract an equity

[7] This is distinct from the Commission's finding in this order that there is no requirement of exhaustion of remedies within Section 386.450, RSMo. Here, OPC is directly claiming that good cause exists *because* it could not access the information, when the pleadings clearly demonstrate OPC has requested subpoenas, but not sought to further enforce them.
[8] Section 393.130, RSMo.

investment. When the weighted costs of debt and equity are combined, the total weighted cost of capital is essentially the equivalent of a fair rate of return.[9]

There is an inherent difference in the cost of debt compared to the cost of equity, and leveraging is when a utility is funded by debt in addition to equity provided by its stockholders.

> Double leveraging is an extension of the leveraging concept to a parent-subsidiary corporate relationship. For example, Company A is an operating utility financed partly with debt capital and partly with equity capital. It uses leverage as explained above. However, the common stock of Company A is owned by Company B, the parent company. Company B obtained the funds it invested in the common stock of Company A by raising its own capital through the sale of stock and from a debt issue. Thus Company A enjoys its own leverage factor plus the leverage factor of Company B. This is the essence of the meaning of double leverage.[10]

The court continued:

> If the cost of capital to the utility is considered without regard to the double leverage enjoyed in a parent subsidiary relationship, an *excessive return* to the ultimate common *stockholders* could result *at* the *expense of* utility *ratepayers* (italics in original).[11]

Thus, establishing just and reasonable rates without excessive earnings necessarily includes combating double leveraging. Addressing double leveraging means correctly understanding the capital structure of a utility and its owners. To appropriately understand the capital structure therefore requires an understanding of the capital structure of the upstream ownership. Multi-layered corporate relationships with holding companies, managing companies, investment partnerships and other corporate entities

[9] State ex rel. Associated Natural Gas Company v. Public Service Comm'n, 706 S.W.2d 870, 875 (Mo. App. W.D. 1985).
[10] State ex rel. Associated Natural Gas Company v. Public Service Comm'n, 706 S.W.2d 870, 876 (Mo. App. W.D. 1985)(internal citations omitted).
[11] State ex rel. Associated Natural Gas Company v. Public Service Comm'n, 706 S.W.2d 870, 876 (Mo. App. W.D. 1985).

make it difficult for the Commission to know where the capital funding is coming from. Knowing the source and type of capital directly addresses the risk that the capital structure is being manipulated to increase equity which in turn unjustly increases rates.

Therefore, the Commission finds that OPC's motion is relevant to the underlying case. The Commission further finds good cause exists in carrying out OPC's (and the Commission's) statutory duties with respect to Elm Hills and the apportionment of its capitalization, earnings, debts, and expenses.

The Commission notes that OPC's request included no time limit for delivery and no arrangement for the delivery of the files. The Commission will set these terms and also allow for a reasonable amount of time to produce the information sought by OPC.

THE COMMISSION ORDERS THAT:

1. OPC's Motion is granted.

2. Sciens Water Opportunities Fund LP, US Water Systems LLC, an unnamed investment firm (see footnote 2 *supra*), Tom Rooney, John Rigas, and Daniel Standen shall produce the books, accounts, papers, and records listed in Attachment K of OPC's Motion (attached hereto in redacted form) at the OPC's offices at 200 Madison Street, Suite 650, Jefferson City, Missouri 65101, no later than on November 18, 2020, at 10:00 a.m.

3. Although service by mail is acceptable pursuant to Section 386.490.1, RSMo, and 20 CSR 4240-2.080(16)(B)2, the Data Center shall serve this order by mailing it via certified mail with a copy of the unredacted Attachment K to the following entities at their last known address: Sciens Water Opportunities Fund LP; US Water Systems LLC; an unnamed investment firm (see footnote 2 *supra*); Tom Rooney; John Rigas; and Daniel

Standen.

4. Upon each mailing, the Data Center shall complete a certificate of service and file it in EFIS under this file.

5. This order shall be effective when issued.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Hatcher, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Confluence Rivers Utility Operating Company, Inc., to Acquire Certain Water and Sewer Assets, and for Certificates of Convenience and Necessity	))))	**File No. WM-2020-0282**

ORDER APPROVING ACQUISITION OF WATER AND SEWER ASSETS AND GRANTING CERTIFICATES OF CONVENIENCE AND NECESSITY

CERTIFICATES

§6 Jurisdiction and Powers of the State Commission

The Commission may approve the transfer of utility assets as long as that transfer is not shown to be "detrimental to the public interest." Section 393.190.

§6 Jurisdiction and Powers of the State Commission

The Commission may grant a water corporation or sewer corporation a certificate of convenience and necessity after determining that such construction and operation are either "necessary or convenient for the public service." Section 393.170.3.

§21 Grant or refusal of certificate generally

The Commission has stated five criteria that it uses to determine necessity or convenience: 1) There must be a need for the service; 2) The applicant must be qualified to provide the service; 3) The applicant must have the financial ability to the provide the service; 4) The applicant's proposal must be economically feasible; and 5) The service must promote the public interest. *In re Tartan Energy Co.*, 3 Mo. P.S.C. 173, 177 (1994).

SEWER

§2 Certificate of convenience and necessity

§4 Transfer, lease and sale

§7 Jurisdiction and Powers of the State Commission

The Commission may approve the transfer of utility assets as long as that transfer is not shown to be "detrimental to the public interest." Section 393.190.

§2 Certificate of convenience and necessity

§7 Jurisdiction and Powers of the State Commission

The Commission may grant a water corporation or sewer corporation a certificate of convenience and necessity after determining that such construction and operation are either "necessary or convenient for the public service." Section 393.170.3.

VALUATION

§13 Ascertainment of value generally
§68 Depreciation generally
§78 Water
§79 Sewer

Where the company had made, and would continue to make, substantial capital improvements to most of its water and sewer systems, the Commission required the use of depreciation rates for water and sewer utility plant accounts recommended by the Staff of the Commission so the new assets could be properly evaluated in the future.

WATER

§2 Certificate of convenience and necessity
§4 Transfer, lease and sale
§8 Jurisdiction and Powers of the State Commission

The Commission may approve the transfer of utility assets as long as that transfer is not shown to be "detrimental to the public interest." Section 393.190.

§2 Certificate of convenience and necessity
§8 Jurisdiction and Powers of the State Commission

The Commission may grant a water corporation or sewer corporation a certificate of convenience and necessity after determining that such construction and operation are either "necessary or convenient for the public service." Section 393.170.3.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held by telephone and internet audio conference on the 9th day of December, 2020.

In the Matter of the Application of Confluence Rivers Utility Operating Company, Inc., to Acquire Certain Water and Sewer Assets, and For Certificates of Convenience and Necessity	))))	**File No. WM-2020-0282**

ORDER APPROVING ACQUISITION OF WATER AND SEWER ASSETS AND GRANTING CERTIFICATES OF CONVENIENCE AND NECESSITY

Issue Date: December 9, 2020 Effective Date: January 8, 2021

Confluence Rivers Utility Operating Company, Inc. (Confluence Rivers) on March 11, 2020, applied for authority to acquire the sewer and water utility assets of Branson Cedars Resort Utility Company, LLC (Branson Cedars); the water utility assets of Fawn Lake Water Corp. (Fawn Lake) and P.A.G. LLC d/b/a Prairie Heights Water Company (Prairie Heights); and the sewer utility assets of Freeman Hills Subdivision Association (Freeman Hills) and a sewer system serving the DeGuire subdivision in Madison County (DeGuire).[1] Confluence Rivers also seeks the Commission's approval to transfer Branson Cedars' certificates of convenience and necessity (CCNs) to Confluence Rivers and asks the Commission to grant CCNs for the Fawn Lake, Prairie Heights, Freeman Hills and DeGuire systems. In addition, Confluence Rivers requests an expansion of its existing service area under a CCN it holds for sewer service in the Villa

[1] On April 17, 2020, Confluence Rivers' application as to sewer utility assets, File No. SM-2020-0283, was consolidated with this case concerning water utility assets, File No. WM-2020-0282. On June 1, 2020, Confluence Rivers withdrew from the consolidated case the portion of its application pertaining to Terre Du Lac Utilities Corporation. On June 12, 2020, Confluence Rivers filed a new application concerning Terre Du Lac in File No. WM-2020-0403, consolidated with File No. SM-2020-0404.

Ridge subdivision in Franklin County (Villa Ridge). Finally, Confluence Rivers requests waiver of the 60-day notice requirement under Commission Rule 20 CSR 4240-4.017.

On July 17, 2020, the Staff of the Public Service Commission (Staff) recommended that the Commission approve Confluence Rivers' application, subject to specified conditions.[2] On July 20, 2020, the Office of the Public Counsel (OPC) asked the Commission to suspend the deadline for response to Staff's recommendation, order Confluence Rivers to provide notice of the pending acquisitions to all customers on the systems to be acquired and set a date or dates for a local public hearing. After receiving responses from Staff and Confluence Rivers, the Commission scheduled a virtual public hearing and ordered Confluence Rivers to provide notice to customers associated with the water and sewer assets subject to the application.

The Commission held a virtual public hearing on August 13, 2020, and heard from three witnesses.[3] After the public hearing, the Commission reinstated a deadline for response to Staff's recommendation. OPC did not file a response. On August 24, 2020, Confluence Rivers filed a response to Staff's recommendation and stated "no objection" to the conditions recommended by Staff for approval of the application.

Confluence Rivers' response to Staff's recommendation also states the company disagrees with Staff regarding net book value of the systems it seeks to acquire. The parties agree that if the acquisitions are approved by the Commission, "an updated rate base level will be established" in the next rate case for these systems.[4]

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[2] The recommendation filed by Staff consists of a *Staff Recommendation* and a memorandum, attached as Appendix A. The memo reports Staff's analysis and states Staff's recommendations and conclusions in detail, including the specific conditions proposed by Staff. References to Staff's recommendation are to the filing document and the attached memorandum as a whole.

[3] *Transcript of Virtual Public Hearing*, File No. WM-2020-0282 (Aug. 24, 2020).

[4] *Confluence Rivers' Response to Staff Recommendation*, ¶6 (Aug. 24, 2020); *Staff Recommendation, Appendix A: Memorandum*, p. 17 (July 17, 2020).

On September 23, 2020, the Commission directed Confluence Rivers to respond to the Commission's written queries with a verified supplement of its application.[5] The Commission requested additional information about the financial statements included in the application and the improvements contemplated for each of the systems to be acquired. Also on September 23, 2020, the Commission directed Staff to respond to a set of written queries with a supplement to its recommendation.[6] The Commission's questions to Staff concerned Staff's review of the cost, viability and urgency of system improvements proposed by Confluence Rivers.

On October 7, 2020, Confluence Rivers and Staff filed responses to the Commission's queries. As directed by the Commission, Confluence Rivers responded in a verified supplement to its application. Confluence Rivers' filing included an updated income statement and balance sheet. In addition to answering the Commission's questions, Staff requested additional time to file more than 250 photos taken during inspection of the subject systems. On October 9, 2020, the Commission suspended until further order the requirement that Staff submit such photos.

No additional responses to Staff's recommendation or Confluence Rivers' supplement to its application have been received, and the time for responses has expired.[7] The Commission has received no requests to intervene in this case. No party has requested a hearing; any hearing requirement is met when the opportunity for hearing is provided.[8] The Commission will take up Confluence Rivers' application unopposed.

Confluence Rivers is a public utility, sewer corporation and water corporation,

[5] *Order Directing Responses Regarding Confluence Rivers' Application* (Sept. 23, 2020).
[6] *Order Directing Responses Regarding Staff's Recommendation* (Sept. 23, 2020).
[7] Commission Rule 20 CSR 4240-2.080(13) allows parties 10 days to respond to pleadings unless otherwise ordered by the Commission.
[8] *State ex rel. Rex Deffenderfer Enters., Inc. v. Pub. Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App. 1989).

subject to Commission jurisdiction.[9] Confluence Rivers provides water and sewer utility services in several areas throughout Missouri. The company's application indicates it provides water service to about 547 customers and sewer service to about 636 customers, which is consistent with the figures determined in its most recent rate case, File No. WR-2020-0053.

Staff reports Confluence Rivers is a subsidiary of Central States Water Resources, LLC, (CSWR) which owns water and sewer companies in Missouri, as well as water and sewer systems in Arkansas, Tennessee, Kentucky, and Louisiana. CSWR also owns Central States Water Resources, Inc. (Central States). Central States entered into sale agreements with Branson Cedars, Freeman Hills and the owners of Prairie Heights and DeGuire.[10] Each of these agreements provide that Central States will assign its interests to Confluence Rivers at closing. Similarly, Elm Hills Utility Operating Company, Inc., which is owned by Central States,[11] entered into a sale agreement with Fawn Lake, under which Elm Hills will assign its rights to Confluence Rivers at closing.

REGULATED UTILITY ASSETS

Confluence Rivers' application concerns acquisition of both regulated systems and utility systems not now regulated by the Commission.

Branson Cedars

Branson Cedars[12] serves 64 water units and 60 sewer units in the Branson Cedars

[9] Section 386.020(43),(49),(59), RSMo (Cum. Supp. 2019). Citations to Missouri statutes are to the Revised Statutes of Missouri (2016), unless otherwise stated.
[10] The Prairie Heights sale agreement includes Prairie Heights and Patricia Gardner. DeGuire is owned by Mr. Mark Edgar.
[11] *Application and Motion for Waiver*, File No. WA-2019-0235 (identifying Central States as Elm Hills' "corporate parent"); *Elm Hills Annual Report for 2019*, p. 2 (April 30, 2020).
[12] Branson Cedars Resort Utility Company, LLC is a limited liability company formed in 2013 and listed as active with the Missouri Secretary of State.

Resort development in Taney County. Most of Branson Cedars' customers own rental units that are not occupied full time. The Commission granted Branson Cedars a CCN in 2015,[13] and Branson Cedars is a water corporation and sewer corporation subject to the Commission's jurisdiction.[14]

After Confluence Rivers' acquisition of the utility assets, Branson Cedars will retain one well, which will be used for water features and irrigation, and Branson Cedars will no longer distribute, sell, or in any manner supply water "for gain."[15]

Villa Ridge

Confluence Rivers seeks permission to expand its existing service territory under a CCN for sewer service in the Villa Ridge subdivision in Franklin County. In February 2019, the Commission authorized Confluence Rivers to acquire the Villa Ridge assets, which were certificated to the former owner in 1987.[16] Confluence Rivers' application indicates it has learned the former utility company provided service to three customers located beyond the service territory. Staff confirms sewer service is now being provided to three Villa Ridge customers outside the service territory as it is currently described and recommends the Commission authorize Confluence Rivers to expand the service territory.

[13] File No. WA-2015-0049.
[14] Sections 386.020(59) and 386.020(49), RSMo (Cum. Supp. 2019).
[15] A water use agreement to be executed by Branson Cedars and Confluence Rivers is expected to allow the well retained by Branson Cedars to serve as a secondary source of water for Confluence Rivers. *Staff Recommendation, Appendix A: Memorandum*, p. 4, n.1, n.2 (July 17, 2020).
[16] *Order Approving Stipulation and Agreement and Granting Certificates of Convenience and Necessity*, File No. WM-2018-0116 (Feb. 14, 2019) (approving acquisition of assets from M.P.B., Inc.). M.P.B., Inc. obtained a CCN in File No. SM-87-52.

UNREGULATED UTILITY SYSTEMS

Fawn Lake

Fawn Lake[17] provides water service to 29 customers near Fawn Lake Air Park in Warren and Lincoln counties. Fawn Lake has been the subject of a Staff complaint for violating Missouri statute by operating a water system without a CCN, failing to provide safe and adequate service and failing to promote and safeguard the public health.[18] The Commission authorized its general counsel to file suit in December 2017 after Fawn Lake defaulted in Commission proceedings. Staff reports the Missouri Department of Natural Resources (DNR) issued notices of violation to Fawn Lake in 2016, and the system returned to compliance in 2018. A problem with a well head was discovered and corrected in a 2019 inspection, which also noted an undersized hydropneumatic tank.

Prairie Heights

Prairie Heights[19] provides water service to about 54 customers in the Prairie Heights subdivision in the city of Bolivar in Polk County. Staff reports DNR records show the system was inspected by DNR most recently in January 2020, and DNR indicated no violations of safe drinking water regulations for the previous two years.

Freeman Hills

Freeman Hills[20] provides sewer service to about 16 customers in the Freeman Hills subdivision, near the city of Mexico in Audrain County. Staff reports DNR issued notices of violation to Freeman Hills in 2014 and the facility was cited for pollution. In

[17] Fawn Lake Water Corp. is a for profit corporation in good standing with the Missouri Secretary of State.
[18] File No. WC-2015-0330.
[19] P.A.G. LLC d/b/a Prairie Heights Water Company is a limited liability company formed in 2008 and listed as active with the Missouri Secretary of State.
[20] Freeman Hills Subdivision Association is a nonprofit corporation formed in 2005 and in good standing with the Missouri Secretary of State.

December 2016, Freeman Hills entered a DNR abatement order, which set deadlines for addressing the violations. Staff reports DNR records indicate Freeman Hills remained out of compliance as of at least May 2019, when DNR requested Freeman Hills commit to system upgrades or sell the system to an operator who will bring the system into compliance.

DeGuire

The DeGuire system provides sewer service to about 24 residential customers and four commercial customers in the DeGuire subdivision, south of Fredericktown in Madison County. Staff reports DeGuire's operating permit expired in February 2006. Staff's review of DNR records indicates DNR issued DeGuire a letter of warning in November 2019[21] after concluding the system was in violation of the Missouri Clean Water Law and water protection regulations for failure to seek timely renewal of its operating permit and failure to file discharge monitoring reports. DNR also noted fence damage and rodent activity.

ACQUISITION OF ASSETS

Commission approval is required for both the transfer of the Branson Cedars' utility assets and Confluence Rivers' acquisition of the Fawn Lake, Prairie Heights, Freeman Hills and DeGuire systems.[22] The Commission may approve such transactions as long as they are not shown to be "detrimental to the public interest."[23] Staff evaluated Confluence Rivers' technical, managerial, and financial capacity (TMF) to determine whether the proposed transfer and acquisitions are detrimental to the public interest. Staff advises that Confluence Rivers satisfies the TMF criteria.

[21] According to Staff's recommendation, DNR records indicate DeGuire did not respond to the letter of warning by December 23, 2019, as requested by DNR.
[22] Section 393.190.
[23] *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980); *State ex rel. City of St. Louis v. Pub. Serv. Comm'n*, 73 S.W.2d 393, 400 (Mo. banc 1934).

Confluence Rivers is an established water and sewer utility that, as discussed above, provides service to more than 500 water customers and more than 600 sewer customers in Missouri. Staff observes Confluence Rivers has the technical ability to operate the subject utilities. Staff also concludes Confluence Rivers' managerial capacity is adequate, in that the company has adequate customer service employees to manage customer requests and meet regulatory requirements for all of the systems. Staff raises no concerns regarding Confluence Rivers' financial capacity, and observes it has access to capital through CSWR. Staff concludes that the proposed transfers of assets are not detrimental to the public interest.

CERTIFICATES OF CONVENIENCE AND NECESSITY

In addition to approval of the acquisitions at issue in this case, Confluence Rivers also seeks the necessary certificates of convenience and necessity to provide utility service in the areas currently served by the acquired systems. The Commission may grant a water corporation or sewer corporation a certificate of convenience and necessity after determining that such construction and operation are either "necessary or convenient for the public service."[24] The Commission has stated five criteria that it uses to determine necessity or convenience:

1) There must be a need for the service;

2) The applicant must be qualified to provide the service;

3) The applicant must have the financial ability to the provide the service;

4) The applicant's proposal must be economically feasible; and

5) The service must promote the public interest.[25]

[24] Section 393.170.3, RSMo.
[25] *In re Tartan Energy Co.*, 3 Mo. P.S.C. 173, 177 (1994).

Staff recommends Confluence Rivers' application for CCNs satisfies these standards, which are often referred to as the "Tartan" criteria or factors. Staff observes the need for the service is evident because the customers of Branson Cedars, Fawn Lake, Prairie Heights, Freeman Hills, and DeGuire are receiving service and will continue to require service. In addition, some of the systems require improvements to provide safe and adequate service in compliance with law. Staff advises Confluence Rivers is qualified to provide service based on its established record in providing water and sewer service to other Missouri customers. Staff also advises Confluence Rivers has demonstrated its financial ability by making appropriate investment in its current operations. Finally, Staff recommends the proposed transactions are economically feasible because no rate change is requested. In addition, Staff proposes that the improvements in service that Confluence Rivers can provide to the acquired systems are in the public interest.

MAINTENANCE OF CURRENT RATES AND TARIFFS

Confluence Rivers proposes to continue providing service at all of the acquired systems' current monthly rates after acquisition.[26] Confluence Rivers' application asserts that the current rates do not reflect the cost of providing service and the company expects to seek a rate increase after investments have been made to improve the systems. The Commission has not evaluated the necessity or prudence of any proposed improvements; the prudence of any system improvement will be evaluated in a subsequent rate proceeding.

As unregulated systems, the rates for Fawn Lake, Prairie Heights, Freeman Hills and DeGuire were established by the current owners without Commission approval.

[26] Branson Cedars' current water and sewer rates became effective on December 3, 2018, in File No. WR-2018-0356.

Staff's recommendation states that it is not now known how closely the current rates align with the cost of operations. The current rates for each system, including commodity charges when applicable, are specified in Staff's recommendation.[27] Staff recommends Confluence Rivers be required to submit tariff modifications to adopt the current rates for Fawn Lake, Prairie Heights, Freeman Hills and DeGuire in Confluence Rivers' water and sewer tariffs, respectively.

DECISION

The Commission finds that Confluence Rivers' acquisition of the specified water and sewer assets is not detrimental to the public interest. Further, the Commission finds that Confluence Rivers possesses adequate technical, managerial, and financial capacity to operate the water and sewer systems it seeks to purchase. The Commission concludes the criteria for granting CCNs to Confluence Rivers have been satisfied and that it is in the public interest for Confluence Rivers to provide water and sewer service to the areas currently served by the assets to be acquired. Subject to the conditions in Staff's recommendation, the Commission will authorize the sale of the Branson Cedars assets and approve Confluence Rivers' acquisition of Branson Cedars, Fawn Lake, Prairie Heights, Freeman Hills and DeGuire. The Commission will grant Confluence Rivers certificates of convenience and necessity to provide water and sewer service within the Branson Cedars service area. The Commission will grant Confluence Rivers certificates of convenience and necessity to provide water service within the Fawn Lake and Prairie Heights service areas and sewer service within the Freeman Hills and DeGuire service

[27] *Staff Recommendation*, *Appendix A: Memorandum*, p. 19 (July 17, 2020). Confluence Rivers proposes to charge $20.00 per month for monthly service to Prairie Heights customers; Confluence Rivers estimated the current Prairie Heights flat rate at $19.08 per month based on the system's income data. Staff recommends the Commission approve the $20.00 flat rate based on the Staff's conclusion that a $19.08 rate is "very unlikely to cover existing cost of service."

areas. In addition, the Commission will authorize Confluence Rivers to expand the Villa Ridge service territory.

Confluence Rivers and Staff acknowledge a disagreement about net book value of the systems to be acquired, and this order makes no finding in regard to net book value. To assist the Commission in establishing rate base for the systems to be acquired pursuant to this order,[28] the Commission will direct Confluence Rivers to file specific information for each system when it next seeks a rate adjustment for Fawn Lake, Prairie Heights, Freeman Hills or DeGuire. Likewise, to enable the Commission to evaluate improvements made to such systems in a future rate proceeding, the Commission will direct Confluence Rivers to file engineering and technical reports and additional project information for each system when it next seeks a rate adjustment for any of the systems acquired pursuant to this order.

Finally, the Commission will grant Confluence Rivers' request for waiver of the 60-day notice requirement under 20 CSR 4240-4.017. The Commission finds good cause exists for waiver, based on Confluence Rivers' verified declaration that it had no communication with the Office of the Commission regarding substantive issues in the application within 150 days before Confluence Rivers filed its application.

THE COMMISSION ORDERS THAT:

1. Branson Cedars is authorized to sell and transfer utility assets to Confluence Rivers and, upon closing, Confluence Rivers is granted a certificate of convenience and necessity to serve those assets.

[28] Relevant statutes include but are not limited to sections 386.250, 393.130, 393.140 and 393.230, RSMo (2016). The Commission's directive includes the types of information that may be considered in a rate case, including in the Staff investigation provided for in a staff-assisted rate case under Commission Rule 20 CSR 4240-10.075(8).

2. Upon closing of the asset transfer, Confluence Rivers is authorized to begin providing service and Branson Cedars is authorized to cease providing service.

3. Confluence Rivers is authorized to expand its Villa Ridge service area as requested to add three customers at the end of Bridgewater Hill Drive.

4. Confluence Rivers is authorized to acquire the utility assets of Fawn Lake, Prairie Heights, Freeman Hills and DeGuire.

5. Confluence Rivers is granted certificates of convenience and necessity to install, acquire, build, construct, own, operate, control, manage and maintain water systems in the areas currently served by Fawn Lake and Prairie Heights.

6. Confluence Rivers is granted certificates of convenience and necessity to install, acquire, build, construct, own, operate, control, manage and maintain sewer systems in the areas currently served by Freeman Hills and DeGuire.

7. Confluence Rivers shall use the depreciation rates for water and sewer utility plant accounts recommended by Staff and attached to Staff's recommendation.

8. The authority granted by this order is subject to the following conditions, as set forth in Staff's recommendation:

a. A 2019 annual report shall be filed for Branson Cedars;

b. Prior to closing on the Branson Cedars assets, Confluence Rivers shall submit an adoption notice to adopt the existing Branson Cedars tariffs;

c. Within 15 days after closing on the Branson Cedars assets, Confluence Rivers shall formalize a water usage agreement with Branson Cedars or another entity as a back-up source of supply for the Confluence Rivers system and provide a copy of the agreement to Staff;

d. Confluence Rivers shall promptly file tariff sheets to revise the service area map and legal description for the Villa Ridge service area;

e. Confluence Rivers shall submit tariff modifications to adopt the rates, maps, and legal descriptions for Fawn Lake and Prairie Heights in PSC MO No. 12, including an updated map for Fawn Lake and updated legal description for Prairie Heights, as attached to and described in Staff's recommendation;

f. Confluence Rivers shall submit tariff modifications to adopt the rates, maps, and legal descriptions for Freeman Hills and DeGuire in PSC MO No. 13;

g. Confluence Rivers shall notify the Commission of closing within five days of closing on any of the assets in this case;

h. If closing on any of the assets in this case does not occur within 30 days after the effective date of this order, Confluence Rivers shall file a report on the status of the transaction(s) within five days after the initial 30-day period expires, and subsequent status reports within five days after each subsequent 30-day period, until closing takes place or until Confluence Rivers files a notice stating closing will not occur;

i. Confluence Rivers shall notify the Commission if Confluence Rivers determines it will not acquire any of the subject assets. At such time, the Commission may modify, cancel, and/or deem null and void any CCN issued to Confluence Rivers for the relevant service area and may require filing of any necessary and appropriate tariffs;

j. Confluence Rivers shall create and keep financial books and records for plant-in-service, revenues, and operating expenses (including invoices) in accordance with the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USoA);

k. Before the customers acquired in this case receive notification from Confluence Rivers of the pending acquisition(s), Confluence Rivers shall provide training to its call center personnel regarding rates and rules applicable to customers acquired in this case;

l. Within 15 days of closing on the assets and prior to the first Confluence Rivers billing to customers acquired in this case, Confluence Rivers shall distribute to the customers acquired in this case an informational brochure detailing the rights and responsibilities of the utility and its customers regarding utility service, consistent with the requirements of Commission Rule 20 CSR 4240-13, as well as notification regarding changes to the billing cycle, bill format, and payment options;

m. Within 15 days after closing on the assets, Confluence Rivers shall provide to the Commission's Customer Experience Department a sample of its actual communication with its newly acquired customers regarding its acquisition and operation of the utility assets and how customers may contact Confluence Rivers;

n. Within 30 days of Confluence Rivers' first billing for each acquired system in this case, Confluence Rivers shall provide to the Commission's Customer Experience Department a sample of five billing statements from the first month's billing;

o. Confluence Rivers shall file notice in this case when the requirements stated above, addressing staff training, informational brochures, communications, and billing, are complete;

9. With its next filing for a general rate increase that includes Fawn Lake, Prairie Heights, Freeman Hills or DeGuire, Confluence Rivers shall file for each system included in the rate request:

a. All independent engineering reports, including any reports now in existence, that estimate the value of the utility system assets when first placed into service. Such filings shall identify the calculation method used to derive the original cost estimates; and

b. The amounts and calculations in compliance with the applicable NARUC USoA for accumulated depreciation, contributions in aid of construction (CIAC) and CIAC amortization for all utility system plant accounts through the 12-month period used to calculate the annual operating revenue request.

Such filings shall be filed in the rate case in the Commission's electronic filing information system (EFIS).

10. With its next filing for a general rate increase that includes any system acquired pursuant to this order, Confluence Rivers shall file for each system included in the rate request:

a. All engineering and technical reports prepared for Confluence Rivers by technical consultants or engineers prior to acquisition of the system;

b. All engineering and technical reports prepared for Confluence Rivers by technical consultants or engineers after acquisition of the system; and

c. A list of all projects completed since acquisition of the system, including for each project: a project description, completion date, total project cost and source of project funds.

Such filings shall be filed in the rate case in EFIS.

11. The Commission makes no finding that precludes the Commission from considering the ratemaking treatment to be afforded any matters in any later proceeding.

12. Staff is relieved of the obligation to submit in this case any photos from Staff's inspection of each of the systems proposed for acquisition in this case.

13. The 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1) is waived for good cause.

14. This order shall be effective on January 8, 2021.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Jacobs, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of Elm Hills Utility Operating Company, Inc.'s Request for a Water and Sewer Rate Increase	)	**File No. WR-2020-0275**
	)	Tariff Nos. YW-2021-0057 and
	)	YS-2021-0058

ORDER REGARDING REQUEST FOR SANCTIONS

EVIDENCE, PRACTICE AND PROCEDURE

§29 Discovery

The Office of the Public Counsel (OPC) requested discovery sanctions against a utility after specifically stating its request for certain documents fell not under the Commission's rules on discovery, but under Section 386.450, RSMo (2016), a statute outside the typical discovery procedures. By employing the statute and stating that its request is not under the Commission's discovery rules, the Commission determined that sanctions under the discovery rules were not appropriate.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held by telephone and internet audio conference on the 9th day of December, 2020.

In the Matter of Elm Hills Utility Operating Company, Inc.'s Request for a Water and Sewer Rate Increase	)))	**File No. WR-2020-0275** Tariff Nos. YW-2021-0057 and YS-2021-0058

ORDER REGARDING REQUEST FOR SANCTIONS

Issue Date: December 9, 2020 Effective Date: December 9, 2020

On March 6, 2020,[1] Elm Hills Utility Operating Company, Inc. (Elm Hills) opened two staff assisted rate cases, water and sewer, which have subsequently been consolidated. On September 18, the Office of the Public Counsel (OPC) requested the production of certain financial documents from Elm Hills' upstream owners pursuant to Section 386.450, RSMo (2016).[2] Elm Hills was not subject to the order issued under Section 386.450, RSMo. OPC indicates the upstream owners did not provide the information to OPC and therefore did not comply with the Commission's order, which had a deadline of November 18. On December 2, OPC filed a motion seeking sanctions against Elm Hills (suggesting three alternative sanctions: dismiss the case; postpone the evidentiary hearing until compliance with the production order; or strike all of Elm Hills' testimony). On December 8, Elm Hills responded. Staff did not respond. OPC filed a rebuttal response on December 8. This order denies OPC's motion for sanctions.

In its request for sanctions against Elm Hills, OPC argues that the actions of the upstream owners, who are not parties, should be imputed to Elm Hills under the theory

[1] All dates hereafter refer to the year 2020, unless otherwise stated.
[2] Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.

of piercing the corporate veil. OPC then requests sanctions against Elm Hills pursuant to 20 CSR 4240-2.090(1), the Commission's discovery rule. The three sanctions sought by OPC all fall within Missouri Civil Procedure Rule 61, regarding enforcement of discovery.

Elm Hills contends that OPC effectively has short-circuited statutory enforcement mechanisms which could be used to compel production and instead proceeded straight to a request for sanctions.[3] Elm Hills also raises a constitutional objection that the Commission has no authority to dismiss or suspend its rate case because the Commission has a duty to set rates that are just and reasonable. As all parties agree to some level of increased rates, Elm Hills concludes that Commission action to stop or delay the rate case would amount to rendering the current rates as unjust, unreasonable and confiscatory.[4] Elm Hills also argues that the information OPC seeks is not necessary to determine just and reasonable rates. OPC responds that the information is relevant and necessary, however the necessity or relevance of the information is not at issue presently.

For the motion for sanctions against Elm Hills to succeed, OPC must first demonstrate that Elm Hills should be held accountable for the actions of its upstream owners, commonly referred to as piercing the corporate veil (also referred to as the alter ego theory). The standard set forth for piercing the corporate veil requires proving three elements: 1) control; 2) wrongdoing, fraud, or improper conduct; and 3) proximate cause.[5]

Elm Hills argues that it has no legal authority to obtain the information from its upstream corporate ownership, thus it would be unfair and unwarranted to impose

[3] OPC correctly states that Elm Hills cites no obligation that OPC must attempt enforcement prior to requesting sanctions, and due to the discussion infra, the Commission will not take up Elm Hill's enforcement-prior-to-sanctions argument.
[4] Due to the discussion infra, the Commission will not take up Elm Hills' objection, nor OPC's rebuttal response regarding the Commission's authority to dismiss or suspend Elm Hill's rate case.
[5] *Real Estate Investors Four, Inc. v. American Design Group Inc*., 46 S.W.3d 51, 56 (Mo. App. E.D. 2001).

sanctions on Elm Hills. Elm Hills further contends that the pleadings submitted by OPC do not show evidence of fraud or wrongful conduct that would justify piercing of the corporate veil. OPC's rebuttal response asserts that the dishonest and unjust act is the use of the corporate structure to hide relevant information. The record is not developed enough for the Commission to make a determination on whether the elements for piercing the corporate veil are met. The Commission need not determine this issue due to the discussion below.

OPC made its limited request for a production order pursuant to Section 386.450 RSMo, specifically indicating that the request was not made pursuant to 20 CSR 4240-2.090 (the Commission Rule on discovery).[6] The Commission's order noted the distinction made by OPC and issued its order under Section 386.450 RSMo, and not under its discovery rules as requested by OPC.[7] OPC now seeks sanctions under the discovery rules.

The Commission Rule on discovery is 20 CSR 4240-2.090 and is used in conjunction with the Commission Rule on subpoenas, 20 CSR 4240-2.100, and Section 386.440 RSMo. These rules, in part, limit discovery to information that is relevant to that case, limit access to non-admissible information unless it appears reasonably calculated to lead to the discovery of admissible evidence, set time limits for responses and objections, establish processes to resolve discovery disputes prior to the filing of discovery motions, and permit sanctions.

In contrast, Section 386.450 RSMo is a unique grant of power in that it allows for broad information gathering in or outside of a case, without discovery limitations on the

[6] Motion for Order Regarding the Production of Documents, filed September 18, 2020, para. 1, 2, 45, 46, and Wherefore clause.
[7] Order Granting Motion for Production, filed October 28, 2020.

information sought. A finding of good cause is the only statutory requirement needed to issue an order that information be produced under Section 386.450 RSMo.

OPC requested an order for information available under Section 386.450 RSMo from the upstream owners of Elm Hills specifically noting it was not requesting information pursuant to Rule 2.090, but now asks the Commission to use those discovery rules to sanction Elm Hills. The Commission ordered the documents be produced by the upstream owners of Elm Hills pursuant only to Section 386.450 RSMo, and will not now issue sanctions pursuant to the Commission's discovery rules.

The request for discovery sanctions by OPC is therefore denied as the order for production given was pursuant to Section 386.450 RSMo and not pursuant to the Commission's discovery rules.

THE COMMISSION ORDERS THAT:

1. OPC's Motion to Dismiss Case or Provide Other Relief in the Alternative is denied.

2. This order shall be effective when issued.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Hatcher, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of a Motion for an Emergency Order Establishing a Temporary Moratorium on Utility Discontinuances to Protect Public Health and Safety by Mitigating the Spread of the COVID-19 Pandemic.	)))))))	**File No. AO-2021-0164**

ORDER DENYING MOTION

EVIDENCE, PRACTICE AND PROCEDURE

§1 Generally

The legislature has given the Commission the power to make rules and regulations, but it must follow the notice and comment rulemaking process in Chapter 536, RSMo.

§1 Generally
§2 Jurisdiction and powers

The Commission cannot issue an order of general applicability. Such an order would be a "rule" as defined by Section 536.021(6), RSMo.

§1 Generally
§2 Jurisdiction and powers

The Commission can only take the actions it is has been authorized by the state legislature to take. Consumers Council of Missouri provided no legal authority for the requested Commission action, other than its interpretation of Section 386.310, RSMo. The Commission disagreed with Consumers Council's interpretation and determined that it did not have authority to grant the motion requesting an order placing a moratorium on involuntary residential disconnections by water, electric, and gas corporations and a waiver of any late fees through at least March 31, 2021.

§6 Weight, effect and sufficiency

Any emergency action the Commission takes that has general applicability to an industry, such as the motion made by Consumers Council of Missouri, must be promulgated as an emergency rule under the provisions of Section 536.025, RSMo. Further, the Commission found that Consumers Council had not provided sufficient evidence that its proposed moratorium on customer disconnections was necessary to protect the public from an immediate danger, that such emergency action would be best calculated to assure fairness to all interested parties, or that the scope of the requested action was appropriately limited so that it did not cause additional harm.

PUBLIC UTILITIES

§7 Jurisdiction and powers of the State Commission

The Commission cannot issue an order of general applicability. Such an order would be a “rule” as defined by Section 536.021(6), RSMo.

§7 Jurisdiction and powers of the State Commission

The Commission found it cannot promulgate or repeal a rule by issuing an order. Further, the Commission found that an administrative rule that is adopted in violation of the notice and comment procedures of the state Administrative Procedures Act is void. Thus, in order to take the action requested by Consumers Council of Missouri, the Commission would need to promulgate an emergency rule under Section 536.025, RSMo.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held by telephone and internet audio conference on the 16th day of December, 2020.

In the Matter of a Motion for an Emergency Order Establishing a Temporary Moratorium on Utility Discontinuances to Protect Public Health and Safety by Mitigating the Spread of the COVID-19 Pandemic.	))))))	**File No. AO-2021-0164**

ORDER DENYING MOTION

Issue Date: December 16, 2020 Effective Date: December 26, 2020

On December 7, 2020, Consumers Council of Missouri filed a *Request for Emergency Order and Motion for Expedited Treatment* requesting that the Commission issue an emergency order placing a moratorium on involuntary residential disconnections by water, electric, and gas corporations and a waiver of any late fees through at least March 31, 2021.[1] Consumers Council asked for a Commission decision by December 16, 2020. The Commission directed notice of the motion and directed that responses be filed by December 14, 2020.

Consumers Council's reason for its request was to help "flatten the curve" of the increasing number of COVID-19 cases within the state by preventing regulated water, gas, and electric utilities from disconnecting residential customers. Consumers Council's theory is that if residential customers are disconnected or are under the threat of

[1] March 31, 2021, is the expiration date of the most recent declaration of a state of emergency in Governor's Executive Order 20-19.

disconnection, they will be more likely to move or seek shelter in other than their current residences. This mobility would then lead to increased spread of COVID-19.

As support for its motion, Consumers Council cited to several academic and research articles, the White House COVID-19 Task Force State Report for Missouri,[2] and specifically to a Duke University study[3] showing that moratoriums on disconnections help reduce the spread of COVID-19 by allowing people to continue to shelter at home, even when suffering economic distress because of layoffs, illness, quarantines, and other causes of lost income due to the pandemic. Attached to its request and motion were letters of support from the Missouri Hospitals Association, Empower Missouri, National Housing Trust (NHT), and Missouri Energy Efficiency for All (MO-EEFA).[4] Consumers Council later submitted letters in support from the Missouri Public Health Association, and AARP. Additionally, Renew Missouri, AARP, NHT, and ArchCity Defenders, Inc., have filed applications to intervene in the case, and Legal Services of Eastern Missouri and Sierra Club submitted statements in support of the motion.[5]

[2] Issue 24, November 29, 2020.
[3] https://nicholasinstitute.duke.edu/articles/policy-pandemic-housing-security-policiesreduce-us-covid-19-infection-rates
[4] MO-EEFA is a coalition of other groups: NHT, Renew Missouri, Elevate Energy, National Resource Defense Council (NRDC), Missouri Housing Development Commission, Tower Groves Neighborhood Community Development Corporation, and Midwest Energy Efficiency Alliance (MEEA).
[5] On December 15, 2020, ArchCity Defenders filed additional letters in support of Consumers Council's motion from the following: Christ Church UCC, Economic Security Corporation of Southwest Area, Jewish Community Relations Council of St. Louis, KC Tenants, Kids Win Missouri, Metropolitan St. Louis Equal Housing and Opportunity Council, Missouri Community Action Network, Operation Food Search, Saint Louis University Center for Service and Community Engagement, and Sts. Joachim and Ann Care Services.

The large Commission-regulated utilities in the state,[6] the CSWR-Affiliated Utilities,[7] and two municipalities[8] all filed responses opposing Consumers Council's motion. The utilities stated that at the beginning of the pandemic they each voluntarily placed a moratorium on residential disconnections. This action allowed the utilities time to take the necessary legal and organizational steps to revise their payment plans, collections processes, customer financial assistance programs, and other operations to better serve their customers during the pandemic. Each of the utilities explained the actions it had taken and indicated that most of the repayment and financial assistance programs were still available and funded. The utilities stated concern that a blanket moratorium would have unintended consequences and could harm customers by making them ineligible to receive financial assistance from LIHEAP because no disconnection was imminent. Additionally, the utilities stated that customers often did not engage with the utilities to seek help with payment plans and financial assistance until prompted to do so by disconnection notices. The utilities argued that granting the motion may leave customers with insurmountable arrearages when the moratorium expires.

The utilities argued that the programs they have put in place should be allowed to work and have been working. The CSWR-Affiliated Utilities gave the example that it had very few customers requesting extended payment plans at the end of its voluntarily moratorium and had not involuntarily disconnected any customers during the pandemic.

[6] Union Electric Company, d/b/a Ameren Missouri; Spire Missouri, Inc.; Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (collectively referred to as "Evergy"); Summit Natural Gas of Missouri; The Empire District Electric Company, The Empire District Gas Company, Liberty Utilities (Missouri Water) LLC, and Liberty Utilities (Midstates Natural Gas) Corp. (collectively referred to as "Liberty"); Missouri-American Water Company (MAWC).

[7] Confluence Rivers Utility Operating Company, Inc.; Elm Hills Utility Operating Company, Inc.; Hillcrest Utility Operating Company, Inc.; Indian Hills Utility Operating Company, Inc.; Raccoon Creek Utility Operating Company, Inc.; and Osage Utility Operating Company, Inc. (collectively referred to as the "CSWR-Affiliated Utilities").

[8] The City of St. Joseph, Missouri, and the City of Jefferson, Missouri.

Ameren Missouri reported that its current programs are working as the number of disconnections in August 2020 are lower than in August 2019. Evergy also reported that its programs are working as evidenced by the fact that the number of customers on pay arrangements at the end of November 2020 is greatly increased compared to the same period in 2019 but the average amount of arrears remains similar to pre-pandemic numbers. MAWC reported that since it resumed disconnections in September 2020, monthly disconnections have decreased compared to the pre-pandemic number.

The utilities also argued that from November 1 to March 31, the Commission's Cold Weather Rule[9] is in place and will decrease the amount of disconnections and increase the length of payment plans, alleviating some of the disconnection fears. Finally, several of the large utilities noted that they had additional voluntary moratoriums on disconnections for nonpayment and the waiver of late fees through the end of December 2020 and some into March 2021.

Additionally, the City of St. Joseph and the City of Jefferson stated that Consumers Council's moratorium will have the unintended consequence of causing financial distress on some municipalities and other unregulated public systems that rely on established contracts with regulated water utilities to disconnect water customers for non-payment of sewer services provided by the non-regulated utility. The municipalities stated that the voluntary moratoriums of the utilities at the beginning of the pandemic put an unintended financial strain on their public works systems and their ability to service municipal bonds.

The Staff of the Commission stated in its response that Consumer Council's motion requested a moratorium that was too broad and should not be applied to small utilities.

[9] 20 CSR 4240-13.055(6).

Staff also responded that such a moratorium should be closely scrutinized so as to not create unintended consequences. Staff noted that a broad application of a moratorium should be promulgated as a rule.

As legal authority for the Commission to take its requested action, Consumers Council cites the Commission's general statutory authority found in Section 386.310.1, RSMo. That provision gives the Commission the authority, after hearing, to issue orders or rules requiring utilities to:

> maintain and operate its line, plant, system, equipment, apparatus, and premises in such manner as to promote and safeguard the health and safety of its employees, customers, and the public, and to this end to prescribe, among other things, the installation, use, maintenance and operation of appropriate safety and other devices or appliances, to establish uniform or other standards of equipment, and to require the performance of any other act which the health or safety of its employees, customers or the public may demand, including the power to minimize retail distribution electric line duplication for the sole purpose of providing for the safety of employees and the general public in those cases when, upon complaint, the commission finds that a proposed retail distribution electric line cannot be constructed in compliance with commission safety rules. The commission may waive the requirements for notice and hearing and provide for expeditious issuance of 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, provided that the commission shall include in such an order an opportunity for hearing as soon as practicable after the issuance of such order.

Even though the statute appears to grant the Commission broad powers to act to protect the health and safety of the public, the Commission cannot issue an order of general applicability. Such an order would be a "rule" as defined by Section 536.021(6), RSMo. That statute defines a rule as "each agency statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of any agency." The legislature has given the Commission the power to make rules and regulations, but it must follow the notice and

comment rulemaking process in Chapter 536, RSMo. The Missouri Supreme Court has also said that "[a]gencies cannot promulgate, or repeal, a rule by an adjudicated order."[10] An administrative rule that is adopted in violation of the notice and comment procedures of the state Administrative Procedures Act is "void."[11] Thus, in order to take the action requested by Consumers Council, the Commission would need to promulgate an emergency rule under Section 536.025, RSMo.[12]

An emergency rule may be made only if the Commission:

> (1) Finds that an immediate danger to the public health, safety or welfare requires emergency action or the rule is necessary to preserve a compelling governmental interest that requires an early effective date as permitted pursuant to this section;
> (2) Follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances;
> (3) Follows procedures which comply with the protections extended by the Missouri and United States Constitutions; and
> (4) Limits the scope of such rule to the circumstances creating an emergency and requiring emergency action.[13]

The Commission has carefully reviewed Consumers Council's motion and shares its concern for the well-being of utility customers and all Missouri citizens during the pandemic. However, the Commission can only take the actions it is has been authorized by the state legislature to take. Consumers Council provides no legal authority for the requested Commission action, other than its interpretation of Section 386.310, RSMo. The Commission disagrees with Consumers Council's interpretation and determines that it does not have authority to grant the motion. Any emergency action the Commission takes that has general applicability to an industry, such as the motion made by Consumers

[10] *Greenbriar Hills Country Club v. Dir. of Revenue*, 47 S.W.3d 346, 357 (Mo. 2001).
[11] See, *NE Hosps., Inc. v. Development of Soc. Servs.*, 850 S.W.2d 71 (Mo. banc 1993).
[12] On December 15, 2020, Consumers Council filed a reply to the utility responses continuing to argue that the Commission has authority under Section 386.310, RSMo, to take the requested action.
[13] Section 536.025.1, RSMo.

Council, must be promulgated as an emergency rule under the provisions of Section 536.025, RSMo.

Furthermore, based on the motion and the responses of Staff and parties in support of and in opposition to the motion, the Consumers Council has not provided sufficient evidence that its proposed moratorium is necessary to protect the public from an immediate danger, that such emergency action would be best calculated to assure fairness to all interested parties, or that the scope of the requested action is appropriately limited so that it does not cause additional harm. The Commission denies Consumer Council's motion.

THE COMMISSION ORDERS THAT:

1. The *Request for Emergency Order and Motion for Expedited Treatment* filed on December 7, 2020, by Consumers Council of Missouri is denied.

2. This order is effective December 26, 2020.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Dippell, Senior Regulatory Law Judge

DIGEST OF REPORTS

OF THE

PUBLIC SERVICE COMMISSION

OF THE

STATE OF MISSOURI

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ACCOUNTING

§13. Contributions by utility

Based on its review of the information in this proceeding, Staff calculated an estimated rate base of $617,848. The purchase price being paid by Liberty Water may be below the Net Book Value of the Savers Farm assets.
SA-2020-0067 **30 MPSC 3d 041**

§38. Taxes

The Commission found that it could correct three prior cases in the fourth case of a series of Infrastructure System Replacement Surcharge (ISRS) cases because Sections 393.1003.3 and 393.1006.6 (RSMo) provide that an ISRS is not final until reset at the next general rate case. As the utility had not yet had a general rate case to reset the ISRS, the Commission determined it could use the fourth case to address Internal Revenue Service (IRS) normalization violations collected from the first three cases.
WO-2020-0190 **30 MPSC 3d 176**

§38. Taxes

The Commission deferred to the Internal Revenue Service's (IRS's) interpretation of the Internal Revenue Code as the IRS is the agency charged with its enforcement.
WO-2020-0190 **30 MPSC 3d 176**

§38. Taxes

The Commission found that the term net operating loss

(NOL) is defined as “the excess of operating expenses over revenues.” An NOL results when a utility does not have enough taxable income to utilize all of the tax deductions to which it would otherwise be entitled. When this situation occurs, the amount of the unused deductions is referred to as an NOL and is booked to a deferred tax asset account.
WO-2020-0190 **30 MPSC 3d 176**

§38. Taxes
In three prior Infrastructure System Replacement Surcharge (ISRS) cases, the Commission determined that no net operating loss (NOL) was shown, and that there would be no normalization violation in the treatment of Accumulated Deferred Income Taxes (ADIT) of the federal tax code due to the Commission’s order. Subsequent to those three decisions the utility obtained a Private Letter Ruling (PLR) from the Internal Revenue Service (IRS). The IRS took a different position than the three prior Commission orders.

The PLR directs that for purposes of the ISRS all plant additions are included in the ADIT deduction but only plant additions other than repairs to plant are included in the NOL calculation as an offset to ADIT.
WO-2020-0190 **30 MPSC 3d 176**

§38. Taxes
The tax normalization requirements of the IRS Code mandate that utility rates be set so that customers do not receive the tax benefit of accelerated depreciation deductions any faster than over the estimated straight-line book lives authorized for the utilities’ assets. The Internal Revenue Service (IRS) agreed with the utility’s net operating loss (NOL) theory that the NOL amount applicable to Infrastructure System Replacement Surcharge (ISRS) plant additions should be determined using the so-called with-and-without method.

The with-and-without method (applied only to plant additions other than repairs to plant) looks at the difference between straight line depreciation used for rates and accelerated depreciation used for income tax reporting and multiplies this amount by the income tax rate to determine the NOL.
WO-2020-0190 **30 MPSC 3d 177**

§38.1. Book/tax timing differences
The tax normalization requirements of the IRS Code mandate that utility rates be set so that customers do not receive the tax benefit of accelerated depreciation deductions any faster than over the estimated straight-line book lives authorized for the utilities' assets. The Internal Revenue Service (IRS) agreed with the utility's net operating loss (NOL) theory that the NOL amount applicable to Infrastructure System Replacement Surcharge (ISRS) plant additions should be determined using the so-called with-and-without method.

The with-and-without method (applied only to plant additions other than repairs to plant) looks at the difference between straight line depreciation used for rates and accelerated depreciation used for income tax reporting and multiplies this amount by the income tax rate to determine the NOL.
WO-2020-0190 **30 MPSC 3d 177**

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§4. Jurisdiction and powers generally

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

GA-2020-0236 **30 MPSC 3d 136**

§4. Jurisdiction and powers generally
The Commission may grant a gas corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either "necessary or convenient for the public service".
GA-2021-0010 **30 MPSC 3d 433**

§6. Jurisdiction and powers of the State Commission
The Commission may approve the transfer of utility assets as long as that transfer is not shown to be "detrimental to the public interest." Section 393.190.
WM-2020-0282 **30 MPSC 3d 471**

§6. Jurisdiction and powers of the State Commission
The Commission may grant a water corporation or sewer corporation a certificate of convenience and necessity after determining that such construction and operation are either "necessary or convenient for the public service." Section 393.170.3.
WM-2020-0282 **30 MPSC 3d 471**

§21. Grant or refusal of certificate generally
The Commission stated in *In re Tartan Energy Company*, 3 Mo. P.S.C. 173 (1994), that five criteria guide its determination of whether granting a utility a CCN is "necessary or convenient for the public service" under Section 393.170, RSMo 2016: (1) there must be a need for the service, (2) the applicant must be qualified to provide the proposed service, (3) the applicant must have the financial ability to provide the service, (4) the applicant's proposal must be economically feasible, and (5) the service must promote the public interest.
SA-2020-0132 **30 MPSC 3d 001**

§21. Grant or refusal of certificate generally
The Commission granted Missouri-American Water Company a certificate of convenience and necessity to operate a sewer system in the Clinton Estates service area in Clinton County, Missouri.
SA-2020-0132 **30 MPSC 3d 001**

§21. Grant or refusal of certificate generally
The Commission granted a certificate of convenience and necessity to Liberty Utilities to acquire the sewer utility assets of Savers Farm, a development not subject to the Commission's jurisdiction.
SA-2020-0067 **30 MPSC 3d 041**

§21. Grant or refusal of certificate generally
The Commission found that Liberty demonstrated it has adequate resources to operate utility systems that it owns, to acquire new systems, to undertake construction of new systems and expansions of existing systems, to plan and undertake scheduled capital improvements, and timely respond and resolve emergency issues when such situations arise.
SA-2020-0067 **30 MPSC 3d 041**

§21. Grant or refusal of certificate generally
An applicant seeking the Commission's approval to purchase the assets of a nonviable utility must show that it is qualified to own and operate the nonviable utility's assets.
WA-2019-0185 **30 MPSC 3d 049**

§21. Grant or refusal of certificate generally
The Commission traditionally determines if a company is qualified to become a public utility by analyzing the Tartan factors.
WA-2019-0185 **30 MPSC 3d 049**

§21. Grant or refusal of certificate generally
“[N]ot detrimental to the public interest." means there is no net detriment after considering all of the benefits and all of the detriments, including the risk of increased rates.
WA-2019-0185 **30 MPSC 3d 049**

§21. Grant or refusal of certificate generally
The Commission authorized the transfer of assets from Central Rivers and granted Elm Hills a certificates of convenience and necessity to provide water and sewer service within the proposed service areas.
SM-2020-0146 **30 MPSC 3d 109**

§21. Grant or refusal of certificate generally
The Commission granted an area Certificate of Convenience and Necessity (CCN) to a gas distribution utility after finding that the cost of the planned upgrades result in a benefit to customers of increased pressure and capacity.
GA-2020-0251 **30 MPSC 3d 123**

§21. Grant or refusal of certificate generally
The Commission employed the Tartan criteria to evaluate applications for Certificates of Convenience and Necessity (CCNs). The Tartan criteria is as follows: (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.
GA-2020-0251 **30 MPSC 3d 123**

§21. Grant or refusal of certificate generally
The Commission employed the Tartan criteria to evaluate applications for Certificates of Convenience and Necessity (CCNs). The Tartan criteria is as follows: (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.
WM-2020-0174 **30 MPSC 3d 166**

§21. Grant or refusal of certificate generally
The Commission has stated five criteria that it uses to determine necessity or convenience: 1) There must be a need for the service; 2) The applicant must be qualified to provide the service; 3) The applicant must have the financial ability to the provide the service; 4) The applicant's proposal must be economically feasible; and 5) The service must promote the public interest*. In re Tartan Energy Co.*, 3 Mo. P.S.C. 173, 177 (1994).
WM-2020-0282 **30 MPSC 3d 471**

§21.1. Public interest
The Commission found the standard applicable to the sale of a utility of "not detrimental to the public interest" means there is no net detriment after considering all of the benefits and all of the detriments. There must be a balancing of all the benefits and detriments to determine if the transfer as a whole would be detrimental to the public.
WA-2019-0299 **30 MPSC 3d 404**

§21.2. Technical qualifications of applicant
The Commission found that Elm Hills possessed adequate technical, managerial, and financial capacity to operate the systems it wishes to purchase from Central Rivers. Elm Hills is a subsidiary of Central States Water Resources and has access to experienced employees who have also demonstrated managerial abilities over the water and wastewater utilities owned by Central States Water Resources. Elm Hills has access to highly qualified operating and engineering experience. Elm Hills also has appropriate

customer service and billing capabilities through its contractors, which provide a benefit to customers.
SM-2020-0146 **30 MPSC 3d 109**

§21.4. Economic feasibility of proposed service
The Commission found that increased rates on their own do not mean the transfer is detrimental to the public. Where opponents to an application for the acquisition of a utility who stood to obtain the acquisition contract for themselves provided estimates based only on repairs identified as needed by the Missouri Department of Natural Resources, and failed to address other system upgrades or replacements that may be needed to proactively maintain the systems to avoid future more costly repairs, the Commission found that the acquiring utility's evidence was more credible with regard to what repairs may be needed than that put forth by the parties opposed to the transfer.
WA-2019-0185 **30 MPSC 3d 049**

§33. Immediate need for the service
The Commission determined that there is a need for the service because, as the Prairie Field Subdivision develops, homes will be built requiring service. Also, Central Rivers' existing service areas will continue to need sewer service.
SM-2020-0146 **30 MPSC 3d 109**

§34. Public convenience and necessity or public benefit
The Commission issued an order granting a certificate of convenience and necessity to install, own, operate, control, manage, and maintain a gas plant in Lafayette County, Missouri subject to the condition that the Commission will reserve all rate making determinations regarding the revenue impact of the service area extension request until the company's next general rate making proceeding.
GA-2020-0235 **30 MPSC 3d 117**

§34. Public convenience and necessity or public benefit
The Commission issued an order granting a certificate of convenience and necessity to install, own, operate, control, manage, and maintain a gas plant in Lafayette County, Missouri subject to the condition that the company file an updated tariff sheet to incorporate the specified new territory.
GA-2020-0235 **30 MPSC 3d 117**

§36. Preference between rival applicants generally
The Commission found that Increased rates on their own do not mean the transfer is detrimental to the public. Where opponents to an application for the acquisition of a utility who stood to obtain the acquisition contract for themselves provided estimates based only on repairs identified as needed by the Missouri Department of Natural Resources, and failed to address other system upgrades or replacements that may be needed to proactively maintain the systems to avoid future more costly repairs, the Commission found that the acquiring utility's evidence was more credible with regard to what repairs may be needed than that put forth by the parties opposed to the transfer.
WA-2019-0185 **30 MPSC 3d 049**

§43. Gas
The Commission issued an order granting a certificate of convenience and necessity to install, own, operate, control, manage, and maintain a gas plant in Lafayette County, Missouri subject to the condition that the Commission will reserve all rate making determinations regarding the revenue impact of the service area extension request until the company's next general rate making proceeding.
GA-2020-0235 **30 MPSC 3d 117**

§43. Gas
The Commission issued an order granting a certificate of convenience and necessity to install, own, operate, control,

manage, and maintain a gas plant in Lafayette County, Missouri subject to the condition that the company file an updated tariff sheet to incorporate the specified new territory.
GA-2020-0235 **30 MPSC 3d 117**

§43. Gas
The Commission granted an area Certificate of Convenience and Necessity (CCN) to a gas distribution utility after finding that the cost of the planned upgrades result in a benefit to customers of increased pressure and capacity.
GA-2020-0251 **30 MPSC 3d 123**

§48. Operations under terms of the certificate generally
The Commission issued an order granting a certificate of convenience and necessity to install, own, operate, control, manage, and maintain a gas plant in Lafayette County, Missouri subject to the condition that the Commission will reserve all rate making determinations regarding the revenue impact of the service area extension request until the company's next general rate making proceeding.
GA-2020-0235 **30 MPSC 3d 117**

§48. Operations under terms of the certificate generally
The Commission issued an order granting a certificate of convenience and necessity to install, own, operate, control, manage, and maintain a gas plant in Lafayette County, Missouri subject to the condition that the company file an updated tariff sheet to incorporate the specified new territory.
GA-2020-0235 **30 MPSC 3d 117**

§52. Transfer, mortgage or lease generally
A utility sought to purchase regulated water and sewer systems for four residential subdivisions. Prior to sale, a regulated utility must obtain the Commission's authorization before selling or transferring its assets.
WM-2020-0174 **30 MPSC 3d 166**

§52. Transfer, mortgage or lease generally

In evaluating the sale of a regulated utility's assets, the Commission can only disapprove the transaction if it is detrimental to the public interest.

WM-2020-0174 **30 MPSC 3d 166**

§53. Consolidation or merger

The Commission found the standard applicable to the sale of a utility of "not detrimental to the public interest" means there is no net detriment after considering all of the benefits and all of the detriments. There must be a balancing of all the benefits and detriments to determine if the transfer as a whole would be detrimental to the public.

WA-2019-0299 **30 MPSC 3d 404**

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§4. Obligation of the utility

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§6. Jurisdiction and powers of the State Commission
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§32. Gas
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DEPRECIATION

No headnotes in this volume involved the question of Depreciation.

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§4. Recovery of discriminatory undercharge
§5. Reports, records and statements

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§8. Jurisdiction and powers of the local authorities

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VII. SERVICE BY PARTICULAR UTILITIES
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DISCRIMINATION

No headnotes in this volume involved the question of Discrimination.

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§46. Relations between connecting companies generally
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ELECTRIC

§13. Operations generally

The Commission found that the state legislature's enactment of Section 393.1400, RSMo. (the PISA statute) did not establish a legislative policy, presumption, or directive that supports imposing a 15% share of changes in net energy costs on utilities that have a fuel adjustment clause.
ER-2019-0335 **30 MPSC 3d 198**

§13. Operations generally

An applicant utility bears the burden to show that its requested fuel adjustment clause should continue.
ER-2019-0335 **30 MPSC 3d 198**

§13.1. Energy Efficiency
The Commission approved Evergy Metro and West's Missouri Energy Efficiency Investment Act Cycle 3 suite of energy efficiency programs subject to conditions.
EO-2019-0132 **30 MPSC 3d 008**

§13.1. Energy Efficiency
The Commission shall approve, approve with modification acceptable to the company, or reject Missouri Energy Efficiency Investment Act application within 120 days after filing pursuant to Commission Rule 20 CSR 4240-20.094(4)(H).
EO-2019-0132 **30 MPSC 3d 008**

§13.1. Energy Efficiency
The Commission determined that Evergy Metro and West valued demand-side investments equal to traditional investments in supply and delivery infrastructure. Evergy calculated that all but one of its Missouri Energy Efficiency Investment Act Cycle 3 programs was cost-effective, and Evergy was willing to modify that program to make it cost-effective. The projected costs will be outweighed by the savings benefits and all customers will monetarily benefit from the programs within the class the programs are offered. Customers who participate in energy efficiency programs will receive most of the benefits of those programs. However, even non-participating customers will receive some benefit.
EO-2019-0132 **30 MPSC 3d 008**

§13.1. Energy Efficiency
The Commission modified Evergy Metro and West's Missouri Energy Efficiency Investment Act Cycle 3 suite of energy efficiency programs to include the Pay As You Save pilot program, which allows for the installation of energy efficiency measures whose savings outweigh costs.
EO-2019-0132 **30 MPSC 3d 008**

§41. Billing practices
Customers taking advantage of the Pay As You Save pilot program will pay the costs of the energy efficiency measures over time through a tariffed charge on their bill.
EO-2019-0132 **30 MPSC 3d 008**

§41. Billing practices
Due to COVID-19 pandemic "state of emergency" government declarations, the Commission permitted the utility to temporarily suspend disconnections and the accumulation of interest and late fees related to non-payment for all but its largest business customers. The Commission also permitted the utility to offer customers flexible payment arrangements and to work with commercial and industrial customers on payment arrangements as needed on a case-by-case basis. Utility reports that these actions have substantially increased arrearages and that arrearages will continue to rise, with significantly higher bad debt expense as a result.
EO-2020-0383 **30 MPSC 3d 131**

§41. Billing practices
Where Complainant signed a guarantor contract for her son's account, as an alternative to her son providing a monetary deposit to reconnect service, utility rightly refused to disclose billing and payment information on her son's account, as her son had not authorized the utility to provide Complainant access to the records and such information was confidential under Section 386.480, RSMo 2016, and Commission Rule 20 CSR 4240-20.015(2)(C). However, under that statute and regulation, the Commission may, in the course of a hearing or proceeding or on order of the Commission, compel the utility to disclose the requested confidential billing and payment information.
EC-2020-0183 **30 MPSC 3d 446**

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EVIDENCE, PRACTICE AND PROCEDURE

§1. Generally
The legislature has given the Commission the power to make rules and regulations, but it must follow the notice and comment rulemaking process in Chapter 536, RSMo.
AO-2021-0164 **30 MPSC 3d 494**

§1. Generally
The Commission cannot issue an order of general applicability. Such an order would be a "rule" as defined by Section 536.021(6), RSMo.
AO-2021-0164 **30 MPSC 3d 494**

§1. Generally
The Commission can only take the actions it is has been authorized by the state legislature to take. Consumers Council of Missouri provided no legal authority for the requested Commission action, other than its interpretation of Section 386.310, RSMo. The Commission disagreed with Consumers Council's interpretation and determined that it did not have authority to grant the motion requesting an order placing a moratorium on involuntary residential disconnections by water, electric, and gas corporations and a waiver of any late fees through at least March 31, 2021.
AO-2021-0164 **30 MPSC 3d 494**

§2. Jurisdiction and powers
The Office of the Public Counsel (OPC) moved for the production of certain documents from certain upstream owners of a utility subject to the Commission's jurisdiction. OPC expressly stated its request is made under the statutory authority of Section 386.450, RSMo (2016), and not the Commission's discovery rule, 20 CSR 4240-2.090. The Commission found that the statute is a broader grant of authority than the general right to discovery allowed under

Missouri's rules of civil procedure consistent with the Commission's past practice.
WR-2020-0275 **30 MPSC 3d 459**

§2. Jurisdiction and powers
Section 386.450, RSMo (2016) has no requirement that the subjects of the production request be parties to the case or for there to be a case at all.
WR-2020-0275 **30 MPSC 3d 459**

§2. Jurisdiction and powers
Section 386.450, RSMo (2016) has no requirement that the subjects of the production request be within the jurisdiction of the Commission. Nevertheless, the Commission found it had limited personal jurisdiction over the upstream owners based on the appearance of close and interwoven ownership and management ties.
WR-2020-0275 **30 MPSC 3d 459**

§2. Jurisdiction and powers
The Commission found the good cause requirement for the use of Section 386.450, RSMo (2016), to be met by the importance of the underlying information. The information sought would contribute to the evaluation of the utility's capital structure which is used in ratemaking. As just and reasonable rates are statutorily required by the Commission, it must appropriately understand the capital structure and thus, also the upstream capital structure to guard against double leveraging.
WR-2020-0275 **30 MPSC 3d 459**

§2. Jurisdiction and powers
The Commission cannot issue an order of general applicability. Such an order would be a "rule" as defined by Section 536.021(6), RSMo.
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§2. Jurisdiction and powers
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AO-2021-0164 **30 MPSC 3d 494**

§4. Presumption and burden of proof
An applicant seeking the Commission's approval to purchase the assets of a nonviable utility bears the burden of proof. The burden of proof is the preponderance of the evidence standard. In order to meet this standard, the applicant must convince the Commission it is "more likely than not" that its acquisition of utility assets will not be detrimental to the public. An acquisition incentive is defined as "[a] rate of return premium, debt acquisition adjustment, or both designed to incentivize the acquisition of a nonviable utility.
WA-2019-0185 **30 MPSC 3d 050**

§5. Admissibility
Where a party moved to compel discovery of non-redacted/un-redacted testimony of a witness in a proceeding involving a sister company of applicant before another state's public utility commission, the testimony in question would likely be irrelevant – and, thus, inadmissible – in the case in hand, as it concerns only the amount of contributions in aid of construction (CIAC) to be ascribed to the purchaser when its rates are set by the other state's public utility commission and is not relevant to acquisition premium or the

financial condition of the parent company, as alleged by movant.
WM-2020-0403 **30 MPSC 3d 438**

§6. Weight, effect and sufficiency
An applicant seeking the Commission's approval to purchase the assets of a nonviable utility bears the burden of proof. The burden of proof is the preponderance of the evidence standard. In order to meet this standard, the applicant must convince the Commission it is "more likely than not" that its acquisition of utility assets will not be detrimental to the public. An acquisition incentive is defined as "[a] rate of return premium, debt acquisition adjustment, or both designed to incentivize the acquisition of a nonviable utility.
WA-2019-0185 **30 MPSC 3d 050**

§6. Weight, effect and sufficiency
An applicant seeking the Commission's approval to purchase the assets of a nonviable utility must show that it is qualified to own and operate the nonviable utility's assets.
WA-2019-0185 **30 MPSC 3d 050**

§6. Weight, effect and sufficiency
The Commission found that increased rates on their own do not mean the transfer is detrimental to the public. Where opponents to an application for the acquisition of a utility who stood to obtain the acquisition contract for themselves provided estimates based only on repairs identified as needed by the Missouri Department of Natural Resources, and failed to address other system upgrades or replacements that may be needed to proactively maintain the systems to avoid future more costly repairs, the Commission found that the acquiring utility's evidence was more credible with regard to what repairs may be needed

than that put forth by the parties opposed to the transfer.
WA-2019-0185 **30 MPSC 3d 050**

§6. Weight, effect and sufficiency
The Commission found an applicant wishing to purchase the assets of a nonviable utility's preliminary estimates and planned improvements were reasonable because they were consistent with the improvements of other regulated water and sewer utilities.
WA-2019-0185 **30 MPSC 3d 050**

§6. Weight, effect and sufficiency
Where an applicant to purchase the assets of a nonviable utility has not met the criteria for an acquisition premium, opponents' argument that an acquisition premium will increase rates to the detriment of customers is moot.
WA-2019-0185 **30 MPSC 3d 050**

§6. Weight, effect and sufficiency
The Commission determined that the applicant to purchase the assets of a nonviable utility had not met its burden to show that the sale of the system "would be unlikely to occur without the probability of obtaining an acquisition incentive" where the evidence shows that the purchase by Osage Utility will take place regardless of the incentive, and where Osage Utility failed to provide necessary records related to the acquired water company's original costs.
WA-2019-0185 **30 MPSC 3d 050**

§6. Weight, effect and sufficiency
An applicant utility bears the burden to show that its requested fuel adjustment clause should continue.
ER-2019-0335 **30 MPSC 3d 198**

§6. Weight, effect and sufficiency
The Commission declined to change the fuel adjustment clause sharing percentages from 95/5 to 85/15 where opponent's evidence showed changing the sharing mechanism would provide more pressure on the applicant to operate at optimal efficiency, but failed to show that the 85/15 sharing percentages would improve the applicant's efficiencies.
ER-2019-0335 **30 MPSC 3d 198**

§6. Weight, effect and sufficiency
Any emergency action the Commission takes that has general applicability to an industry, such as the motion made by Consumers Council of Missouri, must be promulgated as an emergency rule under the provisions of Section 536.025, RSMo. Further, the Commission found that Consumers Council had not provided sufficient evidence that its proposed moratorium on customer disconnections was necessary to protect the public from an immediate danger, that such emergency action would be best calculated to assure fairness to all interested parties, or that the scope of the requested action was appropriately limited so that it did not cause additional harm.
AO-2021-0164 **30 MPSC 3d 494**

§11. Best and secondary evidence
Where a party moved to compel discovery of non-redacted/un-redacted testimony of a witness in a proceeding involving a sister company of applicant before another state's public utility commission, the testimony is not needed, as the financial statements of the parent company would provide the best evidence of the financial condition and strength of the parent company and its relationship to the financial health of applicant.
WM-2020-0403 **30 MPSC 3d 438**

§13. Documentary evidence
The Commission deferred to the Internal Revenue Service's (IRS's) interpretation of the Internal Revenue Code as the IRS is the agency charged with its enforcement.
WO-2020-0190 **30 MPSC 3d 177**

§13. Documentary evidence
In three prior Infrastructure System Replacement Surcharge (ISRS) cases, the Commission determined that no net operating loss (NOL) was shown, and that there would be no normalization violation in the treatment of Accumulated Deferred Income Taxes (ADIT) of the federal tax code due to the Commission's order. Subsequent to those three decisions the utility obtained a Private Letter Ruling (PLR) from the Internal Revenue Service (IRS). The IRS took a different position than the three prior Commission orders.

The PLR directs that for purposes of the ISRS all plant additions are included in the ADIT deduction but only plant additions other than repairs to plant are included in the NOL calculation as an offset to ADIT.
WO-2020-0190 **30 MPSC 3d 177**

§13. Documentary evidence
The Office of the Public Counsel (OPC) moved for the production of certain documents from certain upstream owners of a utility subject to the Commission's jurisdiction. OPC expressly stated its request is made under the statutory authority of Section 386.450, RSMo (2016), and not the Commission's discovery rule, 20 CSR 4240-2.090. The Commission found that the statute is a broader grant of authority than the general right to discovery allowed under Missouri's rules of civil procedure consistent with the Commission's past practice.
WR-2020-0275 **30 MPSC 3d 459**

§13. Documentary evidence
Section 386.450, RSMo (2016) has no requirement that the subjects of the production request be parties to the case or for there to be a case at all.
WR-2020-0275 **30 MPSC 3d 459**

§13. Documentary evidence
Section 386.450, RSMo (2016) has no requirement that the subjects of the production request be within the jurisdiction of the Commission. Nevertheless, the Commission found it had limited personal jurisdiction over the upstream owners based on the appearance of close and interwoven ownership and management ties.
WR-2020-0275 **30 MPSC 3d 459**

§13. Documentary evidence
The Commission found the good cause requirement for the use of Section 386.450, RSMo (2016), to be met by the importance of the underlying information. The information sought would contribute to the evaluation of the utility's capital structure which is used in ratemaking. As just and reasonable rates are statutorily required by the Commission, it must appropriately understand the capital structure and thus, also the upstream capital structure to guard against double leveraging.
WR-2020-0275 **30 MPSC 3d 459**

§18. Record and evidence in other proceedings
Where a party moved to compel discovery of non-redacted/un-redacted testimony of a witness in a proceeding involving a sister company of applicant before another state's public utility commission, the information sought may be obtained from applicant without obtaining the analysis, opinions, and conclusions of the witness about those financial statements and also imposes an unnecessary and

disproportionate burden on applicant by requiring applicant to facilitate movant's preparation of its case against it.
WM-2020-0403 **30 MPSC 3d 438**

§19. Records and books of utilities
An applicant to purchase the assets of a nonviable utility requesting an acquisition incentive for the acquisition of the assets of nonviable assets has the burden to provide records related to the original cost of the acquired company.
WA-2019-0185 **30 MPSC 3d 051**

§23. Notice and hearing
The requirement for a hearing is met when the opportunity for hearing is provided and no proper party requests the opportunity to present evidence. Citing *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Commission of the State of Missouri*, 776 S.W.2d 494 (Mo. App. W.D. 1989).
SA-2020-0132 **30 MPSC 3d 001**

§27. Finality and conclusiveness
The Commission found that it could correct three prior cases in the fourth case of a series of Infrastructure System Replacement Surcharge (ISRS) cases because Sections 393.1003.3 and 393.1006.6 (RSMo) provide that an ISRS is not final until reset at the next general rate case. As the utility had not yet had a general rate case to reset the ISRS, the Commission determined it could use the fourth case to address Internal Revenue Service (IRS) normalization violations collected from the first three cases.
WO-2020-0190 **30 MPSC 3d 177**

§29. Discovery
Where a party moved to compel discovery of non-redacted/un-redacted testimony of a witness in a proceeding involving a sister company of applicant before another

state's public utility commission, the information sought may be obtained from applicant without obtaining the analysis, opinions, and conclusions of the witness about those financial statements while also imposing an unnecessary and disproportionate burden on applicant by requiring applicant to facilitate movant's preparation of its case against it.
WM-2020-0403 **30 MPSC 3d 438**

§29. Discovery
Where a party moved to compel discovery of an appraisal report of a water and/or sewer system proposed to be acquired by a sister company of applicant in a proceeding before another state's public utility commission, the Missouri Public Service Commission held that there was no connection between the two cases other than both applicants being corporate siblings seeking to acquire water and/or sewer systems. With no other connections between the appraisals, the Commission denied the motion as a "fishing expedition."
WM-2020-0403 **30 MPSC 3d 439**

§29. Discovery
The Office of the Public Counsel (OPC) moved for the production of certain documents from certain upstream owners of a utility subject to the Commission's jurisdiction. OPC expressly stated its request is made under the statutory authority of Section 386.450, RSMo (2016), and not the Commission's discovery rule, 20 CSR 4240-2.090. The Commission found that the statute is a broader grant of authority than the general right to discovery allowed under Missouri's rules of civil procedure consistent with the Commission's past practice.
WR-2020-0275 **30 MPSC 3d 459**

§29. Discovery
Section 386.450, RSMo (2016) has no requirement that the subjects of the production request be parties to the case or for there to be a case at all.
WR-2020-0275 **30 MPSC 3d 459**

§29. Discovery
Section 386.450, RSMo (2016) has no requirement that the subjects of the production request be within the jurisdiction of the Commission. Nevertheless, the Commission found it had limited personal jurisdiction over the upstream owners based on the appearance of close and interwoven ownership and management ties.
WR-2020-0275 **30 MPSC 3d 459**

§29. Discovery
The Commission found the good cause requirement for the use of Section 386.450, RSMo (2016), to be met by the importance of the underlying information. The information sought would contribute to the evaluation of the utility's capital structure which is used in ratemaking. As just and reasonable rates are statutorily required by the Commission, it must appropriately understand the capital structure and thus, also the upstream capital structure to guard against double leveraging.
WR-2020-0275 **30 MPSC 3d 459**

§29. Discovery
The Office of the Public Counsel (OPC) requested discovery sanctions against a utility after specifically stating its request for certain documents fell not under the Commission's rules on discovery, but under Section 386.450, RSMo (2016), a statute outside the typical discovery procedures. By employing the statute and stating that its request is not under the Commission's discovery rules, the Commission

determined that sanctions under the discovery rules were not appropriate.
WR-2020-0275 **30 MPSC 3d 489**

EXPENSE

I. IN GENERAL
§1. Generally
§2. Obligation of the utility
§3. Financing practices
§4. Apportionment
§5. Valuation
§6. Accounting

II. JURISDICTION AND POWERS
§7. Jurisdiction and powers of the State Commission
§8. Jurisdiction and powers of the Federal Commissions
§9. Jurisdiction and powers of local authorities

III. EXPENSES OF PARTICULAR UTILITIES
§10. Electric and power
§11. Gas
§12. Heating
§13. Telecommunications
§14. Water
§15. Sewer

IV. ASCERTAINMENT OF EXPENSES
§16. Ascertainment of expenses generally
§17. Extraordinary and unusual expenses
§18. Comparisons in absence of evidence
§19. Future expenses
§20. Methods of estimating
§21. Intercorporate costs or dealings

V. REASONABLENESS OF EXPENSE
§22. Reasonableness generally
§23. Comparisons to test reasonableness
§24. Test year and true up

VI. PARTICULAR KIND OF EXPENSE
§25. Particular kinds of expenses generally
§26. Accidents and damages
§27. Additions and betterments

§28. Advertising, promotion and publicity
§29. Appraisal expense
§30. Auditing and bookkeeping
§31. Burglary loss
§32. Casualty losses and expenses
§33. Capital amortization
§34. Collection fees
§35. Construction
§36. Consolidation expense
§37. Depreciation
§38. Deficits under rate schedules
§39. Donations
§40. Dues
§41. Employee's pension and welfare
§42. Expenses relating to property not owned
§43. Expenses and losses of subsidiaries or other departments
§44. Expenses of non-utility business
§45. Expenses relating to unused property
§46. Expenses of rate proceedings
§47. Extensions
§48. Financing costs and interest
§49. Franchise and license expense
§50. Insurance and surety premiums
§51. Legal expense
§52. Loss from unprofitable business
§53. Losses in distribution
§54. Maintenance and depreciation; repairs and replacements
§55. Management, administration and financing fees
§56. Materials and supplies
§57. Purchases under contract
§58. Office expense
§59. Officers' expenses
§60. Political and lobbying expenditures
§61. Payments to affiliated interests
§62. Rentals
§63. Research
§64. Salaries and wages
§65. Savings in operation
§66. Securities redemption or amortization
§67. Taxes
§68. Uncollectible accounts
§69. Administrative expense
§70. Engineering and superintendence expense
§71. Interest expense
§72. Preliminary and organization expense
§73. Expenses incurred in acquisition of property
§74. Demand charges
§75. Expenses incidental to refunds for overcharges

§76. Matching revenue/expense/rate base
§77. Adjustments to test year levels
§78. Isolated adjustments
§79. Infrastructure system replacement surcharge (ISRS) eligible expense

EXPENSE

§22. Reasonableness generally

The Commission found an applicant wishing to purchase the assets of a nonviable utility's preliminary estimates and planned improvements were reasonable because they were consistent with the improvements of other regulated water and sewer utilities.
WA-2019-0185 **30 MPSC 3d 051**

§22. Reasonableness generally

In a rate case, a utility will not be authorized to recover imprudent improvements and financing charges.
WA-2019-0185 **30 MPSC 3d 051**

§48. Financing costs and interest

In a rate case, a utility will not be authorized to recover imprudent improvements and financing charges.
WA-2019-0185 **30 MPSC 3d 051**

§67. Taxes

The Commission found that it could correct three prior cases in the fourth case of a series of Infrastructure System Replacement Surcharge (ISRS) cases because Sections 393.1003.3 and 393.1006.6 (RSMo) provide that an ISRS is not final until reset at the next general rate case. As the utility had not yet had a general rate case to reset the ISRS, the Commission determined it could use the fourth case to address Internal Revenue Service (IRS) normalization violations collected from the first three cases.
WO-2020-0190 **30 MPSC 3d 178**

§67. Taxes
The Commission deferred to the Internal Revenue Service's (IRS's) interpretation of the Internal Revenue Code as the IRS is the agency charged with its enforcement.
WO-2020-0190 **30 MPSC 3d 178**

§67. Taxes
In three prior Infrastructure System Replacement Surcharge (ISRS) cases, the Commission determined that no net operating loss (NOL) was shown, and that there would be no normalization violation in the treatment of Accumulated Deferred Income Taxes (ADIT) of the federal tax code due to the Commission's order. Subsequent to those three decisions the utility obtained a Private Letter Ruling (PLR) from the Internal Revenue Service (IRS). The IRS took a different position than the three prior Commission orders.

The PLR directs that for purposes of the ISRS all plant additions are included in the ADIT deduction but only plant additions other than repairs to plant are included in the NOL calculation as an offset to ADIT.
WO-2020-0190 **30 MPSC 3d 178**

§67. Taxes
The tax normalization requirements of the IRS Code mandate that utility rates be set so that customers do not receive the tax benefit of accelerated depreciation deductions any faster than over the estimated straight-line book lives authorized for the utilities' assets. The Internal Revenue Service (IRS) agreed with the utility's net operating loss (NOL) theory that the NOL amount applicable to Infrastructure System Replacement Surcharge (ISRS) plant additions should be determined using the so-called with-and-without method.

The with-and-without method (applied only to plant additions other than repairs to plant) looks at the difference between straight line depreciation used for rates and accelerated depreciation used for income tax reporting and multiplies this amount by the income tax rate to determine the NOL.
WO-2020-0190 **30 MPSC 3d 178**

§67. Taxes
The Commission found that the term net operating loss (NOL) is defined as "the excess of operating expenses over revenues." An NOL results when a utility does not have enough taxable income to utilize all of the tax deductions to which it would otherwise be entitled. When this situation occurs, the amount of the unused deductions is referred to as an NOL and is booked to a deferred tax asset account.
WO-2020-0190 **30 MPSC 3d 179**

§73. Expenses incurred in acquisition of property
In a rate case, a utility will not be authorized to recover imprudent improvements and financing charges.
WA-2019-0185 **30 MPSC 3d 051**

§73. Expenses incurred in acquisition of property
The Commission found that increased rates on their own do not mean the transfer is detrimental to the public. Where opponents to an application for the acquisition of a utility who stood to obtain the acquisition contract for themselves provided estimates based only on repairs identified as needed by the Missouri Department of Natural Resources, and failed to address other system upgrades or replacements that may be needed to proactively maintain the systems to avoid future more costly repairs, the Commission found that the acquiring utility's evidence was more credible with regard to what repairs may be needed than that put forth by the parties opposed to the transfer.
WA-2019-0185 **30 MPSC 3d 051**

§79. Infrastructure system replacement surcharge (ISRS) eligible expense
The Commission found that it could correct three prior cases in the fourth case of a series of Infrastructure System Replacement Surcharge (ISRS) cases because Sections 393.1003.3 and 393.1006.6 (RSMo) provide that an ISRS is not final until reset at the next general rate case. As the utility had not yet had a general rate case to reset the ISRS, the Commission determined it could use the fourth case to address Internal Revenue Service (IRS) normalization violations collected from the first three cases.
WO-2020-0190 **30 MPSC 3d 178**

§79. Infrastructure system replacement surcharge (ISRS) eligible expense
The Commission deferred to the Internal Revenue Service's (IRS's) interpretation of the Internal Revenue Code as the IRS is the agency charged with its enforcement.
WO-2020-0190 **30 MPSC 3d 178**

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The PLR directs that for purposes of the ISRS all plant additions are included in the ADIT deduction but only plant additions other than repairs to plant are included in the NOL

calculation as an offset to ADIT.
WO-2020-0190 **30 MPSC 3d 178**

§79. Infrastructure system replacement surcharge (ISRS) eligible expense
The tax normalization requirements of the IRS Code mandate that utility rates be set so that customers do not receive the tax benefit of accelerated depreciation deductions any faster than over the estimated straight-line book lives authorized for the utilities' assets. The Internal Revenue Service (IRS) agreed with the utility's net operating loss (NOL) theory that the NOL amount applicable to Infrastructure System Replacement Surcharge (ISRS) plant additions should be determined using the so-called with-and-without method.

The with-and-without method (applied only to plant additions other than repairs to plant) looks at the difference between straight line depreciation used for rates and accelerated depreciation used for income tax reporting and multiplies this amount by the income tax rate to determine the NOL.
WO-2020-0190 **30 MPSC 3d 178**

§79. Infrastructure system replacement surcharge (ISRS) eligible expense
The Commission found that the term net operating loss (NOL) is defined as "the excess of operating expenses over revenues." An NOL results when a utility does not have enough taxable income to utilize all of the tax deductions to which it would otherwise be entitled. When this situation occurs, the amount of the unused deductions is referred to as an NOL and is booked to a deferred tax asset account.
WO-2020-0190 **30 MPSC 3d 179**

GAS

I. IN GENERAL
§1. Generally
§2. Obligation of the utility
§3. Certificate of convenience and necessity
§4. Abandonment or discontinuance
§5. Liability for damages
§6. Transfer, lease and sale

II. JURISDICTION AND POWERS
§7. Jurisdiction and powers of the State Commission
§8. Jurisdiction and powers of the Federal Commissions
§9. Jurisdiction and powers of local authorities

III. CONSTRUCTION AND EQUIPMENT
§10. Construction and equipment generally
§11. Leakage, shrinkage and waste
§12. Location
§13. Additions and betterments
§14. Extensions
§15. Maintenance
§16. Safety

IV. OPERATION
§17. Operation generally
§17.1. Purchased Gas Adjustment (PGA)
§17.2. Purchased Gas-incentive mechanism
§18. Rates
§19. Revenue
§20. Return
§21. Service
§22. Weatherization
§23. Valuation
§24. Accounting
§25. Apportionment
§26. Restriction of service
§27. Depreciation
§28. Discrimination
§29. Costs and expenses
§30. Reports, records and statements
§31. Interstate operation
§32. Financing practices
§33. Billing practices
§34. Accounting Authority orders
§35. Safety

V. JOINT OPERATIONS
§36. Joint operations generally
§37. Division of revenue
§38. Division of expenses
§39. Contracts
§40. Transportation
§41. Pipelines

VI. PARTICULAR KIND OF EXPENSES
§42. Particular kinds of expenses generally
§42.1. Infrastructure system replacement surcharge (ISRS) eligible expense
§43. Accidents and damages
§44. Additions and betterments
§45. Advertising, promotion and publicity
§46. Appraisal expense
§47. Auditing and bookkeeping
§48. Burglary loss
§49. Casualty losses and expenses
§50. Capital amortization
§51. Collection fees
§52. Construction
§53. Consolidation expense
§54. Depreciation
§55. Deficits under rate schedules
§56. Donations
§57. Dues
§58. Employee's pension and welfare
§59. Expenses relating to property not owned
§60. Expenses and losses of subsidiaries or other departments
§61. Expenses of non-utility business
§62. Expenses relating to unused property
§63. Expenses of rate proceedings
§64. Extensions
§65. Financing costs and interest
§66. Franchise and license expense
§67. Insurance and surety premiums
§68. Legal expense
§69. Loss from unprofitable business
§70. Losses in distribution
§71. Maintenance and depreciation; repairs and replacements
§72. Management, administration and financing fees
§73. Materials and supplies
§74. Purchases under contract
§75. Office expense
§76. Officers' expenses
§77. Political and lobbying expenditures

§78. Payments to affiliated interests
§79. Rentals
§80. Research
§81. Salaries and wages
§82. Savings in operation
§83. Securities redemption or amortization
§84. Taxes
§85. Uncollectible accounts
§86. Administrative expense
§87. Engineering and superintendence expense
§88. Interest expense
§89. Preliminary and organization expense
§90. Expenses incurred in acquisition of property
§91. Demand charges
§92. Expenses incidental to refunds for overcharges
§93. Infrastructure system replacement surcharge (ISRS) eligible expense

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GAS

§3. Certificate of convenience and necessity

The Commission issued an order granting a certificate of convenience and necessity to install, own, operate, control, manage, and maintain a gas plant in Lafayette County, Missouri subject to the condition that the Commission will reserve all rate making determinations regarding the revenue impact of the service area extension request until the company's next general rate making proceeding.
GA-2020-0235 **30 MPSC 3d 117**

§3. Certificate of convenience and necessity

The Commission issued an order granting a certificate of convenience and necessity to install, own, operate, control, manage, and maintain a gas plant in Lafayette County, Missouri subject to the condition that the company file an updated tariff sheet to incorporate the specified new territory.
GA-2020-0235 **30 MPSC 3d 118**

§3. Certificate of convenience and necessity
The Commission granted an area Certificate of Convenience and Necessity (CCN) to a gas distribution utility after finding that the cost of the planned upgrades result in a benefit to customers of increased pressure and capacity.
GA-2020-0251 **30 MPSC 3d 123**

§3. Certificate of convenience and necessity
The Commission employed the Tartan criteria to evaluate applications for Certificates of Convenience and Necessity (CCNs). The Tartan criteria is as follows: (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.
GA-2020-0251 **30 MPSC 3d 123**

§3. Certificate of convenience and necessity
The Commission has stated five criteria that it will use to determine whether an applicant qualifies for a certificate of convenience and necessity: 1) There must be a need for the service; 2) The applicant must be qualified to provide the proposed service; 3) The applicant must have the financial ability to provide the service; 4) The applicant’s proposal must be economically feasible; and 5) The service must promote the public interest.
GA-2020-0236 **30 MPSC 3d 136**

§3. Certificate of convenience and necessity
The Commission has stated five criteria that it will use to determine whether an applicant qualifies for a certificate of convenience and necessity: 1) There must be a need for the service; 2) The applicant must be qualified to provide the proposed service; 3) The applicant must have the financial ability to provide the service; 4) The applicant’s proposal

must be economically feasible; and 5) The service must promote the public interest.
GA-2021-0010 **30 MPSC 3d 433**

§7. Jurisdiction and powers of the State Commission
The Commission may waive compliance with any of the requirements of 20 CSR 4240-40.030, with appropriate limitations and conditions, upon a showing that gas safety is not compromised, pursuant to the waiver provisions of 20 CSR 4240-40.030(18).
GE-2020-0373 **30 MPSC 3d 141**

§7. Jurisdiction and powers of the State Commission
The Commission determined that waiver of Commission Rules 20 CSR 4240-40.030(9)(Q)1, 20 CSR 2 4240-40.030(13)(M)1, 20 CSR 4240-40.030(13)(M)2.A, and 20 CSR 4240-40.030(13)(M)2.B, authorized under 20 CSR 4240-40.030(18), are subject to the provisions of 49 U.S.C §60118(d), which requires at least 60 days' written notice to the U.S. Secretary of Transportation before the effective date of a state commission approving waiver of a requirement under federal gas safety regulations.
GE-2020-0373 **30 MPSC 3d 151**

§8. Jurisdiction and powers of the Federal Commissions
The Commission determined that waiver of Commission Rules 20 CSR 4240-40.030(9)(Q)1, 20 CSR 2 4240-40.030(13)(M)1, 20 CSR 4240-40.030(13)(M)2.A, and 20 CSR 4240-40.030(13)(M)2.B, authorized under 20 CSR 4240-40.030(18), are subject to the provisions of 49 U.S.C §60118(d), which requires at least 60 days' written notice to the U.S. Secretary of Transportation before the effective date of a state commission approving waiver of a requirement under federal gas safety regulations.
GE-2020-0373 **30 MPSC 3d 151**

§8. Jurisdiction and powers of the Federal Commissions
Waiver of Commission rules 20 CSR 4240-40.030(9)(Q)1, 20 CSR 2 4240-40.030(13)(M)1, 20 CSR 4240-40.030(13)(M)2.A, and 20 CSR 4240-40.030(13)(M)2.B, is subject to federal law requiring at least 60 days' written notice to the U.S. Secretary of Transportation.
GE-2020-0373 **30 MPSC 3d 152**

§13. Additions and betterments
The Commission may waive compliance with any of the requirements of 20 CSR 4240-40.030, with appropriate limitations and conditions, upon a showing that gas safety is not compromised, pursuant to the waiver provisions of 20 CSR 4240-40.030(18).
GE-2020-0373 **30 MPSC 3d 141**

§13. Additions and betterments
The Commission determined that temporary waiver of compliance with the requirements for replacement of unprotected steel lines under 20 CSR 4240-40.030(15)(C), to adapt to the disruptions caused by COVID-19, would not compromise gas safety with appropriate limitations and conditions. However, the company was required to complete timely replacements whenever possible, and to conduct weekly odorant intensity tests in affected areas and provide notice of replacement delays to customers.
GE-2020-0373 **30 MPSC 3d 141**

§13. Additions and betterments
The Commission found that a temporary waiver of compliance with the mandated timing of replacement of cast iron gas mains under Commission orders pursuant to Commission Rule 20 CSR 4240-40.030(15)(D), to adapt to the disruptions caused by COVID-19, would not compromise gas safety when granted with certain conditions.
GE-2020-0373 **30 MPSC 3d 141**

§13. Additions and betterments
The Commission determined that where an established Commission-approved replacement program for unprotected steel transmission lines, feeder lines and mains exists is in effect under 20 CSR 4240-40.030(15)(E), it is not appropriate for the Commission to waive compliance with that rule in order to defer the replacement of recently discovered segments of unprotected steel gas main.
GE-2020-0373 **30 MPSC 3d 142**

§13. Additions and betterments
The Commission determined that waiver of Commission Rules 20 CSR 4240-40.030(9)(Q)1, 20 CSR 2 4240-40.030(13)(M)1, 20 CSR 4240-40.030(13)(M)2.A, and 20 CSR 4240-40.030(13)(M)2.B, authorized under 20 CSR 4240-40.030(18), are subject to the provisions of 49 U.S.C §60118(d), which requires at least 60 days' written notice to the U.S. Secretary of Transportation before the effective date of a state commission approving waiver of a requirement under federal gas safety regulations.
GE-2020-0373 **30 MPSC 3d 151**

§13. Additions and betterments
The Commission determined that the temporary waiver of compliance with 20 CSR 4240-40.030(9)(Q)1, regarding the frequency of inspections for atmospheric corrosion, to adapt to the disruptions caused by COVID-19, would not compromise gas safety when granted with certain conditions restricting the time and place of waiver provisions, requiring additional documentation and public notice, and the conducting of periodic odorant intensity tests.
GE-2020-0373 **30 MPSC 3d 151**

§13. Additions and betterments
The Commission determined that the temporary waiver of compliance with 20 CSR 4240-40.030(13)(M) requires leakage surveys, regarding leakage surveys, to adapt to the disruptions caused by COVID-19, would not compromise gas safety when granted with certain conditions restricting the time and place of waiver provisions, requiring additional documentation and public notice, and the conducting of periodic odorant intensity tests.
GE-2020-0373 **30 MPSC 3d 151**

§13. Additions and betterments
Waiver of Commission rules 20 CSR 4240-40.030(9)(Q)1, 20 CSR 2 4240-40.030(13)(M)1, 20 CSR 4240-40.030(13)(M)2.A, and 20 CSR 4240-40.030(13)(M)2.B, is subject to federal law requiring at least 60 days' written notice to the U.S. Secretary of Transportation.
GE-2020-0373 **30 MPSC 3d 152**

§16. Safety
The Commission may waive compliance with any of the requirements of 20 CSR 4240-40.030, with appropriate limitations and conditions, upon a showing that gas safety is not compromised, pursuant to the waiver provisions of 20 CSR 4240-40.030(18).
GE-2020-0373 **30 MPSC 3d 141**

§16. Safety
The Commission determined that temporary waiver of compliance with the requirements for replacement of unprotected steel lines under 20 CSR 4240-40.030(15)(C), to adapt to the disruptions caused by COVID-19, would not compromise gas safety with appropriate limitations and conditions. However, the company was required to complete timely replacements whenever possible, and to conduct

weekly odorant intensity tests in affected areas and provide notice of replacement delays to customers.
GE-2020-0373 **30 MPSC 3d 141**

§16. Safety
The Commission found that a temporary waiver of compliance with the mandated timing of replacement of cast iron gas mains under Commission orders pursuant to Commission Rule 20 CSR 4240-40.030(15)(D), to adapt to the disruptions caused by COVID-19, would not compromise gas safety when granted with certain conditions.
GE-2020-0373 **30 MPSC 3d 141**

§16. Safety
The Commission determined that where an established Commission-approved replacement program for unprotected steel transmission lines, feeder lines and mains exists is in effect under 20 CSR 4240-40.030(15)(E), it is not appropriate for the Commission to waive compliance with that rule in order to defer the replacement of recently discovered segments of unprotected steel gas main.
GE-2020-0373 **30 MPSC 3d 142**

§16. Safety
The Commission determined that waiver of Commission Rules 20 CSR 4240-40.030(9)(Q)1, 20 CSR 2 4240-40.030(13)(M)1, 20 CSR 4240-40.030(13)(M)2.A, and 20 CSR 4240-40.030(13)(M)2.B, authorized under 20 CSR 4240-40.030(18), are subject to the provisions of 49 U.S.C §60118(d), which requires at least 60 days' written notice to the U.S. Secretary of Transportation before the effective date of a state commission approving waiver of a requirement under federal gas safety regulations.
GE-2020-0373 **30 MPSC 3d 151**

§16. Safety
The Commission determined that the temporary waiver of compliance with 20 CSR 4240-40.030(9)(Q)1, regarding the frequency of inspections for atmospheric corrosion, to adapt to the disruptions caused by COVID-19, would not compromise gas safety when granted with certain conditions restricting the time and place of waiver provisions, requiring additional documentation and public notice, and the conducting of periodic odorant intensity tests.
GE-2020-0373 **30 MPSC 3d 151**

§16. Safety
The Commission determined that the temporary waiver of compliance with 20 CSR 4240-40.030(13)(M) requires leakage surveys, regarding leakage surveys, to adapt to the disruptions caused by COVID-19, would not compromise gas safety when granted with certain conditions restricting the time and place of waiver provisions, requiring additional documentation and public notice, and the conducting of periodic odorant intensity tests.
GE-2020-0373 **30 MPSC 3d 151**

§16. Safety
Waiver of Commission rules 20 CSR 4240-40.030(9)(Q)1, 20 CSR 2 4240-40.030(13)(M)1, 20 CSR 4240-40.030(13)(M)2.A, and 20 CSR 4240-40.030(13)(M)2.B, is subject to federal law requiring at least 60 days' written notice to the U.S. Secretary of Transportation.
GE-2020-0373 **30 MPSC 3d 152**

§17. Operation generally
The Commission issued an order granting a certificate of convenience and necessity to install, own, operate, control, manage, and maintain a gas plant in Lafayette County, Missouri subject to the condition that the company file an

updated tariff sheet to incorporate the specified new territory.
GA-2020-0235 **30 MPSC 3d 118**

§18. Rates
The Commission issued an order granting a certificate of convenience and necessity to install, own, operate, control, manage, and maintain a gas plant in Lafayette County, Missouri subject to the condition that the Commission will reserve all rate making determinations regarding the revenue impact of the service area extension request until the company's next general rate making proceeding.
GA-2020-0235 **30 MPSC 3d 117**

§35. Safety
The Commission may waive compliance with any of the requirements of 20 CSR 4240-40.030, with appropriate limitations and conditions, upon a showing that gas safety is not compromised, pursuant to the waiver provisions of 20 CSR 4240-40.030(18).
GE-2020-0373 **30 MPSC 3d 141**

§35. Safety
The Commission determined that temporary waiver of compliance with the requirements for replacement of unprotected steel lines under 20 CSR 4240-40.030(15)(C), to adapt to the disruptions caused by COVID-19, would not compromise gas safety with appropriate limitations and conditions. However, the company was required to complete timely replacements whenever possible, and to conduct weekly odorant intensity tests in affected areas and provide notice of replacement delays to customers.
GE-2020-0373 **30 MPSC 3d 141**

§35. Safety
The Commission found that a temporary waiver of compliance with the mandated timing of replacement of cast

iron gas mains under Commission orders pursuant to Commission Rule 20 CSR 4240-40.030(15)(D), to adapt to the disruptions caused by COVID-19, would not compromise gas safety when granted with certain conditions.
GE-2020-0373 **30 MPSC 3d 141**

§35. Safety
The Commission determined that where an established Commission-approved replacement program for unprotected steel transmission lines, feeder lines and mains exists is in effect under 20 CSR 4240-40.030(15)(E), it is not appropriate for the Commission to waive compliance with that rule in order to defer the replacement of recently discovered segments of unprotected steel gas main.
GE-2020-0373 **30 MPSC 3d 142**

§35. Safety
The Commission determined that waiver of Commission Rules 20 CSR 4240-40.030(9)(Q)1, 20 CSR 2 4240-40.030(13)(M)1, 20 CSR 4240-40.030(13)(M)2.A, and 20 CSR 4240-40.030(13)(M)2.B, authorized under 20 CSR 4240-40.030(18), are subject to the provisions of 49 U.S.C §60118(d), which requires at least 60 days' written notice to the U.S. Secretary of Transportation before the effective date of a state commission approving waiver of a requirement under federal gas safety regulations.
GE-2020-0373 **30 MPSC 3d 151**

§35. Safety
The Commission determined that the temporary waiver of compliance with 20 CSR 4240-40.030(9)(Q)1, regarding the frequency of inspections for atmospheric corrosion, to adapt to the disruptions caused by COVID-19, would not compromise gas safety when granted with certain conditions restricting the time and place of waiver provisions, requiring

additional documentation and public notice, and the conducting of periodic odorant intensity tests.
GE-2020-0373 **30 MPSC 3d 151**

§35. Safety
The Commission determined that the temporary waiver of compliance with 20 CSR 4240-40.030(13)(M) requires leakage surveys, regarding leakage surveys, to adapt to the disruptions caused by COVID-19, would not compromise gas safety when granted with certain conditions restricting the time and place of waiver provisions, requiring additional documentation and public notice, and the conducting of periodic odorant intensity tests.
GE-2020-0373 **30 MPSC 3d 151**

§35. Safety
Waiver of Commission rules 20 CSR 4240-40.030(9)(Q)1, 20 CSR 2 4240-40.030(13)(M)1, 20 CSR 4240-40.030(13)(M)2.A, and 20 CSR 4240-40.030(13)(M)2.B, is subject to federal law requiring at least 60 days' written notice to the U.S. Secretary of Transportation.
GE-2020-0373 **30 MPSC 3d 152**

MANUFACTURED HOUSING

I. IN GENERAL
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§2. Obligation of the manufacturers and dealers
§3. Jurisdiction and powers of Federal authorities
§4. Jurisdiction and powers of the State Commission
§5. Reports, records and statements
II. WHEN A PERMIT IS REQUIRED
§6. When a permit is required generally
§7. Operations and construction

III. GRANT OR REFUSAL OF A PERMIT
§8. Grant or refusal generally

§9. Restrictions or conditions
§10. Who may possess
§11. Public safety

IV. OPERATION, TRANSFER, REVOCATION OR CANCELLATION
§12. Operations under the permit generally
§13. Duration of the permit
§14. Modification and amendment of the permit generally
§15. Transfer, mortgage or lease generally
§16. Revocation, cancellation and forfeiture generally
§17. Acts or omissions justifying revocation or forfeiture
§18. Necessity of action by the Commission
§19. Penalties

MANUFACTURED HOUSING

No headnotes in this volume involved the question of Manufactured Housing.

PUBLIC UTILITIES

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§3. Functions and powers
§4. Termination of status
§5. Obligation of the utility

II. JURISDICTION AND POWERS
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§7. Jurisdiction and powers of the State Commission
§8. Jurisdiction and powers of the Federal Commissions
§9. Jurisdiction and powers of local authorities

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PUBLIC UTILITIES

§1. Generally

The Commission established the assessment amount for fiscal year 2021.
AO-2020-0402 **30 MPSC 3d 161**

§7. Jurisdiction and powers of the State Commission

The Commission traditionally determines if a company is qualified to become a public utility by analyzing the Tartan factors.
WA-2019-0185 **30 MPSC 3d 051**

§7. Jurisdiction and powers of the State Commission

The Commission's powers are not unlimited. The Commission cannot deny the owners of a utility their right to sell their property unless the Commission finds the sale would be detrimental to the public interest. If the sale is not detrimental to the public interest, then the Commission has no authority to deny the transaction.
WA-2019-0299 **30 MPSC 3d 404**

§7. Jurisdiction and powers of the State Commission
The Commission cannot issue an order of general applicability. Such an order would be a “rule” as defined by Section 536.021(6), RSMo.
AO-2021-0164 **30 MPSC 3d 495**

§7. Jurisdiction and powers of the State Commission
The Commission found it cannot promulgate or repeal a rule by issuing an order. Further, the Commission found that an administrative rule that is adopted in violation of the notice and comment procedures of the state Administrative Procedures Act is void. Thus, in order to take the action requested by Consumers Council of Missouri, the Commission would need to promulgate an emergency rule under Section 536.025, RSMo.
AO-2021-0164 **30 MPSC 3d 495**

§13. Acquisition of public utility property
An applicant seeking the Commission’s approval to purchase the assets of a nonviable utility must show that it is qualified to own and operate the nonviable utility’s assets.
WA-2019-0185 **30 MPSC 3d 051**

§13. Acquisition of public utility property
“[N]ot detrimental to the public interest." means there is no net detriment after considering all of the benefits and all of the detriments, including the risk of increased rates.
WA-2019-0185 **30 MPSC 3d 051**

§13. Acquisition of public utility property
An applicant seeking the Commission’s approval to purchase the assets of a nonviable utility bears the burden of proof. The burden of proof is the preponderance of the evidence standard. In order to meet this standard, the applicant must convince the Commission it is “more likely than not” that its acquisition of utility assets will not be

detrimental to the public. An acquisition incentive is defined as "[a] rate of return premium, debt acquisition adjustment, or both designed to incentivize the acquisition of a nonviable utility.
WA-2019-0185 **30 MPSC 3d 051**

§13. Acquisition of public utility property
The acquisition incentive rule, 20 CSR 4240-10.085, sets out the criteria for approval of an acquisition incentive. Section (2) of the acquisition incentive rule requires an application for the incentive to "be filed at the beginning of a case seeking authority" to purchase or sell the assets. Section (2) also requires the Commission to grant the request if the Commission finds the request for the incentive to be in the public interest.
WA-2019-0185 **30 MPSC 3d 052**

§13. Acquisition of public utility property
The Commission's powers are not unlimited. The Commission cannot deny the owners of a utility their right to sell their property unless the Commission finds the sale would be detrimental to the public interest. If the sale is not detrimental to the public interest, then the Commission has no authority to deny the transaction.
WA-2019-0299 **30 MPSC 3d 404**

§16. Property sold or leased to a public utility
An applicant seeking the Commission's approval to purchase the assets of a nonviable utility bears the burden of proof. The burden of proof is the preponderance of the evidence standard. In order to meet this standard, the applicant must convince the Commission it is "more likely than not" that its acquisition of utility assets will not be detrimental to the public. An acquisition incentive is defined as "[a] rate of return premium, debt acquisition adjustment,

or both designed to incentivize the acquisition of a nonviable utility.
WA-2019-0185 **30 MPSC 3d 051**

§16. Property sold or leased to a public utility
The acquisition incentive rule, 20 CSR 4240-10.085, sets out the criteria for approval of an acquisition incentive. Section (2) of the acquisition incentive rule requires an application for the incentive to "be filed at the beginning of a case seeking authority" to purchase or sell the assets. Section (2) also requires the Commission to grant the request if the Commission finds the request for the incentive to be in the public interest.
WA-2019-0185 **30 MPSC 3d 052**

RATES

I. JURISDICTION AND POWERS
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§3. Jurisdiction and powers of the State Commission
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§5. Jurisdiction and powers of local authorities
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§16. Comparisons
§17. Competition
§18. Consolidation or sale
§19. Contract or franchise rate
§20. Costs and expenses

§21. Discrimination, partiality, or unfairness
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§23. Efficiency of operation and management
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§26. Future prospects
§27. Intercorporate relations
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§123. Rate design, class cost of service for telecommunications utilities
§124. Rate design, class cost of service for heating utilities

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RATES

§3. Jurisdiction and Powers of the State Commission

The Commission relied on the recommendation of the Commission's Staff and the uncontested Disposition Agreement to support the requested consolidation of various service areas into a single rate. The Commission noted that a comparison of the rate increases between consolidated and unconsolidated showed customer savings in the vast majority of the service areas when consolidated.
WR-2020-0053 **30 MPSC 3d 102**

§3. Jurisdiction and Powers of the State Commission

Decided at the beginning of the pandemic, the Commission accepted the utility's voluntary offer to delay the effective date of a rate increase.
WR-2020-0053 **30 MPSC 3d 102**

§3. Jurisdiction and Powers of the State Commission
The Commission found the good cause requirement for the use of Section 386.450, RSMo (2016), to be met by the importance of the underlying information. The information sought would contribute to the evaluation of the utility's capital structure which is used in ratemaking. As just and reasonable rates are statutorily required by the Commission, it must appropriately understand the capital structure and thus, also the upstream capital structure to guard against double leveraging.
WR-2020-0275 **30 MPSC 3d 460**

§8. Reasonableness generally
In a rate case, a utility will not be authorized to recover imprudent improvements and financing charges.
WA-2019-0185 **30 MPSC 3d 052**

§16. Comparisons
The Commission relied on the recommendation of the Commission's Staff and the uncontested Disposition Agreement to support the requested consolidation of various service areas into a single rate. The Commission noted that a comparison of the rate increases between consolidated and unconsolidated showed customer savings in the vast majority of the service areas when consolidated.
WR-2020-0053 **30 MPSC 3d 102**

§22. Economic conditions
Decided at the beginning of the pandemic, the Commission accepted the utility's voluntary offer to delay the effective date of a rate increase.
WR-2020-0053 **30 MPSC 3d 102**

§23. Efficiency of operation and management
In a rate case, a utility will not be authorized to recover imprudent improvements and financing charges.
WA-2019-0185 **30 MPSC 3d 052**

§72. Effective date
Decided at the beginning of the pandemic, the Commission accepted the utility's voluntary offer to delay the effective date of a rate increase.
WR-2020-0053 **30 MPSC 3d 102**

§101. Fuel clauses
An applicant utility bears the burden to show that its requested fuel adjustment clause should continue.
ER-2019-0335 **30 MPSC 3d 198**

§101. Fuel clauses
Several parties filed motions to clarify the Commission's Report and Order. Staff's motion noted that the Commission's Report and Order determined that the Fuel Adjustment Clause transmission percentages of 34% for the Southwest Power Pool and 50% for the Midcontinent Independent System Operator, which Staff supported, were inconsistent with Staff's trued-up base factor, which the Commission adopted. So the Commission amended its Report and Order to resolve this inconsistency.
ER-2019-0374 **30 MPSC 3d 213**

§101. Fuel clauses
Public Counsel's claim that the legislature has provided guidance on the appropriate incentive mechanism sharing percentages by including 15 percent of capital investments in the plant in service statute is also not persuasive. The legislature's creation of an unrelated sharing mechanism in

another utility statute does not imply the legislature intends those percentages to carry over to the FAC.
ER-2019-0374 **30 MPSC 3d 213**

§101. Fuel clauses

The Commission found that the 95/5 sharing ratio provides Empire sufficient incentive to operate at optimal efficiency and still provides an opportunity for Empire to earn a fair return on its investment. The evidence in this case also showed that Empire continues to operate efficiently.
ER-2019-0374 **30 MPSC 3d 213**

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SECURITY ISSUES

§69. Financing methods and practices generally

In a rate case, a utility will not be authorized to recover imprudent improvements and financing charges.
WA-2019-0185 **30 MPSC 3d 052**

§71. Financing expense

In a rate case, a utility will not be authorized to recover imprudent improvements and financing charges.
WA-2019-0185 **30 MPSC 3d 052**

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§46. Connections, instruments and equipment in general
§47. Duty to install, own and maintain
§48. Protection, location and liability for damage
§49. Restriction and control of connections, instruments and equipment

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SERVICE

§4. Abandonment, discontinuance and refusal of service

Due to COVID-19 pandemic "state of emergency" government declarations, the Commission permitted the utility to temporarily suspend disconnections and the accumulation of interest and late fees related to non-payment for all but its largest business customers. The Commission also permitted the utility to offer customers flexible payment arrangements and to work with commercial and industrial customers on payment arrangements as needed on a case-by-case basis. Utility reports that these actions have substantially increased arrearages and that arrearages will continue to rise, with significantly higher bad debt expense as a result.
EO-2020-0383 **30 MPSC 3d 131**

§6. Restoration or continuation of service

Commission Rule 20 CSR 4240-13.030(5) provides that, in

lieu of a deposit, a utility may accept a written guarantee as a requirement before restoring service.
EC-2020-0183 **30 MPSC 3d 446**

SEWER

I. IN GENERAL
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§7. Jurisdiction and powers of the State Commission
§8. Jurisdiction and powers of local authorities
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§18. Depreciation
§19. Discrimination
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§24. Abandonment or discontinuance
§25. Reports, records and statements
§26. Financing practices
§27. Security issues
§28. Rules and regulations
§29. Billing practices
§30. Eminent domain
§31. Accounting Authority orders

SEWER

§2. Certificate of convenience and necessity
The Commission granted Missouri-American Water Company a certificate of convenience and necessity to operate a sewer system in the Clinton Estates service area in Clinton County, Missouri.
SA-2020-0132 **30 MPSC 3d 001**

§2. Certificate of convenience and necessity
The Commission employed the Tartan criteria to evaluate applications for Certificates of Convenience and Necessity (CCNs). The Tartan criteria is as follows: (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.
WM-2020-0174 **30 MPSC 3d 166**

§2. Certificate of convenience and necessity
The Commission found the standard applicable to the sale of a utility of “not detrimental to the public interest” means there is no net detriment after considering all of the benefits and all of the detriments. There must be a balancing of all the benefits and detriments to determine if the transfer as a whole would be detrimental to the public.
WA-2019-0299 **30 MPSC 3d 404**

§2. Certificate of convenience and necessity
The Commission may approve the transfer of utility assets as long as that transfer is not shown to be “detrimental to the public interest.” Section 393.190.
WM-2020-0282 **30 MPSC 3d 471**

§2. Certificate of convenience and necessity
The Commission may grant a water corporation or sewer corporation a certificate of convenience and necessity after determining that such construction and operation are either "necessary or convenient for the public service." Section 393.170.3.
WM-2020-0282 **30 MPSC 3d 471**

§4. Transfer, lease and sale
The Commission determined that it is in the public's interest for Liberty Water to provide sewer service to Savers Farm in Cape Girardeau County.
SA-2020-0067 **30 MPSC 3d 041**

§4. Transfer, lease and sale
In evaluating the sale of a regulated utility's assets, the Commission can only disapprove the transaction if it is detrimental to the public interest.
WM-2020-0174 **30 MPSC 3d 167**

§4. Transfer, lease and sale
The Commission found the standard applicable to the sale of a utility of "not detrimental to the public interest" means there is no net detriment after considering all of the benefits and all of the detriments. There must be a balancing of all the benefits and detriments to determine if the transfer as a whole would be detrimental to the public.
WA-2019-0299 **30 MPSC 3d 404**

§4. Transfer, lease and sale
The Commission's powers are not unlimited. The Commission cannot deny the owners of a utility their right to sell their property unless the Commission finds the sale would be detrimental to the public interest. If the sale is not detrimental to the public interest, then the Commission has

no authority to deny the transaction.
WA-2019-0299 **30 MPSC 3d 404**

§4. Transfer, lease and sale
The Commission may approve the transfer of utility assets as long as that transfer is not shown to be "detrimental to the public interest." Section 393.190.
WM-2020-0282 **30 MPSC 3d 471**

§7. Jurisdiction and Powers of the State Commission
The Commission's powers are not unlimited. The Commission cannot deny the owners of a utility their right to sell their property unless the Commission finds the sale would be detrimental to the public interest. If the sale is not detrimental to the public interest, then the Commission has no authority to deny the transaction.
WA-2019-0299 **30 MPSC 3d 404**

§7. Jurisdiction and Powers of the State Commission
The Commission may approve the transfer of utility assets as long as that transfer is not shown to be "detrimental to the public interest." Section 393.190.
WM-2020-0282 **30 MPSC 3d 471**

§7. Jurisdiction and Powers of the State Commission
The Commission may grant a water corporation or sewer corporation a certificate of convenience and necessity after determining that such construction and operation are either "necessary or convenient for the public service." Section 393.170.3.
WM-2020-0282 **30 MPSC 3d 471**

§18. Depreciation
The Saver Farm's wastewater system was designed and constructed to serve approximately twice the number of residential customers currently being served. in a future rate

proceeding Staff may propose a capacity adjustment to certain wastewater system components to reduce the plant balance level and depreciation expense to be included in rate calculations.
SA-2020-0067 **30 MPSC 3d 041**

§18. Depreciation

The sales agreement for all of Central Rivers' sewer assets allows for an adjustment of the purchase price in the event that the Elm Hills discovers information establishing a lower net book value for the assets than Central Rivers represented. Elm Hills has not requested an acquisition adjustment and has the financial capacity to purchase and operate the Central Rivers systems at the agreed to purchase price. Elm Hills proposes to adopt Central Rivers' existing rates. Depreciation rates for Elm Hills and Central Rivers are similar.
SM-2020-0146 **30 MPSC 3d 109**

STEAM

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II. JURISDICTION AND POWERS
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§47. Physical connection
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STEAM

No headnotes in this volume involved the question of Steam.

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§25. Additions and betterments
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§40. Classification of company or service as noncompetitive, transitionally , or competitive
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§46.1 Interconnection Agreements-Arbitrated
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TELECOMMUNICATIONS

No headnotes in this volume involved the question of Telecommunications.

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§4. Obligation of the utility

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VALUATION

§13. Ascertainment of value generally

The Commission found that increased rates on their own do not mean the transfer is detrimental to the public. Where opponents to an application for the acquisition of a utility who

stood to obtain the acquisition contract for themselves provided estimates based only on repairs identified as needed by the Missouri Department of Natural Resources, and failed to address other system upgrades or replacements that may be needed to proactively maintain the systems to avoid future more costly repairs, the Commission found that the acquiring utility's evidence was more credible with regard to what repairs may be needed than that put forth by the parties opposed to the transfer.
WA-2019-0185 **30 MPSC 3d 052**

§13. Ascertainment of value generally
The Commission found an applicant wishing to purchase the assets of a nonviable utility's preliminary estimates and planned improvements were reasonable because they were consistent with the improvements of other regulated water and sewer utilities.
WA-2019-0185 **30 MPSC 3d 052**

§13. Ascertainment of value generally
Where the company had made, and would continue to make, substantial capital improvements to most of its water and sewer systems, the Commission required the use of depreciation rates for water and sewer utility plant accounts recommended by the Staff of the Commission so the new assets could be properly evaluated in the future.
WM-2020-0282 **30 MPSC 3d 472**

§15. Purchase or sale price
The Commission found that increased rates on their own do not mean the transfer is detrimental to the public. Where opponents to an application for the acquisition of a utility who stood to obtain the acquisition contract for themselves provided estimates based only on repairs identified as needed by the Missouri Department of Natural Resources, and failed to address other system upgrades or

replacements that may be needed to proactively maintain the systems to avoid future more costly repairs, the Commission found that the acquiring utility's evidence was more credible with regard to what repairs may be needed than that put forth by the parties opposed to the transfer.
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§15. Purchase or sale price
The Commission found an applicant wishing to purchase the assets of a nonviable utility's preliminary estimates and planned improvements were reasonable because they were consistent with the improvements of other regulated water and sewer utilities.
WA-2019-0185 **30 MPSC 3d 052**

§68. Depreciation generally
Where the company had made, and would continue to make, substantial capital improvements to most of its water and sewer systems, the Commission required the use of depreciation rates for water and sewer utility plant accounts recommended by the Staff of the Commission so the new assets could be properly evaluated in the future.
WM-2020-0282 **30 MPSC 3d 472**

§78. Water
Where the company had made, and would continue to make, substantial capital improvements to most of its water and sewer systems, the Commission required the use of depreciation rates for water and sewer utility plant accounts recommended by the Staff of the Commission so the new assets could be properly evaluated in the future.
WM-2020-0282 **30 MPSC 3d 472**

§79. Sewer
Where the company had made, and would continue to make, substantial capital improvements to most of its water and

sewer systems, the Commission required the use of depreciation rates for water and sewer utility plant accounts recommended by the Staff of the Commission so the new assets could be properly evaluated in the future.
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WATER

§2. Certificate of convenience and necessity
The Commission employed the Tartan criteria to evaluate applications for Certificates of Convenience and Necessity (CCNs). The Tartan criteria is as follows: (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.
WM-2020-0174 **30 MPSC 3d 167**

§2. Certificate of convenience and necessity
The Commission found the standard applicable to the sale of a utility of “not detrimental to the public interest” means there is no net detriment after considering all of the benefits and all of the detriments. There must be a balancing of all the benefits and detriments to determine if the transfer as a whole would be detrimental to the public.
WA-2019-0299 **30 MPSC 3d 405**

§2. Certificate of convenience and necessity
The Commission may approve the transfer of utility assets as long as that transfer is not shown to be “detrimental to the public interest.” Section 393.190.
WM-2020-0282 **30 MPSC 3d 472**

§2. Certificate of convenience and necessity
The Commission may grant a water corporation or sewer corporation a certificate of convenience and necessity after determining that such construction and operation are either

"necessary or convenient for the public service." Section 393.170.3.
WM-2020-0282 **30 MPSC 3d 472**

§4. Transfer, lease and sale
In evaluating the sale of a regulated utility's assets, the Commission can only disapprove the transaction if it is detrimental to the public interest.
WM-2020-0174 **30 MPSC 3d 167**

§4. Transfer, lease and sale
The Commission found the standard applicable to the sale of a utility of "not detrimental to the public interest" means there is no net detriment after considering all of the benefits and all of the detriments. There must be a balancing of all the benefits and detriments to determine if the transfer as a whole would be detrimental to the public.
WA-2019-0299 **30 MPSC 3d 405**

§4. Transfer, lease and sale
The Commission's powers are not unlimited. The Commission cannot deny the owners of a utility their right to sell their property unless the Commission finds the sale would be detrimental to the public interest. If the sale is not detrimental to the public interest, then the Commission has no authority to deny the transaction.
WA-2019-0299 **30 MPSC 3d 405**

§4. Transfer, lease and sale
The Commission may approve the transfer of utility assets as long as that transfer is not shown to be "detrimental to the public interest." Section 393.190.
WM-2020-0282 **30 MPSC 3d 472**

§6. Rates and revenues
The Commission found that it could correct three prior cases

in the fourth case of a series of Infrastructure System Replacement Surcharge (ISRS) cases because Sections 393.1003.3 and 393.1006.6 (RSMo) provide that an ISRS is not final until reset at the next general rate case. As the utility had not yet had a general rate case to reset the ISRS, the Commission determined it could use the fourth case to address Internal Revenue Service (IRS) normalization violations collected from the first three cases.
WO-2020-0190 **30 MPSC 3d 179**

§8. Jurisdiction and Powers of the State Commission
The Commission's powers are not unlimited. The Commission cannot deny the owners of a utility their right to sell their property unless the Commission finds the sale would be detrimental to the public interest. If the sale is not detrimental to the public interest, then the Commission has no authority to deny the transaction.
WA-2019-0299 **30 MPSC 3d 405**

§8. Jurisdiction and Powers of the State Commission
The Commission may approve the transfer of utility assets as long as that transfer is not shown to be "detrimental to the public interest." Section 393.190.
WM-2020-0282 **30 MPSC 3d 472**

§8. Jurisdiction and Powers of the State Commission
The Commission may grant a water corporation or sewer corporation a certificate of convenience and necessity after determining that such construction and operation are either "necessary or convenient for the public service." Section 393.170.3.
WM-2020-0282 **30 MPSC 3d 472**

§11. Territorial Agreements
The Commission has jurisdiction over territorial agreements for the sale and distribution of water. Competition to sell and

distribute water between and among public water supply districts, water corporations subject to Commission jurisdiction, and municipally owned utilities may be displaced by written territorial agreements. The Commission may approve a territorial agreement if the Commission determines that the territorial agreement in total is not detrimental to the public interest.
WO-2020-0249 **30 MPSC 3d 096**

§20. Depreciation
The sales agreement for all of Central Rivers' sewer assets allows for an adjustment of the purchase price in the event that Elm Hills discovers information establishing a lower net book value for the assets than Central Rivers represented. Elm Hills has not requested an acquisition adjustment and has the financial capacity to purchase and operate the Central Rivers systems at the agreed to purchase price. Elm Hills proposes to adopt Central Rivers' existing rates. Depreciation rates for Elm Hills and Central Rivers are similar.
SM-2020-0146 **30 MPSC 3d 110**
